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POLISH-GERMAN RELATIONS IN THE EUROPEAN UNION. BETWEEN COOPERATION AND CONFLICT OF INTERESTS

INTRODUCTORY REMARKS

The present article is a comparative analysis of the European policy of Poland and Germany. In the first part of the analysis the priorities of governments of both countries concerning the European policy will be demonstrated. The second part will present the most important aspects of Polish-German cooperation and conflict of interests in the European Union on the example of the political reform of the European Union, the Eastern Partnership project and the EU Energy Security.

PRIORITIES IN THE EUROPEAN POLICY OF GERMANY AND POLAND

Priorities in the European policy of the Federal Republic of Germany

In contrast to other member states such as Great Britain or France, the Federal Republic of Germany treated the issue of deepening and enlarging the European integration as two sides of the same coin. While, for example Great Britain perceived the enlargement of the European Union as a way of slowing down the integration process, Germany pointed to the compatibility of both objectives of integration. For this reason the Federal Republic of Germany was the initiator, or one of the initiators of establishing the European Union (1993), the Economic and Monetary Union (1999), adopting the Stability and Growth Pact (1997), as well as the political reform of the European Union initiated at the intergovernmental conference in the years 1996-1997 and continued during the consecutive intergovernmental conferences organized in the years 2000, 2003-2004 and 2007. On the other hand, Germany supported the efforts of the European Union and the European Free Trade Association to establish European Economic Area (1994), the efforts of Austria, Sweden, Finland and Norway to join the European Union (1995)¹, as well as the accession efforts

¹ Although Norway signed the accession treaty the Norwegian public rejected it in a referendum carried out on 28 November 1994 with the majority of 52.2% of votes, and with the turnout at 88.6%, cf. G. Brandstetter, *Chronologisches Lexikon der europäischen Integration 1945-1995*, Wien 1996, p. 218.

made by the 10 Central-Eastern European states, Malta and Cyprus which were finalized in the largest expansion of the European Union in history (2004 and 2007).

Germany because of its economic and demographic potential and political significance resulting from that was able to agree its national interest with the necessity to resign from some attributes of sovereignty much more than other member states of the European Union. Consequently, the benefits from participating and operating within institutions of supranational character were sometimes greater than benefits stemming from traditional diplomatic activities. Self-restraining one's sovereignty in the process of integration many a time led to factual benefits on the intraregional or even global scale².

However, after the reunification of Germany four very important changes in the European Policy of the German government occurred. First of all, in the years 1991-1992 there was a change in the political conception demonstrated in the official resignation by the German government from efforts to integrate Europe in the form of a classically understood federation. Since then the final objective of the process of European integration was a closely unspecified federation of national states. This was expressed in September 1991 during the session of the intergovernmental conference in the years 1990-1991 by a rejection of the Dutch project of establishing the European Union as a uniform supranational structure without the division into three pillars and assuming partially common foreign and security policy and policies concerning justice and internal matters. In this way the German delegation resigned from the *unctim* which it very much wanted to enforce in the years 1989-1990 and which assumed simultaneous establishment of the Economic and Monetary Union and Political Union as a prototype of the later "European federal state"³.

Secondly, after the Maastricht Treaty was signed, ratified and came into force the European policy of Germany was becoming more and more pragmatic but at the same time it was oriented more than before towards protecting national interests. This attitude was visible, among others, in the evolution of the political program of both Christian Democratic parties which were then in power in the federal government. While in the Dresden Manifesto of CDU from 1991, the aim of Ger-

² For a wider account see J. J. Węc, *Stanowisko Niemiec wobec kryzysu konstytucyjnego w Unii Europejskiej [Attitude of Germany towards the constitutional crisis in the European Union]*, „Krakowskie Studia Międzynarodowe” 2006 No. 4, p. 213.

³ Apart from Netherlands, the European Commission and the European Parliament the project was also supported by: Belgium, Italy, Ireland, Spain and Greece. Initially the German delegation was also an advocate of a similar constitutional structure of the European Union, but as a result of some pressure from France it changed its mind, cf. U. Frenkler, *Die Maastricht-Politik der Bundesrepublik Deutschland: Machtpolitik oder Zivilmacht*. Konferenzpapier zum Workshop “Zivilmacht Bundesrepublik – Erste Befunde der europäischen Forschung” Trier 1998, p. 6-7, 9; J.J. Węc, *Spór o kształt instytucjonalny Wspólnot Europejskich i Unii Europejskiej 1950-2005. Między ideaq ponadnarodowości a współpracą międzyrządową [Controversy over the institutional structure of European Communities and European Union 1950-2005. Between the idea of supranationality and intergovernmental cooperation]*, Kraków 2006, p. 189-191.

man European Policy was the "United States of Europe in the form of a European federal state", in the fundamental program from 1994 CDU was then in favour of "strong Europe which can guarantee the future of nations" but in national states, which would undergo changes in the process of European integration but which could never be "dissolved". While even in January 1991, Chancellor Helmut Kohl was in favour of establishing the "United States of Europe" as a target model of the European integration, immediately after signing the Maastricht Treaty he was convincing others that the idea was wrong, because it makes everybody "at once think of the United States of America whose citizens identify themselves with their nation". Since, however "Europeans from the united Europe should remain the Germans, the British, the Italians or the French", the European Union "should never become a centralized supranational state"⁴. Kohl's views were largely shared by Edmund Stoiber, the then vice-president of CSU and the Prime Minister of the constituent government of Bavaria, who after the Maastricht Treaty coming into force objected to the idea of establishing the European federal state as a target model of European integration, and pointed out to the ruling of the Federal Constitutional Tribunal from 12 October 1993, which in his opinion imposed restrictions on the member states in the scope of assigning their sovereign powers to the European Union. During the sessions of the intergovernmental conference in the years 1996-1997 the German delegation objected to fully common policy concerning asylum laws and immigration in the European Union. What is more, it even suggested reducing the monopoly of the European Commission in the scope of its right to legal initiatives and it proposed to strengthen the position of the European Union Council, which would after all mean disturbing the institutional balance in the decision-making triangle of the European Union consisting of the European Commission, the EU Council and the European Parliament. Chancellor Kohl in the governmental declaration summing up the results of the intergovernmental conference, when justifying the German attitude towards the asylum and immigration policy, as well as towards the policy concerning industry and craft he referred to the need to "defend the well understood German national interests"⁵.

Thirdly, at the latest since autumn 1998 that is since the assumption of power by the SPD/Alliance'90/The Greens coalition the geopolitical paradigm in the European policy became more and more emphasized, which was meant to guard the German national interest. In the coalition agreement of the new ruling parties signed on 20 October 1998 as well as in the governmental declaration presented by Chancellor Gerhard Schröder to the Bundestag on 10 November the same year there were, how-

⁴ H. Kohl, *Die eigene Kraft des kulturellen Lebens in zusammenwachsenden Europa*, Bulletin des Presse- und Informationsamtes der Bundesregierung vom 17. Mai 1992, quoted after E. Cziomer, *Polityka zagraniczna Niemiec. Kontynuacja i zmiana po zjednoczeniu ze szczególnym uwzględnieniem polityki europejskiej i transatlantyckiej*, Warszawa 2005, p. 98.

⁵ A. Statz, K.-P. Weiner, *Fortschritt durch Flexibilisierung? Stand und Aussichten von Maastricht II*, "Blätter für deutsche und internationale Politik" 1996, No. 12, p.1485; U. Frenkler, op. cit., p. 14-16.

ever several important modifications in the European policy. Those which are worth mentioning here include in particular the announcement of reforms in the common agricultural policy based on co-financing by the European Union member states, lowering the German contribution towards the general EU budget, strengthening the common foreign and security policy, coordinating the employment policy to combat unemployment, as well as strengthening the policy of environmental protection in the EU. At the same time the new federal government maintained the attitude of the former governments concerning the need to treat the process of deepening and enlarging the European Union as two sides of the same coin, as well as concerning the need to transform the European Union into a Political Union, understood as a community of decentralized national states⁶.

Fourthly, in the years 2004-2005 after the greatest in history enlargement of the European Union, and following the failed constitution referendums in France and Netherlands the so far adopted strategy in the German European policy which treated the deepening and enlargement of the EU as two sides of the same coin was replaced by a strategy aimed at the internal and external consolidation of the EU. Already in June 2005 the end of the "integrative capacity" of the European Union was mentioned by Angela Merkel, then the head of the parliamentary CDU/CSU faction and a candidate of the Christian Democratic parties for the Chancellor of the Federal Republic of Germany in the next parliamentary election. In her opinion, the European Union by implementing its present enlargement strategy has reached the limits of its capacity. For this reason Merkel then called the governments of the EU member states to keep the accession promises towards Bulgaria, Romania and Croatia, and afterwards prepare an alternative political strategy. She also declared herself as an advocate of the changes proposed by the treaty establishing Constitution for Europe from 29 October 2004 which divided the competencies between the European Union and the member states by adoption of a mechanism enabling the transfer of powers back to the member states⁷. Nevertheless, in the coalition agreement from 11 November 2005 the parties of the new CDU/CSU/SPD coalition declared themselves in favour of deepening the process of European integration understood as "adequate combination of unity and diversity". However, on the other hand they also announced undertaking all the necessary steps aimed at drafting a new enlargement strategy which would mark out "the limits of enlargement" for the EU, pointing, among others, to the constitutional crisis in the European Union caused by the negative results of the referendums in France and in Netherlands. This "sensible" enlargement strategy, not exceeding the accession capacity of the European Union was regarded to be

⁶ For a wider account see J.J. Węc, *Ciągłość i zmiana w polityce zagranicznej i bezpieczeństwa pod rządami nowej koalicji SPD/Sojusz '90/Zieloni. Analiza porozumienia koalicyjnego i deklaracji rządowej* [Continuity and change in the foreign and security policy under the new SPD/Alliance '90/The Greens coalition government. Analysis of the coalition agreement and governmental declaration] „Rocznik Polsko-Niemiecki” 1999, No. 8, p. 187-193.

⁷ The end of the "integration capacity" of the EU, PAP from 23 June 2005.

“an important contribution towards ensuring peace and stability” on the European continent. Still the document upheld the prospect of Croatia and other West Balkan states joining the European Union, whereas accession of Turkey was made dependant on the capacity of the EU itself, as well as on the adoptive capabilities of Turkey. If one of these conditions was not met, the alternative solution for Turkey would be “possibly close” “ties with the European structures” in the form of “privileged partnership”. In consequence a development of the European neighbourhood policy, presented below, as an alternative to a full membership in the European Union started to gain importance. Apart from that both coalition parties with reference to the political reform of the European Union defined in the constitutional treaty, not only declared to provide new stimuli for the process of its ratification in the first half of 2007, that is during the German presidency but they also appealed to the other member states to take up further constitutional changes which would guarantee integrity of the competencies of the member states without them being questioned (*Aushöhlung*) by the European Union. Although it seemed an incredibly radical postulate in the case of Germany, both parties also called for strengthening the intergovernmental infrastructure in the European Union by encouraging the European Council to make use of its right to persuade (*aufzufordern*) the European Commission to withdraw its drafts of legal acts in singular cases” and even “if the need arises to withdraw already adopted legislation”⁸. Chancellor Angela Merkel in the governmental declaration presented to the Bundestag on 30 November 2005 asked again about the limits of enlarging and deepening the process of integration realized within the European Union⁹. On 11 May 2006 in the government’s statement devoted exclusively to the European policy Merkel literally demanded marking out the limits of enlargement of the European Union claiming that the EU is unable to accept all the European countries which would like to join it. She also, for the first time, very clearly spoke about the need for internal and external consolidation (*Verfasstheit*) of the European Union and at the same time she expressed her doubts concerning the possibility to harmonize this task with the process of further enlargement of the EU¹⁰. In this context enlarging and deepening the integration within the European Union therefore assumed a com-

⁸ Gemeinsam für Deutschland. Mit Mut und Menschlichkeit, Koalitionsvertrag von CDU, CSU und SPD, http://www.bundesregierung.de/nsc_true/Content/DE/_Anlagen/koalitionsvertrag, p. 147-151.

⁹ Verhandlungen des Deutschen Bundestages. Stenographischer Bericht. 16. Wahlperiode, 4. Sitzung am 30. November 2005, p. 88-89.

¹⁰ Verhandlungen..., 35. Sitzung am 11. Mai 2006, op. cit., p. 2892-2893. The rationale of the new enlargement strategy for the European Union was developed in Chancellor Merkel’s speech delivered in the Bertelsmann Foundation on 22 September 2006 cf. Rede von Bundeskanzlerin Dr. Angela Merkel zur Eröffnung des Internationalen Bertelsmann Forum „Die Zukunft der Europäischen Union” am 22. September 2006 in Berlin, “Bulletin des Presse- und Informationsamtes der Bundesregierung” vom 24. September 2006. For analysis of the latter speech see P. Buras, „Europa uda się wspólnie”. *Zmiany w niemieckiej polityce europejskiej a rola Niemiec w Unii Europejskiej* [“Europe will succeed together”. *Changes in the German European policy and the role of Germany in the European Union*], „Polski Przegląd Dyplomatyczny” 2007, No. 1, p. 40.

pletely new dimension. The internal and external consolidation of the European Union was supposed to constitute an indispensable premise of its capability to act. From this point of view it was also of utmost importance for the German government to finalize the constitutional reform in the European Union which was defined in the constitutional treaty. Thus, the objective of the internal and external consolidation understood as strengthening the European Union inside and outside the structure obtained an absolute priority before the process of the EU enlargement. This was tantamount to a departure from the dual strategy of deepening and enlarging which was until then implemented by the former German governments.

However, it should be emphasized that parallel to the approaching date of election to the European Parliament in June 2009 the attitudes of both coalition parties concerning the new strategy of enlargement for the European Union were becoming more and more divergent. To illustrate, CDU in its election manifesto *Strong Europe – Secure future* adopted on 16 March 2009 in Berlin declared itself in favour of the need to introduce a “phase of consolidation” in the European Union during which “the strengthening of the EU identity and its institutions should have priority over its further enlargement”. In what follows full membership in the European Union should not “be the only answer to the expectations concerning the European perspective”, although it was at the same time stated in the document that such a perspective would undoubtedly be “important for the process of reforms” in the countries of Eastern Europe and Western Balkans. Notwithstanding, according to CDU it is only Croatia which should be accepted into the European Union as the most advanced candidate state, while the best solution for Turkey, which had started the accession negotiations as well, would be a programme of privileged partnership. The remaining countries neighbouring with the European Union and applying for, or intending to apply for accession to the European Union should be embraced by the European neighbourhood policy where some projects should be supported and implemented, among others, the EU project for the Mediterranean Sea and the Eastern Partnership project¹¹. In contrast with the Christian Democrats, SPD in its European manifesto *For the sake of strong and social Europe* adopted on 10 February 2009 in Berlin ex-

¹¹ Starkes Europa – Sichere Zukunft. Programm der Christlich-Demokratischen Union Deutschlands zur Europawahl 2009, Berlin 16. März 2009, <http://www.cdu.de/doc/pdfc/090316-europa-wahlprogramm-2009.pdf>, p. 12-13. The CDU enlargement strategy supported by Chancellor Merkel met with sharp criticism from Karel Schwarzenberg (Czech Republic), Jean Asselborn (Luxembourg), David Miliband (Great Britain), Carl Bildt (Sweden) and Alexander Stubb (Finland) during the meeting of foreign ministers from the European Union which took place in Czech Hlubka on 28 March 2009. The critics were in favour of accepting into the European Union the countries from former Yugoslavia and Turkey. While Frank-Walter Steinmeier, German Foreign Minister and the SPD candidate for the office of chancellor in the election to the Bundestag in 2009 accused CDU of conducting a contradictory internal policy concerning the enlargement of European Union because it demanded that only Croatia was accepted into the EU, whereas on the other hand it was in favour of establishing a clear European perspective for the Western Balkan states, cf. Criticism of the German Chancellor's course concerning the EU enlargement, Deutsche Welle, 30 March 2009 r., <http://www.dw-world.de/dw/article/0,,4137019,00.html>.

pressed support for the accession of Turkey to the European Union under the condition of meeting the essential membership requirements, as well as it clearly declared itself in favour of establishing a clear accession perspective for the Western Balkan states¹².

Priorities in the European policy of Poland

Because of the political and economic position in the European Union, but primarily due to modest experience in the area of European integration, as well as due to traumatic historical experiences in the last two hundred years or more, the Polish government found it much more difficult than the German government to agree the national interest with the need to abandon some attributes of the state sovereignty. For this reason Poland belonged to the group of these European Union member states which were opposing the far-reaching process of deepening the integration and strengthening the supranational infrastructure (especially in the area of common foreign policy and security) and which were opting for strengthening cooperation and intergovernmental infrastructure.

After Poland's accession to the European Union on 1 May 2004 one of the fundamental priorities in the European policy of the coalition government (SLD/UP) under Prime Minister Marek Belka was for Poland to enter in an active manner the process of building effective, from the point of Polish interest, coalition alliances within the EU. This was supposed to serve the purpose of attracting individual member states of the European Union as supporters of the Polish position. This priority was based on the assumption that it was necessary to reconcile the Polish national interest with the interests of the other member states of the European Union in the name of the interest of the community (common good). The second important priority was the intention to overcome the discrepancy in the relations with Germany and France which resulted from the debate on the project of the constitutional treaty during the sessions of the intergovernmental conference in the years 2003-2004. The shared duty of Poland and Germany should also include counteraction against burdening their bilateral relations and image of both nations in the international arena with problems resulting from the past. Maintaining high dynamics in the political relations with Germany and France was meant to serve the purpose of using them for collaboration towards eastern policy and common foreign and security policy of the European Union. The aim of these efforts was to design a new conception of the eastern policy in the European Union, development of the trans-Atlantic relations, as well as the development of the security and defence policy in a way cohesive with the role of NATO in Europe¹³.

¹² Für Europa: stark und sozial. Europamanifest der Sozialdemokratischen Partei Deutschlands für die Wahlen zum Europäischen Parlament 2009. Kurzfassung, hrsg. vom SPD-Parteivorstand, Berlin 2009, p. 4.

¹³ Cf. Information from the Minister of Foreign Affairs, Włodzimierz Cimoszewicz about the tasks for Polish foreign policy in 2004. Stenographic report from 67th session of the Polish Sejm from 21

The active involvement of Poland in building and establishing effective coalitions within the European Union was also supported by the minority government (PiS) formed in the autumn of 2005 under the Prime Minister Kazimierz Marcinkiewicz. Representatives of this government also postulated maintaining the so far enlargement strategy of the European Union, and they in particular supported the efforts made by the Ukraine towards accession and integration with the EU¹⁴. Notwithstanding, in contrast to the previous governments, the geopolitical paradigm which was meant to guard the Polish national interest became more and more emphasized in the European policy of both the minority and coalition government (PiS/Samoobrona/LPR) headed by Kazimierz Marcinkiewicz, and especially during the government under Prime Minister J. Kaczyński (PiS/Samoobrona LPR). Realization of the national interest within the entire Euro-Atlantic area that is within the European Union and NATO was the requirement of the Polish reason of state for the government of Prime Minister Marcinkiewicz. While integration within the European Union was supposed to guarantee economic development and prosperity in Poland, the alliance with the USA within NATO was meant to guarantee its external security. It was for this reason that Marcinkiewicz's government made efforts to eliminate dissonance and misunderstandings between the USA, France and Germany concerning the security policy, although this turned out to be only wishful thinking¹⁵. On the other hand, however, the representatives of that government were also warning against excessive demonstration of the Polish national interest in the European Union as a constant confrontation of one's own national interests with national interests of other states could lead to a battle of "national egoisms" in the EU, which indeed should be avoided at all cost (Stefan Meller)¹⁶. The geopolitical paradigm received an even stronger emphasis in the European policy of the government under Prime Minister Kaczyński, according to which the realization of the national interest was

January 2004. Sejm Rzeczypospolitej Polskiej, 4th term, p. 2-6. For an extensive analysis of the new conception of the Polish government concerning the European policy see J.J. Węc, *Stanowisko Polski wobec reformy Unii Europejskiej w latach 2003-2004. Nowa koncepcja polskiej polityki europejskiej [Poland's attitude towards the reform of the European Union in the years 2003-2004. New conception of the Polish European Policy.]*, in: *Międzynarodowe implikacje procesu integracji europejskiej dla Polski i Niemiec*, E. Cziomer and M. Czajkowski (eds.), Kraków 2004, p. 47-60.

¹⁴ Exposé of the Chairman of the Council of Ministers of the Republic of Poland, Kazimierz Marcinkiewicz, Stenographic report form 2nd session of the Sejm of the Republic of Poland from 10 November 2005. Sejm Rzeczypospolitej Polskiej, 5th term, p. 7; Information from the Foreign Minister, Stefan Meller about the tasks for the Polish foreign policy in 2006, Stenographic report form 10th session of the Sejm of the Republic of Poland from 15 February 2006, Sejm Rzeczypospolitej Polskiej, 5th term, p. 7-9.

¹⁵ Exposé of the Chairman of the Council of Ministers of the Republic of Poland, Kazimierz Marcinkiewicz, Stenographic report form 2nd session of the Sejm of the Republic of Poland from 10 November 2005. Sejm Rzeczypospolitej Polskiej, 5th term, p. 7.

¹⁶ Information from the Foreign Minister, Stefan Meller about the tasks for the Polish foreign policy in 2006, Stenographic report form 10th session of the Sejm of the Republic of Poland from 15 February 2006, Sejm Rzeczypospolitej Polskiej, 5th term, p. 7-9.

a direct consequence of the specific historical and geopolitical position of Poland. Even enlarging the European Union to include the Ukraine was for Kaczyński not only a geopolitical issue, in the sense of strengthening the security for Poland and the EU against the threat from Russia, but also an incredibly significant issue for the decision-making mechanism in the EU, in the sense of weakening the German influence in the EU¹⁷. In other words, as it was expressed in a straightforward manner by the Polish Foreign Minister, Anna Fotyga, the European Union was to be the most important platform for the realization of Poland's political and economic interests¹⁸.

While the government under Jarosław Kaczyński approached the constitutional reform of the European Union, which was codified in the constitutional treaty with an undisguised restraint, the new government (PO/PSL) headed by Donald Tusk treated this reform, as well as the Treaty of Lisbon from 13 December 2007 itself as an indispensable condition for strengthening and facilitating the legal and institutional foundations of the EU, and in consequence as a premise of the internal consolidation of the EU indispensable for its proper functioning and a strong position in the international arena. Internal consolidation of the European Union was therefore to be a guarantee of its effective operation outside the EU, and in particular in common foreign and security policy and European neighbourhood policy. With reference to the latter policy in May 2008 the new Polish government together with the Swedish government came up with a proposal to implement the project of Eastern Partnership. In the opinion of the new Polish Foreign Minister, Radosław Sikorski the project could constitute for Poland and Germany "a very important area for co-operation" within the European Union.

The cabinet of Prime Minister Tusk in its political declarations did not highlight, as much as it was done until then by Kaczyński's government, the national interest and the desire to maintain the political position of one out of the six most influential member states in the European Union. It rather returned to the conception of national interest adopted in the years 2004-2005, understood as the economic and technological development with Poland making in the foreseeable future a "civilization jump", among others, thanks to benefits coming from the process of European integration. On 7 May 2008 in a report on foreign policy presented to the Sejm Minister Sikorski stated that the national interest or the reason of state cannot be understood arbitrarily. The "sense of being in control of its own fate" should be one of the most important attributes of the national interest in contemporary Poland, as well as being able to make a "jump towards advanced civilization" thanks to the process of European integration. In this sense the process of European integration is not in contradiction

¹⁷ Exposé of the Chairman of the Council of Ministers of the Republic of Poland, Jarosław Kaczyński, Stenographic report form 22nd session of the Sejm of the Republic of Poland from 19 July 2006, Sejm Rzeczypospolitej Polskiej, 5th term, p. 174-176.

¹⁸ Information from the Foreign Minister, Anna Fotyga about the tasks for the Polish foreign policy in 2007, Stenographic report form 41st session of the Sejm of the Republic of Poland from 11 May 2007, Sejm Rzeczypospolitej Polskiej, 5th term, p. 359-360.

with the Polish national interest but, on the contrary “peaceful integration of Europe is in our direct interest”. In what follows, the Minister appealed to both, the opposition political party, PiS not to scare the citizens “with a threat of emergence of the European super state, which is hiding the imaginary subjection towards the larger and stronger states”, as well as to the governments of the western partners of Poland in the European Union to finally start to treat the Polish struggle for freedom in the second half of the 20th century also as a part of the European experience just like the prosperity they enjoyed in those years, and finally he appealed for abandoning the “national egoisms” in favour of the primary principle of subsidiarity and common good¹⁹. Thus, the European Union demonstrating solidarity and subordinate to the principle of subsidiarity and common good was supposed to constitute the best platform for the realization of the Polish national interest.

BETWEEN COOPERATION AND A CONFLICT OF INTERESTS

Constitutional reform in the European Union

From the German point of view the constitutional reform of the European Union codified in the Constitutional Treaty from 29 October 2004 and then in the Treaty of Lisbon from 13 December 2007 played an extremely important role in the strategy of internal and external consolidation and stabilization of the European Union. In line with the so far binding philosophy behind the European integration since 1957, the

¹⁹ During the mentioned speech in the Sejm Sikorski said, among others, “The stylistics of diplomacy is fundamentally dependant on the initial assumptions, especially the doctrinal ones. Ideologists like to resort to ultimate concepts, usually arbitrarily understood, such as ‘national interest’ or ‘reason of state’ (...). Perhaps it is worth to think about a convincing definition of “national interest’ of contemporary Poland. We would probably agree that the most important thing is for our nation to have the sense of control over our own fate. However, it is not enough to be free, the ability to compete is needed as well. In other words in order to be, we need to have the ability to strengthen ourselves. And gaining a stronger position means for Poland catching up with at least the level of development of our EU community. The Membership of Poland in the European Union inspires us to make a jump towards advanced civilization. Advanced civilization is absolutely in our national interest. Consequently, our Polish national interest is not in opposition to the process of European integration, and quite on the contrary, peaceful integration of Europe is in our direct interest. Let us not be afraid of the process, let us not scare co-citizens with a threat of emergence of the European super state, which is hiding the imaginary subjection towards the larger and stronger states (...) It is not only us who do not agree to subjection, but also no other European nation would agree to that (...). Europe will not reach mental unity until our western partners make an effort to understand, truly understand that our struggle for freedom in the second half of the 20th century constitutes the same European experience like the prosperity they enjoyed in those years (...). It is important to see that the partnership nature of the European Union re-orientates in the same way us and other member states from our national egoisms towards the primacy of subsidiarity and common good”, cf. Information from the Foreign Minister, Radosław Sikorski about the Polish foreign policy in 2008, Stenographic report form 15th session of the Sejm of the Republic of Poland from 7 May 2008, Sejm Rzeczypospolitej Polskiej, 6th term, p. 6-8.

reform meant further deepening of the integration process but also strengthening the intergovernmental infrastructure in the EU. Transforming the European Union into an international organization and the changes in the common foreign and security policy were supposed to lead to the strengthening of the EU's position in the international system, and by the same token to the widening of the freedom of action and strengthening the role of Germany in the international politics. The internal consolidation and stabilization of the European Union, on the other hand was assumed to result from the establishment of the rigid division of competencies between the European Union and the member states, the development of axiological basis of the EU, strengthening the position of national parliaments, changes in the institutional system, in the internal market, as well as in the realm of freedom, security and justice. Paradoxically, the strategy of internal consolidation and stabilization of the European Union contained also all the changes introduced in the Treaty of Lisbon which in contrast with the Constitutional Treaty, strengthened the position of member states by including, among others detailed specification of the principle of division of competencies between the EU and the member states, or the even greater strengthening of the position of national parliaments in the EU. In addition, establishing the so-called double majority in decision-making procedure by qualified majority in the Council of the European Union and in the European Council meant a significant increase of political importance of Germany in the decision-making system of the European Union, and in consequence a very serious change of balance of powers in the organization.

Poland perceived the constitutional reform of the European Union in many respects similar to Germany, which is as a necessity resulting from the enlargement of the EU intended to extend its internal and external capacity needed for this international organization to function. The above thesis applied to all the Polish governments which participated in the constitutional reform of the European Union, irrespective of the fact that during the rule of PiS/Samoobrona/LPR the Polish national interest was articulated much stronger in the European policy. During the session of the Convention on the future of Europe (2002-2003) and during the intergovernmental conference (2003-2004) the governments of Poland and Germany were in agreement concerning the necessity of the constitutional reform in the European Union in the following areas: transforming the European Union into an international organization; strengthening the axiological foundations of the EU, establishing the division of competencies between the EU and the member states, simplifying the legislation procedures and the catalogue of sources of the law, introducing some changes in the institutional system (empowering the European Parliament, the European Commission and the European Court of Justice), as well as strengthening the role and position of the national parliaments in the decision-making and legislative process in the EU.

At the same time, however during the debate concerning the constitutional reform of the European Union disputable issues occurred between the governments of both countries which created potential or real conflict areas. Already during the work of the Convention in the years 2002-2003 Poland and Germany differed in their attitudes to such issues as decision-making-procedure in the EU Council and in the

European Council, presidency in the European Union, membership in the European Commission and the common foreign and security policy in the European Union. While the Polish delegates were in favour of maintaining the so far used decision-making procedure in the Council of the European Union, that is by a qualified majority and in favour of equal rights for the citizens of all member states in the European Commission, the representatives of Germany suggested abandoning the system of weighting votes and introducing the so-called double majority. They also wanted to reduce the number of commissioners and agreed to divide the commissioners into two different categories, with the right to vote and without the right to vote. During the session of the Convention the German delegates supported by the representatives of France were advocating communitizing the second pillar of the European Union and postulating, among others, to grant the EU foreign minister a very wide range of competences, to establish voting with qualified majority as a principle in decision-making concerning the common foreign and security policy, and to introduce a full control of the European Parliament over these issues, to transform the common security and defence policy into the European Union of Security and Defence which would strengthen the European pillar of NATO, to establish the European Defence Agency as a supranational body, securing this area by principles of enhanced cooperation, to take over the commitments stemming from the modified Treaty of Brussels from 1954, together with the then alliance clause, to establish the so-called structural cooperation initiated, however, not by the European Council or the Council of Ministers²⁰, but by the interested member states, that is to say clearly based on the conception of *Europe à la carte* which was commonly criticized in Poland and in other member states. On the other hand, delegates of Poland, similar to representatives of many other member states or candidate states were firmly against the proposal to communitize the second pillar of the European Union for fear of a division within the EU security system into two areas, the European and trans-Atlantic system. Following that, they demanded introducing into the project of the constitutional treaty provisions which would fully respect commitments of the member states in the European Union resulting from their membership in NATO²¹.

The only significant initiatives which were jointly put forward by Germany and Poland during the European Convention concerning the future of Europe included a joint memorandum of the governments of France, Germany, Great Britain, Ireland and Poland submitted to the Convention's Secretariat on 14 June 2002 which concerned the division of competences between the European Union and the member

²⁰ Council of Ministers is a new name for the Council of the European Union defined in the Constitutional Treaty from 29 October 2004.

²¹ For a wider account see Europäischer Konvent. Beitrag von Herrn Dominique de Villepin und Herrn Joschka Fischer "Gemeinsame deutsch-französische Vorschläge für den Europäischen Konvent zum Bereich Europäische Sicherheits- und Verteidigungspolitik", 22. November 2002, CONV 422/02, p. 1-4; J.J. Węc, *Spór o kształt instytucjonalny [Dispute over the institutional structure]*, op. cit., p. 339-343, 348-350.

states. The other initiative was a declaration of the ministers for European Affairs of Poland, Germany and France adopted on 26 May 2003 concerning the common foreign and security policy of the European Union. In particular the first document was of substantial importance for the course of the proceedings of the Convention. The authors of the memorandum called the participants of the Convention to define clearly and precisely in the draft of the constitutional treaty the norms and principles specifying how the European Union could acquire its competences. They argued that according to the general principles binding in the international legislation, the European Union cannot have competences other than those which have been, or will be determined by the member states in the international agreements (the assignment principle). The competences of the European Union should be realized in line with the principle of subsidiarity and proportionality, whereas competences in all areas unspecified in the international agreements should be assigned exclusively to the member states²².

The governmental delegations of Poland and Germany came also with different political objectives to the session of the intergovernmental conference in the years 2003-2004. While the German delegation was against the "untying of the package" of agreements determined in the draft of the Convention, and it did not present in fact any new postulates at the intergovernmental conference, the Polish delegation submitted as many as five new proposals including introducing *invocatio Dei* to the preamble of the constitutional treaty, establishing group presidency in the European Union, reflecting the full representation of the member states in the membership of the European Commission, maintaining the system of weighting votes in the European Council and the Council of Ministers agreed upon in the Treaty of Nice, as well as excluding such solutions in the common security and defence policy which would weaken the role of NATO in Europe²³. The fiasco of the European Council session in Brussels in December 2003 was, among others, the aftermath of the failure to reach agreement in several crucial issues in which Poland and Germany presented different attitudes. They included: the contents of the preamble, the membership in the European Commission, definition of the qualified majority as well as the minimum number of mandates in the European Parliament²⁴. However, when in June 2004 the European Council adopted the Treaty establishing Constitution for Europe it was also to a large extent the merit of Poland and Germany. The German government from the

²² Cf. S. Parzymies, *Polska wobec projektu traktatu konstytucyjnego Unii Europejskiej [Poland's attitude towards the Constitutional Treaty project of the European Union]*, „Sprawy Międzynarodowe” 2003, No. 2, p. 102.

²³ For a wider account see J.J. Węc, *Reforma instytucjonalna Unii Europejskiej w pracach Konwentu. Stanowisko Polski [Institutional reform of the European Union in the proceedings of the Convention. Poland's attitude]*, in: *Stanowisko Unii Europejskiej wobec Polski i jej sąsiadów w przededniu poszerzenia*, M. Czajkowski and E. Cziomer (eds.), Kraków 2003, p. 134.

²⁴ For a wider account see J.J. Węc, *Spór o kształt instytucjonalny [Dispute over the institutional structure]*, op. cit., p. 381-421.

beginning of 2004 made efforts to enter into "a more intensive discussion" with the Polish government (Schröder), while the Polish government demonstrated readiness to reach a compromise by agreeing to the modification of the arrangements in the constitutional treaty drafted by the Convention. Out of the five fundamental postulates submitted by the Polish delegation two were adopted by the intergovernmental conference (group presidency, common foreign and security policy), and with reference to the three other proposals Polish efforts were unsuccessful (the membership in the European Commission, definition of the qualified majority, *invocatio Dei*). These provisions of the constitutional treaty which concerned the group presidency in the European Union and the common foreign and security policy in the EU could be treated by the Polish government as its huge political success as Poland was one of their initiators²⁵. The German government, on the other hand considered the establishment of the so-called double majority in the decision-making procedure in the Council of Ministers and in the European Council its greatest diplomatic success, because it created a new balance of powers in the European Union. The representatives of the federal government also did not hide their satisfaction from the reduction of the number of commissioners in the council of the European Commission to 2/3 of the number of the member states because they were from the very beginning for a radical reduction in this respect²⁶.

In June 2007 the German presidency managed to prepare a complex draft of a mandate for the next intergovernmental conference, mostly thanks to strong determination and a very precise methodology of negotiations with the member states of the European Union. The project envisaged signing a new revision treaty called a reformation treaty which would change the presently binding treaties but which would retain ca. 90% of the provisions of the constitutional treaty. Following that, on 14 June 2007 the German presidency sent the project of the mandate to the governments of the individual member states. Some of the states nearly to the last moment were considering the possibility of introducing changes in the project of the mandate. Poland belonged to the group which reported the largest number of reservations²⁷.

²⁵ The principle of unanimous voting was maintained in common foreign and security policy, there was a lack of legislative acts, the competences of the European Parliament were slight and the competences of the Court of Justice were very limited. Besides this area belonged to a separate category in the division of competences between the European Union and member states.

²⁶ For a wider account see J.J. Węc, *Spór o kształt instytucjonalny [Dispute over the institutional structure]*, op. cit., p. 360-361, 452-454.

²⁷ The group also included the government of Great Britain, Netherlands, Czech Republic and France, cf. The attitudes of the member states except Poland and Germany which share presidency in the EU Council in the present term concerning the treaty reform. Department of Analysis and Strategy of the Office of European Integration Commission, <http://www.ukie.gov.pl>, s. 3-4, 8-9, 15-16; L. Jesień, *Stan debaty nad reformą instytucjonalną w wybranych państwach Unii Europejskiej [The state of the debate over the institutional reform in the chosen countries of the European Union]*, „Polski Przegląd Dyplomatyczny” 2007, No. 4, p. 144-145 (survey of the negotiators of German presidency);

In this situation the day before the session of the intergovernmental conference in 2007 there was a dispute between the government of Poland and Germany concerning the constitutional reform of the European Union. Also this time the dispute focused first of all on the definition of a qualified majority in the Council of Ministers and in the European Council. The Polish government which was to lose the most by the European Union resigning from the Niece principles of decision-making procedure in the Council of Ministers by a qualified majority, proposed to replace the so-called double majority drafted in the project of the mandate (at least 55% of the votes of the states including at least 15 states and representing at least 65% of the EU population) by a system of even voting called a square root system. The arguments put forward included the fact that according to the voting theory an equal say of all the EU citizens in voting in the Council of Ministers would be possible if the weighting of each country in the voting procedure was approximately proportional to the square root of its population size, and not to the population size. However, Germany objected to this proposal, for whom as it was mentioned earlier, the system of the so-called double majority was incredibly beneficial. Since during the decisive session of the European Council on 21-22 June 2007 the Polish delegation remained very much on its own in the dispute, President Lech Kaczyński resigned from this postulate in exchange for the promise of strengthening the so-called Joanina mechanism.

During the session of the intergovernmental conference in the period from July to October 2007 representatives of the Polish government demanded that the so-called mechanism from Joanina should be written down in the new treaty, but they also postulated (similar to the day before the conference) that the role of the national parliaments should be strengthened in the scope of observing the principle of subsidiarity. They also demanded a more precise specification of the division of competences between the European Union and member states, especially in the scope of competitive competences and in common foreign and security policy. Eventually, in the Treaty of Lisbon signed on 13 December 2007 in line with the postulates of the Polish delegation the period of observing the Niece definition of a qualified majority in the Council²⁸ and in the European Council was *de facto* extended until as late as 2017. The so-called Joanina mechanism was also strengthened although not in the Treaty but in the declaration²⁹.

R. Grzeszczak, *Prezydencja Niemiec a reforma ustrojowa Unii Europejskiej [German presidency and the constitutional reform of the European Union]*, in: *Procesy reform w Niemczech i Unii Europejskiej*,

R. Grzeszczak and M. Piotrowska, Wrocław 2009, p. 22-25.

²⁸ Council is the new name for the Council of the European Union defined in the Treaty of Lisbon.

²⁹ Declaration nr 7 referring to article 16 paragraph 4 of the Treaty about the European Union, and article 238 paragraph 2 of the Treaty about the functioning of the European Union, [in] *Traktat z Lizbony, zmieniający traktat o Unii Europejskiej i traktat ustanawiający Wspólnotę Europejską*, Lizbona, 13 grudnia 2007 r., *Dziennik Urzędowy Unii Europejskiej*, C, 2008, No. 115, p. 338-340.

On the other hand, however the possibility was taken into account that the mechanism may be changed or lifted by a unanimous decision of the European Council³⁰. By virtue of the Treaty of Lisbon the principles of the division of competences between the European Union and member states were also precisely specified³¹, and the right of objection by the national parliaments within the early warning system was broadened³². Apart from that new regulations were adopted concerning common foreign and security policy which confirmed competences of the member states in this area (art. 24 paragraph 1 EUT), as well as two declarations appended to the Treaty of Lisbon were adopted, which defined full independence of the member states in foreign and security policy, in the area of establishing relations with other countries and international organizations, and in the area of national diplomatic service³³.

The Eastern Partnership Project

As it was mentioned earlier, Poland and Sweden were the initiators of the idea of the Eastern Partnership project. On 26 May 2008 the ministers of foreign affairs of both countries, Radosław Sikorski and Carl Bildt, came up with an official proposal during the session of the Council devoted to General Matters and External Relations in Brussels. The project was supposed to be an integral part of the European neighbourhood policy, which the European Commission had described already on 12 May 2004, and which was then adopted by the EU Council in June of the same year³⁴.

³⁰ Protocol nr 9 concerning the decision of the Council referring to the execution of the article 16 paragraph 4 of the Treaty about the European Union and article 238 paragraph 2 of the Treaty about the functioning of the European Union in the period between 1 November 2014 and 31 March 2017 and from 1 April 2017, [in] *Traktat z Lizbony*, op. cit., p. 274.

³¹ Treaty about the functioning of the European Union, in: *Traktat z Lizbony*, op. cit., p. 346

³² Protocol nr 2 concerning the application of the principles of subsidiarity and proportionality, in: *Traktat z Lizbony*, op. cit., p. 208.

³³ Treaty about the European Union, in: *Traktat z Lizbony*, op. cit., p. 40; Declaration nr 13 concerning common foreign and security policy, *ibidem*, p. 343; Declaration nr 14 concerning common foreign and security policy, *ibidem*.

³⁴ The European neighbourhood policy was aimed at establishing good relations between the European Union and the neighbouring countries. With reference to the new security strategy of the European Union from December 2003 this policy should also serve the purpose of ensuring stability and security to those countries, cf. *Europejska Polityka Sąsiedztwa – Komunikat Komisji [European Neighbourship Policy – Communiqué of the Commission]*, „Monitor Europejski”, Brussels 12 October 2004, COM (2004), 373 final, p. 1-36. For an extensive analysis of the document see B. Koszel, *Polska i Niemcy w Unii Europejskiej. Pola konfliktów i płaszczyzny współpracy [Poland and Germany in the European Union. Areas of conflict and platforms for cooperation]*, Poznań 2008, p. 176-187. The examples of cooperation with the countries from Eastern Europe within the European neighbourhood policy included so far, among others, a plan of establishing a free trade zone with the Ukraine, establishing the first visa centre of the European Union in Moldavia, or financial support for Georgia in the implementation of economic and political reforms. Only in 2007 the European Union allocated 1.65 billion Euros for the European neighbourhood policy, cf. J.J.Węc, *Niebezpieczna Europa [Dangerous Europe]*, „Monitor Unii Europejskiej” 2008, No. 9, p.14-15.

The Polish-Swedish idea of Eastern Partnership was also supported by the German government although not from the very beginning. The Eastern Partnership project was accepted by the European Council on 20 June 2008³⁵. The project was addressed to the Ukraine, Georgia, Azerbaijan, Armenia and Moldavia. On conditional terms also Belarus could participate in the project. The fundamental aim of the project was to facilitate visa traffic, and even possibly establish visa-free traffic, as well as joint activity concerning energy policy, cooperation in the area of culture, education and environmental protection, and in the long-range perspective the aim was to establish a free trade zone with the six above mentioned countries. The usefulness and topicality of the Eastern Partnership was confirmed by the European Council during a special meeting on 1 September 2008 devoted to the Georgian crisis. In the conclusions accepted then by the European Council there was an announcement of implementing the Eastern Partnership project starting from March 2009³⁶.

Following this the European Council during a session in Brussels on 19-20 March 2009 adopted a declaration about starting the implementation of the Eastern Partnership project understood as an integral part of the European neighbourhood policy and concerning the Ukraine, Armenia Azerbaijan, Georgia, Moldavia and Belarus. The declaration specified and defined the assumptions of the Polish-Swedish project. The cooperation was supposed to be based on "shared values such as democracy, lawfulness, and respect for human rights as well as the principles of free market economy, sustainable development and good governance". This cooperation was meant in future to lay "foundations for new agreements concerning association between the EU and those partners" that have made satisfactory progress in the realization of the above principles and values. The Eastern Partnership project envisaged, among others, full liberalization of the visa regime as a long-range aim of bilateral cooperation, establishment of the free trade zone between the European Union and the above mentioned countries, but it also provided for a closer cooperation in the area of energy security in order to ensure long-term supply and transit of energy. The mechanism of consultations between the European Union and the six countries participating in the cooperation would involve regular meetings of heads of states or governments, "as matter of principle every two years", as well as meetings of foreign ministers held once a year. During the consultations four aspects of mutual cooperation called thematic platforms should be discussed. These include democracy, lawfulness and political stability (among others, election standards, freedom of the media, fighting corruption, civil service reform, cooperation concerning system of justice and the police), economic integration and convergence with the UE policies (among others, standardization of market and trade solutions, social-economic development, health, environment, climatic changes), energy security (among others,

³⁵ Session of the European Council in Brussels. Conclusions of Presidency, Brussels, 19-20 June 2008, „Monitor Europejski” 2008, No 50, p. 20.

³⁶ Special session of the European Council 1 September 2008 in Brussels. Conclusions of Presidency, 1 September 2008, No. 12594/08, p. 3.

development and construction of the basic energy infrastructure, providing support for the southern energy corridor, extending the Odessa-Brody oil-pipeline to Poland), as well as interpersonal contacts (cultural and scientific cooperation, support for non-governmental organizations and civil society)³⁷. During the above mentioned session the European Council also decided to raise the financial expenditure for the realization of the aims planned in the project of Eastern Partnership for the years 2010-2013 up to 600 million Euros³⁸.

The first meeting of the representatives of the EU member states and the six countries included in the Eastern Partnership was held on 7 May 2009 in Prague. Despite the fact that the heads of states or governments of France, Great Britain, Italy and Spain did not participate in the meeting, which showed their scepticism or lack of interest in the project, the concluding declaration contained resolutions substantiating this initiative. It was agreed, among others, that the first meetings devoted to the discussion of the so-called thematic platforms will be held in June 2009. Apart from that the participants appealed to the European Commission, to the future presidencies, and to the partner states to quickly work out the schedule of the meetings at the ministerial level and define the priorities of the individual thematic groups for the years 2009-2010³⁹.

It should be underlined that the lack of enthusiasm inherent in the reaction of four out of five largest member states of the European Union towards the inauguration meeting of the representatives of the governments of the countries included in the Eastern Partnership does not hold much promise for a full success of the project. This fact also shows that the European Union still has a serious problem with defining and creating a common eastern policy. Also the interest in the Eastern Partnership from the governments of Poland and Germany stems from, as it seems, different political premises. In particular both countries differed and still differ in their approach to the aims of the project and in terms of their attitude towards Russia.

While Germany supported the initiative because of the changes in the hitherto enlargement strategy and because of their willingness to develop the capacity of the European Union to operate outside the EU area, Poland treated the project as a stage

³⁷ Session of the European Council in Brussels. Conclusions of Presidency, Brussels, 19-20 March 2009, <http://www.consilium.europa.eu/>, s. 1, 19-21; Eastern Partnership, European Commission. Directorate-General for External Relations, <http://www.ec.europa.eu/>, s. 1-17 (analysis by J. Urbanik).

³⁸ 250 million Euros came from resources provided for earlier on for these countries within the European neighbourhood policy, and 350 million Euros are additional financial resources granted during the discussed session of the European Council, A. Talaga, *Partnerstwo Wschodnie zaczęło pękać na długo przed szczytem* [The eastern Partnership started to split long before the summit], „Dziennik” 8 May 2005, p. 14-15; cf. also Szczyt dodatkowych pieniędzy [Summit of extra money], PAP from 20 March 2009.

³⁹ M. Dulak, *Szczyt partnerstwa Wschodniego – co dalej?* [Summit of the Eastern Partnership – where do we go from here?], 12 May 2009, <http://jagiellonski.salon24.pl/>; A. Talaga, op. cit., p. 14-15; J. Bielecki, *Wielcy z Europy zignorowali Wschód* [The mighty from Europe ignored the East], „Dziennik” 8 May 2005, p. 14-15.

on the way to the future enlargement of the European Union towards the east (the Ukraine, and possibly also Georgia, Azerbaijan, Armenia and Moldavia). Russia was not included either into the aims of the European neighbourhood policy (although it was the addressee of one of its financial instruments) or in the aims of the Eastern Partnership. Since, however, Germany perceived Russia as its key partner in Eastern Europe, as well as a country which has to be taken into account in the policy towards the other post-Soviet states of the region, it is possible that the interest of the German government in the realization of the aims of the Eastern Partnership might be a resultant of the German-Russian relations. The role of the post-Soviet states was perceived in a completely different way by Poland and other countries of Central and Eastern Europe. The existence and stability of these countries were to constitute a guarantee of security and sovereignty for Poland and other countries of Central-Eastern Europe. For this reason in Poland's approach, differently from the German approach the element of separation dominated over the element of cooperation with Russia⁴⁰.

Energy security in the European Union

Increase in the price of energy carriers, growing competition worldwide in this area, as well as repetitive gas crises made it evident to the EU member states that there is a need to strengthen energy security. The Treaty of Lisbon, among others on the initiative of Poland, formulated legal basis for establishing in the future common energy policy including a provision concerning "ensuring security in terms of energy supply". Following a motion submitted by the Polish delegation a clause of solidarity was adopted also in this area stating that the policy of the European Union concerning energy should be based on "solidarity among the member states" (art. 194 Treaty of Lisbon)⁴¹.

Poland and Germany were interested in developing the energy security of the European Union. However, both countries differed in their perception of the principles on which common energy policy of the EU should be based. Poland supported the position of the European Commission concerning full liberalization of the energy policy as the basis for communitizing it, whereas Germany, alike France, was against one of the fundamental postulates of the European Commission in this area, namely the postulate of dividing the function of energy producers from the function of energy distributors. The reason behind such attitude of the German government was enormous involvement of German companies engaged in the Russian energy sector, as well as a lack of interest of energy concerns in separating the companies dealing with (energy sources) production from those dealing with energy distribution (transmission networks)⁴².

⁴⁰ For a wider account see P. Buras, *op. cit.*, p. 58-59.

⁴¹ Treaty about the functioning of the European Union, in: *Traktat z Lizbony*, *op. cit.*, p. 176.

⁴² For a wider account see P. Buras, *op. cit.*, p. 53-56; B. Koszel, *op. cit.*, p. 187-200.

On 13 November 2008 the European Commission presented an energy security plan for the European Union which was meant to reduce its energy dependence on Russia. In the conclusions from 12 December 2008 the European Council called the Council of the European Union to "quickly check out" the plan before the meeting of the European Council in March 2009. The plan of the energy security for the European Union was based on implementation of four objectives. The first one included connecting all the wind power stations in the North Sea area into one network (Netherlands, Germany, Denmark, Norway and Great Britain) which would allow for a mutual exchange of electric energy from the wind power stations, and which thus would make these countries independent from the change of weather conditions (wind power). This objective followed the example of a similar and well tested in practice cooperation between Denmark and Norway: if the wind is weak in Denmark its network is powered by electricity from the Norwegian water power stations and vice versa. The second objective included connecting separate at present systems of electricity transmission in the area from the Baltic Sea to the Mediterranean Sea as a premise for creating in future an energy network which would ensure energy security to all member states of the European Union. The principle of evening up the energy balance and settling accounts among the individual countries would be similar to the one in the case of wind power stations. The third objective included building a community gas ring which would allow to exchange natural gas in case of gas supply from Russia being cut off. The fourth objective was building at least two new gas pipelines connecting the European Union with Central Asia and Africa. One was supposed to run from Azerbaijan, the other one from Nigeria. These two new gas pipelines would secure the present and future demand for natural gas in the European Union. According to the estimates of the European Commission, though the dependence of the European Union on imports of gas in the years 2008-2020 is supposed to increase from 61% to 73%. Besides the new sources of supply would allow for a better diversification of gas imports to the European Union and would make it possible to break out from the so far dominant position of Russia. To illustrate, according to the data from the European Commission in 2008 the share of Russia in gas imports to the European Union reached as much as 40% with 8 EU member states being 100% dependent on that supply (Lithuania, Latvia, Estonia, Finland, Sweden, Slovakia, Bulgaria and Ireland). The plan of energy security for the European Union was combined with the climate package 20-20-20 which predicts that by 2020 the European Union will increase energy saving by 20%, will reduce CO₂ emission by 20%, and 20% of the used energy will come from renewable resources⁴³.

On 19-20 March 2009 the European Council during a meeting in Brussels worked out directives meant to serve the purpose of creating a reaction mechanism in case of a crisis concerning disturbance in the supply of gas to the European Union.

⁴³ New plan of energy security of the European Union, http://www.wiadomosci24.pl/artukul/nowy_plan_bezpieczenstwa_energetycznego_unii_europejskiej_81272.html.

The European Council decided that an increase in energy security should be reached through an improvement of energy efficiency, diversification of energy suppliers, sources and transmission routes, as well as through propagating the EU energy interests in relations with other countries. "Efficient, liberalized and integrated internal energy market" was considered to be "the condition of effectiveness of energy security policy" of the European Union. The European Council also approved the plan of energy security of the European Commission from 13 November 2008, which was made more precise in the conclusions of the European Union Council from 19 February 2009. As a result the European Council called the European Commission to quickly prepare a detailed plan of actions which are indispensable for the implementation of the plan in cooperation with the member states. In particular by the end of 2009 it was supposed to specify the conclusions concerning specific steps "referring to the development of the southern corridor" including the mechanism which would facilitate access to gas in the area of the Caspian Sea. However, these actions could not have any impact on other priority projects concerning energy which had been agreed upon earlier on. This provision was a clear concession towards Germany. Besides, the European Council pointed out that in order to increase energy security of individual EU member states "it is essential to make the best possible use of their own resources including renewable sources, mineral fuel, and nuclear energy in those countries which choose this option"⁴⁴. The heads of states or governments also decided to allocate 200 million Euros for the preparation of *Nabucco* gas pipeline construction, which would allow for the natural gas to be transmitted from the Central Asia through Georgia and Turkey to the European Union bypassing Russia⁴⁵.

On 23 March 2009 following the above mentioned resolutions of the European Council, the head of the European Commission, José Manuel Barroso, the Ukrainian President, Wiktor Juszczenko and the Prime Minister of the Ukrainian government, Julia Tymoszenko signed a declaration in Brussels concerning the modernization of the Ukrainian systems of gas transmission to the European Union. The declaration stated that the European Union will be ready to invest 2.5 billion Euros in the modernization of 13,500 kilometres of the Ukrainian gas pipelines, which currently supply 20% of the gas used in the European Union. The Project would involve participation of international financial institutions. The Ukraine obliged itself to ensure better transparency in the access to the gas pipelines and to equal treatment of all investors. The responsibility for management of the transmission network would be entrusted to an independent institution appointed by both sides, which would assume its duties by the end of 2011. A part of the financial resources of the European Union would be allocated to installing modern counters, which using the satellite connection could instantly inform how much gas is being delivered from Russia to the Ukraine.

⁴⁴ Session of the European Council in Brussels. Conclusions of Presidency, Brussels, 19-20 March 2009, <http://www.consilium.europa.eu/>, p. 1, 8-10.

⁴⁵ A. Kublik, *Moskwa nie zgadza się na rozwód UE z Gazpromem [Moscow says no to a divorce of the EU with Gazprom]*, „Gazeta Wyborcza” 30 March 2009.

The EU companies would also gain access to the underground storage of gas located on the territory of the Ukraine. Besides, the Ukrainian side offered to increase the capacity of their transit gas pipelines by 60 billion cubic metres per annum, which in their opinion could be an alternative to the construction of *Nord Stream* and *South Stream* gas pipelines planned by Russia which would bypass Belarus, the Ukraine and Poland⁴⁶. Signing the declaration caused immediate sharp criticism from the Russian government, which treated it as an irresponsible and unfriendly gesture towards Russia and announced to review their relations with the European Union concerning energy policy⁴⁷. Although the Russian government could not, or did not want to admit it openly, it seems that the criticism was mainly due to the fear that the engagement of the European Union in the Ukraine would make it impossible for *Gazprom* to take over the Ukrainian transmission networks, which had been the objective of the Russian side for quite a long time.

Beyond doubt the success of the energy security plan of the European Union will depend on the attitudes of all the interested member states. However, to a substantially large extent it will be dependent on the attitude of Germany and its future relations in this matter with Russia. This thesis seems much more justified in view of the fact that the Russian government will probably continue its strategy of using energy resources to reach its aggressive political and economic objectives in foreign policy. This view is further confirmed by the fact that the Russian government not only supports *Gazprom* projects, which are competitive to the European Union, like for example the *Nord Stream* gas pipeline construction plans being competitive towards the *Nabucco* gas pipeline, or by its intention to establish closer cooperation with Azerbaijan and Nigeria in terms of gas supply but the above thesis is also corroborated by a categorical objection of the Russian government to the plan of modernization by the European Union of the Ukrainian transmission systems which supply gas to the EU.

CONCLUDING REMARKS

In the period of the first five years of Poland's membership in the European Union the most disputable issues in Polish-German relations undoubtedly included: constitutional reform of the European Union, Eastern Partnership as an integral part of the European neighbourhood policy and the EU energy security. Although governments of both countries supported projects which aimed at the implementation of the constitutional reform of the European Union, establishing the Eastern Partnership and common EU energy policy, they nevertheless differed in matters concerning the

⁴⁶ Ibidem; Deklaracja gazowa Ukraina - UE to nieprzyjazny gest [The Ukraine-EU gas declaration as an unfriendly gesture], PAP from 30/31 March 2009.

⁴⁷ J. Bielecki, *Unia stawia na ukraińskie gazociągi* [The EU stakes on the Ukrainian gas pipelines], „Dziennik” 24 March 2009; Deklaracja gazowa Ukraina - UE to nieprzyjazny gest ..., op.cit.

methods of achieving those aims. These differences were not only due to different priorities in the European policy but also due to different perception of national interests in the process of European integration. While Poland was in favour of strengthening cooperation and the intergovernmental infrastructure, Germany on the other hand, was still in principle advocating the deepening of the integration process and strengthening the supranational infrastructure in the European Union. While Poland, also after the constitutional crisis in the European Union in the years 2005-2007, was in favour of the continuation of the EU enlargement process, Germany since 2005 departed from its hitherto prevailing enlargement strategy which treated enlarging and deepening the integration process as two sides of the same coin. Both countries also differed in their approach towards the European neighbourhood policy, including the Eastern Partnership project. For Poland the project was treated as a stage towards the future enlargement of the European Union towards the East, whereas Germany supported the project because of the change in their previous enlargement strategy and their willingness to develop the European Union's capabilities to operate outside the EU area. Additionally, both countries differently perceived the principles which were supposed to lay foundations for the common energy policy of the European Union. Poland supported the position of the European Commission concerning full liberalization of energy policy as the foundation for communitizing it, Germany, on the other hand, was against it, among others because of the reluctance of the German energy concerns to divide companies which are the producers and distributors of energy. Finally, the German opinions in this matter were also determined by a vast engagement of German companies in the Russian energy sector. In general however, attitudes of governments of both countries towards the Eastern Partnership and energy security of the European Union were a resultant of their relations with Russia. While Germany perceived Russia as its key partner in Eastern Europe, as well as a country which should be taken into account in the policy towards the other post-Soviet states in the region, Poland as a matter of fact was making efforts to make these countries stronger and more stable as a guarantee of its own security and sovereignty.