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Central and Eastern European Countries in Preparation for Membership in the European Union - a Polish Perspective

Europe Agreements signed in 1995 and 1996 by the European Community with Estonia, Latvia, Lithuania and Slovenia have increased the number of accession-candidate countries of Central and Eastern Europe to ten. This process was initiated in December 1991 by signing Europe Agreements with Poland, Hungary and Czechoslovakia and, after the split of the Czech and Slovak federation, separately with each of the two countries.

In Europe Agreements since the very beginning each and all of the Central and Eastern European countries have seen an instrument for future membership in the European Union. Instead, in Europe Agreements the European Union originally saw only an instrument for the development of a „new type" of special relationship with these countries.

These positions, so distant, were gradually getting closer. On the part of the EU this process was initiated with the approval by the European Council of the Commission's special report on a future relationship of Poland, the Czech Republic and Hungary with the Community in Edinburgh in December, 1992.[1] However, only the conclusions of the European Council in Copenhagen in June, 1993 brought a true breakthrough, for the Council determined essential conditions for the membership to be obtained by the associated countries therein and stated that: *"Accession will take place as soon as an associated country is able to assume the*

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[1] See: *Conclusion of the Presidency*, European Council in Edinburgh, 11-12 December 1992, SN 456/92, Part D, p. 3, also in *"Together in Europe"*, no.21, p.1. For a wider comment see: E.Piontek, *Europe Agreement EEC-Poland - Legal Concept of the Schema,* „*Polish Yearbook of International Law",* 1991-1992, p.133-159, also see: „*Together in Europe"*, no.20, p.21.

obligations of membership by satisfying the economic and political conditions required".[2]

Following that, at the summit in Essen in November of that year, the European Council approved a document entitled: „Strategy for the Integration of the Associated Countries in Central and Eastern Europe". Then in Cannes in June 1995, the European Council accepted the *White Paper* that had been prepared by the Commission earlier and that addressed particular guidelines as to the implementation of *acquis communautaire* to the associated countries in the process of their preparation for integration in the Internal Market of the EU.[3] The follow-up to the *White Paper* took the form of national work programmes developed by the Commission in collaboration with each of the associated countries.

As a consequence of all those steps there was a special national „Questionnaire" separately addressed by the Commission to each associated country. The answers to that „Questionnaire" are to provide the Commission with data for evaluation of the actual extent to which each of the associated countries is prepared for the membership in the European Union, and for determination of the time for commencement of respective negotiations with them.[4]

In summing up the pre-accession stage of mutual relations formed as such between the European Union and Central and Eastern European countries (the parties to Europe Agreements), one should conclude that in backing up the conclusions of the European Council in Copenhagen and the resolution of the European Commission's *White Paper*, the European Union and the associated countries had acted unilaterally. Since then steps have had to be worked out together, with each side taking the other's views and problems duly into account. As Sir Leon Brittan, then the European Commissioner for External Economic Relations, put it in 1994: „*Since Copenhagen, the nature of European Union-Polish relations has changed. From being a close neighbour ... Poland has become a future Member State. This requires both the EU and the Polish Government to work out a strategy for accession and to tailor it to meet the criteria set out in Copenhagen"*.[5]

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[2] See: *Conclusion of the Presidency*, European Council in Copenhagen, 21-23 June, 1993, SN 180/93, p.12; also: *„Together in Europe"*, no.32, p.1, and no.32, p.2. See also: *Presidency Conclusions*, European Council at Corfu, 24-25 June, 1994, SN 150/94, p.15.

[3] See: *White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union*, COM (95) 163 final, and earlier documents: COM (94) 320 final and COM (94) 361 final.

[4] See: *Questionnaire Poland. Information requested for the preparation of the opinion on application for membership of the European Union,* European Commission, Directorate General for External Relations, Brussels, April 1996.

[5] *„Press Release"*, European Commission, no.77, 03.02.1994, p.1. Compare opinions expressed in: *Commission Report for the Reflection Group*, Intergovernmental Conference 1996, Office for

In legal terms Europe Agreements provide for voluntary harmonisation only, and more precisely, for *„approximation"* of domestic legislation of associated countries to that of the Community. Thus Article 68 of the Europe Agreement with Poland states: *"The Contracting Parties recognise that the major precondition for Poland's economic integration into the Community is the approximation of that country's existing and future legislation to that of the Community. Poland shall use its best endeavours to ensure that future legislation is compatible with Community legislation"*. References made to *„approximation"* and *„best endeavours"* by no means imply an obligation to incorporate *acquis communautaire*, although it has apparently been envisaged under the Europe Agreements that associated countries will form the legal foundations for their economic system based on the EU model.[6]

However, since the Copenhagen Summit and its aftermath the former of the two obligations mentioned above have had to be reinterpreted in accordance with the requirements of the new target these agreements were to strive for. This is full membership in the European Union. Thus, among the important

Official Publications of the European Communities, Luxembourg 1995, and in: *Commission Opinion: Reinforcing political union and preparing for enlargement,* Intergovernmental Conference 1996, Office for Official Publications of the European Communities, Luxembourg 1996. That change of qualification from the association as a quasi substitute for membership to the one preliminary to membership is tantamount to *de facto* modification by subsequent accord with the original nature of association under the Europe Agreements. As the European Commission commented upon in its brochure *The European Union's pre-accession strategy for the associated countries of central Europe* (Brussels 1996): *„... following the European Council summit in Copenhagen in 1993, where the European Union recognised membership in the European Union as an objective shared by both the European Union and the associated countries of Central Europe ... the Europe Agreements have become a main element of the framework within which countries work towards European Union membership"*. In EC practice the Luxembourg Accord is an illustrious example of modification by subsequent diplomatic practice in the application of the treaty. It is only in practice in the UN that the most widely-known example of *de facto* charter modification, followed by the consistent practising of it, is made by the negative votes known to be due to the lack of unanimity in the permanent Security Council members. In 1993, an international arbitration tribunal, in a dispute between France and the United States concerning the bilateral Air Transport Services Agreement of 1946, concluded that the subsequent practice of the two parties was relevant not only to the interpretation of the treaty but also to its modification by tacit consent. (See: *International Legal Materials,* no.668, July, 1964). As a matter of fact, the most substantive and procedural aspects of the institution of association with the Community have been gradually developed by subsequent practice going well beyond what had been originally provided for regarding this institution in constitutional treaties of the Community - see: P.J.G.Kapteyn, P.Verloren van Themaat, *Introduction to the Law of the European Communities after coming into force of the Single European Act,* second edition, Kluwer, London 1990, p.828-838.

[6] See: observations by H.Kramer, *The EC and the Stabilisation of Eastern Europe, "Aussenpolitik"*, no.12-21 1992, p.15.

consequences thereof, whenever the Europe Agreement refers to *"approximation of law"* the task should mean an obligation to incorporate the respective Community rules into the legal order of the associated country to the fullest extent possible as an important condition of membership in the Union.

1. Domestic measures

Each of the Vishegrad Group countries has prepared detailed programmes of adjusting domestic laws to the requirements of the European Union. In each of those countries organisational units have been established and procedures ensuring the proper co-ordination and supervision of the law adjustment process have been enacted. Drafting legal acts in compliance with the requirements of EC law is the responsibility of the ministers or specialised governmental bodies which are - either statutorily or by a resolution of the respective Council of Ministers - obliged to apply the appropriate procedures.[7]

1.1. Czech Republic, Slovak Republic and Hungary

In Czechoslovakia the first decree on law adjustment was adopted in 1991. After the separation of Slovakia, the Government of the Czech Republic issued, on 4 May, 1994, a new decree on the adjustment of domestic law to EC law. The Vice-Prime Minister is directly responsible for co-ordination of the adjustment activities. All of the ministries and other governmental bodies are obliged to propose the necessary adjustment measures. The Governmental drafts of legal acts have to address when stating reasons the issue of conformity of the proposed legislation with the requirements of EU law. Necessary assistance is provided by a specialised section of the Office of Legislation and Public Administration, acting under direct authority of the Vice-Prime Minister.[8]

By decree of 17 August, 1993, the Head of the Prime Minister's Office in Slovakia was made responsible for examining the conformity of legal acts with EC law and for recommending necessary adjustments. Following the decree of 25 January, 1994, a special team was established to advise the Government on matters concerning the European Union. In the Prime Minister's Office a

[7] For a wider comparative analysis of the adaptation of domestic laws in the Vishegrad Group countries to EU requirements, see: H.Herfeld, *Recht europaisch. Rechtsreform und Rechtsangleichung in den Visegrad-Staaten*, G###tersloh, 1995; also E.Piontek, *European Union and Countries of Central and East Europe. New structures of Relations and Trade Prospects* in: *La place de l'Europe dans le commerce mondial*, Institut Universitaire International, Session de julliet, Luxembourg 1994, p.301-342.

[8] Ibid.; see also: *Legal Aspects of the Integration of the Czech Republic and Slovakia into European Security and Economic Structures, "German Yearbook of International Law"*, 1994, p.68 passim.

subdivision was set-up to deal with questions concerning adjustment of domestic law to EC law. On 25 March, 1995, the Government adopted a general programme of membership preparation in the Union known as: „Slovakia's Strategy on the way to the EU".[9]

The Hungarian authorities undertook their first adjustment steps as early as 1988. The Hungarian governmental bodies were asked to take the EC regulations and directives into consideration when working on domestic legal standards. Their task was made more precise in a further decision of 1990 which obliged governmental bodies to indicate in the groundwork of each particular draft-law to what extent the draft covered EU law. Thus, by the time the Europe Agreement was signed on 16 December, 1992, the Hungarian Government had already been securing the gradual adjustment of domestic law to EC law and had established the necessary procedures in the legislative process.

After signing the Europe Agreement, an interdepartmental committee for co-operation of the Government's activity in the process of integration with the European Union was established. The Act no.1/1994 on enforcement of the European Union Treaty states that any future legislative actions should comply with the requirements of that Treaty. At the same time the Government's resolution on the office of the Minister of Justice provided that the minister, acting within the framework of his *ex officio* supervision of the formal aspects of the legislative process, shall evaluate the compliance of proposed legislation with EU law. A general programme of gradual adjustment of Hungarian law to EU requirements has been established.[10]

1.2. Poland

In Poland the process of adjusting domestic law to the requirements of the European Community had officially been instituted well before the Europe Agreement was signed. Already in September, 1990, the Economic Committee of the Council of Ministers (KERM) officially recommended that the new legislation be harmonised with the community's requirements. This was followed by the decision of the Council of Ministers on 29 March, 1994, whereby all ministers and other governmental central bodies were required to perform the so-called preliminary assessments, indicating the EU legal acts which should be taken into account in the process of drafting new laws or amending the existing ones. Those assessments have to indicate the reasons for temporary postponement in implementation of the part of European legislation in question from the expected date of the completion of process. The draft-act,

[9] Ibid., p.90.

[10] See: Governmental Decisions no.2023/1988, no.2006/1990, and no.1923/1992; for wider comment see: A.Vida, *Ungarns freiwillige Anpassung an das Europarecht*, *„Wirtschaft und Recht in Osteuropa"* 1994, p.4.

along with such a preliminary assessment, is then passed for further evaluation to the Government Plenipotentiary for European Integration and Foreign Assistance who gives a „final assessment" on compliance of a given draft with EU law. Along with the Government Plenipotentiary's final assessment the draft is sent to the Parliament.

However, this procedure applies neither to MP's legislative initiatives nor to the amendments introduced by the Parliament to the governmental draft-acts.[11] To fill that gap a special committee of parliamentary representatives acting under the chairmanship of the Speaker of the House (Sejm) is to be set-up. This had not yet been the case at the moment of writing this contribution. The tasks of this committee will consist of evaluation of each parliamentary piece of legislation in terms of its compliance with EU law, and the presentation of reasons for approval of any departures therefrom which are deemed necessary for a given period of time.[12] The said mechanism should facilitate orderly incorporation of *acquis communautaire* into the Polish legal system without undesirably frustrating the current operation of this system.

Worth stressing in this context is Decision no.133 taken by the Council of Ministers on 14 November, 1995, obliging all governmental departments to draw up, within one month, detailed schedules of domestic legal acts under their competencies listed in Appendix 3 to the said Decision. The Government Plenipotentiary for European Integration and Foreign Assistance was requested to prepare a comprehensive two year working scheme. This task was fulfilled by mid-February, 1996, in the form of the *White Paper on the Timetable for the years 1996-1997 with Regard to Adjustments of the Polish Economic and Legal Systems to the Requirements of the Europe Agreement*. The *White Paper* follows the guidelines set in the European Commission's *White Paper* and adapts them to the Polish realities. It is comprised of 34 chapters showing both the present state of law and the necessary adjustive actions, stated in a task-instructing-manual (not officially published).

Under the Act of 8 August, 1996, the Committee for European Integration came to life.[13] The Committee is the principal governmental body for planning and co-ordinating: policies regarding Poland's integration with the European Union, Poland's adjustment to European standards, and the governmental administration's acts in the sphere of incoming foreign aid.

In particular, the Committee main duties include:

[11] See: "*Monitor Polski"*, 1994, no.23, item 188.

[12] Information given by Józef Zych, the Speaker of the House (Sejm) in his address at the 'Fourth Polish Legal Days' in Cracow, 23 May, 1996.

[13] See: „*Dziennik Ustaw*", no. 6 1996, item 474; Executive Regulation of 2 October, 1996 on establishment of the Committee for European Integration (*„Dziennik Ustaw"*, no.116 1996, item 555). See also review of the Act of 8 August, 1996 in Part „Documents" of this volume (Editor).

- co-ordination of Poland's adaptation and integration processes with the European Union as well as initiation, organisation and co-ordination of activities which further those processes;
- initiation and co-ordination of adjustment activity in the area of legal institution and the assessment of drafts of legal acts's conformity with the European Union law;
- co-operation with the European Commission with regard to realisation of the individual programme of integrational requirements;
- evaluation of the progress of adjustment processes;
- co-ordination of efforts concerning acquisition and use of foreign aid;
- undertake informational, conceptual and human resources preparations for integration processes;
- co-operation with local self-government organisations intended for increasing their involvement in various organisational structures of the European Union;
- attending to national defence and security matters.

The Committee presents the Council of Ministers with assumptions of the programmes, progress reports, and drafts of legislative acts on adaptational and integrational activities with the European Union, as well as draft decisions regarding the foreign aid.

The Committee members include different ministers (*inter alia* ministers of: Foreign Affairs, Internal Affairs, Economy, Finance, Labour and Social Policy, Agriculture and Food Economy, Justice). Debates are lead by the Chairman or directly by the Prime Minister, who personally supervises the work of the Committee.

2. External supporting measures

The core of technical and financial aid for the Vishegrad Group countries is the PHARE Programme established in 1989. Initially it was meant to assist Poland and Hungary in their transition from a planned to a market economy. Later the Programme covered other countries of the region, also. The aid and assistance administrated under the Programme include advising, seminar organising and providing certain political reforming processes, privatisation and restructurisation of enterprises with technical equipment and support. A number of PHARE projects concentrate exclusively on law reform and adjustment, in particular in the field of intellectual and industrial property rights protection, consumers' rights, harmonisation of technology, customs law, statistics,

environment protection and public order, air law as well as banking law, law on bankruptcy, tax and accountancy in business enterprises, and energy law.[14]

Within the structure of the European Commission, a special office was recently established with the task to provide the Central and Eastern European countries, upon their request, with information on EC law and means of implementation, as well as to provide assistance in translation of EU documents into national languages. It is expected that a data bank will so on be set up. That bank could store all the necessary information on the assistance programmes of the Commission and EU member countries as well as on their experts to be engaged in professional consulting and other forms of support.

The said activities should be closely related with the real needs of each of the associated countries and the assistance rendered should concentrate on the priorities mutually agreed upon by the aid suppliers and recipients. What the Central and Eastern European countries, and the Vishegrad Group countries in particular, need least of all are those „golden boys" who are eager to draft, on their own, new laws for Poland today or for the Czech Republic tomorrow.[15] Instead, the European Union's experts are expected to assist local specialists and work together with them and thus to effectively contribute to the better mutual understanding of what European integration requirements actually mean and by what means they can be best met. Acting in such a manner, the EU's experts would also make the local experts more familiar with multinational collaboration in law-making within the European Union.

On the whole, however, independent of any criticism one might have against the manner in which the EU's assistance programmes have been hitherto administered, the importance of all those programmes can hardly be overestimated and continuation of them is a key to successful completion of the adjustments referred in the Commission's *White Paper*.

Concerning worries amongst certain circles in the European Union about the burden on the EU budget resulting from the costs of assistance rendered to the Central and Eastern European countries, it should not be overlooked that a considerable part of that assistance finances the European Union's exports

[14] See: *Poland and Hungary Aid for Restructuring of Economy & EU-DGI,* PHARE Information Office, „*A Performance Review 1990-1993"*, Brussels 1994; see also: *Towards greater economic integration. The European Union's financial assistance and trade policy for Central and Eastern Europe and the New Independent States,* European Commission, Brussels, October 1995; *Third and Fourth Annual reports from the Commission to the Council and the European Parliament on the implementation of Community assistance to the countries of East and Central Europe (PHARE) in 1992 and 1993*, Commission of the European Communities, Brussels, 20.02.1995.

[15] Compare: F.Randzio-Plath, *Unternehmen Osteuropa - eine Herausforderung für die Europaische Gemeinschaft*, Baden-Baden 1994, p.215.

of services and goods supplied to the recipient countries under the respective programmes. Moreover, less bureaucracy in the administration of assistance programmes and more reliance on market instruments in the promotion of transformation processes in the associated countries would also improve these programmes and decrease the costs of the adjustment process.

3. Principle of homogeneity in EU law and the incorporation of *acquis communautaire* into the legal systems of the associated countries

The Association Council, referred to in Title IX of the Europe Agreement between Poland and the European Community as well as in Europe Agreements with other associated countries, was established with the task *inter alia* to supervise the implementation of the Agreements. To this end it has the power to examine *„any major issues arising within the framework of the Agreement and any other bi-lateral or international issues of mutual interests"* and make decisions in that respect. Those decisions are *„binding to the Parties which shall take the measures necessary to implement the decisions taken"*. Moreover, the Association Council *„may make appropriate recommendations"*.

However, it cannot be said that these powers guarantee an EC law-conform application in the legal order of the associated countries. First, according to the Europe Agreement, the Association Council *„shall draw up its decisions and recommendations by agreement between the two Parties"*. Hence, it is assumed under this procedure that such an agreement is it be achieved by means of negotiations. Second, the Europe Agreement contains no provision that an agreement achieved under this procedure shall guarantee application of the Community rules in question in the Community. Third, in order to ensure that the respective decisions of the Association Council in the associated countries will be binding, the latter have to adopt certain legal acts, often of a statutory character, hereby following the domestic procedure of law enactment. This is a long-lasting procedure by its very nature. The final product of that procedure may also-even if this was not the intention of the domestic legislator - differ from the original intention of the EC rule in question or be applied in a manner not necessarily coherent with the interpretation prevailing in the Community.[16]

[16] To substantiate the above critical assessment it may suffice to quote the respective provisions of the Decision of 5 December, 1995, made by the EU-Polish Association Council adopting the implementing rules necessary for the application of Article 63 of the Europe Agreement with Poland and the rules implementing Article 8 of the Protocol no.2 on ECSC products to that Agreement, both of which refer to competition. Thus according to Article 9 of the said Decision: "*whenever the procedures provided for in...* (the Decision itself) *do not lead to a mutually acceptable solution ... an exchange of views shall take place in the Association Council ...* (and) *the Association Council may make appropriate recommendations for the settlement of these*

Even if the domestic laws are a mere replica of the EC laws, there is no guarantee that they will be interpreted identically in practice. This was also made clear by the European Court of Justice (ECJ) in the opinion of 14 December, 1991, on conformity of the draft European Economic Area Treaty with the Community legal order. In this opinion the Court observed that "*the fact that the provisions ... are identical does not mean that they have to be interpreted identically*",[17] and concluded that recognition of the binding force of judgements taken under Article 177 and Article 164 of the EEC Treaty is a peremptory condition for securing homogeneity and autonomy of the Community law.[18] That opinion resulted in the introduction of appropriate amendments into the European Economic Area Treaty and Article 105 of this treaty, now envisages a central role for the EEA Joint Committee in securing homogeneity. In particular, Article 105(2) requires the Joint Committee to keep under constant review the development of the ease law of the ECJ and the EFTA Court. The EC Commission has defined this role as securing the respect of ECJ rulings on the part of the EFTA's.[19] Consequently, the Joint Committee cannot help confirming the binding force of ECJ interpretation in matters of respect for the EFTA member countries by means of taking the same position, or else it would fail to fulfil its obligations.

Thus, if the Committee, within two months after a difference in the case law of the ECJ and the EFTA Court has been brought before it, has not succeeded in presenting a homogeneous interpretation of the Agreement, the procedures laid down in Article 111 of the EEA Treaty may be applied providing that contracting parties agree to request the ECJ to give a ruling on the interpretation of the relevant rules. The parties may, however, decide not to ask for a ruling by the ECJ. In such circumstances special safeguard measures would have to be taken to remedy possible imbalances. At the same time the EEA Treaty forejudged that if there is to be a judicial settlement of any dispute arising in relation to the EC case-law, that settlement can only be provided by the ECJ. If a settlement is provided by the Joint Committee, the case law of the count is not to be prejudiced. As was clearly stipulated in an Agreed Minute ad Article 105 of the EEA Treaty, decisions taken by the Joint Committee under these provisions may not affect this case law.

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cases..", but nothing over and above all that. (See: *Association Between the European Union and the Republic of Poland,* The Association Council, Brussels 5 December, 1995, EU-PL 1406/95.)

[17] O.J. C 110/1-15; O.J. 92/C.

[18] Ibid.; see also: ECJ Opinion 1/91, Title III: *Appraisal of the Agreement, and ECJ Opinion* 1/92, 10 April, 1992.

[19] See the Commission observations in Opinion 1/92: *Draft Agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area*, ECR I-282, I-2833, 1992.

The above EEA mechanism has apparently been intended to reconcile the need for uniform interpretation of the EC law throughout the EEA with EFTA's' objections to what they used to call the rule by „foreign judges".[20] As a result, the said mechanism is incomprehensive in legal terms and at the same time, face-saving for the „sovereign" aspirations of the EFTA countries. Still, this does not alter matters in that the ensurance of homogeneity in European law is conditioned by the application of this law according to the judicial interpretation of ECJ.

For that very reason, already in May, 1990, when Poland officially applied for an association with the EEC, the Polish Government declared its willingness to accept ECJ jurisdiction within the substantive scope of the Association Agreement. This proposal consisted of both recognising the competence of the ECJ to decide on the questions of interpretation of a particular provision of Europe Agreement upon a petition of any of the parties thereto, Poland included, and in extending the requirements provided under Article 177 of the Community Treaty onto the Polish courts, with regard to provisions of the European Union`s laws incorporated into the Polish domestic legal system while implementing the Europe Agreement. That proposal was, however, turned down by the Commission on the grounds that it would be contrary to the constitutional treaties of the Community which reserve access to the ECJ for member countries only. That argument appears hardly convincing, as the Association Agreements such as the Europe Agreements on the one hand, and the amendments to the Community constitutional treaties on the other, are subject the same rectification procedure. For, in order to gain their binding force, they must be ratified by the Community itself and each of the EU member countries. It should also be kept in mind that, as the ECJ has consistently held, the provisions of an agreement concluded under Articles 228 and 238 of the EC treaty form an integral part of the Community legal system, bringing to force that agreement.[21]

On these grounds the Court claimed jurisdiction to give preliminary rulings on the interpretation of an Association Agreement in so far as it was an act adopted by one of the institutions of the Community.[22] Worth separately stressing in this context is that in the case of the Greek Association Agreement, the Commission itself originally suggested that disputes arising out of the application of this agreement should be submitted to the ECJ are augmented by a Greek judge,

[20] *The Future European Economic Area*, Club de Bruxelles, EC/EFTA, Brussels 1991, p.159-160.

[21] See: Case C-192/89 S.Z.Sevince v. Staatsecretaris van Justitie; Case 181/73 Haegeman v. Belgium; Cases 267-269/81 Administrazione delle Finanze dello Stato v. Societa Petrolifera Italiana SpA and SpA Michelin Italia. (ECR I-3461, I-3501, 1991.)

[22] See: Case C-192/89.

but this arrangement was rejected by Greece.[23] In the case of the Europe Agreement with Poland, this was the Commission that took Greece`s position.

All in all, as neither the EEA nor any other mechanism for the preservation of homogeneity of EC law was offered under the Europe Agreements, the problem of how to secure homogeneity in European law on the part of Poland and of other associated Central and Eastern European countries has remained open.

There are also some other legal problems arising within the context of incorporation of *acquis communautaire* into the domestic legal order of the associated countries. Thus, under the Community law directives may, under certain conditions, have a direct effect in a dispute between the authorities of a member state and individuals.[24]

However, the Community directives are addressed to the EU member countries exclusively and as such represent a foreign law for the associated countries. Therefore, due to lacking provisions in Europe Agreements which might fill in this gap, it is not possible to ensure the same legal effects for the directives in the associated countries as they have in the member ones. It is a source of substantial difficulties when the associated countries do not comply with the time schedules of harmonisation in relevant territories, or when such harmonisation fails to be correct.

It is also worth mentioning that, whenever implementation of a given law act of the Community refers to a particular Community's procedure for the implementation or execution of that act such a procedure ought to be incorporated into the domestic law of the associated countries, too, if for them the same effects are to be achieved. That selective incorporation of special procedures brings difficult legal dilemmas with it as it would have to lead to compartmentalisation of domestic procedures subject to the act they are applied to.

Separate problems arise in connection with pluri-lateral international conventions such as the Brussels Convention and the Rome Convention, which are only open to EU member countries. Even a strict incorporation of the provisions of those conventions in the statutes of the domestic law of the associated countries hardly guarantees the legal effects those conventions are to secure. For this purpose, a legal transaction made on the territory of one state in pursuing the rules of respective conventions, must be recognised

[23] See: H. Smit, P.Herzog, *The Law of the European Economic Community: A. Commentary on the EEC Treaty*, New York 1976.

[24] See: Joined Cases C-6/90 and C-9/90 Francovich and Others v. Italian Republic, (ECR I-5357, 1991); also comments by: P.P.Craig, *Francovich, Remedies and the Scope of Damage Liability*, „*Law Quarterly Review",* no.3 1993, p.595; J.Steiner, *From direct effects to Francovich*, "*European Law Review",* no. 1 1993, p.3.

accordingly by the appropriate organs of another state as effective in the area of their jurisdiction. Therefore, only allowing accession of the above mentioned and similar conventions by the associated countries might solve the problem.

Finally, it should also be stressed that Europe Agreements provide no institutional arrangement to secure for the associated countries of Central Europe any real say in the development of the rules with which they are supposed to harmonise their laws. The failure to make such arrangements may be rendered more disturbing by challenges to the legitimacy of the institutions responsible for the development of relevant rules.[25]

4. Concluding remarks

The experience gained since the Europe Agreements with the Vishegrad Group countries were signed reveals a variety of problems connected with the implementation and execution of those agreements. Some problems have already been settled whereas others still require further solutions to be worked out.

In general, however, tremendous progress has been achieved in almost every domain covered by the Europe Agreements and, in particular, in the field of assimilation of *acquis communautaire* into the domestic legal systems of the Vishegrad Group countries. Reciprocal opening of domestic markets for goods from the countries concerned is, on the whole, progressing in accordance with the EA time- and subject-matter schedules and liberalisation in the financial service sector has also been observed. Inflation has been put under rigorous control, effectively curbed and continues to fall in all the Vishegrad Group countries, whilst their internal debt is also decreasing and solid grounds for the sustainable economic growth have been laid.

The Vishegrad Group countries are determined to satisfy economic and other criteria for membership in the European Union and to get ready for negotiations on accession which, they hope, will start just after IGC is closed. Those expectations seem to be in line with the opinion expressed by the Reflection Group in its „Strategy for Europe" paper submitted in December, 1995, that one of the *„most ambitious goals"* of the EU is enlargement to the East and to Cyprus and Malta. The Madrid Summit, at which hopes were expressed that the preliminary stage of accession negotiations with the Vishegrad Group countries would coincide with the start of negotiations with Cyprus and Malta, further substantiate the expectations of the Vishegrad Group countries.

[25] See: D.Kennedy, D.E.Webb, *The Limits of Integration: Eastern Europe and the European Communities"*, *„Common Market Law Review"*, no.9 1993, p.1102; also C.Brzeziński, *The EC-Poland Association Agreement: Harmonization of an Aspiring Member State's Company Law, „Harvard International Law Journal"*, no.34 1993 p.105 passim.

These countries are also in agreement as to the model of membership in the Union they are interested in. They are ready to accept the shape of the Union as it will have at the time of their accession, monetary union included,[26] and determined to accept disciplines, rights and obligations resulting from the membership, as well as to collaborate with other members to further strengthen and develop the integration. However, they are not going to become second-class members of the Union. Hence, no „Europe of circles", „hard core" and „other" Europe or European Union structured after similar divisive patterns into „in" and „out" member countries would be acceptable for Poland and the other Vishegrad Group countries. This segmenting would segregate the „better" members of the Union from those „worse" ones, thus creating various, one-sided dependencies discriminating the latter members.

Contrary to the above it would be fairly acceptable to admit into the Union
a more active pole of member countries already participating in the integration process through the instruments of a monetary union, common foreign and defence policies. That „more active pole" should, in no way, become a closed elitist club. Instead, from the very beginning, it should at all times be open, without any barriers, to each and all the other EU members which wish to join the pole and fulfil the objective criteria required in order to meet that end.

As the Prime Minister of Belgium Jean-Luc Dehaene put this idea: *„diversity must ... be balanced with a factor of unity, because excessive diversity leads to nationalism and racism. Achieving this unity is at the heart of the European Community project itself. Some kind of differentiation such as has been elaborated for the Economic and Monetary Union may prove to be useful. Should we choose not to do so, we would run the risk that the dynamism or the will of some to go ahead would be slowed down by the difficulties encountered by others. In order for those differentiation formulas not to jeopardise the Community equilibria, they deviate as little as possible from the procedures laid down under the Treaties. (...) There should not be any exclusion either: the final goal must always be the adhesion of all".*[27]

As far as accession to the European Union of the Vishegrad Group countries is concerned, the most desirable solution would be early membership followed by
a transition period after the pattern of the so-called „Iberian model" that consists in

[26] See: an interview with Polish Vice Prime Minister and Minister of Finance Grzegorz Kołodko, *A Moving Target*, and *Poland on the way to European Monetary Union,* „*Rzeczpospolita"*, 06.01.1997.

[27] Conference of Minister Jean-Luc Dehaene, the Prime Minister of Belgium on „The Future of the European Unification: Challenges and Possibilities", held in Warsaw, January 13, 1995 in the College of Europe in Natolin.

gradual adaptation to all the EU requirements in the selected sensitive areas in accordance with, agreed in advance, subject-matter and time schedules.

In Vishegrad Group countries early admission to the Union on a full membership status is considered to be of paramount importance for a number of strategic reasons, in particular:

- to strengthen the sense of direction to be followed in the fields of economic and social policies;
- to clarify the means to practice existing and prospective options in foreign and flanking policies within the ability of the applicants;
- to prevent the domestic legal system from gradual degeneration as a result of assimilation of the EU legal acts, written according to the Union's own, substantive and time schedule while the associated countries take no part in the decision-making process;
- to secure the actual balance of burdens and benefits consequent upon establishment of the Internal Market by means of the full employment of legal instruments governing that market from the earliest possible stage of its development and thus, to prevent negative hinterland effects to which the applicant countries would be exposed if they were kept outside the Union for a long period of time;
- to gain full access to the Union`s policy-making mechanisms on which the ability to shape the European Union and furtherance of integration process actually depend.

The Vishegrad Group countries are unanimous in that only a single Union based on solidarity and partnership, and, at the same time, a flexible, open Union will be able to serve the purpose of coming closer and closer to European integration and to secure its sustainable development effectively.