

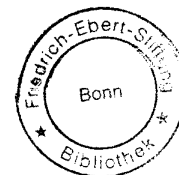
# **The Polish Transformation from the Perspective of European Integration**

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**EU-monitoring**

*February 1997*

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**EU-***monitoring*

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## PREFACE

The individual who initiated the project which gave rise to this book is Hans Blumenthal, director of the Friedrich Ebert Foundation Office in Warsaw. It was Blumenthal who decided that the Foundation, whose activities and resources from the very beginning of the transformation process have supported numerous Polish projects geared towards developing a market economy, parliamentary democracy and civil society, should now - as far as possible - help to deepen the process of Poland's integration with the European Union. This is how the idea came about to prepare a report that would present in a comprehensive way Poland's integrative capabilities. Aware of the complexity and long-term nature of this process, Blumenthal suggested that the report should not be a one-off event, but one that could be repeated at a future date, and that the course of Poland's integration with the EU should be monitored systematically from a defined perspective. This is how the term "Euro-monitoring" arose, and we have used it as the logo for the whole project.

Five people - the authors of the present report - undertook to bring Hans Blumenthal's idea to fruition. Before we actually began writing, we spent many weeks discussing our approach to the problem. Initially, it seemed simplest to define for each of the basic areas of integration a group of standards, whose fulfillment would imply that integrative capability had been achieved. However, after the discussion we rejected such an approach, but not - it should be stressed - because in many areas (e.g., the development of civil society or the improvement of firms' micro-economic effectiveness) definition of such general standards would be especially difficult.

It would, of course, be possible to reduce these standards to the formal and legal norms (*acquis communautaire*) that a country applying for membership must embody in legislation. However, in this instance our understanding of the integration process would be limited to a unilateral adjustment of the legal system. While such adjustment is a fundamental dimension and requirement of integration, it by no means exhausts the essence and challenges of this process.

Thus, we decided to separate the **formal dimensions of the integration process from the virtual ones**: to distinguish what is necessarily a unilateral formal and legal adjustment to EU norms from what is a conscious choice of social, economic and political development path, geared towards achieving a strong position within the EU. This analytical distinction allows us to understand better the mutual dependence and diffusion of two processes - so important for Poland - namely, systemic transformation and European integration. This is also reflected in the title of the report, in which we



wanted to stress the overlapping of transformation and integration as the essence of our approach to the problem.

Having chosen such a distinction, we would have readily taken the indicators needed to analyze and evaluate the course of the integration process from the currently adopted and implemented national strategy of integration. Yet, as we all know, no such strategy exists at the moment. Nor did we decide - in the first phase of the project - to propose our own indicators, based on what we believe to be most important for Poland's integration with the EU. This would have meant narrowing the field of the discourse from the very outset, which is the opposite of what we intend. However, we do not discount the idea of elaborating such indicators in a future report, after the present one has been discussed more broadly.

Despite our affiliation to various ministries and offices, we wrote this report from the standpoint of experts. It is addressed neither to the government, nor to any state organ, nor, least of all, to any political party; the same goes for the academic community. For we do not wish this report to encourage exclusively political or expert deliberation. This is not because we regard the latter to be superfluous - quite the opposite. Yet we believe it will only be fruitful if it develops on the basis of authentic and broad public debate. Unfortunately, in Poland today - as the Warsaw correspondent for the German and Austrian press, Klaus Bachmann<sup>1</sup>, has acutely observed - the debate over European integration is taking place exclusively within the narrow political elites, whose efforts are directed mainly towards convincing their foreign partners, rather than society at large or their own voters, about Poland's intentions in this area. Bachmann is right in saying that in the final analysis it is not the attitude of politicians that will determine the actual course of integration, but rather social behaviour, resulting from the way real interests are defined, articulated and represented.

So we wish to emphasize that this is not a book written from some theoretical position or for the purpose of designing a theory; nor should it be seen as an attempt to define Poland's negotiation position, which will follow from a full analysis of the benefits and costs of integration. Our aim is to encourage public discourse on how the integration process is actually taking place and what can and should be done in order to give Polish society and the Polish economy a better chance of success within this process.

The social and political consensus on Poland's integration with the EU, recorded by public opinion research centres, will remain an illusion as long as the challenges and problems of the virtual dimension of integration remain beyond the public's perception. We get the impression that what is presently leading us to the EU is a

peculiar alliance of political ambitions and social ignorance. It is precisely now that we need public debate on the question of integration, so that later on it does not turn out that the majority are "for and even against" it<sup>2</sup>. Perhaps we are aiming too high, but we would truly like this report to contribute to the swift emergence of such a debate.

Jerzy Hausner  
Kraków, 23 December 1996

1. Bachmann, K. (1996) "Is Poland really pro-European". *Rzeczpospolita*, 18 October.

2. This is a reference to a famous linguistic gaffe made by ex-President Lech Wałęsa - [trans].

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## INTRODUCTION

The point of departure in our analysis will be to determine what membership in the European Union implies and what changes and adjustments are required of a country applying for membership. The list of responsibilities and common policies that EU member-states have accumulated since the beginning of the integration process half a century ago is very long. Let us mention the most important of these. As a democratic member of the EU, with a market economy, Poland will have to:

- Enter the European internal market, i.e., the free flow of goods, services, labour and capital within the borders of the EU; this means, in particular: adopting the instruments of the EU's common commercial policy, including a common external tariff; implementing common competition rules, also in the area of public aid and procurement; harmonizing environmental and consumer protection regulations; and mutual recognition of industrial standards and professional qualifications.
- Participate in the Common Agricultural Policy (CAP).
- Participate in coal and steel sector policy carried out within the framework of the European Coal and Steel Community.
- Implement the Common Regional Policy.
- Adopt the communities' social policies, including the European Social Charter.
- Participate in the European Monetary System, i.e. introduce full convertibility of the zloty and alter exchange rate policy, thus stabilizing the rate of the zloty against the ECU; in the longer term, enter European Economic and Monetary Union, which will first require meeting the fiscal and monetary convergence criteria as set out in the Maastricht Treaty (on European Union).
- Participate in the EU budget.
- Participate in the work of European institutions, above all the Council of Europe, European Parliament and European Commission.
- Join the supra-national system of appeal, represented by the European Court of Justice.
- Participate in the future common foreign and defence policy; introduce European citizenship.
- Cooperate with EU countries in the area of justice and internal affairs.

The French term *acquis communautaire* refers to the body of economic, political and legal arrangements worked out by the European Union. Each member-state is obliged to implement the *acquis*. We should remember, however, that many members have so far not adopted all the "common" arrangements listed above, even the most important ones. Moreover, the shape of some of these arrangements, for example defence policy, has not yet been defined by the Union, while other arrangements, for instance agricultural policy, may be changed. The specific conditions of Polish membership in the EU will be subject to negotiation in the pre-accession stage. These negotiations will determine whether in certain areas Poland will be able to derogate the more problematic arrangements.

For the purposes of this report, let us also take a brief look at the evolution which has taken place over the past decades within the Community, and later the European Union. During the 1950s and 60s, the Community was mainly geared towards establishing a common trade and agricultural policy. At the end of the 1970s, the European Monetary System came into being, which stabilized exchange rates and inevitably had an impact on the macroeconomic policies of respective member-states. In the second half of the 1980s, steps were taken to consolidate the internal market. Today, in the 1990s, the European Union is preparing to introduce a single currency, which is to take place at the turn of the century. Monetary union is therefore seen as a continuation of the earlier integrative arrangements, in accordance with the slogan: **single market, single currency**. The EU also aims to institutionalize a common foreign and defence policy.

Economic cooperation is presently regarded as the main pillar of the EU. The second pillar is to be a common foreign and defence policy, while cooperation (no longer just a common policy) in the area of justice and internal affairs will represent the third. The EU arrangements listed above may be divided into **four packages: political, institutional, economic and social**.

The integration of the Polish economy with the EU economy began in the early 1990s, following in the wake of the systemic changes and the Agreement on Association with the European Communities. From the theoretical point of view, we may speak of integration from the moment European market economies began to sign preferential trade agreements with Poland. The Association Agreement goes further: it envisages the establishment of a free trade area.

The initial phase of membership in the EU will imply a fundamental qualitative change in the integration process. For it is only through membership that Poland will be able to access two of the key arrangements, namely, participation in the work of European institutions - which implies a role in decision-making - and participation in

the EU's budgetary policy, which will in practice make Poland a net beneficiary of the most important funds in the EU budget. Of course, membership will for sure entail many more rights and responsibilities, or, putting it another way, a significantly broader adjustment to the elements of *acquis communautaire* than at the associate-membership stage. However, specific arrangements and a detailed schedule of changes cannot be determined until the negotiations over Poland's membership finally get under way.

However, the integration process will not end once Poland has become a member-state of the EU, and perhaps not even when it has fulfilled the Maastricht criteria and entered European Economic and Monetary Union. We therefore regard Poland's formal accession to the EU as a **"happy event"**, but not the **"happy end"** of the integration process itself.

**Chapter I**

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**THE MACROECONOMIC DIMENSION  
OF INTEGRATION**

## THESES

- **The effective presence of Poland within the EU depends on achieving sustainable economic growth, enabling Poland to shorten the wide gap between its level of GDP and the EU average.**
- **To maintain the Polish economy on the path of sustainable economic growth requires not only continuing the macroeconomic policy of stabilization and consolidation pursued so far, but also introducing a number of structural reforms.**
- **In about a decade or so, this should enable Poland to meet on a long-term basis the fiscal and monetary convergence criteria adopted and defined in the Maastricht Treaty and apply for membership in European Monetary Union.**

In this chapter we shall tackle the problem of Poland's integration with the EU from two perspectives: the macroeconomic situation and agriculture. The former issue is always of fundamental significance to economic growth: if certain key economic indicators reach an appropriate level, macroeconomic stability will be ensured and the economy will function properly. Macroeconomic concerns have recently assumed greater importance in the light of plans to introduce European Economic and Monetary Union. On the other hand, it may prove extremely difficult for Poland to introduce the Union's arrangements with regard to agriculture - traditionally a very important area of cooperation within the EU.

## 1. STRUCTURE AND GROWTH OF GDP

The entry of Poland into the EU implies not only important changes for our country, but also for the Union itself; for the community of European nations will be enlarged through the accession of a relatively big country. In terms of population, Poland is smaller than five of the member-states, larger than ten others, and larger than the other eleven countries applying for membership. If the Union is expanded to include Poland, Poles will constitute 9% of its total population, Germans - 20%, the French - 15%.

Poland is also a relatively large country in terms of geographical size, although this criterion can be misleading: the vast Scandinavian countries, after all, have relatively few inhabitants. Undoubtedly, Poland's large size means that the problems and opportunities connected with entry into the EU will be greater than those of other countries applying for membership.

Macroeconomic issues did not from the outset constitute an important area of cooperation between the countries participating in the integration process. The European Community - which came into being as a common market - was mainly a consequence of microeconomic decisions. Gradually, the barriers to the free flow of goods, services and factors of production, i.e., labour and capital, were eliminated. After thirty years, this process reached its conclusion in the form of the Single European Act of 1987 and the Europe 1992 programme. It was only then that the full European internal market (leaving aside a few exceptions) became a reality.

As well as removing the barriers to trade and foreign investment, the Community implemented a common agricultural policy that was distinctly interventionist. For many years, however, it failed to coordinate macroeconomic issues.

However, as EU countries opened-up their economic borders, so the importance of stabilizing exchange rates increased. When, at the end of the 1970s, the European Monetary System was established to cater to this need, partial macroeconomic stabilization became an imperative - in the longer term it determined the stability of exchange rates. In today's international currency dealings, payments for trade and foreign investment account for only a small proportion of the total number of transactions. Given the higher importance of investments made in foreign currencies, it is interest rates which have a decisive influence on exchange rates. Under such conditions, the durability of the European Monetary System requires at least partial coordination of exchange rate policy.

If the currently-implemented programme to introduce European Economic and Monetary Union is to be successful, EU member-states must fully harmonize their respective economic policies - gradual convergence is no longer enough. Macroeconomic concerns are thus central to the issue of integration, and the problem facing Poland - a country with aspirations to membership - is how to achieve full integrative capability. It seems that this should occur some time after formal membership has been secured. Macroeconomic stabilization is also of fundamental importance to Poland's economic growth perspectives and the effective resolution of social problems.

We begin the present chapter by presenting the size and structure of Poland's GDP against that of EU member-states and certain other countries around the world. We discuss in detail how GDP is used to satisfy consumption and investment needs, which puts into an appropriate context our discussion of economic growth. Another problem concerns the balance of payments. In particular, we deal here with the effect that the present exchange rate of the zloty has on the balance of payments.

Such an analysis makes it easier to consider the situation of the Polish economy from the point of view of future membership in European Economic and Monetary Union. We assess Poland's chances of fulfilling the five financial criteria - concerning inflation, interest rates, the budget deficit, public debt and the exchange rate - on which participation in this undertaking depends. These criteria not only constitute the preconditions for monetary union: they also give an indication of the country's macroeconomic position.

### 1.1. GDP in Poland and the EU

The basic measure of a country's economic activity is its Gross Domestic Product (GDP) expressed either in global values or *per capita*. Poland's GDP compared to

EU countries and selected countries from around the world is illustrated in figures 1.1-1.3<sup>1</sup>.

Figure 1.1 presents the geographical structure of aggregate GDP in Poland and EU countries, which has been determined using the exchange rates of convertible currencies. The Polish economy's share in the "European cake" is small, but this should not be surprising: the total GDP of all ten associate-members of the Union is approximately equal to the GDP of a single member - the Netherlands. If, however, instead of exchange rates we use purchasing power parity, the situation of the East and Central European countries looks much better. Figures 1.2 and 1.3 show GDP *per capita*, first using exchange rates, then purchasing power parities.

Thus, the distance between Poland and EU countries calculated according to this basic, albeit imperfect measure of economic activity and development, is large. However, we should remember that when Spain, Portugal and Greece were joining the Union, the "economic distance" between these countries and the largest EU member-states was similar. This is illustrated in figure 1.4.

It should be added that during the years 1994-95 - when the rate of economic growth in Poland was especially high compared to EU countries - the existing gap in GDP was slightly reduced. In 1995, Polish GDP stood at 286 billion zlotys, i.e., USD 3,000 *per capita*.

We also present Poland's situation in terms of GDP *per capita* compared to other Central and East European countries aspiring to membership in the EU. The relevant statistical data are found in table 1.1. In this instance, instead of GDP we use Gross National Product (GNP), which changes the values only minimally. Due to the relatively low level of foreign investment and low cross-border mobility, the differences between these aggregates in the countries under discussion remain insignificant.

The average level of GNP per capita in Central and East European countries is roughly 30% of the average in EU countries. And although GDP and GNP are seen as imperfect measures of economic activity, and especially of standards of living, it should be recognized that the statistical material in figures 1.1-1.3 and table 1.1 is convincing enough to reveal the large economic disparities between the "two halves of Europe". It is especially telling that the economic distance between Estonia and the Czech Republic is relatively small, while Estonia is ahead of Poland.

1. The figures and tables in the text have been prepared on the basis of data published by the Central Office of Statistics, Eurostat and the International Monetary Fund. The abbreviations refer to the following countries: A - Austria, B - Belgium, CZ - Czech Republic, D - Germany, DK - Denmark, E - Spain, F - France, FIN - Finland, GR - Greece, H - Hungary, I - Italy, IRL - Ireland, J - Japan, ROK - South Korea, L - Luxembourg, NL - Netherlands, P - Portugal, PL - Poland, RUS - Russia, S - Sweden, SK - Slovakia, UA - Ukraine, UK - United Kingdom, USA - United States of America.

Figure 1.1

*Geographical Structure of GDP in the EU,  
Including Poland  
(according to exchange rates)*

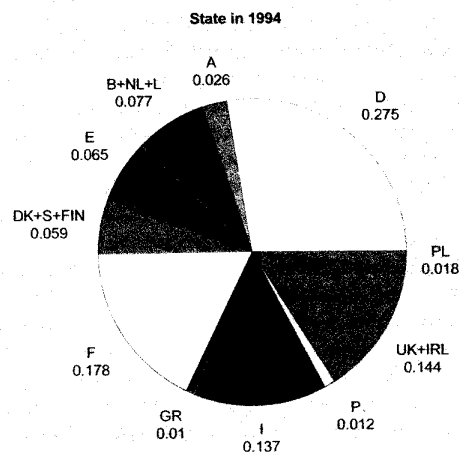


Figure 1.2

*GDP Per Capita in Selected Countries  
in 1993 in 1000 USD  
(current prices)*

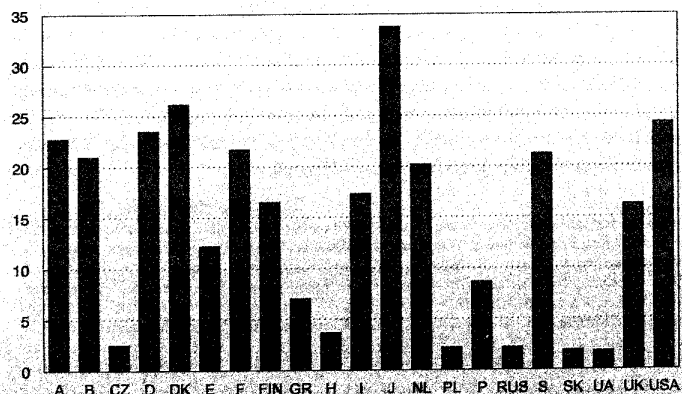


Figure 1.3

*GDP Per Capita in Selected Countries in 1994  
(according to purchasing power parity)*

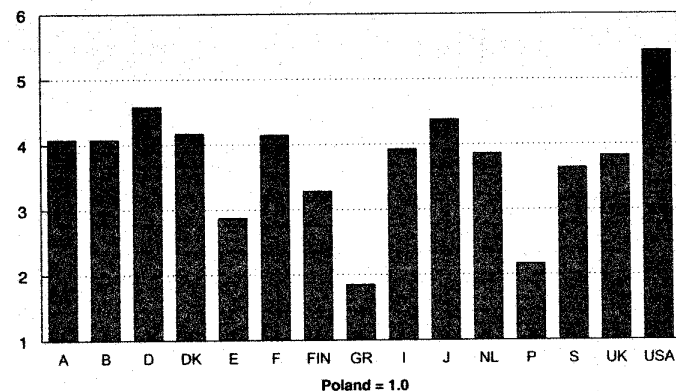


Figure 1.4

*Changes in Per Capita GDP in Greece, Portugal and Spain,  
Relative to France and Germany  
(according to purchasing power parity)*

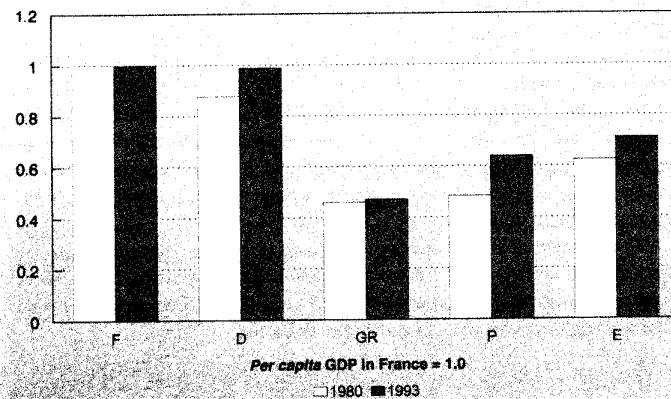


Table 1.1

GNP\* in Central and East European Countries Relative to Poland in 1993 (according to purchasing power parity; Poland = 1.0)

Bulgaria	1.04
Estonia	1.22
Lithuania	0.56
Latvia	0.91
Czech Republic	1.34
Romania	0.57
Slovakia	1.07
Slovenia	1.60
Hungary	1.13

\* GDP was almost equal to GNP in the countries under analysis

Source: World Bank

Comparative statistics on labour productivity, presented in table 1.2, supplement the data on GDP per capita. Productivity is illustrated using the relation of GDP - calculated according to the purchasing power parity of money - to the number of persons employed in a given country. Thus, we make a distinction between labour productivity *sensu stricto* and productivity *sensu largo*, defined in relation to labour resources. In the light of the data presented in table 1.2, the disparity between Poland and Western countries in terms of productivity is equally large, although in the case of many of these countries it is slightly lower.

Let us also take a look at the overall structure of GDP production in Poland and EU countries, which is presented in table 1.3. For comparison with Poland, we have selected three EU countries: Germany, the United Kingdom and Spain. In the first case, the share of industry - for a country that enjoys a very high level of development - remains large; in the second, on the other hand, it is relatively small. We have chosen Spain as it is often compared with Poland due to certain similarities in the history of these two countries.

The structure of GDP production in Poland is therefore quite similar to the structure in EU countries. In Poland, too, a dominant role is played by services, whose total contribution to GDP is similar to the level in Spain and Germany. We should note the still relatively high share of agriculture in Poland.

Table 1.2

Labour Productivity in Selected Countries Compared to Poland in 1993 (according to purchasing power parity; Poland = 1.0)

Austria	3.51
Belgium	4.26
France	4.25
Greece	1.97
Spain	3.74
Netherlands	3.89
Japan	3.34
Germany	3.88
US	4.56
Sweden	3.16
UK	3.40
Italy	4.13

Source: Central Office of Statistics (GUS)

Table 1.3

Structure of GDP Production in Poland and Three EU Countries\*

Country	Agriculture	Industry	Services
Spain	4.6	34.8	60.6
Germany	1.2	36.6	62.3
Poland	6.3	32.2	61.5
UK	1.6	28.7	69.8

\* Data for Poland - 1994, remaining countries - 1993

Source: Central Office of Statistics (GUS), OECD

To end our comparison of GDP figures for Poland and EU countries, we should stress that - from the point of view of integration - a beneficial mutual relation of economic parameters is more important than GDP per capita. In other words, it is more important to be healthy than wealthy.



## 1.2. Use of GDP: Investment and Consumption

Analyzing the way in which GDP is used allows us to establish what part of the "product" produced in a given country is used to satisfy current needs, i.e., consumption, and what part to satisfy future needs, i.e., investment. The proportion of resources allocated to these two ends has a decisive influence on short- and long-term economic growth. Below we present the recent trends in the use of GDP in Poland, EU countries, and, additionally, in the US, Japan, South Korea, the Czech Republic and Hungary.

In order to analyze the structure of GDP use, we present each of its components as a percentage of total GDP; each component is listed separately in figures 1.5-1.10. Because net export does not need to be in surplus, we arrive at values whose components are in some cases negative. The values for each country in the four figures add up to 100%. As economic parameters change from year to year, the average values for 1990-94 have been used to illustrate the trends in GDP use. In the case of post-communist countries, which at that time were undergoing intense systemic and structural changes, the usefulness of most of the averages is necessarily lower than in the case of countries with stable market economies. The data for the Czech Republic refer only to the years 1993-94, and for Portugal - to the years 1990-92. In our calculations we have used the International Financial Statistics yearbooks published by the International Monetary Fund.

Let us begin with some remarks on investment and private consumption. The highest share of private consumption in GDP was recorded in Greece, Hungary, the US, and, to a lesser degree, in Italy, Portugal, Spain and the United Kingdom. In Poland, private consumption is not significantly lower than in these countries.

As regards gross investment, its share in GDP is highest in Korea. It is not much smaller in Japan, and is also high in Luxembourg, Portugal, the Czech Republic and Austria. In this respect, Poland's position is not satisfactory. Although the estimates for 1995 suggest an increase in this indicator to 19%, Poland's level of investment is relatively low, which in the long term may make it difficult to maintain the presently high rate of GDP growth and - bearing in mind the need to renew and modernize a large part of the production base - may in time exacerbate the social situation.

When it comes to the share of export and import in GDP, Luxembourg holds the record. This can be explained by the size of this country. Indeed, a high share of export and import in GDP is most often found in relatively small countries - other examples include Belgium, Ireland and the Netherlands. The share of foreign trade in GDP is very low in the US and Japan. These are by far the world's largest economies, which are huge markets in their own right, and which cater mainly to their own needs.

Figure 1.5  
Share of Private Consumption in GDP  
in Selected Countries  
(average for 1990-94)

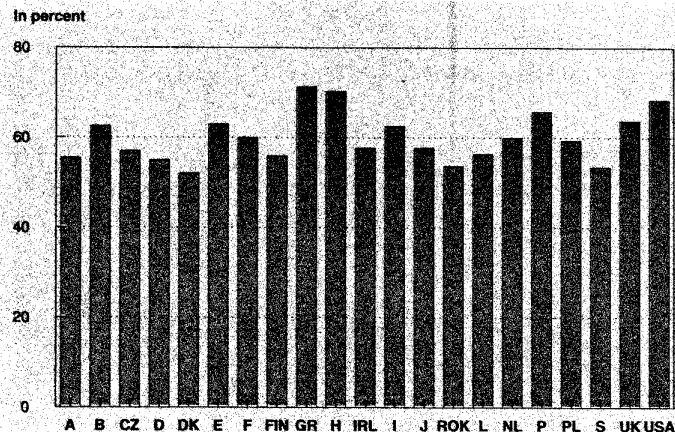
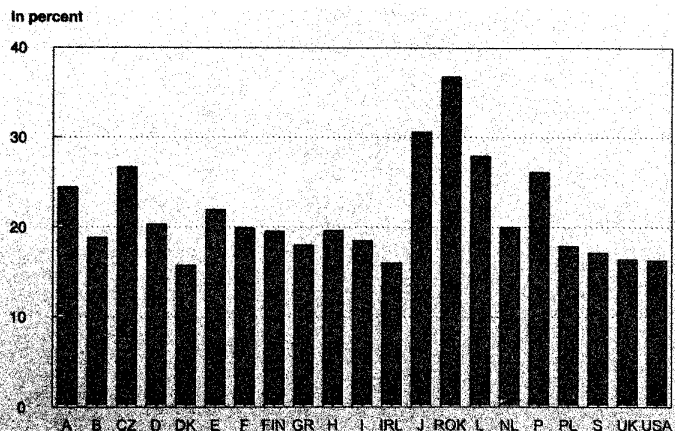
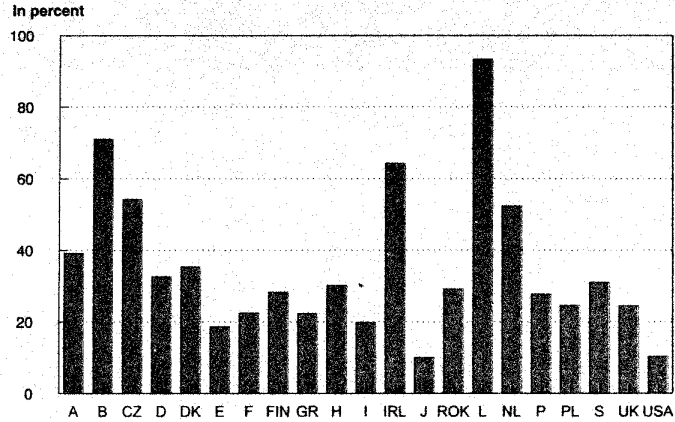


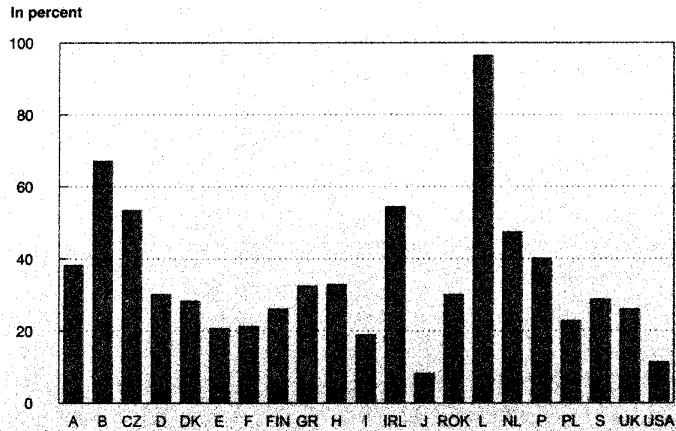
Figure 1.6  
Share of Gross Investment in GDP  
in Selected Countries  
(average for 1990-94)



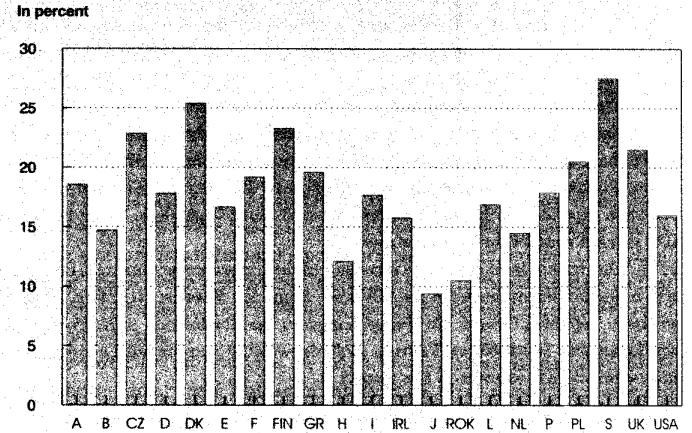
**Figure 1.7**  
Share of Exports in GDP  
in Selected Countries  
(average for 1990-94)



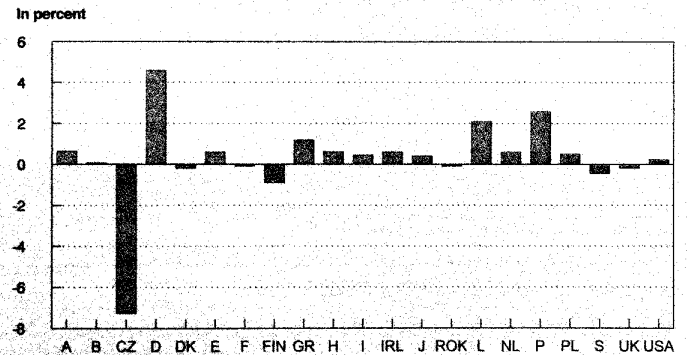
**Figure 1.8**  
Share of Imports in GDP  
in Selected Countries  
(average for 1990-94)



**Figure 1.9**  
Share of Government Consumption  
in GDP in Selected Countries  
(average for 1990-94)



**Figure 1.10**  
Share of Savings in GDP  
in Selected Countries  
(average for 1990-94)



Germany, the country in third place, has far higher export production in relation to GDP, but the global size of its domestic product is significantly lower than Japan's.

Poland, although it is far from breaking any records in this respect, has already to a large extent opened up its economy. In 1995 its economy opened up still further. This is a positive change, as higher exports are a good way of accelerating economic growth and modernizing the economy.

The share of government consumption in GDP differs from the relation of the state budget to this aggregate. Thus, we are considering only one part of the budget: the purchase of goods and services by public institutions, while omitting the redistribution of income. Our conclusions must therefore be different, as we are not analyzing total state expenditure. It should be remembered that a high share of the budget in GDP is not favourable to long-term growth.

Central and local government consumes the highest proportion of GDP, in the form of public procurement, in the following countries: Sweden, Denmark, Finland, the Czech Republic, Poland, the United Kingdom, and the lowest - in Belgium, Hungary, Japan, and South Korea. Leaving aside the wealthy Scandinavian countries, Poland surpasses EU countries in this respect.

### 1.3. Economic Growth

In recent years Polish economy has been developing very fast, as is evidenced by its particularly high GDP and industrial production growth rates. This development has been accompanied by gradually falling unemployment and inflation. Thus, the three basic macroeconomic indicators have changed for the better, while economic growth has been high enough to offset the previous fall in GDP. The changes in the indicators of economic growth are illustrated in tables 1.4 and 1.5.

Table 1.4  
Changes in GDP in Poland

GDP in fixed prices (billion zlotys)	155.8	210.4	286.0	357.7
Growth of GDP in the previous year's fixed prices (%)	3.8	5.2	7.0	6.0

Source: Central Office of Statistics (GUS), draft budget for 1997

Table 1.5  
Changes in the Components of GDP

Growth in consumption (%)	4.1	6.0
Growth in gross investment (%)	18.5	17.0

Source: draft budget for 1997

It should be said that economic growth, after a period of collapse at the beginning of the decade, was for the most part initially caused by rapidly growing consumption. The role of investment during this period was insignificant. In time, and particularly during 1995, economic growth was effected through higher investment and export. In recent years, the growth rate of investment clearly surpassed the growth rate of GDP and consumption.

The next table (1.6) illustrates the growth of valued added in various sectors of the economy. In recent years, highest growth has been experienced by industry and financial services, while agriculture - due to its dependence on weather conditions - has been most unstable. With the exception of 1995, construction - which in market economies is traditionally seen as an important factor catalyzing growth - has had an insignificant impact on the economic climate.

Table 1.6  
Growth of Value Added by Sub-Sector (in percent)

Sector	Share in GDP			
	1992	1993	1994	1995
Agriculture	6.8	5.7	-14.9	11.6
Industry	34.0	8.6	10.3	9.9
Construction	7.8	1.1	2.7	7.3
Trade	13.1	5.8	-1.5	4.4
Transport, communications	6.2	-5.3	0.5	3.1
Financial services	6.2	29.1	102.1	19.4
Public administration, defence	6.1	5.2	7.8	4.1
Education	3.8	0.1	10.2	1.4
Health	4.2	0.5	4.1	2.9
Other	13.0	-8.4	5.2	3.9

Source: Central Office of Statistics (GUS)

Economic growth is being accompanied by falling unemployment, which is illustrated in table 1.7. It should be noted that the economic upturn started long before unemployment began to fall. There is a high proportion of people who have been unemployed for more than a year, although European statistics show that this period is even longer in certain countries: Belgium, Spain, the Netherlands, Germany, or Italy.

Overcoming unemployment in Poland is harder than in EU countries, as job creation - seen from a purely technical point of view - is much slower. That is why, for social reasons, a high rate of economic growth and a high rate of investment are so necessary.

Table 1.7  
*Unemployment; at the End of the Year (in percent)*

Registered unemployed	13.6	16.4	16.0	14.9
Unemployed (relative to entire workforce)	13.7	14.9	13.9	13.1
Unemployed for more than one year (relative to the entire workforce)	39.6	35.8	41.6	39.9
Unemployed for more than two years (relative to the entire workforce)	12.9	13.4	18.9	19.2

Source: Central Office of Statistics (GUS)

The current growth of GDP was preceded by a period of sharp decline at the beginning of the decade. What was the cause of this decline and how was it overcome? The causes of the deep recession that accompanied the systemic transformations in all post-communist countries are usually believed to be the following: changes in financial policy, the inability of enterprises to manage under the new market conditions, rationalization of consumption and investment processes, declining defence expenditure, and the collapse of trade with the CMEA. While we do not deny the relevance of these explanations, we believe that there exists a general - though not single - cause of this phenomenon, which encompasses some of those listed above. It seems that the fundamental cause of recession was the radical change in the structure of global demand.

This aggregate comprises the sum total of partial demand for various goods and services. If it undergoes major internal change over a short period, i.e., if many of its components suddenly rise or fall, then an appropriate change in the structure of global supply becomes necessary. The various elements of global supply must adapt to current demand. Where demand is falling, a change in supply is easy, but where it is

rising, a change in supply is more difficult, as the increase in production may turn out to be disproportionate to the increase in demand. The more elastic "partial supply" is in relation to "partial demand" - i.e., the quicker various sectors can adjust to the new expectations of buyers - the easier it is to overcome deepening recession due to the radical change in the structure of global demand. In those post-communist countries - Poland is one of them - where economic units were able to adjust swiftly to new market signals, the fall in production lasted a relatively short time and the economic upturn was easier.

We believe that the phenomenon we have described is not restricted to this exceptional situation - i.e., the systemic changes in Central Europe. It can also occur in a developed market economy, if, in a short period, a deep "re-orientation" of production becomes necessary. A catalyst for such changes can be, for instance, the end of a war, when "peace-time" demand, connected with reconstruction and the fulfillment of previously unsatisfied needs, substitutes "war-time" demand. In another instance, a radical change in demand can be caused by swift integration processes, particularly the rapid liberalization of trade. In Central and East European countries, the rapid opening-up of previously closed economies was, along with the systemic transformation, a cause of the recession.

There exists no universal recipe for fast economic growth. However, certain conclusions may be drawn from the experience of countries that developed very quickly after the Second World War and were able to reduce the economic and socio-cultural distance separating them from the most highly developed countries - we are referring here mainly to the Asian countries.

Rapid growth requires above all a high level of private savings and investment, as these are much more effective than public savings and investment. They should be supplemented - which does not mean substituted - by an appropriately large level of direct foreign investment. A high rate of savings implies an accordingly lower level of consumption, while luxury consumption can be taxed punitively. Export should become an important factor of growth. In their trade policies, the countries of the Far East resorted to methods that departed from the rules of foreign trade set out in the GATT: above all, they subsidized export in various ways and introduced strong protectionist policies with regard to their domestic markets. Poland cannot adopt such strategies due to its striving for membership in the EU: it has to adjust to the rules that are binding in the internal European market. However, economic policy should aim to achieve a high level of export, as this will force domestic producers to modernize their production. Rapid growth also requires macroeconomic stability (low inflation and a low budget deficit), progress in education, development of the economic infrastructure, and a solid banking system. Contemporary theories of growth - including the

well-known works of R. Solow - attach relatively large importance to technological change and education, and less to the traditional factors of growth - labour, capital and land - as causes of the dynamics of economic systems.

Poland only partially fulfills the conditions of rapid economic growth. We have already mentioned the relatively low level of investment, i.e., over-consumption. Foreign investment is still low, but continually growing. Macroeconomic stability has basically been achieved. Inflation, in particular, is on a downward slope, though compared to EU levels it is still high. A long-term inhibitor of growth could turn out to be structural problems in the state budget, threatening a dangerous imbalance of income and expenditure, and resulting mainly from an overly high contribution by the state budget to the national insurance (pensions) system and an increasing balance of payments deficit.

The question arises: what rate of investment would ensure rapid GDP growth? If we accept the common view that a 5% rate of investment leads to a 1% rate of economic growth, then a 25% share of investment in GDP will be necessary for a 5% rate of economic growth, which for Poland seems to be the minimum desirable level. We may assume, however, that the relation between these two values need not be so high. This is because there exist in Poland many unused human and real capital resources; also, as Poland is lagging behind the West technologically, investments to rebuild old assets often become in fact new ones.

In recent years, there has been high GDP growth in Poland without significantly higher investment in human and real capital. Most probably, it will not be possible to maintain such a situation in the long term. It should be noted, however, that the need for more investment relative to GDP may find little sympathy and support in Polish society.

#### 1.4. Balance of Payments and the Rate of the Zloty

In recent years, a number of stable trends have appeared in Poland's foreign trade. Imports are higher than exports, trade in services is roughly equal, the current trade balance - not taking into account cross-border trade - is negative, the influx of foreign capital, particularly in the form of direct investment, has increased, as have hard currency reserves. These trends are illustrated in table 1.8. In 1996, exports will probably be twice as high as in 1993, while the growth rate of imports will certainly be higher still. The trade deficit, mainly in transactions with the EU (see table 1.9), is for the moment not high relative to GDP.

Figure 1.11  
Real Effective Rate of the Zloty,  
1992-96

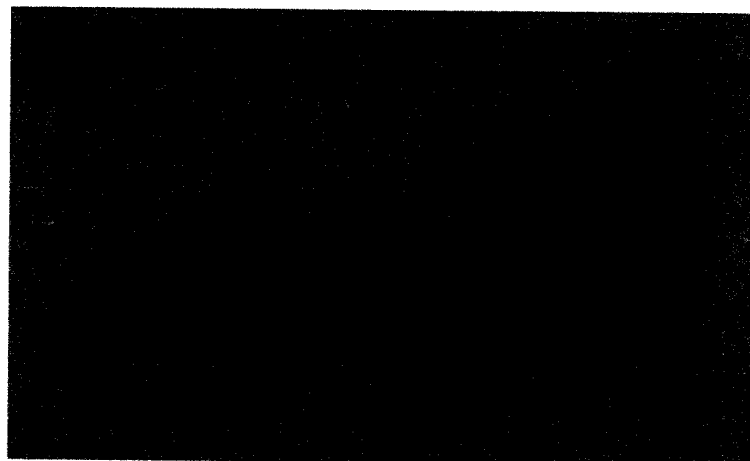


Figure 1.12  
Real Exchange Rates in Poland,  
the Czech Republic, Hungary and Slovakia  
against the USD

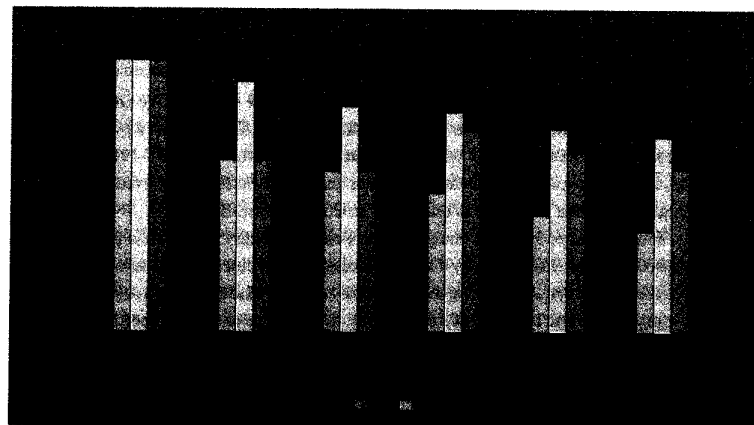


Table 1.8  
*Foreign Trade (payment statistics)*

Export (billion USD)	13.58	16.95	22.88	26.03
Import (billion USD)	15.88	17.79	24.70	31.12
Trade balance (billion USD)	-2.29	-0.84	-1.83	-5.09
Current account balance (billion USD)	-2.33	-0.94	-2.39	-
Capital account balance (billion USD)	0.59	1.20	8.93	-
Growth in official reserves (billion USD)	0.00	1.75	8.93	6.45

Source: National Bank of Poland, Central Office of Statistics (GUS), draft budget for 1997

Table 1.9  
*Geographical Structure of Poland's Foreign Trade (customs statistics)\**

1994, export	75.4	62.7	10.1	14.5
1994, import	75.2	57.5	10.6	14.2
1995, export	75.1	70.0	7.6	17.3
1995, import	74.3	64.6	10.3	15.4
I-VI 1996, export	74.0	69.3	6.4	19.6
I-VI 1996, import	74.3	65.4	10.5	15.2

\* Group I encompasses highly developed countries, group II - EU countries (some also belong to group I), group IV - East-Central Europe and the Commonwealth of Independent States, group III - the rest of the world

Source: Central Office of Statistics (GUS).

In the first half of 1996, the current account balance was negative and stood at roughly USD -272 million. There were also trade deficits in goods, services, property revenues, interest and transfers, which stood at: USD -3,146, -220, -27, -191 and -185 million, respectively. A relatively small current account deficit was achieved thanks to "non-registered trade", which was estimated at USD 3,497 million.

The process of systemic change in the Polish economy has led to a permanent real appreciation of the zloty, i.e., a strengthening of this currency against the major convertible currencies, after taking inflation into account. The real effective rate (RER) of the zloty is the best measure of how quickly this process is taking place. The RER

constitutes a kind of average rate of a given currency against a group of other currencies. In mathematical terms, it is the weighted geometrical mean of changes in the rate of a given currency against each of the other currencies.

Figure 1.11 presents the changes in the real effective rate of the zloty over the years 1992-96. An increase in its value indicates a strengthening of the Polish currency; a decrease in its value - the reverse. To establish the RER, so-called indirect quotations are used, i.e., the amount of each foreign currency needed to purchase the currency under analysis.

As we can see, there was an especially large increase in the RER during 1995. After another sharp rise in December 1995, the RER remained at a high level in relation to previous years, but was now more stable and no longer prone to sudden monthly fluctuations.

The especially strong real appreciation of the zloty in 1995 did not prevent the growth of exports during this period to record levels. Over the entire four-and-a-half year period, appreciation, though significant, was never dramatic. That is why we believe that although the strong zloty did not help exporters do business, it should not be seen as the only, nor even the decisive factor determining the relation between exports and imports in Poland's foreign trade.

A real appreciation of domestic currencies took place in almost all the countries undergoing systemic transformations in Central and Eastern Europe. This is illustrated in figure 1.12, which shows the changes in the real rate of the Czechoslovak crown, the Czech and Slovak crowns, and the Hungarian forint against the US dollar. As we are using direct quotations here, the table indicates the amount of crowns and forints needed to purchase a single currency - in this case the US dollar. Therefore, conversely to the RER, a fall in the rate indicates a strengthening of the given currency.

What causes a negative trade balance and how can import and export be equalized? If the former is higher than the latter, does this necessarily result in macroeconomic destabilization? First and foremost, the relation between imports and exports should be considered together with other elements of the balance of payments. Economic theory suggests that there exists a certain pattern of long-term change in the balance of payments, which has been recorded in many countries that nowadays enjoy a high level of development. It goes as follows: at the outset, imports exceed exports in a country entering the path of development. In time, the relation between the import and export of goods and services is reversed, which makes it possible to repay previously incurred debts. In the third phase, intensive export of capital becomes possible, the profits of which, in the fourth phase, enable the trade deficit to be overcome.

The Polish market economy is still young, which is why it is easier for imports to exceed exports. After all, Poland's partners, particularly in the EU, are able to offer a rich assortment of products: from high-tech machine tools to attractive cars. Balancing Poland's foreign trade is of course possible, but the easiest and best way of doing this is to reduce global demand, particularly through using the instruments of monetary policy. Such a strategy would, however, make GDP growth more difficult.

Thus, trade imbalance does not need to threaten macroeconomic stability provided there is a high enough influx of hard currency - but not merely as result of exports exceeding imports. In Poland, the trade deficit is offset by the influx of foreign capital and cross-border trade. If we take into account the revenues from cross-border trade in Poland's current account - which has been the practice in statistical reports since 1996 - then it turns out that a relative balance has been achieved. The high level of cross-border trade suggests that specialized trading enterprises are unable to sell many of their products abroad.

These claims do not imply, however, that we believe it impossible for the Polish export sector, or perhaps only part of it, to become less competitive due to the real appreciation of the Polish zloty. On the contrary, such a course of events is always possible, be it in the short or long term. In particular, a clear improvement in one element of the country's balance of payments, e.g., a one-way influx of hard currency, may indirectly cause the situation of other elements to worsen. This phenomenon is known as the "Dutch disease", or, when the influx of hard currency mainly takes the form of official transfers, as the "generalized Dutch disease" [Orłowski 1996, p. 58]. This "disorder" occurred in the Netherlands during the 1960s after the discovery of natural gas reserves, and also in many other countries whose exports were dominated by a single type of product, usually a raw material.

The strengthening of the zloty against foreign currencies gives exporters a lower revenue in zloty after taking inflation into account, while imports do indeed become cheaper. The real effective rate, used to measure appreciation, can also seen as a tool for assessing changes in the international competitiveness of goods produced in a given country. This is a good tool provided that prices and production costs remain stable. Thus, in Poland, competitiveness understood in this way is falling.

If, however, the effectiveness of export production is growing, the level of the RER is no longer fundamentally significant for the expansion of export. In other words, real appreciation does not in this instance constitute a barrier to increasing export. It was under such exchange rate conditions that countries such as Japan, South Korea and Germany - today major world exporters - began developing their foreign trade.

Direct foreign investment - which can accelerate economic growth significantly and create new jobs - is a precondition for Poland to maintain a satisfactory balance of payments position and improve the competitiveness of its products on international markets. The influx of foreign capital at the beginning of the systemic transformations was low, but in time it grew rapidly (see table 1.10). One may assume that Poland has become more attractive to investors thanks to consistent economic policy and the declarations of politicians from EU countries that Poland will become a full member-state in the not-too-distant future.

Table 1.10  
*Influx of Direct Investment into Poland in Global Values (in billion USD)*

1989	1990	1992	1993	1994	1995
89	291	924	1,600	1,300	2,500

Source: State Agency for Foreign Investment (PAIZ)

It is expected that the influx of foreign capital in 1996 will exceed USD 4 billion, while in the coming years it will be even greater. The geographical structure of investors is shown in table 1.11. Only investments with a value of at least USD 1 million are taken into account. We estimate that the remaining investments amount to USD 1.8 billion in total.

Table 1.11  
*Direct Foreign Investment in Poland According to Investors' Country of Origin (in billion USD; only investments over USD 1 million are taken into account)*

Country	Investment up to XII 1995	Share in total investment	Pledged investment	Number of firms
US	1,698	24.9	1,520	62
International Corporations	1,101	16.1	263	14
Germany	683	10.0	456	79
France	574	8.4	356	29
Italy	459	6.7	1,755	17
Netherlands	408	6.0	180	13
UK	368	5.4	165	21
Australia	298	4.4	27	3
Total	6,832	100.0	5,250	362

Source: State Agency for Foreign Investment (PAIZ)

As we can see, the structure of investments is differentiated, while the country in first place on the list accounts for one quarter of total investment. There are many indications that the US share in foreign investment in Poland will fall, while the share of EU countries - which to date have invested around 65% of total capital - will rise. It should be noted that Japan - a country with an especially high potential - has made few investments in Poland. Until the end of 1995, Japan had invested a mere USD 33 million and had pledged to increase this in the future to USD 40 million.

## **2. POLAND AND EUROPEAN ECONOMIC AND MONETARY UNION**

Participation in the planned European Economic and Monetary Union (EMU) will undoubtedly constitute a major challenge for Poland, yet it should be seen as a natural consequence of the country's membership in the EU. Poland will only be able to participate, however, some time after membership has been secured. In any case, Polish economic policy should aim to meet as fully as possible the convergence criteria set out in the Maastricht Treaty, which govern participation in the EMU. This will not only help boost the economy, allowing Poland to enter the single currency system at a future date, but will also - which is equally significant - improve the country's current macroeconomic situation. Poland's preparations to meet the Maastricht criteria should not only be understood as a desire for certain macroeconomic parameters to reach a given level, but also as an effort towards being able to meet these criteria in the future.

### **2.1. The Problems of Monetary Integration**

According to the Maastricht Treaty, for a member-state to qualify for EMU it must meet the so-called convergence criteria. Eligible countries will be those in which:

- the growth rate of consumer prices does not exceed by more than 1.5% the average for this indicator in the three EU countries with the lowest inflation rates in the previous year;
- the general budget deficit does not exceed 3% of GDP;
- public debt does not exceed 60% of GDP;
- the exchange rate remains within the boundaries specified by the European Monetary System for at least two years;
- the long-term interest rate, reflecting expectations as to the future growth in prices, is no more than 2% above the average for the three countries most

effective at fighting inflation; the long-term interest rate is calculated according to the interest rate on long-term government bonds.

Fulfillment of the budgetary criteria of convergence is made easier by a regulation which allows for expenditure to exceed revenues provided that this happens for exceptional reasons and is only temporary. By the same token, a country's public debt may be considered acceptable so long as the country is continually moving closer to the critical threshold of 60% of GDP.

The criteria connected with the budget deficit and public debt, along with other indicators, are applied in international banking to assess geographical risk. The countries fulfilling such criteria should have stable market economies and be fully credible as places of origin for borrowers searching for funds on the international financial market. Thus, such criteria did not appear for the first time in the Maastricht Treaty.

It seems that, from the point of view of monetary union, the exchange rate criterion is of key significance. Stable exchange rates coupled with an absence of exchange controls create a situation that is already close to monetary union. In economic theory, it is believed that such a union does not need to have a single currency - permanently fixed exchange rates are enough.

The other requirements are intended to stabilize the EU's exchange rate system, which will make monetary integration easier and more durable, and enable the European Monetary System to function whilst maintaining low inflation.

Since the signing of the Maastricht Treaty, only a few EU countries have managed to fulfil all the convergence criteria. By the autumn of 1996, the following countries had met the inflation and interest rate criteria: Austria, Belgium, Denmark, Finland, France, the Netherlands, Luxembourg, Germany, Sweden, the UK and, basically, Ireland. Compared to previous years, this is a major improvement.

In 1996, the currencies belonging to the European Monetary System fluctuated within a narrow 2-2.5% band, although the system allows for fluctuations of 15%, which is not to say that such a band is preferable. This is probably a sign that the international financial markets recognize the feasibility of monetary union.

However, fulfilling the budgetary and public debt criteria is very difficult. In 1996, only Luxembourg enjoyed a satisfactory position in this respect, while Finland was close. Belgium, Greece and Italy recorded a public debt exceeding 100%, while Greece and Italy had a deficit of over 6%. In 1997, Finland, France, Luxembourg and Germany are expected to fulfil, or nearly fulfil, both these criteria.

It seems that the budgetary criterion will prove most troublesome for EU countries. Why is it that, despite the considerable efforts of finance ministers, deficits con-



tinue to exceed acceptable levels? There appear to be two main reasons for this: the incompatibility of taxation principles with the obligations undertaken by governments (structural difficulties) and insufficient cash at the disposal of governments due to economies not fulfilling their economic potential (trade-cycle difficulties). Let us take a closer look at these phenomena.

In economics, a distinction is made between various types of deficit: budget, actual, structural, and cyclical. A structural deficit implies that the "economy is working in top gear", while a cyclical deficit implies a loss of revenue (and a possible reduction in expenditure) due to the under-use of resources. Together, these two deficits constitute an actual deficit, and only this kind of deficit is statistically observable. Yet there exist analytical ways of dividing it into its component parts. According to analysts from the International Monetary Fund, in most EU countries it is structural deficits that account for the greater part of actual deficits, although in France and Germany - especially important countries in terms of EMU - cyclical deficits are dominant. If we assume that the Maastricht Treaty obliges governments to impose ceilings on structural and not actual deficits - which, of course, is a free interpretation - then the problem of the budgetary criterion is mitigated.

Fulfillment of the coherence criteria constitutes only that part of preparations for EMU which can be measured. For the latter is supposed to mean not only monetary union, but also economic union, consisting in the free transfer of goods and factors of production, linked with close coordination of economic policy. The bases for such economic union exist in the form of the European internal market, the European Monetary System, and - as a consequence of the EMS - coordination of macroeconomic policy, particularly interest rate policy.

We believe that the conjunction of the Maastricht Treaty's five convergence criteria is a necessary but not sufficient condition for the establishment of durable and effective monetary union. To create strong EMU, we regard the following to be additionally necessary:

- tight economic convergence as regards the structure of GDP production;
- closer competitiveness levels of the countries involved in monetary union;
- convergence of labour productivity levels in the countries in question.

We shall call these additional criteria the foundations of EMU, and the Maastricht criteria - its pillars. The "building" that is the EMU requires "pillars" to maintain its balance and "foundations" to ensure durability.

The pillars are criteria that we can measure far more easily than the foundations. Convergence of labour productivity levels is the easiest foundation to measure numerically. It is illustrated in figure 1.13. Analysis of the statistical data shows that

the disparities in labour productivity were greater in 1994 than in 1991; thus, the situation of EU countries in this respect has become more, not less differentiated. This is the case for all fifteen countries of the Union; for five of those the countries: Belgium, France, the Netherlands, Luxembourg, Germany, and for nine member-states, if we additionally take into account Austria, Denmark, Finland and Ireland<sup>2</sup>.

It is almost certain that in the first phase, only a few EU countries will participate in EMU. This might be the group of five countries mentioned above - though this would be an extreme minimum - or it might be the group of nine, which the other countries could join later on. Most striking is the ambiguous attitude of the UK. In any case, it follows from our analysis that European Economic and Monetary Union may begin at the end of the century in an economic situation that is far from optimal. For sure, the resolutions of the Maastricht Treaty easing the convergence criteria will be applied. Thanks to this, the initiation of EMU will not entail abandoning the already-existing monetary union between Luxembourg and debt-ridden Belgium.

The economic situation is such that the monetary policy of the new central European bank will take on a new significance. Perhaps the success of EMU will depend most of all on this policy. At the outset it will probably be very restrictive, which some participants will experience in the form of a lower GDP growth rate.

Everything suggests that the new currency - the euro - will enter circulation thanks to the political will that exists in the interested countries. EU countries are aiming to transform the Union from a system of free flowing goods, services, capital and labour, supplemented by a common agricultural policy, into a system of close political cooperation, probably broadened to encompass a single defence policy that is compatible with that of the Atlantic alliance. The single European currency will constitute an important step in this direction, for along with other integrative arrangements, it will bring the countries of the EU closer together. The economic benefits of introducing the euro, resulting from the full use of the internal European market, will emerge after a longer period of time.

## **2.2. The Polish Economy in the Light of the Convergence Criteria Set Out in the Maastricht Treaty**

The statistical data describing Poland's situation in the years 1990-95 from the point of view of convergence criteria are illustrated in table 1.12. For the interest rate

2. Unlike in figure 1.13, the labour productivity coefficient is given here in absolute, not relative terms. For the fifteen countries of the Union it stood at 0.28 in 1991 and 0.31 in 1994; for the five countries - 0.08 and 0.18; and for the nine countries - 0.11 and 0.18.

we have used the interest rate on refinanced credit at the National Bank of Poland. We have omitted from the table the non-quantifiable exchange rate criterion, which is described elsewhere.

Table 1.12  
Poland in the Light of the Maastricht Convergence Criteria

Criterion	1990	1991	1992	1993	1994	1995
Inflation rate	585.8	70.3	44.3	37.2	29.5	21.6
Refinanced credit rate	55.0	40.0	38.0	35.0	33.0	29.0
Budget deficit	0.4	-3.8	-6.0	-2.8	-2.7	-2.6
Public debt	94.9	81.4	85.3	86.0	69.5	56.1

Source: Central Office of Statistics (GUS)

Thus, Poland meets two convergence criteria: those connected with the budget deficit and the public debt<sup>3</sup>. Many EU countries had difficulties in meeting these criteria after the Maastricht Treaty had come into force.

Inflation is definitely too high. There are a number of reasons for this. Economic policy in the 1990s was not completely geared towards reducing inflation. The goals of macroeconomic policy - as in many countries around the world - were defined as follows: achieving a high rate of GDP growth, minimizing inflation, and combatting unemployment. The main goal was to support economic growth.

Cost and demand factors determine the growth rate of prices. Let us first concentrate on cost factors. The government raised the price of electricity and gas, which remain under its control, in order to reduce budget subsidies, bring domestic prices closer to world prices, and promote energy-saving. A similar effect, albeit on a smaller scale, was brought about by the over-valuation of enterprises' fixed assets.

Wages had a decisive impact on the level of prices. The basic instrument for controlling prices after 1989 was the tax on excessive wage increases - the *popisek* - but it was only partially effective at ensuring that wage increases were linked to increases in labour productivity. This administrative tool - intended to prevent wage increases in state enterprises that were not preceded by better financial results or increases in labour productivity - was abandoned after a few years. The *popisek* did not apply to the private sector, which acted as an incentive for swift privatization.

The market structure, i.e., the extent to which the market is dominated by monopolies, also determines the growth rate of prices. In Poland, the retail food market, which is still a long way from perfect competition, is especially significant as regards the growth of prices.

3. According to certain economic analyses, the budget deficit slightly exceeds the acceptable level.

Figure 1.13  
Labour Productivity in EU Countries  
in 1991 and 1994

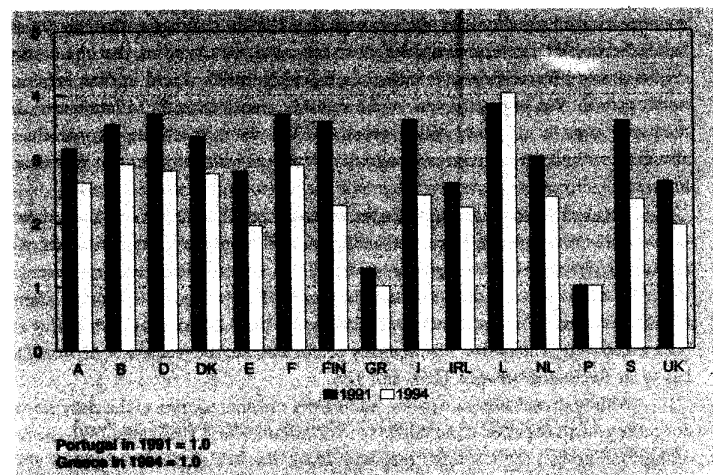
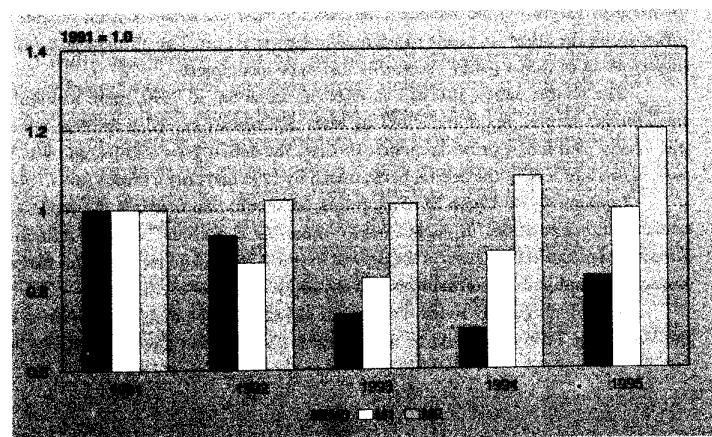


Figure 1.14  
Money Supply in Poland  
in Real Values, 1991-95



Monetary policy occupies a separate place among the causes of inflation. Its main instrument - the interest rate - was set after 1989 in such a way that, on the one hand, the real interest rate would be above zero, and, on the other, that the costs of credits drawn by enterprises would not be too high, which would in turn help economic growth. Yet, in practice, due to the monthly variations in the inflation rate, this duality of aims in monetary policy meant that the real interest rate was not always above zero. Generally, the price of money, relative to inflation, was not excessively high.

Figure 1.14 shows the changes in the money supply. We use here three definitions of money supply: M0 - encompassing cash in circulation, current accounts in banks (hard currency) and compulsory reserves; M1 comprising cash and gold reserves; and M2, i.e., M1 plus savings accounts. The sizeable fluctuations in the money supply clearly undermine the occasional claim that in the 1990s Polish monetary policy has been excessively monetarist. The liquidity coefficient, i.e., the relation of M2 to GDP, has so far fluctuated between 34.5% and 37%.

Although exchange rate policy, leading to a real appreciation of the zloty, slowed down the growth of prices, it did not do so to maximum effect. Until May 1991, the rate of the zloty against the US dollar remained fixed, after which, until October 1991, it remained fixed in relation to the basket of hard currencies. At that time, this instrument of macroeconomic policy effectively slowed down the generally rapid rise in prices. The mechanism that was introduced later on - a steady rise in the value of the basket of hard currencies, also known as the crawling band - was no longer neutral with respect to rising prices. However, because the monthly devaluation of the zloty was never greater than 2%, there never arose a mutually propelling mechanism of inflation followed by further devaluation. On the one hand, the crawling band was meant to limit the rate of inflation, on the other - to create incentives for higher export. The ultimate anti-inflationary effect of such a policy necessarily had to be incomplete.

The budget deficit also had an effect on inflation. In 1990, there was still a small budget surplus, but in the following years expenditure exceeded revenue, which was mostly paid for by printing money. In time, the deficit grew smaller, and was financed less and less by the central bank, which by 1996 had only a minor role to play.

Looking for the causes of rising prices, we should also note that the process of systemic transformations in Poland began under the conditions of hyper-inflation. Despite a significant limitation of the growth in prices in subsequent years, this had an impact - through inertia mechanisms - on the future course of events.

As we have already stated, Poland has already met the budgetary criterion of the Maastricht Treaty. It should be remembered, however, that a relative balance be-

tween expenditure and revenue is possible because large cuts are continually being made in subsidies to various state enterprises. For this reason, the reform of the national insurance (pensions) system promised by the government will be enormously significant for the future of Polish budgetary policy. The traditional pay-as-you-go pensions system in Poland, which converts current contributions into current payments, will be especially difficult to maintain due to demographic changes, particularly from the middle of the coming decade. It seems necessary to implement a capital system, in which current contributions are invested. However, as the retirement age in Poland is the lowest in Central and Eastern Europe, the pressure on the budget's social expenditure is that much greater. The ease with which employees can retire due to old-age or sickness is combined with a still high level of national insurance (pensions) contributions, much higher than Italy's 27%, which is the highest in the EU.

Table 1.13 illustrates the relation of budget expenditure and revenue to GDP in the 1990s.

Table 1.13  
*Revenues, Expenditures and the Budget Balance (as a percentage of GDP)*

	1990	1991	1992	1993	1994	1995	1996
Total income	47.9	43.9	45.1	47.6	48.3	47.8	48.1
Budget revenues	34.8	26.1	27.2	29.5	30.0	29.3	27.9
Total expenditure	45.1	45.8	50.0	49.9	50.5	49.7	50.9
Budget expenditure	34.6	29.9	33.2	32.3	32.7	31.9	30.9
Balance	2.8	-2.0	-4.9	-2.3	-2.2	-1.8	-2.9

Source: Central Office of Statistics (GUS), Ministry of Finance

Polish membership in the EU will no doubt lead to a greater influx of hard currency from abroad, which may have certain consequences for budgetary policy. In the light of the declared changes, before the EU expands east, we may expect an adjustment in the principles of allocating structural funds from the Union budget. In short: the flow of such funds will probably not be as great as if the current principles were applied. In any case, whether larger or smaller, structural funds will enable the Polish budget deficit to be increased without the threat of higher inflation. Yet if this were to happen, Poland would move further away from fulfilling the Maastricht criteria. It could also pose a threat to macroeconomic stability and GDP growth.

In recent years, Poland's public debt has fallen significantly, finally sinking below the 60% threshold. This has facilitated the rapid growth of GDP. At the same

time, in the public debt, the share of debts to domestic creditors increased at the expense of debts to foreign creditors. Data on the size of the public debt and its structure are presented in tables 1.14 and 1.15.

Table 1.14

*Public Debt (at the end of the Year, in billion Zlotys)*

Tradeable debt	27,809.00	36,207.00	43,886.00	58,113.00
Total debt	133,976.00	146,211.00	160,700.00	190,330.00
Internal debt	35,906.00	49,850.00	59,593.00	75,908.00
Foreign debt	98,070.00	96,361.00	101,107.00	114,422.00
Tradeable debt/total debt	20.8	24.8	27.3	30.5

Source: Ministry of Finance

Table 1.15

*Structure of Internal Tradeable Public Debt (at the end of the Year, in percent)*

<b>Instruments:</b>				
- treasury bills	55.9	59.8	53.9	48.7
- bonds	40.2	39.9	46.1	51.3
<b>Creditors:</b>				
- National Bank of Poland	35.0	30.1	8.7	7.6
- commercial banks	59.3	55.1	67.8	68.2
- non-bank sector	5.6	14.2	18.0	20.8
- non-residents	0.1	0.6	5.5	3.4

Source: Ministry of Finance

The final criterion is the exchange rate. The crawling band system in force since 1996 means that the central bank maintains the rate of the zloty on the inter-bank market within a band that allows for a difference of plus/minus 7% from the central bank rate, which, in turn, is changed each day in such a way as to ensure a 1% devaluation each month. This arrangement diverges from the postulates of the Treaty. For Poland to meet the exchange rate criterion, the price of the zloty against the ECU and the national currencies of EU countries would, with a small margin of tolerance,

have to remain fixed. This would imply abandoning the already only partial link between the zloty and the US dollar. However, one of the key conditions of a fixed exchange rate is a radical check on inflation.

If Poland is to participate in EMU, the zloty must be fully convertible. The Polish currency fulfills the requirements of article VIII of the statute of the International Monetary Fund, while the convertibility of the zloty after 1990, mainly encompassing commercial transactions, has never been threatened. On accession to the OECD, capital transactions were also partially liberalized. Non-residents are freely able to make both direct and portfolio investments, transfer profits, and repatriate capital in the event of investments being liquidated. Similar transactions made by residents are, however, restricted; there are limits on the value of investments and the maturity of securities.

Above all, a synchronized exchange rate and interest rate policy - different from the existing one - is needed to make the zloty a fully convertible currency. Yet overly high inflation is a barrier to such a policy. The devaluation rate of the zloty, which, let us recall, currently stands at 1% per month, is often lower than the inflation rate. The interest rate, in turn, set according to the inflation rate, allows for relatively high interest on savings in zlotys, after they have been converted into Western currencies. This phenomenon was most dramatic in 1990<sup>4</sup>. It will be best to look for a permanent solution to this problem - how to link the devaluation rate to the interest rate - once inflation has come down.

The position of Poland's central bank, which is independent of the government, meets the requirements of the Maastricht Treaty. This may be seen as a kind of sixth criterion for entering EMU, and in this respect Poland is ahead of some EU countries.

Stricter fulfillment of the Maastricht criteria, a more effective anti-inflationary policy, and convergence of price structures in Poland with those of the EU justify making a stable exchange rate a goal of macroeconomic policy. In this case, the direct goals of monetary policy, in the form of desirable money aggregate levels, must be selected in such a way as to ensure a stable exchange rate. Only after inflation has been lowered will such a turnaround in macroeconomic policy be possible, or even desirable. For then it will be relatively easy to implement, while the new goal of macroeconomic policy will require only slight changes in the parameters of other economic instruments at the disposal of the government and the central bank.

Of course, the additional conditions - "foundations" - of durable monetary union, described in the previous paragraph, make it that much harder for Poland and

4. It had occurred several times before this, but had been less intense. At the moment of writing, this phenomenon did not occur at all.

other post-communist countries to join EMU. Central and East European countries should, therefore, aim to forge for themselves the best possible situation from the point of view of the Maastricht criteria, bolstering in this way their own macroeconomic stability, and treating entry into EMU as a programme for the future.

Entry into EMU means participating in a common macroeconomic policy, particularly with regard to interest rates. While the European Monetary System indirectly leads to the convergence of its participants' interest rates, future monetary union will mean a single interest rate right across the board. Poland will be able to join EMU when national interest rate policy is coherent with its European counterpart. It should be noted that even after monetary integration, the countries participating in EMU will have some leeway in shaping their own economic policies and therefore influencing the rate of economic growth. Its tool will primarily be a broadly understood fiscal policy, which, while observing the general principle of low budget deficits, may take on different forms.

### **3. POLAND AND THE COMMON AGRICULTURAL POLICY (CAP)**

Agriculture is often seen as an especially problematic area of the Polish economy as far as integration with the EU is concerned. That is why, going beyond strictly macroeconomic concerns, but continuing to address general problems, we have devoted the next point to this issue.

We begin with a brief description of the instruments of the EU's agricultural policy; then we discuss past and future modifications to this policy; and finally we consider Poland's participation in CAP.

#### **3.1. The Content of CAP**

Officially, there are five goals of CAP: increasing agricultural production, securing a high standard of living for the farming community, stabilizing the agricultural market, guaranteeing regular food supplies, and ensuring fair consumer prices. Among these - not always compatible - goals, the first is most important. It may be understood as a striving to make the integrating Europe self-sufficient as far as food is concerned.

Influencing the current situation on the agricultural market and production conditions are both part of CAP. The latter activity is called structural policy. The first priority of CAP has always been to control the agricultural market as well as the amount

of cash resources allocated. This is built on three principles: maintaining a single market for agricultural produce, and thus opening up the internal EU borders for such goods and setting common prices; giving preference to EU products, which takes the form of a common commercial policy vis-à-vis third countries; and solidarity in the financing of these aims. The last principle is institutionalized in the form of the European Agricultural Guidance and Guarantee Fund, which constitutes a part of the EU budget known under the French abbreviation FEOGA. It is mainly used for controlling the market, less so for structural policy.

Direct influence over the market situation takes a number of forms. The most important of these is a system whereby the purchase of agricultural produce is guaranteed, and its price is maintained at a level set by the European Commission. Production quotas may also supplement these measures. In practice, prices exceed world market levels, which effectively stimulates production within the EU and ensures high incomes for farmers. Consequently, the EU has to subsidize the products it exports in order to maintain high prices for the benefit of sellers. Market intervention also consists in limiting imports through customs duties and import quotas, without adjusting prices accordingly. Another solution is to pay premiums to agricultural producers, the effect of which is that high production costs coexist with low consumer prices.

Looking at CAP from a long-term perspective - which is possible, as in practice it began in the early 1960s - we should point to its many benefits. The EU has attained a high level of self-sufficiency as far as food is concerned, farmers enjoy high incomes, the agricultural market has become stabilized, and all this has significantly increased the economic security of the Union. Despite its high level of self-sufficiency, the EU is the world's leading importer of food. However, this mostly concerns cereals and tropical fruit.

Yet there are also negative sides to CAP: large agricultural surpluses (what to do with them is a major problem), the high costs of the policy, which are incurred both by European taxpayers (the FEOGA accounts for the lion's share of the EU budget) and by consumers, who pay higher than world prices for their food. Nearly 50% of farmers' revenues come from artificially raised prices and subsidies. The producer subsidy equivalent (PSE), which constitutes an equivalent of the total transfers made to farmers from consumers and taxpayers, related to the value of production, stood at 48% for the whole of the EU in 1993. In Poland, the PSE stands at 15%. Another indicator reflecting the level of support given to farmers is the consumer subsidy equivalent, which is similar to the PSE, but does not take into account the transfer of revenues from consumers and taxpayers. This indicator stood at 39% for the whole EU.

CAP also affects third countries, which are faced with barriers when exporting to the EU and are threatened by the EU's own subsidized exports. Long-term market

intervention always leads to a less-than-optimal allocation of production factors, in this case to a surplus of agricultural equipment, the maintenance of surplus arable land, and environmental damage. For these reasons, there have been many calls for a thorough reform of CAP.

It was possible to exclude agriculture from the free market system because in EU countries this sector produces a relatively small proportion of GDP and the number of people employed in it is also relatively low. Even if, from a purely economic point of view, this is an ineffective policy, or - put another way - one that cannot be assessed unequivocally - the EU has been able to afford such a "luxury".

### **3.2. The Future of CAP**

In 1992, changes known as the McSharry reforms - after the EU commissioner for agriculture at that time - were made to CAP. They consisted in gradually lowering the interventionist prices applied within the EU in relation to world prices, while still maintaining the former at a higher level. Direct subsidies to farmers were increased to offset the farmers' loss of revenue. Another effect of modifying CAP was that agricultural surpluses were also reduced.

The McSharry reforms, spread out over a number of years, were not synonymous with giving the EU's agricultural policy a new and final form. On the contrary, the issue of further changes to CAP crops up again and again in discussions on European integration. The present EU commissioner for agricultural policy - F. Fischler - has come out in favour of a new, simplified and less bureaucratic agricultural policy, whose details have not yet been specified.

There seem to be three main directions in which CAP could go. First, it could be left in its present form. In the long term, however, this would be a very costly alternative, even if CAP was not extended to the new member-states in Central and Eastern Europe. It would also violate the EU's obligations towards the World Trade Organization, which entail the liberalization of international trade in agricultural goods. Moreover, it would lower the competitiveness of EU agriculture on the world market. It seems, therefore, that this alternative is unacceptable. Second, the current policy could be totally abandoned in favour of free trade in agricultural produce, supplemented by direct or conditional subsidies to agricultural producers. This alternative should be seen as politically unacceptable, and, particularly in the short term, economically very costly. What remains, therefore, is a mixed solution in which changes would be introduced gradually, following on from the reforms of 1992. An analysis of the political calendar, particularly the timetable of elections in EU countries suggests that further

reform of CAP will not get under way until 1999 at the very earliest. According to Fischler: "In five to ten years, no one will be able to say that the farmers need unconditional, direct subsidies." The subsidies should be geared towards "protecting the natural environment, protecting the soil, and ecological farming". He also notes: "We must find a way of exporting without subsidizing".

In the light of these statements, we may expect a further convergence of EU and world prices, which will facilitate a solution to the problem of subsidized exports, and an intensification of structural measures, which will lead to farmers being given conditional access to budgetary funds. Fischler does not propose a departure from market intervention; rather, he points to the possibility of reducing it significantly, and further opening the European agricultural market to the world.

In the case of agricultural policy, long-term market intervention leads to the periodic appearance of huge agricultural surpluses despite repeated attempts to reduce them. Hence, some economists claim that the interventionist CAP will be gradually dismantled and in the longer perspective - for instance, in twenty years or so - will vanish altogether.

An important aspect of the changes to CAP is the planned expansion of the EU eastwards. Fischler notes, however, that: "Even if the expansion of the EU were not possible at the present time, it would, in my view, still be advisable to begin discussing the future shape of agricultural policy". Let us therefore consider the importance of CAP for the countries applying for membership in the EU.

### **3.3 Poland and CAP**

Why does Poland's entry into CAP seem problematic? First, because this policy would prove extremely costly, and the costs would be incurred not only by Polish consumers, but also by taxpayers in the fifteen countries of the Union. Second, CAP, especially if unreformed, could lead to a significant increase in agricultural surpluses with Poland as a member-state. Finally, this policy, especially when it comes to influencing the current situation on the agricultural market, would hamper long-term structural changes in Polish agriculture.

Agriculture accounts for approximately 6% of Poland's GDP, but nearly one quarter of the entire workforce is employed in this sector. The disparity between these two indicators is exceptionally large. Among EU countries, only Greece has a comparable share of people working in the agricultural sector, but there its share in GDP is

5. All Fischler's statements are cited in *European Dialogue*, a publication of the European Commission, January-February, 1996.

twice as high. The proportion of people working in agriculture in the European Community in the mid-1950s was similar to that of Poland today. In Italy it stood at 40%, in France - 27%, and West Germany - 18.5%. In 1965, average employment in agriculture in the EC fell to 16.5%.

Figure 1.15 shows the size of the farming community in Poland relative to the total number of people employed in agriculture in EU countries. If Poland was a member of the EU, Polish farmers would approximately account for one third of total employment in agriculture. We believe, however, that these figures, calculated on the basis of official statistics, overestimate the number of Polish farmers. First, many of them do work in the form of services catering to their own needs and those of their neighbours. The effect of this is that, unlike in Western statistics, among Polish farmers there is a hidden group of craftsmen and people offering simple agro-technical services. Second, in Poland about one third of all farms - "social farms" - yield little or no marketable agriculture produce. Despite these reservations, Poland does have an especially high number of people working in agriculture. And because CAP is not only an economic policy, but also a social policy geared towards supplementing farmers' incomes, under Polish conditions it would become a form of non-market income support for a very large group of people that produce a relatively small portion of GDP. It would therefore imply a large-scale redistribution of GDP.

Comparing the acreage of arable land in Poland and the EU confirms the extensive character of Polish agriculture. Figure 1.16 presents the share of EU countries and Poland in the total area of land used for cereal production. Table 1.16, in turn, illustrates the yield from cereal production per one hectare of land in selected countries.

Table 1.16  
Cereal Crop Yields per 1 Ha in Selected Countries in 1994 (in Decatonnes)

Country	Yield	Country	Yield
France	64.5	Russia	15.6
Spain	23.3	US	55.5
Canada	25.6	Ukraine	32.4
Germany	55.1	UK	64.5
Poland	25.7	Italy	48.3

Source: Central Office of Statistics (GUS)

Due to the high level of employment in agriculture and, compared to EU countries, the scarcity of farm machinery, labour productivity in this sector is low.

Figure 1.15  
EU and Poland. Total Population Structure  
According to Nationality and Number of Farmers

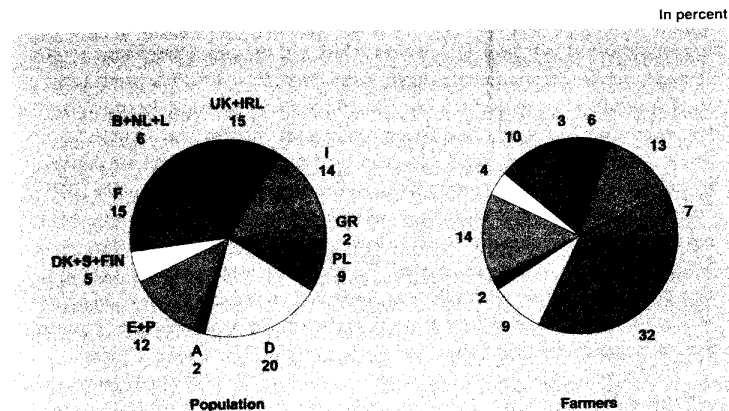
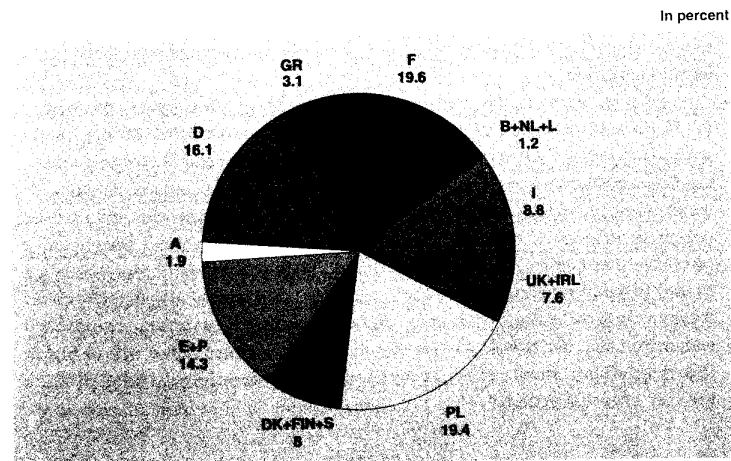


Figure 1.16  
EU and Poland. Structure of Land used  
for Cereal Production in 1994



In accordance with the logic of CAP, the costs of the high prices on the agricultural market should be borne both by consumers and the EU budget. An increase in the share of expenditure on food relative to total consumer expenditure will give rise to serious difficulties in Poland, for it is already high and amounts to approximately 40%. In highly developed countries, this figure varies from 15% to 20%. The income elasticity of demand for food in the EU is low - from 0.3 to a negative value, depending on the type of product. In Poland, the situation is somewhat different - i.e., changes in consumer incomes have a significant impact on the demand for food - and will remain so in the near future. The main reason for this is the large difference in *per capita* GDP. If we also take into account the sizeable income disparities within Polish society, then we see that the introduction of CAP could have a highly disadvantageous effect on the household incomes of many consumers. This could also happen in other Central and East European countries, even where the disproportion between the share of agriculture in GDP production and the share of farmers in the total number of employed persons is not so large as in Poland, and where *per capita* GDP is slightly higher.

Taking all these factors into account, it seems that Poland, like its neighbours, will not be able to introduce CAP within a short period of time. It would be too expensive for us to finance ourselves, and everything suggests that the other fifteen countries of the EU would not finance it either. Nor would it help the much needed structural changes in Polish agriculture. So, if Poland is to become a member of the EU in around the year 2000, it should now secure derogation of CAP.

Let us not forget that the future extension of CAP to Central Europe should be welcomed, above all by the farmers themselves, for it is their incomes and their opportunities to sell their agricultural produce that would be radically improved. In such an event, it is precisely the farmers who would be the greatest advocates of Polish membership in the EU.

Let us again cite Fischler's words. Speaking about the possible expansion of the EU, he says: "Abandoning this system for the sake of expanding the EU is unthinkable. ...Developing CAP in the right direction is both possible and in everyone's interest. Assessing the situation of agriculture in Central European countries, he states: "It is important to help [Central Europe] carry out structural changes that will increase the competitiveness of the retail food industry. Why? So prices won't have to fall if these countries become members of the Union". Fischler continues: "More funds are needed to transform agriculture in these countries. ...We must give them help within the framework of the Phare programme, and after they have become members, through regional funds. ...We can already see that the costs of regional policy will be higher than those of agricultural policy. ...In my opinion, these countries need no more than a ten-year transition period..."

We believe that these words contain an outline of a long-term programme for the adjustment of the Polish food economy. Which path, therefore, will lead to the integration of Polish agriculture with that of the EU? Certainly, the share of people employed in Polish agriculture relative to the total number of employed persons should be brought closer to the EU average. This will require structural policies, supplementing the changes triggered by the market mechanism itself. As an exodus of people from the countryside to the towns is undesirable, many new rural jobs outside agriculture will have to be created. A higher number of people employed in reconstructing the social and technical infrastructure, in the development of forestry, and in improving the environmental situation, would seem most justified. A strengthening of the agricultural food industry and of small rural enterprises outside the food sector is also needed. Changes in the prices of Polish agricultural produce, bringing them closer to EU prices, will play a significant role in the adjustment process. These changes should be self-generating, not accelerated by the government.

Is this a realistic programme? We believe it is, though certain reservations must be made. Above all, the transition phase may turn out to be longer than ten years, assuming that Poland becomes a member in the year 2000. Structural changes in the countryside will be slow, as is only natural, and will not be purely economic in character. They will alter the socio-economic function of the village, while among villagers conservative attitudes are usually dominant.

The starting point for changes in the countryside is not a good one. During the Communist period, attempts were made to increase agricultural production, also through the use of subsidies, in order to "feed the nation". But the development of the village as a socio-cultural environment was neglected. Today, this, among other factors, makes it more difficult for the food economy to adjust to market conditions. Before 1989, Polish agriculture was for the most part privately-owned, not collectivized. However, it did not experience the kind of agronomical progress that occurred at that time in market economies.

Structural changes require external support: from the state budget and the Phare programme, and later from the European agricultural and regional funds. Such changes are in the interest of both sides: Poland and the EU. Support should be large enough to help adjust the agricultural production capabilities of both sides in the integration process. The principle of equalized potential should be applied here.

Let us finish with a brief look at the price of agricultural produce. Figures 1.17 and 1.18 illustrate the price relation of two products - wheat and pigs<sup>6</sup> - in various EU

6. Author's own calculations on the basis of *Agricultural* [1996]. Figures 1.17-1.18 take into account only the countries described in this statistical journal.



Figure 1.17  
Wheat Prices in EU Countries  
(excluding VAT)  
in March 1996

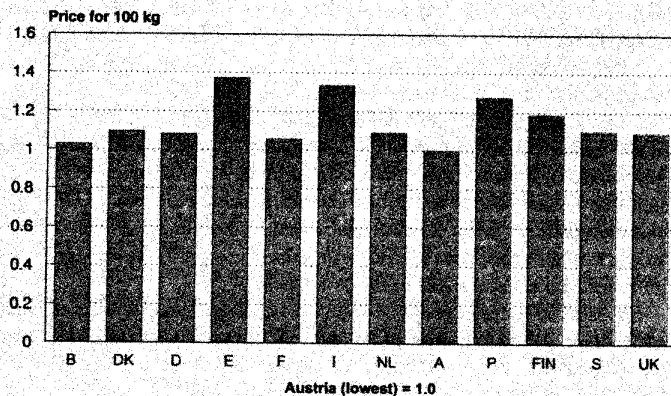


Figure 1.18  
Pig Prices in EU Countries  
(excluding VAT)  
in March 1996

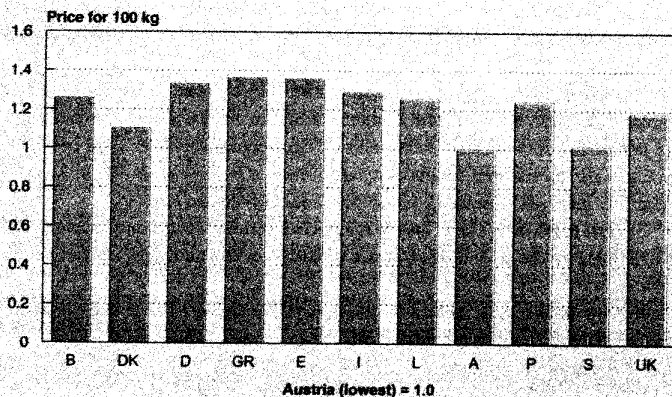


Figure 1.19  
Growth of Wheat Prices in Poland in 1991-96 (June)  
as Compared to the EU

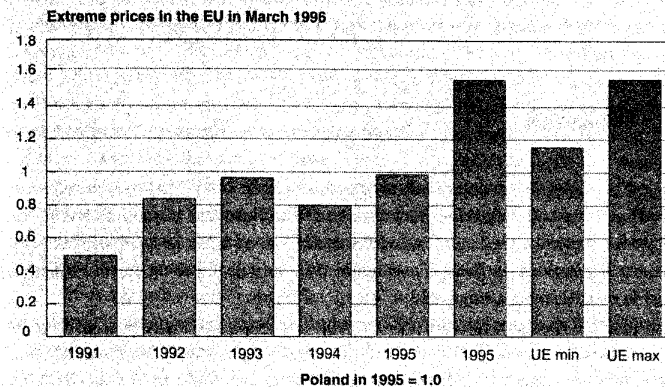
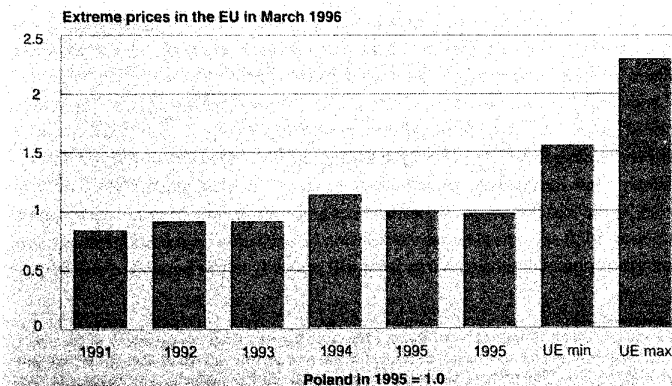


Figure 1.20  
Growth of Pig Prices in Poland in 1991-96 (June)  
as Compared to the EU



countries. The next ones show the growth of prices, expressed in ECU, of selected agricultural products in Poland during the 1990s<sup>7</sup>. They have been related to the prices in two EU countries, the first with the highest, the second with the lowest. This brief example shows that the price disparity between Poland and the EU is neither very large, nor very small. Thus, it need not take a great deal of time for these prices to converge further.

## CONCLUSION

The aim of Polish policy is to secure membership in the EU in around the year 2000. The process of integrating the Polish and West European economies has in fact been under way since the beginning of the decade, going hand in hand with the systemic transformations. In Poland, new market institutions are being created in such a way as to meet European standards.

The EU arrangements and policies mentioned in the introduction, forming the *acquis communautaire*, may be divided into four packages: political, institutional (connected with the operation of European institutions), economic and social. Without doubt, membership will require adopting the political and institutional packages, while the remaining two - given that Poland is probably set to join the Union relatively soon - will be adopted only partially.

A free trade area - not encompassing trade in agricultural produce - will come into being under the terms of the European Agreement on Association with European Communities. Membership will most probably entail transforming this area into a customs union, which for Poland will in practice mean adopting the communities' common external tariff. At the same time, Poland will have to take on the communities' non-tariff barriers, and, if the single market is to become a reality, to implement, or rather fully implement, the communities' policies with regard to competition, public aid and government purchases. Liberalizing the flow of capital and labour will immediately allow the customs union to become a single market, where there will be no barriers to the free flow of goods and services and their factors of production: capital and labour. Swift and complete standardization of legislation on the environment, consumer protection and industrial standards will probably not be possible. Similarly, the

7. The analysis covers the period up to March 1996, as no later statistics were available at the time of writing. Compared to previous years, the price of wheat rose sharply in Poland during the first quarter of 1996: by 20%. The price of pigs was relatively stable. In EU countries, the changes in these prices from month to month were small.

full social package cannot be implemented immediately in a not very wealthy country; after all, it has led to difficulties in far richer countries.

We believe that it will not be possible for Poland to participate in the guarantee part of CAP during the next few years. For this implies a high level of agricultural production and ensuring that farmers get more than the world price for their produce. A large portion of CAP costs are borne by consumers, the rest by the EU budget. It is likely, however, that neither Polish consumers, nor West European taxpayers, will accept such an arrangement. CAP in its present form was designed for countries with an employment and national income structure that is very different from Poland's. If, on the other hand, CAP was adopted, then it is precisely Polish farmers who would become the greatest advocates of EU membership, for they would experience a radical improvement in their incomes and sales opportunities. Whilst making these remarks on the guarantee part of CAP, we wish to stress that Poland should very actively participate in EU structural policy with regard to the agricultural sector.

A membership requirement for the EU is high economic growth. In this way, the economic distance separating Poland from EU member-states can be reduced and Polish citizens can enjoy a higher standard of living. Growth requires macroeconomic stability, in particular, a lower rate of inflation, a low budget deficit, a rational share of the total budget in GDP, and a higher propensity to save. Fulfilling the Maastricht convergence criteria - and, above all, gaining the ability to meet these criteria on a permanent basis - will not only give Poland a ticket to European Economic and Monetary Union, but also create the conditions for faster economic development.

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**Chapter II**

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**ENTERPRISES IN THE TRANSFORMATION  
PROCESS**

## THESES

- Consistent macro-economic policy and the introduction of institutional and structural reforms have a beneficial impact on Polish enterprises, influencing the evolution of their internal structures and helping them adapt their behaviour patterns to the conditions and requirements of an open market economy. Enterprise restructuring has been broad in scope, but has for the most part been limited to so-called defensive restructuring, which does not involve any fundamental technological changes. The process underlying these changes has only just begun to intensify.
- The relatively slow pace of privatization and the absence of mass privatization programmes imply both opportunities and dangers. One danger lies in the highly politicized and therefore influential enclaves of the non-market (etatist) economy consolidating their positions in so-called strategic sub-sectors, which, due to soft budget constraints, will syphon off resources that the state needs to reform social services and develop a modern infrastructure. One of the opportunities is that the spontaneous, if rather slow privatization process has so far not led to the propagation of ownership and organizational structures that could block or impede effective management.
- Transformations in the banking system have promoted favourable adjustments on the micro-economic level. Banks have been forced to purge their asset portfolios and assess their clients more rigorously. So far, during the course of consolidating the banking system and privatizing Polish banks, the authorities have managed to avoid creating non-transparent organizational and ownership structures.

The ability of the Polish economy to integrate with the EU essentially depends on the appearance and consolidation of trends toward sustainable growth - trends which will gradually help decrease the socio-cultural gap that exists between Poland and the leading nations of our continent. It is not therefore necessary for us to be rich on entering the EU, but rather that we should be "getting richer". Under the conditions of a rapidly opening economy, the essential condition for sustaining these trends is increasing the competitiveness of the Polish economy on an international scale.

Measuring the distance separating Poland from the most advanced European nations on the macroeconomic scale is a relatively simple process - there exist generally accepted, uniform measures of prosperity and internal and external equilibrium. The so-called Maastricht criteria, although not determining Poland's membership in the EU, are rightly treated as a signpost, an ideal one in its own way, which the country should aim towards from a medium-term perspective. The progressive consolidation of the Polish economic situation, evident in continuing economic growth, a stronger currency, falling inflation and steadily increasing modernization, show that we are gradually getting closer to that model on the macroeconomic plane.

The success of the economy as a whole is not possible without progress being made on the micro-economic level. If enterprises cannot, or do not, adapt to an open economy, exports will not grow and the manufacture and consumption of goods and services will fail to increase. In this most general sense, enterprise competitiveness is verified through the macro-economic situation of the country. Moreover, there are no unequivocal criteria of the behaviour of firms or their internal structures, which, if they were fulfilled, would show that the national economy has drawn closer to the EU model during the transition period. In West European firms, by contrast, we are dealing with different models of entrepreneurship, market organization and organizational structure, and even with a very different share of the public sector in the economy. Does this mean, however, that, regarding Poland's ability to integrate with the EU, we can only look at Polish enterprises and the changes currently occurring in them through the macroeconomic prism alone?

Poland's economic prospects are to a great extent being determined by the character and scale of adjustments that enterprises are making in their efforts to adapt to market conditions, as well as by the transformations taking place in their ownership structures. In other words, Poland's chances depend on privatizing state enterprises and changing the methods of managing them. Furthermore, although no "one correct" model enterprise exists, certain of its features do. It is these features which will improve Poland's prospects in the competitive struggle awaiting it on the single European market. In the present chapter we will try to answer the following questions:

- What up to now has been the most important event in the transformation process that has affected the Polish economy on the micro-economic scale?
- What types of enterprises and market structures have appeared as a result of privatization?
- Has the banking sector (as the key element in the capital market) served as a catalyst forcing enterprises to make positive adjustments, or has it also been a source of disturbance, disrupting the allocation of resources and complicating the management structures of enterprises?

It is our desire, therefore, to assess whether Polish enterprises are becoming more familiarized with the market and assuming ownership structures similar to those prevailing in highly developed nations. What are the main dangers of such a trend, and where do the opportunities lie for obtaining some degree of international competitiveness?

## 1. ENTERPRISE RESTRUCTURING<sup>1</sup>

The new economic policy launched in January 1990 fundamentally changed the conditions under which enterprises operated. The policy above all concerned state entities, although the private sector also had to adapt to a new price structure, increased foreign competition and a collapse in domestic demand brought on by the introduction of a tight income policy.

The most important changes in the price structure concerned: (a) interest rates on bank credits; (b) the exchange rate, and (c) energy and fuel prices. The sudden shift from a policy of maintaining low, indeed negative bank interest rates to a policy of interest rates consistently exceeding the level of inflation was perhaps the greatest shock for enterprises accustomed to subsidizing their activities through the banking system.

Changes in the exchange rate proceeded in a more gradual fashion. For many years the black market (and later the free-market) price of the dollar deviated drastically from the official rate. On some occasions it was more than ten times higher. It is difficult to imagine a more effective means of both isolating an economy from external influences and fundamentally and comprehensively distorting prices and costs. During the course of 1989, as a preparatory basis for fundamental reform, the authorities

1. This part of our work is based mainly on empirical research carried out in the years 1991-1996 (see: bibliography).

raised the official rate of the zloty against the dollar from PZL 500 to PZL 6,500. As a result, the official rate was brought considerably more in line with the free-market price. A significant devaluation of the Polish currency followed, which triggered inflation but improved the starting position of exports. The introduction of the "Balcerowicz package" led to a further drastic devaluation of the zloty (the official rate rising from USD 1 = PZL 6,500 to USD 1 = PZL 9,500). This made a full unification of the exchange rate possible and formed the basis for the internal convertibility of the Polish currency. For Polish enterprises this was a revolutionary change in the full sense of the word: the national market had become part of the international market, both with regard to the supply of raw-materials and the market for finished goods.

After interest-rates and foreign currency, the third price group to experience fundamental reform at the end of 1989 was fuel and energy prices. The costs of electricity, coal, etc., were not fully liberalized, but price increases running to several hundred percent allowed the government to limit further the range of state subsidies.

With the almost total liberalization of prices which accompanied the above-mentioned measures, substantial progress in adjusting the price-structure of the Polish economy became feasible. We might even go so far as to say that henceforth the structure of prices no longer diverged radically from the structure of manufacturing costs, nor created a significant source of imbalance in the economy. One of the main conditions proper to the functioning of a market economy was thereby brought into force. The reformed price system imposed harsh economic conditions on enterprises, but also supplied them with the accurate information they needed to operate effectively.

Other key measures taken by the economic authorities that directly affected enterprises included: raising the obligatory *dywidenda* tax for state enterprises and introducing a tax on excessive (extra-normative) wage increases (the so-called *popiwiek*). The *dywidenda* was calculated on the basis of the enterprise's own funds and imposed a financial burden regardless of whether the firm yielded a loss or a profit. In 1990-92, Polish firms often experienced situations whereby they would produce a gross profit and at the same time a net loss, or be faced with net losses that far exceeded their gross losses. The *dywidenda* as a kind of tax on capital had already existed in the 1980s (the Hungarians were the first to introduce it), but its rate was raised in 1990 to 30%, after which it was reduced to 22% in 1991 and 10% in 1992. In the 1980s, when conditions of shortages and rampant inflation were the rule, the *dywidenda* did not trouble firms unhindered by liquidity problems. The 1990s, however, brought considerable changes in this area. The economic motives for introducing the obligatory *dywidenda* and thus a kind of permanent charge on using state-owned capital stemmed, it seems, from B. Ward's theory (the labour-managed firm) of employee-controlled enterprises. The

function of the *dywidenda* was to prevent firms from understating their production levels, which was a common practice under certain conditions. It is difficult to say whether the *dywidenda* has performed its intended purpose. It has certainly been a serious fiscal burden for state enterprises, many of which have protested loudly against this kind of handicap in relation to private firms.

The *popiwek* was a tax paid on transgressions of an enterprise's wage fund (or the average wage) above the administratively set normative level. Its rates were indeed extortionate, reaching 500-600% (later it was gradually lowered) and its main task was to limit - in the initial period - the level of real earnings and thereby check their growth. The *popiwek* was levied independently of the firm's financial results.

The *popiwek* did not directly hinder the activity of enterprises. Indeed, the opposite was the case. It has often been said that it served as an aid for management teams in overcoming pressure for wage increases from the shop-floor. In time, however, it became a tool that restricted human resource management to such an extent that the natural protests of trade unions against the *popiwek* met with the support of enterprise managements, who saw no further need to maintain it. Indeed, its eventual liquidation and replacement by a wage arbitration system regulated by the Tripartite Commission failed to result in any wage explosion. During the first years of the transition, the tax on excessive wage increases nevertheless fulfilled its task as an instrument limiting wage inflation. It was one of the two "anchors" (along with the fixed exchange rate) of the nominal programme of economic stabilization. The fight against inflation, which the *popiwek* anchor was intended to serve, translated itself into a restriction on the population's purchasing power and a recession in demand on the domestic market. It thus implied an impediment to manufacturing sales, particularly in the light of the abolition of most administrative import barriers.

To recapitulate, the changing price structure, general price liberalization leading to increasing costs, falling demand on the domestic market (which made it difficult to shift rising costs onto prices), expensive bank credit and increased financial burdens were only some - as it would soon turn out - of the burdens facing enterprises as a result of the new economic policy programme. Were they enough to change the philosophy of financial management in Polish firms? Did they compel Polish firms, especially state enterprises, to adapt to the demands of the market economy?

It was expected (not without some fear....or hope) that one of the first consequences of implementing the economic stabilization programme would be a wave of bankruptcies among those state enterprises experiencing liquidity problems and unable to settle promptly their financial obligations towards the state. A particular role in this case has been credited to the obligatory *dywidenda* (benefiting the State Treasury), which was supposed to become the catalyst of these bankruptcies.

It quickly turned out that although these expectations were not exactly mistaken, the "big bang" in the first period primarily affected domestic household budgets squeezed between the pincers of increasing prices on the one hand and the *popiwek* on the other, which effectively checked any growth in nominal earnings. On the other hand, 1990 was a year of great shock for enterprises. Shallow reserves accumulated in the previous period - raw material stocks together with foreign currency deposits on special accounts created as a percentage of export proceeds - had allowed the majority of firms to pass through the initial transformation phase without mishap. What is more, many firms had been highly profitable (state banks leading the way) during this period, although these profits often existed only on paper. The state budget produced a surplus, and foreign currency reserves quickly grew thanks to the expansion in exports recorded in this period. This is because the substantially devalued zloty had made it possible to successfully, though superficially, redirect Polish foreign trade away from the East towards the West.

A downturn in the economic fortunes of many enterprises only followed a year later. Successive increases in energy prices together with overvalued fixed assets, a real appreciation of the zloty linked with the fixed exchange rate policy implemented after 1990, and above all the collapse in trade with the Soviet Union and other former CMEA countries combined to push many companies into serious financial difficulties. On the macroeconomic level this situation manifested itself in budgetary crisis and a rapidly worsening current account balance. On the micro level the crisis assumed the form of a further fall in production, increasing unsold stocks of final products, growing enterprise indebtedness and the loss of solvency.

The first research carried out on the situation in 1991 gave little room for optimism. Firms had reacted to the new situation quite sluggishly. The macroeconomic policy of that time appeared highly insufficient to induce Polish enterprises to adapt to the new conditions in any energetic fashion. It seemed that the worst scenario would be realised in Poland: rampant inflation would accompany a collapse in production, while non-privatized enterprises (and their staffs) would resort to mass over-consumption of their assets. The possible breakdown of the Balcerowicz programme, many feared, might entail a return to "the worst of all possible worlds", a situation that Poland had experienced in the second half of 1989: quasi hyper-inflation and market shortages, combined of course with a withdrawal of the freely convertible zloty.

By 1992, however, the first good news was already coming in from the enterprise sector. First of all a slow, but with time increasingly rapid growth in the volume of production and sales was recorded. Research results and business surveys also pointed to a growing optimism with regard to the future. In spite of fears that the increase in

production would be temporary, financed solely by accumulating inter-firm debts and outstanding financial obligations to (still un-privatized) banks and the state, economic growth turned out to be sustainable, and highly dynamic. In 1996, Poland was the first country in the region which managed to surpass the level of production recorded in statistics for the end of the 1980s. Moreover, many are hopeful that the expansion in investment expenditure registered since 1995 will consolidate these trends. Although the driving force behind the Polish boom was, and still is, the private enterprise sector, the crisis in the state sector - measured by the level of production output and profits - has also passed. The profitability of state enterprises (which, however, is not the best gauge of economic success in Poland) has been consistently higher than that of private enterprises in the last few years.

The behaviour of private enterprises has been in great measure determined by the economic situation. The state's privatization policy has also been a fundamental factor in this process, along with the pace of institutional transformation in the banking system.

From the point of view of the restructuring effort, the 1990s can be divided into the following three stages:

- 1990 - **a period of expectation**, associated, on the one hand, with what appeared to be the sound financial situation of enterprises (facing little compulsion to carry out changes), and, on the other, with a lack of faith in the effectiveness of the Balcerowicz reforms and similar measures. We should recall that managers of Polish state enterprises had already witnessed several earlier attempts to reform the economy, which inclined them to believe that the new reforms had little likelihood of succeeding;
- 1991-92 - **the peak of the crisis**. Polish firms were forced to look for the optimal (least painful) means of survival. This period also saw **the beginning of the adjustment process** (Pinto at al. 1993b);
- 1993 and the following years - **a period of economic boom**. Many firms have continued with their internal restructuring. The situation of individual units within the same branches has undergone increasing differentiation. Following legislation on the financial restructuring of banks and enterprises, commercial banks have also been part of this process. Moreover, since 1994 investments have been re-activated.

The kind of changes which occurred during these years, and indeed are still occurring, have proved significant enough to increase considerably Polish exports to EU and OECD markets, and more recently to the domestic markets of former CMEA countries. Much improved labour efficiency has helped counter the impact of the pro-

gressive appreciation of the zloty against Western currencies. We can thus accept the hypothesis that a significant number of enterprises have made progress in adapting to the requirements of the market economy. We should bear in mind that this has been achieved in spite of the fairly weak pace of state property privatization, which prompts reflection on the causes, character, justification and general strategies involved in restructuring state enterprises.

As we already observed at the beginning, adjustments in the price structure have conditioned the **proper course** of adjustments that enterprises had to make during the transformation. Their scale will be determined by the outcome of macroeconomic policy, from which a **hardening of budget constraints** governing the functioning of micro-entities follows.

Hard budget constraints - a concept introduced by J. Kornai - simply means that an enterprise has to cover its own costs out of sales revenues from goods and services manufactured or provided by the enterprise itself. In other words, an enterprise cannot rely on "soft" financing from external sources in the form of grants, subsidies or particular tax allowances and concessions. Budget constraints can be softened in various ways, for example, by loosening up monetary policy, impeding access to the domestic market, or through any other type of venture limiting competition. The most obvious manifestations of soft budget constraints are, however, an increase in (a) bank debts, (b) inter-enterprise debts, which evolve into "payment bottlenecks" and (c) arrears (in the form of tax) vis-à-vis the state budget. Accumulation of such trends signifies that a nominally tough macroeconomic policy has been effectively watered down by enterprises and the banking system. Restricting such practices may be treated as a successful attempt at shifting macroeconomic policy onto the microeconomic level.

Closer analysis of the situation in the years 1991-94 shows that significant progress was made in imposing tight budget constraints on enterprises - This achievement is the key factor underlying the success of the Polish economy in overcoming the recession caused by the transformation. Let us examine this question more closely<sup>2</sup>.

Financial discipline in enterprises occurs when banks become concerned to grant credits to the most effective units and try to eliminate badly operating ones from the market. Among the standard accusations levelled at Polish banks during the first two to three years of the transformation were: (a) a tendency to grant "automatic" credit to traditional clients, i.e., state enterprises, and (b) incompetence in accurately estimating the credit-worthiness of borrowers or proposed investment projects. Somewhat later, many critics attacked banks for being reluctant to grant credit in general (for they made their "living" by granting credit to the government to finance the budget

2. This question is further expanded upon in Belka & Krajewski [1995].

deficit), as well as for the sins of formalism and bureaucracy. The result of these tendencies was, according to critics, the rise of a considerable portfolio of bad assets - uncollectible loans, and a lack of credits granted to the enterprise sector, including financially sound units. In short, we were dealing with poor credit allocation on a mass scale.

Although it would be possible to cite many examples of such behaviour, they cannot replace a more profound analysis of the actual situation. The actual size of enterprise debts to banks was subject to enormous fluctuations at the beginning of the 1990s, recording a fall of up to 25% in 1991, and growing by nearly 45% in the following year. In this period, therefore, the "recklessness" of banks in their credit operations had probably reached its peak. What is more, the results of research carried out at that time [Pinto et al. 1992, 1993a] revealed a negative correlation between the profitability of a state enterprise and its inclination to apply for bank credit. This was a very dangerous occurrence, which - if it had been further maintained - might have jeopardized the entire stabilization programme as well as the goal of creating the framework of a market economy.

The situation fortunately changed fairly rapidly. First of all, the actual size of bank credit assigned to enterprises stabilized and then began to decrease, and this tendency (which many finance politicians have also seen as a cause for alarm) remained at almost exactly the same level up till the present. Moreover, awarded bank credit is generally very low in Poland. In manufacturing industry it fluctuates somewhere between 1.2-1.5 of the monthly value of sales and thus compared to other countries, including Poland's neighbours - the Czech Republic, Hungary and Slovakia - is a very limited source of external financing for enterprises. This contradicts the claim that Polish firms (including state enterprises) were receiving widespread "soft financing" from what were still largely un-privatized banks.

Secondly, analysis of statistical data and the opinions of state enterprise managers [Pinto et al. 1993] suggests that a qualitative change in bank behaviour had already occurred in the early phase of the transformation. A detailed study of seventy five large state enterprises in manufacturing industry between 1990-92 compared the behaviour of consistently profitable firms (AAA) with those persistently incurring losses (A). The dynamics of bank credit confirmed the hypothesis presented above. Up till December 1991, credit for A (weak) firms increased at a considerably faster rate than it did for AAA (good) firms. We can argue then that this was an essential factor softening budget constraints for the former. It is interesting, nevertheless, that credit for AAA firms only grew at a minimal rate in 1992, whereas it fell for A firms, which may have been a consequence of the commercialization of nine state banks, formed in 1989 from the regional branches of the National Bank of Poland (NBP).

More importantly, in the qualitative questionnaire accompanying the statistical survey managers almost unanimously declared that banks had radically changed their approach towards clients. In 1990 they were like cash desks paying out cash on demand. By 1992, however, they were already becoming very cautious partners for enterprises. In the opinion of respondents, the degree of difficulty, measured on a scale of 0 to 5 (0 = very low, 5 = very high), experienced by AAA firms in obtaining bank credit did not significantly change between 1990 and 1992 and was graded at 3.0, 2.8 and 3.2 respectively for those years. For A firms these indicators amounted on average to 3.2, 2.0 and 1.2 during the same period and thus their access to bank credit did not noticeably suffer.

This does not of course imply that after 1992 banks completely ceased financing enterprises with no economic prospects. There are still numerous such cases, e.g., in coal-mining. These, however, do not represent typical models of the bank - enterprise relationship. We should also add that here we are dealing with a "rolling over" of old credit or, in extreme cases, the capitalization of unpaid interest, rather than newly-granted loans. Summing up, bank credit ceased quite early on to be a source of "easy" money for enterprises.

Inter-enterprise credit, or more strictly speaking its extortion from suppliers by enterprises experiencing liquidity problems, represents another channel of soft financing. This often degenerates into "payment bottlenecks", which has become a much discussed problem in Poland over the last few years. In particular, two dangers arise from them:

- increasing *inter-enterprise credit* creates an additional money supply, which in turn can dangerously water down state monetary policy;
- the asymmetric character of inter-enterprise credit results in smaller, financially sound companies with no monopolistic position in the market being forced to finance their own consumers; this can have serious consequences for the allocation of resources.

The phenomenon of payment arrears between enterprises had already appeared in Poland on a larger scale in the 1980s, during the period of rampant inflation. As with the majority of economic aggregates, the scale of such debts considerably fluctuated in 1989-92: initially they actually decreased, after which, in 1992, they grew. In spite of alarmist talk, fuelled by enterprises themselves (discovering in "payment bottlenecks" a convenient excuse for their own financial difficulties, and often indolence), inter-firm debts never assumed appreciable dimensions. Since 1993 their actual size has fallen quite rapidly (15-18% annually), but even in the most difficult period they never surpassed a dangerous level either in the economy as a whole or in its major sectors.



In manufacturing industry, which particularly interests us due to its immediate significance for the international competitiveness of the Polish economy, the ratio of trading debts to monthly sales varied between 1:2 and 1:4 [Belka & Krajewski 1995]. Moreover, as more accurate analysis of data gained directly from enterprises shows [Belka et al. 1995], only about 57% of outstanding debts are actually overdue, which reduces the arrears problem to a level below one month's sales. If we add to this that half of these debts are "old", i.e., going back over a year, then we can safely argue that the problem of extorted inter-enterprise credit has only marginal significance for the economy as a whole. In Poland, this problem was solved very quickly by the enterprises themselves, who mastered the art of managing their own liquidity in reaction to the harsh conditions of the market.

In Poland the most important gap to bridge remains the enterprise-state relationship, reflected in overdue national insurance (pensions) contributions (ZUS) and tax arrears at different budgetary levels. The state's reluctance, or inability, to enforce the payment of outstanding debts in the last few years was, and to a certain extent still is, an important factor softening the budget constraints of enterprises, and represents an important form of hidden subsidization.

Enterprise indebtedness reached its apogee at the end of 1993, thus coinciding with the financial crisis experienced by many enterprises. For if industrial production had already begun to grow in mid-1992, many enterprises only began to be more profitable in 1994. From this moment the actual size of tax and ZUS arrears began to fall quite clearly (by 22% in 1994 alone). This was partly a result of improved financial discipline, and partly a simple consequence of the various debt-rescheduling programmes that have been implemented over the last few years. A further improvement in tax exaction was recorded over the 1995-96 period. On the other hand, arrears have accumulated in specific sectors of the economy, e.g., in coal-mining. The problem of increasing unpaid debts (of every type) in the worst group of enterprises had already been noted by some observers earlier. S. Gomułka [1993] claimed, for example, that 90% of all arrears were concentrated in 10% of all enterprises. This phenomenon has probably intensified over the last period.

The non-payment of taxes and other financial obligations to the state represents without doubt the weakest point in the hard budget constraint policy the government has tried to impose on enterprises. The state's weakness in enforcing arrears payments has gone hand in hand with its inability to set in motion an effective "exit mechanism" for inefficient, mainly large state enterprises. We should remember, however, that this concerns a politically significant minority of units that are highly visible in the media. Nevertheless, they have not so far affected the overall ability of the enterprise sector to function in open market conditions.

Maintaining this "politicized sector" in its present, temporary form over a longer period will increase the burden on public finances. It may also intensify pressure to slow down government efforts to open up the economy and encourage competition. Finally, it could represent a dangerous example for those firms and branches which have already made many adjustments in this area. On the other hand, the state's tolerance of tax arrears - although extremely risky - does not imply any direct influx of fresh resources to inefficient or undisciplined enterprises. As a result, it actually has less effect on softening the budget constraints of micro-entities than liberal bank credit policies and extorted inter-enterprise credit.

To sum up these observations, a consistent macroeconomic policy based on controlling the budget deficit and introducing a moderately tight monetary policy has proved successful in Poland. For it has significantly toughened financial discipline in enterprises, which in turn is **the principal condition for beginning adjustments on the micro-economic level.**

In this context, we should turn our attention to the well-known debate on the causes of shortages and chronic imbalance in a centrally planned economy. At dispute here is whether general liberalization and a consistent policy of macroeconomic stabilization would result in equilibrium in all markets if ownership relations themselves remained unchanged. Polish experience in the first years of the transformation confirms this thesis and undermines the importance of J. Kornai's macroeconomic-based theory. Such an opinion probably prevailed among those Polish reformers who expressed views on this subject (e.g., S. Gomułka and M. Dąbrowski). D. Jasiński [1994] offers an interesting approach, arguing that although soft budget constraints are a systemic feature of planned economies, they do not generally result from the state paternally treating enterprises as its own property. Rather, their cause lies more in the absence of universal market mechanisms. This results from the fact that **long-term** success in overcoming the legacy of a centrally planned economy depends, among other things, on creating a capital market and a labour market for managers. Initial advances in restructuring state enterprises may come from creating the right macroeconomic environment. They may also arise from developing suitable markets with a view to the inevitable future privatization of these enterprises. We will consider the motivations behind such strategies in a later point.

We may distinguish different phases of enterprise behaviour, characterized by specific types of adjustment. It would be too simple and thus mistaken to try to specify when exactly these successive phases occurred in the economy as a whole. For these adjustments have taken place in different firms and branches of the economy at different levels of intensity. Instead, we will define three stages (behavioural types) that have been visible in the economy at the same time. These are:

- survival (drifting);
- defensive restructuring;
- strategic restructuring.

The **survival (drifting) strategy** typified the first phase of the transformation period, when an avalanche of problems descended on enterprises unprepared for them. Polish firms naturally reacted to these problems in a defensive way by trying to shift high costs onto prices, which proved only partly possible. They also made efforts to limit the scale of production and gradually reduce the level of redundant assets. Demand for production assets was, however, low and prevented enterprises from making any rapid adjustments in this area. Debts mounted, and in general enterprises were unable to pay them off simultaneously. **It therefore became necessary for enterprises to select the most favourable debt structure for their needs.** These arrears arose, as we know, towards the state (in the form of taxes and ZUS contributions), suppliers and enterprises' own employees. The latter played the least significant role, and enterprises settled these debts first of all. In practice, therefore, enterprises "played" with their financial obligations to the state, banks and suppliers, which was most characteristic feature of their survival strategies. The hierarchy of creditor priority together with the dynamics of that hierarchy says much about the kind of policy applied in the Polish economy and its institutional structure.

We have described this "game" played by enterprises in more detail in earlier parts of the text. The essential thing is that the majority of enterprises took part, treating it as a way of exploiting the shallowest liquid reserves - to the cost of other entities. The fact that this phase has ended for most enterprises and the drifting strategy has been suppressed, is entirely a consequence of reforms in the banking system as well as the relatively tough macroeconomic policy imposed by the state.

**Defensive restructuring** covers a very wide range of changes in almost every aspect of enterprise activity. The only areas not affected by defensive restructuring are ownership transformations (i.e., privatization) and fundamental modernization of production, including changes in an enterprise's production profile, which requires heavy investment expenditure. We distinguish **defensive restructuring** from **strategic restructuring** here as the latter specifically covers these last two aspects.

Polish enterprises have employed a number of different strategies during the defensive restructuring stage. The most popular have been:

- adjusting the scale of employed production factors - machines, installations, and production surfaces - to match the size of production saleable on the market;

- adjusting internal organizational structures to market conditions;
- developing new distribution channels for the domestic and export markets.

Moreover, since 1993 the authorities have implemented financial restructuring on a wider scale. We shall address this theme separately, in a later part of the text.

(a) Many commentators in the relevant literature have identified the adjustment process almost exclusively with the tendency of enterprises to get rid of unnecessary staff. This was understandable in the face of the reduced scale of production and an estimated 15-25% employee surplus that many enterprises had to contend with at the beginning of the transformation. The natural manifestation of this tendency on the macroeconomic level was unemployment, which at its peak (1993) reached 17% of the professionally active civil population.

Reducing employment has allowed many enterprises to reduce their production costs substantially. Yet, in spite of expectations, this has rarely assumed the form of mass lay-offs. For the most part, this has involved many employees either gradually entering retirement or departing voluntarily (*natural attrition*). There were two reasons for this: first, mass lay-offs are costly - firms would have to pay out compensation - and second, they generate social resistance from employees.

Nevertheless, it is significant that employment levels failed to increase in 1994-95, and in the public enterprise sector they actually continued to fall despite a sharp increase production, including industrial production. Meanwhile, managers of these enterprises still regard staff levels in their own enterprises to be far too high [Belka et al. 1995]. They are not trying to reduce these levels at any cost, as they are expecting a further boom in the market, but they see further opportunities for rationalization. It is possible to draw from this both pessimistic conclusions - about the prospect of having to support high unemployment in Poland - and optimistic ones - about the still intensifying scale of employment rationalization and further improved labour efficiency.

Observers have paid much less attention to the adjustments that enterprises have made in the level of their employed production assets. This has little significance for current production costs. Yet some estimates indicate that during the most critical years of the crisis (1992-93) the sale of assets - such as surplus machines and installations, together with the sale and leasing of production and storage areas - provided the public sector with revenue equal to one third of net profit gained [Maciejka 1995]. Fortunately, this not easily quantifiable process has not affected the development of new private enterprises. For they are often using assets made available by state enterprises that had generally fallen into financial difficulties. Many private firms, particularly in

manufacturing industry, started out their operations by exploiting "demobilized" machinery, and many new firms are continuing this practice. The typical image of Polish industrial cities is one of large, old multi-storey production and storage buildings that once belonged to state enterprises, but which today are "populated" by dozens of newly-emerging private firms engaged in commerce, production and the service sector. These represent authentic, spontaneously emerging incubators of entrepreneurship.

**Privatization through asset sales** is one of the most important paths (though not one recorded anywhere in the statistics) to ownership transformations in Poland. It is a very beneficial phenomenon for the economy, although one which artificially extends the formal existence of many state enterprises. This partly explains why - according to the Ministry of Privatization - approximately 3,000 generally small state enterprises with "varying financial prospects" still remain to be privatized. These have either failed to awaken investor interest or their staffs have expressed no desire to privatize them. Some of these enterprises probably already only exist on paper, or are operating on a considerably reduced scale, looking increasingly like property leasing agencies.

Foreign observers were at one time very interested [Estrin et al. 1994] in the range of social amenities and facilities that state enterprises provided for their staffs, as well as in their burdening costs. "Company flats" represented the most important of these services, but holiday homes, canteens, medical clinics and even sports stadiums should also be mentioned. The financial cost was substantial, but never usually exceeded 0.5-2% of the firm's general costs [Pinto et al. 1993a] and did not affect the quality of such services. On the other hand, managers indicated that problems involved in administering these social facilities absorbed a considerable amount of their time. This probably represented a greater burden than actually financing them.

State enterprises fairly quickly and effectively solved most of these problems. Enterprises either sold off most of their social facilities, converted them for other purposes (e.g., shops), or very often commercialized them, e.g., leased them out to private individuals, who today run the canteens and holiday homes at their own cost. The kindergartens, sport stadiums and, eventually, the company flats were transferred to the local (*gmina*) authorities. To a great extent this problem no longer exists in Polish enterprises. Conversely, as many enterprises have stabilized their financial positions, private firms have become stronger, and more and more foreign firms have appeared, a partial transformation of the social sphere has also occurred.

(b) The leading internal-organizational changes have included:

- a comprehensive change in the hierarchy of importance of management members: to the benefit of the vice-managing directors of marketing and

finance departments and to the detriment of those responsible for production and maintaining output;

- creating or developing marketing departments;
- improving accounting services and cost auditing;
- merging or liquidating subsidiary firms in multi-firm enterprises, often scattered over a wide area;
- liquidating, and even more frequently, transforming auxiliary units (involved in transport, maintenance etc.) into independent ownership and organizational entities.

The list of these transformations is long and could go on indefinitely. Their common denominator, however, is that many enterprises wished to simplify their structures, lower costs, re-orient production and gradually decentralize the decision-making process.

c) One of the most difficult tasks which confronted state enterprises was to create new channels of distribution. State warehouses had gone bankrupt under the strain of high interest rates, and new private firms were still very small, poorly financed and often with one foot in the grey economy. They preferred to trade in goods produced by other small private firms or in imported goods (also through private importers from elsewhere). It would be only a slight exaggeration to say that traditional state suppliers of consumer products would have found it easier to sell them on highly competitive but stable Western domestic markets than on their own domestic market.

The survival and success of state enterprises in great measure depended on their skill in developing distribution networks - company sponsored warehouses, commercial agent networks and, sometimes, their own shops. The fact that many enterprises have managed to create such networks is evidence of their significant progress in adapting to the demands of the market economy. It is also proof of the considerable depth of entrepreneurship in the state sector.

Tied with the above was the need to improve, or in most cases actually create, a system of debt management. Sales departments cooperated with finance departments to assess customers according to their creditworthiness and worked out discriminating policies dictating payment conditions. They also sometimes employed subtle methods for recovering outstanding debts. The result of all this was to reduce instances of forced inter-corporation credit.

Defensive restructuring essentially changes the way enterprises operate. Perhaps, however, especially in the long run, it will not be enough to tackle competition at

the international level. To do so requires radical changes in production technology, production profiles and further advances in management techniques. Investment levels proved surprisingly stable during this period (approx. 14.5-15% during 1990-94). All the same, they were still too small for the needs of modernizing the Polish economy.

These facts partly explain the existence of a large margin of unexploited manufacturing assets in the economy, some of which (buildings, but also infrastructure and installations) could be easily adapted for new purposes. Investment has been directed, therefore, more towards modernization than to the creation of new forces of production.

On the other hand, many people have linked the low level of investment to the moderate pace of state property privatization, and hence to the slow influx rate of foreign capital. In short, we may argue that the majority of enterprises have not yet got beyond the defensive restructuring stage.

For a full picture we should nevertheless add that:

- even in the first years of the transformation crisis, asset over-consumption was not a typical survival strategy adopted by enterprises, particularly if they were making sufficient profits [Pinto 1993]. In general it was limited to enterprises persistently suffering from liquidity problems; the hated *popiwek* probably turned out to be a very useful instrument in this case;
- the strategy of "moving" assets to private companies set up by individuals managing state enterprises or "channelling" profits from manufacturing sales through private intermediaries only took place on a very limited scale in Poland. We may credit this fact to the existence of powerful trade unions conscious of companies' interests; so-called coal companies that act as parasites on coal-pit mines are a well known exception to this rule;
- Investments have increased substantially since 1995; expenditure set aside for this area is increasing (at fixed prices) at a rate of 20% per annum. The influx of foreign capital has also substantially increased; we may also conclude that strategic restructuring has gathered pace in many enterprises in the Polish economy.

Concluding our thoughts on restructuring, a number of questions should be asked about the motives guiding management personnel in the state sector. The principal authors of their enterprises' successes, they did not try to leave their enterprises for the private sector (even though many were offered such an opportunity) and had fairly low salaries, at least during the early phase of the transformation.

Inclining managers to take practical steps towards restructuring have been (a) a desire to develop their professional careers and (b) the enterprise's privatization prospects. With the arrival of an outside investor, particularly from abroad, a **good reputation** could determine the future of a firm's management. In addition, even in cases where changes in the labour force were necessary, successful restructuring has improved their professional chances on the managerial labour market that has been developing since the early 1990s. The **prospect of privatization** has been a more complex factor. A management's motives after all could depend on the different privatization paths it foresees, on how quickly privatization will occur and on what role the management would play in this process. Capital privatization (a strategic outside investor) in large establishments produces fairly transparent motives: the management/board of directors are presented with the opportunity to advance considerably their material position in the form of higher salaries and a possible small stake in share ownership. As a result they develop a strong interest in activities that enhance the enterprise's value. Privatization through **employee leasing** inclines managements to understate the book-keeping value of their enterprises so as to take possession of them more easily, but not by making their own situation actually worse. Managements therefore tend either to conceal investment expenditure, entering it under current operating costs, or to understate profits. After being taken over, firms usually also show distinct signs of growth because the staff (and management) are interested in obtaining the highest possible dividends, even if this is simply to pay off credit obtained to purchase a large share package in the taken-over enterprise. It is worth noting here that in employee companies, which we will discuss in more depth later on, managements/managerial boards have not infrequently taken actual control.

The leasing path to privatization is not employed in larger enterprises. The management can take control of their enterprise either through the so-called management contract (a fairly rare form - only twelve cases have been noted throughout the entire economy), or through capital privatization by way of public tender (on the Warsaw Stock Exchange). In both cases managements are strongly motivated towards improving their enterprises' positions.

We can also of course imagine managements resorting to harmful or downright fraudulent strategies. Deliberately bringing a firm to the edge of bankruptcy makes it possible, in theory, to buy it, via a token outside investor, "for next to nothing". The fact cannot be ignored that such situations have taken place and still do. Fortunately, privatization is subject to strict social supervision. Moreover, Polish law, which prohibits staffs (and managements) from taking control of firms liquidated "for economic reasons", makes such procedures difficult. In any case, these are fairly rare occurrences.

To summarize, the privatization prospects of an enterprise create a powerful motivation for its management to control and deepen the restructuring process. A successful state enterprise obviously benefits its managing director (in the form of a good reputation and a higher salary), but only a successful, privatized state enterprise offers the highest prizes (control, a share in ownership). This leads to a further conclusion - putting a break on privatization for political or social reasons can thereby weaken the process. **A dynamic pro-market orientation is then replaced by a rent-seeking orientation** which ossifies the existing situation by creating administratively set trade barriers and re-establishing monopolistic market structures. The key-point of these reflections should thus be the rule: the less privatization that exists the more pressure there is on the state authorities to create branch holdings from above. Hampering the development of "all-embracing market mechanisms" represents a serious threat to economic equilibrium. The most obvious remedy is to further "depoliticize" the economy, one of the signs of which would be privatization.

## 2. PRIVATIZATION

Privatization of the economy was the key element of the institutional reform programme launched at the end of the 1980s. For without the existence of predominantly private ownership it is difficult to imagine building an efficiently functioning market economy (so goes the historically-based argument). On the other hand, detaching the economy and settling ownership relations in enterprises appear essential to induce greater efficiency (so goes the theoretical argument). We will expand on this question in a later part of this section, when we will try to assess the quality of privatization in Poland. The need for privatization will not be discussed here. Instead, we will concentrate on the basic events and comment on them from the point of view of developing enterprises capable of operating efficiently in an open market economy.

In Poland, privatization rests on two pillars: so-called **initial privatization**, which involves the spontaneous development of the private sector from below, and **state property privatization** carried out by the government from above, in accordance with legislation approved by parliament. The latter has stirred up the greatest interest and emotion. It has depended on fluctuations in the political situation, and has carefully been scrutinized by the outside world. It has progressed at a pace which in highly developed countries would be described as "violent", but which, when compared to certain other countries transforming their economies, has been quite slow. On the other hand, privatization initiated by an enterprise's founding body has remained somewhat

in the background, and is treated, perhaps fairly, as a natural, almost banal process, despite its greater significance for the development of the economic situation and the course of social change.

In a later part of this chapter we will try to determine what type of firm is emerging as a result of these two processes.

### 2.1. Initial Privatization

A private sector existed in Poland throughout the entire period of "real socialism". It was particularly evident in agriculture, where private ownership predominated (accounting for approx. 80% of land). Small craft firms were active in the service and commercial sectors of the economy, employing an administratively limited number of persons.

At the end of the 1980s, the unfriendly or at best tolerant attitude of the state authorities towards the private sector radically changed. Even the last Communist-dominated government (of M. Rakowski) set in effect truly revolutionary changes. It introduced legislation that fully liberalized the laws on setting up and managing firms and almost completely eliminated licensing, including those licences regulating international trade. These actions precipitated an outright explosion in private entrepreneurship.

The data presented below (table 2.1) on the quantitative changes in economic entities best illustrate what occurred in the following years.

Table 2.1  
*Private Economic Units, 1989-95*

Type of unit	1989	1995	
	in 1000s, at the end of the year	1989 = 100	
Domestic companies	15.7	ca. 78.9 <sup>a</sup>	502.5
Companies with foreign capital participation	0.429	ca. 24.1 <sup>b</sup>	5,617.7
Individual proprietorship	813.5	ca. 1,900.00 <sup>c</sup>	233.6

<sup>a</sup> Only joint-stock and limited liability companies, including companies with a majority share of public capital

<sup>b</sup> Only joint-stock and limited liability companies

<sup>c</sup> In 1994, including civil partnerships

Source: Data from the Central Office of Statistics (GUS) 1991-96, cited in Mujżel & Baczkowski [1996]

In total, employment in the private sector grew by about 1.4 million in the years 1990-95, while in the same period it fell by up to 3.6 million in the public sector [Mujzel & Baczko 1996].

It has been said quite fairly that private enterprises have been the locomotive driving the Polish economy. Their productive and commercial dynamism against the background of the public sector is testified by the fact that in 1994, the last for which we have complete data, the private sector's share in the creation of GDP reached 56%, in industrial manufacturing sales - 38.3%, construction - 86.2%, retail goods sales - 90.8%, imports - 65.8%, and exports - 51.3%. Currently, it is certainly several percentage points higher in most of these categories.

We should also remember that official statistics overlook unregistered business activity, i.e., the "grey economy", which is estimated to account for 20-25% of GDP [Sadowski & Herer 1996]. Cross-border trade, entirely dominated by the private sector, plays a particular role in Poland. In 1995, according to the estimates of the Market Economy Research Institute, the "unofficial" exports amounted to a sum of only USD 6 million, i.e., approximately 25% of recorded exports. The official share of the private sector in GDP is thus understated. We should further recall, however, that these statistics include agricultural farm-holdings, and various co-operatives and "non-profit" enterprises in the private sector. In addition, the sector is expanding thanks to the privatization of many state enterprises. While newly-emerging entities represent the vast majority of firms active in the non-public economy, they only account for part (slightly more than half) of its total volume of sales.

Let us now try to build up a picture of the typical "new" private firm, describing some features of its economic structure, and comparing them to state and non-privatized enterprises<sup>3</sup>.

It is a truism that private firms are **quite small** with regard to employment size and internal capital. Direct comparison with state enterprises on a national scale would not be very sensible due to the different sectoral structures of both these company types (private firms are usually engaged in commerce and services, while state enterprises are more active in industry). Nevertheless, in a sample of 200 manufacturing enterprises that we researched, the average employment size of private firms was six to seven times smaller than in the remaining enterprises.

Private firms in general exhibit **greater dynamism** in production, employment and investment. As regards the first two values, this tendency is not surprising, al-

though the actual level of difference between private and other firms deserves our attention. Production in the former group grew on average six times faster than in the remaining groups, while employment increased by 23.3%, and fell by 7-8% elsewhere. Data on investments also demand reflection. Up to 1994 the recorded investment expenditure of the private sector for the entire economy showed a similar (i.e., low) dynamism to that of the public sector. This is because private firms often include investment expenditure in their current operating costs, thereby reducing their calculated profits and tax obligations. These are obviously illegal practices with their origins in the "grey economy". Fairly small firms, however are still able to employ them.

Research results show that the profitability of comparable private firms (because they all operate in the manufacturing industry) is on average higher than in state enterprises. Only in 1996 did both sectors begin to show similar profit levels. We should remember, however, that the private sector is highly heterogenous and includes, for example, many loss-making co-operatives. Also important is the fact that no private firm can incur excessive losses, something which we unfortunately often see in state enterprises. This confirms the common claim about the **high mobility of private capital**. If a private firm proves inefficient, it ceases to exist. A state enterprise continues to operate, even when its losses accumulate. Indeed, even when losses exceed the state enterprise's internal capital, there is no effective mechanism to eject it from the market.

Private firms are **not burdened by the past**. The managers of a significant majority of them think, for example, that employment is at a suitable level or is even too low. More than half the managers of other firms believe that their companies are supporting a certain margin of "hidden unemployment". If vacancies appear in private firms, they are always caused by a lack of professional candidates for the job. The inability of state enterprises to offer competitive salaries is an equally important factor. This testifies not so much to a lack of resources as it does to their inflexible internal structures - a consequence of both the public character of ownership and the inevitable hierarchical structure of large units. **Small firms, therefore, imply greater flexibility**. Another important element here is that practically **no trade unions** are active in private firms.

A typical private firm enjoys a more **advantageous financial position** than state enterprises, although some of them that are heavily in debt. Moreover, their debt structures differ from those of state enterprises. First of all, private firms **have almost no tax arrears**. If they avoid paying taxes, this is thanks to "good accounting", and not - as in the case of some state enterprises - because they have raised their arms helplessly or unscrupulously exploited their bargaining power. Secondly, the widely held

3. This part is based on the results of empirical research carried out by Belka et al. [1995]. We should emphasize that we are dealing here with newly-established private firms and not with state enterprises that have been privatized.

belief that private firms suffer from restricted access to bank credit is not confirmed by the statistics. Certainly many of them have never even applied for loans, but some obtain enough credit that their share in total banking debts turns out to be (in the research in question) higher than for all other entities.

Thirdly, private firms have **generally fewer outstanding debts** than their counterparts in the state sector. This concerns not only overdue taxes, but also debts owed to suppliers. However, where such arrears do occur, a considerable number of them tend to be a year old or more.

Private firms invest a relatively large amount: they expand their (fairly small up to now) manufacturing capacities more frequently than other firms. In effect, **they have at their disposal the most up-to-date production assets, in spite of the fact that part of their stock was obtained from liquidated state enterprises.**

Research provides some interesting observations on the ownership and management structures of newly-established private firms. As we already know, the overwhelming majority of private firms in Poland are under individual ownership; only 4% of them come under a different category. However, even these companies are individually owned and have simply been converted for fiscal reasons. The main shareholder is usually responsible for approximately 70-80% of their initial capital. Besides these, there are some companies with two main owners, who divide the shares between them on a 50:50 or 51:49 basis. Small and medium-sized companies with foreign capital participation are generally set up in such a manner. In these entities the domestic partner controls about half the shares, but is rarely responsible for their actual day-to-day running.

To recapitulate, in most Polish private firms **ownership is highly concentrated** in the hands of one or two individuals. The importance of minority shareholders is usually almost symbolic. Managers - if they are not at the same time the firm's owners - are typical wage-earning employees, responsible for the everyday running of the firm and for implementing the decisions of the "boss". It is he who determines investments, price policy, appointments to the most important positions, and even supply sources. This concentration of decision-making is natural enough in small firms with an uncomplicated capital structure and market position. It probably accounts for their flexibility and speed of operations. Nonetheless, the simple, perhaps even **primitive, internal structure of these firms may become a restraining factor, which can check their growth.**

Private firms, often with their roots in the grey economy and thus inclined to shorten their planning horizon and conceal part of their turnover from the tax authorities, are confronted with a management "barrier". Spectacular examples can be given of

firms, which after achieving unarguably fantastic results in the short term (e.g., ELGAZ, WESTA), have ended in bankruptcy. Their owners had tried to manage firms with turnovers to the order of many million USD - in no respects small family establishments. Mistrust of "outsiders" in these firms results in various decisions being concentrated in the same pair of hands. It also leads to a lack of consultation with specialists and an excessive faith in the owner's own intuition. The consequence of such tendencies has not in most cases been bankruptcy. Rather, they have acted to effectively curb expansion beyond a certain level. There are scarcely more than a couple of private firms (apart from banks) quoted on the Warsaw Stock Exchange today that did not come into existence as a result of state property privatization. It is interesting that the largest private enterprises generally avoid the stock-markets, perhaps because of the strict regulations on auditing and monthly accounting reports. Certainly, 212 private entities were included in the list of the "500" largest Polish enterprises in 1995, of which twenty one were in the top "hundred". However, newly-established private firms were only modestly represented in this group [Mujzel & Baczkowski 1996]. A process of consolidation is obviously in progress and its relatively limited character is in part due to the still brief history of the Polish transformation. Let us not forget, after all, that most of these units only started operations a few years ago.

The quicker, however, these firms assume more advanced organizational and legal forms (e.g., commercial companies, rather than civil partnerships or individual proprietorship, the more frequently they will apply for bank credit and the faster they will "mature", leave the grey economy and begin rational development. Polish private firms have already made significant progress along this road. Among the stimuli making this possible was the introduction of VAT in 1993. The next important step will be a social insurance system to help restrict employment "on the black", which the statistics will reveal in the form of an increase in employment (and production) in the private sector.

## **2.2. Privatization of State Enterprises**

There were 7,337 state enterprises active in Poland in 1989. In 1990-91, their number grew as a result of de-concentration. There were 4,081 state enterprises in Poland on 30 June 1996. In addition, 1,066 commercial companies (both joint-stock and limited liability) were operating with the State Treasury serving as a 100% shareholder.

From the beginning of the transformation (in this case from 1 January 1990, i.e., when the Sejm passed legislation on the privatization of state enterprises) to the

end of the first quarter of 1996, ownership transformations embraced 3,701 enterprises, 1,157 of which became state treasury companies (via "commercialization"); the rest were privatized through various methods of liquidation. Of these commercialized units, 165 were privatized through capitalization, and 512 were transformed under the National Investment Funds programme.

First of all, however, we should briefly present the basic ownership transformation "paths" that have been adopted in Poland, followed by a discussion of the results of their application<sup>4</sup>.

**Commercialization.** Commercialization entails changing the legal form of an economic state entity into a capital association - a State Treasury joint-stock company. In Poland, this denotes a departure from the self-governing formula of enterprise management, based on a functioning employee council and general staff meetings which in reality control the management of the enterprise. Appointed in their place are (a) a Board of Directors - an assembly of representatives delegated by the founding organ, i.e., by the appropriate ministry or voivod as well as the firm's employees, and (b) the management - made up of those people involved in running the firm. The most important decisions on, for example, privatizing the firm are taken by the General Meeting of Shareholders - in practice the appropriate office representing the State Treasury. Commercialization essentially implies strengthening the role of management and the State Treasury, which acquires various instruments of direct control over the enterprise.

**Capital privatization.** Under this procedure (always preceded by "commercialization"), a state enterprise's stocks/shares are sold by means of (a) public tender - i.e., on the stock exchange, (b) inviting potential strategic investors to negotiations, or (c) auction.

Financially sound enterprises are the principal subjects of capital privatization. The sale of companies through public tender, although a very labour-intensive and costly process, is often regarded as the most attractive form of capital privatization. This is because the Polish capital market is based on this method and privatized state enterprises in this way represent its most important element. Approximately fifty firms altogether have been affected by the capitalization procedure. A usually fairly well dispersed type of ownership results from sales through public tender, involving the participation of both domestic and foreign investors.

4. In this part we have widely referred to data from the Report on Ownership Transformations [1995].

Almost all the remaining enterprises transformed through capitalization have been privatized through the invitation to negotiations approach. A typical investor is a foreign or domestic entity which purchases a majority share package in the enterprise. In line with Polish practice, the criteria for choosing a strategic investor, besides the price offered, are **additional commitments with regard to investment (i.e., in employment), social amenities, production and other areas**.

A significant proliferation of debts and an increase in their value occurred during the years 1994-96, which to a certain degree is hampering the capital privatization process and is stimulating foreign investment of the greenfield type.

So far (again, up to the end of the first quarter of 1996) 165 companies have been privatized through capitalization.

**Privatization through liquidation.** Strictly speaking there are two "paths" to liquidation: (a) art. 37 of the Privatization Act and (b) art. 19 of the State Enterprise Act. The aim of liquidation is to transfer enterprises or parts of them to new owners. The assets of a privatized enterprise can be **sold, transferred to another company, or leased out** to a company with the participation of the employees of the liquidated enterprise (employee leasing). In general, liquidation involves small and medium-scale enterprises, and can be used in regard to both economically sound enterprises as well as those in financial difficulties. In the latter case we are dealing with liquidation outlined in art. 19 of the State Enterprise Act, and - what is important - leased assets cannot in this case be restored to an employee company.

So far, privatization through liquidation has embraced 1,482 entities (Biuletyn 1996). Employee leasing (768 firms) has proved to be the most popular form of liquidation, the effects of which we will discuss separately due to its great significance for Polish privatization. Enterprises are sold on principles analogous to sales based on the capitalization method. The negotiation process (except when concerning the price) covers such factors as: employment guarantees, investment commitments and safeguards for the natural environment. Such proceedings, however, concern smaller enterprises and are principally geared towards domestic investors. This method set in motion the **quick sale**, i.e., an operation organized by the Ministry of Privatization to promote firms, and has mostly been used with enterprises experiencing financial difficulties. Potential domestic investors are treated on a preferential basis and have the option of repaying the debts of the purchased enterprise in instalments.

The method of **transferring the assets** of liquidated state enterprises was not overly popular during the early privatization phase (only eighty seven cases for the entire 1990-96 period), but recently has been employed more and more often. Asset transfers take place when a state enterprise finds a suitable partner capable of injecting



capital into it. Size is of no importance here, which is shown by the example of FSO - the Warsaw car manufacturer, which was taken-over in this way by Daewoo.

**Liquidation of an enterprise experiencing financial difficulties** (art. 19 of the State Enterprise Act) is implemented when the continued existence of that entity is unjustified. It consists in breaking up the enterprise's assets and striking it from the register after satisfying its creditors. This method usually concerns fairly small enterprises where the process of reducing employment (and assets) is already well advanced. Eighty percent of cases involve enterprises employing up to 200 people [Report 1995].

**Bank conciliatory proceedings.** The legislation on the financial restructuring of banks and enterprises, which we will discuss in more detail in a later part of the text, created new opportunities for privatizing state enterprises, involving creditors taking possession of an enterprise's stocks or shares. The programme is still at a fairly early stage. A conversion of outstanding debts into shares has taken place or is about to occur in about 150 firms, which represents the preparatory stage for their privatization after they have carried out a reform programme.

As can be seen, we have a very wide palette of possibilities before us in Poland for privatizing state enterprises. We can still add to the above-mentioned alternatives the NFI programme which encompasses 512 State Treasury companies. These firms - usually after being restructured beforehand - will become privatized by various methods through management funds. Some will end up on the stock market. The majority, however, will fall into the hands of strategic investors. The first share prospectuses have already been prepared, and several dozen capital transactions have already taken place.

In spite of the possibilities described above, a considerable number of enterprises remain to be privatized in Poland (about 3,500-4,000). The public sector share in industry still exceeds 50%, and the privatization of certain infrastructural sub-sectors has not even begun yet (e.g., telecommunications, the fuel and energy sector). Nevertheless, a relatively small group of large enterprises (300-400) make up the hard-core of state ownership, often in the so-called strategic sub-sectors, where privatization is stirring up the greatest emotion. This area demands resolute political decisions, due among other things to the key role that foreign investors will play. It will also be a technically difficult and time-consuming process, because privatization must be carried out on an individual basis. On the other hand, it may create enormous opportunities for modernizing the economy and have considerable budgetary effects. This "great" privatization process will be the most important task facing the Polish state in the near future.

However, we should not exaggerate the importance of the large number of still un-privatized firms (amounting to several thousand) recorded in the statistics. The overwhelming majority of them are small, insignificant units where the process of actual liquidation - through selling assets and reducing staff - is well advanced. These are often enterprises in name only, where the problem is not so much one of privatization as liquidation.

In the course of privatization up till now the following methods seem to have been most significant economically:

- **capital privatization** on an individual basis - due to the size of the entities being privatized, the role of foreign investors, and its importance for the development of the capital market;
- **employee leasing**, due to its great popularity in the first years of the transformation; and
- **liquidation due to financial difficulties**, as this method can considerably improve the allocation of resources for the economy as a whole.

We shall now discuss these methods in more detail, paying attention to their importance in shaping the model enterprise - a factor which will determine the competitive prospects of the Polish economy.

**Capital privatization<sup>5</sup>.** Many observers have treated this type of enterprise transformation as the closest to "authentic, full" privatization. It usually concerns large enterprises, and in the past was applied almost exclusively to financially sound firms. The author of the most interesting analysis on this subject distinguishes three sub-groups of investor types present in such firms:

- the dispersed investor - a wide range of share-holding, none of which possesses a controlling share (typical stock-market firms) - type A;
- the foreign investor - a majority share-block (51-100%) is in the hands of a single foreign investor, or when the foreign investor controls only a minority share-holding the remaining shares are dispersed - type B;
- the domestic investor - as above, but with the participation of a domestic investor - type C.

These enterprises turned out to differ quite fundamentally in many aspects of their operation. Group A companies (stock-market firms) are the most profitable, which

5. This section makes use of numerous observations contained in the IBnGR report [Privatization Effects 1995].

is due, however, to the fact that the firms privatized through public tender are almost exclusively the best. Group B firms (foreign investor firms) are the least profitable, below group C firms, but are also carrying out costly restructuring and training programmes. Injecting these enterprises with capital and streamlining the management of working capital has stabilized these companies and strengthened their financial position.

Firms transformed through capital privatization bring new products onto the market, increase investment activity - firms with foreign investor participation are the clear leaders in this field - generate sales, promotional and advertising techniques and often (again in the case of group B firms) enter new markets.

The sale of employee shares has resulted in more and more concentrated forms of ownership, particularly among group B and C firms. On the other hand, management is becoming an increasingly important force in group A firms, to a large extent dominating them. In these cases, however, the shareholders through the statutory organs together with rules governing the operation of public companies (e.g., strictly enforced rules on transparent financial management) act as controlling agents.

It is worth quoting here the author of the above-cited report - J. Dąbrowski, who argues that although "privatization on an individual basis cannot be a formula for ownership transformation in a large number of enterprises (due to the long drawn out process involved etc.)... this route offers the greatest hope in terms of improving operations". The Ministry of Privatization shares this view, stating that enterprises transformed through capital privatization come closest to the principle of maximizing profits as the basic criterion of financial operations, are extending their planning horizons and creating conditions for long-term expansion [Report 1995].

**Employee leasing.** At the end of 1995, about 1,000 employee companies were operating in Poland, employing close to 300,000 staff. Their enormous popularity during the first phase of the Polish transformation resulted from the desire of their staffs to take control of their "own" enterprises. A number of politicians and left-wing intellectuals tended to treat them as forms of "employee enfranchisement" or mutations of the idea of self-government. For liberals, employee companies were always "the lesser of the two evils" in relation to state enterprises. Their significance for privatization meant that the most serious research centres in the country were involved in analyzing the way they functioned<sup>6</sup>.

6. We are above all using the results of research carried out by M. Jarosz's team from the Institute of Political Studies PAN [Employee Companies '95, 1996] and by the Market Economy Research Institute [The Effects of Privatization 1995].

Employee companies are to a great extent a sociological phenomenon. For us, the most interesting question is whether they can survive in the conditions of an open market economy.

Let us recall at the outset a few basic principles which determine enterprise take-overs via the leasing method. In their basic form these are simply variants of the liquidation path (specified in art. 37 of the Privatization Act) which concerns fairly small and financially sound enterprises. They result from the fact that, in order to take over a firm, the employees (and physical persons outside the firm) have to accumulate a kind of guarantee fund amounting to 20% of the enterprise's value set by professional valuation. These resources remain in the enterprise, while the new company (taking over the assets of the old one) has to pay the State Treasury leasing instalments over a period of ten years.

The "Achilles heel" of the leasing company is immediately apparent. For such firms lack significant external capital reinforcement, which thereby limits their ability to invest. The other obvious danger associated with their co-operative character is that the principle aim of all operations is reduced to simply maintaining the firm, even at the cost of maximizing salaries and reducing employment.

In reality, the situation of the employee companies is more complex and increasingly varied. An employee company's prospects depend both on its initial starting position and, to a certain extent, on the economic sector in which it is active. Companies which start from a good position gradually improve their situation, while those which start out with debts and a weak market position seem to fall into even deeper crisis. Employee leasing may stimulate pro-efficiency activities (superficial restructuring), but the lack of external financial reinforcement prevents them from overcoming more serious difficulties.

One trend occurring in this area is that of employee companies gradually being transformed into capital associations. This takes the form of **concentrating shares** within the current body of shareholders, while the management's position and also increasingly the **outside investor's share** are strengthened. This process, however, as J. Szomburg asserts [Effects 1995], is linked to the deteriorating position of many companies, which forces them to look for external sources of financing and to strengthen the management's position. What this demonstrates in principle is the defensive orientation of most of these entities. Some of the most dynamic employee companies have entered the stock-market and have somehow moved into the "premier league" of Polish enterprises.

Employee leasing has played an important role in the Polish privatization process. As M. Jarosz and M. Kozak write [1996, p. 184], it has been one of the instruments used to come to terms with the new reality. For staffs, leasing was the only acceptable

form of ownership transformation. As a result, however, many entities controlled by "insiders" have been created that are defensive in their outlook and possess limited opportunities. In spite of this, some of them have the potential to succeed, especially if the process of transformation into full-blooded capital companies with the participation of outsider investors is continued and consciously supported by the state.

**Liquidation due to financial difficulties.** So-called "bankruptcy" liquidation (art. 19 of the 1981 State Enterprise Act) comes into effect when an enterprise collapses as a result of losing its market outlet, rapidly increasing debts and cash shortages. Liquidation may lead to:

- the existing entity continuing to operate (restructuring through liquidation) or new entities taking over most of the manufacturing stock of the old enterprise;
- most of the liquidated enterprise's assets being leased out;
- the assets being sold, most often to private entities.

Up till the end of 1994, this type of liquidation procedure had been initiated in no more than 1,245 enterprises. Nevertheless, the process was only brought to final completion in 303 cases [Report 1995, p. 59]. It may be concluded that this is a path as popular and significant as it is lacking in effectiveness. Actually, a number of legal barriers stand in the way of the liquidation process. These include the unregulated status of real estate, the limited demand for the assets on offer, and the ineffective incentive system for liquidators (lump sum payments, regardless of how effectively they carry out liquidation, or its economic effects). Nevertheless - as J. Dąbrowski, T. Kamiński [1996, p. 40] and others emphasize - bankruptcy liquidation represents an inappropriate method for eliminating permanently loss-making state enterprises. It enables the transfer of products and unused or ineffectively used assets for potential revenue purposes. It is a specific formula of asset privatization, as a significant part of the firm's assets falls this way into private hands.

Using empirical research as their base, these authors point out that restructuring through liquidation is generally ineffective, because it does not ensure capital reinforcement. As a consequence, it should not as a rule be employed: it merely reinforces an enterprise's already weak financial position. An alternative is to sell the assets - advantageous from the point of view of improving resource allocation as well as strengthening the private sector (approx. two thirds of resources end up under private ownership).

Up till now, liquidation through bankruptcy has affected 1,000 state enterprises. However, asset sales have taken place in many entities that have rationalized their

stock. The limited structural effectiveness of bankruptcy liquidation has little significance as far as privatization is concerned, i.e., it prolongs the existence of liquidated entities. Of paramount importance is to set in motion the re-allocation process to strengthen the dynamically developing private sector.

### 2.3. The Structure-creating Consequences of Privatization<sup>7</sup>

The concept of economic structure is highly ambiguous. The branch or sectoral structure of domestic product creation is a subject of great interest for economists as they rightly treat it as a factor influencing long-term economic competitiveness. In this context, situations where energy-consuming and antiquated kinds of economic activity predominate in a given country are a cause for alarm. It is also rightly believed that an economy based on sub-sectors that exploit a cheap labour force or cheaper raw material base (thanks to ecological dumping and other factors) is unprofitable to maintain in the long run. This, in turn, suggests increasing the share in production and exports of branches with a high manufacturing base and a "high technology" level. A differentiated branch structure is also more beneficial than some kind of "monoculture". A commitment to an intra-branch international division of labour that arises from raw-material specialization is also important.

Another aspect to this problem lies in the form and evolution of market structures - more or less monopolized, and more or less subject to market competition. In this case, we may obviously treat a concentration of production or restricted competition as negative phenomena. On the other hand, many observers have also discussed the need to create domestic market structures with a strong capital base (in the form of syndicates, holdings, etc.) capable of resisting competition from international corporations. It is with this problem that we shall begin our discussion.

**Privatization and changes in market organization.** Besides initial privatization, which has resulted in a declining share of the largest enterprises in overall production, capital privatization has the most important potential role to play in shaping competitive conditions. This is especially true when foreign investors are involved. Alongside fears linked to the presence of foreign investments, many commentators have expressed concern about the possible take-over of entire markets and their subordination to foreign interests, which would clash with the needs of domestic industry.

7. This section includes many ideas contained in the Report on Ownership Transformations [1995], a pioneering work in the Polish literature on this subject.

In addition, opinions are being voiced on the danger of production becoming monopolized and concentrated once again, this time in private hands. As the authors of the cited report observe, the central problem involved in assessing such dangers lies in identifying the line of demarcation between specific markets. Aware of the limitations of the method employed, they analyzed the share of 134 enterprises privatized through capitalization in different markets according to product groupings in the three-figure European Classification of Economic Activity. This involves a fairly high degree of aggregation, which can in certain cases cause the competitive position of enterprises to be evaluated incorrectly, resulting in an overestimation or underestimation of their market dominance. With these reservations in mind, it turns out that at the end of 1994 a mere eight enterprises privatized through capitalization enjoyed a clearly dominant market position (with a share ranging from 21% to 45%). Moreover, privatized firms together had a 40% share or higher in four markets (out of a total of fifty), a 30% or higher share in ten, and over 20% in fourteen. It should be added that foreign firms were dominant in seven markets defined in this way (a > 20% share), while the authors stipulate that "allowing for effective strategies of differentiation, foreign capital can still have a substantial influence in two or three markets".

The Report concludes, therefore, that capital privatization does not represent a threat to competition and "that the concentration of private capital in some of these markets could even be higher so as to more fully exploit the advantages of scale and scope, concentrate resources on R&D and, finally, conduct a stronger marketing strategy".

J. Bukowski - a high-ranking official of many years standing at the Ministry of Privatization, currently serving at the Ministry of the State Treasury - offers a more up-to-date assessment of the situation [Bukowski 1996]. He recalls from his own experiences that the Polish government, when selling state enterprises to foreign investors, consciously aspired to ensure that no single buyer could take over all or the majority of enterprises in any given sub-sector. This policy has been applied to the cement, paper-manufacturing, brewery, chemicals, confectionary, tobacco and technical gas industries, where the government limited foreign or domestic consortiums to purchasing one enterprise in any particular branch. In the traditionally highly concentrated tyre industry, the two largest enterprises were sold to major competitors on the world market - Goodyear and Michelin. The exceptions to this rule are the motor industry, where several dozen manufacturing firms were taken over by just four investors (FIAT, GM, Daewoo and the domestic holding company of S. Zasada which is linked with Mercedes Benz), the machinery and power engineering sub-assembly industries, which the ABB consortium was able to dominate, and the lighting and electrical industries, in which Phillips has taken over several enterprises.

J. Bukowski's assessment confirms the conclusion of the earlier report. The capital privatization of state property has not resulted in any restriction of market competition. Indeed, the total opposite has been the case. It has generally consolidated the trend towards de-concentration which had occurred during the late 1980s and the early transformation years as a result of the disintegration of branch associations, and later "branch unions". One of the important safeguards against concentration is the Anti-Monopolies Commission, which has to approve each case of privatization. Public opinion plays an even more powerful role here, sensitive as it is to the dangers of monopoly, particularly when it arises from foreign capital.

This obviously does not imply that powerful concentrations of production are in any way lacking in Poland. In many respects they are a legacy of the centrally planned economy. Nor is there any shortage of tendencies to **re-centralize** the economy - a result of pressure from branch lobbies. The most spectacular examples of the latter are coal companies (mining pit-coal) and the emergence of sugar holdings. Nevertheless, these trends are not so much a consequence of privatization as a sign of branch interest groups trying to shift the costs of essential restructuring onto society.

An interesting and fairly unexpected occurrence accompanying privatization in Poland has been the rise of capital groups with conglomerate structures based on the old central offices of foreign trade. These enterprises, taking advantage of hitherto substantial (for Polish conditions) financial resources as well as a good managerial staff, have become the most important domestic institutional investors. They are engaged in taking over smaller state enterprises, many of which operate outside the "parent" branches of the economy. The managements of these enterprises either quickly brought about their privatization by means of public tender or obtained consent for some kind of managerial privatization. After privatization, and taking advantage of resources accumulated in the past or acquired from issuing their own shares, they set about building the manufacturing supply base and developing a distribution network in the country.

As J. Bukowski notes, some trading enterprises have been converted into manufacturing-trade holdings. The majority have invested in "parent" branches, e.g., Stalexport in the iron and steel industry and in trade in iron and steel products, Agros in the consumer industry, Rolimpex in the fodder and sugar-refining industries as well as in grain processing and storage, Animex in building and construction services, etc. Elektrim and Universal are diversifying their purchases, and today control several dozen dependent companies.

Against this background the un-privatized state treasury commercial company Impexmetal still remains a peculiar exception, "privatizing" firms from the non-ferrous metallurgical branch, taking them over from their founding organs. Many ob-

serve this case with alarm, for it has occasioned the rise of ambiguous and non-transparent (in contrast to stock market companies) organizational and ownership structures.

Individual entrepreneurs (S. Zasada, J. Kulczyk, J. Starak and K. Grabek), who are successfully participating in the privatization of state property, are also trying to form capital groups.

The National Investment Funds (fifteen joint-stock companies) represent a kind of institutional investor specific to Poland. They manage share-packages of varying size for 512 firms taking part in the general privatization programme. The task of the NFI is to restructure state enterprises, raise their market value and, finally, sell them off to strategic investors.

Holdings created on the basis of the former central offices of foreign trade or other former state enterprises, or which were set up by individual investors, are not seen as a serious threat to market competition in Poland. In general, they are active in branches where capital and production are highly de-concentrated (e.g., in the consumer and construction industries). In addition they help create vertical rather than horizontal links and usually do not include (though there are exceptions) the largest producers.

In reality the largest of these holdings can form groups capable of dominating specific markets. Nevertheless, it seems that the "national" argument is prevailing. For these holdings are an economically viable way of consolidating Polish capital, thereby increasing its chances of financing the large investment projects awaiting the Polish economy. If they were lacking - many believe - only foreign consortiums would be able to build motorways, create cellular phone networks, modernize power plants, etc., in Poland.

#### **Privatization and changes in the (material) branch structure of the economy.**

Concern about the consolidation or even deepening of the unprofitable structure of the Polish economy, which is becoming apparent in the "weak" structure of exports and investments, has not been without its consequences. The government has formulated programmes of sectoral industrial policy to support so-called high-opportunity sectors or classes of products enjoying good market prospects or a high level of efficiency. Lists of such potential "winners", based on various calculations, have already emerged.

We will not discuss here the accuracy of these calculations nor the reasoning behind the projected industrial policy. In the "Report on Transformations" the authors undertook an interesting attempt to compare the lists of these "high opportunity" sectors with a list of branches and sectors where enterprises privatized through capitaliza-

tion - thus those representing attractive targets for investment - operated. In nineteen branches mentioned by A. Karpiński and S. Paradysz [1994] (the authors responsible for the ranking), only two contained no enterprises privatized through capitalization: the motor-car and artificial fertilizer branches. Major foreign investment in the former occurred in 1995-96 (Daewoo, Opel and perhaps Isuz), and it is common knowledge that investments will play a very large role in the latter. The Report's authors thus conclude that privatization is exploiting already-existing opportunities, building on them excessively, but most of all creating them.

This brief observation has the following significance for the present study: capital privatization, particularly with foreign capital participation, is the most effective means of stimulating the international competitiveness of the Polish economy and exploiting its inherent, relative strong-points, both current and potential. The investments generated over the last period (in 1995 - USD 2.5 billion, in 1996 at least USD 4 billion) have created a favourable groundwork for consolidating growth tendencies as well as generally beneficial structural changes. The consequence of denying, for whatever reasons, foreign capital access to particular branches and sectors of the Polish economy will be that the cost of modernizing them will have to come from domestic sources. In addition, access to international channels of distribution will become more difficult.

**The quality of Polish privatization.** The superiority of private over state ownership is a subject of particular debate in Poland. Besides the political and historically-based arguments which dominated in the first years of the 1990s, many economic arguments - originating from outside the theoretical literature on the subject - have also come to the fore. In the present study we shall overlook those arguments which concern the operation of the market (creating the conditions for all-embracing mechanisms of market-competition) and the functioning of the state (increasing transaction costs as a consequence of *rent-seeking* activity). We will concentrate instead on strictly micro-economic arguments dealing with the enterprises themselves. In this case, the superiority of private over state ownership is revealed in the following features of the former:

- the **profit motive** or other, similar motives, is the guiding principle behind a private firm's operations, while, as the experience of real socialism shows, even reformed state enterprises are generally guided by other motivations: the desire to maximize wage funds, defend employment positions, etc;
- a private enterprise is subject to external control through (a) the commodities market - the possibility of bankruptcy, (b) the capital market - the pos-

sibility of a hostile take-over, and (c) the management labour market - the possibility of the shareholders changing the managerial staff; in the case of state enterprises this kind of external control is either highly imperfect or simply non-existent;

- a private firm has better development opportunities. Thanks to its more flexible internal structure its access to external sources of financing (through share issues, stocks, debt-for-equity swaps, etc.) is made easier. These characteristics specify a certain model private enterprise and do not always appear after ownership rights have been transferred. On the other hand, we can assess the quality of privatization through the distance which separates enterprises from this ideal before and after privatization. The more geared towards maximizing financial results and thus inclined towards painful - if necessary - rationalization, the more transparent and subject to external control, the more capably flexible, and the more efficient and competitive enterprises become. They undergo this test on the market, when confronted with competitors.

### 3. CHANGES IN THE BANKING SYSTEM

Reform of the banking system in Poland is not "in itself" a subject of our concern. It nevertheless forms such an important element of the institutional environment in which micro-economic adjustments take place, that we must be aware of the evolution in this sphere in order to understand the course of those adjustments.

Risking a gross simplification we may say that the most important events in the Polish banking system of the last few years, i.e., after it came into existence at the beginning of 1989, have been the:

- transformation of the nine commercial state banks into State Treasury commercial companies together with the announcement of a programme to privatize them (1991);
- passing and implementation of legislation on the financial restructuring of banks and enterprises (1992-1994);
- commencement of state bank privatization (since 1992), and the consolidation of this process (1996).

We should of course add to this short list the gradual opening up of the Polish banking system to foreign capital. This has enormous significance from a long-term perspective, but has so far had little importance for how enterprises function, which

concerns us most of all. Similarly, the emergence of a capital market out of the Warsaw Stock Exchange has proved important in strengthening the position of banks. It has enabled capital to be injected into smaller banks (both private and privatized). At the same time the Stock Exchange has become the standard mechanism for privatizing state banks.

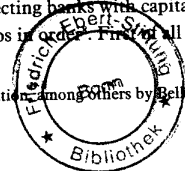
Putting aside these facts, we will concentrate instead on those events which have directly affected bank - enterprise relations, and which have most profoundly shaped microeconomic behavioural models.

We have already mentioned the importance of the "commercialization" of state banks (in other words, their corporatization) which took place at the end of 1991. By increasing state supervision of banks through setting up appropriate organs of control - boards of directors and general meetings of shareholders, and above all by creating the prospects for privatization, the state considerably influenced discipline in banking operations. This confirms the research results we quoted earlier. The concurrence in time of institutional change with a radical shift in the approach of banks to their clients is not accidental. A natural learning process also played a certain role here, as a result of which banks increased their power. But it was the act of commercialization itself that surely served as the catalyst of change for bank managements.

We should observe at this point that the Ministry of Finance assumed direct control over several dozen institutions (the nine commercial banks formed from the National Bank of Poland plus a number of "specialized" banks). In exercising its powers, therefore, the Ministry did not exceed its technical and substantive capabilities. By contrast, a similar case of ownership supervision exercised by the Ministry of Privatization over several hundred non-financial State Treasury companies proved in practice illusory. In the case of banks this operation had a great deal of significance.

Occurring almost simultaneously with the transformation of banks into joint-stock companies were efforts undertaken to restore them to financial health. Separated from the structure of the socialist "monobank" (NBP), state banks suffered from a severely limited solid capital base. Moreover, in the first years of the transformation they allowed a considerable number of uncollectible loans to appear in their portfolios. The share of such "bad assets" in the credit portfolio as a whole reached up to 40% in certain state banks. The threat of a serious banking crisis loomed, promising almost unimaginable consequences for the entire economy. In this situation the Ministry of Finance prepared and carried out reform measures which entailed injecting banks with capital and at the same time forcing them to put their credit portfolios in order.

8. This operation is widely described in the literature on the transformation, among others by Belka [1994].



Careful audit was made of state banks (the nine commercial banks mentioned above, followed by PKO BP and BGŻ), as a result of which a separate portfolio was assembled of irregular credit involving clients who had not repaid their debts. In proportion to the size of these portfolios banks received capital reinforcement in the form of restructuring bonds. On the other side of the coin, they had to clear up their balance-sheets within a strictly defined time-limit by employing one of the following methods:

- recovering outstanding debts;
- starting bankruptcy proceedings against debtors;
- selling bad assets on the resulting secondary market for enterprise debts;
- carrying out bank conciliatory proceedings.

This last solution entailed annulling enterprise debts or re-scheduling them on condition that the enterprise concerned carried out a restructuring programme approved by the bank. Enterprises thus obtained significant respite (the procedure not only covered debts to banks but also to the State Treasury and suppliers). On the other hand, they had to commit themselves to carrying out a programme of reforms. Banks gained the opportunity to purge their balance-sheets and strengthen their capital base, but were compelled at the same time to take active steps with regard to their insolvent debtors - research, assess and approve their restructuring programmes, and afterwards monitor their implementation. In the course of implementing the legislation on the financial restructuring of banks and enterprises passed on 3 November 1993, the commercial state banks trained staff prepared for investment activities and managing assets, and able to recognize different kinds of risks in financial operations. In a word, they were forced to work with their clients. The above-mentioned legislation stipulated, as one possible option, that banks could exchange debts for shares in a restructured enterprise. This was intended to be a new path to privatization or at least a way of initiating ownership transformation. When the law first came into force, banks were not overly enthusiastic about opting to exchange debts for shares. There were many reasons for this. For reasons of prudence, banks were restricted to a value not exceeding 25% of their own capital when buying stocks and shares in external economic entities. It seems, however, that such reluctance resulted mainly from the fear of becoming too heavily involved in managing firms - an activity for which banks were unprepared due to personnel reasons.

As a consequence of legislation, over 500 state economic entities have been subject to bank conciliatory proceedings, mainly commercial firms and enterprises in the manufacturing industry. There have been approximately 150 cases of debts being exchanged for shares. This is a considerable number, though less than many had expected when this legislative solution was first drafted.

Banks, thirty of which took part in the entire operation (not simply those, moreover, which the state had injected with capital), generally opted to take over firms in individual cases. As Ch. Gray and A. Holle [1996] observe, the more active banks in this area were those regarded as having less capital and armed with the worst asset portfolios in the initial period. One bank, considered the leader in this field, took over shares in more than twenty enterprises in exchange for debts, but decided to form a separate investment fund. To recapitulate, the financial restructuring operation has had important and generally positive consequences:

- the share of so-called irregular credit in the credit portfolios of the nine commercial banks decreased from almost 40% at the end of 1992 to just 15% by the end of 1994 [Rada 1995];
- the capital-adequacy ratio increased up to a level of 12-20%, which means that banks have more than fulfilled the EU directives on bank security;
- several hundred state enterprises, after working out a restructuring programme, have been given "one more chance"; their actual success in the long-term is not, of course, assured; we can safely say that some firms will fall into difficulties again, especially if they fail to receive appropriate financial reinforcement in time.

All-purpose banks were forced towards activities characteristic of investment banks; this bore fruit when banks raised the general level of their staff skills. However, only in a small number of cases did this result in banks becoming involved in such activity on a permanent basis.

As far as banks were concerned, the legislation on financial restructuring allowed them to avoid the likelihood of serious crisis. More importantly, banks involved in the implementation of this legislation over the last few years have already been partly privatized, and have recorded no renewed increase in the share of insolvent credit in their portfolios. Perhaps this is due to the generally good outlook in the Polish economy. The experience that banks have gained over the last few years has also been important.

In 1991, a plan for the privatization of Polish state banks was outlined. Sale by public tender on the Warsaw Stock Exchange was accepted as an inseparable element of this form of privatization. However, due to the shallowness of the capital market, the unstable nature of the stock market, the complicated nature of such operations and also political resistance, only four of the nine banks formed from the old NBP and one so-called specialized bank (BRE) have been privatized up to the present time.

Six years after the transformation began, most of the banking system still remains under state ownership - for we are dealing here not only with the five remaining

un-privatized banks of the original nine, but also with the largest Polish banking institutions - PKO SA., Bank Handlowy w Warszawie SA., PKO BP, BGŻ and similar entities as well as with state shares in already "privatized" banks. Many perceive this situation as a restraining factor on the transformation process in the banking sector. Also highly significant is the reluctance of Poles to allow the financial sector to fall into the hands of foreign capital, an attitude not only typical of Poland. As a result, foreign investors have managed to acquire a controlling share in only three privatized state banks - BŚ, WBK and BRE. The liberal licensing policy of the NBP, however, has resulted in over thirty financial institutions from all over the world entering the Polish market. Moreover, most of them have usually limited their activities to building "bridge-heads" and have not expanded their operations further. In this situation, trends towards consolidation have appeared from both the government and the banks themselves in the form of the NBP and Ministry of Finance offering incentives to stronger banks to take over weaker ones experiencing financial difficulties or even already liquidated. Earlier, the large, private Economic Initiatives Bank, which was still controlled by Polish capital, began to show trends towards consolidation, which in reality meant towards creating a banking group centred around itself. The state-managed "consolidation from above" programme was also launched, which led to the formation of a new banking group comprising PKO SA and three banks from the nine formed from the NBP. Moreover, while the next bank was being prepared for privatization - PBK in Warsaw - another group began to take shape centred around five institutions (four banks and an insurance company) that had expressed a readiness to link up together.

The need for consolidation is hardly questioned by anyone in Poland<sup>9</sup>. It is enough to mention that when Petrochemia Płocka (the largest Polish oil refinery) opted to use Polish banks to finance its construction of a hydrocracking installation, which was to cost USD 400 million, Bank Handlowy had to form a syndicate with fourteen other Polish banks to supply USD 260 million of credit.

The process of consolidation - from above or below, with or without privatization beforehand - was and still is a subject of fierce debate. The fact is, however, that consolidation is taking place and being directed without the participation of foreign capital.

From the point of view of the present analysis, which concentrates on the relationship between banks and companies, the above process is of some importance. In the long term, after consolidation has successfully been carried out and all banks have been privatized, the latter will be able to take a more active part in financing modernising investments and also have a more active influence on companies. In the short

9. For a summary of the theoretical debate on this subject, see Solarz [1996].

term, however, Polish banks will be absorbed by these complex processes and probably will not be inclined or able to invest capital in enterprises.

This situation in itself is not unfavourable. Polish banks are still at the stage of looking for the most effective way of intervening in the economy. After all, if banks become too heavily involved in controlling non-financial entities, this may lead to weaker credit discipline and a general decline in management standards.

## CONCLUSION

The systemic transformation period has imposed fundamental changes of a diverse and multidirectional character on Polish enterprises. Although the pro-market orientation is clearly in the ascendant in Poland, some unexpected phenomena have appeared which are untypical of highly-developed countries or even threatening for the consolidation of the market economy. Let us try to arrange these phenomena in some order and on this basis assess their prospects:

A. A consistently implemented programme of macroeconomic stabilization has forced most enterprises (including un-privatized ones) to adapt their operations to the requirements of the market economy. The **restructuring process** has been broad in character, embracing nearly all aspects of a company's operations. As a result, many of them, and thus also the Polish economy as a whole, can now take advantage of the development opportunities which have appeared as a result of the systemic transformations. The **defensive**, and therefore quite superficial, range of changes may however prove insufficient when the Polish economy opens up completely, which indeed will happen even before Poland joins the EU. Therefore, it is necessary to continue adjustments of a **strategic** character which will enable wide-ranging changes to be carried out in production technology, production profiles and management techniques. The privatization of enterprises is a necessary condition of such changes. From an economic and technical point of view, many Polish enterprises are now well prepared for these transformations.

B. As a result of the concurrence of different circumstances (social resistance, indecision in economic policy, and certain objective factors) **enclaves of the non-market economy** have appeared within the economy as a whole. These enclaves are oriented towards rent-seeking and not towards rationalizing their economic activities. They represent a serious danger due to the increasing budgetary costs of maintaining them, the inflationary impulses they create, and, most of all, their demoralizing, ostentatious effect. Tolerating their existence or allowing new enclaves to be created may



undermine the entire process of systemic transformation. However, it should be noted that attempts to isolate these sectors and prevent their problems from spreading directly to other branches of the economy have to a certain extent been successful. While the state tolerates the mass failure of these branches and enterprises to meet their tax obligations, or even their contributions to the national pensions system, banks balk at granting them credit, unless specific guarantees are taken into consideration and the majority of suppliers have worked out sufficiently effective ways of enforcing debts. We can therefore say that the state has directly taken on the burden of maintaining these enclaves and in general they only have an indirect influence on the rest of the economy. The maintenance of these enclaves of the non-market economy<sup>10</sup> - traditional branches sheltered from the effects of the market economy - is directly linked to Poland's ability to integrate with the EU. In the European Agreement on associate membership, specific schedules exist for "opening up" the steel and petroleum industries, the banking sector, etc. Any lack of progress in restructuring these spheres, and any attempts to prolong the period of protection, will represent an obvious hindrance in Poland's negotiations over the terms and conditions of EU membership.

C. Privatization of the Polish economy is proceeding differently from the way reformers had imagined at the beginning of the 1990s. Initial privatization has dominated this process and, as a result, newly-emerging private firms are rapidly strengthening their position in almost every sphere of the economy. The most dynamic of them are growing into powerful forces capable of competing with "traditional" units, i.e., state or privatized entities.

Privatization has contributed to the emergence of a still fairly small, but fairly well functioning capital market, has improved the allocation of resources for the economy as a whole and is encouraging economic modernization. The emergence, as a consequence of privatization, of enterprises dominated by "insiders" - managers and staff - whose operational goals cannot fully accord with the long-term requirements of the market economy, is a cause of alarm for many. Another process that can also be observed, however, is the gradual concentration of ownership in employee companies and their transformation into fully-fledged companies with foreign investor participation.

As a result of the fairly slow pace of state property privatization, Poland has avoided the rise of complex economic organisms and non-transparent organizational and ownership structures (e.g., cross-ownership). The capital market, banks through

10. Delimiting these enclaves, i.e., defining their criteria, on the basis of which we would be able to include particular branches, sub-sectors and individual enterprises within them appears highly necessary from the point of view of political economy. At the same time, it represents a serious research challenge both on the conceptual (choice of criteria) and practical (measurement) levels.

their role as financial intermediaries, and enterprises themselves, have remained separate and independent. This has beneficial consequences from the point of view of shareholders managing and supervising their firms. On the other hand - faced with a weak capital market - the problem arises of how and when banks can intervene in enterprises.

Banks, after the very difficult initial period of restructuring, have managed to impose discipline on their own operations as well as on their clients. The financial restructuring programme has allowed them to clean up their balance sheets and strengthen their capital base. In general, banks have avoided any wide-scale engagement in investment-type activities, despite the investment incentives following from the legislation on financial restructuring, and are leaving this field open to other financial institutions. The creation of banking groups (consolidation), together with privatization, are regarded, probably quite fairly, as the main priorities in the present period. This is because Polish banks are presently expecting a difficult period of adjustment to the requirements of a fully open market. The advances made up till now in the Polish banking system, although certainly insufficient in the long term, have in general nurtured a pro-market re-orientation in enterprises.

The micro-economic dimension of privatization contains a wealth of various phenomena and trends. Analysis of its character produces a heterogeneous picture that prevents us from offering any simple assessment. Are the operational aims of Polish firms more and more in accordance with a market orientation - towards profit, development and the desire to increase market value? Are the firms being formed in the privatization process characterized by financial flexibility and an ability to absorb organizational and technological innovation? Are the emerging ownership structures sufficiently transparent to make external supervision of management activity possible? We cannot offer any unequivocal answers to these questions, but we should always raise them, treating them as indicators of the maturity of the Polish economy in its micro-economic dimension.

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**Chapter III**

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**THE LEGAL DIMENSION OF  
EUROPEAN INTEGRATION**

## THESES

- A great deal of Polish law is still not grounded in the precise and effective procedures necessary for it to be compatible with Community law. Polish law still contains a number of regulations which prevent the free exchange of goods, services, capital and labour.
- Due to the absence of appropriate constitutional provisions, Poland is not ready to introduce those limitations on its sovereignty entailed by accepting the rights and responsibilities of EU membership.
- As far as the convergence of legal cultures is concerned, Poland has a high integrative capability. This concerns, among other things, the principles of legal discourse, including procedures for interpretative discourse, the role of lawyers in society and professional ethics.

Poland's intention to join the process of European integration found legal and institutional confirmation in the European Agreement on Association with European Communities signed on 16 December 1991. Poland has since taken the first steps towards implementing an organized integrative policy, based on appropriate legal procedures. Thus, the process in question had already begun during the initial phase of the transformation of the Polish legal system. On 29 December 1989, an amendment was introduced to Article 1 of the Constitution of 22 July 1952, which reads: "The Republic of Poland is a democratic state, based on the rule of law, and implementing the principles of social justice". It was only natural that the process of integration should coincide with the formation of a state based on the rule of law (*Rechtsstaat*). The term "a state based on the rule of law" entered legal language and also made its appearance in political-ethical discourse and the language of the law. It became synonymous with reforming the state so as to protect the individual from the arbitrary actions of the authorities. In the social dimension of the transformation, the category of a state based on the rule of law became supplemented with the idea of a civil society; in the economic dimension - with the idea of a market economy, and in the political dimension - with the concept of a democratic political system.

Integration in the social, economic and political dimensions takes place largely through the use of legal instruments. There are, however, specifically legal issues that crop up in the integration process, and it is such issues that the present study is concerned with. The problems in question concern the issue of what is referred to in juridical literature as "the characteristics of the legal order". The category of legal order can also be found in Chapter 3 of Part 5 of the Association Agreement. This group of problems is only partly concerned with the description of specific legal regulations: the idea of the Community's legal order is a broader category that stems from European legal culture.

Poland's legal integrative capability should thus be seen as resulting from the interaction of two factors: (i) the level of development of legal institutions, and (ii) the maturing of legal discourse within these institutions, based mainly on the rules worked out by domestic legal culture.

It can be easily seen that the traditional, positivist model of legal study - based on the "formal-dogmatic" method - is insufficient if integrative capability is understood in this way. Legal positivism tends to view the law in naturalistic terms, completely ignoring its cultural and communicative dimensions. The specificity of Community law requires supplementing this approach - constituting a classical element of legal thought - with a certain type of legal hermeneutics in which the law is construed as a communicative object - the outcome of an argumentation presented within a cul-

turally specified discourse. This explains the division of the present chapter into two parts: an institutional analysis concerned with the approximation of laws; and an analysis of legal cultures, together with a comparison of the rules characteristic of the discourse taking place within these cultures, mainly in the field of legal interpretation.

Such an approach alleviates yet another problem. Today, any discussion of integrative capability has to take place in conditions of fundamental change within the Union, which is preparing itself to admit new members. Barely two years after the Treaty on European Union came into force, its conceptual content has once again become the subject of heated debate. Member-states have failed to reach a consensus on many legal arrangements. Some areas of the European law are lacking in precision, which makes it difficult to assess the progress of harmonization in associate member-states. From this point of view, assessing the integrative potential of Polish legal culture is particularly important. We may expect that when fundamental reform of legal institutions has been completed, the legal discourses conducted within those institutions will bear the brunt of integration. Thus, an analysis of legal structures alone is insufficient to assess the integrative capability of the Polish legal system. We could even claim that a well-developed legal discourse, based on procedures and principles similar to those existing in member-states, will offset any future shortcomings and irregularities in legal regulations.

From a methodological point of view, we should note that while any analysis of the institutional dimension only requires selecting those problems relevant to the integration of legal systems, analysis of the legal-cultural dimension necessitates the introduction of legal and theoretical assumptions. Indeed, analysis of such a complex cultural object as legal discourse is impossible without adopting certain broader theoretical assumptions.

## 1. TRANSFORMATION OF LEGAL INSTITUTIONS: ADJUSTMENT OF LEGAL REGULATIONS

### 1.1. Consequences of the European Agreement

With regard to Polish law, the binding character of the Agreement does not follow directly from constitutional norms. The Constitution of 1952, as amended on 7 April 1989 - which was in force when the European Agreement was concluded - said nothing about the position of international treaties in the Polish legal system. This question has been addressed, on the other hand, by the Polish courts. A review of judi-

cial decisions on the applicability of international law to the Polish legal system (based on the decision of seven judges of the Supreme Court of 12 June 1992, II CZP 48/92, OSNCP No. 10/1992, Item 129) indicates that when the Sejm (the lower house of parliament) passes an act approving the ratification of an international agreement and the agreement has been published in the official gazette (*Dziennik Ustaw*), it should be honoured by Polish courts *ex proprio vigore* (by its own force). It is unclear, however, whether treaties take precedence over domestic law in cases where the two conflict. Of all the courts in Poland, only the Supreme Court of Administration (NSA) has so far ruled - on 23 November 1990 (Case II S.A. 759/90) - that ratified agreements, published in *Dziennik Ustaw*, take precedence over domestic law in such cases.

Concerning the binding force of the European Agreement on the Polish legal system, we can unequivocally state that Polish courts - recognizing the self-executing character of the Agreement - are obliged to apply its provisions *proprio vigore*. However, it is far from clear whether, in cases where this treaty conflicts with Polish law, priority should be given to the Agreement [Daranowski 1996, pp. 59-70]. It should be stressed, however, that the wording of Article 68 of the Treaty, in which Poland undertakes to ensure to the best of its endeavours that future legislation conforms with that of the Community, likewise allows Polish courts to give the provisions of the Treaty precedence over Polish law, if the two conflict.

### 1.2. Institutions Appointed to Support Integration Processes in the Legal Sphere

Immediately after the Agreement was signed, a number of institutions were created to supervise the implementation of its provisions. Responsibility for their general coordination became the function of the Government Plenipotentiary for European Integration and Foreign Aid, who was to cooperate with the Minister of Foreign Affairs and other relevant ministers and heads of central offices. The Plenipotentiary's tasks were defined by unpublished Resolution No. 11/91 of the Council of Ministers, dated 26 January 1991, which established the office of Government Plenipotentiary for European Integration and Foreign Aid. Responsibility for political dialogue with the EU was entrusted to the Minister of Foreign Affairs. In accordance with the Council of Ministers' recommendations (Council of Ministers' Resolution No. 4/94 of 1 February 1994 on the enforcement of the European Agreement granting Poland associate member status), the Minister was obliged to take political action aimed at securing full EU membership. The Minister of Foreign Economic Relations was put in charge of implementing the trade-related provisions of the Agreement. In addition, in 1994 all central

offices began to organize departments which would act in cooperation with the European Communities. An Inter-Departmental European Agreement Team under the leadership of the Government Plenipotentiary for European Integration assumed responsibility for information flow between these units. In addition, a number of informal committees responsible for coordinating integrative measures were established in the central offices. The most important of these committees in the legal dimension is the K-4 Committee, set up by the Ministry of Foreign Affairs (and corresponding to the K-4 in the European Union), which is responsible for cooperation in the field of justice and legal enforcement. Integrative institutions also exist in Parliament. The Sejm Committee for the European Agreement has been functioning since 1992, and a Subcommittee for European Integration has been part of the Foreign Affairs Committee of the Senate (the upper house of parliament) since 1995.

### 1.3. The "White Book" Compilation Stage

In accordance with the Sejm Resolution of 4 July 1992 (Monitor Polski, No. 2, Item 165), the adjustment measures are based on the "Programme for adjusting the Polish economy (November 1992) and the Polish legal system (January 1993) to the requirements of the European Agreement", prepared by the Government Plenipotentiary for European Integration and Foreign Aid. The above-mentioned resolution obliged the Plenipotentiary's Office to present an annual report on the implementation of the programme. The report was submitted first to the Council of Ministers and - after its acceptance - was reviewed by the Sejm Committee for the European Agreement. On 5 September 1995, the "Report on the implementation of the programme for adjusting the Polish economy and legal system to the requirements of the European Agreement in 1994" was approved by the Council of Ministers, which simultaneously adopted a "Schedule of measures adjusting the Polish economy and legal system to the requirements of the European Agreement in 1995-96". The schedule defined the tasks and responsibilities of the organs of state administration and certain central offices engaged in the process of European integration and responsible for implementing the provisions of the European Agreement. It specified those institutions which would cooperate in executing particular tasks, set deadlines for the completion of work, and defined the nature of the final result.

With regard to adjustment procedures, two more Resolutions of the Council of Ministers - Nos 16 and 133 - were of particular importance. The unpublished Resolution No. 16 of 26 March 1994 (on additional procedural requirements concerning draft

government legislation, in view of the need to meet the criterion of compatibility with European Union law) introduced mandatory examination of legislative acts to ensure their compatibility with EU Law. This became the responsibility of various ministries and the central organs of state administration.

Following the "White Book on the integration of associated countries with the EU internal market" (Cannes, June 1995), approved by the European Commission, Polish adjustment procedures became accordingly modified - by the Council of Ministers' Resolution No. 133 of 14 November 1995 on fulfilling the obligations resulting from the Agreement to adjust Polish law to EU legal norms and in connection with the measures necessary to implement the recommendations of the "White Book" on the integration of Central and East European associate member states with the Single Market of the European Union. The resolution obliged the Government Plenipotentiary to prepare a programme for adjusting Polish law to EU legal standards, as well as to coordinate its implementation. Chief and central organs were - according to their competence - charged with preparing work schedules comprising the following tasks: (a) compiling a list of Polish normative acts dealing with issues regulated by the normative acts of European law listed in the "White Book"; (b) determining the degree to which Polish law complies with European Union legal standards; (c) determining those areas of Polish law which are of priority importance in the integration process with the Single Market and drafting necessary organizational changes.

Both Resolutions No. 16 and No. 133 should be regarded as important steps towards harmonizing Polish law with the legal system of the European Communities, but - it should be noted - they did not ensure full harmony, as they excluded acts which were not drafted by the government administration, such as government bills amended by Parliament in the course of legislative proceedings or acts promulgated on the government's initiative before the resolutions in question came into force.

Furthermore, Polish integrative procedures do not include any explicit requirement that bills initiated by members of parliament or by the President should be assessed as to whether they comply with the obligation assumed under Art. 68 of the Agreement. Thus, relatively clear harmonization procedures exist only within the executive branch of government. However, the rules set up by these procedures are not always observed. There are frequent cases of bills lacking the introductory opinion required under Sections 2 and 3 of Resolution No. 16. What is clearly still missing is a single institution that could examine and evaluate all legislative work from the point of view of the *acquis communautaire*.

#### 1.4. Developing New Legal Arrangements to Enhance the Ability of the Polish Legal Order to Integrate with the European Order

It should be stressed that Articles 68 and 69 of the Agreement give Polish legislators considerable freedom to set the pace for adjusting Polish law to Community law. Only in certain areas were deadlines set for full harmonization.

According to the Agreement, legislators should work toward harmonization "to the best of their endeavours". The main objective of approximating legal regulations is not only to eliminate obstacles to Poland's economic integration with EU, but also to clear the way for Poland's membership in the Union. One of the Polish negotiators who prepared the Agreement stresses that including this fundamental goal in the preamble to the Agreement involved much intense negotiation [Sołtysiński 1996, p. 31].

Thus, harmonization should be based on the "Legislation of the Communities", i.e., the three founding treaties merged in the Single European Act, the Maastricht Treaty, member states' accession treaties, and other international agreements to which the European Communities are a party. These are the "primary laws of the Communities". Harmonization also embraces the law-making acts of Community organs, i.e., regulations, directives and decisions. It is debatable, on the other hand, whether the legal order of the Communities also comprises the recommendations and opinions of the European Council and Commission and the decisions of the European Court of Justice and court of first instance, which in actual fact function as precedents [Koopmans 1982, p. 27].

This approach to Community law has been adopted as the basis for Poland's harmonization efforts. However, people often tend to forget that in Polish law, too, the scope of constitutional sources of the law is uncertain. The Polish system of sources of law is clearly an open one. Harmonization processes apply only to those acts of law which are known with certainty to belong to the source system. These include, above all, acts of Parliament, regulations and orders. Under the circumstances, it is of utmost importance that control should be extended to quasi-legal acts which have earned the collective nick-name of "red tape law". Such acts play an important role in the Polish legal order and may in practice block any attempts to apply the recognized principles of Polish law. This phenomenon is particularly conspicuous in the field of financial law. We believe that the judiciary has a special role to play in eliminating this pathology, as the functioning of courts in Poland is regulated by acts of Parliament only.

The term "approximation of laws" used in the Agreement places Poland under no obligation to faithfully emulate Community law [Sołtysiński 1996, p. 32]. Poland thus retains a relatively high degree of legislative autonomy.

Membership in the EU implies limited sovereignty for member-states, which means that domestic legal systems must accept norms that originate from sources other than national parliaments or any other domestic law-making body.

The above principle is not formulated explicitly in the Treaties. But in the well-known case of *Van Gend & Loos vs Nederlandse*, the Court of Justice of the European Communities did present the general opinion that "Member-states have restricted, although only in certain matters, their sovereign rights for the sake of the Community" (Case 26/62, ECR 1963: 6). The Court confirmed this position emphatically during the *Flaminio Costa vs ENEL* case: "If member-states have established the Community for an unlimited period of time and equipped it with institutions, a legal personality and capacity of its own, a capacity for international representation, and, above all, actual prerogatives resulting from limiting the competence or delegating the rights of particular countries for the sake of the Community, then they have limited, although only in certain matters, their sovereign rights and created thereby a system of legal norms which are binding both for their citizens and themselves" (Case 6/64, ECR 1964:1145).

Limitations on the sovereignty of member-states are visible in areas usually reserved for organs of national sovereignty, i.e., in the drafting and implementing of laws. By investing Community organs with the right to set up norms which are binding both on member-states and directly on their citizens, member-states have transferred a considerable part of their legislative functions to the Communities' organs. The Court's position ensures "respect for the law in interpreting and applying the Treaty" in certain courts of the member-states.

In view of the supranational character of the Communities, the founding member-states exercised their constitutional right to delegate certain attributes of their sovereignty to an international organization. Countries which joined the Communities later on have either used similar provisions contained in their constitutions, or made appropriate changes in their legal regulations before signing the treaties.

The notions of the sources of Community law and its applicability in domestic law can be classified neither within the model characteristic of domestic law, nor within the model of international public law. A considerable number of Community legal norms are in force in domestic law and don't need to be ratified or accepted in any way, and provide the grounds for direct action by state organs. Supplementing this principle, known as "direct applicability", is the principle of the "direct effect" of Community law norms, i.e., their capacity to directly establish subjective rights. These characteristics of Community law, combined with the adopted principle of the supremacy of Community over domestic law, leave little room for doubt that the sovereignty of member-states has been limited.

The Polish Constitution does not allow for the nation's sovereignty to be limited or any of its attributes to be delegated to an international organization [Wójtowicz 1996, p. 42]. Article 2 of the 1952 Constitution, which still remains in force, only states that "in the Republic of Poland, sovereign authority is invested in the Nation". It follows that Poland's integrative capability crucially hinges upon appropriate amendments being made to the Constitution.

Since accession to the EU entails limiting sovereignty, it has often been postulated that any accession agreement should be subject to stricter ratification procedures than those at present in force. Consent should involve either a qualified majority in the Sejm, or a referendum [Wójtowicz 1996, p. 43].

• With regard to Polish constitutional law, Poland is not prepared to limit the execution of its sovereignty, although this is necessary for full integration with the EU. It should be noted, however, that appropriate amendments to the Constitution which would make this possible have already been prepared. In practice, accession to the EU will require either a new Constitution to be passed beforehand, or, at least, amendments to be made to the existing one. However, the possibility of making the required changes is not a purely legal problem, as it is also linked to the political dimension of integration [Działocha 1996, pp. 5-15].

Similar conclusions can be reached by analyzing how human rights and civil liberties are understood in Polish constitutional law. Submission of Poland's ratification document of the European Convention for the Protection of Human Rights and Fundamental Freedoms (with additional protocols 3, 5 and 7) to the Secretary General of the Council of Europe on 19 January 1993 was a major step on the way to meeting the criteria of Article F of the Maastricht Treaty. Another important step was the recognition, as of 1 May 1993, of the right to individual complaint (Art. 25) as well as the acceptance of the jurisdiction of the European Court of Human Rights. Poland ratified protocols Nos. 1, 4, 9, 10 on 10 October 1994 - thus undertaking to respect the rights guaranteed by the Convention - and subjecting its courts to external control in this respect (including individual complaint). Protocol No. 6 (abolishing capital punishment) has not yet been signed.

The obligations undertaken by Poland are not as yet reflected in the Constitution. The "Small (provisional) Constitution" ignores this issue; as a result, the provisions of the 1952 Constitution were retained, with added guarantees for the freedom of economic activity (Art. 6), protection of property, the right of inheritance, and full protection of personal property (Art. 7).

The lack of appropriate constitutional provisions with respect to human rights has been alleviated by the decisions of certain courts, particularly the Constitutional

Tribunal and the European Court of Human Rights. It is worth observing that the number of "Polish" cases submitted by the European Commission to the Court increased five-fold between 1992 and 1995 [Drzemczewski & Nowicki 1996, p. 162]. These decisions have led to the following principle being adopted: from the moment of Poland's entry into the Council of Europe, the decisions of the European Court of Human Rights in Strasbourg may and should be taken into account as an important source for interpreting Polish domestic law (verdict of the Supreme Court of 11 January 1995, III ARN 75/94, OSN Zb.U. No. 9 9/1995, Item 106). The Supreme Court of Administration, in turn, ruled in verdict II SA 35/91 that "fundamental international norms on basic human and civil rights must be seen as important guidelines for interpreting domestic law" [Łętowska, Łętowski 1995, p. 205ff]. The institution of the Ombudsman also serves to protect human rights in Poland.

Thus, the actual scope of protection for human rights and civil liberties is far more extensive. It follows that the issue of Poland's preparedness for institutional integration in the area of human rights and liberties must not be confused with the question of whether Poland respects these rights.

Paradoxically, then, the Convention assumes the role of a quasi-constitutional document. But, on the other hand, the legislative process often overlooks the fact that Poland has accepted the regime of the European Convention for the Protection of Human Rights. A case in point is the Foreigners Act, which finally took the form of an amendment passed on 5 January 1995. The original version of it had been declared unconstitutional by the Constitutional Tribunal, which, moreover, rules that it violated the Convention.

Despite these irregularities, the Convention inspires new legislative initiatives, particularly in the field of criminal law. Regulations providing for provisional arrest solely by court order came into force on 3 August 1996 on the strength of the Act of 28 June 1995 which amended the penal procedure (*Dziennik Ustaw*, No. 89, Item 443).

Nevertheless, incorporation of institutional arrangements directly into Polish law is extremely important, since a country admitted to the EU should undertake all the obligations following from the constitutional acts of the Communities and derivative laws. For the European Court of Human Rights, acceptance of the *acquis communautaire* entails accepting the declarations, resolutions and other acts adopted jointly by member-states in reference to the Communities - including those which pertain to protecting human rights.

Accession to the EU implies observing the rule of law, which afford citizens full human rights and fundamental civil liberties. This requirement is mentioned explicitly in Article 3 of the Statute of the Council of Europe, to which Poland was admitted on 26 November 1991.



Polish constitutional law includes regulations in keeping with these values. Article 1 of the Constitution, mentioned above, no doubt expresses the idea of democracy in a universal sense. Regulations defining the notion of a state based on the rule of law have been largely worked out by decisions of the Constitutional Tribunal (principles of: citizens' confidence in the state, protection of acquired rights, the right to fair trial and the right to be heard, prohibition of retroactive laws). Besides, the Constitution contains institutional guarantees of democracy, allowing citizens to participate in government through both indirect and direct democratic procedures.

The most important regulations in this field include Article 1 of the Constitution, the law on political parties, and the electoral law. These regulations ensure political pluralism to such a degree that the introduction of a one-party system would be unconstitutional. Another constitutional principle essential for maintaining democracy is the division of power, which is embodied in Article 1 of the "Small Constitution". This principle is not elaborated in detail by the constitutional provisions, but this is due to the instability of the political configuration within which legal institutions function. Both courts of law and judges have been guaranteed full independence. The structure of the judiciary in Poland is continually evolving. Basically, in all types of judicial cases, right of appeal to a higher court is available, with the sole exception of administrative cases, where the system is single-tiered. Organization of a two-tiered system of administrative courts is being hampered by shortages of funds and personnel.

An important institution protecting the independence of courts and the guarantees given to judges is their professional self-governing association and its organ, the National Council of the Judiciary (Article 42 of the "Small Constitution").

In fulfillment of Article 111 of the Agreement, preparations were launched in 1995 for Poland's accession to the Lugano Convention of 16 December 1988 on jurisdiction and enforcement in civil and commercial cases. In spite of having submitted extensive information about the principles of its civil law, Poland has not as yet been invited to join the Convention. On the other hand, Poland has acceded to most of the conventions recommended by the EU in the field of criminal law.

Thus, Polish constitutional law only partly meets the requirements laid down for countries applying for membership in the EU. The most serious problem, it appears, is a lack of regulations allowing some attributes of sovereignty to be delegated to an international organization.

The introduction, in Part V of the Agreement, of the chapter on "The Harmonization of Legal Regulations" has important consequences for the choice of the integration strategy. The Agreement does not call for conducting the entire integration process within a legal framework, but only indicates - in Article 69 - areas in which

legal regulations are necessary. Consequently, the integration process does not have to be subordinated in its entirety to legal considerations. Conversely, the Agreement suggests that legal measures - associated by their very nature with state coercion - should be applied with caution to integration problems. The legal dimension is but one aspect of integration and it is up to Poland to decide - barring the exceptions listed in Article 69 - when and to what extent economic, political or legal measures should be applied (taking into account the specificity of its economic, political and social circumstances).

In choosing legal measures, it may not always be necessary to create a new legal institution, i.e., a subset of legal norms forming a functional whole by virtue of regulating - in a possibly exhaustive way - some sufficiently important type of social relations [Ziemiński 1980, pp. 34-35]. Undoubtedly, many problems can be left to legal discourse, which is the subject of the second part of this chapter.

The Single Market is characterized by four freedoms: the freedom of movement of goods, services, capital and labour. The priority areas in the harmonization of law, specified in Article 69 (customs law; company law; banking law; company accounting and taxation; intellectual property; employee protection; financial services; competition law; protection of the life and health of people, animals and plants; consumer protection; indirect taxation; technical regulations and norms; transportation; environment) are largely concerned with these very freedoms.

When reviewing the progress of the Polish legal order toward harmonization, special attention should be paid to the above-mentioned areas. We have no intention of competing in this field with the authors of the "White Book"; therefore, we shall restrict our study to analyzing the legal principles which are beginning to penetrate into these areas, and to indicate those domains where the Polish legal system is absorbing new laws from the legal order of the Communities. For this reason, the present work ignores the problem of harmonizing technical norms. It should be noted that the Agreement creates no obligation to harmonize procedural regulations. In all probability, the fundamental standard in this field will have to derive from the adopted concept of human rights. Nor does the Agreement indicate the need to harmonize systems of civil law. This is probably due to the fact that Polish civil law stems from the same tradition of Roman law which gave rise to the civil law systems of member-states.

Our discussion of selected areas of law will not cover the entire history of the harmonization process, but will be limited - wherever possible - to the last two years of the Agreement's functioning.

Evaluating the capacity of the Polish legal order to integrate with European law in general terms, we should stress that Polish law does not explicitly mention liberties characteristic of legal orders linked to the Single Market. We see this as a draw-

back which prevents Polish law from being applied in the spirit of Article 68 of the Agreement. At the very least, introducing appropriate statutory declarations into Polish law would enable coherent legal institutions to be established. After all, this would not necessarily mean that all the liberties in question would be granted immediately and without restriction. It is obvious that - mostly for economic reasons - full enjoyment of these liberties would be impossible. However, without subjective rights being clearly indicated, all regulations that attempt to bridge the existing gaps in Polish law will inevitably be fragmentary, as no coherent interpretation is possible. We are thus left with the impression that the significant shortcomings of Polish statutes, presented below, stem from a lack of certain fundamental decisions on adopting certain liberties associated with European law.

**Legal problems connected with the free transfer of goods and services.** Regarding the free transfer of goods and services, one of the most important areas is **customs law**. The current customs law, promulgated by legislation passed on 28 December 1989, has come in for much criticism - mainly because of numerous loopholes, the absence of a precise conceptual framework, excessive ministerial prerogatives, and the lack of any legible classification of goods. Its application presents problems for citizens and state organs alike, which is attested by numerous verdicts of the Supreme Court of Administration that have overturned the decisions of the customs authorities. Polish customs law clearly departs from European standards. Yet, in the field of customs law, countries applying for membership must satisfy the very tough requirements set by the EU. Thus, promulgating a new customs law is among the top harmonization priorities. Only the import tariff currently in force applies the Combined Nomenclature used in European Union countries.

Harmonization of the Polish customs system is also influenced by those international agreements concluded by Poland which are also binding on the EU. These include: annexes to the Kyoto Convention, the Istanbul Convention and the International Convention on the Harmonized System of Goods Classification and Coding. A very important impulse for harmonizing customs law is Poland's accession to the Uruguay round of the GATT negotiations, and the consequent adoption of the GATT Code of Customs Value. The Code allows for the use of explanatory notes, which specify in detail the order in which valuation methods are to be applied, thus preventing the possibility which presently exists of rejecting any invoice presented by an importer. Poland also has to give up using minimum customs values, as valuation must be based on sound calculation.

Applying the Code will standardize such important procedures as the valuation of license fees and related costs, cash discounts, transportation and insurance costs,

interest on trade credit, the customs value of information and software carriers. Harmonizing Polish law with GATT norms will require much legislation to be drafted over the next two years, most of which will be related to customs regulations.

Another significant factor in the harmonization process is Poland's accession to the Convention on Common Transit Procedure and the Single Administrative Document Convention. The "transit" procedure enables the use of a single guarantee system for shipping goods throughout all European countries, involving, among other things, customs deposits in banks or insurance companies.

We should thus conclude that the process of harmonizing customs law will take another couple of years, even though in July 1995 the government submitted a draft of a new customs law, together with draft executive provisions, and the new customs law was passed by the Sejm on 8 November 1996. Legislative work has hardly finished, though. The new Customs Code is patterned on a similar document adopted as the European standard. It introduces numerous categories hitherto unknown in Polish law, such as: customs debt, transit, customs destination, periodic declaration, or the right to binding tariffic information. Completing the legislative procedure will probably mark only the beginning of a lengthy training period for the customs authorities and citizens in learning how to apply the new Customs Code.

In the field of **company law**, the Polish Commercial Code does not depart significantly from similar regulations in force in EU member-states. There was thus no need to introduce the basic conceptual categories of company law into the Polish system, or to carry out any harmonization procedure. The Polish parliament also decided - as early as 1988, and again in 1991 - to introduce a statutory form of regulation pertaining to companies with foreign capital participation. The last-mentioned legislation was most recently amended on 29 March 1996 (amendment to the Act on Companies with Foreign Capital Participation and certain other Acts; *Dziennik Ustaw*, No. 45, Item 199). Among other things, the amendment specified conditions for acquiring shares in companies with foreign capital participation by a legal person representing the state, when the person in question brings in non-pecuniary initial capital in the form of an enterprise or part of one. In practice, this left considerably more room for cooperation between Polish state enterprises and foreign economic entities, and, consequently, gave foreigners new opportunities for establishing enterprises in Poland. Recent harmonization efforts have also been made to comply with the Council Directive of 9 March 1968 (68/151/EEC) on disclosure requirements for companies. The aim of this directive is to protect the interests of shareholders and third parties by publishing information about companies. To adjust Polish law to its provisions, two acts were passed on 20 December 1995. The first concerned the publication of *Monitor Sądowy i*

*Gospodarczy* [The Judicial and Economics Monitor - containing data on registered commercial companies]. The second was an amendment to the Commercial Code. Draft legislation on setting up a court register for companies has also been prepared, which will largely satisfy the requirements of the Council Directive of 13 December 1976 (77/91/EEC) obliging companies to disclose and publish data on their capital.

Community law lays particular emphasis on the protection of intellectual, industrial and commercial property. This area was accordingly mentioned in Article 69 on an equal footing with regulations on the free transfer of goods and services, which are of fundamental importance to Poland's association with the Community. With regard to protecting intellectual, industrial and commercial property, Poland has undertaken to achieve, within five years of the Agreement coming into force, a level of protection comparable to Community standards, as well as to introduce similar methods for vindicating rights in this field (Article 66 of the Agreement). In accordance with Article 1, Point 2, of the Paris Convention on the protection of industrial property, this type of property comprises: patents, utility designs, industrial designs, trademarks, service brands and trade names. This list should be supplemented - in accordance with the Berne Convention and the Convention establishing the World Intellectual Property Organization - with literary and artistic property and goods created thanks to human intellect in industry, culture and science. Thus, the scope of intellectual property protection in Poland needs to be significantly extended.

Legislation on copyright and similar rights, passed by the Sejm on 4 February 1994 (*Dziennik Ustaw*, No. 34, Item 234, with subsequent amendments), enables Poland to meet many of its obligations under the Agreement. The issue of "minimum conventional protection" is reflected in Article 7, which states that if the international agreements to which Poland is a party provide for broader protection than that envisaged by the copyright legislation, then the provisions of such agreements shall apply. In practice this implies accepting the scope of protection following from such agreements as the Berne Convention (the Paris Act of 1971) or the General Convention on Copyright Law (Paris 1971), and bilateral agreements which directly (*ex iure conventionis*) specify rules that apply when the scope of protection they provide does not follow from domestic law. The principle adopted in this legislation reflects the level of protection that resulted from the General Convention, the Berne Convention (the Paris Act of 1971), and the Rome Convention (1961) for domestic artists, performers and producers. It is also takes into account certain EEC Directives, and in particular Directive 1405 from 1991 on the protection of computer software, Directive of 19 November 1992 on the rights of leasing and rental and similar rights, and Directive of 29 October 1993 harmonizing the term of copyright protection and certain related rights. Cur-

rently, the harmonization of Polish law with regard to copyright is at the stage where legislation is being enforced through the issue of executive provisions. An important step in this direction was the granting - as of February 1995 - of licenses to associations applying for the right to act in the field of collective copyright management. Until now, the sole organization functioning in this capacity has been the Association of Authors (ZAiKS). It should be stressed that Poland is preparing to ratify the Rome Convention, but no date has been set for ratification as yet.

The Agreement states (Article 60, Point 1) that Poland will apply for admission to the Munich Convention of 5 October 1973 on granting European patents, even though, strictly speaking, the Convention does not form part of Community law. Accession to the Convention does not depend on Poland alone, as Poland must first be invited by the Administrative Council of the European Patent Organization, and such invitation is conditional upon Poland accepting the three Strasbourg Conventions and adjusting Polish law in line with European patent law. The amendment to the Innovation Act made in 1992 is insufficient in this respect. Alongside adjusting patent law, an industrial property law is being prepared. The draft, prepared by the Patent Office of the Republic of Poland, has already been accepted by the Legislative Council. This follows from the recommendations of the EU "White Book" and takes into account Council Directives No. 89/104/EEC (trademarks) and No. 87/54/EEC (protection of semiconductor circuit topography), Council Regulation No. 1768/92 (additional certificates for vegetable products), and Order COM/93/344 of the Parliament and Council on the legal protection of designs. Experts unanimously agree that this draft helps adjust Polish law to the European patent system [Szajkowski 1996, pp. 112-118]. Since the Agreement states that - in the case of the protection of intellectual, industrial and commercial property - the adjustment process should be completed within five years of coming into force, it is necessary to ensure appropriate legislative priorities for the laws being prepared.

The free transfer of goods and services was also indirectly influenced by the amendment of 8 June 1995 to the Insurance Services Act (*Dziennik Ustaw*, No. 96, Item 478), which considerably harmonized Polish insurance law with European standards. The amendment established a number of new institutions for supervising insurance services and customer protection, conforming to Community law. We should also mention the legislation on export contract insurance guaranteed by the State Treasury.

**The legal framework for competition** on the goods and services markets has been largely determined by two Acts: that of 24 February 1990, on the prevention of monopolistic practices (consolidated text published in *Dziennik Ustaw* of 1991, No. 89, Item 403), and that of 16 April 1993, on counteracting unfair competition (*Dziennik*

*Ustawa*, No. 47, Item 211). These two regulations largely harmonize Polish law with Community law.

By contrast, Polish legal institutions in the field of price control are clearly outdated. The legislation of 26 February 1982 on prices and the executive provision of the Minister of Finance of 17 December 1988 are still in force. They are obsolete and contradict Community law. In this area, Community law has evolved detailed regulations and practices. The legal foundations of price control are provided by Articles 85 and 86 of the Treaty of Rome, while price-related procedures carried out by European Community organs are governed by Regulation No. 17. The European Court of Justice has ruled on numerous cases related to prices. A European legal doctrine exists in this area, too. All this should allow appropriate legal regulations in Poland, harmonized with Community law, to be relatively easily formulated.

Yet another aspect of goods and services transfer is **environmental protection**. In Poland, work in this field consists mainly in implementing economic instruments. However, Article 69 suggests that legal measures should also be undertaken. Legally speaking, the 1980 Act on Environmental Protection and Management is still in force. At the time it was passed, it was a modern instrument, but now it does not conform to European standards. The harmonization process in this field is at an early stage. Legislative drafts are being prepared to amend legislation on extraordinary environmental hazards, as well as introduce regulations on environmental impact assessment. The draft of a new law on the use of inland waters has had its first reading in the Sejm. The Council of Ministers has also submitted a bill on waste management to parliament. Work on a new environmental protection law, financed under the Phare project, is currently under way.

**Legal problems connected with the free transfer of capital.** Harmonization of **banking law** is one of the factors facilitating free capital movements. It also has a decisive influence on the quality of financial services offered. The Polish "White Book" states that considerable progress has been made in adjusting Polish law, but only in the sphere of safety regulations such as: bank licensing, solvency norms, credit concentration, the financial investments of banks, controlling the flow of bank assets, and money-laundering prevention. By contrast, the regulations on the scope of deposit guarantees are quoted as an instance of glaring incompatibility with Community law.

Generally, experts believe that Polish banking law still lacks the form typical of market economies, although harmonization in this area can be seen - to some extent - as a problem of secondary importance [Kosikowski 1996, p. 77; Fojcik-Mastalska 1995]. It needs to be said that the draft acts on banking law and on the National Bank of

Poland (NBP), submitted to the Prime Minister by the NBP, take into account EU legislation. Current work and debate on the draft banking laws reveal the political dimension of this legislative undertaking. The principal moot points include the consolidation and privatization of banks and the independence of the central bank. Polish law has to conform with the directives of the EU Council in this respect. Political controversies seriously hamper the legislative process, as the case of the draft NBP act shows with particular clarity. It is interesting to note that in Community law the dominant tendency is to strengthen the independence of central banks, while simultaneously promoting their integration. In this context, the Banking Guarantee Fund Act - modelled on EU arrangements - and the executive provisions concerning bank accountancy are hopeful signs.

Freedom of capital movement was greatly enhanced when Polish **foreign currency law** was liberalized under the Act of 2 December 1994 (*Dziennik Ustaw*, No. 136, Item 703). The changes were prompted not only by harmonization considerations, but above all by Poland's adoption of the new articles of the IMF statute - in particular, Article VIII. The Act introduced new notions into Polish foreign currency law, by introducing legal definitions of foreign currencies, hard currencies, the transfer of hard currencies to and from abroad etc. The definition of foreign currencies was extended to embrace international units of account, such as the ECU. The legislation allowed non-residents to purchase foreign currencies at exchange-offices; its underlying principle is the internal convertibility of the zloty in all currency transactions in goods, services and intangible assets. Regulations on exchange-rate control were liberalized. An important amendment to the above-mentioned law was made in 1995, when the obligation imposed on economic units to convert all foreign currency receipts into zlotys (at a duly licensed bank) was waived.

On 16 January 1996, Polish foreign currency law was adjusted to OECD requirements by order of the Minister of Finance. Many changes were introduced, which liberalized the transfer of foreign currencies abroad, the acquisition of real estate abroad, investment abroad, and the purchase of foreign treasury bills or bonds. The considerable extent to which Polish foreign currency law has been harmonized with EU law over the past two years has been mainly due to Poland's accession to the OECD. It must be remembered, however, that the process of adjusting Polish law to the regulations contained in ca. 170 EU normative acts has only just begun. In view of Poland's economic situation, the pace of change will depend on the balance of payments. For this reason, Poland has not introduced into its laws the principle of free currency transactions.

Harmonization is also fairly advanced in the case of **securities law**. The Act of 22 March 1991 on public trading in securities and investment funds (consolidated text

published in *Dziennik Ustaw* of 1994, No. 58, Item 239) and its executive provisions take into account the relevant directives of the Council of the European Communities. It does not restrict in any way the purchase of securities on the Polish market by foreign investors or on foreign markets by domestic investors. Approval of securities for public trading is granted by the Securities Commission to domestic and foreign issuers on equal terms. The same goes for issue requirements and procedures. The accounting principles regulating the operation of entities engaged in the public trading of securities have also been harmonized with European law.

Numerous new legislative initiatives, regarding, among other things, capital requirements for broking houses, investment funds, and money laundering prevention should improve the quality of the securities market and harmonize it with European law.

The harmonization of Polish tax law has benefited from the fact that the harmonization process has generally proceeded in parallel with the creation of a tax system appropriate to the conditions of a market economy. As early as 18 September 1989, an agreement was signed between Poland and the European Economic Community on commercial and economic cooperation (*Dziennik Ustaw*, No. 38, Items 214, 215). Although this agreement placed Poland under no formal obligation to adjust its tax law to European standards, it indirectly fostered this kind of adjustment.

Direct taxes have not as yet been standardized within the EU. In particular, income tax - even though it is based on similar constructions everywhere - still differs considerably from state to state. However, the European Commission is trying to achieve uniformity in the sphere of corporate income tax. The principal aim is to create the same conditions for enterprises operating in different member-states. It can thus be concluded that harmonizing Polish tax law will present no problem as far as direct taxation is concerned.

Of all indirect taxes, value added tax is by far the most important. The structure of Polish VAT conforms, as far as principles go, to the common model of VAT set out by the sixth Council Directive. However, within the Communities, harmonization of VAT has also reached an advanced stage with regard to its details. Generally speaking, all the elements related to constructing and collecting this tax have been jointly agreed upon. What still needs to be unified are the rates. Polish regulations in this field differ from European ones in objective and subjective tax exemptions and the list of goods and services subject to reduced rates. Among objective exemptions, the exemption of unprocessed farm products is clearly at odds with Community regulations. As regards subjective exemptions, the turnover limit for such exemptions differs significantly from the limit of ECU 5,000 under European law. All in all, we can speak - albeit

cautiously - about the fairly advanced harmonization of Polish law with Community law in relation to VAT.

Excise duties in Poland differ from European regulations in that the list of goods subject to this form of taxation is far longer in Poland. No final harmonization has been reached in this respect among member-states, and so Poland is at a similar stage of this process. Still, the Council directives state that the only goods subject to excise duty should be mineral oils, alcohol and spirits, and tobacco products. Although the rates of excise duty applicable to these groups conform with the directives, there are many other types of goods subject to excise duty in Poland, where it functions as a kind of tax on luxury goods.

Some aspects of tax law in the area of direct taxation have an impact on foreign entities operating in Poland, and hence - indirectly - on capital transfers. From this point of view, an important step towards harmonization was taken on 13 October 1995, when an amendment was made to the Corporate Income Tax Act and to certain other acts (*Dziennik Ustaw*, No. 142, Item 704), introducing the notion of "capital group". Under the new regulations, groups can be regarded as a kind of taxpayer. In the EU, this problem - known as the problem of taxing parent and daughter companies - is regulated by Directive 90/435/EEC. By introducing the notion of "capital group for tax purposes", the Polish regulations have implemented to a large extent the recommendation of this Directive, using the "exemption" method. Even though the adopted regulation subjects groups to a form of investment coercion incompatible with European law, it can nevertheless be seen as a model example of Poland fulfilling its harmonization obligations. This is also an arrangement which favours modern forms of enterprise creation through capital operations.

Conflict with European standards still exists, on the other hand, in the field of enterprise transformations and mergers. In particular, Polish tax law makes no provision for deferring the moment when an enterprise becomes taxable to avoid situations where the threat of new tax obligations arising hinders a decision on transformation or merger. The requirement to draw up a closing-balance when a transformation or merger is effected makes this kind of threat very real. Harmonizing Polish law with Community law would require legal regulations enabling economic entities to function smoothly. Despite the considerable progress already achieved, the provisions of tax law still prevent economic units from entering into various types of relations, for fear of double taxation. This observation applies to regulations governing the operation of "individual proprietorship", "civil partnerships", and "commercial-law partnerships".

**Legal problems related to the free transfer of labour.** Problems related to the free transfer of labour are largely connected with the recent amendments to Polish labour law and with attempts to reform the social insurance system. Considerable progress has been achieved in adjusting - as prescribed by the Agreement - Polish laws to Community standards in the field of employee protection in the work-place. The amendment to the Labour Code, made in 1996, provided a good opportunity to implement the recommendations contained in the reports prepared by the Office of the Government Plenipotentiary for European Integration. In keeping with the European Social Charter promulgated by the European Council (Turin 1961) - which has not yet been ratified by Poland - and the so-called Community Charter of Employees' Fundamental Social Rights (Strasbourg 1989), Poland has retained some of its existing social benefits, while introducing many new ones consistent with Community law. In Article 10 of the Labour Code, the right to work was retained, in a declarative form, which generally conforms to Article 1 of the Community Charter. The right to choose one's place of work, previously nonexistent and now guaranteed under Article 10, is another clear instance of the influence of Community law.

Still inconsistent with Community law are Polish norms regulating the free movement of labour. With respect to employees from member-states, the Agreement is violated by the provisions of the Employment Act of 14 December 1994 (*Dziennik Ustaw* of 1995, No. 1, Item 1), whereby Polish employment agencies may grant or refuse permission to employ a foreigner, depending on the situation on the labour market in Poland. It must be added, however, that Poland has concluded bilateral agreements with most member-states, which considerably alleviate the consequences of statutory regulations.

One area where - in the opinion of experts - Polish legislation is ahead of Community legislation is Article 11 (3) of the Labour Code, which broadly prohibits discrimination in labour relations, and is similar in content to decisions of the European Court of Justice. Article 11 (2) introduced the principle of sexual equality in the work-place, which is extremely important as far as harmonization is concerned. Article 13, following Article 4 of the European Community Charter and Article 5 of the Community Charter, grants employees the right to fair remuneration. Another instance of conformity of Polish labour law with Community law are provisions regulating the protection of employee rights in the course of ownership transformations in enterprises (Articles 23 (1), Point 3, and 24 of the Labour Code). On the other hand, no such conformity exists over the minimum length of work leave, which is shorter in Poland than Directive No. 104/1993 specifies. Polish law conforms with Community law in the areas of work safety, hygiene and safeguarding women's rights in the work-place, while

- once again - a glaring discrepancy exists in protecting the rights of young employees, particularly as regards their right to fair remuneration. Regulation of "collective labour relations" is not yet complete in Poland. Article 18 (2) of the Labour Code declares that this issue will be regulated by separate provisions. Draft legislation on collective labour relations, prepared by the Commission for Labour Law Reform, is currently the subject of much debate. It is based on two principles of Community social policy: social dialogue, and informing and consulting employees on matters relevant to their interests. It should be stressed that on a number of points it is difficult to assess how much Polish labour law conforms with Community law, as the latter is still far from being a coherent and exhaustive system of legal norms. Even the legal status of particular institutions is often unclear. Thus, the dynamic character of European labour law makes it difficult to decide how accurately Polish employers are fulfilling the provisions of Article 68 of the Agreement.

No explicit obligation to coordinate the Polish system of social insurance with the systems of member-state was included in the Agreement. However, Poland is expected - in accordance with the obligations related to the free transfer of labour - to ensure that employees from member-states and their family members legally staying in Poland may transfer pensions and benefits related to age, accidents at work, occupational diseases, or disability resulting from these factors (Article 38, Point 2 of the Agreement). Yet Polish law still does not allow for the transfer of such benefits abroad. Thus, the only way to fulfil this obligation in its entirety is through bilateral agreements with other countries. So far, Poland has concluded relatively few such agreements.

## 2. INTEGRATION OF LEGAL CULTURES AND DISCOURSES

### 2.1. Legal Culture and Legal Discourse

It appears that the "normative" definition of culture is the most useful for our purposes. This views culture as a totality of normative patterns of behaviour, socially accepted, acquired and transmitted from generation to generation through meaningful symbols [Borucka-Arczowa 1991, p. 68]. The normative view of culture thus involves the category of cultural norms, thanks to which patterns of behaviour can be understood. According to this interpretation, law is a kind of cultural norm, and its normative character instantiates the normative character of cultural patterns. In this sense we can thus speak about the interaction of law and culture.

Researchers usually emphasize the relative autonomy of particular subsystems of culture, such as: law, politics, the economy, morals, or religion. From a normative viewpoint, these can be defined as normative patterns of behaviour, distinguished through specific axiological justifications. In the case of law, we can mention such values as: social order, legality, the certainty of social procedures and the predictability of their outcome.

From this perspective, participation in culture is based on the relationship between an agent and normative patterns of behaviour. This relationship may take the form of a purely "instinctive", or "mechanical" utilization of these patterns, but it may also involve their fully conscious application, interpretation, or even creation. As a rule, conscious, active and reflexive participation in culture is seen as more valuable. This is revealed, for instance, in the recommended methods of raising children or in role models. This is why the notion of "participation in culture" is often reduced to a purely evaluative function: it then denotes a reflexive, creative attitude towards cultural patterns.

Many legal theorists claim that the participation of lawyers in culture is always of a reflexive, active character [Teubner & Willke 1984; Skąpska 1991, p. 117; Nonet & Selznick 1978, p. 24ff]. Hart speaks about the "internal" point of view of legal norms, which are treated as kinds of normative cultural patterns. The normative character of legal norms cannot thus be reduced to a pattern of behaviour contained in a norm, or to the contents of a sovereign act of will: it is seen as a certain meaning - which explains the difference between being under compulsion and under obligation. Understanding a rule thus becomes separated from its mere perception as a stimulus. A rule does not become a law until the addressee assumes an attitude towards it which Hart calls critical-reflexive - which means that the addressee accepts it or directs at it postulates which he tries to justify.

With the evolution of Polish legal culture after 1989, lawyers have shown an increasing awareness of this "internal" point of view. During the initial phase of this process, the law was seen as an external stimulus originating from the political subsystem of culture, whose main function was to control society. Lawyers, however, have gradually begun to perceive it as a communicative phenomenon whose meaning is constituted and given specific shape in legal discourse.

Making and implementing law are perceived as two relatively separate processes. The law-making process is seen as a source of more or less ambiguous and semantically nebulous normative messages, which can hardly ever - in their original form - directly guide people's behaviour. Formulating an unambiguous legal norm for a given case requires a message from the law-maker, which, however, needs to be "elabo-

rated" by relatively independent legal discourse in law-applying institutions - mainly courts. The need felt in legal culture for such a mechanism - one which "supplements" legislation with legal discourse - is due first of all to the properties of natural language, in which law-makers' messages are expressed. In view of the democratic requirement of equal treatment before the law, law-makers are obliged to couch legal norms in general terms. The democratic requirement of clarity in the law means that the content of law should be accessible to every citizen, and so legal norms should be formulated in natural language.

The democratic legislative process is dominated by a political discourse whose essence is the articulation of particular interests and the choice - through argumentation - of the majority interest. We may say, after Dworkin, that "Judicial review ensures that the most fundamental issues of political morality will finally be set out and debated as issues of principle and not political power alone, a transformation that cannot succeed, in any case not fully, within the legislature itself" [Dworkin 1985, p. 22].

Assimilating regulations and norms and creating new administrative and technical structures is in itself, of course, one of the necessary conditions of harmonizing Polish law with EU law. Undoubtedly, setting a schedule and formulating a programme of action in this field (as well as constantly evaluating its progress, while taking into account the economic, social and political context) are very important in implementing the association agreement. However, we must not forget that Polish legal culture has to accommodate the new legislation and the changed legal order. Assessing the capacity of Polish legal culture in this respect is far more complex than evaluating the development of some narrowly construed legal institutions.

## **2.2. Integration vs an Autonomous Legal Culture**

There has been a widespread conviction since 1960 that lawyers concerned with European Community law are dealing with a specific legal order which, though it is linked in many ways to public international law and the internal laws of member-states, cannot be reduced to them. As we said above, there is an equally widespread view that the Communities are equipped with prerogatives that limit the sovereignty of member-states, but this does not mean that the Communities are turning into a federation.

Judges and advocates generally share the view, expressed by the doctrine of Community law, that *corpus iuris* (previously mentioned in connection with the decision in the case of *Flaminio Costa vs ENEL*) presents a specific category of law, which can be classified neither as domestic law, nor as public international law. Such a posi-

tion has also been supported by the supreme courts and the constitutional practice of member-states.

Thus, the legal order in question defines the competence, rights and responsibilities of particular legal institutions and agents, and also creates procedures for determining infringements of the law and handling cases of such infringements. After its own legislative system, executory formal law, and a judiciary to apply this law had been created, a complete legal order emerged.

### **2.3. Integration and the Mode of Participation in Culture Adopted by Polish and European Lawyers**

The most essential feature of Community law is its "direct effect", i.e., its capacity to create rights. Simplifying the matter slightly, we may say that Community law creates an order not only in the sense of the Roman notion of *lex* but also of *ius*. The legal system of a member-state, embedded in such an order, must be capable of elaborating a legal text within a legal discourse. The discourse must be developed to an extent that allows norms arising from the Community legal order to receive coherent interpretation across member-states - which results in these norms being applied uniformly. Most norms of Community law are interpreted directly by the judiciary of a given state. This gives rise to the all-important question: is Polish legal discourse capable of arriving at its own interpretation of Community law that would be consistent with the interpretations produced by legal discourse in other member-states - without sacrificing the autonomy of Polish legal culture? An approximate answer can be given after analyzing the justifications of particular court decisions. It cannot, on the other hand, be answered through an analysis of decisions on the application of the law. It should be pointed out, however, that limiting the discussion to the context of justifications is typical of the legal approach, as justifications play an important role in controlling the correctness of court decisions.

### **2.4. Presentation of the Legal Discourses of Both Cultures**

We may state at the very outset that Polish legal discourse in the field of applying the law does not differ substantially from the legal discourse in EU member-states. It was shaped within a legal system that has always exhibited features of a continental system, deriving from the reception of Roman law.

Examining the possible peculiarities of the style of justifications within this discourse, we should conclude that the prevailing style is deductive, legalistic and magisterial.

The dominance of deductive over discursive reasoning is obvious in the decisions of the Supreme Court and Supreme Court of Administration. In justifying their verdicts, these courts concentrate on presenting their point of view and supporting it by invoking the relevant provisions of the law. Discursive and polemical elements appear in those parts of the justifications where the court reviews the decision of a lower-level court or rejects the argument of the plaintiff. Thus, the court mostly presents arguments in support of its views. A discursive style, on the other hand, predominates in decisions of the Constitutional Tribunal. When discussing and evaluating the arguments of the applicant and the other parties concerned, the Tribunal presents its verdict after balancing the arguments for and against.

In all types of justifications, we can observe the legalistic style dominating over the substantive style. Justifications are professionally prepared, formulated in legal language, and legal arguments predominate. This is not to say that substantive arguments are not used. In legal discourse, reference is frequently made to ethical, economic, or rational grounds, which is a consequence of law-makers using evaluative terms and general statements.

In Poland, as in other civil law countries, justifications are formulated in a magisterial style. A verdict represents an act of state authority, and not a decision of a court or an individual person. An exception to this rule exists in the institution of the *votum separatum*, whereby a judge may present an opinion dissenting from the view taken by other judges.

Finally, Polish legal discourse is characterized by a tendency to present a decision as the only legitimate one, and not as the best of a number of available alternatives.

It can thus be seen that the style of legal discourse as exemplified by the justifications of court decisions does not go beyond the styles functioning in member-states and in EU courts.

Concerning the discourse procedure, it should be stressed that the starting point of Polish legal discourse is the maxim *clara non sunt interpretanda* (a clear legal text should not be interpreted), which stems from the French school of exegesis. In accordance with this doctrine, interpretation takes place only in those cases where the formulation of a law is not clear and its application to an actual situation would be difficult. The distinction between directly understanding a text and interpreting it is due to the nebulous character of legal language. Direct understanding occurs when it can be de-



terminated beyond doubt - in a given context of legal language use - that a given situation falls either inside or outside the scope of the regulation in question. Only in cases of doubt (semantic indeterminacy) should we resort to interpretation. Thus, a text is clear if a competent speaker has no doubts as to whether or not a given object belongs to a certain semantic category. This kind of conclusion is reached on the basis of linguistic rules alone, which provide the foundation for a direct comprehension of the text in any natural language. Direct understanding of the law is connected with the ethnicity of legal language. Thus, interpretation is an exceptional case in the process of applying the law. It is possible in two kinds of situations: when the meaning of a legal text is uncertain, or when it appears desirable to depart from the meaning used in natural language - either because of the construction of the legal system, or because of the "functional" context of a legal norm. In both cases, doubts cannot be resolved solely by the linguistic competence of a natural language user, but necessitate recourse to legal directives (canons) of interpretation. The resulting conclusions should be supported by means of an argumentative procedure, presented in the justification of the verdict.

The *claritas* doctrine, which explicitly assumes lawyers' competence to decide whether a legal text is clear or not, underlies the legal discourse related to EU law. Formulating and developing such an assumption of legal discourse was one of the most interesting tasks of Community jurisprudence. It was mentioned for the first time as early as 1963 (case 28-30/62, 1963 ECR 31). As in Polish legal discourse, the alleged existence of a question of interpretation must be proved and is subject to review by a higher court.

Reaction to a legitimate question of interpretation in Polish and Community discourses is also basically the same. The same types of interpretive directives are distinguished: grammatical, systemic, teleological, and functional [Brown & Kennedy 1994; Bredimass 1978]. In Polish legal discourse, the use of historical interpretation is relatively rare. This is a consequence of rapid changes in the sphere of legal culture, as well as because of the special role of interpretation as a means of maintaining the continuity of law. In 1989, the legal acts hitherto in force were not abrogated, but it was decided that in the first stage the law would be adjusted, by way of interpretation, to the requirements of a state based on the rule of law. This increased the role of the courts in the process of transforming the law. A telling example is provided by constitutional law, which was discussed in the previous section. The absence of a new Constitution did not prevent the Constitutional Tribunal and the judiciary from formulating a number of principles underlying a democratic state based on the rule of law, which had never been explicitly stated before. This is a fact of considerable importance for

assessing the integrative capacity of Polish legal discourse. The prevailing tendency nowadays favours an adaptive approach, which facilitates the introduction of new institutions and legal arrangements to Polish legal culture.

As in Community law, interpretive directives are expressed in decisions and in doctrine, but are not the subject of legislation. In this respect, Polish legal discourse approximates Community discourse more closely than does the discourse of many member-states.

Like Community law, Polish law may be called reflexive in this respect. The status of interpretive directives derived by the discourse from decisions is similar in both cases to that of a precedent.

For obvious reasons, Polish legal discourse contains no procedure for resolving language problems resulting from differences in the translation of texts in the multi-lingual Union. Polish discourse gives precedent to the ordinary meaning of words over their specifically legal sense. Bearing in mind that many Community notions are borrowed from the languages of member-states, this directive could not be defended before the European Court of Justice. More generally, one might claim that Community legal discourse is oriented predominantly towards identifying notions and their contextual harmonization, while Polish legal discourse is mostly terminology-oriented. Hence, Polish discourse often relies on the dictionary meaning of words.

A very well developed element of Polish legal discourse comprises, on the other hand, teleologically interpretive doctrines and directives related to the consequences of legal norms - both of which are characteristic of Community law, too.

As far as the procedures of reasoning used in Polish legal discourse are concerned, it can be easily seen that the same forms of argumentation are applied in Community discourse. We should enumerate here the following: argumentation based on statutory analogy, *argumentum a maiori* (from the greater to the lesser), *argumentum a minori* (from the lesser to the greater), *argumentum a contrario* (from the opposite). In both discourses similar techniques for resolving contradiction are used: those based on the standards of *lex posterior* (priority is given to the more recent act), *lex specialis* (priority is given to the more specific act), and *lex superior* (priority is given to the higher-order act). Finally, both discourses often apply the idea of "balancing" principles, aimed at determining the nature and scope of rights, as well as the "policy" argument, which refers to the determination of collective goals (Cassis de Dijon - case 120/78 (1979) ECR 649).

It can be predicted that the future interaction of Polish legal discourse with Community law and discourse will also involve the mode provided for in Article 177 of the Treaty (pre-judicial question). Since the decision to address the European Court of

Justice with a pre-judicial question rests solely within the competence of the domestic court, two issues take on special importance: the meaning of *acte claire* (a clear legal act) - which should be similarly construed by all member-states - and the existence in legal discourse of a tradition of putting forward similar questions. The first of these problems has been discussed above. It appears that Polish and Community discourse share a similar understanding of what an interpretation problem is. It should be stressed in this context that the tradition of pre-judicial questions is firmly established in Polish law, and its theoretical foundations are well developed. As in Community law, a question must be raised in connection with a specific case, and the court must determine that without knowing the answer, it would be unable to decide that case (the *non liquet* doctrine). Likewise, in both legal systems, such a question suspends the proceedings. More importantly, the institution of the pre-judicial question plays an important role in establishing the position of those courts whose decisions mainly concern the sphere of public law, such as the Supreme Court of Administration. For it is expected that these courts that will have most cause to address questions to the European Court of Justice.

## 2.5. Axiology of Interpretive Discourse in Poland and the Communities

Legal discourse has been presented above primarily in its procedural dimension. However, legal discourse in Poland is also a source of general principles defining the legal order, and in this respect Polish legal culture resembles that of the Communities. After all, it is only in Article 215 (2) that the Treaty makes an overt reference to legal principles common to member-states - and only for the purpose of establishing non-contractual responsibility for the Community and for the future European central bank. Decisions of the European Court of Justice have transformed these fragmentary regulations into a body of general legal principles. A similar role has been played by the Constitutional Tribunal, which articulates fundamental legal principles in its decisions, thus creating a kind of doctrine of a state based on the rule of law. The legal discourse taking place in judicial institutions has thus exerted far greater influence on the definition of the axiological foundations of the Polish legal order than legislation itself has had. This phenomenon is also noticeable in some branches of the law, which have evolved since 1989, where the general legal principles have been defined by the courts. A good example is provided by tax law, whose principles were developed almost from scratch by the decisions of the Supreme Court of Administration.

The Constitutional Tribunal has never attempted to give a comprehensive definition of a state based on the rule of law. The notion of such a state is included in the specific principles - established by decision of the Tribunal - which underlie the notion of a legal state. The principles that have been formulated thus far resemble those arrived at by the courts of the Communities. The list of principles formulated by the Constitutional Tribunal no doubt reflects the decisions of the European Court of Justice (cf. Mikołajewicz [1995, pp. 101-111] for a reconstruction of Constitutional Tribunal decisions). In its rulings, the Constitutional Tribunal included among the principles of a legal state the following detailed principles<sup>1</sup>:

- citizens' confidence in the state and in the laws promulgated by the state; this is a compound principle, as one of its elements is the principle of protecting acquired rights, which consists in the principle of property protection and the principle of the non-retroactivity of the law;
- the credibility of the law, entailing the principles of openness, stability and clarity in the law;
- the right to due procedure, the qualified form of which is the right to fair trial; one of its guarantees is the principle of judicial independence;
- *pacta sunt servanda* (contracts are to be kept);
- dominance of statutory procedures in law-making;
- the unity of legal order.

As has already been said, these principles were formulated by the Constitutional Tribunal by way of legal discourse - they are not a product of legislative efforts. By using the formal procedures of discourse described above, the Tribunal arrived at general principles defining the legal order. A similar mechanism for developing legal culture operates in Community law. This is one of the manifestations of the "self-reflexiveness" of legal discourse. Following G. Teubner, we may define self-reflexiveness as the ability of legal discourse (as a social subsystem) to create and maintain mechanisms for defining and determining its own identity as a subsystem, and to make practical use of the consequences of this ability [Teubner & Willke 1984; Górski 1992]. This idea is expressed through the postulate of maintaining the autonomy of the legal system, which is obliged to respect the autonomy of other subsystems. Normative influence and control pertain only to processes of interaction between systems, without interfering with events going on within systems.

1. For the most part, these principles are also contained in the rulings of the European Court of Justice [Brown & Kennedy 1994].

## **2.6. Assessment of the Development of Ethical Standards among the Legal Professions and Analysis of its Influence on the Model of Rational Discourse in Both Cultures**

The existence of the self-reflexiveness mechanism in Polish legal discourse has important consequences for the analysis of integrative processes. We may be so bold as to say that legal discourse is probably in the process of achieving autonomy within Polish culture. The law is no longer equated with coercion exerted by the state, or, at the very least, We can say that contemporary legal culture in Poland has come to perceive social interaction as one of the constitutive features of law. A connection has been made between the goal-mean rationality of agents and communicative rationality: social communication is seen as an essential factor in the creation of law. The form of legal discourse presented above is possible only when it is generally accepted that one of the constitutive elements of the law comprises the mutual "expectations" of potential addressees of legal norms. Accordingly, legal norms are not seen as instructions or algorithms for action, but as normative expectations constituting something akin to a frame of reference which gives structure to the actions of social agents [Skapska 1991, p. 152].

For lawyers, participation in culture becomes reflexive participation in a certain communicative community, even though communication takes place here through legal institutions which are a product of tradition and the historical development of culture.

The process currently under way in Poland of forming a new vision of law, assumes an active role for lawyers. It certainly facilitates integrative processes in their legal dimension, for the new model of legal culture favours group learning processes and the introduction of new meanings to legal discourse.

The communicative dimension of law and the influence that agents subjected to legal regulation exert on the system of normative expectations that make up the law are recognized in European legal theory, too. Recently, as theoretical reflection on the essence of Community law has developed, studies have begun to appear which analyze the discursive aspects of the European Court's justifications: their argumentative structures, coherence, and universal and pragmatic aspects [Król & Zirk-Sadowski 1994, p. 26 and references quoted therein].

The new concept of legal culture accounts for the increased role of ethics in the legal professions. The joint creation of meanings in law-related communicative activities requires a compulsion-free exchange of argument. For this reason, special emphasis is placed on the independence of the legal professions. This is particularly con-

spicuous in the case of judges. In this respect the situation of a Polish judge does not differ from that of a European one. In Poland, as in all EU countries, it is only the courts that administer justice. One of the features of the administration of justice constituting legal discourse is the independence of the judiciary, which involves both the independence of the judiciary from the other branches of government and the independence of judges while examining and deciding cases.

The International Code of Ethics, which regulates the professional performance of attorneys, adopted by the Council of Bars and Law Societies of the European Community (CCBE), views the independence of the attorney profession as the foundation of attorney ethics. The CCBE is an organization of attorneys from all member-states. Its chief organ is made up of representatives of the legal professions from all member-states, and it is the countries, not these representatives, which have voting rights within it. The CCBE represents European lawyers before the European Commission, European Court of Justice, and European Court of Human Rights. Consistency between Polish and European codes of ethics in the legal profession will be one of the conditions determining the participation of Polish attorneys in Community legal discourse and - indirectly - the integration of Polish and European legal discourses. The Polish norms of professional ethics for attorneys correspond for the most part to European standards [Jaworski 1996, pp. 57-66]. Their provisions regulate the problem of attorney independence vis-à-vis the public authorities, the adversary, the customer, third parties, and attorneys' personal interests - by prohibiting them from simultaneously pursuing another career. The laws currently in force in Poland have provided legal instruments to protect attorneys' independence by establishing a professional association, disciplinary panels, and also by introducing certain rights to immunity and professional secrecy.

Apart from these theoretical considerations, a practical problem is soon likely to occur. An integral element of Union membership is the mutual recognition of qualifications in the legal professions. However, one usually practices law in one's home country. Besides, it is in the interest of states to strictly regulate their legal professions so as to ensure that the law is suitably applied. The functioning of the system ensures that lawyers are the dominant group in the third branch of state authority - the judiciary. This is true of judges and attorneys alike. Thus, a conflict begins to emerge between the character of legal practice - peculiar to the state - and the transnational character of the economy, which requires considerable legal support. In brief, the internal, domestic character of legal practice necessarily increases the cost of international undertakings, which require the employment of lawyers authorized to act in a given territory, and the establishment of special channels of communication between local markets of legal services. Thus, each change of location by an enterprise involves

extra costs and a greater risk of errors, particularly at an early stage of its operation in a given country. The idea behind the proposed mutual recognition of professional titles and licenses is to reduce the costs of such undertakings and increase productivity.

In the EU, this problem has been solved by introducing a number of regulations aimed at creating a pan-European legal practice. A new type of lawyer is emerging: one whose sophisticated legal knowledge will allow him to run a Community-scale legal practice. We may argue that, along with organizing a single market for goods and services, Europe has begun to create a pan-European form of legal practice, which serves the needs of this market. As a result, law faculties in Poland will have to harmonize their training methods accordingly.

### 2.7. Impact of Legal Education on Improving the Integrative Capacity of Poland's Legal Order

European law has now been included in the curricula of Polish law faculties. It is usually one of the principal courses, and, in some schools, it is one of the specializations that law students may choose. Teaching European law assumes different forms. In contrast to the traditional branches of the law, Polish universities have so far not worked out a uniform canon for teaching this discipline. Thus, the qualifications of graduates from different law faculties in Poland may vary considerably.

In the ongoing debate on this issue, it has often been stressed that the Europeanization of teaching at law faculties in Poland should not be restricted to supplementing the curriculum with information about European legal systems. Also, many have suggested introducing such courses as European comparative legal studies, legal systems in member-states, and the theory of European law [Bakker 1993; Galster 1996].

We might also hope that introducing European law courses will somewhat alter the way law is taught in Polish schools. Currently, the focus is on strictly legal problems. Teaching European law requires a far more extensive knowledge of economic issues. The economic approach to law is clearly visible in the teaching and practice of European law. In Poland, however, it lacks a strong tradition, as for many years it amounted to little more than political economy for lawyers. Working out a new model of economic education in law faculties is necessary in view of the European orientation of the new curricula.

Yet another problem is how to teach European law during post-graduate studies. Providing instruction for practitioners, civil servants and local-government officials should not solely be the responsibility of universities. A greater role should be played in this field by European Institutes, which already exist in Poland.

## CONCLUSION

In conclusion, it should be stressed that from the point of view of the pace of Poland's integration with the European Communities, very serious shortcomings still exist in the Polish legal order. They can be seen even in the structure of the very organs responsible for adjusting the Polish legal order to the European one. A system has been set up to check whether executive legal acts conform with European legal standards, but no precise procedures exist in the case of draft legislation proposed by members of parliament or by the President. It should also be noted that the existing control procedures are not always observed. Poland still needs to establish a single centre for examining and evaluating legislative work from the point of view of Article 68 of the Agreement and the obligations arising from it.

A major obstacle to the adjustment of Polish legislation to the European legal order is the absence of a new Constitution. Under the circumstances, even the relationship between the Agreement and Poland's domestic law remains unclear. It is only thanks to the decisions of the Supreme Court and Supreme Court of Administration that Polish judges have become convinced of the need to respect the Agreement *ex proprio vigore*.

The Community legal order entails limiting the sovereign power of member-states. The delay in preparing a new conception of the Polish constitutional order has meant that Poland is not yet ready to accept those restrictions on the execution of its sovereignty which are imposed on member-states when they become fully integrated with the EU. The constitutional regulations now in force do not allow Polish legislators to limit the state's sovereignty or delegate some of its attributes to an international organization.

Article 69 of the Agreement indicates, by subject, which areas of the law especially need adjusting in light of Poland's future membership in the EU. When reviewing Polish law in terms of its conformity with the legal order of the Communities, special attention must be paid to these areas, as they are directly linked to the implementation of the four freedoms characteristic of the Single Market: the free transfer of goods, services, capital and labour. It just happens that Polish law contains numerous regulations that stand in the way of these freedoms. These shortcomings are often alleviated by court decisions, but prompt and decisive legislative action is needed to accelerate the adjustment of Polish law to European law.

In the cultural dimension, integration is primarily a communicative problem - a question of the capacity to jointly create symbols. From this point of view, the integration of different legal orders proceeds not only through a common hermeneutics of

legal norms, but also through a common legal categorization of reality. Such a Categorization of reality utilizes myths, symbols, stereotypes, metaphors etc., common to European legal culture. The capacity of European law to introduce rights directly into the law of a member-state may be properly implemented only within the framework of mutually accepted patterns of legal culture.

Analysis of the patterns functioning in Polish legal culture affords a positive evaluation of its integrative capacity. Polish legal culture is similar to European culture in the way the role and principles of legal discourse are defined. Particularly important is the similarity of interpretive discourse structures.

It should be noted, however, that the similarity of both cultures perceived on the normative plane is not in itself a guarantee that the rules will be properly observed. This is a question that should in the nearest future be addressed by the sociology of law. At this point it only needs to be added that suitably organized legal education is essential for implementing normative patterns. Despite the shortcomings of organizational structures and inadequate funding, We may say that the curricula and professional standards of legal education in Poland do not depart from the European standard. This is demonstrated by the performance of Polish students taking part in European aid programmes. As a rule, students of Polish law faculties do very well in such programmes and keep up with the standards required in European legal education.

The capacity of Polish lawyers to participate in the practice of European legal discourse also crucially depends on their knowledge of European law and their ability to engage in foreign-language argumentation. We do not need any profound studies in the sociology of law to say without doubt that considerable improvement could be made in this area. Thus, working out an appropriate model of legal education at all levels - taking into account the issues of European law - is a priority task for Polish universities.

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## Chapter IV

# POLISH SOCIETY FROM THE PERSPECTIVE OF EUROPEAN INTEGRATION

## THESES

- In Polish society, the division is deepening between those who, thanks to their "resources" (e.g., education), can take advantage of new opportunities, and those who in real terms lack such opportunities. For the first group, the relations dominant in EU countries are an example to be followed; for the second - they are a point of reference determining the level of expectations, whose addressee remains the state.
- At the level of basic organizational principles, a characteristic feature is the de-politicization of rules and ties created in the course of social activities, and de-socialization of rules and ties created in the course of political activities. The numerous examples of social self-organization are all of a local character, while political divisions have so far not taken hold in the social structure, and thus, instead of articulating and representing the interests generated by this structure, are an instrument by which differing visions of social life are imposed from above.
- The absence of ties between the socially-determined dimensions of community and the politically-determined dimensions of control will probably disappear as the social structure begins to crystallize. At the same time, there is reason to fear that the individual and group adjustment process set in motion by the systemic changes may extend the "transition stage" beyond the period envisaged by most individuals and thus severely weaken the capability of Polish society to integrate with "European society". For a feature of these adjustment processes is a reliance on strategies developed within the framework of the "second society", which means that individuals try to increase their "rewards" without bearing the „costs" of participation in the liberal-democratic system.

Integration with Europe has been one of the more important political aims - at least officially - of successive governments since the beginning of the systemic changes in Poland. The institutional reforms introduced after 1989 were unequivocally pro-Western, in the sense that they were committed to the ideas of democracy and the market economy. Independent experts have recently assessed Poland's advance towards these goals quite favourably. Freedom House awarded Poland grade 2 for political rights and grade 1 for its civil liberties<sup>1</sup>. As regards the liberalization of the Polish economy, the World Bank placed Poland ahead of all post-communist countries with a score close to 9 on a 10-point grade scale [Report 1996]

\* The idea of integration with the European Union likewise enjoys a high level of approval in public opinion surveys. In surveys carried out by CBOS [1996a], since 1993 advocates of integration have always far outnumbered its opponents. In 1996, 80% of respondents declared their support for integration, and just as many said they would vote in favour of Polish entry into the Union if a referendum was held on the issue. The majority of the respondents is also convinced that Polish relations with the European Communities are at present equally beneficial for both sides (45%) and, furthermore, that integration would bring more benefits than losses for Poland (44%).

Therefore, taking into account the necessary formal conditions for integration - "democratization", "marketization" and public support - entry into the European Union seems to be only a matter of time, provided of course that no violent changes occur on the global political scene. The problem of integration appears in this context as an essentially political problem and its solution depends to equal degree on the efforts of the Polish government and the willingness of EU member-states to accept Poland into the Union.

Much more complex and difficult to evaluate are the chances of Polish society integrating with "European society". Firstly, because such an integration involves not only the adjustment of political and economic institutions to EU standards, but also fundamental changes in all the dimensions of individual behavior. Secondly, because there are no clear indicators which would enable us to identify unambiguously the kind of changes desired and classify deviations from those changes which are not related to specific national factors. Last but not least, Western European societies themselves, as a general model for post-communist societies, have apparently been undergoing a quite fundamental transformation for a long time. This may significantly alter both the "content" of integration as well as its course.

1. Based on a seven point grade scale where 1 = freedom and 7 = a lack of freedom. In comparison - the indicator in 1989 for both areas was 5.

However, a relatively fixed scheme of reference is essential if we are to assess the obstacles standing in the way of Polish society's integration with Europe. Therefore, for the needs of the present work we have defined integration in the social dimension as **the ability of Polish society to join the community of other liberal-democratic states on relatively equal terms**. In order to assess this ability we must first of all reconstruct the internal dynamics of the processes currently transforming Polish society.

An important element of these processes have been the changes in socially shaped patterns of behavior. In other words, the "object" of systemic transformation has not simply been the communist institutions themselves, but also the peculiar social system of "real socialism"<sup>2</sup> that evolved out of society's efforts to adapt to those institutions. The institutional structures of the communist state were obviously an important part of it, but they were supplemented and very often also opposed by unofficial structures of social behavior. These unofficial structures created, to use the term coined by E. Hankiss, a *second society*, which developed "its organizational principles, steering mechanisms, and networks in the hidden, informal sphere of social space" [1988, p. 18].

Hence, to understand adequately the current processes of societal change in Poland and to estimate the prospects for successful integration of Polish society with European society, we should begin with a short description of the second society itself.

## 1. THE SECOND SOCIETY

An especially useful tool when describing the second society is the notion of *habitus* introduced by P. Bourdieu [1973, 1977] in his theory of social practice. *Habitus* is a system of unconscious schemes of perception and dispositions which mediate between the institutional structures and individual behavior. Such underlying patterns of "thinking and acting", if they are commonly shared by a society's members, become external and constraining factors influencing their behavior. For a person raised in a system of real socialism it was obvious that you could not just go to shop to buy a car. You had to "arrange" to get one and this above all meant having to find "access" to it. The moment a large number of people begin to adopt such behaviour it begins to structure social practice in a way that is just as binding and full of material consequences as the system of official economic and social institutions.

2. It is extremely interesting to note that this term - which was very commonly used in the 1980s - has almost completely disappeared from the socio-political dictionary since 1989.

The *habitus* which evolved under real socialism and determined the structural characteristics of the "second society" emerged from three types of processes. The first of these were processes of active adaptation to the conditions of behavior defined by the institutional structures of the communist state. Like the "second economy", the second society itself emerged to compensate for the official institutions which, focused on implementing ideological aims, were dysfunctional for the needs of the average individual. Instead of adjusting their behaviour to the ideologically defined demands of the institutions, people used, or rather "utilized" them to achieve their own particular goals. In other words, the common feature of these developing adaptation strategies was an attempt to make individual well-being independent of the social system by "re-privatizing" a part of state power, rules, and/or resources. Examples include both using the tools and materials of a state enterprise to do private work "on the side" and taking advantage of one's position in the party structure to secure one's child a place in university.

Obviously, it would be a mistake to think of Polish society under communism simply in terms of such adaptation processes. Above all else, there were people who, either as a matter of principle or for practical reasons, could not adjust to the communist system. The rising expectations of the population and the diminishing resources of the system also seriously limited the usefulness of adaptation strategies. Therefore, social protests became the second essential element of life under real socialism. In the case of Poland, we can even regard social protests as a specific form of regulating relations between society and the communist state. As such, they also represented an adaptation mechanism, although of a collective type [Marody 1991a].

Another source of *habitus* underlying the second society were **processes of selective modernization**. As many authors have pointed out, Poland entered the post-war period as a civilizationally backward, under-industrialized and under-urbanized society, with a traditional peasantry predominant in its social structure. This was a consequence of both long-term historical processes and the immediate destructive effects of the war. "Forced industrialization" [Morawski 1980] at the beginning of the 1950s and later Gierek's policy of "development on credit" became the fundamental motors of the modernization process, which in turn developed a feeling of social and cultural advancement in Polish society [Marody 1991b].

We should remember, however, that all these modernization efforts of the communist regime were subordinated to ideological goals and, as such, were selective in character. Those aspects of social life regarded as "private" remained outside communist concern, as did those public activities which had no place in the new political and economic system (or which the communists even regarded as politically harmful). Under communism, industrialization was primarily concentrated on developing heavy in-



dustry, whereas mass education was aimed at occupational training. On the other hand, mass communication was more or less strictly controlled, the appearance of women on the labour market did not significantly change their position in the family, while migration from the countryside simply resulted in the "ruralization" of the towns. If we add to this that, as time passed and the communist system began to open up, different social groups became exposed to varying degrees to modern or even post-modern influences from the West, then the term "selective modernization" seems to describe quite well the mixture of traditionalism and modernity in the *habitus* of the second society.

Last but not least, the *habitus* of the second society was also shaped by a number of historical processes, the permanence of which over longer periods of time resulted in experiences common for successive generations and, hence, became the basis for the identity of Polish society. We are not talking here about certain mythologized features of the "national Polish character", but rather the repetition of certain existential conditions and the inter-generation transfer of cognitive and behavioural schemes accompanying them and shaped under their influence. One consequence of this has been the peculiar role of the Catholic Church in the institutional structure of Polish society. Another has been the specific inclination of Poles towards "situational innovation" instead of trying to create durable, institutionalized forms of organized social life [Podgórecki 1976]. The desire to moralize political divisions and the culture of justification accompanying this desire represents a third example [Marody 1996].

For the second society, which had formed as a result of the interactions of these three processes, the basic dimension of social space was a division into the public sphere, controlled by the communist authorities, and the private sphere, where individuals could undertake their own decisions, while the basic dimension of social differentiation was the division into authorities and society<sup>3</sup>. Familiarism became the leading principle of organized social life<sup>4</sup>, assuming the form of negative solidarism in social protests. The basic mechanisms controlling social interaction were also transformed: the prevailing principle of "ethical dualism" meant that Poles adopted a logic of co-operation and consensus in relations with members of "in-groups", and a logic of struggle in their relations with "outsiders". It also tightened ethical standards in social activity and expanded the culture of justification into everyday life.

The development of the Solidarity movement further enhanced this division into "bad authorities" and "good society", giving it an essentially political character.

3. Both these divisions were more situational than absolute. This does not change the fact that recognizing a given situation as a public/private one or a given person as representing at any given moment the authorities/an average citizen was a fundamental determinant differentiating forms of behaviour in this situation or with regards to that person.

4. This often assumed the form of clientelism in the public sphere [Tarkowski 1994].

The significance of social consensus as the basis of political activity increased, while the role of articulating, negotiating and compromising interests through politics diminished. Last but not least, the Solidarity movement gave moral legitimacy to social protests, which thereby became the basic form of political activity in society.

With such a baggage of habitual cognitive patterns, expectations and dispositions the Poles entered the transformation period. We should stress that this baggage was not solely the property of particular individuals but was rooted in the structural characteristics of the second society. It defined the basic ways of societal functioning and not simply the behaviour of particular members. In this sense, systemic transformation has entailed not only dismantling specific institutions of the communist system, but also all those informal structures and mechanisms that had shaped the *habitus* of the second society.

## 2. THE PROCESS OF SOCIAL CHANGE IN THE BASIC DIMENSIONS OF SOCIAL LIFE

The *habitus* of every society is a product of its environment or the conditions of existence and thus changes when the institutional structures themselves change. Nevertheless, a precondition of such change is a social recognition of reality - a process which is influenced by the *habitus* itself. We see what we used to see and, therefore, we act accordingly. As a part of what is socially taken for granted, a *habitus* can easily outlive the empirical conditions which gave birth to it. Therefore, the process of "de-habituating" a given *habitus* depends more on the social accumulation of new behavioral experiences than on any actual empirical change in institutional structures.

What therefore have the experiences of the last seven years involved, and how have they influenced social patterns of "thinking and acting"? The most general answer to these questions is that Polish society has reached such a point on its way to a new social system that it has ceased to be driven by a simple aversion to communism and an equally simple admiration for Western democracies. During the last seven years, people have forgotten the most disagreeable aspects of the former system. Instead, they have had the opportunity to experience the most unpleasant sides of the new one, such as unemployment, inflation, the decrease of social security, etc.

During this same period, however, social reality has changed to a degree which makes it impossible to return to the past. The new institutional order has imposed its own demands on society and challenges people to cope with them. Moreover, when Poles agreed at the beginning of the transformation to accept the consequences of the economic reforms introduced by the government, this was above all a moral choice, a

form of "escape into the collective lot" [Białecki 1990], for which the new authorities were to assume full responsibility [Marody 1991c]. Some time after 1993, however, a fundamental re-definition of the social situation occurred<sup>5</sup>. Poles ceased to look upon the new conditions as a temporary, provisional state, and thus not quite real. Burdened by every possible failure in comparison to the final goal, they began to treat the new conditions as reality *sui generis*. In place of strategies oriented towards survival, Poles began to adopt strategies aimed at recognizing and "domesticating" the new order.

▷ We can clearly see how this idealistic, or even "ideal" definition of social reality transformed into a realistic one, when we investigate the way in which Poles changed their understanding of the two fundamental concepts of systemic transformation - capitalism and democracy. Comparing answers to identical questions asked in 1991 and 1994, it is difficult not to notice how the content associated with both concepts became progressively more realistic and pragmatic [Marody 1996b; Siemińska 1996a]. This is particularly visible in the case of "democracy". Poles now treat the term not only as the name of a peculiar type of **ideal political order**, but likewise as the name of an actual **political and economic system**, in which the individual lives here and know. By way of analogy to "real socialism", we may call this system "real democracy", for in both cases the differences between the ideal and its actual realization are being stressed. This "real democracy" covers both the political and economic dimensions of social life and is evaluated through the individual's everyday experiences as well as in terms of his/her global gains and losses in social life.

Discarding idealized fantasies and expectations and accepting social reality in an empirical shape far removed from the abstract ideal, has important consequences for individuals' behaviour. The fundamental change here is that **instead of simply reacting to situations Poles have begun to act in them**. As a consequence, they have far more opportunities to gain new experiences which will prove helpful in working out new strategies and developing new habits. For as long as we subordinate our actions in social space to the expectation of implementing a reform of the social system - not directed by us - then it is not worthwhile devoting new energy to testing out new actions burdened by a high risk of failure. Only when people recognize the changed systemic conditions as permanent and not subject to fundamental modification will they try to find their own new place in the new social order.

5. For those who advocate explaining everything in terms of political events, 1993 will be associated above all with the coming to power of parties rooted in the old communist system. We do not believe, however, that this factor played any significant role in the process mentioned above. It would be also wrong to link the post-1993 economic boom with the policies of governments formed by those parties. Both processes were set in force by the institutional reforms launched after 1989, both also required some time to develop, which coincided with a change of parties in power.

The newly emerging identity of Polish society is treated here as an effect of three basic, interacting factors: (a) transformed institutional structures, which create a new framework for individuals' actions; (b) the individuals' resources which determine their ability to exploit these new conditions, and (c) the values and previously inherited habits which together modify the course of human actions. Our analysis will cover the three main dimensions of social space: the economic, the normative and the public.

## 2.1. The Economic Dimension

Our analysis of social actions in the economic dimension will include two fundamental issues: the processes influencing individual economic activity and the social articulation of interests. To understand both problems we must first assess how much macroeconomic transformations have affected the standard of living of individual citizens. For the picture reconstructed from statistical data and numerous opinion surveys on the material and social conditions of Polish society has two completely opposing characteristics. On the one hand, we get the impression that Polish society as a whole - perhaps with the exception of cheats, certain politicians and members of the Sejm - lost out with the introduction of market economy principles. For several years now more than half the respondents of CBOS (53% in 1996) have reckoned that their household incomes are lower than the average household income in Poland [CBOS 1996f]. In the subjective opinion of urban residents researched by a team led by L. Beskid [Beskid et al. 1995], 41% of Polish society lives in actual poverty.

Official statistics support the impression that the average Pole's economic situation has deteriorated significantly. Real wages, which fell by nearly 25% in 1990, decreased by further percentage points between 1991-1993, remaining the whole time below their mid-1980s level. Despite a small increase in 1994, wages still remained below the 1990 level [Książkowski 1995]. Rising poverty has accompanied this trend. In 1993, 29% of the population (49% according to certain estimates) were living below the poverty line, whereas in 1987 the figure stood at 14%. The increasing unemployment rate, which in 1993 reached 16.3%, has admittedly levelled out, but still remains relatively high - in 1995 it amounted to 13% [Mały 1996]<sup>6</sup>.

On the other hand, individual consumption has systematically increased throughout the entire period under analysis and the consumption of most basic commodities has remained at levels similar to those seen at the end of the 1980s [Książkowski 1995]. The most spectacular increase has occurred in the supply of consumer durables.

6. Data from Autumn 1996 indicate a further fall in unemployment. It is still, however, close to 13%.

Since 1990, 30% of households have purchased a colour TV set, 26% - a video recorder, 18% - a telephone, 15% - cable television, 14% - an automatic washing machine, 13% - a mountain bike, and 10% - a compact disc player and a personal computer [CBOS 1996c].

Table 4.1  
*Changes in Individual Incomes and Consumption, 1989-95*

Previous Year = 100

	1990	1991	1992	1993	1994	1995	1996
Real wages	109.0	75.6	99.7	97.3	97.1	100.5	104.5
Consumption	99.7	84.7	106.3	102.3	105.2	104.3	missing data

Source: Statistical Yearbooks

The results of sociological research also show a high level of optimism and satisfaction among Poles. CBOS data since 1993 have registered significant changes in social moods. Poles are increasingly **satisfied that something has gone right** (from 22% in 1993 to 32% in 1995), while the **feeling that everything is turning out well** has also risen (20% and 30%, respectively, for those years). On the other hand, the sense of **helplessness** has clearly diminished (from 39% to 30%). The data also revealed a less distinct, but still systematic decline in feelings of **depression** (from 32% to 27%), **anger** (from 32% to 28%), **dejection** (from 49% to 43%) and **exasperation** (from 64% to 59%). Positive evaluations for the past year likewise increased in all dimensions measured: **personal life** (from 23% to 36%), **family matters** (from 18% to 34%), **work** (from 26% to 41%), the **country** (from 14% to 28%) and the **world situation** (from 12% to 20%) [CBOS 1996d]. Quite low (7%) and decreasing was the percentage of respondents who declared that they were experiencing hard times (**not enough money even for basic needs**) [CBOS 1996f].

These two apparently contradictory sets of data illustrate important trends in the economic dimension of social life in Poland. The first of these - especially evident in surveys on social attitudes - is **loosing the feeling of social security**. This is linked to Poles' entirely new experiences with large-scale unemployment. Two thirds of those researched by CBOS regarded unemployment as one of the most important problems facing the country. Two fifths (41%) were afraid of becoming unemployed. Feelings of insecurity, which in 1994 affected one third of the respondents, dramatically increased a year later (to 41%), reaching their highest level since 1992 [CBOS 1995a]. This general emotional reaction has had certain practical effects on their economic activities.

First, loosing the feeling of social security has resulted in **changing expectations towards work**. In 1990, **job security** was only the fourth most frequently mentioned feature that Poles associated with a good job. By 1994 it had become the most important feature. The percentage of people who failed to mention the personal development aspects of a good job also increased twofold (from 12.6% to 24%). Poles see the personal development aspects of job as a kind of luxury, which - when feelings of security are undermined - is abandoned first of all [Marody 1996b].

Secondly, loosing the feeling of social security has also resulted in **restricted occupational mobility**.<sup>7</sup> Although the lack of systematic data makes it difficult to estimate this influence adequately, one can only say that no more than 11% of those researched in 1995 declared a willingness to change their jobs, while a mere 4% intended to do so in the near future [CBOS 1995b]. Study of selected state enterprises showed that most employees had decided to stay with their firms even though they saw little prospect of higher wages. This was because most felt uncertain of their chances on the local labour market. Actually, Poles who left their jobs voluntarily often gained considerably more lucrative jobs.

Thirdly, increasing insecurity has also meant that Poles see **private employment as less attractive**. While most of those researched by CBOS [1995c] associated private firms with higher wages when compared to state enterprises, only 15% would opt to work for a private firm if the wages offered by a state and a private firm were identical. Not without significance here is the fact that the respondents ranked state enterprises higher than private firms with regard to employment security, stability and social amenities.

Fourthly and finally, the impaired feeling of social security has led to a **revival of egalitarian and collectivist attitudes**. This is especially so among people of lower socio-economic status [Zabrowski 1995; Marody 1996b]. A series of studies on the socio-economic preferences of Poles between 1990-94 [Sokołowska & Tyszka 1996] also indicated: (a) increasing support for state control over the economy (prices, wages and production), (b) decreasing support for privatization and paying for education and training and (c) steadily diminishing support for unrestricted private ownership. Nevertheless, this shift away from pro-market attitudes in favour of accepting increased state interventionism is still rather weak and cannot be described as a dramatic turnaround. In general, the supporters of liberal and individualistic solutions still enjoy a relative superiority of numbers [Jasińska-Kania 1996a; Marody 1996b].

7. The "attachment" of Poles to their flats is an additional factor that restricts occupational mobility. In spite of the changes in administrative rules, changing or exchanging flats is still a very costly undertaking. Poles must thus look for job within the area they currently live in.

Another trend currently characterizing the economic side of Polish social life has been the **dramatic development of the grey economy**. This is one of the main reasons for the apparent inconsistency of data on wages and consumption we noted above. For the official statistics are not the best source for assessing income trends in Poland. Their reliability is questionable as the majority of Poles are trying to hide some of their income from the tax office. According to the estimates of the Market Economy Research Institute, every third Pole is supplementing his/her income on the black. GUS estimates that income earned in the grey economy amounts to approximately 20% of GDP [Książkowski 1995].

**Undertaking additional work** is in itself perhaps a symptom of positive changes in the process of adjusting to the new economic conditions. On the micro level this is linked to the rise in individual entrepreneurship and a departure from learnt helplessness. On the macro level it has moderated the effects of systemic reform. Nevertheless, the fact that a significant part of this additional work has taken place in the grey economy may have a number of negative social consequences. We would like to pay attention to two of these.

The first is closely related to the structure of the unemployment benefit system. Analysis of incomes earned by the unemployed and their families shows that in all cases benefit is not a basic source of income but a supplement to it [Herk et al. 1995]. According to the estimates of social workers, those who actually want to work and are actively seeking work represent a mere 40% of unemployment benefit recipients. The authorities could induce a further 20% to work if they used various kinds of disciplinary measures. The remaining 40% are solely interested in the social benefits of their unemployed status [Henzler 1996]. The negative relationship between unemployment benefit and the minimum wage discourages Poles from undertaking low-paid jobs and consolidates structural unemployment, which in turn increases the state's financial burdens twofold. It must pay out not only more benefit than an analysis of the labour market would suggest, but in addition is deprived of potential tax income.

The second problem is connected with the high level of youth unemployment. As CBOS data suggest, 59% of young people (up to twenty four years old) have never been employed. Since secondary school and university students represent 36% of this social category, this means that one quarter of young people have been unemployed for at least some time. Their incomes mainly come from the support they receive from their families and casual work. There are also cases, however, of young people receiving fairly high incomes without doing regular work, which makes us question the legality of their source. Maintaining the share of young people in the general structure of unemployment at its present level could seriously disrupt the process of socialization.

Already today, due to the declining role of the family and school system, young people are being increasingly socialized by their peers [Siemińska 1996b].

In general, the present development of the grey economy reinforces the *habitus* characteristic of the "second society". Tax evasion now plays the same role in the economic strategies of Poles that the various methods of "re-privatizing social assets" and attempts to "opt out of the system" played in the 1980s. It maintains the hitherto division between the public sphere, for which the authorities are responsible, and the private sphere, in which the most important asset is situation-based individual resourcefulness [Marody 1991b].

The third important phenomenon for the economic dimension of Polish social life is a **change in the factors responsible for social differentiation**. This has given rise to certain patterns of behavior which may counter the above mentioned strategy. Under real socialism, social stratification was characterized by two fundamental features. On the one hand, the social and occupational hierarchy approximated those existing in Western societies: with managers, an intelligentsia and private owners at the top, and peasants and unskilled workers at the bottom. On the other hand, stratification, especially in the 1980s, became increasingly "decomposed" in the sense that people with higher education were receiving relatively lower incomes than their counterparts in market economies. In 1982, the correlation between incomes and years of completed education ranged - depending on the research - between 0.08 and 0.17; considerably below the corresponding figures for Western societies [Słomczyński 1994; Domański 1994].

At the end of the 1980s this picture began to change. In the years 1987-91, private owners enjoyed the best financial position in Poland. By 1991-93, however, the highest-ranking managers had already overtaken them. In 1993, even the non-technical intelligentsia were receiving incomes on average higher than owners' [Domański 1994]. **Increasing income differences** have accompanied these trends. "While in 1987 the lowest 10% of earners gained close to 5% of the general earnings pool, in 1991 the figure was already 3%. The highest 10% of earners correspondingly secured 18% in 1987 and 34% in 1991" [Pohoski 1996, p. 58].

**Education** combined with a managerial position is currently the most important factor determining high financial status. Poles have clearly recognized this change. Education is perceived as an investment giving the best returns in the future [Cichomski & Sawiński 1994; Marody 1996b]. The percentage of young people who want to continue their education is systematically increasing [CBOS 1996b]. The most frequently mentioned motives for studying are purely pragmatic: education is ceasing to have any value in itself for Poles. Instead it is becoming an investment intended to ensure future profit.

We should add, however, that this will not be an affordable investment for everyone. While free in theory, education is becoming increasingly expensive in practice [Wrzesińska 1995], and thus less accessible for people with a lower socio-economic status. As the author of the CBOS report [1996b] rightly observes, we are dealing here simply with a problem of **inherited social status**. Moreover, as J. Czapiński<sup>8</sup> points out, this problem is all the more apparent as it presently affects all social dimensions simultaneously: education is becoming the fundamental condition for gaining access to power, wealth and prestige.

Independently of its political and social significance, restricted access to education also has negative economic consequences. First, it considerably limits the ability of Polish society to adapt. Less educated Poles far more often prove helpless when faced with unemployment. Their chances of finding a job are also considerably lower [Marody 1996b]. Secondly, the education system is structurally backward and ineffective. As a result, the percentage of people with higher education is far too low for the demands of a modern economy. What is more, the currently rising number of students is being impeded by many factors and may soon come to a complete halt if the authorities fail to introduce fundamental changes into the entire education system [Czapiński 1995]. Thirdly and finally, due to low education standards many Poles have difficulty understanding the current economic transformations. This encourages many to believe in the idea of a paternalistic state responsible for the fate of all its citizens. This in turn could put a brake on the systemic changes taking place.

Undoubtedly, the life strategy adopted by Poles in reaction to the changes in systemic conditions in the economic dimension of social life has been to invest in their own (or their children's) education. These changes have likewise influenced transformations in social ties. We have in mind here above all the ways and platforms for developing the community of actions at different levels of social reality, from the lowest - social relations, to the highest - the articulation of interests.

The fundamental change marking this area has been the **shattered sense of "collective fate"** which had been the basis for social relations in Polish society. The feeling of solidarity specific to the period of real socialism hinged on the conviction that everyone was a victim of the system. This feeling of solidarity also persisted in the initial phase of the systemic transformations with the implicitly accepted assumption that **everyone** would be a beneficiary of the systemic reforms. However, it soon turned that the costs and gains of developing a market economy have not been equally distributed. Furthermore, the shared abstract values defining the general shape of the new system have often only been a screen for conflicting individual and groups interests,

8. A remark made during the discussion on the present study.

linked with the changing form of social space. Increasing differences in earnings, income and wealth, the inevitable consequence of introducing market conditions, have signalled the end of **collective** fate and its replacement with **individual** ones.

Despite appearances, no clearly defined and differentiated **social interests** have emerged to replace "collective fate". We would like to stress the word "social" in this context. It means that group interests should derive from the social structure and reflect the basic mechanisms of social differentiation. Analysis of social attitudes, electoral support and other ways of expressing group interests clearly shows that new social divisions have not yet sufficiently crystallized to become the basis for identifying interests. This is despite the fact that Poles are becoming increasingly aware of social differences. Old and new "ideological" divisions are still more important. There are also emerging divisions of secondary importance with regard to actual structuring processes. For example, these days we may talk about different interests associated with employment in private or state-owned firms. The old divide between farmers and the rest of society is also being revived in political debate [Kolarska-Bobińska 1994].

These divisions mostly come to the surface during political elections. In everyday life, on the other hand, we have lately been able to observe the rise of various forms of localism. The **social identification of interests** is becoming based on relatively small groups of people employed in the same factory, hospital or institution; living in the same region, small town or building; active in the local branch of the same party, organization or association; belonging to the same informal group of close friends or simply knowing each other. Personal ties and loyalties, emerging quite easily due to the local scale of social relations, gives such groups a high degree of cohesion.

We can define this form of social identification as **tribal corporatism**. Replacing interests derived from the social structure, which reflect abstract mechanisms of social differentiation, "tribal corporatism" is based on specific concerns arising from the present or even momentary position of groups. These groups owe their solidarity to the threat their members perceive from other groups or the policy of the state. It transforms society into an aggregate of in-groups, whose various interests appear to have only one feature in common: they are seen as morally justified and, therefore, deserve immediate satisfaction from the state or its agencies.

Tribal corporatism can take different forms, depending on the type of institution involved. In industrial enterprises it often appears in the guise of trade union activity where, defending employee interests is subordinated to a formula of demands and confrontation. This is especially evident in firms bought by Western capital [Gąciarz & Pańków 1996]. However, in employee-run companies trade unions can find themselves excluded from "tribal corporatism". As M. Jarosz [1996] points out, employees'

relationship to their "own" firm is based on a prevailing sense of participation in the community, the chief concern of which is survival, threatened by "outsiders" with different interests. This leads employees to see trade unions as organizations which threaten their fundamental aims through their demand-oriented behaviour.

Another form of "tribal corporatism", observed in small towns, almost by definition particularly favours the development of such social bonds. Political divisions in Poland are now so deep that even gossip about potential co-operation between certain parties gives rise to official *dementis*. Meanwhile, in small towns, people linked to opposing parties very often put their political differences aside and co-operate to promote local community interests more effectively. In such a case, a local politician assumes a dual role: as a "non-party" member of a local community he/she is concerned with its interests, and as a member of political party can use his/her contacts at the centre for the realization of those interests, having access to information as well as to people responsible for allocating money. The relationship binding a local community with its politicians thus assumes the form of *clientelism*, the main beneficiary of which becomes the community as a whole or specific groups within it.

Links with the centre are especially important if "tribal corporations" are to pursue their interests successfully. For they are competing for social resources still mainly distributed by the state. The distribution of these resources, therefore, basically depends not on decisions affecting general market mechanisms, but rather on those involved in distributing group privileges controlled by the authorities. These resources are principally distributed not on the basis of decisions that affect general market mechanisms, but rather those involved in distributing group privileges controlled by the authorities. We may say that "tribal corporations" resort to strategies characteristic of real socialism. E. Mokrzycki [1992] defined the latter as a system of centrally distributed privileges and benefits for different social groups. However, in the new institutional context these strategies acquire a different meaning. For the acceptance of market mechanisms is usually implicit in the aims of "tribal corporations", provided that their own "corporation" will be excluded from the influence of those mechanisms. Hence, particular interest groups do not want to modify the new systemic rules fundamentally. Rather they simply wish to guarantee a better position for achieving their own goals in the new system.

The conflicts presently observed in the economic dimension are not then the result of competing political programmes reflecting different social interests and proposing distinct methods of producing social resources, which would be negotiated through democratic procedures. Rather they result from the competition of particular "tribal corporations" for access to public resources.

## 2.2. The Normative Dimension

The normative dimension has particular importance for a society, since it provides the basis for social integration around shared norms and values and, hence, determines the legitimacy of the system. During the Solidarity era two such basic concepts served to integrate human actions on both the social and individual levels: the abolition of communism and returning to a "normal life". After seven years of transformation it is clearly apparent, however, that returning to a "normal life" is proving much more difficult to achieve than the abolition of communism. This is especially so for politicians.

Over the last few years, the post-Solidarity parties have mostly failed to focus their ideologies and programmes on the everyday problems underlying the transformed institutional system. Instead of concentrating on unemployment, increasing material differences and rising crime, they have spent their time fighting the post-communist parties as well as each other. This struggle has been characterized by attempts to build the political integration of society on the feeling of being threatened by the evil personified in their political adversaries. In relation to the past this "evil" was multiplied and, depending on political preferences, could be a "commie", a member of the *nomenklatura*, Western capital, those who reject Christian values and those who preach them too zealously. The pattern of proposed social integration has remained, however, unchanged - political adversaries are defined not only as different but also as alien to "us", we who should unite against that external threat [Marody 1995b].

These attempts to integrate society failed, perhaps because of the increasing fragmentation of the political scene. Nevertheless, an important side-effect of this specific political rhetoric has been to undermine the very sense of the transformation. Many politicians have presented the latter as a monstrous catastrophe and the source of misery for millions of Poles. The Christian parties have accused their adversaries of exposing Poles to moral nihilism, pornography, violence and the culture of death. The Solidarity trade union has drawn a picture of millions of people living in poverty thanks to Balcerowicz's reforms and rail against "the theft of national assets" whenever the privatization issue is raised. Former Prime Minister Olszewski announced in a parliamentary speech that the "invisible hand of market has turned out to be the hand of the swindler", while as leader of the Movement for the Reconstruction of Poland (ROP) he has declared his firm intention to settle scores with previous administrations for political decisions in contradiction of the law. The remaining post-Solidarity parties have unanimously questioned the legitimacy of the democratically elected post-communist

majority in the Sejm, whereas the latter has avoided discussion on norms and values, focusing instead on the "technical" aspects of governing the state.

With the gradual destruction of all potentially integrating symbols in the normative sphere, society has become torn between two tendencies: **moral and legal rigorism**, having no counterpart in everyday behavior, and **behaviourial pragmatism**, in which actions are justified only by self-interest and motivated by the desire for success. The first is expressed above all in the attitudes of Polish society to the law, attitudes characterized by an extremely high level of rigorism. In 1995, 63% of those researched by CBOS accepted the opinion that **the law should be obeyed, even when it seems unjust**; 65% of respondents believed that **the government should respect the law even if it means delaying solutions to important social problems**. Furthermore, support for both these opinions has grown by 10% since 1992. Almost half the respondents (48%) believed that **the law should be obeyed regardless of the circumstances** [CBOS 1995d].

Research on the way Poles view violations of moral norms and principles [Jasińska-Kania 1996b] also reveals a high level of political and social legalism - higher than in Western European countries. The same research also shows, however, that Poles are less ready to condemn behaviour guided by personal interests without regard for moral norms. Participating in the grey economy and avoiding paying the new VAT tax have also produced no specific moral dilemmas in Polish society, though 75% respondents accept the opinion that understating income for tax purposes was **never** justifiable [Jasińska-Kania 1996b]. Finally, Poles betray a certain level of ethical dualism when judging the behaviour of "our" public figures and "theirs". This appears to stem not so much from differences in political views, as it does from more permanent and deep-rooted patterns of moral reasoning [Jasińska-Kania 1988; Marody 1996b], reinforced by the principle of tribal corporatism.

The high regard that Poles have for the law does not necessarily imply any willingness to respect legal rules and regulations. Rather, it is rooted in the helplessness of Polish society faced with an **axiological deficit**. Paradoxically, this deficit results from too many individual and group visions of justice rather than from too few. This has been accompanied by a **belief in the law as an instrument substituting social control**. Poles have conveyed this attitude through their many complaints about the lack of legal clarity. It is also evident in their condemnation of legal loopholes, which they blame for the spread of unethical conduct in Poland.

Undoubtedly, the law is an instrument of social control, but not the only one. One's own fellow citizens exercise social control through their vindictive responses to illegal or immoral behaviour. This covers a wide spectrum of actions: from moral condemnation and social ostracism on the one hand, to notifying the appropriate authori-

ties when the law is broken, on the other. It is only when such actions take place that the rift existing between legal and moral rigorism on the one hand, and behaviourial pragmatism on the other, ceases to exist, at least in the social sphere.

Social control at this level arises from shared norms and values, and the resulting conviction that we can rely on our fellow-citizens to cooperate in enforcing them. However, at present those norms and values are permanently under auction in Poland as different groups bid for the right to interpret them. In addition, fewer and fewer Poles are inclined to cooperate as their confidence in their fellow citizens diminishes. Ninety percent of Poles believe that **you can never be too careful when dealing with other people**<sup>9</sup>.

Declining trust and cooperation in contemporary Polish society can partly be attributed to a growing feeling of being threatened, in many cases physically, by the rising delinquency [Księżopolski 1995; Frieske 1996; CBOS 1996c]. However, far deeper cultural causes have also played their part. Various empirical data suggest [Marody 1996c] that Polish society is now passing from "community" forms of cooperation, based on informal relationships and private dependencies and loyalties, to an "open" model of cooperation, in which our partners are people we don't know well and behaviour is based on universally accepted formal norms and rules. These analyses show, among other things, that those respondents who were more trustful of other people and more inclined to cooperate had a higher socio-economic status and income. We can explain this as a consequence of their position in the social structure, which more often compels them towards cooperation based on more formal ties.

These individuals, however, are mainly representatives from the traditional professions and business. Both groups have lately been trying to develop more formal mechanisms of social control [Domański 1994]. "Community" forms of cooperation still dominate in public life. The models of action cultivated in this sphere are particularly significant since they are becoming the scheme of reference for ordinary people. The models emerging in Poland are not helping to develop legal attitudes nor deepen the conviction that obeying the law is desirable and profitable for the individual. The continuing debate in the highest echelons of power on the legitimacy of decisions "on the border of the law", the escalation of mutual recriminations with no consequences either for the accusers or the accused, and finally the repeated "suspension" of universally binding norms and laws for people in influential positions - all these have rather reinforced the belief that obeying officially established rules is not necessary. The latter has been accompanied by a growing conviction among Poles of social inequality before the law, which they regard as more tolerant towards those at the top.

9. At the same time, 61.4% of Americans gave an identical answer to this question.

The mechanisms controlling public life have likewise proved defective. This has mainly been due to **party factionalism**, which affects not only political parties and groupings but also the independent press and public opinion. In this case the mechanism of "tribal corporatism" takes the shape of the following norm: "look after your own, crush your opponents", while violation of this rule is treated as high treason<sup>10</sup>. The fragmenting and polarizing political scene also discourages public figures from co-operating to regulate the public sphere. Several dozen minor post-Solidarity parties, permanently engulfed in the excessive ambitions of their leaders, are competing for the role of Chief Guardian of Moral Values, whereas the post-communist parties, blamed for every crime of communism, are trying in turn to distance themselves from any values whatsoever and aspire instead to be the Chief Engineer of Transformation. Both sides show no interest in more arduous and costly strategies geared towards maintaining the normative order, as these strategies also might burden members of their own group [Marody 1996a].

M. Król [1996] sums up the present state of the normative order when he writes: "We have a Constitutional Tribunal which functions very well, but we do not have any sense of moral decency, which cannot result from calling for higher standards or introducing codes of ethics for parliamentary deputies or professionals. Rather, a sense of moral decency results from the shared understanding of common good." By this means we arrive back at the starting-point of our analysis. Shaping the normative sphere depends on the existence of shared norms and values. Meanwhile, the conflicts taking place in the public arena still stem from the question "Whose Poland is it?" and not from "What kind of Poland do we want?".

### 2.3. The Dimension of Public Life

Next to the economic sphere, the most fundamental institutional changes achieved since 1989 have been in the domain of public life. Yet these changes appear to have come in for stronger criticism than economic changes - which Poles after all have experienced more at close hand. This attitude is mostly expressed in the relatively low number of Poles who regard the current political system as good and not requiring any basic changes (32%). The majority (59%) evaluate the new system as bad and think it should be fundamentally reformed [CBOS 1996f]. Very few Poles likewise believe that **the country's affairs are in safe hands**. This opinion received its lowest score in mid-1992 (5%), but had increased slightly (to 25%) by the beginning of 1996. Nevertheless

10. Compare this for example, with the reactions of the Freedom Union (Unia Wolności) members to J. Kuroń's article [1996].

more than half the respondents still reckon that **nobody is presently in control of the country's development** [CBOS 1996g].

However, we should bear in mind here that Poles are not criticizing democracy as a political system, which they are increasingly accepting (71% in 1995). Instead, the focus of their attack is "real democracy", which they have experienced through the actions of actual people and real situations. It is significant that, independently of changes in government, general approval of government as an institution has remained relatively stable. Indeed, it is considerably higher [CBOS 1996h] than the conviction that **the nation's affairs are in safe hands**, although these are the very "hands" that should be responsible for Poland's development.

To disentangle the various threads running through the answers to these and similar questions we should first of all examine the consequences of political institutional change for the social dimension. Seen from this perspective, the basic experiences of most ordinary people during the transition to democracy show a prevailing **feeling of isolation and having to fend for oneself** [Ziółkowski et al. 1994]. Paradoxically, Poles perceive the democratic system of political representation as more remote and detached from the concerns of the ordinary man-in-the-street, and also less accessible in a communicative sense, than the communist regime.

Under real socialism, the leading watchdogs of ordinary people's interests were - according to respondents - Solidarity, the Church and, despite appearances, the Communist Party. Their concern for ordinary Poles was driven by different motives - decent in the case of Solidarity and the Church, committed as they were to defending human rights, and less so with the Party, being mainly concerned not to incur the "wrath of the people". Nevertheless, in both cases society was the focus of attention. In the general struggle between the opposition and the Party to maintain or overthrow the communist system, both sides tried to defend (or at least declared to do so) ordinary people to legitimize their claims to represent society.

Judged through the experiences of real socialism, systematic change appears, therefore, as a change for the worse. First of all, because there are no longer any institutions (perhaps with the exception of the *ombudsman*) which Poles see as impartially committed to protecting ordinary people. Respondents in many studies believe that both Solidarity and the Church have become too deeply embroiled in the struggle for money and power. They have become too concerned with their own interests and have forgotten the average man in the street. Seventy percent of respondents believe that **Solidarity** should be restricted exclusively to its trade union activities [CBOS 1996i]. **The role of the Church** in public life excites even more emotion. In-depth analysis [Marody 1996d] shows that Poles regard the authority of the Catholic Church as un-



questionable, but only in the domain of spiritual matters. Most of the respondents see the Church's involvement in political life in a negative light. This attitude is directly reflected in their declining confidence in this institution.

Second, Poles lack a clearly defined addressee for their social demands and claims. Previously this role had been filled by the Party. Presently, the large and growing number of political parties and new institutions designed to mediate in difficult matters have not made finding help any easier. More importantly, due to the changes in all systemic regulations, people do not know even where to look for help. Third, the new potential addressees, because they are so spread out, are "incomparably weaker, less efficient and effective" [Ziółowski et al. 1994, p. 201]. After all, with the breakdown in social solidarity resulting from increasing social differences, the Wrath of the People has also lost its potent force.

It is not surprising, therefore, that **the state remains the basic addressee of social claims**. The state is the only institution which has not been subject to diffusion and diversification. Furthermore, its representatives, at least on the central level, are easily identifiable. Poles therefore expect the state to provide fundamental solutions to social problems, including unemployment and low wages [CBOS 1995a]. In addition, Poles almost universally approve of the state guaranteeing a certain level of social welfare. It is significant that this approval is not based on the conviction that "the state should give me such and such"<sup>11</sup>. Rather, we are dealing with an adequately recognized catalogue of actual societal concerns and problems. By their very nature these problems cannot be solved by individuals, and thus must be dealt with on the social, though not necessarily the central level.

This is also the main reason why the "war at the top", the "battle for ministerial posts" and party conflicts over public appointments are a cause of so much alarm - they are threatening to destabilize the state. Poles currently look upon the political system as **the main source of tension and instability**. Conflicts taking place in the power structures and in relations between the authorities and society are far more often registered by respondents than, for example, conflicts resulting from the increasing social differences. This is in spite of the fact that Poles regard the latter as the main source of social divisions [Kolarska-Bobińska 1994]. Furthermore, Poles are becoming increasingly convinced that conflicts at the top are affecting the lives of ordinary people [CBOS 1995f], while incompetent and irresponsibly-led governments are seen as the third most serious problem facing the country [CBOS 1995a]. Respondents also regard po-

litical instability as a cause of personal insecurity, as political conflicts are aggravating the already highly changeable and unpredictable social reality produced by the systemic transformation.

The most visible features of public life in present-day Poland, then, are the desocialization of politicians, the subordination of the public interest to party factionalism and the increasing "isolation" of society. The low opinion that Poles have for the authorities, while at the same time focusing all their social expectations on them, embodied in the state, is another factor. In the background, however, has been the rise of certain forms of **self-organization from below**. At present, we can say little about this phenomenon, since our knowledge does not as yet extend beyond basic statistical data on non-governmental organizations, a few case studies on individual organizations and general claims about the civil society that is currently forming.

The quantitative data on **non-governmental organizations** [Informator 1996] shows that an unprecedented explosion in civic activity has taken place since 1989. This increase in non-governmental organizations peaked in 1992 when the number registered was close to 1,200. Since then the number of organizations registered each year has diminished. Yet, in 1995, it still amounted to approximately 300. Estimates of the KLON/JAWOR Data Bank on Non-Governmental Organizations record 20,000 NGO's presently active in Poland. In their work, these organizations have generally tended towards a strict demarcation of the social and political spheres. The sole exception (and a kind of supplement) to this appears to be the principle of patronage linking local social activists with local politicians. J. Kuroń [1996], who has exceptionally wide contacts in this area, expresses a similar opinion, when he writes about the "desocialization of politicians and the de-politicization of social activists". At the same time, however, there are signs of a possible change in this trend.

The Data Bank on Non-Governmental Organizations records an almost twofold increase - between 1993 and 1994 - in the number of references made by these organizations to activities such as "human rights and the protection of minorities", "the media and information" and "the state and the law". This means that NGO's are becoming more interested in issues characteristic of the political dimension of a democratic state. The trend of NGOs towards strictly political activities likewise confirms a more detailed analysis carried out on such organizations in the ecology movement. As its author states [Gliński 1996], Polish ecological groups have limited their activities to the area of non-institutional policy [Offe 1995a]. However, during the last period they began co-operating with local self-governments, regional administrations and the Ministry of Environmental Protection. They have also become involved in parliamentary lobbying.

11. For example, with regard to unemployment, respondents see the role of the state as "helping people adapt to the free market rather than simply 'pumping' money into the pockets of the unemployed" [CBOS 1995e, p. 3].

The growing number of magazines and periodicals published at the sub-local level (covering areas below the voivodship level) also testify to increasing grass-roots activity. It is worth recalling here that in R. Putnam's study on Italian democracy [1995], local press reading habits were one of the indicators of "civil community" in that society. The data on Poland in this area show that between 1993 and 1996 the number of local periodicals increased from 883 to 1,238 [Katalog 1993, 1996]. Research on press reading habits likewise reveals that local periodicals are proportionally more successful than national ones.

C. Offe's [1995a] concept of non-institutional politics associated with new social movements is significant in this context. For we should pay careful attention to those signs of civic behaviour which do not normally count as political activity. A characteristic feature of "non-institutional politicizing" is the use of methods specific to social movements and not political parties. The "political nature" of protests, expression, articulation and cooperation in the general decision-making process depends, in Offe's view, on a collective actor's conviction that they have social legitimacy and that their aims may be valid for the wider community.

In this context, the entirely new phenomenon of the "black marches" against increasing crime and violence in Polish cities is an interesting case in point. It is certainly difficult to talk in this case about the appearance of a collective actor with even a loosely defined identity. Nevertheless, this type of activity does appear to meet the conditions of non-governmental political activity. It at least represents a peculiar form of communicating with, and applying pressure on, the authorities. The same can be said of the numerous protests organized by the fairly small feminist groups, which track every deviation from the principles of sexual equality in the everyday functioning of the authorities.

Although - as research on social opinions shows - Polish society as a whole still does not feel fully "capable of sustaining and reproducing itself without the perpetual and ubiquitous wardenship and command of political rulers" [Bauman 1993, p. 4]. In other words, Poland is not a civil society in the classic sense of the word. Available data indicates that a third actor - alongside the institutions of the state and the political elite - is beginning to make its presence felt in public life. This is the **citizens' movement**, which takes the form of various grass-roots citizens' initiatives. Its potential to develop and consolidate obviously depends on a number of additional factors. Not all of these "citizens' initiatives" accord with the principles of a democratic state. Nevertheless, they are proof that the public sphere is beginning to merge and signify the gradual weakening of the division between state-controlled public activity and private activity dependent on individual decisions - which had been typical of the period of real socialism.

### 3. THE PROSPECTS OF INTEGRATION WITH EUROPE

In all three dimensions analyzed above, the transformation of institutional conditions unquestionably influenced changes in individual actions. Yet the direction of these changes has not yet been unequivocally determined. The liberal-democratic institutional structures which Polish society received in the first period of transformation still offer a wide *spectrum* of possibilities: from a culturally and socially backward society shaken by political and economic crises on the periphery of Europe, to a society which is capable of integrating with Europe as a partner of equal standing in a community of other liberal-democratic states. The first possibility would exclude Poland from "European society" even at the moment of its entry into the EU. The second prospect raises the question of Polish society's ability to achieve **three fundamental aims**: (a) in the economic dimension - to become a **competitive society**; (b) in the normative dimension - to **implement and maintain the rule of law**; and (c) in public life - to become a **civil society**.

We should not identify these aims with the empirical features of liberal-democratic societies. They refer rather to a group of values representing both the basic measure used to evaluate their functioning, as well as a far-reaching ideal which influences - to a greater or lesser degree - the direction of current policies. We can re-create a more detailed register of those values on the basis of international publications such as the Human Development Report published annually by the UNDP, or documents such as the European Social Charter [1993], which contains a detailed and elaborate catalogue of economic, social and cultural rights.

We will thus examine the chances of Polish society integrating with "European society" by taking these values as our frame of reference. At the same time, we will focus on the **social barriers** and obstacles preventing Polish society from attaining these values, which are appearing or may appear in the processes of social change currently under way.

#### 3.1. The Social Barriers to Economic Development

Most of the social barriers impeding **economic development** are rooted in a fundamental paradox of the Polish transformation<sup>12</sup>. Z. Bauman referred to this at the beginning of the 1990s [1993], when he pointed out that the social forces which contributed to the fall of communism were not consciously interested in building capital-

12. This also concerns the transformations in the other post-communist countries.

ism as such. Neither the heavy-industry workers representing the hard-core of Solidarity, nor the state-subsidized peasants, nor even the intelligentsia whose social status in the communist system was quite high and privileged - none of these groups dreamt of changes which would deprive them of what they had gained with so much difficulty under real socialism. Dissatisfaction born from the disastrous economic functioning of the old system did not essentially go beyond the demand for basic redistribution. The post-communist system was supposed to be simply better, more economically effective and socially just, but remain the familiar system they already knew [Marody 1991b].

Meanwhile, transformation in the economic sphere has essentially changed the **criteria** of efficiency and justice. Sociological research certainly shows that a meritocratic attitude has prevailed in Poland for a long time. However - as E. Mokrzycki notes [1992] - these attitudes are rooted in socialist principles of meritocracy, which fundamentally differ from the meritocratic criteria accepted in the market economy. This is because socialist meritocracy not only postulated "to each according to his merits" but also presupposed the existence of an **objective** measure of merit in a strong sense, which was not restricted to market mechanisms.

This "objective measure" was based on the conviction that different types of work had different degrees of functional indispensability for society. This was propagated through the communist mass-media, which bestowed value on certain occupations at the expense of others. In this way, "workers" were essential because they produced goods for society, farmers - because they fed the population, teachers - because they educated it, and doctors - because of their difficult and responsible work. On the other hand, office workers and civil servants - not including party functionaries - were unnecessary, for the battle with bureaucracy was the favourite means used by the mass-media to apply the principle of "class justice" during the period of real socialism. The intelligentsia-based professions held an ambiguous position. On the one hand, they conferred prestige, while on the other - they could not be credited with carrying out **work** that was important for society. For the fundamental dimension of evaluation was the opposition of hard, essentially physical labour to intellectual work not associated with physical effort.

As a consequence, however, this "objective measure" turned into the quite subjective conviction that "I work very hard, so I deserve high wages". The criterion of justice, hence, became not the **results** of an individual's work but rather the **amount** of work he expended. As CBOS data show, this criterion remains unchanged till today. The value-system underlying work still places value on immediate "physical" exertion at the expense of long-term investment in improving one's qualifications and building a career.

The desire for education we noted in the first part of our study does not testify to any deep change in the value-system. Rather, it has an imitative character<sup>13</sup>. Poles recognize the link between education and higher income. Nevertheless, they are still unaware - at least on a wider social scale - that the basic **criteria** for salaries have changed and are now based on the results of labour. They also appear to be almost entirely unaware that the **market** value of those results depends on the mechanisms of supply and demand and not on any "objectively" measured social utility of a specific profession nor on the merits associated with having a university degree.

In addition, the desire for education is faced with a number of **structural limitations**. Poland's trump card on the road to the market economy was supposed to be its highly-qualified work-force. Poland certainly eliminated illiteracy a long time ago. Yet, even in 1995 over 60% of Poles had received no secondary school education (i.e., they left school at 15), finishing their schooling at the elementary or basic vocational school level. Somewhat less than 7% have a university education [Mały 1996]. The unsolved problem of developing mass secondary school education affects not only individual chances of material success, but also, and even more so, the development of the country as whole. For the wealth of highly developed nations depends on high-tech industry, services and, most of all, what J. Naisbitt calls "the information professions", which mainly consist in producing, processing and disseminating information. Two thirds of the entire EU work force are employed in this sector, while the corresponding figure for Poland is only one third. For example, to reach German employment levels in the finance and insurance services, an additional one million people would have to be employed in the sector [Balicka & Gajdziński 1996].

The problem, however, is that they would have to be educated first. For our highly-qualified work-force, when placed against the requirements of a modern market economy, turns out to be a national myth. Out of forty one states researched on their human-resource and academic potential, Poland was ranked thirty second as regards **access to human resources and qualifications**, thirty seventh in computer skills and was in last place when it came to general competitiveness [Balicka & Gajdziński 1996].

Certainly, home-grown specialists are more and more often replacing Western experts and advisors in Poland. All the same, as a report of the personnel recruitment firm Korn/Ferry International [1996] shows, local labour markets in East-Central Europe are still not saturated in this area. The rotation of managers employed in foreign firms reaches on average 27%, compared to 10% in Western countries, which is a result of competing foreign firms "outbidding" each other for employees.

13. Which obviously doesn't mean that raising the level of education in society would not produce fundamental changes in the value-system of work.

Besides socialist meritocratic principles and the low level of qualifications necessary for a modern economy, the third factor which can influence economic activity and thereby Poland's chances of a partner's share in the EU economy is **the fear of taking risks**. This is especially highly apparent among less-educated Poles [Poleszczuk 1996]. Although this attitude is typical of other modern societies, in Poland, due to the relatively high proportion of less-educated people, it represents a significant problem when faced with a **competitive environment**.

As data from the Korn/Ferry International report [1996] show, even people in the highest managerial positions lack motivation and orientation towards results and work-quality (as well as honesty, negotiation skills, team-work and leadership qualities). In many of the worse-off social groups, a **fascination with success combined with inherent passiveness** can increase their level of frustration and encourage many to seek solutions in illegal activities.

### **3.2. The Social Barriers to Developing a State of Law**

The problem of developing a rule of law is one linked to the existence of particular legal regulations as well to the possibilities of effectively implementing and executing them. The social implications of the first factor, as the World Bank Report [1996] points out, are that: "Legislative acts, passed without careful preparation and containing significant inconsistencies, ambiguities and loopholes open to abuse will slow down economic reforms and cultivate cynical attitudes in society as well as diminish public confidence".

We can point to three more general social factors which increase the likelihood of the law becoming "spoiled" at its legislative stage. The first has been the inclination of successive government administrations to use the law as a means of satisfying the state's current budgetary needs. The second factor is the centralizing tendency of the bureaucracy, reinforced by habits formed under the previous system, to extend its control over ordinary citizens<sup>14</sup>. The third factor, discussed earlier, is the phenomenon of "tribal corporatism", which has resulted in all social actors trying to safeguard the interests of their own group or institution though protective legislative solutions. The influence of all three solutions is reinforced by the lack of any concept of the common good or public interest, which itself is a consequence of the axiological deficit mentioned earlier.

The problems of drafting laws, however, of secondary importance in building a rule of law. On the one hand, they are purely technical and can be relatively easily removed. On the other, adjusting Polish law to EU rules is one of the conditions of Poland's acceptance into the Union, so we may assume that particular legislative regulations will gradually fall more in line with the principles of the free market. Another factor is playing a far more important role in this area, namely the practical possibilities of implementing and executing established laws. From this point of view, one of the main social barriers to building a state of law is a fairly **specific understanding of the very concept of the law** in Polish society.

Analyzing this problem, A. Giza-Poleszczuk [1991] points out that Polish society predominantly perceives the law as one which determines "the right to...": justice, money, freedom, do something, have something etc. This transforms the law into an arena for recognizing moral rights rather than one for inquiring into how a given act conforms with a set of abstract rules and procedures. The law ceases to have value in itself and becomes a vehicle for realizing ethical values. "In this way, a 'just' law is seen rather as a tool of revindication: restoring lost values and redressing wrongs" [Giza-Poleszczuk 1991, p. 184]. It becomes a tool of intervention to prevent "wrongdoing", a register of punishments and rewards that people "justly" deserve - not a formalized system of rules delimiting possible actions in accordance with the "letter of the law".

Paradoxically, this "morally loaded" attitude towards the law increases the chances of people treating it purely instrumentally and breaking its binding rules. For the concept of fairness lies outside the legal order and refers to other non-legal values. In Poland, due to their generally limited knowledge of legal rules and regulations, people's decisions to undertake an action are mainly guided by their own judgements, applying the categories of "good" and "bad" - which bestows on those judgements a moral rather than a legal character. Moreover, these judgements are greatly modified by the attitude of behavioural pragmatism we discussed above. Various examples of people "taking the law into their own hands" mainly involve situations of claiming ownership rights with total disregard for the law [Sprawozdanie 1996].

But likewise the attitude of moral rigorism may contribute to activities that undermine the idea of the rule of law. Different groups usually begin to make references to "natural law", "historical justice", "moral right", etc., when their members begin to see the binding legal order as the principal barrier to realizing no longer individual interests, but an entire world vision, which subordinates the actions of **all** people to the values recognized by a particular group. This type of moral reasoning clearly contradicts the modern concept of the rule of law, which focuses on the right of individuals **to choose** their way of life. This is because it represents an attempt to avoid

14. Although we should emphasize here that this is an orientation characteristic of all bureaucratic systems, regardless of their systemic past.

binding legislative solutions by refusing - on moral grounds - the recognition of legally guaranteed law rights possessed by specific social categories.

We should recall that in Poland, cultural norms and values that were subject to selective modernization under real socialism and which have shaped the concept of justice in Polish society are profoundly traditional. They exclude certain types of behaviour belonging to the domain of individual rights in Western societies, and the principle of equality accompanying them. This is linked to a second factor which restricts the chances of implementing and executing the rule of law in its European version, which is an **unawareness of the discriminating character** of certain elements of the social *habitus*. For the values and norms of Polish society, though highly differentiated, have one common feature: they are collectivist in the sense that they subordinate individual rights to group interests or to the values and norms those groups recognize as solely fair. Although 94% of respondents believe that **the law is fair if it protects both the strong and the weak**; at the same time, however, close to 70% of them reckon that **the law should safeguard the interests of the majority, and different minorities, if they want to live in Poland, must reconcile themselves with that law, and that the law is fair if the majority of people accept it** [CBOS 1995d].

In Polish society the concept of discrimination makes sense only when describing relations between a social group and the state or other social groups. In other social contexts the rights an individual possesses are granted by a particular group or gained by being a member of that group. An abstract understanding of individual rights, which separates their substance from the values and norms espoused by a specific social group (claiming usually to represent the majority of society) is very weakly rooted in both everyday consciousness and in legal practice.

The concept of discrimination evident in draft legislation on gender equality and the concept of privacy applied in draft legislation on protecting personal data are examples of concepts related to individual rights in their modern sense. For those concepts to take root in social practice, not only suitable legal regulations would have to be introduced and knowledge of those regulations be disseminated among ordinary people - the specific norms would also have to be built into the societal culture, which would transform the individual (in relation to the group) into an autonomous subject of social activity.

A third essential factor associated with the purely normative level can also affect the ability of Polish society to integrate with European society. We may define this as a **readiness to apply the law**, in the case of the judicial machinery, or the desire to **take advantage of legal rights** in the case of individuals. For the rift between moral-legal rigorism and behavioural pragmatism highlighted earlier is especially visible in the actions of the judiciary. Although acting in accordance with the law, Polish courts

appear more willing to avoid making firm decisions in controversial political issues than investigate them impartially. The classic example here are the verdicts of acquittal given in the trials of B. Tejkowski and the priest Jankowski, accused of spreading racial hatred, due to what the courts called the insignificant social injury involved. The problem in such cases is not that the judicial machinery lacks tools of control in the form of suitable legal regulations. They have access to sufficiently clear and binding legal regulations in such cases. Nevertheless, as E. Łętowska [1995] observes, abuses of the law require the readiness of an appropriate authority to explicitly call them abuses.

"**The lack of readiness of an appropriate authority**" is perhaps understandable and even rational in the cases cited above. However, this does not change the fact that in Poland and similar societies, where the normative sphere has become seriously weakened, universally recognized norms are lacking and the mechanisms of social control have been drastically impaired, the judicial practice of "covering up" politically controversial cases impedes the development of the rule of law. This in turn further convinces many Poles that faith in the "moral rightness" of their actions is sufficient by itself to justify those actions. What is more, "the lack of readiness of an appropriate authority" also makes citizens less willing to come out in defence of values they acknowledge. This promotes **opportunistic attitudes** towards institutions credited with the "the power to cause harm", i.e., which either directly or through negative opinions about individuals could make it difficult for them to realize their important interests. Paradoxically, it is mainly the Church and schools which currently enjoy such a status rather than the administrative or political authorities. Including norms based on individual rights in the *habitus* of Polish society as well as limiting opportunism as the fundamental social strategy<sup>15</sup> depends above all on Poles developing a civil society.

### 3.3. Social Barriers to Developing a Civil Society

The creation of institutions duplicating Western democratic and free-market ones has played a leading role in the systemic transformations since 1989 [Offe 1995b; Mandelbaum 1996]. Imitation is by no means a bad thing in itself. In M. Mandelbaum's opinion it represents the best formula for survival in situations where competition is the general rule, as well as for societies as a whole. Nevertheless, this formula involves serious risks, for "institutions that are 'copied' and transferred without the moral and cultural infrastructure to support the 'original' can produce highly different results,

15. Opportunism as an individual strategy appears in all societies.

often in conflict with original expectations" [Offe 1995b, p. 29]. The "institutionalizing of institutions" entails filling them in with "local" meaning, and conferring on them a significance based on the experiences of the society in which they are implanted. Hence, the integration of Polish society with "European society" is inseparably linked to the problem of institutionalizing a civil society - one that is able to autonomously satisfy the needs of its members and appoint its political representatives.

The fundamental obstacle here is the Polish **vision of the state** as the general distributor of social assets which takes care of its citizens' needs - a vision inherited from real socialism. This idea of the paternalist state recalls in its basic form the **welfare state** developed in Western countries and evident in many of the resolutions of the European Social Charter. However, when it comes to the question of "protection" itself, the Polish concept is significantly broader. It covers not only free health care and education, the right to work and accommodation, etc., but also a more developed system of needs and wants. As a result of their experiences under real socialism, Poles have come to treat the satisfaction of those needs and wants as natural and obvious - even though it essentially depends on the general level of wealth in a society.

As E. Mokrzycki points out, the social philosophy behind this demand is also different: "It is treated not so much as the result of a negotiated social contract of fellow citizens as the **natural right** of the citizen and hence the **natural duty** of the state" [1992, p. 280]. This means that the claims of particular social groups are seen as morally legitimized, which releases the members of those groups from the obligation to look for **social** solutions to the problems oppressing them. Instead they can direct their attention to "political" solutions, which essentially boils down to looking for better leaders.

J. Hryniewicz quite clearly defines the current situation when she writes: "With the pressing attempts to rationalize social policy in Poland, a socialist social utopia is still essentially being practiced; everybody is entitled to everything, and the state remains a collective philanthropist giving out goods on demand" [1995, p. 252]. Eliminating this "utopia", and thus the incongruity between the "theory and practice" of the emerging liberal-democratic society, is strictly dependent on the policies of the state itself. This is not only because the state has to clearly define which social needs it is responsible for providing, but also - and perhaps even more so - because institutional conditions must be created to give broad sections of society genuine opportunities to satisfy their remaining needs. In both cases this would simplify the rules of the "systemic game", which in turn would reduce the sense of helplessness in Polish society and help genuinely "socialize" social activity.

The first task implies the need for broad public debate on what goals society wishes to satisfy through the state. Seven years after the systemic transition began, it is

becoming obvious to an increasingly large number of Poles that the Polish state today is unable to meet all the obligations which it inherited from the previous system. This increases the chances of negotiating new - more realistic - conditions for a social contract between the state and its citizens and, as a consequence, "de-etatizing" social policy.

Alongside defining the scope of the state's responsibility to its citizens, an equally important task is to create conditions promoting various forms of social activity. We can point to at least three types of such conditions which should be the object of state decision-making.

First, financial conditions are needed to encourage citizens to assume responsibility for some of their needs currently provided by the state. This would include legal measures to facilitate, e.g., writing off spending on education and house-building against tax. We also have in mind here state assistance in creating a non-commercial network of financial institutions which would grant low-interest loans for certain investments. So far, state policy in this area has been characterized by a lack of resolution resulting from its subordinating to current budgetary needs (e.g., the recent withdrawal of tax-relief on flat-construction), and indecision.

Second, institutional conditions are urgently required to simplify legal procedures which would enable non-state organizations to be set up more quickly. These, in turn, would function according to special laws (e.g., tax exemption, linking paid work with voluntary work) and be geared towards providing for the needs of local communities (e.g., care for children, the sick and elderly). Co-operating with the state, they would take over some of its duties and at the same time activate and organize social life in local communities. The fact that in Poland such organizations often become a cover for purely commercial activity is not a sufficient argument for abandoning the idea. At most, it should be taken into account in the supervisory activity of fiscal organs.

The third and final condition involves developing special types of training. Social policy is not a task for amateur social activists. It requires well-trained specialists capable of mediating between people with specific needs and those who can satisfy them. They could also help people with similar needs and aims to get in touch, thus accelerating the process of social self-organization. It is a paradox that even persons working in employment offices do not require special training.

J. Hryniewicz, analyzing four possible variants for realizing state social policy (continuation, improved continuation, free-market-based philanthropy and "de-etatization"), shows that the variant based on "de-etatizing" social policy discussed above would help to shape a civil society, while the remaining variants would have to destroy the current system, render its functions pathological, and bring about its gradual collapse. At the same time, however, she asserts that carrying the first variant into effect

"would be resisted by everybody: the authorities, because they would lose their monopoly, and social groups, because they would be deprived of their actual (or formal) privileges" [1995, p. 250].

The resistance of the "authorities", or more precisely the bureaucratic machinery, depends on the strength of social pressure. On the other hand, there is no way for us to assess realistically the potential resistance of various social groups until attempts are undertaken to "de-etatize" particular areas of social policy. The problem in this case is that as long as the state gives, it is entirely natural to take, and then to demand more. **Free-riding** is a problem in all modern societies. Limiting its role strictly depends on developing a civil society.

All the symptoms exist for us to believe that Poland is capable of transforming itself into a civil society. Obviously, this would not be a one-off event, but part of a long, drawn-out process. Economic conditions and educational factors, along with the social changes accompanying them, would influence its course. Nevertheless, this process can only begin by re-defining the inter-relations between state and society. The political elites may dream of society organizing itself and unburdening them of the responsibility for meeting all its social needs, but as long as the fear of social resistance and opportunistic moves towards mobilizing political support restrain them from taking unpopular decisions, large sections of society will continue to dream of a "paternalistic state" which will bear responsibility for their well-being.

## CONCLUSION

The transformation of institutional, political and economic structures which took place in the early 1990s triggered off adjustment processes in Polish society that modified its identity in a quite fundamental way. Their pace and direction were set not only by the new institutional conditions, but also by the differentiation of individual and group "social assets" which could be used in the once again open struggle for positions in the social structure.

The most important feature presently characterizing the identity of Polish society is the deepening division between those who, due to their "assets", can take advantage of the new opportunities created by the system and those who - even when they recognize these opportunities - are unable to exploit them. The basic "assets" determining this divide are: a better education (up to at least secondary school level), a young age, having no or very few children, and living in a large city. For the first group, the EU countries are the example to be followed in regard to material aims and the choice of activities; for the second - they are a point of reference determining the level of expectations, which are directed towards the state.

This division, however, is important only when we examine the individual strategies for coping with the new institutional system; it does not reflect the complexity of processes involved in transforming the identity of Polish society at the level of its basic organizational principles. A characteristic feature of these processes is the depoliticization of rules and ties created in the course of social activities, and the desocialization of rules and ties created in the course of political activities. For, on the one hand, the numerous examples of social self-organization are still of a local character and the state must mediate in their co-ordination. On the other hand, political divisions have so far not taken hold in the social structure, and thus, instead of articulating and representing the interests generated by this structure, become an instrument - to a greater or lesser degree effective - by which differing visions of social life are imposed from above.

The absence of ties between the socially-determined dimensions of community and the politically-determined dimensions of subordination can be seen as a transitory phase and will probably disappear as the social structure begins to crystallize and local problems become "globalized". At the same time, as the analyses presented in this study show, there is reason to fear that the individual and group adjustment processes set in motion by the systemic changes may extend the "transition stage" beyond the period envisaged by most individuals, and thus severely weaken the ability of Polish society to integrate with European society. For an important feature of these adjustment processes is a reliance on strategies developed within the framework of the "second society" to exploit the institutional possibilities created by the new systemic order. This results in individuals trying to increase their "rewards" without bearing the "costs" of participation in the liberal-democratic system.

These analyses also point to three fundamental factors which will determine how fast Poland acquires the "civilizational competencies" characteristic of liberal-democratic systems [Sztompka 1993], and which can also prolong or shorten "the transition phase". The first involves **reforming the education system**, to widen access to higher education, but which should also include basic changes in curricula. The research results contained in this study confirm the interdependence between higher education and all features of individual attitudes and their actions essential for a liberal-democratic society. Data compiled and analyzed by J. Czapinski [1995, 1996] show that education is not only the most powerful factor determining all the "civilizational competencies" of the individual essential for participating in a modern society, but also determines the economic growth of the country by shifting the economy to more profitable and modern sectors. Investing in education becomes, therefore, a far more effective way of "buying social peace" than financially propping up obsolete and unprofitable industrial establishments.

The second factor is **solving the housing problem**. "Attaching" the average Pole to his/her flat (often his/her parents' flat) restricts geographical mobility and reduces the chances for social mobility. It also places in doubt the chances of accomplishing essential economic structural changes (reducing, for example, rural overpopulation). Above all, however, it affects - albeit indirectly - the chances of Poles acquiring many of the "civilizational competencies" that result from urbanization and which are mainly linked to urban life. For, as J. Bauman [1993] points out, the concept of civil society that comes from the German term *bürgerliche Gesellschaft* clearly associates the idea of citizenship with urbanization.

Finally, the third essential factor is **reforming the public sphere**, which should be "de-etatized" and transferred into the hands of local communities and non-governmental organizations. While the state maintains its role as general distributor of public resources, it remains the main addressee of social demands that it cannot satisfy, which, in turn, can threaten the stability of the entire system. Moreover, "socialization" of the public sphere appears as one of the stronger stimuli for developing a civil society and hence can rapidly eliminate the gulf between the dimension of community and the dimension of subordination. For as long as the state, identified with the political sphere, and society, cutting itself from it, represent two opposing entities that function in separate sectors of social space, it will be impossible to work out moral and customary rules describing the common good for the whole of society; rules which are the basis for maintaining and enforcing a liberal-democratic order.

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## Chapter V

# THE POLITICAL SYSTEM AND POLAND'S INTEGRATION WITH EUROPE

## THESES

- Poland is characterized by an unconsolidated system of democratic government that is politically crisis-prone. The most important cause of this is the weakness of the constitutional order, revealed by: the dominance of short-term interests over the need to enact a new constitution; the evolution of the semi-presidential system towards a parliamentary-governmental one; the absence of a professional and efficient administration (civil service); and the lack of trust in political organizations and institutions.
- Consequently, the system of interest representation is unstable, unclear and immature, which means that the social basis for carrying out structural reforms and implementing integrative strategies is weak and ephemeral.
- The way to overcome the above-mentioned incoherences and contradictions of the constitutional order is not to homogenize coercively society from above, but rather to diversify its structures gradually and functionally by carrying out appropriate institutional reform.

## 1. FORMATION OF A NEW CONSTITUTIONAL ORDER

### 1.1. General Premises behind the Formation of a Constitutional Order

This chapter addresses the political and institutional dimension of Poland's integration with Europe<sup>1</sup>. In particular, we shall present the functioning of parliamentary democracy in terms of the extent to which the arrangements adopted in West European countries are a point of reference for its formation and development - and the European Union its point of gravitation. The analysis will also encompass the influence of political organizations, especially the state and its organs, on the process of integration. Hopefully, these deliberations will allow us to evaluate - from the political perspective - Poland's ability to take on the tasks and responsibilities of membership. Political agents participating in the creation of a new constitution must be aware that it should be compatible with the social environment in which it is to function. It must, therefore, reflect the common aims and interests of the nation. This is to be achieved by ratifying the constitution through a referendum, in which the nation can express its sovereign will. Domestic policy-makers should also take into account the obligations resulting from international law (even if these do not entail any sanctions) as well as the coupling of constitutional systems, which is a part of the integration process. In the case of Poland, this concerns, above all, the constitutional systems of Western democracies - the countries of the European Union. Article 68 of the treaty on Poland's associate membership of the European Union stipulates that a pre-condition for integration is the convergence of current and future Polish legislation with EU legislation. This also pertains to current and future constitutional arrangements.

The creation of a new constitutional order must, therefore, take into account the current and future obligations that ensue from Poland's desire to participate in the economic and political structures of the EU. The new Polish constitution should therefore meet general European standards concerning:

- the democratic structure of state authority;
- recognition of the law as the chief regulator in the functioning of the state and in the relations between the state and its citizens;
- guarantees of human rights;
- respect and protection of the rights of national minorities;
- free market guarantees.

1. I am especially grateful to Stanisław Mazur for collecting and preparing the analytical material that made this text possible - [J. H.].

These standards should be understood more as values than as specific obligations that a given state has to fulfil. Adoption of these standards does not hinder the preservation of national identity, which must find expression in the constitution [Sokolewicz 1992].

In modern legal and constitutional systems, constitutions are understood more as procedural laws, i.e., which define the rules of the game, than as material laws, i.e., which define the tasks and obligations of the authorities. This approach springs more from philosophy of John Locke, where the emphasis is placed on the rights of the individual and the plurality of social organizations, than from the philosophy of Rousseau, where the stress is on governments of the majority and the collectivist aspect of human rights. However, modern constitutionalism, to which most of the EU member-states are inclined, tries to reconcile the formal (procedural) and material (substantive) aspect of constitutional arrangements.

The general formulations of European constitutional standards are becoming more and more concrete. A clear symptom of this is the Maastricht Treaty, which incorporated the European Convention on Human Rights, establishing, among others, the office of European ombudsman. The function of this office is to exercise direct control over the observance of individuals' rights in supra-national procedures. The Treaty has also introduced fairly specific regulations concerning the signatories' economies, including balanced budget policy and competition, as well as the precedence of monetary policy over economic policy, whose aim is to preserve the autonomy of central banks vis-à-vis governments.

Obligations concerning the common foreign and defence policies of a united Europe are another, albeit indirect effect of the Treaty. The assumed increased importance of the European Parliament and the precedence of EU law over domestic law have major consequences for European integration in all its aspects. The need to preserve national sovereignty is currently one of the arguments most frequently raised by opponents of a united Europe on "Maastricht principles". It is highly likely that similar tendencies will soon arise in Central European countries aspiring to membership of the Union. Major political groups will emphasize the need to maintain the primacy of law established in sovereign countries over law established by "bureaucrats from Brussels".

In analyzing the transformation of the Polish constitutional order in the context of European integration, we aim, therefore, to concentrate on its institutional aspect, i.e., relations between the organs of authority, and relations between the organs of authority and citizens; on the issue of respecting individual rights, and on constitutional guarantees for market-based economic structures.

## **1.2. Formation of the Constitutional Order during the First Period of the Systemic Transformations**

The need to create a new constitutional order was from the very outset considered to be one of the most important aspects of the transformation process. Yet, so far, this task has not been fulfilled. Poland's political elites have not been able to reach consensus over the fundamental structural issues concerning the functioning of the state. Compared with other countries of the former communist bloc, Poland is seriously lacking in this regard. Not only does it not possess a new constitution, but the legal arrangements introduced so far have been formally and functionally incoherent.

Structural reform of the state actually began with the "round table" talks in February 1989. During the negotiations, attempts were made to reach an agreement whereby the political opposition would enter the reformed political system, while power would remain in the hands of the Polish United Workers' Party (PZPR) and its satellites. Reforming Poland's political institutions was the party option, which, by legalizing the opposition, sought to legitimate and authenticate its own power. At the same time, this agreement was the price that the opposition had to pay for the re-legalization of the Solidarity Trades Union, which was its basic postulate and its condition for participation within the formal framework of the political system.

Finally, an agreement over the reform of the political system was reached. In April 1989, soon after the "round table" talks had ended, the Polish parliament amended the 1952 constitution. Articles referring to the leading role of the Party and the alliance with the Soviet Union were removed, and Poland was redefined as a democratic state governed by the rule of law. Another important change was the introduction of freedom of association, which paved the way for forming new political parties. According to P. Winczorek [1993, p. 8], these articles, together with articles in the amended constitution on ownership rights and the freedom to engage in economic activity, form the basis of the present and desired political and economic system of the Republic of Poland.

However, from the point of view of the dynamics of the political process, the most important changes concerned the functioning of legislative and executive power. This constituted yet another bargaining tool in the process of co-opting the opposition and preserving power for the PZPR. To this end, the party leaders proposed the establishment of the institution of president, which had played no part in Polish political life since 1952. The powers accorded to the president were very broad. They mainly concerned foreign and defence policy, but also the current policy of the state. There were also certain legislative powers, such as the right to initiate legislation, or the right

of veto; a presidential veto could only be overturned by two thirds majority of all deputies present. Many of the head-of-state's prerogatives did not need to be countersigned by the prime minister, including such significant powers as the right to dissolve parliament before its term was up.

The president was to be elected by the National Assembly, comprising both houses of parliament - the Sejm and Senate. For observers of the Polish political scene, it was clear that the function of president (designed for Wojciech Jaruzelski) was the best way for the leadership of the ruling party to preserve its own power and influence and maintain stability in foreign and defence policy, taking into account the interests of the Soviet Union [Gross 1991, p. 61]. It was seen as an arrangement that would in some degree substitute the principle of the "leading role of the Party", which was inappropriate to the new reality.

The price which the PZPR had to pay for introducing the institution of president was the establishment of an upper house of parliament - the Senate - to which there would be completely free and democratic elections. One of the most significant powers of the Senate was the right to veto legislation passed by the Sejm. The senatorial veto could be overturned by a two thirds majority. For the opposition, free elections to the Senate were a form of compensation for agreeing to the office of president and accepting undemocratic elections to the Sejm (65% of the seats were reserved for the PZPR and its satellites).

To summarize, constitutional change - essential to structural transformation - was carried out in a piecemeal fashion. The new legal and constitutional order was to a large extent the product of short-term needs, which must surely be seen as disadvantageous to legal and constitutional reform in Poland. A positive aspect of the changes were those articles of the constitution referring to fundamental systemic principles - the principle of the rule of law, and the equality of all forms of ownership.

The amended constitution was an curious mix of articles originating from the 1950s (particularly in the chapter concerning rights and civic responsibilities), articles resulting from the piecemeal reforms of the 1980s - which established new institutions: the Constitutional Tribunal, the State Tribunal, the Ombudsman, the National Council of the Judiciary - and regulations resulting from the "round table" agreements.

This legal hybrid was a necessity in the first half of 1989. At that time, there was no way of predicting the defeat of the PZPR in the parliamentary elections of 4 June 1989, still less the collapse of the entire communist bloc after the so-called Springtime of Nations - events which radically changed the geo-political world order. However, the new constitution soon revealed much confusion and inconsistency. Despite this, it remained an important step on the road to forming a new political system in Poland.

The political model that resulted from this system was closest to the French model - often termed semi-presidential - in which the head-of-state plays an especially strong and active role, particularly if he/she has a parliamentary majority, and therefore works in tandem with a government of similar political provenance. However, the strength of the French office of president originates primarily from the Gaullist tradition of executive power. In Poland, the broad presidential powers contained in the amended constitution were practically dead from the outset, for the political position of Wojciech Jaruzelski as president of the new Poland in a radically different Europe was very weak. Fully aware of this, Jaruzelski refrained from using his prerogatives.

### **1.3. Role of the Small Constitution in the Process of Legal and Institutional Change**

As it gradually assumed full political power, the Solidarity opposition attempted to modify the political system still further, above all by calling for early presidential and parliamentary elections. However, the personnel and political changes were not accompanied by systemic change. Assuming the office of head-of-state, Lech Wałęsa consistently sought to build a durable presidential system on the French model and to establish a constitution appropriate to this aim.

Many Western political scientists have also pointed to the advantages of the system based on a divided executive in post-communist countries. S. Holmes [1993, p. 39], for instance, states that in this type of system the president can support the incumbent prime minister, or try to limit his/her activities. Because he/she is responsible for introducing harsh economic reforms, the prime minister becomes the target of public antipathy engendered by the reforms. Thus, governments come and go, while the reformist president - keeping economic matters at a safe distance - stays in office, guaranteeing the continuity of the reform process. This model was basically endorsed by Wałęsa, who described his successive prime ministers as "buffers": once they were no longer useful, they could be easily replaced without too much disturbance to the general direction of reform.

The problem of enacting a completely new constitution arose shortly after the first free elections to parliament in December 1991. The presidential proposal directly invoked the arrangements adopted by the Fifth Republic in France. However, the constitutional commission introduced a number of changes, and in the end Wałęsa withdrew it. Simultaneously, work was under way on a bill prepared by the Democratic Union (UD), which attempted to find a compromise between a strong presidential system and a strictly parliamentary one. This bill formed the basis of the "Small Con-

stitution" - an act which, in a specific way, controlled relations between the executive and the legislature, between the Sejm, Senate, government and president.

The enactment of the Small Constitution signified an annulment of the constitution of 1952, although many of its articles were maintained. Most of these originated from the systemic changes of 1989-91 and concerned the general tasks and functions of the state (rule of law, division of authority, property rights, freedom of association). The Small Constitution also preserved many articles relating to the judiciary (on the Constitutional Tribunal, State Tribunal, Ombudsman and National Council of Justice). The new constitution also preserved the chapter outlining the basic rights and responsibilities of citizens. This became a target of fierce criticism from opponents of the bill, who dubbed it "stalinist".

The law, enacted on 17 October 1992, reflected the transfer of power to the government and Sejm at the cost of the Senate, but also at the cost of the president. Its cardinal aim was - as stated in the preamble - to rationalize relations between the executive and legislature, i.e., to remove the inaccuracies and vagueness of the previous law. The Small Constitution introduced a parliamentary-presidential system - a kind of semi-presidential system. According to M. Duverger's definition [1980, p. 166], the semi-presidential system consists of a constitution that puts emphasis on the following elements: an elected president who is given direct legitimacy by the nation and thus enjoys fairly broad powers, and a prime minister who is politically answerable to the parliamentary majority that appoints him in the post. This type of executive has been described by J. Blondel [1992, p. 162] as dual leadership.

In order to avoid potential dangers connected with the overlapping of power, the authors of the Small Constitution devoted a separate article to the prerogatives of the head-of-state that did not need to be countersigned by the prime minister or any other minister. A important change was that the president could no longer put forward a motion to dismiss the government. Much legal confusion was caused by the existence of the so-called presidential departments (Ministry of Foreign Affairs, Ministry of Defence and Ministry of the Interior), over which Lech Wałęsa wished to exert decisive influence, invoking, as justification, his constitutional rights as head-of-state in the area of defence, foreign policy and internal affairs. The law did not specify who had the final say in appointing ministers, and this should be regarded as one of its shortcomings. Wałęsa, however, acting on the basis of *fait accompli*, devised a specific kind of political practice, according to which the head-of-state played a decisive role in this area.

The increased significance of the government should be seen as one of the most important aspects of the new legal order. The possibility of submitting urgent bills to

parliament was supposed to impose legislative priorities on the lower house in accordance with the wishes of the Council of Ministers. The Constitution also allowed the government to issue decrees with the force of legislation, which, given that the parliament was permanently in session, led to the danger of parallel legislative initiatives. These prerogatives significantly strengthened the position of the government in its relations with parliament, which - coupled with the fact that the head-of-state could no longer put forward a motion to dismiss the government - in formal terms put the Council of Ministers at the centre of the political scene.

The Small Constitution classically defined the powers of the Sejm, according to the role of the highest organ of legislative power, to which the government, and in part the president, were answerable (the head-of-state could be dismissed by a two thirds majority in the National Assembly). The powers of the upper house were somewhat decreased. This was most evident in the Sejm being able to overturn the Senate's amendments or vetoes by an absolute majority - previously a two thirds majority had been required. The aim of this was undoubtedly to make the legislative process more efficient; it was also a reaction to frequent calls questioning the need for an upper house altogether. The new regulation also pertained to the issue of territorial self-government, opening the way for the decentralization of the state and public administration.

The Small Constitution clearly states that it is only a temporary arrangement and that it automatically becomes void the moment a full constitution is ratified.

The arrangements introduced under the Small Constitution seemed to work effectively, particularly during the relatively harmonious period of the Suchocka government, when Wałęsa was still president. After the victory of the post-communist parties in the 1993 elections, relations between the president and government transformed into open conflict, in which each side tried to take advantage of the ambiguity of certain constitutional regulations. Neither side was completely successful - Wałęsa did not manage to dissolve parliament, and therefore to dismiss the government, but he did maintain control over the presidential departments. However, the conflict itself revealed the weakness of the Small Constitution by showing that its articles could be interpreted in a variety of ways.

#### 1.4. Charter of Civil Rights and Freedoms

Almost all modern constitutional systems contain a formalized charter of civil rights and freedoms, which serve as an important supplement to the traditional articles of the constitution. For it is not only the relations between the organs of state, but

also the relations between the state and its citizens, that are significant for modern constitutionalism.

The American Constitution was the first to include a charter of civil rights and freedoms. The charter, a classic record of liberal-democratic freedoms, is one of the two basic methods of understanding the statutory regulation of state-citizen relations. The other method is to include articles in the constitution pertaining to social, economic and cultural rights. Today, it is more common to include such a charter of rights in national constitutions [Mc Whinney 1981, p. 112], while the scope of these rights and the possibility of executing them is open to debate. This approach has been adopted by most of the West European democracies, although it has not been embraced by all the member-states of the EU. The UK, for instance, has no charter of civil rights and freedoms, applying instead the principle of the rule of law. What this means is that the decisions of independent courts - which treat all citizens on an equal footing - are the only source of civil rights.

The Constitution of the Republic of Poland contains a section defining basic civil rights and responsibilities. However, it dates almost entirely from the 1950s. The very idea of civic responsibilities is itself not in accordance with general democratic standards. The fact that this part of the Constitution is neither comprehensively defined, nor enjoys public approval, will probably constitute the greatest barrier to the ratification of a new Constitution.

The first attempt to change this state of affairs was made by Lech Wałęsa, who submitted draft legislation to Parliament shortly after the "Small Constitution" had been passed. The Bill of Rights proposed by Wałęsa was meant to act as a natural supplement to the new Constitution. It was largely based on the American Constitution, and was therefore a classic charter of liberal freedoms. The Bill was criticized by the Catholic Church for not containing enough references to Christian values. It was likewise criticized by the parliamentary opposition of the time (mainly the post-communist Democratic Left Alliance - SLD) for paying too little attention to economic, social and cultural rights. Soon afterwards, the SLD caucus submitted its own bill, but this floundered in the legislative process, too.

### **1.5. Perspectives of Forming a New Constitutional Order**

The work of the constitutional commission in the new parliament was dominated by conflicts with the Catholic Church over the postponed ratification of the Concordat, the regulation of Church-state relations, and the Church's demand for the

protection of unborn children to be enshrined in the new constitution. There was also much heated debate over the text of the preamble and the proposal to include within it an invocation underlining the Christian traditions of the nation and the responsibility of the state authorities to pay heed to Christian values.

Greatest influence over the content of the draft constitution is currently exerted by the Democratic Left Alliance (SLD), which has the greatest number of representatives in the constitutional commission. The SLD's position is to a large extent endorsed by the Labour Union (UP). Both these parties want to develop a legal framework for a governmental-parliamentary system in Poland. Some of their members would even wish to see a strictly parliamentary system as the basis of state authority. In each case, the president would perform no more than a ceremonial function. The SLD leadership, as well as most deputies from the Freedom Union (UW), would like to see the regulations from the Small Constitution retained, with the proviso that the powers of the divided executive be more clearly defined. This would imply a further strengthening of government power at the cost of presidential power.

After the presidential elections of 1995, won by the SLD candidate Aleksander Kwaśniewski, the attitude of the SLD changed. Presently, its representatives in the Constitutional Commission are trying to maintain, or even increase the President's powers. And they are doing so with ever-increasing urgency, as the likelihood that the political right will win the 1997 parliamentary elections is now very real.

However, the attitude of extra-parliamentary right-wing parties is a fundamental barrier to any swift ratification of the new constitution. Such parties question the representative credentials of parliament and refuse to concede it the "moral" right to ratify a constitution. In their view, one third of voters are not represented in parliament and therefore cannot exert any influence over the draft constitution. Thus, they are calling for elections to a Constituent Assembly whose only task would be to ratify a new constitution.

In 1995, the Solidarity Trade Union managed to gain a million signatures of support for its "citizens' draft constitution". This proposal was endorsed by most of the extra-parliamentary right-wing parties, and in particular by the Movement for the Reconstruction of Poland (ROP). As a political counterweight to the work of the Sejm's constitutional commission, the proposal also won the support of the Catholic Church. Some of the articles contained within it had already been suggested by the Episcopate. The proposal put strong emphasis on a greater role for trade unions. In the institutional context, the position of the president would be strengthened at the cost of the Sejm and the Council of Ministers. However, Solidarity's draft constitution does not propose a typical presidential system; it rather leans towards a mixed type of arrangement.



The strategy of the extra-parliamentary right was to submit the "citizens" draft constitution, as well as the one proposed by the Sejm's constitutional commission, for ratification in the same referendum. This demand was strongly opposed by the ruling coalition. It was not endorsed by the Freedom Union, either.

The right's strategy showed that ratification of the constitution by the present parliament would be a difficult task, and a risky one for the ruling coalition. If the constitution were rejected in a referendum, this would dramatically undermine the legitimacy of the power structure created after the 1993 elections. In this situation, one may expect that the draft constitution will be passed by parliament in the first half of 1997, i.e., just before the parliamentary elections, while the referendum will coincide with the election campaign. However, we should not exclude the possibility that conflicts within the ruling coalition, which will increase as the elections approach, will postpone the constitutional issue until after the elections. In practical terms, this would mean that work on the draft constitution would have to begin virtually from scratch in a future parliament.

Instrumental treatment of the constitution was characteristic of the transformation process in its institutional aspect right from the very outset. For the communist authorities, systemic reform was supposed to be a way of legitimating the PZPR - "the last resort". For the opposition at that time it was merely a bargaining tool in the struggle to re-legalize Solidarity. Neither position favoured a mature, fundamental, or at least a well thought out reconstruction of the political system. As L. Garlicki [Sprawozdanie 1993] aptly remarked, the effect of creating the institution of president at the "round table" agreements in order to achieve specific short-term political goals was that this institution was inherited by political forces who were opposed to it in the first place.

As a result, all the subsequent systemic reforms had to be based on *ad hoc* legal regulations, which, although they might have been necessary at the time, did not reflect a comprehensive vision of the state. The short-term interests of the main actors on the Polish political scene became the point of departure for successive amendments of the constitution. Yet the reconfiguration of this political scene was frequent and often radical. Consequently, the opportunity to engender durable changes to the state system was missed.

In the opinion of many constitutional theorists, an awareness of time-scales is of fundamental importance to carrying out qualitative changes in the functioning of the state. The art of establishing a constitution consists in being able to seize the historical moment, which as a rule occurs during periods of sudden change and is accompanied by public euphoria. Poland experienced such a period for almost a year: from

the June 1989 elections, through the establishment of the Mazowiecki government, to the appearance of social unrest caused by Balcerowicz's "shock therapy" in May 1990. Unfortunately, during this period there was not enough time to prepare and ratify a constitution, or, looking at it another way, it was the political elites who lacked the requisite power and imagination, concentrating on short-term goals and neglecting work on the new systemic model.

The breakthrough of 1989 was not accompanied by any radical and comprehensive constitutional change. Thereafter, public enthusiasm for systemic reform clearly waned. Increasingly acute internecine fighting among the political parties pushed the constitutional issue into the background.

Because changes in the political system took place chiefly within the context of the immediate political struggle, its forms developed gradually. Consequently, the semi-presidential system (initially with very broad powers for the head-of-state) evolved into a governmental-parliamentary, or parliamentary-governmental one (this depends on future relations between the Sejm and the Council of Ministers). Recently, however, a worrying trend has come to the fore: an increasingly ceremonial role for the president coupled with the relatively weak position of the government (revealed, among other things, by the issue of the Concordat). The result of this is a weak executive, with power being concentrated in the Sejm, and, consequently, in the hands of the leaders of the ruling parties, who, naturally, are not subject to direct political control. Thus, Poland faces the prospect of a strictly parliamentary system, which, under the present conditions, would involve direct government by political parties, regardless of their orientation. The danger is that this will lead to the appearance of a dysfunctional system when there is a historic need to create a durable constitutional order that meets European standards.

## 2. FORMATION OF THE PARTY SYSTEM AND THE BALANCE OF POLITICAL FORCES

### 2.1. General Remarks

Analysis of the Polish party system at its present stage of development is burdened with a large element of methodological risk. For the factors which determine how it develops and functions are undergoing dynamic change. Those political and legal facts which in the theory of political parties are regarded as indicators of a "mature" party system are still in the process of formation [Meny 1990, p. 67]:

- formation of levels of party identification among broad sections of the electorate;
- creation of an attractive image vis-à-vis other parties;
- establishment of links with other social institutions;
- institutionalization of political parties.

For the purposes of the present work, at least a brief definition of what we mean by the party system is necessary. Avoiding a broad understanding of this notion (such an approach would make the analysis more difficult, for the reasons given above), we have used the definition proposed by G. Sartori [1976], for whom the party system is a structure of mutual influence resulting from rivalry between political parties and leading to their mutual dependence. A party's activities are a function of the existence of other parties - it reacts to the behaviour of other parties either in a cooperative or competitive way.

## **2.2. Basic Tendencies in the Formation of the Polish Party System**

The following stages may be distinguished in the formation of the party system and balance of political forces after 1989:

### **• quasi-party system characterized by bipolar structural disintegration (1989-91)**

The erosion of the state socialist system from the 1970s onwards did not create any conditions that could have formed the basis of a party system as it is presently understood. The root cause of this was the policy carried out by the PZPR and its satellites, which - from the point of view of their own short-term interests - effectively monopolized the official political scene. Leaving aside the specific role played by the Catholic Church, before 1989 the only "oppositional" political force able to effectively confront the regime was Solidarity [Antoszewski et al. 1993].

The absence of a positive model of party behaviour and democratic parliamentary tradition made establishing a civil society, and its appropriate structures and mechanisms, much more difficult. The fragmentary form of civil society in Poland before 1989 impeded the creation of an electorate conscious of its own interests and preferences. This manifested itself in the elections of 1989, which became a kind of plebiscite. At that time, the preferences of the vast majority of voters did not suggest any identification with specific interests or political forces; rather, they were an expression of symbolic identification with Solidarity. The mass support which Solidarity won

testified to a dissatisfaction with the system of state power that had functioned up to that point. After the elections within the political system two blocks centred around Solidarity and the PZPR temporarily appeared.

The enactment in 1989 of legislation on freedom of association speeded up the establishment of new political parties. Most often, they took the form of "parties-conglomerates", building their image at the level of symbolic values. Their programmes were radical, which was meant to facilitate their identification among voters. However, this radicalism significantly reduced the willingness of political parties to cooperate with one another.

The rapid changes soon led to the disintegration of the two opposing blocks. In January 1990 PZPR was dissolved. In its place two "new" parties appeared: The Polish Social-Democratic Party (SdRP) and the Polish Social-Democratic Union (PUS). A simultaneous fracturing of the peasant movement also took place: several groups began competing to be the rightful heir to the emblems and traditions of the Polish Peasants' Party (PSL). The Parliamentary Citizen's Caucus (OKP), representing Solidarity, also split into factions [Antoszewski et al. 1993]. In Parliament, caucuses with no direct electoral mandate came into being.

These phenomena signalled a widening gulf between political parties and the electorate. At the same time, they were an expression of the "identity crisis" of the former opposition, at the root of which lay a lack of legitimacy caused by the break up of the PZPR and the formal disappearance of the opposition's chief adversary, as well as the growing tensions in its relations with the electorate resulting from the social costs of economic transformation [Staniszczis 1990].

Simultaneously, the conflict within the Solidarity camp intensified. During the 1990 presidential campaign, two political groups emerged within it: The "Democratic Action" Citizens' Movement (ROAD) and The Centre Alliance (PC). The basic line of division between these two groups concerned which candidate to support in the presidential elections, Mazowiecki or Wałęsa. During the campaign, neither group appealed to specific social groups or their interests. The debate revolved around approval or disapproval of the Mazowiecki government and the course of the transformations, especially in its economic aspects [Antoszewski et al. 1993].

The presidential elections of 1990 clearly revealed the lack of ties between political parties and specific social groups. Identification with symbols was the chief determinant of electoral sympathies. Those candidates who emphasized their connection with specific social formations achieved the worst results. During that period, most political parties were guided far more by ideological than pragmatic reasoning. Such an attitude undoubtedly heightened the atomization of the party system.

• **party system characterized by a highly atomized structure (1991-93)**

The introduction before the 1991 parliamentary elections of proportional representation - with no minimum percentage requirement - resulted in a highly fragmented distribution of seats in the new parliament. The fragmented parliament was not able to produce a stable, majority coalition. The following orientations could be distinguished within it:

- **Catholic-nationalist:** Christian-National Union (ZChN), Christian-Democratic Party (PChD), Christian-People's Party (SLCh), Movement for the Republic (RdR), Christian Democracy (ChD), Solidarity Trade Union - endorsing the conservative, Christian-democratic variant of the social market economy;
- **liberal-democratic:** Democratic Union (UD), Liberal-Democratic Congress (KLD), Polish Economic Programme (PPG) - decidedly pro-European, endorsing the free market and tough financial policy;
- **social-democratic:** Democratic Left Alliance (SLD) - representing those who lost most during the transformation period;
- **nationalist:** Confederation for an Independent Poland (KPN) - expressing a vision of a paternalistic state;
- **peasant:** Polish Peasants' Party (PSL), Peasants' Alliance (PL) - demanding state interventionism and opposing Poland's rapid integration with the EU.

The results of the 1991 elections revealed and exacerbated the decomposition of the Polish political scene. The Solidarity camp became even more fragmented, which consequently led to the appearance of many new small parties.

The 1991 elections introduced qualitatively new factors into the development of the parliamentary system. While during the 1989 elections the main line of division shaping the political scene were attitudes towards the Polish People's Republic and the Polish United Workers' Party, in 1993 this issue was no longer dominant. New areas of conflict emerged, such as: evaluation of the Solidarity governments, or the directions and dynamics of the economic transformations. At the same time, durable ideological orientations in society began to crystallize. Despite this, however, it was not voters' understanding of their actual political interest, but personal sympathies and antipathies, as well as symbolic identification, that to a large degree continued to define electoral attitudes and behaviour. That is also why we may speak of a "structural disintegration of the electorate" during that period [Raciborski 1991].

• **party system dominated by a two-party coalition (1994-96)**

The introduction of a new system of proportional representation with a minimum 5% entry requirement prevented many parties represented in parliament from winning seats in the 1993 elections. The SLD and the PSL - parties with roots in the Polish People's Republic, hence the term "post-communist" - were the clear winners. Their victory was above all an expression of public disapproval for the neo-liberal economic policy carried out by the Solidarity governments and the high social costs it had entailed.

The electoral success of the SLD and PSL was to a large degree made possible by the inability of the right-wing political groups to unite. The SLD-PSL coalition government and the resulting increase in importance of these two parties halted further decomposition of the Solidarity camp, which numerous integrative initiatives, particularly intense during the 1995 presidential campaign, had failed to do.

The results of the last parliamentary elections should also be seen as a qualitatively new factor helping shape links on the party-electorate axis. While in the case of the post-Solidarity parties symbolic identification was still dominant, the SLD and PSL were better able to understand group interests. Today, their supporters are members of those groups that can expect to benefit from the policies carried out by the SLD-PSL coalition. During 1994-96, despite internal differences and periodic tensions, the "post-communist" coalition has been able to repel the attacks of the disunited opposition and carry out - for the most part - effective internal and external policies. This is attested by encouraging economic figures and, among other things, by Poland's entry into the OECD.

### **2.3. The Problem of European Integration in the Activities of Political Parties**

During the first phase of the formation of the party system, the vast majority of the political elite unequivocally endorsed a pro-West European foreign policy. It should be stressed, however, that in 1989 Poland's integration with Europe, though desired, was a vague and distant prospect. At that time, there were sporadic suggestions that preserving neutrality should be the main goal of Polish foreign policy.

While in 1989 the slogan of integration with the European Community enjoyed almost universal acceptance among Poland's leading political parties, by 1991 at the latest - when developments on the international arena turned European integration into a practical issue for the Polish state - voices questioning the soundness of the pro-European option could also be heard. Doubts were raised on the Polish political scene as to the speed of integration and the principles on which it should be based.

Widening differences over the viability of integration, its scope and forms, has led to the crystallization of two orientations among Polish politicians - **euroenthusiasm** and **euroskepticism** - using notions reflecting the debate under way in EU countries. In Poland, both euroenthusiasts and euroskeptics recognize the need for integration, but for the latter, given the existing geopolitical reality, it is more a case of necessity than choice [Wesołowski & Pańków 1995].

The euroskeptics harbour three basic doubts as regards European integration:

- **threat to national identity**, particularly from a moral-religious point of view (ZChN, KPN, Solidarity, Bezpartyjny Blok Wspierania Reform {BBWR}) [Goryszewski 1992<sup>2</sup>; Wałęsa 1995<sup>3</sup>];
- **Poland - the peripheral economy** (PSL, PC, BBWR, Self-Defence [Samoobrona] [Lepper 1993]<sup>4</sup>);
- **erosion and loss of sovereignty** (KPN, PC).

Furthermore, they stress that the process of integration with West European structures is disadvantageous for Poland because:

- it is taking place too quickly;
- it is dominated by trends towards the "European Fatherland" model;
- Poland has accepted the conditions set by the EU and NATO too readily; the sequence of events is wrong: first we need to improve the economy, then we can join the integration process.

The arguments of the euroenthusiasts stress the following benefits of European integration:

- it helps solve the problem of national security and allows Poland to escape the Russian sphere of influence;
- it offers the opportunity to build an affluent society;
- integrative tendencies are taking place world-wide, and Poland will not be able to develop in isolation.

Euroenthusiasts also stress the need to seize quickly the historic initiative that came with the disintegration of the USSR, and warn that if integration with the West is slowed down Poland could be pushed back into the Russian sphere of influence.

2. Goryszewski: "Poland is not interested in entering a Europe of the German nation".

3. Wałęsa: "I hope that in the process of integration it will be possible to preserve the faith of our forefathers".

4. Lepper: "What the West wants is to make Poland dependent, to create a Polish market for its production surpluses".

Among the major parties of the Polish party system, it would be difficult to find any that openly question the propriety of integration with the European Union. However, analysis of the documents and statements of leaders allows us to draw conclusions about the equivocal approach of the political elites towards the problem of Poland's integration with Western economic, political and military structures:

- the general agreement of Polish political parties as to the propriety of Poland's entry into the EU is based on a shallow consensus; major differences exist between the official declarations of party leaderships and their actions - which are conditioned by the attitudes of their memberships and potential electorates (PSL, SLD, ZChN);
- differences are also evident within the leaderships of the major political parties. This forces them into political manoeuvring in order to reconcile opposing expectations and interests. Consequently, the issue of integration is treated instrumentally: it ceases to be a chief goal and instead becomes a bargaining tool (ZChN, PSL);
- the official programmes contain strategies and arrangements that could constitute an alternative to Poland's entry into the EU and NATO (KPN, PSL).

Table 5.1 presents in a synthetic way the positions of the main political parties on various aspects of Poland's integration with Europe.

### 3. FORMATION OF THE SYSTEM OF INTEREST REPRESENTATION

#### 3.1. Factors Determining the Formation of the System of Interest Representation

Analysis of the trends and development perspectives of the system of interest representation requires evaluating the organization and functioning of the state. In this regard, the most important issue is the state's low level of formation. As a result, the day-to-day political game does not take place within a generally acknowledged framework; rather, the aim of each of its participants is to impose such a framework unilaterally. Consequently, the political game reproduces the political system to only a small degree, and mainly serves to destabilize it. A classic example of this were the threats to amend the Small Constitution, made in response to president Wałęsa's attempts to weaken both parliament and government. Thus, the absence of a new constitution does not only imply that the rules of political action and the relations between participants on the political scene are vague; it also implies a lack of definition of the procedural thresholds which in every democratic and consolidated political system

Table 5.1  
European Integration in the Programmes of the Main Political Parties

Party	Integration with the EU	Entry into NATO	Integration with the EU	Integration with the EU
SLD	integration with the EU on equal principles	entry into NATO is the priority of Polish foreign policy	underestimation of the importance of co-operation with neighbouring countries	no alternative; intensified relations with Poland's eastern neighbours are needed
PSL	integration, but with far-reaching protection of the domestic market	entry into NATO only on the basis of full membership	asymmetry of relations between Poland and the EU, threat of erosion of national sovereignty	cautiously expressed lack of alternative to integration with the EU
UW	full economic integration with the EU	entry into NATO should be the leading principle of Polish foreign policy	danger of Poland being perceived and treated as a weaker partner	no alternative to integration with Western structures
UP	documents say little about integration with the EU	creation of new, multilateral international structures in the sphere of security		principle of good co-operation with both the West and East
KPN	orientation towards Eastern markets	Baltic to Black sea model	Poland's gradual loss of sovereignty, economic dependence on international financial institutions	establishment of a broad alliance of Central and East European countries
ROP	sporadic references to the soundness of integration with the EU	entry into NATO	loss of political and economic sovereignty, threat to national values	absence of clearly defined alternatives, decentralized integration
PC	many reservations to integration with the EU	entry into NATO	danger of state sovereignty being undermined, asymmetry of benefits, expansion of Western consumer culture	no references to any kind of alternative
ZCHN	need to protect the Polish economy against foreigners	relatively few references about the soundness of entry into NATO	loss of sovereignty and national self-sufficiency, decline of religion and Polish culture, economic dependence	lack of direct references about the need to co-operate with both the East and West
BBWR	integration on the basis of equal rights	entry into NATO	weakening of national identity, economic exploitation	no alternative; need to intensify contacts with Poland's Eastern neighbours

regulate the generally acknowledged method of changing those rules and regulations [Rüb 1993, p. 3].

It is on this basis that experts believe that the goal of building a constitutional state has so far not been achieved, and that Poland is still threatened with a profound political crisis [Kamiński 1994]. Such an assessment is strengthened by the bad functioning of the state administration and the postponement of comprehensive measures aimed at reforming it and adjusting it to free market conditions. Despite numerous declarations by successive governments, the legislation package introducing a limited - reform of the economic and administrative centre of government was not passed by parliament until mid-1996. The legislation will come into force on 1 January 1997.

Until now, the centre has functioned within structures characteristic of the command economy. This means that - despite the deregulation carried out during the first phase of the "Balcerowicz programme" - the various organs of state administration have enjoyed relatively wide discretionary powers in the area of economic activity. Furthermore, they have clearly aimed to broaden these powers and have been effective in gradually acquiring the right and capability to intervene arbitrarily in economic matters. This phenomenon is one of the many reasons for the still overly high level of politicization of the state administration. A spectacular consequence and indication of this is the enormous turnover of top posts in the administration and in the boards of public enterprises each time political and personnel changes take place in the government. This has led to calls for the establishment of a proper civil service that would not be subject to short-term political manipulation. Yet while there have been many strong declarations of support for this proposal, it has always been torpedoed in practice [Pelczyński 1994]. Only recently has a civil service bill finally been passed by parliament, and already there have been calls for amendments to it, while the appointment of the head of the civil service has openly become subject of party bargaining. The legislation will come into force in 1997.

Aside from the weakness of the constitutional order and the low effectiveness of its administration, the third basic factor behind the meager consolidation of the political system is the financial crisis [Hausner & Owsiak 1992], which renders the state incapable of fulfilling its obligations towards its citizens and performing many public functions. Consequently, the state tries to unilaterally abandon many of its obligations, leading to public protest, critical assessments by the Ombudsman, and rulings from the Constitutional Tribunal on the illegality of such measures. Unfortunately, in practice this usually leads not to the resolution of a given problem, but to its postponement, which undermines public confidence in the state, and introduces legal and financial chaos. A situation such as this creates a favourable environment for "the spontaneous privatization of public institutions", to use S. Golinowska's [1993] apt defini-

tion. This process has many different aspects: one of its symptoms is the chaotic commercialization of the social services - a poor substitute for their reform in a situation where budget resources earmarked for this sphere are always inadequate. Another is the inability of the state to adopt a coherent plan and begin reforms in this area.

The instability of the political system and its lack of consolidation have given rise to public attitudes that only exacerbate such phenomena. Generalizing the large body of sociological research carried out in Poland, it may be said that members of the basic social groups (workers, hired staff) - disillusioned with the course of the economic transformation and shouldering the main burden of its costs - are critical of all the institutions of the political system and do not believe that these institutions represent them or defend their interests. For the majority, this does not yet imply a readiness to reject democratic rules and governments; it rather leads to the conviction that worker interests will be respected only when a government - independent of parliamentary control - finds itself under constant social pressure from the trade unions and the public.

The dominance of these kinds of attitudes provides the psycho-social context for the continuation of what Ph. Schmitter has described as the "non-consolidation" of democracy, and which he believes will be a characteristic feature of Central Europe's new democracies. According to Schmitter, the post-socialist states are condemned to democracy for the foreseeable future because at present they have no other way of exercising power (political dominance). In such a situation the minimum procedural requirements of democracy are observed: elections take place, associations exist, rights are respected, and yet this whole group of democratic rules and institutions does not constitute a set of coherent, accepted and foreseeable principles, functioning in a regular way, that would reproduce power and win long-term public support. On the contrary, democratic forms are temporarily adapted to the needs of personal networks and in reaction to the new problems that arise. Under such conditions, there is little opportunity for a stable system of interest representation to come into being, one that could determine relations between political parties, interest organizations and social groups [Schmitter 1993, p. 8].

### 3.2. The Emerging Model of Interest Representation

Schmitter's approach seems well-suited to the Polish situation. For this reason, one can also expect that the emergence of a coherent system of interest representation in Poland will be a long process, full of opposing tendencies, which will be reflected in

the periodic co-existence of elements that logically and functionally belong to different models.

In general, four possible models of interest representation can be distinguished under post-socialist conditions [Hausner 1995]:

- **authoritarian corporatism;**
- **authoritarian populism;**
- **class conflict;**
- **institutionalized cooperation.**

**Authoritarian corporatism.** This model is a continuation of socialist corporatism under new conditions. It implies an etatist economy in which economic organizations monopolize representation. Its emergence could result from: limiting the scope of privatization; maintaining a large public sector and a high level of both state economic intervention and state commitments to social security; putting trade unions, employee and employer organizations under administrative supervision and political control; limiting the right of employers and employees to negotiate by eliminating trade union pluralism and introducing mandatory membership in commercial chambers for employers and entrepreneurs.

This solution is favoured by the fact that, on the one hand, most social groups in post-socialist societies tend to see the state as the sole guarantor of their interests [Ost 1991] and, on the other, the political elites are becoming increasingly convinced that coercive (authoritarian) measures taken by the state are necessary to overcome the economic, social and political crisis.

The traditionalism of post-socialist societies and the conservative interpretation of social rights prevalent in them also provides a fertile ground for authoritarian corporatism. Another important factor may be the dominance of Catholicism, as the Roman Catholic Church has traditionally been an advocate of state corporatism, promoting: a conservative interpretation of social rights based on the principle that the state should submit to the micro-structures of social life, especially the family [Esping-Andersen 1990, pp. 27-61], and the idea of social solidarity guaranteed by the state.

**Authoritarian populism.** This model would imply abolishing or severely limiting all structures of interest mediation, particularly those specific to parliamentary democracy. Involvement in social life would be limited to participating in mass organizations, licensed and subject to political control. Their aim would be to mobilize the masses and public opinion to serve the policies of a narrow power elite and to

neutralize all forms of spontaneous articulation of group interests and attempts at self-organization in order to defend them.

The crucial factor which could lead to this model of interest representation would be the collapse of the government's economic stabilization programme and ensuing higher inflation [Hausner 1992]. Such a course of events would lead to a sharp polarization of society into two groups: the minority, who would be able to protect their wealth and income from a drastic loss of value, thanks to their particular resources and social position; and the majority, who would quickly lose all their property and savings. The latter, also comprising the swelling ranks of small-holders, in other words the middle class, would provide a strong base of support for populist forces, blaming the situation on domestic and international oligarchies. Basically, the breakdown of economic stabilization would lead to a violent rejection by the dominant majority of the economic and political transformation programme, as well as the political parties connected with it. Given such a serious legitimization crisis of an entire political class, it would be possible for populist forces to take power, especially if led by a charismatic figure. The realization of a populist economic programme (preferential treatment for small-holders in agriculture, trade and industry, and for domestic capital) as well as a political programme (directed against political parties, intellectual elites and the bureaucracy) would lead to the model of interest representation described above.

**Class conflict.** In this model, social conflicts would be focused along the line of class divisions between capital and labour. The leading role would be played by class-based political parties, penetrating and subordinating to their aims various interest groups and organizations, and competing with one another for power. This would not necessarily eliminate parliamentary democracy. However, there would be a permanent danger that the political struggle might be conducted outside its boundaries, thus destabilizing the state. In practice, all social conflicts would be politicized, limiting the autonomy of various interest organizations and local self-governments.

The crucial premise of this model is the growth of social differentiation as marketization progresses. Due to its financial crisis, the state would be unable to neutralize and contain social differentiation. Such a situation would undermine the universal character of citizenship [Wallace 1993, p. 5] and impede the development of civil society, thus deepening social divisions and class conflict.

**Institutionalized cooperation.** In this model, the basic interest groups and organizations would collaborate in solving the essential problems of economic development. It would have to be based on the legal and organizational independence of social partners, who would have to be aware not only of their group interests, but also of their

mutual inter-dependence, and this can only be brought about by way of social discourse. Thus, the model is based not on social solidarity, but on a lasting agreement between various agents, who rationally decide that cooperation is possible despite their differences, and will benefit them more than struggling for supremacy.

Such a model can never be brought about by a systemic project, but can only be achieved through an extended process of social interaction, aided by certain institutional solutions in both the economy and political life. Under the specific conditions of post-socialist societies, the most important factor favouring this model is, in my opinion, **the strategy of economic transformation and restructuring based on negotiation** [Hausner 1994].

Each mechanism of interest representation generates and requires specific actors and their behaviour. Evaluating the chances for one of the models described above to emerge under post-socialist conditions, it should be said that due to the deepening economic transformation - whose costs are distributed very unevenly - and the collective experience that results from it, a large and growing section of society idealizes the former economic system, expressing its disapproval of the present reality. What this means, above all, is a desire to see a return to the level of social and economic security that the former system guaranteed, without necessarily implying support for the specific arrangements of that system. It conceals not so much a reactionary option as a partially articulated belief in the existence of a "third way", an alternative to the "liberal" economic programme. Society wants some kind of new order, but it is not quite sure which.

The vagueness of people's systemic preferences has not only resulted from general cultural chaos, inevitable in the wake of systemic changes, i.e., a crisis of fundamental values and social convention [Tarkowska 1990]. It is essentially caused by the corporatist self-identification of most social groups, coupled with an absence of strong groups with systemic identity. The short-term character of collective action, the cult of immediacy, the failure to take into account the long-term consequences of social actions, a failure to invest in the future - such are the essential components of this identification. The continuing cultural chaos, being a by-product of the above phenomena, also contributes to social apathy and a wait-and-see attitude [ibid.].

One should stress, however, that this apathy is relative and certainly does not pertain to individual and collective efforts to gain material benefits and defend economic privileges. As Rychard aptly remarks, the "withdrawal" of the majority of society from politics, i.e., from system-creating activity, does not imply passivity. On the contrary, as the economic transformations progress, various social groups are becoming active again, but this activity takes forms different from those expected by intellectuals and politicians [Rychard 1993].

Sociological research shows that elements favourable to the authoritarian corporatist model are especially predominant in the consciousness of public sector employees in Poland. This is particularly true with regard to the growing nostalgia for the past - a longing for a structure of industrial relations in which the state plays the role of "employer" and guarantor of economic security, while branch employees can exert effective pressure on the state through their managements and social activism. Thus, what is in fact desired is the restoration of socialist corporatism and the privileges it provided. It is worth noting that to the extent that these rules functioned, strikes were essentially redundant; even the first symptoms of dissatisfaction were sufficient for employees to exert informal pressure and win benefits through bargaining. Today, the advocates of such rules do not in principle support strikes, but rather believe in "negotiations" with the government, understood as an effective way of gaining and defending privileges, i.e., particular decisions or arrangements beneficial to a given sector (branch) of the economy. This is how one can explain the high level of support for negotiations between the trade unions and the government as an instrument of defending employee interests, despite the widespread belief that trade unions are failing to represent these very interests.

Another component of the corporatist-authoritarian model is the high and gradually rising level of support for state enterprises; yet another is the dominance in Polish society of a community-based and substantive understanding of values, as opposed to liberal societies, where an individualistic and procedural understanding of values is predominant. Mokrzycki and Cirtautas convincingly show that this problem is not only a legacy of communism, but also of "Solidarity" as a mass social movement [Mokrzycki & Cirtautas 1993, pp. 24-27]; it undoubtedly opens the way for measures based on enforced cooperation rather than free competition.

Many sociological studies have confirmed the existence in Polish society of elements of social consciousness that encourage the development of the authoritarian-populist model of interest representation. The basic component of this orientation is a polarized vision of social order involving the oppressed majority ("us") and the privileged elite ("them"). Workers, in particular, harbour a strong sense of injustice, which was once reinforced by the widespread stereotype of "Solidarity as the new *nomenklatura*", and today by the belief that the "old communist *nomenklatura*" has returned to power".

This is accompanied by a critical attitude towards politicians and politics. Equally widespread is the conviction that politicians and civil servants are corrupt. At the same time, a large portion of society has a strong anti-political attitude. Together, these feelings erode support for the democratic system, especially amongst workers and farmers, but also among some private owners.

It is difficult to say anything about the way social consciousness conditions the class conflict model, as little research has been done into the consciousness of owners, entrepreneurs and employers. Hence, we can only consider the viability of this model of interest representation on the basis of employee opinions. Research in this area shows that elements of class identification amongst employees do occur to some extent. Although, on the one hand, employees believe that trade unions hardly represent their interests, most of them would resist proposals to limit the unions' role and weaken their influence over the economy. The research also points to a growing uniformity of opinion amongst skilled and unskilled workers and, on the other hand, a sharpening of divisions between workers and management.

A specific indicator favouring the class conflict model is the much greater popularity of anti-reformist attitudes amongst private sector employees than public sector employees. This suggests the possibility of anti-market and class attitudes becoming more pronounced as privatization progresses. Such a development is all the more likely as labour relations in the private sector have so far meant the absolute dominance of employers over employees, whose interests are not properly safeguarded.

It is most difficult to identify those elements of consciousness that favour the model of institutionalized cooperation, mainly because in part they can be the same opinions or attitudes that were previously characterized as favouring the authoritarian-corporatist or class-conflict models. For example, the view that negotiations between trade unions and the government are the best way to defend employee interests can be seen as an element favouring authoritarian corporatism, but under certain conditions this attitude can also lend support to measures typical of institutionalized cooperation. The expectations of employees are quite diverse in this area. At the shop floor level, the preference for negotiations with the government (ministry) is much lower than for negotiations with the management or supervisory board. One may conclude, therefore, that under certain conditions employees would be prepared to support the replacement of paternalistic relations (authoritarian corporatism) with relations guaranteeing them the status of social agents, but also forcing them to take responsibility for their actions.

Phenomena signalling the need for class integration, understood as factors favouring the class conflict model, can also be seen indirectly as factors reinforcing the model of institutionalized cooperation, as the autonomy of major interest organizations is a precondition for any partnership amongst them.

The above analysis shows that there are many components in the consciousness of Polish society that may strengthen institutional solutions proper to the various models of the system of interest representation. It is an open question which components will be repressed, and which stimulated, thus precipitating the formation of a



given system of interest representation. However, if there is to be any kind of rational action in this area, political decision-makers (and their social partners) must be aware of the actual situation and must understand what kind of measures are possible and desirable.

In order to assess what is possible, decision-makers must be able to distinguish how the basic participants in the system of interest representation - particularly the state, employers' organizations and trade unions - operate, and how they are actually organized. Assessment of what is desirable, in turn, must result from analysis of the barriers to and possibilities of economic development, taking into account the international dimension of competition. From this perspective, regardless of how one assesses the course of the transformations, it seems obvious that the issue of economic restructuring is of key importance, for without it there can be no stable growth and all the achievements made so far could be wasted. The point is that, among other things, the causes of inflation to an ever-increasing degree result from the structure (organizational, material, technological, regional) of the economy, which is not adjusted to the conditions of a market economy or to the requirements of international competition. Thus, even the best macro-economic policy will not be able to eliminate these causes, which themselves undermine the relative stability that has already been achieved.

This point is doubly significant: measures aimed at shaping the system of interest representation and labour relations must be directed towards solving the key problem of economic development, namely regional and industrial restructuring; at the same time, however, if such measures are not undertaken, or if they are misdirected, the transformation under way could, in a short space of time, begin to regress. For if restructuring processes were blocked or slowed down, economic imbalance and higher inflation would result, and then democratic government would indeed be threatened, even in its incomplete, non-consolidated form. Thus, the issue of effective economic restructuring is the key not only to economic development, but also to political development.

We make these remarks in the context of the increasingly clear aim of the government, and of part of the trade unions, to transform the tri-partite negotiations at the central level into the basic element of industrial relations, and thus to create in Poland a system of interest representation modelled on the corporatist arrangements adopted in many countries of Western Europe after the Second World War. Leaving aside my numerous reservations as to whether the establishment of such a system is at all possible at present, I wish to emphasize strongly that from the point of view of economic restructuring, this is a faulty solution, for, as experience shows, although it will undoubtedly enable the achievement of social compromise and harmony, it will do so at the cost of impeding structural changes in the economy and reducing its structural,

international competitiveness [Streeck & Schmitter 1991]. Given Poland's aspirations to membership of the European Union, as well as increasing globalization, this would in time prove to be a very high price to pay, for it would turn Poland into a permanently peripheral economy in the international dimension.

#### **4. STEERING THE PROCESS OF EUROPEAN INTEGRATION FROM THE CENTRE**

Poland's Agreement on Association with the European Communities, which provides the framework for the integration process, was signed in 1991. To distinguish this type of agreement from traditional association agreements, it was called the European Agreement. The European Communities - and as of 1995 the European Union - also concluded such Agreements with other Central European countries. Their distinguishing feature is that they encompass both political and economic relations, on the assumption that the Agreements will provide the basis for full integration in the future. The Agreements define the framework for: institutionalized political dialogue; the establishment of free trade areas in the sphere of industrial goods; cooperation, and coordination of sector policy; the process of adjusting legislation in associate member-states to legislation in EU countries; and for EU aid accorded to Central European countries through the Phare programme.

Under the terms of the European Agreement, appropriate supervisory organs, as well as organs to support and evaluate the Agreement will be established. The role of the Association Council, operating on the basis of art. 102 of the Agreement, is to address all issues resulting from the terms of the Agreement, as well as all other bilateral or international problems of mutual interest. The Council, comprising ministers from both sides, meets once a year. On the Polish side, the Minister of Foreign Affairs is responsible for the Council's work and is also its co-chairperson.

The Association Committee, the Council's supporting organ, operates on the basis of art. 106 of the Agreement. It comprises representatives of the Polish government, Council of Europe, European Commission, and EU member-states. The Committee is divided into sub-committees and working groups responsible for cooperation in given areas. On the Polish side, the co-chairperson of the Committee was (until the establishment of European Integration Committee) the Government Plenipotentiary for European Integration and Foreign Aid.

The Association Committee is a forum where the implementation of the European Agreement is reviewed. Among the most frequently raised issues at the Committee's meetings are trade problems connected with access to Polish or EU markets, par-

ticularly in the area of agricultural produce, textiles and iron and steel products. One of the Committee's functions is to act as an early warning system for situations where conflicts of interest may arise.

The Parliamentary Association Committee, which operates on the basis of art. 108, is a forum for meetings and exchanges of opinion among parliamentarians.

The bodies listed above perform two important functions:

- they constitute a platform for systematic political dialogue;
- they help resolve problems arising from the implementation of the European Agreement.

The adjustment measures introduced by successive governments have been based on the "Programme for adjusting the Polish economy (adopted by the Council of Ministers in November 1992) and legal system (January 1993) to the requirements of the European Agreement". These programmes were prepared and their implementation coordinated by the Government Plenipotentiary for European Integration and Foreign Aid, who operated within the structure of the Office of the Council of Ministers. The Plenipotentiary was obliged to cooperate with the Minister of Foreign Affairs and other appropriate ministers and to elaborate and present an annual report on the execution of the adjustment programmes. First, the report was approved by the Council of Ministers; then it was submitted for review to the European Agreement Parliamentary Commission.

The European integration process affects almost all areas of political, economic and social life. Thus, participating in this process are all those departments in which offices for European integration have been established. Greatest responsibility, however, lies with the Minister for Foreign Affairs, who conducts political dialogue and cooperation in the area of foreign policy and state security, and the Minister for Foreign Economic Cooperation, who is responsible for cooperation and trade policy.

Until recently, the basic forum for coordinating work undertaken by the various ministries and central offices was the Inter-departmental Team for the European Agreement, established by the Government Plenipotentiary at the beginning of 1994. The tasks of this Team included:

- setting the timetable for measures adjusting the Polish economy and legal system to the requirements of the European Agreement;
- preparing reactions to EU documents and proposals;
- preparing the Polish side for the meetings of the Association Committee.

The specific tasks of the Government Plenipotentiary for European Integration and Foreign Aid included, also:

- carrying out conceptual work - initiating expert studies on various areas of the Polish economy and legal system, publishing materials, organizing academic and other conferences;
- training personnel - needed for cooperation with the EU during the pre-accession phase and after membership has been secured;
- ensuring an efficient flow of information - between Polish and EU institutions participating in the implementation of the European Agreement;
- coordinating the use of foreign aid resources - particularly those provided by the EU under the Phare programme;
- promoting the idea of European integration and disseminating knowledge about this subject in Polish society.

The above-presented mechanism for coordinating the implementation of the European Agreement did not function effectively. This was most clearly revealed when the Supreme Chamber of Control (NIK) reviewed it, pointing to a number of major organizational deficiencies which could threaten the benefits to Poland arising from the integration process and limit the influence of the state authorities on the course and costs of this process [Informacja 1996]. The deficiencies were identified as follows:

- the absence of a single institution supervising information policy towards the EU and maintaining a common position on the Polish side on all issues subject to negotiation and agreement;
- poor internal coordination of work carried out in various ministries and central offices;
- non-fulfillment, in most cases, by ministries and central offices of the requirement to review all draft legislation for its compatibility with EU law and the non-establishment of special posts to research the compatibility of legislation;
- the absence of a system of monitoring to enable at least a general assessment of the preparation of government administration personnel for cooperation with EU institutions;
- major delays in appointing inter-departmental teams to prepare the basis for negotiating key issues in future negotiations on the conditions of membership;
- exceeding the time-limit for implementing a number of projects under the Phare programme; in 1990-94 alone, this meant that Poland lost the possibility of using funds worth 32 million ECU.

In the conclusion to its analysis, the Supreme Chamber of Control stated that the weaknesses of the mechanism for coordinating the implementation of the European Agreement are felt in the following areas [Informacja 1996, p. 6].

- programming;
- information flow;
- harmonization of law;
- financing of crucial work from the state budget;
- preparation of personnel and organization in ministries and central offices;
- using the experiences of other countries;
- functioning of the Polish representation at the EU.

To the comprehensive and in-depth assessment carried out by the Supreme Chamber of Control we should add that a general result of these deficiencies and weaknesses is the absence of a government (state) European integration strategy, which would, in a coherent way, programme political, formal-legal, economic and social measures. According to the Government Plenipotentiary, the Polish "White Book" was to serve as the basis for such a strategy. While this book - consisting of dozens of separate reports - may be a valuable source of information, it should hardly be seen as a government policy document.

The absence of a European integration strategy has a negative impact on the course of the entire integration process. What is particularly unfortunate, though, is that consequently there is little idea in Poland of how to use foreign aid. The latter is used to finance many diverse and fruitless undertakings and maintain the considerable administrative apparatus which services them. Instead of helping to coordinate the work of the government administration, foreign aid resources make this work even more fragmented. Each ministry and central office makes a great effort to win as many of these resources for itself, but then does little to make effective use of them. Despite the unanimously critical opinions of EU representatives and other donors, it has so far not been possible to alter this reprehensible practice.

The problem of finding an appropriate coordination mechanism in the area of European integration was one of the main factors behind the reform of the economic and administrative centre of government. Among member-states and countries aspiring to EU membership, there are various types of arrangements in this area. Analyzing each case in turn, we may distinguish three models for coordinating EU adjustment measures:

- **Anglo-French** - marked by the highest centralization of powers connected with integrative measures. These powers are basically divided between the Ministry of Foreign Affairs, which deals with strictly political measures,

and another central organ, which prepares adjustment measures in the economic sphere;

- **Belgian-Spanish** - marked by the dominant role of the Ministry of Foreign Affairs in the area of integration policy, which consults with inter-ministerial problem commissions;
- **German** - in which various ministers - depending on the profile of their department - take individual responsibility for adjustment measures. However, these measures are coordinated by the chancellor's office.

The coordination mechanism that recently emerged in Poland was closest to the German model. There was an Office of Plenipotentiary for European Integration and Foreign Aid, headed by a politician with the status of an under-secretary of state, located within the structure of the Council of Ministers' Office, while in each ministry and central office there was a special department charged with preparing personnel and implementing the terms of the European Agreement. However, in practice, chaos in the division of powers and responsibilities and numerous other problems resulted from the large number of ministries, many with a branch profile, the low level of administrative courtesy blocking effective inter-departmental cooperation, the unclear relationship between the Government Plenipotentiary and other departments of the Council of Ministers' Office, Ministry of Foreign Affairs and Ministry of Foreign Economic Cooperation, as well as from the poor organization of the Plenipotentiary's office itself. If we add to this the dearth of professional administrative personnel with high abilities, international professional experience and a knowledge of foreign languages, then the need for fundamental changes in the mechanism of steering the European integration process from the centre is easily justified.

The reform of central government institutions currently underway also encompasses this mechanism. In October 1996, the European Integration Committee, headed by the Prime Minister, was established to streamline the mechanism. The effect of this will be to centralize coordination and responsibility, thus bringing Poland closer to the Anglo-French model, in which integration policy is not synonymous with traditionally understood foreign policy. The powers of the Ministry of Foreign Affairs will therefore be reduced, although the ministry will actively participate in working out the political dimension of integration policy, formed in its entirety by the new Committee with the status of a ministry.

Only after some time will it be possible to assess the effectiveness of this arrangement. In its institutional assumptions, it would seem to be of benefit as far as accelerating integrative measures is concerned. However, Polish political practice, char-

acterized by the subordination of executive power to party interests, could quickly weaken, or even neutralize the systemic advantages of this arrangement.

## CONCLUSION

By pointing to the **gap between political articulation and institutionalization**, Mokrzycki and Cirtautas have captured the essence of the basic problem of the development of parliamentary democracy in Poland. They claim that in Poland "the social groups that articulated democracy are exactly those groups most threatened by it in its liberal free-market form" [Mokrzycki & Cirtautas 1993, p. 2]. The authors argue that the primary reason for this is the dominance of a **substantive understanding of political values** in society, whereas the political institutionalization taking place within them corresponds to a process-oriented understanding of these values. Thus, the authors locate this contradiction mainly within the sphere of consciousness. However, they also stress the absence of a feedback loop between the political leadership and critical social groups [ibid., p. 12], and therefore point out the behavioral aspect of the contradiction between political articulation and institutionalization.

Rychard also takes the behavioural approach in tackling the question of relative political demobilization. He believes that the problem facing Polish society is not the existence of particular interests or the fact that they are not articulated, but rather the "lack of mechanisms for negotiating interests that should be harnessed as the driving force of the entire social order". Consequently, group interests can be realized only in opposition to the state, or outside its structures [Rychard 1993].

Emphasizing the behavioural dimension of this contradiction (i.e., between political articulation and institutionalization) shifts the focus of analysis away from the political consciousness of society to the functioning of the political system and the consciousness of the political elites. In this area, one can mention at least several characteristic phenomena which reveal this contradiction.

Undoubtedly, in Poland (as well as in the Czech Republic, Hungary and Lithuania) the political elites that took power after the downfall of the communist regimes were convinced that there was no other democratic political alternative to their rule. They also assumed that the social support they enjoyed at the beginning would last. This made them think that in realizing their economic programme they would not need to reckon with social and political constraints, and that by persisting in their aims they would be able to lead society from the command to the market economy.

In actual fact, the new political class did not enjoy strong social roots, nor did it attempt to change this. It communicated with society mainly on the level of symbols,

using this method of communication as a tool of social education and a way to legitimate its rule [Marciniak 1991, p. 55]. Even today, many politicians maintain that the failures of the first non-communist governments were chiefly caused by their poor public information policy. On the other hand, because of its rapid prosperity, the new political class became quickly alienated from society. Its political position allowed it to gain prosperity by participating in the **process of primitive capital accumulation**, doctrinally justified as the only way to create a middle class [ibid., p. 58].

If one adds to this the general weakness of political parties, one easily understands the political vacuum between society and the authorities and the all-too-rapid reemergence within the consciousness of post-socialist societies of the "us" vs "them" divide. Charismatic leadership was one of the many ways in which the various countries attempted to fill this vacuum. Experience shows, however, that the effectiveness of this method is very limited even in Russia, where, due to historical traditions, such appeals would seem to find fertile ground. In Poland, deliberate invocations of Marshal Piłsudski have proved fruitless and at times even ridiculous. In practice, attempts to make up for the absence of intermediary political structures by charismatic leadership serve only to personalize politics and the political struggle, eventually destabilizing the state. Therefore, they do not bring the desired results.

Another option is for politicians to use corporatist economic structures. However, attempts to stabilize the political system by introducing corporatism into an economy still dominated by state ownership might produce the expected results, but only at the cost of blocking the economic transformation process. In the long run, this would lead to a complete loss of control over social behaviour, as corporatization cannot produce a significant and permanent improvement in the economic situation under the conditions of a disintegrating Soviet empire and the exhaustion of extensive growth factors. Moreover, it can only strengthen the state bureaucracy, which would in any case appropriate whatever short-term economic surplus was achieved as a result of corporatization of selected sectors of the economy (e.g., mining) by subjecting the economy to administrative control.

So it seems that the only effective, pro-transformation way of overcoming the contradiction between political articulation and institutionalization would be to create **structures able to bridge the gap between society and the authorities and to mediate interests both between various social groups** as well as between these groups and the authorities. This would lead to the formation of a solid social basis for implementing a **national integration strategy**. The axis of such a strategy must be a **structural policy geared towards maintaining sustainable economic growth and raising the international competitiveness of domestic production**. Only through such a complex policy can we ensure the development of civil society, create the foundations for

effective economic restructuring in a democratic environment, and hence provide Poland with a real opportunity for integration with the European Union.

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## FINAL CONCLUSIONS

In conclusion we would like to justify and develop more fully the approach to European integration that we have adopted in our analysis. This is all the more necessary as it is not the only possible approach.

Analyzing carefully the tone of official statements and documents, one invariably gets the impression that the only problem facing Poland in the area of integration is when it can join the EU. The Polish diplomatic service, aided by the president, government and parliament is trying to set the earliest possible date for rapid accession. At the same time, the Polish side is trying to display to its EU partners a high level of progress and determination in its efforts to adjust the country's legal system to the *acquis communautaire*, declaring, unequivocally, that all the formal requirements of accession have been met.

Given such an attitude, the question "should?" is indignantly rejected as diplomatically and politically tactless, while the question "when?" is seen as the only admissible one. In all probability, such an approach will prove sufficient and effective enough for Poland to join the European Union. Yet, will it also be enough for the country to survive in the EU on the basis of equal partnership? Will, therefore, this "happy event" guarantee us a "happy end"? Dare we doubt it?

In the public arena, the opposite view - extreme scepticism - hardly exists at all. To outline the arguments underlying this (basically hypothetical) view, let us turn to a text<sup>1</sup> written by H. Kierzkowski, a Polish economist who has been working abroad for several years. Kierzkowski claims that as far as trade is concerned, the Polish economy has already adjusted to the EU, that its level of openness vis-à-vis the economies of EU member-states is on a par with Spain's. Thus, with the exception of large financial transfers, the EU can do little for Central European countries, including Poland, that they cannot or should not do themselves. On the contrary - he adds - the adoption of EU standards regarding the labour market, welfare and environmental protection, in conjunction with the high expectations in these societies as to the positive effects of integration, will leave Central European countries burdened with a level of public expenditure that they cannot afford, which in consequence will undermine their economic growth.

Thus, Kierzkowski concludes that the benefits of integration will be much lower than expected, while the costs will be extremely high. At the same time, Central European countries are applying for membership in NATO, which is much more impor-

1. Kierzkowski, H. (1996) "Central Europe Looks West". *The World Economy*, (Fall).

tant, for it will guarantee them a level of security that they cannot provide for themselves. But membership in NATO will also entail heavy costs. That is why, given the choice between NATO and the EU, it would be better to choose NATO and to put aside for the moment the issue of European integration. For Kierzkowski the question "when?" is secondary - what matters is "can we afford it?", and, consequently, "should we do it now at all?"

If we refer the two approaches outlined above to the relationship between transformation and integration, then the advocates of the first approach would claim that at present integration is more important than transformation, that it conditions transformation, and in a general sense is even a substitute for it. In turn, the hypothetical (which we again stress) advocates of the second approach would probably claim that what is important is the market transformation and its completion, that is necessary to strengthen first the Polish economy, and that the time for integration will eventually come.

Against this background we would like to elaborate our own position, which is based on the idea that transformation and integration condition each other and should overlap. In other words: without continuing the transformation, Poland has no real chance of virtual integration, and without European integration, the Polish transformation will not be completed. Thus, for us the most important question is neither "when?", nor "why?", but "how?".

This difference ceases to be a banal play-on-words if we perceive Poland's European integration as a two-track process. Firstly, integration, and consequently **membership (nominal)**, must entail the **fulfilment of formal criteria**, i.e., the adjustment of Poland's legal system to the *acquis communautaire*. In this sense, **the European Union is for Poland a point of gravitation**. Secondly, however, membership, and consequently **(virtual) integration**, must entail the **fulfilment of material requirements**, expressed in Poland's ability to compete in the single European market and, in the future, under the conditions of European monetary union. In this sense, **the European Union is for Poland a point of reference**.

Looking at the issue in this dual way, it would seem appropriate to analyze the two dimensions of Poland's integrative capability. On the one hand, this capability is reflected in the **adjustment process** of Poland's legal system to the EU's - and in this case we may speak of a **passive adjustment capability**. On the other hand, it involves participating in the integration process on the basis of partnership, understood in this instance as a **process of convergence** - which can be defined as an **active participation capability**.

Such a two-track understanding of the integration process enables us to perceive it, to some extent, as a process of interaction. It is not only that Poland is joining the EU: by accepting Poland (and probably other Central European countries, too), the EU is also changing and expanding. "Is Poland ready and able to integrate with Europe?" - we agree that this question is fundamental. But it would also seem relevant to ask: "Is the European Union ready and able to accept the transforming countries of Central Europe?" Experts and politicians stress that the EU must transform if it is to expand.

The case of German reunification provides a powerful argument for adopting the interactive approach to the process of integration. We are not referring here to the volume of investment, which in this case has led to the transformation being identified with integration, but rather to its short and long-term consequences. Despite the enormous transfer of resources, there is little to suggest that the eastern *länden* will achieve competitiveness and dynamic growth. Indeed, there are several reasons to believe that they will become permanently marginalized, which will lead to serious social and political problems all over Germany.

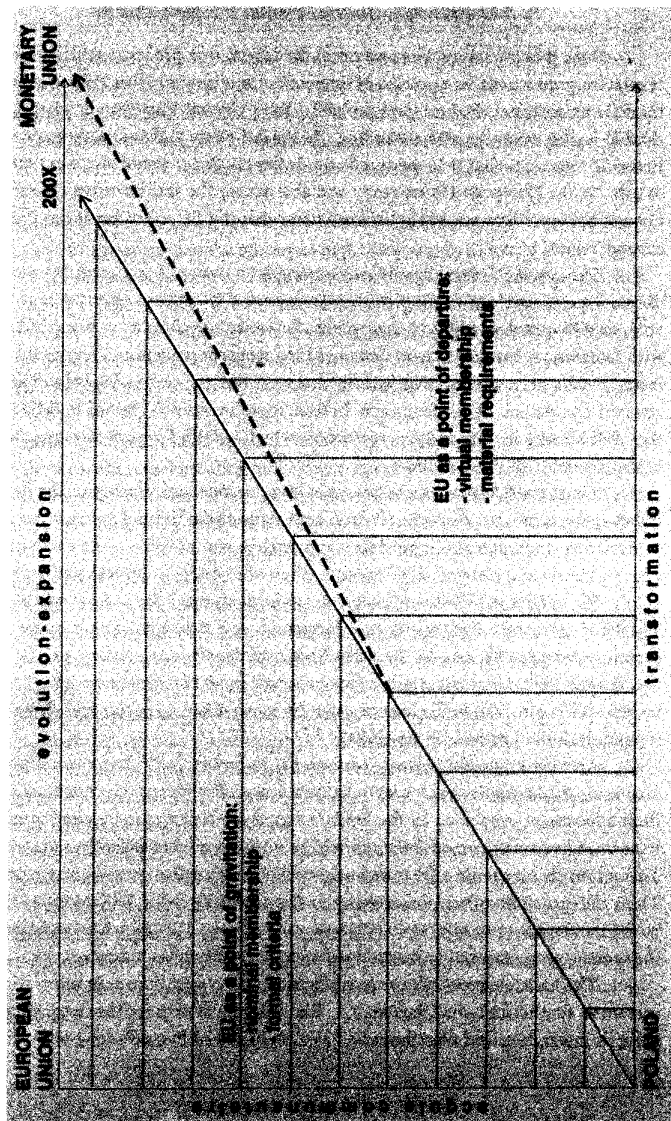
Thus, the question arises: how should we understand in practice the compatibility of the measures adopted in Poland with those of the EU and its member-states? Is **statically understood compatibility** appropriate and possible - i.e., compatibility which consists in a planned adjustment to given and precisely defined standards?

We believe that this would be a misguided approach for at least two reasons. The EU is presently undergoing transformation, and it is certain that many of the current arrangements, e.g., in the area of regional development policy, will be abandoned after 1999. Moreover, there exists no single model of socio-economic development in EU countries. On the contrary, there is much diversity in this area. Thus, even if possible, imitation will not be easy.

Another argument against institutional imitation is the fact that although it may bring rapid results and quickly help improve effectiveness, its application will limit adjustment capability. In the longer term, this will become a source of ineffectiveness. That is why **compatibility should be understood dynamically**, not statically. This means that it should refer to general principles rather than specific arrangements. Thus, the principles of socio-economic development adopted in EU countries should be the standard that we refer to and endeavour to achieve. However, we should develop the specific arrangements, in accordance with these principles, ourselves.

The basic elements of our approach to the process of European integration are presented synthetically in Diagram 1.1. The diagram illustrates the need for a coupling of integration and transformation as a condition of Poland's long-term success.

Diagram 1.1  
Dimensions of the Process of European Integration



The arguments and assessments formulated in the report acquire their true meaning only within this conceptual framework. Thus, at this juncture, it is worth recalling the key conclusions of our analysis.

1. The effective presence of Poland within the EU depends on maintaining sustainable economic growth, enabling Poland to shorten the wide gap between its level of GDP and the EU average.

2. To maintain the Polish economy on the path of sustainable growth requires not only continuing the macro-economic policy of stabilization and consolidation pursued so far, but also introducing a number of structural reforms.

3. As a result, this should enable - in about a decade or so - the fiscal and monetary convergence criteria adopted and defined in the Maastricht Treaty to be fulfilled on a long-term basis, and allow Poland to apply for membership in the European Monetary Union.

4. Consistent macro-economic policy and the introduction of institutional and structural reforms have a beneficial impact on Polish enterprises, influencing the evolution of their internal structures and helping them adapt their behaviour patterns to the conditions and requirements of an open market economy. Enterprise restructuring has been broad in scope, but has for the most part been limited to so-called defensive restructuring, which does not involve any fundamental technological changes. The process underlying these changes has only just begun to intensify.

5. The relatively slow pace of privatization and the absence of mass privatization programmes imply both opportunities and dangers. One danger lies in the highly politicized and therefore influential enclaves of the non-market (etatist) economy consolidating their positions in so-called strategic sub-sectors, which, due to soft budget constraints, will syphon off resources that the state needs to reform social services and develop a modern infrastructure. One of the opportunities is that the spontaneous, if rather slow privatization process has so far not led to the propagation of ownership and organizational structures that could block or impede effective management.

6. Transformations in the banking system have promoted favourable adjustments on the micro-economic level. Banks have been forced to purge their asset portfolios and assess their clients more rigorously. So far, during the course of consolidat-



ing the banking system and privatizing Polish banks, the authorities have managed to avoid creating non-transparent organizational and ownership structures.

7. A large part of Polish law is still not subject to precise and effective procedures controlling its compatibility with Community law. Polish law still contains a number of regulations preventing the free exchange of goods, services, capital and labour.

8. Due to the absence of appropriate constitutional provisions, Poland is not ready to introduce those limitations on its sovereignty that are connected with the rights and responsibilities of EU membership.

9. As far as convergence of legal cultures is concerned, Poland has a high integrative capability. This concerns, among other things, the principles of legal discourse, including procedures for interpretative discourse, the role of lawyers in society and professional ethics.

10. In Polish society, the division is deepening between those who, thanks to their "resources" (e.g., education), can take advantage of new opportunities, and those who in real terms lack such opportunities. For the first group, the relations dominant in EU countries are an example to be followed; for the second - they are a point of reference determining the level of expectations, whose addressee remains the state.

11. At the level of basic organizational principles, a characteristic feature is the de-politicization of rules and ties created in the course of social activities, and de-socialization of rules and ties created in the course of political activities. The numerous examples of social self-organization are all of a local character, while political divisions have so far not taken hold in the social structure, and thus, instead of articulating and representing the interests generated by this structure, are an instrument by which differing visions of social life are imposed from above.

12. The absence of ties between the socially-determined dimensions of community and the politically-determined dimensions of control will probably disappear as the social structure begins to crystallize. At the same time, there is reason to fear that the individual and group adjustment process set in motion by the systemic changes may extend the "transition stage" beyond the period envisaged by most individuals and thus severely weaken the capability of Polish society to integrate with "European soci-

ety". For a feature of these adjustment processes is a reliance on strategies developed within the framework of the "second society", which means that individuals try to increase their "rewards" without bearing the "costs" of participation in the liberal-democratic system.

13. Poland is characterized by an unconsolidated system of democratic government that is politically crisis-prone. The most important cause of this is the weakness of the constitutional order, revealed by: the dominance of short-term interests over the need to enact a new constitution; the evolution of the semi-presidential system towards a parliamentary-governmental one; the absence of a professional and efficient administration (civil service); and the lack of trust in political organizations and institutions.

14. Consequently, the system of interest representation is unstable, unclear and immature, which means that the social basis for carrying out structural reforms and implementing integrative strategies is weak and ephemeral.

15. The way to overcome the above-mentioned incoherencies and contradictions of the constitutional order is not to homogenize coercively society from above, but rather to diversify its structures gradually and functionally by carrying out appropriate institutional reform.

16. Thus, our final conclusion is as follows: we presently consider the main axis of the integration process to be **structural policy**, understood as **the stimulation by the organs of public authority of structural changes in the economy in order to maintain a high rate of growth and raise the economy's international competitiveness by strengthening market mechanisms**. Without effective and rapid resolution of structural problems in the economy, both the constitutional order and the development of civil society - notwithstanding the great achievements of the systemic transformations so far - will be endangered. To implement a consistent structural policy also requires: decentralizing the state; reforming the territorial organization of the state and state administration; developing the tertiary sector; strengthening territorial self-government and grass-roots economic self-government.

Hence, we believe the adoption and application of a national strategy for European integration (which the Polish parliament has rightly demanded from the government in its resolution of March 1996), forming the core of a national strategy of socio-

economic development, to be a pre-condition of success. We may mention here some of the basic goals of such a strategy:

- strengthening market mechanisms in the economy;
- carrying out sector and regional restructuring;
- introducing crucial and now badly overdue reform of social services, including, in particular, reform of the national insurance (pensions) system;
- triggering modern economic growth factors linked to the formation and use of human and social capital;
- maintaining sustainable economic growth;
- achieving high international (structural) economic competitiveness.

Defining, adopting and implementing such an integrative strategy will undoubtedly require serious public debate and dialogue between the government and representatives of major social groups. It is better to begin work on this strategy now, rather than to be defenceless - when the negotiations get under way - against the attacks of those who will use the opportunity to promulgate political accusations and attempt to win power in defence of national interests and lost sovereignty. In actual fact, a real limitation on sovereignty would be the non-implementation of such a strategy, for in that case Poland would be left with no opportunities and no real choices.