Europe and Its Institutions: Towards a Renewed Polish Approach to the EU

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Poland seems on the cusp of winning for itself the status of a leading EU Member State. Over the course of the sovereign-debt crisis, it has successfully held its own in an increasingly intergovernmental EU. That now creates a temptation to ditch its traditional “hedging” approach to the European Commission and Parliament and strike out more on its own. Yet, Poland’s real success in this intergovernmental EU has been in securing the continued openness of EU rules and the integrity of its institutions. Since Poland is still at risk of being sidelined by exclusive forms of intergovernmental cooperation, it needs to find ways to renew the protective influence of the bloc’s supranational institutions rather than to abandon them.

High Standing after a Decade’s Membership

The EU’s sovereign debt crisis shifted attention from Europe’s east-west tensions to deeper structural problems in Southern Europe. This has created an opportunity for the eastern members, once perceived as “solidarity egotists” that use the EU only to secure financial support from their partners, to play a more constructive role in the bloc.¹ Out of the crop of eastern states that joined the EU in 2004, Poland has handled this shift with particular aplomb. Its record of economic growth in—seemingly—the worst phase of the crisis² and the broadly positive attitude of the society towards the EU have served to strengthen Warsaw’s standing on European issues.³

A decade after accession, there are some telling indications of Poland’s rise. In an interview in March 2013, former French President Valéry Giscard d’Estaing suggested that Poland should be the last EU member to enter the eurozone.⁴ Considering that a decade ago Paris perceived the CEE countries as junior members and permanent outliers, this signals a shift in perception in one of the EU’s biggest Member States. Warsaw is no longer viewed as the recalcitrant trouble-maker unused to the structures of EU integration but rather

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¹ For more information on the notion of “solidarity egotists” and how the new Member States are perceived by the old members and how this picture has changed over the years, see K.-O. Lang, “Old Members and New Partners: Expectations, Political Realities and Perceptions,” a paper delivered for the Friedrich Ebert Foundation, Budapest office, 14 May 2010, p. 5.

² Poland’s GDP in 2012 was up by 18.2% compared with 2007. See: “Social and Economic Impact of Poland’s Membership of the European Union: Key Conclusions on the 9th Anniversary of Poland’s EU Membership,” Ministry of Foreign Affairs of Poland.

³ See, i.a., the speeches by the minister of Foreign Affairs of Poland, “Poland and the Future of the European Union,” 28 November 2011, Berlin, and “Poland, the Netherlands and the EU—Common Challenges,” Leiden University, 12 June 2013, both at www.msz.gov.pl.

as a Member State that forms coalitions (e.g., Friends of Cohesion Policy) and launches initiatives (e.g., the European Endowment for Democracy).

The extent of its normalisation can be shown in the statistics, too: these indicate that when Poland and its CEE partners were fresh-faced members they in fact blocked far less than the older Member States, despite a reputation for recalcitrance. These days, Poland enjoys a reputation as a constructive player and committed Member State despite its more robust pursuit of national interests such as those displayed in the recent negotiations of the EU's multi-annual budgetary framework. This suggests that Poland is now permitted the same leeway as more established members, which have an equally ambiguous voting record.

Poland has tasted success in representing its interests in a more differentiated and intergovernmental EU. This throws into question the fundamentals of its normally cautious European policy and its traditional reliance upon the Community institutions, specifically the Parliament and Commission: can and should Warsaw now abandon its traditional “hedging” relationships to these two institutions and go it alone? A proper answer to this question requires a closer analysis of Poland’s motivations, first, for moving away from the supranational institutions over the course of the past few years and, second, for its new investment in intergovernmentalism.

Poland’s Hopes for Supranational Institutions Dashed

The eurozone debt crisis has not only pushed the EU towards greater intergovernmentalism but also to more exclusive forms of eurozone-only cooperation. This challenge to the integrity of the EU system was already clear under the French Council presidency in 2008. During its six months at the helm, Paris intensified the discussion on the necessity of a dedicated institutional framework for the euro area even before the Lisbon Treaty entered into force, and proposed a legal basis for Eurogroup gatherings. Given the negative implications of deeper eurozone integration for the EU’s institutional integrity, Poland faced being sidelined.

Yet, the vulnerability of Poland’s position as a non-eurozone Member State only really became clear during its own presidency in the second semester of 2011. The role of Council chair usually gives the incumbent Member State prominence and security within the EU’s intergovernmental system. Moreover, the timing was advantageous: Poland was among the non-euro members (Hungary and Denmark being the others) to hold the rotating presidency shortly after December 2009, giving it the opportunity to influence the institutional architecture created under the Lisbon Treaty. But, with the opening days of its presidency marked by objections from eurozone capitals about the presence of Poland’s finance minister at Eurogroup meetings, Warsaw faced up to the fact that these expectations were premature.

The Polish presidency was naturally quick to draw lessons and tried to use its presidency semester as a chance to cement the role of the Community institutions in the intergovernmental system. By involving Parliament in the negotiations on the Multiannual Financial Framework and organising a format for debates with MEPs (“Meet the Presidency”), Poland established favourable foundations for cooperation. Poland also went some way to smoothing relations among the Commission, Parliament and Council, as they had been tense ever since 2010 when the Council withdrew from the so called troika negotiations on an inter-institutional agreement.

Although this strategy did smooth legislative talks during the presidency as well as contribute to the consolidation of Polish membership in the EU, it ended with an unwelcome shock: Britain’s “veto” of the EU treaty change. With the Commission proving grudgingly amenable to the idea of cooperation outside

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6 Before the 2004 enlargement, Germany belonged to the group of Member States most frequently contesting proposed EU legislative acts; see: W. Van Aken, op. cit., p. 59.

7 The Polish presidency continued interinstitutional cooperation with Parliament on the MFF talks as established by the Hungarian presidency. Indeed, it went further by inviting MEPs to one of the GAC’s informal sessions devoted to the MFF talks.

the treaty framework (an option proposed bypassing the UK) and with MEPs enjoying only observer rights in the resulting deliberations, the limits of supranational influence on eurozone governance were suddenly clear. Poland’s faith in the community institutions was not being repaid—it had underestimated the risk of their “contamination with intergovernmental processes.”

Joining the treaty on stability, coordination and governance in the Economic and Monetary Union (the fiscal compact) was a natural step for Poland. Warsaw simply had to secure influence over moves towards a “genuine EMU” to which it would one day accede, even if this meant accepting the fact of differentiated integration. Unlike, say, the UK, which has an opt-out from the third stage of EMU, Poland is legally obliged to adopt the common currency under the terms of its accession to the EU. Its accession to the fiscal compact should not, however, be understood as turning its back on supranational EU rules and institutions, but rather as Poland seeking out intergovernmental partnerships that would cement its inclusive institutional vision for the EU.

Poland’s New Engagement at the Intergovernmental Level

In its strategy of safeguarding an open and inclusive “euro-plus” mode of governance, Poland has benefited first and foremost from its close cooperation with Berlin. It was the Westerwelle Group on the future of Europe that popularised the term “pre-ins” (i.e., states with a firm intention to join the currency, and thus with attendant rights to co-define eurozone governance). Moreover, the legalistic approach to introducing EU reforms adopted by Germany—under pressure from the Bundestag and the Court at Karlsruhe—has played out in Poland’s favour. The current treaty-revision procedure requires the consent of all members and is one of the remaining safeguards for smaller states and outliers. Berlin’s commitment to it limits the scope for further EU fragmentation.

And yet, making use of more differentiated integration tools such as intergovernmental agreements has been accepted in the new German Grand Coalition Agreement. This tendency was already clear in Berlin’s response to the British veto at the December 2011 summit, as well as more recently in the intergovernmental negotiations on the Single Resolution Fund. It was, moreover, Chancellor Angela Merkel who established a more top-down approach to decision-making by heralding a “Union method” that would give preference to the European Council as the primary forum for economic crisis management. The Commission now finds itself merely implementing European Council decisions, losing its role as an independent agenda setter and its formal monopoly of legislative initiative.

In this context, the change at Elysée Palace in 2012 caused Warsaw to hope that there would be a shift in French policy, too, one that would show a greater understanding of the significance of the community institutions for smaller members and outliers and ending a long run of policies seemingly aimed at establishing the EU as an exclusive project. Instead, the French debate on the fiscal compact and reactions to the new role of the Commission in economic governance, not to mention the May 2013 Franco–

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10 The United Kingdom and Denmark exercise a so-called protocol derogation, as envisaged in the protocols attached to the EU treaties, and it is up to them to decide if they want to join the third stage of EMU, even once Maastricht criteria are fulfilled. This is in contrast to other Member States with a treaty derogation, including Sweden, which are de jure obliged to initiate the abrogation procedure once criteria are fulfilled; see, A. Nowak-Far, “Komentarz do art. 139 Traktatu o Funkcjonowaniu Unii Europejskiej” (“Commentary to Article 139 of the Treaty on the Functioning of the European Union”), in: A. Wróbel (ed.), Traktat o funkcjonowaniu Unii Europejskiej (“Treaty on the Functioning of the European Union”), vol. II, Wolters Kluwer Polska, Warszawa, 2012, p. 820.

11 Poland was the only non-eurozone Member State from the 2004 enlargement to participate in the deliberations of this group.

12 This balance has been referred to as a spatial balance of powers within the EU institution, which ensures that smaller and less influential Member States are not marginalized in the decision-making process. Both EU current Council voting as well as the treaty revision procedure aim to safeguard their interests; see: M. Dawson, F. de Witte, “Constitutional Balance in the EU after the Euro-Crisis,” The Modern Law Review, no. 76 (5), 2013, pp. 836–842.

13 “Deutschlands Zukunft gestalten, Koalitionsvertrag zwischen CDU, CSU und SPD” (“Shaping Germany’s Future, Coalition agreement between CDU, CSU and SPD”), signed in December 2013.
German paper on a Europe of stability and growth,¹⁴ which hinted at the establishment within the European Parliament of dedicated eurozone structures, left Poland cold. Paris has preferred to reach out to Warsaw directly rather than set up an EU-wide institutional framework that offers safeguards to all non-euro members. And yet, its stand is not always coherent and somewhat paradoxical. For instance, although France is reluctant to give more powers to Brussels, it also expects the EU to regulate the financial services market.¹⁵ Unfortunately, this choice only risks undermining the Community institutions by instrumentalising them in favour of a narrow political agenda, further diminishing their standing in some capitals. The UK, long on the opposite side to France in regards to measures on financial markets (notably, a financial transaction tax or banking bonus cuts) is slowly seeing the danger.

British defeats in the Council—once highly unusual, but seen most recently on the bank capital requirements—show that its own notion of a decentralised, collegial intergovernmental EU falls short of reality. Having acknowledged that its strategy of criticising Europe is counterproductive, the UK now seems to be adopting a more engagement-oriented approach to its EU partners. The lack of appetite in other capitals for a treaty change, which could otherwise help to resolve the UK’s domestic constraints, has pushed it to adopt a more constructive approach, with the “Cut EU Red Tape Report” serving as a recent example.¹⁶ Yet, ironically for such a staunch advocate of intergovernmentalism, the UK’s bargaining power, particularly on the financial services’ agenda, increasingly relies on the Court of Justice.¹⁷

Moreover, a strong domestic strain of euroscepticism has overshadowed any resurgence in British influence. This is off-putting to other non-euro members previously allied with the UK, and encourages them to form new coalitions.¹⁸ In some ways, Poland has taken on the role of the mature partner in that particular relationship, committed to keeping the UK fully engaged in EU affairs. One reason is that any renegotiation of UK membership would raise questions about all outliers’ rights to influence policies in which they do not fully participate.¹⁹ Another is that an inward-looking UK will fail to offset the negative effects of the Franco–German tandem, forgetting its role as a balancing influence in the bloc.²⁰

But so far, that balancing role has not been necessary, and herein lies the secret of Warsaw’s success. The clear divisions between the EU’s Big-3—Germany, France and Britain—have played out in Poland’s favour. Tensions between the northern and southern members, as illustrated by the weakness of the Franco–German tandem, have prevented the emergence of a coherent eurozone core and forced euro states to seek out eastern allies. Meanwhile, the UK’s efforts to squander the political capital built up over 40 years of membership have blurred distinctions between old members and newer additions such as Poland. With intergovernmentalism misfiring, moreover, each of the Big-3 have emerged as allies to Poland—often unwittingly and unwillingly—in its efforts to involve the supranational institutions more closely in eurozone and economic affairs.

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¹⁵ It seems to reflect an approach towards the single market shared by political elites in France that markets should not be governed by the “invisible hand” but rather by efficient institutions; see C. Lequesne, O. Rozenberg, The French Presidency of 2008: The Unexpected Agenda, Swedish Institute for European Policy Studies, Stockholm, 2008, p. 28.


¹⁷ In the last two years, the UK has brought before the Court of Justice three proposals concerning financial markets. In the opinion issued in September 2013 in a case brought by the UK on the validity of Article 28 of a regulation on short-selling that authorised the European Securities and Market Authority (ESMA) to intervene on rules for short selling or even prohibiting it under certain circumstances, the Advocate General agreed with the British government that the powers vested in the agency in the article go beyond the requirements for harmonisation of the single market, and due to this incorrect legal basis the article should be annulled: “Opinion in case C-270/12 United Kingdom and Northern Ireland v. Council and European Parliament,” 12 September 2013. Nevertheless, despite the UK’s growing expectations that the Court of Justice would share the Advocate General’s opinion, in its judgment of 22 January 2014, the Court stated that the questioned provisions proved compatible with EU law. This will naturally only sharpen the UK’s rhetoric about the creeping powers of EU institutions; see: “judgment C-270/12 UK v. Council and Parliament.”


Poland’s Post-2014 Dilemma

By a two-track approach that links intergovernmental relationships with a specific, inclusive vision of the EU supranational architecture, Poland has been successful in anchoring itself into the EU’s new economic governance. It secured a place at the euro summits institutionalised by the fiscal compact despite the open hesitance of then-French President Nicolas Sarkozy. It has also secured an inclusive setup for the Banking Union’s Single Supervisory Mechanism, which authorises both euro area and non-euro area members, once they decide to join the SSM, to participate in decisions about executing the prudential supervision of credit institutions.

Poland’s quick maturation as a Member State, and its success at navigating the intergovernmental EU, has thus provoked a discussion about whether Warsaw might not abandon its traditional hedging approach to the supranational actors, and embrace a lead status in a more intergovernmental setup. The reasoning is clear. Poland’s reliance on the Commission and Parliament dates from a time when it was a junior member. With the Parliament and Commission failing in their role to provide inclusive EMU governance, Warsaw has secured its interests through strong relations with other member governments. In that reading, and having shown that it can hold its own, Poland should now take the chance to consolidate its position in the EU and replace its current web of intermediaries by adopting a leadership-driven approach.

Yet, to follow this approach would be to forget two key lessons of the last five years: that Poland’s relations to other governments are highly precarious, and that the most successful of them have been tied to a hedging vision of the EU’s supranational institutional architecture. In other words, Warsaw’s real triumph has not been in navigating an intergovernmental Europe, but in preventing its very emergence: with supranational institutions reactive to the wishes of large states, Poland paradoxically gave them a boost by making the case for EU integrity in major capitals. These challenges will, moreover, persist. When EU members began 2014 by sending representatives to negotiate an international agreement on the Single Resolution Fund, a certain sense of déjà vu was inevitable.

That sense of déjà vu is likely to sharpen as the year goes on. Voting rules in Council from November 2014 may herald further eurozone consolidation. A euro area representing up to 64% of the Member States and more than 65.9% of the EU population could outvote the remaining members if the EU18 displayed a strong will to act coherently. Of course, this scenario is rather unlikely as long as the north-south divisions within the eurozone persist and the Franco–German tandem remains frayed. However, the chance of a resurgent Franco–German tandem in the euro core should not be entirely excluded, and not just because the new voting rules favour large states. The new German foreign minister’s attempt to recalibrate his country’s European policy shows how quickly things might shift.

Reacting to Chancellor Merkel’s and the Kanzleramt’s changes to European policy, the new German foreign minister has seemed bent on returning Germany to more traditional lines. In early 2014, it was feared that this would entail a downgrade of the Weimar cooperation with Poland, a format that flourished under Merkel/Westerwelle, in favour of a more traditional Franco–German “engine.” Despite initial expectations that the new German Europe minister would be charged with covering trilateral relations among Berlin, Warsaw and Paris, and give serious weight to the Weimar format, it turned out that Michael Roth would actually deal predominantly with the Franco–German tandem, whilst Germany’s relations to its eastern neighbour would be handled by a regional prime minister.

Of course, these fears of a Polish downgrade are overblown. However, it is indicative of the perils of intergovernmentalism that a more traditional and pro-European course from Berlin could actually

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21 Calculation of euro area voting weight based on Eurostat data as of 2013. The Lisbon Treaty introduced a new voting system as of November 2014, called by many a “double majority” system, defined as having at least 55% of Member States, including at least 15 of them, and comprising at least 65% of the population of the European Union. The treaty also envisages that in the transition period ending in March 2017, each Member State may request that the QMV system be applied. This could not only lead to tensions in the Council but also slow down the decision-making process in the respective institution. See, “Treaty on the European Union and Protocol on Transitional Provisions as attached to the Lisbon Treaty,” O.J. EU, C 326, vol. 55, 26 October 2012.

22 A further sign of this loosening of German–Polish relations was found in Frank Walter Steinmeier’s Russia policy. The German foreign minister put back in place the political and administrative team behind the SPD’s old Ostpolitik. This new conciliatory and trade-based approach to Russia runs in the face of Germany’s recent effort to stand up to Russia politically, a policy that relied on Polish support. The planned visit to the EU’s eastern neighbourhood by Steinmeier and his French counterpart, without the accompaniment of a Polish partner, reinforced concerns in Warsaw about its downgrade.
undermine the integrity of the EU and marginalise Warsaw. This is because the revival of the Franco–German tandem would almost certainly antagonise the “euro-out” UK. Britain has been pushing for treaty changes to reform the EU, and Germany has until now made efforts to reach out to London. A robust Franco–German tandem is unlikely to engage in dialogue, though, leaving the UK to impotently demand a reopening of the EU treaties whilst the eurozone simply repeats the *modus operandi* of the fiscal compact and circumvents it via differentiated integration.

**Recommendations**

Poland is neither a large nor small Member State, no longer “new” and not yet “old,” not a “euro-out” but not yet a “euro-in.” What Poland needs in order to reflect this fluid status is a hybrid institutional setup in which power is diffused amongst a number of players. This will allow it to hedge the exclusive tendencies that might block its progress as a Member State and seek out partners where it can. There are three fields where it can secure such relations in the immediate-to-near term: the current debates over the procedure to nominate the incoming president of the Commission; the prospect of the Commission and Parliament negotiating a new interinstitutional agreement to regulate their relationship; and the emergence of the European Central Bank as a serious political player.

**On the first point,** Poland should advocate an alternative understanding of the battle now kicking off for the nomination of the Commission president. The MEPs demand that the European Council should be obliged to not just choose a candidate whose political affiliation reflects the outcome of the May European elections as the treaty indicates, but one nominated by the victorious party family. This meets with rather lukewarm reactions amongst Polish elites. Poland supports the notion of a stronger European Commission, perhaps even one relying more on legitimacy derived from the European Parliament, but this is simply seen as a manoeuvre by Parliament to increase its control over the Commission.

There is thus hostility in some capitals to a move that seems set to weaken the Commission and increase the centralisation of power around two antagonistic players—Parliament and the European Council. And yet, taking advantage of the democratic potential of the forthcoming May 2014 elections and strengthening the Commission’s legitimacy is much more commendable than backtracking on novelties to which all Member States signed back in 2007. And a different reading is possible. An EU-wide campaign centred on top candidates for the Commission presidency need not necessarily infer an unpopular centralisation of power with the Parliament, but rather a subtle diffusion and reweighting of power relations.

This is because the nomination of lead candidates for the European elections would encourage better coordination within EU-wide party families, thereby bringing together national parliamentarians and MEPs. National parties faced with the necessity of supporting a joint top candidate will be guided, for instance, to cooperate with other national parliamentarians on questions of electoral strategy and commitments. This could improve interparliamentary cooperation, and in the longer term give the Commission a source of parliamentary legitimacy outside the European Parliament, and even provide a platform for improved scrutiny of eurozone decision-making at the national level.

**On the second point,** Poland should use any new interinstitutional agreement (IIA) between the Commission and Parliament as an anchor of inclusiveness. The two institutions will be tempted to use a new IIA as a means to tag team their way to greater powers in the field of EU economic policy, a field where the supranational institutions have felt particularly sidelined in the course of the sovereign debt crisis. They have form on this kind of manoeuvre. Parliament has always used inter-institutional agreements as a tool to test the limits of the EU treaties as it sought to expand its influence over international agreements or comitology, the system for implementing EU laws. Economic governance within the EMU is shaping up to be its next target.

Poland should thus advocate among the other Council members the idea of a tripartite agreement. This would allow it to raise the issue of openess in eurozone decision-making as well as the integrity of the EU institutions. After all, both Poland and the European Parliament are interested in a more transparent procedure for completing the EMU. It would also allow the Council to react in a conciliatory manner to

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any attempts at a further centralisation of powers in the hands of supranational institutions ahead of the adoption of the Commission’s five-year programme. A constructive debate about rebalancing EU powers would also echo President José Manuel Barroso’s 2013 call that “Europe should be big on big things and smaller on small things.”

Of course, the two institutions may again need persuading that they should place the integrity of the EU over their search for expanding their existing competences. The Commission and Parliament, due to the loss of their significance in the EU decision-making process, have become more vulnerable to differentiated integration. They might thus feel tempted to use the IIA negotiations to accommodate some of the ideas being floated aiming to adjust their internal organisation to multi-tier integration. This might be supported in particular by France should a new Franco–German tandem emerge. Here, Poland will have to fall back to its now routine role of persuading other capitals to resist such temptations.

On the third point, Poland must further develop relationships with the EU’s emerging economic institutions, rather than just the two political players, the Commission and Parliament. Poland’s strategy towards eurozone membership, referred to by some as keeping a “foot in the door,” would probably not have worked without a recent shift of thinking by the ECB on the question of eurozone enlargement. It is the ECB that co-monitors Poland’s progress in fulfilling convergence criteria, and the ECB that increasingly believes that enlargement requires a kind of two-way conditionality: an efficient convergence process in the candidate countries, naturally, but also successful euro reform by the “euro-ins.”

This narrative underpins Poland’s emerging wait-and-see approach towards euro-area accession, and offers its Europe policy a timely lifeline. After all, Poland until recently could only win access to eurozone decision-making by assuring powerful euro-members of its intention to take up the currency quickly. The ECB’s change of thinking allows Poland to better prepare its economy for euro accession by forging structural reforms without the risk of being accused of simply backtracking on euro accession. Of course, in order to build a firm relationship with the ECB, Poland must act in good faith. If not complemented by a firm euro roadmap, this wait-and-see strategy will undermine Polish credibility.

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