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**Strategic Goals of the Polish Mandate for  
Negotiations  
with the European Union**

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## MAIN CONCLUSIONS

1. First problems have emerged in the process of negotiations on Poland's accession to the European Union. Due to a lack of clearly defined goals in the Polish negotiating mandate, there is a threat that Poland will be pushed into the second category of countries aspiring to the EU membership.
2. This situation is accompanied by the currently growing syndrome of tiredness with Europe among the citizens of the EU member states. The signs of that tiredness include the tendency to close within local communities and to turn away from universal European ideas, as a result of fears of the tough criteria related to the euro, as well as the reluctance to make sacrifices on behalf of the countries aspiring to join the Union.
3. The acceleration of the integration has overheated the process. In the economy, overheating implies a need to slow down economic growth. A similar situation has been observed in the case of integration processes in the EU. The overheating of the integration process is reflected by the real slowing down of its momentum. The main barrier preventing a further progress of integration, apart from the declining support by EU citizens, is an increasing differentiation of political interests among the member states.
4. The social attitudes related to the introduction of the common currency are accompanied by a fear of the Union's enlargement to include Central Eastern European countries. It should be expected that, together with the advance of negotiations on their accession, the fears may grow and take various forms.
5. The common currency, the system of closer co-operation, will facilitate the implementation and enlargement of the European Union. However, the introduction of the common currency will, at the same time, mean the establishment of a solid nucleus of the Union. This will enable the enlargement of the EU to include new members, while placing them in the European area. Under these circumstances, integration may advance among the current member states of the Union, leaving other countries in the margin of the process.
6. The strategic goals of the negotiating mandate should be:

- negotiating realistic, optimum and effective transition periods for Poland, which would be based on accurate economic calculations. Unjustified extension of the transition periods would be a historic neglect and short-sighted ignorance;
- joining the EU as part of the first enlargement wave (along with the Czech Republic and Hungary). The belief that it is not possible for the Czech Republic or Hungary to join the Union earlier than Poland lingers on among the Polish public, but also among some of the political circles in Poland. Meanwhile, if Poland makes mistakes, it may be joining the EU in the second turn;
- making a better use of Poland's geographical situation to achieve political and economic goals, although there is no doubt that Poland will be very isolated in promoting its eastern neighbours;
- by restricting the negotiations exclusively to the issues concerning the Single Market, Poland would simultaneously agree to be pushed off to the outskirts of the European economic area.

## **I. Analysis of the situation**

The process of European integration is not a stable one. It has its ups and downs. Nonetheless, over the past fifty years, it has been progressing on the whole. In the 1990s, real grounds emerged for the first time for a qualitative change of the integration processes and their permanent transformation. A fast acceleration was observed. At the internal level, the acceleration of the integration process was reflected by the establishment of the European Union (1992), intensive efforts aimed at introducing the common currency euro, the Inter-Government Conference held in 1996-1997, and the signing of the Amsterdam Treaty. In the external dimension, the acceleration was reflected by the political consent to the accession of Central Eastern European countries to the EU expressed in June 1993, the accession of Austria, Sweden and Finland to the EU (January 1995), and the selection of six countries to be invited to hold EU membership negotiations (December 1997). From the historical perspective, this acceleration of integration is unmatched in the nearly fifty-years long history of the Communities.

It should be noted that when the agreement establishing Poland's association with the European Communities was being initialled in Brussels on 16 December 1991, none of the participants of the ceremony expected that Poland could start membership negotiations within barely seven years.

Back then, it was very difficult for the political circles in the Communities to accept the idea of Poland's future membership in the Union. It was a personal achievement of Jan Kułakowski, at the time the Polish ambassador to the Communities, that the unilateral declaration stating that Poland's ultimate goal was the membership of the Community, was forced through in the preamble of the agreement. In 1991-1992, a broad discussion was going on in Brussels on deepening the Community. During that discussion, the possibility of a simultaneous widening was basically rejected as contradictory to the deepening efforts. The question was whether to deepen or to widen the Community. The heated atmosphere of those deliberations was certainly connected with the immense political changes occurring in Europe and in the world. These changes, initiated by the Round Table Talks in Poland in 1989, and followed by the fall of the Berlin Wall and the unification of Germany, made the Union's politicians realise the need for a faster political integration. For the first time, thanks to Germany's unification, the Union expanded geographically not as a result of accession talks, but due to an enlargement of the territory of one of the member states. In March 1990, Belgium put forward a proposal to hold an inter-government conference on the political union and institution reinforcement. The proposal was backed

by Germany and France. As a result, it was decided (Dublin I and Dublin II) that two parallel inter-government conferences would be held: on the Economic and Monetary Union, and on the Political Union. The extraordinary summit which convened in Dublin on 28 April 1990, was initially meant to be devoted exclusively to the unification of Germany. Right before the meeting, the leaders of France and Germany addressed a joint letter to their ten colleagues, proposing to deepen the political integration within the Communities. They suggested four main topics for the future negotiations: a greater “democratisation” of the Communities, an enhancement of efficiency of EC institutions, ensuring policy uniformity and coherence in the economic, monetary and political activities, as well as defining and implementing a common foreign and security policy. The discussion of the French-German proposal dominated the summit, departing from the issue of Germany’s unification, which was the main reason why the conference had been convened in the first place.

Britain was the most negative towards the proposed political union. Margaret Thatcher held the opinion that the proposal may be interpreted by the British people as meant to transform the Communities into a single state. “Will it be necessary to explain to the citizens what the political union is not going to be by eliminating its competence, or will it be necessary to tell them that the European Union is not going to hurt either their beloved Queen, or the Parliament which has already been working in the Westminster for seven centuries,” she said (quoted after L’Agence Europe, 29 April 1990) [retranslated]. A similarly reserved attitude towards the French-German initiative was held by the Portuguese and the Danes. The inter-government conferences started in Rome in December 1990. The places where the negotiations were held changed in the course of the conferences. Finally, the treaty was signed by all the member states in Maastricht on 7 February 1992.

After the Maastricht Treaty was signed and the European Union established, the process of European integration definitely gained momentum. The question whether the Union should be deepened or widened was replaced by the concept of implementing the two processes in parallel.

**The rapid acceleration has led to an overheating of the integration process. In the economy, overheating implies a need to slow down economic growth. A similar situation has been observed in the case of integration processes in the EU. The main barrier preventing a further progress of integration is a declining support by EU citizens, coupled by an increasing differentiation of political interests among the member states.. The overheating of the**

**integration process is reflected by the real slowing down of its momentum. That fact is not quite generally realised, but the tendency is taking a real shape in the form of the trend to abandon gradually the deepening of integration for the sake of its flattening.**

The main reasons underlying the qualitative changes in the EU integration process are:

1. A fall in the public's approval for a further deepening of integration.
2. The decision to enlarge the Union.

The ways in which these changes are occurring include:

- The possibility for a member state not to participate in a specific type of co-operation within the Community following an autonomous decision by the member state;
- The possibility to exclude a member state from a specific type of co-operation on the basis of a decision by the Council of Ministers of the European Union;
- The introduction of the principle of flexibility in the Amsterdam Treaty.

### **1. Fall in public support for a further deepening of integration**

Latest opinion polls conducted among the European Union's citizens show that 43% of the EU population support Poland's accession to the Union. The most sceptical attitudes were held by Germans (29% support). Reluctance towards a fast enlargement was also observed among Austrians, Danes and Belgians. That decline in the integration zeal is connected with a generally declining public support in the member states for the idea of deepening the Union. According to figures released by Eurobarometer, the confidence in the European Union has fallen by over 20 percentage points since 1990 (from 72% in 1990 to 48 percent in 1996).

To date, the integration processes within the Community have been based on the building of the Single Market. The stages of the integration were: the free trade zone, the customs union, and the Single Market. At the moment, the last stage of the process, namely, the monetary union is being implemented. Thus, the implementation of the idea of economic integration will be fully completed. The common policy will be pursued in all the main areas of the economy, and the decisions will be made by supra-national organisations. The economy, and not politics, has been the dominating factor in the establishment of a united Europe. **However any community formed on economic grounds alone is always insufficient.** The 1990s

have demonstrated the weakness of the Community. Faced with the war in former Yugoslavia, the Union has proved helpless in the military or diplomatic sense. The political integration and unity necessary to settle the conflict were lacking.

The 1990s have seen the gap widen between economic integration and democracy in the broad meaning of the term. The progress in economic integration has highlighted the shortcomings in democracy (for example, the free flow of people makes it necessary to ensure equal treatment to all and to ban discrimination). Therefore, it should not be considered surprising that a EU citizen manifests his or her European identity mainly by referring to the economic success, a growing prosperity. As a consequence, it should not be surprising either that, during the times of recession, all polls record a dramatic decline in trust in the Union's institutions and in the integration idea. The interdependence between the economic cycle and support for Europe is very well reflected in the statistics kept by Eurobarometer. During the period 1987-1992, the average annual rate of economic growth in Europe was 4%, which created 9 million new jobs. The boom ended in 1992, bringing a fall in the public's trust in the Union. In 1991, support was expressed by 72% respondents, but the figure fell to 48% over the next five years. Despite the great impact of economic integration on the development of European unity, economic ties have turned out too weak to provide the grounds for the future of Europe. **The period when Europe could develop without an active involvement of its citizens, with their silent consent, is history now. The end of the 1990s marks a revival of the idea that Europe means mainly the implementation of universal democracy with a top priority given to the human person. The future of the Union and its further development depend on the degree in which the Union's citizens and nations identify themselves with the organisation.** It should be expected that future treaty provisions will focus on issues concerning the European citizenship, growing powers of the European Parliament, or more generally, the development of democracy. Already in the Amsterdam Treaty, the most elaborate part of the document is the section entitled "The Union and Citizens," and the titles of its chapters: employment, social policy, environment, public health, and consumer protection, indicate the increasing attention paid to the human and moral aspects of the integration process.

One may say that, if today, the European politicians do not quite agree yet as to the *finalité politique* of the united Europe, they certainly agree on the importance of the European identity of its citizens as the core from which the integration idea should stem in the coming decades.



**Among the citizens of the member states, there is a growing syndrome of tiredness with Europe at the moment.** The signs of that tiredness include the tendency to close within local communities, to turn away from universal European ideas, a reluctance to make sacrifices on behalf of the countries aspiring to the EU membership, and most of all, a fear of the tough euro criteria. The French government realised the magnitude of those fears quite dramatically when the country was hit by a wave of strikes and demonstrations against attempts to reduce the level of social security ensured by the state. The citizens' growing alienation from the Union is additionally due to the fact that all the major structural reforms are implemented by the EU executive authorities, without the involvement of the national parliaments and the European Parliament. The participation of representative institutions is restricted to pronouncing opinions for or against. The parliaments are faced with accomplished facts, and do not take part in material discussions and negotiations. Thus, the executive and legislative branches of the government are swapping their traditional functions. The increasing scope of issues regulated by the Council and the Commission, and their direct interference with the rights and duties of the citizens, formerly reserved exclusively to the national regulations, must provoke concern. Furthermore, these tendencies are certainly one of the reasons underlying the growing hostility among the people towards the idea of a strongly united Europe.

First signs of a growing civil resistance against a further deepening of the integration showed in the results of the referenda held on the Maastricht Treaties in France and Denmark. Our analysis must not ignore either that Norwegians did not agree to join the EU, that Malta's decided to abandon accession talks, and that a reluctance has been showed by a majority of the people in Switzerland.

The social attitudes connected with the introduction of the common currency are coupled by the fear of the Union's enlargement to include the countries of Central Eastern Europe (CEECs). It should be expected that, together with the advance of their membership negotiations, that fear may increase and take various forms. The enlargement to include the CEECs will be the first enlargement not only in the quantitative, but also in the qualitative sense in the history of the Communities. The countries comprised in the Communities, and those which later joined the European Union never differed in the economic, cultural and political sense. This also applies to the countries which experienced periods of dictatorship in their history, e.g., Spain or Greece. They did not give up the rules of a market economy. They were sovereign states, preserving a centuries-long tradition of the western civilisation. Poland, similar to other countries neighbouring with the EU (with the exception of the Czech Republic and

Hungary), is not perceived as a Western European country. There is a mentality gap between us and the EU member states. Therefore, one should not be surprised with various proposals which are being put forward to place us in the European area as second or even third class members. French politicians are particularly prone to do that. In this context, let us quote Claude Cheysson, former minister for European integration and ex-member of the European Commission, who said, “The Union’s enlargement would be advantageous in the case of democratic countries with high living standards and advanced social structures. Germans, whose eyes are turned to the East, care about the enlargement. However, their accession (the accession of CEECs) will prevent any new policy. Britain is delighted to see its wishes come true: a huge European free trade zone and nothing more. So, this is what the future of the Union looks like. While comprising a growing territory, the Union will, at the same time, be stripped of ambition and all democratic control. Some might be tempted to describe that using different words, as a fat, sterilised Europe incapable of taking action. This is not the kind of Europe we need.” Giscard d’Estaing had similar reservations. He suggested to place the countries aspiring to EU membership in an external ring of the Union, restricting their membership to the free trade zone alone, due to their lack of cultural and historical unity with the West.

Both statements were published in the serious, high-circulation French press (*Le Monde* and *Le Figaro*). It should be expected that the number of such statements will be growing together with the advance of the accession talks. It is going to be very difficult to change the well established stereotypes and the traditional image of the CEECs and their citizens held by the average western voters.

There is a strong fear that the introduction of the euro will amplify the problem of a growing unemployment. A half of unemployed in the EU have been jobless for over a year, and one in five unemployed is under twenty-five years of age. The growing unemployment encourages the emergence of an unfavourable political atmosphere around the EU enlargement. EU citizens fear an inflow of cheaper labour from the East. They also fear losing the feeling of security, an inflow of organised crime, or, in more general terms, a withering of the social structure due to non-legalistic attitudes of their new co-citizens.

## **2. Decision on EU enlargement**

By a paradox, the turning moment from which the first signs of overheating of the integration process were observed, was the signing of the Maastricht Treaty. This is a paradox because that moment has been perceived as a great success of another stage of deepening the

Communities, i.e., the establishment of the European Union. For the first time, a treaty was adopted that laid foundations for the development of a common foreign and security policy, as well as the common judiciary and law enforcement systems. On the day when the Treaty was signed, it was forgotten that the costs involved had been high. These costs included consent to Britain's opting-out on the social protocol, its exclusion from participation in the financial costs related to the enforcement of the basic rights stipulated in the employees charter dated 1989, and the special status of Denmark. Denmark does not have to participate in the single currency, and it does not take part as a full member of the Western European Union. It was forgotten that **the Treaty and the negotiations which preceded its signing, unveiled the growing contradictions between the member states, and the increasing role of their particular interests. The compromise achieved at the cost of Britain's opting-out, additional decisions, protocols, and declarations providing for the special status of Denmark, in fact, started the implementation of a highly disintegrating idea of Europe *à la carte*. The idea that enables a member state to make an independent decision not to take part in specific activities undertaken by the Union.** The fact that Britain's new Labour prime minister endorsed the social protocol can be no excuse. The point is the very establishment of the mechanism allowing free choice.

The possibility for a member state not to participate in specific types of co-operation on the basis of a free decision of the member state was reaffirmed in the Amsterdam Treaty. The Treaty was not a full compromise despite its ignoring the most sensitive institutional issues. Special protocols supplementing the document recognised the right of Britain, Ireland and Denmark not to participate in the Council's work related to specific matters. Britain and Ireland maintained their right to check persons crossing their borders within the Community. Despite the adoption of the entire Schengen agreement into the *acquis communautaire*, the relevant provisions will not concern Britain and Ireland which have not signed the agreement to date. The Amsterdam Treaty sealed the principle enabling individual member states not to take part in certain areas of co-operation. In other words, it confirmed the idea of integration *à la carte*.

**From the legal point of view, the Maastricht Treaty for the first time created a mechanism that allowed to exclude individual member states from co-operation in certain domains of the Union.** As it is known, this May, the Council is to decide which countries will be allowed to participate in the monetary union. The countries which do not fulfil certain criteria are described as member states with derogation (Art. 109k of the European Communities Treaty). Thus, there will be an automatic division into two groups: the countries fully co-operating with each other,

and those excluded from the co-operation. The day of accession to the monetary union, even if only one single country is left outside the euro area, will be the beginning of Europe divided into the better and the worse members. The Union will start entering a stage of Euro-zones. There will be the first, second, third, and maybe even the fourth ring of states, depending on their position with regard to the nucleus formed by the participants of the monetary union. The placement of countries in the rings will vary. The countries will be able to pass from one ring to another, depending on their economic performance.

The Inter-Government Conference of the member states of the European Union concluded its work in Amsterdam on 17 July 1997. The new treaty described as the Amsterdam Treaty was initialled. For Poland and other associated countries, the most important achievement of the Treaty was that the fact it was passed. In line with the decision made by the Council of Europe in Madrid, the adoption of the Treaty opened the way for the associated countries to begin membership negotiations with the EU. The Treaty was officially signed by the foreign ministers of the fifteen member states in Amsterdam on 2 October 1997.

The Treaty will take effect after it is ratified by all the member states and by the European Parliament. It should be expected that the ratification process may take up to two years. In many member states, due to their constitutional tradition, the ratification will be preceded by referenda. This is the case with countries such as: Denmark, France, the Scandinavian countries, and Austria. Various problems should be expected bearing in mind the bad experience related to the ratification of the Maastricht Treaty.

It appears that a possible negative result of individual referenda will not be connected directly with a critical assessment of the new treaty. Compared to the Maastricht Treaty, the provisions adopted in the Amsterdam Treaty are to a much greater extent transparent and oriented towards increasing the freedoms and the feeling of security of the citizens. The ratification process will be coinciding with such important events as the selection for the third stage of the Economic and Monetary Union (April-May 1998) and parliamentary elections in Germany (September 1998). These factors, and most of all, the social threats felt in connection with the introduction of the common currency, may stimulate a wave of Euro-scepticism in the Union. It would also be difficult to ignore the feeling of "tiredness with Europe," the tendency to turn away from politics, from the universal ideas, the tendency to close within local communities, and the growing nationalist trends observed among the people in the member states.

A new element in the Amsterdam Treaty was the institution of a closer co-operation (*co-operation plus étroite*). When certain member states will want to establish closer co-operation in certain areas, they will be able to take advantage of the Union's institutions, procedures and mechanisms provided for in the treaties. The establishment of closer co-operation should be aimed at enhancing the fulfilment of the Union's tasks, while fully respecting the treaties and the Community's uniform institutional framework.

That co-operation is to be a final resort, and the decision concerning its establishment must be pegged to the participation of the majority of the member states. The costs of co-operation, with the exception of administrative costs, are to be covered by the countries involved.

The Amsterdam Treaty was to prepare the EU for the enlargement to include the CEECs. As it is known, the negotiations on the institutional reform of the EU were given up. The reform is to be discussed as part of a new treaty, no later than a year before the accession of the twenty-first member state to the Union. However, this does not mean that the Treaty completely neglected the issues related to the future enlargement. **Nevertheless, the point is that the Union has adopted a negative approach when preparing for the enlargement. Thus, for the first time in the history of the Communities, it was provided for the possibility to use sanctions against a member state violating the fundamental civil rights and liberties (new Art. F.a and Art. 236 of the European Communities Treaty).** The relevant provision stipulates that "The Council, convened at the level of heads of state or government, by the power of a unanimous decision, following a motion filed by one third of the member states or by the Commission, having considered the opinion of the European Parliament, may state the existence of a permanent and serious violation (*l'existence d'une violation grave et persistante*) of the principles laid out in Art. F, section 1, by one of the member states. The Council must earlier request the government of a given member state to present all its observations on the matter" [retranslated].

Having endorsed such a motion, by a qualified majority of votes, the Council may suspend a member state in certain rights related to the implementation of the Treaty, including the right to vote enjoyed by the country's representative on the Council.

**It is natural that the reason underlying the adoption of the above provision was bad experience related to respect for human rights in certain countries aspiring to the EU membership, e.g., regarding the treatment of national minorities. This also applies to the declaration stating that the capital punishment has been abolished by**

**the majority of the member states, and is not administered anywhere nowadays.**

The observance of the fundamental human rights and civil liberties is a precondition for a country to be admitted to join the Union (the new version of the article of the European Union Treaty).

The provisions concerning the institution of closer co-operation stress that their application in practice is possible when at least a majority of the member states are involved. Such co-operation shall remain open to all member states. However, despite all its additional conditions, the essential character of the institution remains unchanged. A provision has been made that enables an efficient functioning of the Union within a specific group of member states, e.g., among the countries participating in the single currency, or among the “old” members, without the need for an involvement of all the member states.

The decision made at the Luxembourg Summit to start the negotiations with six countries is a logical consequence of the change occurring in the integration processes. A further deepening of the integration of the fifteen countries, and twenty-one after the enlargement, has become impossible at the current stage. In fact, the concept of Europe formulated in the famous Shauble-Lamers document put forward by the leading CDU politicians, and the concept promoted by Giscard d’Estaing have won. Both of them, with minor differences, envisage the establishment of a solid nucleus of the Union, whose political system should acquire the character of a federate structure through the deepening of internal integration. Giscard d’Estaing would see such a nucleus consisting of only five countries: France, Germany, and the Benelux countries. They would constitute the first ring, the European power. The second ring would be made of countries which, with the help of the solid nucleus, should be included in the European power; while the countries aspiring to the EU membership would be given a place in the European area, exclusively in the free trade zone. **During various seminars and discussions held in Poland, the enlargement has been pegged, among other factors, to the success of the third integration stage, i.e., the monetary union. However, no one has paid attention to the fact that the character of that condition is negative. The establishment of the common currency will mean the formation of a solid nucleus of the Union. Its establishment will enable the enlargement and the placement of new member states in the European area. One may put forward the hypothesis that the common currency and the institution of closer co-operation, enable the enlargement and provide a real chance for its implementation. The Union may deepen its internal integration, while leaving our countries in the margin of the process.**

## II. Strategic goals of the Polish negotiating mandate

Goal one: negotiating realistic, optimum and effective transition periods for Poland on the basis of accurate economic calculations.

*Unjustified extension of the transition periods would be a historic neglect and short-sighted ignorance.*

One may wonder about the attitude which Poland should adopt in case of a long-term change in the pace of the integration. First of all, the assumption should be made that the option of a strongly integrated EU which would be efficient in the implementation of its decisions, is definitely more advantageous for Poland. Only such a Union may play a major role in stimulating efficient reforms in the Polish economy. Only a strong Union may be capable of defending European interests in international economic and political relations. However, bearing in mind the above observations, it would be difficult not to take into account the “negative” scenario for the development of European integration. If that scenario is realised, the accession of new members, including Poland, will certainly be easier than it would be if the Union pursued the deeper, federate integration model. The accession will be limited to the adoption of the requirements of the Single Market, without a need to transfer some of the national powers in the area of the foreign and security policy, as well as the judiciary, to the supra-national level. There will be a high probability for an easier achievement of longer transition periods and derogation from the enforcement of particular areas of the *acquis communautaire*. There are grounds to fear that, under the influence of strong industrial and agricultural lobbies, Polish negotiators might be trapped into those seemingly easier agreements. However, for the sake of the Polish economic interests, the transition periods should be as short as possible, and based on detailed calculations of their effectiveness. **The temptation to extend transition periods longer than it is really necessary, constitutes the greatest threat to Poland’s economic and civilisation development. According to its own wishes, the country might be placed in the Union’s last ring, together with the countries whose economic reforms are less advanced compared to Poland at the moment. One must not let the Polish Euro-sceptics identify tough negotiations with a firm defence of Poland’s place in Europe’s second division. This may be the case if we are stubborn in seeking to negotiate as long transition periods as possible. Then, even if the Union strongly resisted such an arrangement, there will be a chance**

**for us to be placed in its third division. Tough negotiations are negotiations leading to the quick achievement of a full membership. They imply the assumption of all the obligation, and the ability to fully take advantage of the status of an equal member of the organisation.**

The Polish media have recently made a fetish of the position of negotiator in the accession talks. Due to a prolonged period of waiting before the appointment, an impression was given of the omnipotence of the person holding the post. In fact, even with the best negotiator, there are no chances for success unless the individual line ministers understand the strategic goals of the negotiations, unless particular interests are rejected, and a general consensus is reached. Without that, regardless of the efforts made by the negotiating team, Poland will not become a member of the European Union, but of the European economic area.

Goal two: joining the EU as part of the first enlargement wave, along with the Czech Republic and Hungary.

*The belief that it is not possible for the Czech Republic or Hungary to join the Union earlier than Poland lingers on among the Polish public, but also among some of the political circles in Poland.*

There is a real threat of the negotiations being prolonged, and Poland achieving the membership later than the remaining candidate countries. Poland is the largest among the six selected countries. The population of Cyprus, Slovenia, the Czech Republic, Hungary, and Estonia amounts to a total of 25 million, which makes barely two-thirds compared to the population of Poland. One may say that small countries pose small problems. However, when comparing the size of Poland's negotiation problems, the scope of the necessary adjustment and economic reforms with the economy of Cyprus or Slovenia, one may observe that the right frame of reference may only be obtained by looking at the negotiation problems of all the countries combined. The belief that it is not possible, for example, for the Czech Republic or Hungary, to join the Union earlier than Poland lingers on among the Polish public, but also among some of the political circles in Poland. It is difficult to explain in a rational way the grounds on which that opinion is based. It might have been justified to a certain extent during the times when efforts were made to join NATO. In a situation when Poland's membership in NATO is basically settled, the accession to the Union will be determined to a large extent by economic factors and the overall balance of costs.

According to the Amsterdam Treaty, "At least one year before the expansion of the Union beyond twenty members, a conference of



government representatives will be held to review all the treaty provisions concerning the composition and functioning of institutions.” **Thus, the Union’s most difficult problem, the reform of institutions, has been postponed until the negotiations which are to begin at the time when the twenty-first country will be joining the Union. Six countries started the negotiations in March 1998. The accession of only five of them will not make it necessary to convene a new inter-government conference. In fact, no one is interested in holding the conference, fearing that it might spur a wave of contradictory interests among the member states.** If the Union is enlarged to include only five more countries, every member state will be represented by one member in the European Commission. The Commission is currently comprised of twenty members. Five large member states nominate two members each, while ten smaller ones one member each. Thus, in the case of accession of five new members, the large countries would give up their double representation on the Commission. A proposal to change the system of voting has been put forward as a compensation for those countries. The change is to be acceptable to all the member states (*d’une maniere acceptable pout tous les etats membres*). Having come to terms with the lack of precision in the above statement, one may say that, for the time being, the Union is prepared for the accession of only five countries. Meanwhile, it is to be enlarged by six countries, but no arrangements have been made for that option.

The negotiations with Poland will certainly be the most difficult. If a decision is made to accept all the six countries simultaneously, the remaining five countries would most likely have to wait for Poland. However, another scenario is also possible, for example four plus two, with the first group comprised of the Czech Republic, Hungary, Estonia and Slovenia, and the second one including Poland and Cyprus (the latter, for example, due to the unresolved issue of the division of the island). An option five plus one is also possible. It should be stated clearly that any scenario making it impossible for Poland to join the EU as part of the first enlargement wave is very disadvantageous. It would delay our membership and peg it to the results of the inter-government conference provided for in the Amsterdam Treaty and to the reform of the Union’s institutions.

Goal three: Taking political and economic advantage of Poland’s geographical situation.

*There is no doubt that Poland will be very isolated in promoting its eastern neighbours.*

Despite the fact that the negotiations with Poland will be of a primarily economic character, one must not forget about political aspects. Over the centuries, Poland generated the political situation in the Central Eastern European arena. By forming the union with Lithuania, it established the first federate state in the history of modern-age Europe. Two religions: the Catholic and the Orthodox Churches, and two cultures: the western and the eastern culture coexisted in that state. Over the centuries, Poland played a positive role as a universal liaison between the Slavic world and the western world. Although the country made a number of historical mistakes while performing that function, one should not be surprised that it is natural for those nations to turn their eyes to Poland after they liberated themselves from the Soviet domination. **For Lithuania or Ukraine, for example, the choice between Russia and the West is now, at least in the nearest perspective, in a way, a choice between Russia and Poland.** In addition, the political circles in those countries are very impressed with the success of the Polish economic reforms achieved thanks to the Balcerowicz plan. However, all that does not mean an automatic rapprochement between those countries and Poland. Their people still feel the reluctance resulting from the old hurts and fears of the philosophy of Poland as a power. The fear and passive resistance towards dramatic reforms and any changes which the reforms would bring, are even more important. It would be better for Poland and for Europe if NATO and the European Union did not end on the Bug River. However, for the time being, that proposal is received with great reservations by the EU political circles. **There is no doubt either that we will be very isolated in promoting our eastern neighbours.** Never in their history have the Czechs and Hungarians played the role of liaisons between the East and the West. These nations were comprised within the Austria-Hungary Empire under the House of Habsburg. They have always been connected with the West and did not impact on the developments in the region. The need to promote an eastern policy in the West may become our advantage. After all, it adds to the list of economic arguments a vital argument of a geopolitical character, i.e., our friendly policy towards the eastern neighbours, as well as border relations and national minority issues regulated by treaties. All these factors foster the idea of a safer Europe which would not be divided into new areas of influence.

Goal four: Guaranteeing to Polish citizens full rights resulting from the membership in the European Union.

*If the negotiations were restricted to the issues related to the Single Market alone, that would mean consent to Poland being pushed off to the outskirts of the European economic area.*

Beginning from the Treaty of Rome until 1992, the Single Market has been the driving force of European integration. Together with its completion, further integration processes will naturally proceed within the second and the third pillars. The implementation of a common foreign and security policy, if ever realised, will be the last stage of the unification of Europe due to the need to reduce dramatically the sovereignty of individual states. One may project that, during the coming decade, the integration will be effectuated within the third pillar, i.e., in the area of the judiciary and law enforcement. Issues related to the third pillar constitute the largest part of the Amsterdam Treaty. It should be expected that they will also dominate in EU legislation.

**It is characteristic that the Union's policy towards the candidate countries to date has basically been centred exclusively around the issues related to the Single Market, while hardly mentioning the third pillar. Thus, the candidate countries are being pushed off to the third ring of the Union, the European area.** It is very likely that that the EU negotiating mandate will contain a clause about negotiating the longest possible transition period for Poland with regard to the free flow of people. That free flow of people only appears to be connected with the Single Market, while being very strongly related to the third pillar. It will be easy for EU politicians to argue about the need to restrict that freedom in the case of Poland on the grounds of unemployment, the fear of organised crime, insufficiently tight controls on Poland's eastern borders, etc. In exchange for consent not to let Poland enjoy the fourth freedom, the negotiators will gladly agree to our proposals concerning extended transition periods for agriculture or the steel industry. **If we accept that deal, we will fall into the trap of being placed in the third ring from which it will be very difficult to get out.** One should not forget that the integration of the member states within the third pillar will be pursued on the basis of a negative approach, the fear of illegal immigration, threats to the feeling of security, etc., backed by strong public support. It would be very convenient for the Union to keep its checks at the border with Poland for a long time still. There is no doubt that the Union will be trying to achieve that. There is a very real danger that a kind of feedback will appear. Poland will be trying to negotiate the longest protection periods for

its industry and agriculture, while the Union will be able to maintain its checks at the border in a natural way, without a need to put a particular effort into the relevant negotiations.

Poland's membership in the European Union is a great challenge for the entire nation. But it is a pity that the membership is often presented to the public exclusively in terms of its economic aspect. This gives an impression that our accession to the EU is a result of purely cynical calculations, i.e., the economic advantages. This is very dangerous. It is boring to keep repeating the cliché that the membership means rights and obligations. It means the adoption of shared principles and values, respect for law, democracy, civil rights and freedoms. It means solidarity among the nations, tolerance, individual freedoms and civil ties in the broad sense of the terms. It means the feeling of responsibility for the future of Europe, and thus, the feeling of European identity. If we want to participate in the building of Europe, already now, we must identify ourselves with its traditional principles, and treat the economy only as one of the elements of the structure.

**The Polish negotiations should focus on defending full rights resulting from the EU citizenship. Any consent to give up on those rights, to trade them for longer protection periods for the Polish steel or coal industries, will be at odds with the understanding of a civil state. It must not turn out again that abstract collective interests urged by lobbies are more important than the rights of an individual. The achievement of a second class citizenship for Poles will imply a silent approval to the European idea being soon resented by the people. After all, it is better to be poor but equal in one's own country than richer but worse where they do not want us. It is fundamental for our negotiators to understand the importance of the adoption of full rights and duties for our citizens, which include holding the European passports. Without that fundamental element, even the best results of our economy will not be enough. After all, the importance of a country and its rank in the world today are measured directly by the approach of the state towards its own citizens.**

## Supplement

### Acquis communautaire: scarring the officials

*The adjustment of Polish legislation to EU standards is implemented mainly through the passing of new legislative acts or via amendments introduced to existing legislation. On the other hand, the harmonisation is pursued in a very small extend via pro-European interpretation of existing legislation. The reports presented by the Polish government on the progress of harmonisation of law with Community legislation describe the changes made in Polish legislation, the number of newly introduced acts, but they do not contain any information about the legal practice in court or out of court, i.e., the institutional enforcement of legislation. However, it is not enough just to state that the texts of new legislative acts comply with European legislation. Such compliance does not have to mean the achievement of real harmonisation at all.*

### Recommendations for the harmonisation efforts

1. The legislative procedure in the European Union is clearly based on negotiations. This is both an advantage and a disadvantage of the system. An advantage, because the legislative acts adopted this way are backed by the will and agreed position of the fifteen member states, the European Parliament, and the relevant advisory bodies such as the Social Economic Committee or the Regions Committee. On the other hand, the weakness of the system is related to deficiencies of laws made that way. Every compromise requires a part of the proposed provisions and legislative measures to be given up. Quite frequently, lawyers accustomed to the traditional, continental legislative procedure, find it difficult to accept the results of the compromise. **The law makers realise the poor quality of the Community legislation.** Therefore, it is not surprising that the issue has been raised during the last Inter-Government Conference which ended in Amsterdam in July 1997. The declaration accompanying the Amsterdam Treaty stressed that the quality of legislation was a fundamental prerequisite for a proper perception of legislation in the member states. The declaration appealed to the Council, the European Parliament, and the Commission to pass guidelines (*lignes directives*) which would determine the rules concerning the formulation of legislative acts, with the aim of enabling a better understanding of legislation by the entities to which it is addressed.

2. Poland, and its state administration in particular, extol the quality and integrity of Community legislation. The statement that something is provided for by Community legislation is often used as the final argument in discussions. However, one should not forget that, when making their legislation, the Union's institutions are subject to diverse influence. They are not only under the pressure of the member states, but they are also exposed to lobbying by various groups of interest represented in Brussels. It is typical that the legislation passed this way often does not enjoy support in the member states, and the Commission must resort to using legal measures to ensure its enforcement. The White Paper presented to Poland on "The Preparation of the Associated Central Eastern European Countries for Integration with the Internal Market of the European Union" lists Community legislation to which Poland should adjust. However, the point is that **many directives referred to in the White Paper have not been complied with yet by the member states**. We should certainly take this aspect into account during the upcoming negotiations.

3. Democracy lays the foundations of the legislative system based on negotiations. The more the state is decentralised, the closer it is to the citizens, the greater their participation is in the law making process. The principle of subsidiarity upheld in the Union, empowers the Union to take action only when, and only to the extent in which the objectives of the proposed activities cannot be achieved sufficiently by the member states (Art. 3b of the Maastricht Treaty). According to the principle of subsidiarity, the Union has the right to act instead of the member states only when its actions turn out to be more efficient in the process of objective implementation (efficiency by better results). In the positive sense, this implies that the primary competence rests with the member states, and the Council of the European Union should determine in all cases whether or not there is a need to apply Art. 3 of the Treaty. The principle of subsidiarity has been introduced into the preamble of the Constitution as one of the principles underlying the new system of the Polish state. The Constitution is provided for as the organic law of the state, based on the respect for freedom, justice, cooperation among authorities, social dialogue, and on the principle of subsidiarity reinforcing the rights of citizens and their communities. **The practical enforcement of the principle of subsidiarity on a larger scale in Poland should be enabled by the administrative reform**. The greater the competence transferred to the local governments, the more

democratic shall the law be, and thereby, the closer shall it become to the citizens.

4. The weakness of the legislative system is the difficulty in differentiating between the basic regulations and the implementing regulations. Within the system of Community legislation, there is no hierarchy of importance of particular legislative acts, unlike in the national legislation of the continental European countries. In Community legislation, both regulations and directives often stipulate specific ensuing provisions to be developed, which are subsequently passed as regulations or directives. In addition to the range of legislative acts provided for in the treaties, the Communities issue a number of different legislative measures whose legal consequences depend on their content. These legislative acts bear various names, such as: programmes, projects, memoranda, recommendations, declarations, joint resolutions, proclamations, joint positions, etc. That practice further obscures the system and hierarchy of Community law, which tend to lack transparency anyway. The introduction of the chapter on transparency into the treaty is mainly meant to bring the activities of Community institutions closer to the citizens. **Under the new Art. A, all EU citizens, as well as all individuals and entities which have their domicile or seat on the Union's territory, have the right to be provided access to the documentation of the European Parliament, the Council and the Commission.** The procedures concerning the access to documentation shall be laid out by the Council within two years after the treaty takes effect. All Community institutions shall establish internal rules of procedure to determine the rules governing the access to their documentation.
  
5. The institutional weakness of the legislative process is related to the fact that the role of the European Parliament is not sufficiently large still. However, it does not appear likely that the system vesting decision making powers in the Council and in the member states will be abandoned in the nearest future. **Therefore, it seems that the law making process in the Union will continue to be of an inter-government and not international character for a long time still.** The nature of the Union prescribes its functioning to rely on cooperation among the member states, and on continuous efforts to seek compromise between diverse interests. This leads to a growing

alienation of the citizens because all the major structural changes are enforced via the EU executive authorities, without the participation of national parliaments and the European Parliament. The involvement of representative institutions is limited to pronouncing their opinion for or against. The parliaments are faced with accomplished facts, and have no impact on substantial discussions and negotiations. Thus, the traditional roles of the legislative and the executive branches of the government are swapped.

## **Recommendations useful for the negotiations**

1. The basic precondition for Poland's accession to the European Union, is the adoption of the entire EU legislation by the country. In this context, one should not forget that the main challenge is posed not by the technical adjustment of the texts of law itself. It is necessary to establish an economic, administrative and social system to support and monitor the enforcement of the legislation. Therefore, together with the process of harmonisation of Polish legislation, parallel efforts should be undertaken to create an overall institutional system.

One may wonder about the effect of recognising the prevailing power of EU legislation and its direct implementation on the Polish legislature and judiciary.

Firstly, having joined the European Union, in case of interpretation or implementation problems concerning Community legislation, Poland will be required to apply no other procedure than that provided for in EU legislation (Art. 219 of the EU Treaty). This means that conflicts between Poland and any other EU member state shall be settled exclusively in court, and the only court empowered to resolve such conflicts shall be the European Court of Justice.

Secondly, as provided for in Art. 169 of the EU Treaty, the European Commission will be able to move against Poland if the country failed to fulfil its obligations assumed under the Treaty. As a consequence, Poland will also be able to move to the European Court of Justice against another member state (Art. 170 of the EU Treaty) on grounds of that state failing to fulfil its obligations under the Treaty, or against the European Commission or the Council, if they defy the Treaty by failing to make decisions (Art. 175 of the EU Treaty).



**Thirdly, all Polish citizens and entities will be able to file for proceedings against decisions made by EU institutions, if a given decision concerns them directly and specifically (Art. 173.4).**

Fourthly, as a member state, Poland will be able to move to the European Court of Justice to request the Court to examine the legality of legislative acts made by Community authorities (Art. 173 of the EU Treaty).

2. The harmonisation of law implies certain costs. These are the costs related to the reforms of the entire Polish economy. It is trivial to say that a simple transfer of EU legislation, without adjusting to its economic provisions, would ruin completely Poland's chances for real integration with the European Union. Legislative measures were passed in abundance in Poland in the past, but they were not accompanied by the relevant economic measures. One should bear that in mind in order not to fall again into the trap of making laws that exist on paper alone. Already now, having analysed the extent of adjustment measures, it is possible to determine the desirable time limits for their completion. As regards the legislative acts which Poland will be required to adopt by the time of accession, this will be five to six years (under the assumption that the negotiations will take three to four years plus two years for their ratification).

3. In the formal sense, the obligation to adjust Polish legislation to accommodate the tasks related to the country's future membership of the European Union is a consequence of Art. 68 and 69 of the Europe Agreement concluded between Poland and the European Communities and their member states. The above provisions lay out the guidelines concerning the character of the adjustment process, as well as the priority areas. After its ratification, the Europe Agreement became a part of legislation of the two signatories. According to the rule *pacta sunt servanda*, the provisions of the Agreement are binding for the Polish state, the Communities, and the member states. The Europe Agreement does not compel Poland to adopt Community legislation literally. Articles 68 and 69 use the term "harmonisation of legal regulations." This means the achievement of a degree of law adjustment, in which legislation would be able to fulfil the tasks laid out in the Agreement.

Compared to the obligations of the member states, the Europe Agreement guarantees for Poland a much greater autonomy with regard to law adjustment. **Until Poland joins the Union, Community legislation will continue to be a model for us, but not a source of law.** We should harmonise our legislation in line with that model. The Europe Agreement does not determine a specific deadline for our adjustment efforts to be completed. One of the reasons why it would be difficult to set such a deadline is that law harmonisation must be a process of a dynamic character. It is necessary to adjust to the existing legislation and to the new acts which are made every year. Nonetheless, in some cases, the Europe Agreement lays out quite a precise timetable for the adjustment efforts. This refers, for example, to the adjustment of the customs law, the opening of the Polish market, investment, the supply of services, and the assistance provided by the state.

4. The adjustment of Polish legislation to EU standards is achieved mainly via creation of new legislative acts or through amendments made to the already existing ones. On the other hand, only to a very small extent is the harmonisation sought by means of pro-European interpretation of existing legislation. **Having compared legislative acts passed in the European Union and in Poland, one is struck by a lack of precise and, at the same time, comprehensible justification of the purpose meant to be achieved through the Polish legislative measures.** As a rule, the justification is the most elaborate part of the Union's legislative acts. This is very important from the educational point of view. At the same time, the relevant requirement safeguards the law makers against excessive casuistry. Poland has a bad tradition of identifying law exclusively with the text of the regulations, while overestimating the importance of tangible measures. However, the acts which are made, constitute only one element, albeit the basic one, of the substance of law. This approach has been described by professor Ewa Łętowska as text-centred. It focuses on the text of legislation, without analysing the institutional and functional aspects of its existence. The reports presented by the Polish government on the progress of work on law harmonisation with European legislation describe, for example, the changes made in legislation, the number of new acts passed, but they provide no information about the court or out-of-court practice, i.e., the general institutional framework of law enforcement. Meanwhile, it is not enough to state that the text of new legislation complies with European legislation. Such compliance does not have to mean at all that the harmonisation has been achieved. In European

legislation, the text of a legislative act is very often restricted to determining either the desirable results, while leaving the means and methods of implementation up to national legislatures, or to delimiting particular provisions by ordering or banning a certain type of behaviour. Further specification of that behaviour is left to the legal practice and court jurisdiction. Without going into the details of the very interesting issue of the European law standards, one should note the extremely important role of the European Court of Justice in the reinforcement of those standards in the entire Union. Under Art. 177 of the European Community Treaty, by the power of preliminary rulings, the Court of Justice settles issues related to the interpretation of treaty provisions and the validity of secondary legislation. Already now, when possible, Polish courts should consult the judicial decisions of the European Court of Justice to a greater extent, thereby providing pro-European interpretation of Polish legislation. This should apply predominantly to those areas in which the law of the land has already been harmonised with Community legislation. **In a number of cases, pro-European interpretation of law provided by Polish courts may replace the need to pass new legislative acts**, thus making it possible to abandon the criticised text-centred approach. Unfortunately, that method of law harmonisation has been used to a very small degree to date.

### **Polish negligence: lobbying in the EU**

At the moment, both in Poland and in the EU, work is underway on determining the negotiating mandates. In the Union, specific terms of the mandate concerning economic issues will be consulted over with the Social Economic Committee. Therefore, powerful lobbying organisations representing the interests of EU agriculture, industry and trade will make an impact on the final shape of these points. Among more than one hundred European industry federations, one may find, for example, the CIAA (the confederation of the food and agriculture industry), COPA/COGECA (agricultural producers), ESTA (the tobacco industry), EUROFER, EUROMETAUX (steel industries), EUROGAS (natural gas suppliers), EFPIA (pharmaceuticals), ACEA (the automotive industry), etc.

It should be stressed that the complexity of the structures and decision making procedures in the European Communities, and most of all, the importance and significance of those decisions, have encouraged the establishment of lobbying organisations and group pressures. Few people

in Poland realise that **Community legislation accounts for over 80% of economic legislation binding in the member states, and on the average, a half of legislative acts in the member states originate from earlier decisions made by Community institutions.** Since the mid-1980s, the Communities have been passing several thousand various legislative acts per year. The EU Council alone passes on the average 300-400 regulations per year, not to mention other acts such as directives or decisions. Legislative acts adopted by the Community are binding in whole and applied directly in all the member states without the need to ratify or endorse them. The direct application of Community legislation means that its provisions have full binding power, the same in all the member states, starting from the moment of taking effect, throughout the entire period of validity. Those directly binding regulations constitute the source of law and obligations to all those whom they concern, regardless of whether this applies to the member states, individuals, or entities. That effectiveness also applies to all courts whose judiciary function in the member states is to safeguard the rights guaranteed to individuals by Community legislation.

Since Community legislation is directly applied and effective, and most of the economic decisions are made by the Council of Ministers of the European Union or by the European Commission, it is not surprising that the number of lobbying organisations functioning in Brussels is currently estimated at over 4,000.

The 1985 was a breakthrough year in the activities of European lobbyists, when the European Commission announced the White Paper concerning the Single Market by 1992. The number of lobbying groups in Brussels doubled at that time.

There is a wide range of lobbying organisations. These include both the influential federations of particular industries affiliated to UNICE (the Union of European Industry Confederations and Employers), and representatives of trade unions, consumers, or conservationist organisations. A separate category is comprised of representatives of regions, whose role has increased since the establishment of the Regions Committee after the Maastricht Treaty took effect. German and Austrian *laender*, Spanish *comunidades*, as well as regions from countries which do not have a federate structure, e.g., Bretagne or Northern Ireland, have their representative and liaison offices in Brussels.

The importance of lobbying may also be proved by the fact that institutions training professional lobbyists have been established in Brussels. The European Institute for Public Affairs and Lobbying was

established in 1994, and the European Centre for Public Affairs in Brussels in 1996.

The Polish representation in Brussels is comprised of the diplomatic posts of the Polish government (the Embassy in Belgium, the Mission at the EU, the Trade Counsellor's Office), and several companies with a Polish share focusing mainly on the local market (Benelux). No organisation of a strictly lobbying character to represent Polish companies has been established in Brussels to date.

Polish diplomatic posts deal in political lobbying which includes contacts at the highest level of EU diplomacy and administration. These contacts concern economic issues to a large extent, but the point is mainly to settle economic issues concerning the country as a whole, and not to represent the interests of individual companies. Polish diplomats from the Mission to the European Union sometimes intervene on behalf of individual cases, but only upon clear instructions to do so from their headquarters. On the other hand, the trade counsellors' offices deal in direct promotion of Polish companies. However, for the past several years, the activities of the offices have been diminished, the offices have been described as relics of a centrally planned economy, and their very right to exist has been undermined. That uncertainty impacts on the day-to-day work of the offices, while a lack of definite decisions leads to shortcomings in investment and staff. In addition, one must not forget that the offices are government agencies financed from the state budget. They represent mainly long term economic interests of the state, which, in specific cases, may not always be identical with the interests of individual companies.

In the European Parliament, apart from the standing Joint Parliamentary Committee of the Republic of Poland and the European Union, comprised deputies to the European Parliament, and members of the Polish Sejm and Senate in equal numbers, there is also the Group of Poland's Friends *Amici Poloniae*. The Group was established in 1982, after martial law was imposed in Poland. It is estimated that, thanks to the Group, Poland was provided aid worth 140 million ECU. It should be stressed that *Amici Poloniae* is basically the only non-government lobbying organisation which operates within EU institutions and promotes Polish interests.

Apart from the aforementioned activities and institutions which, in addition to their primary functions, may lobby on behalf of individual Polish companies or capital groups, there is not a single lobbying

organisation of the Polish industry in Brussels. The first attempt to set up such an organisation was the one-man representative of the Polish Chamber of Commerce (KIG) which functioned in 1994-1996. It could not develop large-scale activities due to a shortage of financial resources and a lack of a uniform structure to represent the interests of the Polish business both in Poland and abroad.

The Confederation of Polish Employers has formally been accepted as a member of UNICE. However, it does not have a permanent representative at UNICE, which is a precondition for efficient participation in the organisation's work. UNICE is a very influential organisation in the European Union. It groups national confederations of employers, indirectly representing the unions (chambers) of particular national industries affiliated to the confederations, as well as their European representations.

In 1997, on the initiative of the European Integration Committee, a Polish liaison group was set up to establish cooperation with the Social Economic Committee of the European Union. The group is comprised of representatives of various employers organisations, business circles, trade unions, and organisations representing diverse groups of interest. Members of the group include, among others, representatives of: the Polish Business Board (PRB), the Confederation of Polish Employers (KPP), the Polish Chamber of Commerce, Solidarity, a consumer organisation. As stipulated in the National Integration Strategy and in the report presented by the secretary of the European Integration Committee on the preparations for negotiations with the EU, the group comprised of representatives of these organisations constitutes the forum for consultations over the preparations for the talks. In the future, this is to hold for the negotiations as well. "The goal of advanced consultations with representatives of business circles, industry and trade chambers, consumer and employers organisations, is to make these organisations involved in the work on the Polish negotiating mandate, and in preparing Polish companies to function in the Single Market. Within this framework, certain working groups have already decided to establish the so called partner groups to organise meetings between working groups and all the business, social and trade organisations which indicate their interest in participating in the process."

At this point, it is difficult to evaluate the real value of the liaison group initiative. The words assuring about the group's involvement in the work on the Polish negotiating mandate, may be a promise that its opinion will be taken into account in the future. The quality of that opinion will depend on access to information, sound knowledge of the practical side of

the negotiations, the stamina of individual people, and the rank of organisations represented in the group. Shortcomings in any of these areas, and a lack of access to information in particular, may restrict the significance of the establishment of the group to a formal fulfilment of the point 8.17 of the National Integration Strategy. The point referred to stipulates that the government shall provide support for the initiative aimed at the establishment of a permanent cooperation mechanism with non-government organisations, including consultations during preparations for the negotiations and during the negotiations. Later on in the same point, the document stressed the importance of external activities and the need to set up a system to lobby on behalf of Polish economic and political interests in EU institutions and organisations. The system has not been established to date. The lack of the system cannot be blamed on insufficient activities on the part of the government. The government cannot be expected to organise the activities of independent companies or capital groups and to act instead of them to safeguard their interests, as it used to be the case in the past. These groups should establish a strong, independent lobbying organisation in Brussels on their own initiative.

The point in having an independent representation of Polish economic interests in Brussels should be evaluated in terms of the advantages of its establishment. Such an evaluation is difficult because the nature of lobbying does not involve direct profits. The profits are indirect, originating, e.g., from the achievement legal regulations advantageous for the capital group, higher duties on products supplied by competition, the achievement of advantageous licences, etc. Having assumed that lobbying is effective, one may also estimate the losses incurred due to its absence. The results of such calculations will always be hypothetical. Lobbyists can never be one-hundred percent sure that their efforts will produce specific gains. An example may be provided by profits forfeited by Polish companies due to anti-dumping restrictions imposed by the EU. The total losses run in tens of millions of dollars. It is highly probable that these losses could have been avoided if lobbying were undertaken in due time. Under the currently binding regulations, motions filing for anti-dumping proceedings to be instituted are filed by European industry federations directly affected by dumping. These federations are affiliated to UNICE through their national confederations of industry and employers. The Polish presence in Brussels, active participation in the work of UNICE, and most of all, direct contacts with the plaintiff federations before the motions were filed or in the course of the explanatory proceedings, would have made it possible to resolve the conflict situations in mutual arrangements in a number of cases.

Another example of potential losses is the absence of Polish companies in tenders announced by the European Commission. Under Art. 67.2 of the Europe Agreement, Polish enterprises were made eligible to take part in tenders held on the territory of the Communities, starting from the day when the Agreement became effective. In line with the principle of asymmetry adopted in the Agreement, EU companies will be able to take part in tenders in Poland no later than by the conclusion of the first transition period (five years from the date when the Agreement takes effect). To date, Polish companies have not been submitting their offers in the public tendering procedures in the EU market. The lack of activity in that field is a result of various factors. One of them is certainly the need for an involvement of significant financial resources as a precondition for the participation in tenders. However, most often, the companies do not have the necessary information about the tendering procedure. If a representation of the Polish industry were established in Brussels, one of its tasks would be to gather information about the tenders announced and to evaluate the potential changes of Polish companies if they submitted their bids.

It is worrying that, for various reasons, Polish producers and exporters have wound up a large number of representative offices abroad. These included representative offices in Brussels. In Warsaw, the opposite process has been observed. The number of foreign consulting or law firms establishing their offices in Warsaw is impressive. It is trivial to stress that access to information is a prerequisite for efficiency in any field.

A typical task of all lobbyists in Brussels is to analyse Community legislation on a current basis, and to make efforts to impact on the regulations at the initial stage of the decision shaping process. In the case of a representation of the Polish industry, its activities in this area should lead to the establishment of an early warning system which would enable the represented entities to formulate their position on EU legislative acts vital from their point of view early enough. In order to be able to fulfil that task, the representative office should be provided with an on-line access to the APC system (monitoring of the European Commission's proposals concerning legislative changes), ABEL and CELEX systems (containing the documents published in *Official Journal* series L and C), to the whole of Community legislation, as well as to the RAPID and EPOQUE systems (quick access to the current documents of the Commission and the Council, as well as all documents and legislative procedures in the European Parliament). It is also necessary to carry out day-to-day analysis of particular EU markets (the steel market, the produce market, the textiles



market, the automotive market, energy, transport), as well as to prepare more general reports about the economic and political situation in the EU.

The representative office should follow closely the European policy towards competition (the main partner in that case is the Commissions Directorate General IV), and in particular, anti-trust proceedings enforced by the Commission, and company mergers monitored by the Commission. It should monitor the EU financial market, examining the opportunities for Polish companies to obtain advantageous loans from European financial institutions (the European Investment Bank, the European Bank for Reconstruction and Development). Finally, last but not least, it should provide active support for the Polish negotiating teams by presenting them with the opinion of Polish and EU capital groups concerning specific negotiation topics.

It is necessary to use efficiently the time which is running short until Poland's accession to the European Union. Polish companies should play an important role in adjusting the Polish economy to the requirements of the Common Market, the free flow of goods, services, capital, and labour. The establishment of a representation of the Polish industry in Brussels will enable direct and permanent contacts with similar European organisations which will have a significant influence on determining the terms of accession talks in particular topical groups. The decision to establish the representation in Brussels should be made right away because the number of lobbying organisations will grow dramatically after the EU enlargement.