

Table of Contents

Summary, key words, JEL code	13
List of basic abbreviations	15
Glossary	20
Introduction (<i>M. Muszyński</i>)	36
Chapter 1.	
The issue of constitutional requirements for the participation of a Member State in the monetary union - general remarks (<i>M. Muszyński</i>)	
1. Introduction	43
2. The monetary union - introductory remarks	46
2.1. The objective of integration	46
2.2. The approach of the Member States to the monetary union	49
2.3. The legal bases for the establishment of the monetary union	54
2.4. Requirements for membership in the monetary union	55
3. Relations between constitutional norms and the norms of the EU law referring to the monetary union	62
3.1. The principle of the primacy of EU law and the supremacy of the constitution	62
3.2. The approach to the issue of resolving collisions between national law and EU law	66
4. The issue of a constitutional norm as a limitation clause of the integration process within the euro area	70
4.1. The notion of a limitation clause	70
4.2. The approach to constitutional limitations on integration within the monetary union	71
4.2.1. Accessing the EU as a sufficient requirement for integration within the monetary union	72

4.2.2. The constitution as a limitation clause of the integration process within the monetary union	74
5. The role of the national parliament in the process of monetary integration	76
5.1. The systemic position of the national parliament	76
5.2. National parliaments in the process of integration and the Treaties	77
5.3. The position of national parliaments in the integration process within the monetary union	80
5.4. National parliaments and the application of the principle of subsidiarity by the EU institutions	88
6. The role of the central bank in the process of monetary integration	91
6.1. The state's central bank - introductory remarks	91
6.2. Monetary policy and the European System of Central Banks	93
7. Conclusions to the chapter	96

Chapter 2.

Constitutional regulations of the euro area Member States related to participation in the monetary union (S. Pawłowski)

1. Introduction	99
2. Regulations regarding central banking	100
2.1. Models of constitutional regulations concerning central banks	100
2.1.1. States in which there was no need to amend the constitution with regard to integration in the monetary union	101
2.1.2. States in which existing constitutional provisions were amended with regard to integration in the monetary union	103
2.1.3. States in which new provisions were added to the constitution with regard to integration in the monetary union	111
2.2. Specific national solutions for integration in the monetary union	113

2.2.1. Austrian solutions	113
2.2.2. Finnish solutions	119
3. Regulations regarding financial stability	122
3.1. Member States' constitutions and the ESM Treaty	122
3.2. Member States' constitutions and the entry into force of the Fiscal Compact	123
4. Conclusions to the chapter	127

Chapter 3.

The requirements for the participation in the monetary union in the light of the Constitution of Germany. General issues (*G. Morgenthaler*)

1. Introduction	131
2. The constitutional requirements for accession to the euro area. General remarks	132
2.1. The constitutional basis for integration in the Economic and Monetary Union in Germany	132
2.2. The inviolable boundaries of the integration process	137
3. The Federal Constitutional Court's supervision of the conferral of sovereign powers	140
3.1. The legal basis for the jurisdiction of the Federal Constitutional Court to supervise the conferral of sovereign powers in the integration process	140
3.2. Material grounds for adjudication by the Federal Constitutional Court on the integration process	141
4. Specific requirements for the monetary union in the jurisprudence of the Federal Constitutional Court	143
4.1. The judgement regarding the Maastricht Treaty	143
4.2. Judgements regarding the European Financial Stabilisation Mechanism and the European Financial Stability Facility	146
5. Conclusions to the chapter	149

Chapter 4.

The requirements for the participation in the monetary union arising from the Polish Constitution - general remarks

(*M. Muszyński*)

1. Introduction	153
2. The delegation of powers on the basis of Article 90 of the Constitution of the Republic of Poland (the procedural issue)	158
2.1. The content of Article 90 of the Constitution of the Republic of Poland	158
2.2. The notion of the conferral of powers “in relation to certain matters”	160
2.3. The function of Article 90 of the Constitution of the Republic of Poland in the integration process	164
2.4. Article 90 of the Constitution of the Republic of Poland and the EMU	169
3. The position of the National Bank of Poland in the light of Article 227 of the Constitution of the Republic of Poland (the substantive issue)	172
3.1. The features of the central bank in the light of the Constitution of the Republic of Poland	172
3.2. The independence of the National Bank of Poland	175
3.3. The constitutional tasks of the National Bank of Poland in the context of the integration within the EMU	178
4. The constitutional requirements for the withdrawal from the euroarea	182
4.1. The Constitution of the Republic of Poland and the withdrawal from or modification of the integration process	182
4.2. Problems related to the withdrawal from the euro area in the Constitution of the Republic of Poland	184
5. Conclusions to the chapter	189

Chapter 5.

Cooperation within the monetary union.

The German perspective (*G. Morgenthaler*)

1. Introduction	195
-----------------	-----

2. The legal basis for cooperation between German organs and EU bodies within the monetary union	196
2.1. The basis set out in EU law	196
2.2. The basics laid down in national law	198
3. The Federal Constitutional Court's supervision of monetary policy implemented in the euro area	200
3.1. The specificity of adjudication by the Federal Constitutional Court in cases related to the monetary integration	200
3.2. The scope and consequences of the rejection of an act of EU law by the Federal Constitutional Court	201
4. Relevant cases resolved by the Federal Constitutional Court	204
4.1. The case regarding the Securities Markets Programme (SMP) and the Outright Monetary Transactions (OMT)	204
4.2. The case of the Expanded Assets Purchase Programme and the Public Sector Purchase Programme of the Eurosystem	205
5. Conclusions to the chapter	207

Chapter 6.

The requirements for the participation in the monetary union arising from the Polish Constitution - detailed issues (*S. Pawłowski*)

1. Introduction	211
2. The constitutional nature of the National Bank of Poland and Poland's participation in the EU	213
2.1. The National Bank of Poland after the accession to the European Union	213
2.2. The legal grounds for the operations of the National Bank of Poland	214
3. The independence of the National Bank of Poland in the light of the Constitution and EU law	216
3.1. Constitutional grounds for the independence of the National Bank of Poland	216
3.2. The independence of a central bank as provided for in EU law	228
3.3. The independence of the National Bank of Poland - conclusions	241

4. The constitutional structure of the bodies of the National Bank of Poland	242
4.1. The process of creating the bodies of the National Bank of Poland	242
4.2. The position of the members of the bodies of the National Bank of Poland as regards EU institutions	246
4.3. The division of competences among the bodies of the National Bank of Poland	247
5. Institutional and capital relations between the National Bank of Poland and the European Central Bank	250
5.1. The status of the National Bank of Poland as a member of the ESBC	250
5.2. EU requirements regarding the shape of a central bank	252
5.3. The powers of the National Bank of Poland with regard to the ECB - the nature of capital relations	258
5.4. The performance of tasks by central banks and the ESCB	262
6. Joining the monetary union and assigning authority (the matter of granting consent by way of a referendum)	265
6.1. The basis for conferring control over foreign currency on the European Union	265
6.1.1. The issue of the beneficiary of transfer in the deliberations of the doctrine	265
6.1.2. Repealing derogation with regard to Poland and the possibility of a referendum based on the jurisprudence of the Constitutional Tribunal	268
6.2. The conferral of control over monetary policy on the basis of Article 90(1) of the Constitution of the Republic of Poland	282
6.2.1. The moment of conferring control over monetary policy	283
6.2.2. The beneficiary of, the requirements for and the scope of conferral of control over monetary policy	287
7. Joining the monetary union and amending the Constitution of the Republic of Poland	293
7.1. Ensuring legal convergence of national law with EU primary law - Poland's point of view	293

7.2. The content of the Constitution of the Republic of Poland and integration within the monetary union - prospects for an amendment	298
7.3. The constitutional foundations of integration within the monetary union - <i>de lege ferenda</i> proposals. Possible directions of changes	306
7.4. Integration in the monetary union and constitutional human rights and freedoms. Mechanisms guaranteeing stability of the banking system at the EU level	315
8. The constitutional nature of unorthodox measures of the ECB taken in the face of the euro crisis	326
8.1. A general description of measures taken as part of the single monetary policy	326
8.2. The issue of the constitutional nature of unlimited purchase of Treasury bonds of Member States by a central bank from the viewpoint of Poland	331
9. The National Bank of Poland and banking supervision	334
9.1. Constitutional grounds for supervision over activities of the financial market	334
9.2. Banking supervision and EU law	346
10. The fundamental objective of the National Bank of Poland (the policy of zero or minus interest rates)	353
10.1. Responsibility for the value of currency as a task of the National Bank of Poland versus integration within the monetary union	353
10.2. Sustainable economic goals of the European Union and ensuring price stability	358
11. Conclusions to the chapter	367
 Chapter 7.	
Final conclusions (<i>M. Muszyński, S. Pawłowski</i>)	
1. The objectives of the analysis	373
2. Conferral of monetary policy powers on the EU. A constitutional association	375
3. Constitutional identity in relation to monetary policy powers. The findings of the Federal Constitutional Court	380

4. Constitutional identity within the framework of monetary policy powers. Findings related to the Polish Constitution	386
5. Non-standard instruments of the ECB and constitutional identity	394
6. The issue of reviewing EU acts regarding the monetary union	395
7. The procedure for the accession to the euro area and the issue of a referendum	403
8. The institutional conflict concerning the primacy of EU law and the supremacy of the Constitution	407
9. The issue of “legal safeguards” for Poland created before the accession to the monetary union	408
10. Summary	410
Bibliography	412
Legal acts	412
Non-normative acts and ECB opinions	417
Rulings of the Constitutional Tribunal	417
Rulings of the Federal Constitutional Court	419
Rulings of the Court of Justice of the European Union	420