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Polish Perspectives on the European Union's Common Foreign and Security Policy

1. Introduction

The establishment of peace and prosperity among European nations was, and still is, one of the most fundamental prerequisites for the success of the European Union's¹ integration process on various levels. This clearly defined goal is threatened by the danger zones which have multiplied on the frontiers of the EU during the 1990s. Consequently, the "New World Order" which was supposed to have been achieved by the 1989 self-limited revolution in Central and Eastern Europe, has not yet arrived.² The non-violent character of **the third great transformation** of the European international order in the twentieth century is under continuous revision as some parts of Europe (especially in the former Yugoslavia) have been devastated by ethnic warfare.³

The Second Pillar⁴ of the European Union · its Common Foreign and Security Policy (CFSP) – has the potential to play an important role as an anchor

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¹ "The collapse of the Soviet Empire and the demise of the totalitarian regimes (...) has not eliminated insecurity in the European continent, but uncorked nationalist passions and ethnic rivalries". See R.Dehouse, *Europe · The Impossible Status Quo*, London 1997.

² The term self-limited revolution is used to convey the relatively bloodless nature of the revolutions in Central and Eastern Europe (with the partial exception of Romania). See Z.Czubiński, *Poland: A Potential Paradise for Western Investors? Brief Analysis of the New Economic Reforms, "European Taxation"*, vol. 30, no. 6 1990, p.151-53. See also, M.Roskin, *The Rebirth of East Europe*, New Jersey 1991.

³ The previous two great transformations occurred as a result of the First and Second World Wars.

⁴ The European Union is founded on three pillars: the European Communities (comprising the European Community, the European Coal and Steel Community and Euratom); the Common Foreign and Security Policy; and the co-operation in the field of Justice and Home Affairs. The latter two pillars are intergovernmental in character.

of stability across the whole European continent (as well as within the European Union, itself). It is therefore necessary to examine its significance for the EU and Central and Eastern Europe (CEE).

The article begins with an examination of the CEE states' motives for seeking membership of the European Union even at the cost of transferring part of their national sovereignty to international institutions. Secondly, an analysis of the EU's Common Foreign and Security Policy takes place. This analysis focuses on the decision-making mechanisms within the CFSP which are designed to facilitate greater co-operation (and, perhaps even eventual convergence) in Member States' foreign and security policies. Since the Europe Agreements constitute a broad framework for co-operation in the field of foreign and security policy between the EU and its associated CEE states, the third part of the article examines the general nature of these Europe Agreements, and then proceeds to assess the ways in which the Central and East European states may cooperate in the EU's formulation of foreign and security policy within the framework of these Agreements. Finally, the potential consequences of the CFSP for the Central and East European region are addressed.

2. Some historical remarks

Paradoxically, the Iron Curtain had provided the framework for political and economic life in both the East and West. It defined the playing field for the Marshall Plan, NATO, the EC, Germany's Federal Republic · in other words, the background for Western Europe's prosperity.⁵ This division was extremely convenient not just for the Soviet Union, but also for Western Europe. It was especially advantageous to the element of protectionism within the EC, and hence for distortions such as the Common Agricultural Policy (CAP). In brief, it is argued that this factor is mainly responsible for turning Western Europe into a short-sighted and self-satisfied rich man's club.

On the other side of the Iron Curtain, Europe was underdeveloped and economically, militarily and politically controlled by the Soviet Union while retaining limited sovereignty (the Brezhnev Doctrine). Many Western officials, in particular during the decades of the seventies and eighties, were dreaming of perpetuating their isolation indefinitely, but the third great transformation ended this situation.

The self-limited revolution of 1989 give rise to three Europes: one consisting of the established West European democracies, the majority of them being members of the EU; another included the Visegrad triangle (called the Visegrad Group following the "velvet divorce" of Czechs and Slovaks) and Slovenia; and

⁵ See N.Davis, *Europe · A History*, London 1996.

the third Europe comprised the remaining countries. It should be pointed out that later events partly changed this initial configuration.

In the long-run Europeans, would have to face the choice of either rebuilding their village in unison or reinventing the iron curtain. Taking into consideration, however, the fact that in reality, events in Eastern and Western Europe were and are closely connected, and that consequently the success of the EU as seen from the East had been a potent factor in the failure of the Soviet Bloc, and moreover that the success or failure of the post-communist democracies would condition the fate of the EU, both parts of Europe decided to take the proper steps.⁶

The post-World War Two period has witnessed a remarkable growth in the number of states, starting from about 50 and reaching more than 180 in 1998. Nevertheless, the massive proliferation of states in Europe, quite often called the “Second Springtime of Nations” or “Renaissance of the Nation State” did not come until the end of the Cold War.⁷ Among the former Soviet satellites and newly born states, the consequent reanimation of sovereignty appeared not only as a result of the introduction of democratic structures but the whole reorientation in foreign policy. The countries in question are now at the front of the queue for membership in historically Western-oriented organisations such as NATO and the EU.

The core issue why the states in question would suddenly like to transfer part of their own rights to international institutions, despite negative historical experiences. In order to provide an adequate answer to this question, it is worthwhile to quote an almost commonly accepted definition of state sovereignty which is understood as *“the notion of effective government interlinked with the idea of independence; often termed state sovereignty in the sense that such a government only exists if it is free from direct orders and control by other governments”*.⁸

Furthermore, the doctrine adds three basic constitutive features of the states such as territory, sovereign government and populations. A state's actions are motivated by the promotion of a favourable international environment in order to achieve its own survival with a consequent emphasis on security, the protection of a particular form of political rule, and the defence of certain national interests. The following question would be: how important is the state in contemporary politics? The answer is not the easiest one. The school of thought which holds that a state enjoys untrammelled supremacy in international relations as well as absolute sovereignty is being increasingly criticised. Two examples might serve to illustrate this statement: first, the power of the EU to

⁶ See *Issues in World Politics*, eds. B.White, R.Little, M.Smith, London 1997, p.23-44.

⁷ *Ibid.*

⁸ See P.Malanczuk, *Akehurst's Modern Introduction to International Law*, (7th rev. ed.), London 1997, p.78.

ban the export of British beef against the British desire to maximise export sales; second, the ability of the IMF to link the conditions of loans to the monthly performance of the Russian economy.

The conclusion is very obvious, even if the superpowers have to accept the partial erosion of their sovereignty due to existing international obligations and in order to secure their interests at large: the Central Eastern European states have no other option but to accommodate themselves to the existing democratic international framework in Europe. Otherwise, their newly gained sovereignty might be reduced in forms contrary to their national interests. Having this in mind, the CEE countries viewed the EU not only as an economic organisation but carefully observed the development in the Second and Third Pillars of the EU. In those two new pillars, in spite of the danger of reducing national sovereignties, the Central Eastern European states look to shelter their national identities.

3. The Common Foreign and Security Policy

Established by the Maastricht Treaty and revised by the Treaty of Amsterdam,⁹ the EU's Common Foreign and Security Policy (CFSP) was designed to play a significant role in the creation of a more united Europe. Provisions for the CFSP in both Treaties are analysed below in order to assess the extent to which the CFSP has already facilitated co-operation among Member States in foreign and defence policies, and the likelihood for closer convergence of States' policies in these areas in the future.

The Maastricht Treaty¹⁰ created the three pillar structure of the European Union. Title V of this Treaty regulates the Common Foreign and Security Policy of the EU. The jurisdiction of the European Court of Justice in relation to the Common Foreign and Security Policy is expressly excluded by Article L of the Maastricht Treaty. Under the Maastricht Treaty, it is the European Council (comprising Heads of State and Government of Member States) which defines the principles and general guidelines of the CFSP. The Council of Foreign Ministers, meeting at least once a month, adopts decisions regarding the definition and implementation of CFSP on the basis of the principles and guidelines issued by the European Council. Maastricht sought to develop a framework which would institutionalise co-operation in foreign policy matters between Member States. A closer analysis of the actual provisions of the Treaty of Maastricht reveals that the Treaty only seeks to promote co-operation between

⁹ The Treaty of Amsterdam was signed in October 1997, and will only come into force once all fifteen Member States have ratified the Treaty.

¹⁰ The Maastricht Treaty was signed in December 1991 and came into force on 1 November 1993.

Member States in foreign policy areas but cannot enforce the alignment of Member States' foreign policies on given issues. Article J.1 (4), for example, states that: "*The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with*".

Nowhere in the Maastricht Treaty does it mention how the Council may **ensure** that Member States' co-operate in foreign policy (in other words, there is no element of compulsion in the Treaty that would force Member States to align their foreign policies) although the Treaty does lay down several mechanisms which may facilitate co-operation should Member States so desire it. These mechanisms are: information, consultation and common positions; joint actions; and common statements.

Article J.2 (1) of the Maastricht Treaty states that a Member State "*shall inform and consult*" other Member States, at the Council level, on matters of foreign and security policy of general interest in order to ensure that their combined influence is exerted as effectively as possible in the international sphere. It assumes that the general interest of Member States on a specific foreign or security matter will be the same. This is a rather large assumption given the diverse national interests of the EU's Member States. Common positions are the second mechanism through which Member States are able to align their foreign and security policies and are mentioned in Article J.2 (2) of the Maastricht Treaty. This Article states that it is the Council that defines a common position while Member States shall ensure that their national policies conform to the common position. In other words, Member States are expected to support the Council's common position at international conferences and within international organisations such as the United Nations. Furthermore, the practice of Member States adopting agreed statements in the area of foreign policy which began under the framework of European Political Co-operation has been continued by the Maastricht Treaty. These agreed statements are issued in the form of a common statement by the European Union. Common statements impose much weaker obligations on Member States than common positions.¹¹

Joint actions¹² represent another mechanism through which States may seek to align their foreign policies. A joint action differs from a common position in that the former is a basis for a common Union approach at the international level while the latter seeks to ensure that a Member State's national foreign policies

¹¹ See I.Macleod, I.D.Hendry, S.Hyett, *The External Relations of the European Communities*, Oxford 1996, p. 416-17.

¹² See Article J.3 of the Maastricht Treaty.

are aligned with the Union's.¹³ Subjects of joint actions are decided upon by the Council on the basis of general guidelines from the European Council. The Maastricht Treaty stipulates that once a State has committed itself to a particular position in a joint action then it is obliged to honour its commitment.¹⁴

It is argued that the way in which the Second Pillar is regulated in the Treaty of Amsterdam has an evolutionary rather than a revolutionary character. At Amsterdam, the intergovernmental character of the Second Pillar was retained. The CFSP remains subject to international law, not to Community law. Amsterdam's revisions of the provisions outlining mechanisms (i.e. information, consultation and common positions; joint actions; and common statements) which may facilitate the convergence of Member States foreign policies were rather limited. The mechanisms which will be available to Member States for foreign policy co-operation/convergence (once the Amsterdam Treaty has been ratified by all 15 States) have not been significantly altered.

The major difference is that the European Council will decide on common strategies to be implemented by the Union in areas where Member States have important interests in common. Common strategies will be implemented mainly through the use of joint actions and common positions. Strategies for joint action by the Union in areas where the Member States have important interests in common will be decided by unanimity in the European Council. Action, however, to implement these common strategies will normally be on the basis of qualified majority voting. But if a Member State objects to a decision implementing a strategy, it can invoke an 'emergency brake' mechanism, referring the matter to the Heads of State and Government for discussion. Furthermore, the Amsterdam Treaty has introduced the principle of 'constructive abstention' in order to allow Member States which do not wish to participate in a project (i.e. joint action or common position) that they do not oppose in principle, to stand aside.¹⁵ The clause on constructive abstention is the CFSP's flexibility clause and is intended to facilitate decision-making since decisions are taken by the Council acting unanimously, then abstentions would not prevent the adoption of such decisions. However, if the Member States abstaining represent more than one third of the votes weighted in accordance with Article 148 (2) of the Treaty establishing the European Community then the decision shall not be adopted.

The Amsterdam Treaty also gave the Secretary General of the Council the responsibility of being the High Representative of the Common Foreign and Security Policy. The task of 'Mr or Ms CFSP' was intended to personalise and

¹³ For more information see: *The European Union's Common Foreign And Security Policy*, European Commission, Brussels 1996.

¹⁴ Under special circumstances a State may deviate from its position in a joint action. See *ibid.*

¹⁵ See Amsterdam Treaty, Article J. 13.

raise the profile of the EU's CFSP. Article J.8 states that the Presidency of the EU will be the main representative of the Union in the area of common foreign and security policy, and will be assisted by the Secretary General of the Council who shall exercise the function of High Representative for the common foreign and security policy. Furthermore, Article J.8 goes on to state that the Presidency shall be assisted in this task by the next Member State to hold the Presidency. This creates a rather ambiguous situation given the fact that Member States only occupy the Presidency for six months so it is still not entirely clear who is representing Europe in the area of foreign and security policy. Nevertheless, the decision of the EU leaders at Amsterdam to establish a policy planning and early warning unit, and the Commission's participation and right of shared initiative in this exercise suggests that Member States' governments are serious in their attempts to achieve a substantial degree of co-operation in their foreign and security policies.

The Maastricht Treaty acknowledged that defence was an important common interest among the Member States of the European Union while at the same time recognising the primacy of NATO in this area. It spoke of "*the eventual framing of a common defence policy, which might in time lead to a common defence*".¹⁶ At Amsterdam, the EU leaders adopted a more cautious approach to the idea of a common defence policy for Europe and the defence-related provision was rephrased in the following way: "*the progressive framing of a common defence policy, (...) which might lead to a common defence, should the European Council so decide*".¹⁷ Also, the Amsterdam Treaty did not preclude the possibility of the eventual integration of the Western European Union (WEU) into the EU. Amsterdam allowed Member States (even those which are not members of the WEU) to participate with the WEU in humanitarian operations, peacekeeping and peacemaking (known as the "Petersberg tasks").

The revisions to the Provisions on the EU's Common Foreign and Security Policy at Amsterdam have not altered the fundamentally intergovernmental character of decision-making within this Second Pillar, but the use of qualified majority voting in some limited areas has ensured that Amsterdam was not a step backwards (but a small and hesitant step forward) on the road towards a common foreign and security policy for Europe. There is, however, a long way to go. It is doubtful whether the European Union would be able to construct a genuine foreign policy under the auspices of the CFSP in the near future. At present, the EU's Common Foreign and Security Policy remains enfeebled because the EU Member States are largely unable to agree on a common position whenever a crisis presents itself with the former Yugoslavia and

¹⁶ See Maastricht Treaty, Article J. 4.

¹⁷ See Treaty of Amsterdam, Article J. 7 (1).

Albania being the most infamous examples of the EU's failure to do so. The EU's foreign policy decision-making within the framework of the CFSP has been described as being reactive in nature.¹⁸ Some political commentators have gone so far as to deny that the CFSP is actually the EU's common foreign policy: "*it is not a common foreign policy but a modestly enhanced version of political co-operation. It has remained an intergovernmental process based on the voluntary submission of issues that raise a common concern of the member states, ensuring consensual decision-making*".¹⁹

The intergovernmental nature of the decision-making process within the CFSP pillar, together with the practical difficulties of achieving the unanimity requirement, reflect the fact that among the EU Member States, a common European identity is still lacking and that national interests remain predominant over the Community interest.

4. Rationale and structure of the Europe Agreements

The Europe Agreements are the legal basis the political and economic relationship between the European Communities and individual Central and East European states. CEE states' co-operation within the Second Pillar of the EU is governed by these Europe Agreements. It is worthwhile mentioning the uniqueness of the Europe Agreements which have established associations between the European Communities and their Member States, on the one part, and 10 individual states formerly within the Soviet sphere of influence. Historically, links between the European Communities and the associated states²⁰ had been very limited due to the refusal of the Soviet Union and its allied states to recognise the legitimacy of the EC.²¹ When on the 25 June 1988, diplomatic relations were established between the EC and the Council for Mutual Economic Assistance (CMEA), this held out for the possibility of deeper economic trade links between the EC and the CMEA states. Consequently, so-called bilateral **first generation agreements** covering trade, commercial and economic co-operation were concluded with CEE states judged by the EC to be on the road to political and economic reform. Two of the first CEE states to conclude such agreements with the EC were Hungary and Poland on the 26 September 1988 and 19 September 1989, respectively.

¹⁸ See "*The Economist*", 22.03.1997, p.37-38.

¹⁹ T.Kende, *Ties and Adaptation in the Fields Covered by the Second and Third Pillars*, op.cit., p.147.

²⁰ All of the associated states, were formerly members of the Soviet-controlled Council for Mutual Economic Assistance.

²¹ See J.J.M.Tromm, *Introduction to European Community Law. Module III: External Relations*, The Hague 1995, p.28-38.

Moreover, at the Group of 7 (G-7) Summit in July 1989, the PHARE programme was developed in response to the rapid transformations occurring in Hungary and Poland. The PHARE programme was to be the framework through which the European Commission would co-ordinate assistance, from the G-24, to Hungary and Poland as these countries were first to undertake the political and economic transitions to democratic government and market economy. Partly, due to pressure from the German government for a “*much more active Community policy*” but also as a result of the European Commission’s desire in 1989 to provide much more comprehensive technical and economic assistance, the Community developed its own PHARE programme towards Hungary and Poland.²² PHARE was eventually extended to other Central and East European states as they embarked upon the processes of economic and political reform.

In addition, the European Bank for Reconstruction and Development (EBRD) was established in May 1990 under the direction of the EC. The EBRD was to assist in the CEE states’ transformation to market economies by providing public funds in the form of loans, primarily, to private CEE nationals but also to their governments. EC assistance through the EBRD and (until 1992 when the PHARE Democracy Programme was established) the PHARE programme concentrated mainly on the technical and economic aspects of the transitions in Central and Eastern Europe, and largely ignored the transitions’ political and cultural dimensions, and the fact that in order for the economic transitions to be successful then the societies in the CEE states must also be transformed. The establishment of PHARE and the EBRD did not constitute a long-term political policy, on the part of the EC, for enabling the CEE states to be once more reunited with Western Europe.²³

The rapid pace of the political, as well as economic, transformations in Central and Eastern Europe necessitated the addition of a political dimension to the PHARE programme. Likewise, the first generation agreements were quickly overtaken by events in Central and Eastern Europe. The EC recognised that it had to develop a long-term strategy towards Central and Eastern Europe that would also take into consideration the unique double economic and political transitions which these states were undertaking; and that such a strategy would have to reflect the fact that these states belonged to Europe, both historically and culturally. Negotiations for second generation agreements, Europe Agreements, began in December 1990 with Poland, Hungary and Czechoslovakia.

The official opening of the Europe Agreement negotiations began on the 20 December 1990 with Czechoslovakia, Hungary and Poland. Poland and

²² See U.Sedelmeier, H.Wallace, *Policies Towards Central and Eastern Europe* in: *Policy-Making in the European Union*, ed. H. & W.Wallace, London 1996, p.359.

²³ See J.Gower, *EC Relations with Central and Eastern Europe* in: *The European Community and the Challenge of the Future*, ed. J.Lodge, London 1993, p.295-297.

Hungary signed individual Europe Agreements (EAs) with the European Communities and their Member States on the 16 December 1991. Now there are 10 associate countries in Central and Eastern Europe.

A Europe Agreement creates “*special, privileged links with a non-member country which must, at least to a certain extent, take part in the Community system*”.²⁴ The Europe Agreements were signed by the Council of Ministers and the Member States and thus have got the character of mixed agreements since neither the European Community nor the Member States have sole competence over the policy areas to which the EA provisions pertain.²⁵ Inclusion of provisions on movement of persons and cultural co-operation as well as of political co-operation meant that the Community had to share competence with the Member States. Since the Agreements were signed both by the Community and Member States, “endless discussion” over whose area of competence (Community or Member State) to which a particular issue belongs may be avoided.²⁶

The Europe Agreements are very lengthy documents and for the purpose of this article it is necessary to concentrate only on the political dimension of the Europe Agreements in order to gain a better understanding of foreign policy co-operation between Poland (and the other Central and Eastern European states) and the EU.

5. General political dialogue

A unique feature of the Europe Agreements is the inclusion of a political dialogue dimension. The EAs are based on Article 238 of the EEC Treaty (Treaty of Rome). There has never been a political dialogue dimension to agreements which used Article 238 as their legal basis until the establishment of these Europe Agreements. In essence, this means that for the first time structured political dialogue could take place between the Community, Member States and the associate members. The political dialogue is **structured** because the EAs contain “institutional provisions” which detail how political co-operation between the signatories of the EAs should be arranged.²⁷ The establishment of structured political dialogue was very important for Poland because it helped to reduce

²⁴ P.-C.Muller-Graff, *Legal Adaptation to the Market Economy of the European Communities* in: *The Legal, Economic and Administrative Adaptations of Central European Countries to the European Community*, ed. P.-C.Muller-Graff, ECSA series, vol. 1, Baden-Baden 1993, p.99.

²⁵ See: D.McGoldrick, *International Relations Law of the European Union*, London 1997, p.78, 84. Also, I.Macleod, I.D.Hendry, S.Hyett, *op.cit.*, p.142-164.

²⁶ P.-C.Muller-Graff, *Legal Adaptation...*, *op.cit.*, p.99.

²⁷ M.Maresceau, “*Europe Agreements*”: *A New Form of Cooperation Between the European Community and Central and Eastern Europe* in: *The Legal, Economic ..., op.cit.*, p.216.

concerns over losing too much sovereignty to the EU.²⁸ Political co-operation takes place on many levels and in various forms. Two of the main fora for political co-operation which came into existence after the inclusion of the political dialogue dimension in the Europe Agreements were the Association Council and the Association Committee.²⁹ In addition, there is also an Association Parliamentary Committee. Before the establishment of structural dialogue in 1994, political dialogue was very weak. It was not specific or concrete.³⁰

Polish Government ministers, members of the Council of the European Union and members of the European Commission comprise the Poland-EU Association Council.³¹ Formally, it is “*the decision-making body of the institutional system*”.³² Specific competencies have been given to the Association Council under the Europe Agreement with Article 104 stating that the Association Council is charged with the supervision of the Europe Agreement’s implementation and that it should strive to ensure that the objectives of the Europe Agreement are achieved; and it has been empowered by the EA to do so. The Association Council has the power to take binding decisions with regard to the appropriate measures which are needed to be taken to safeguard the implementation of the Europe Agreement.³³ As a corollary, the Association Council has the power of arbitration in cases where disputes referring to the “*application or interpretation*” of the Agreement have arisen between any of the parties to the Agreement (Art. 105). These legal provisions do not work so well in practice.

The Association Council meets once every year (and whenever circumstances require) for about one hour. There are lots of countries present and not enough time for discussion and presentation of statements. The EU spends about 20 minutes outlining its stance, leaving only 40 minutes for all the associate countries to respond. This means that each associate country is limited to

²⁸ For information regarding the classic concept of sovereignty and the intensive debate over the extent of the loss of Polish sovereignty once Poland has acceded to the EU then see A.Wasilkowski, *Uczestnictwo w strukturach europejskich a suwerenność państwowa (State Sovereignty and Participation in European Institutions)*, “*Państwo i Prawo*”, vol. 51 1996, p.15-23. See also Art. 90 of the new Constitution of the Polish Republic of 2 April 1997.

²⁹ There are also various sub-committees and working groups within the Association Committees.

³⁰ From interview with senior official at the Polish Committee for European Integration in January 1997, Warsaw.

³¹ See: *The European Union's Pre-Accession Strategy for the Associated Countries of Central Europe*, European Commission, Brussels 1995, DG1A, p.9.

³² E.Dienes-Oehm, *Problems and Trends in the Implementation of the Europe Agreement. Institutional Connections* in: *Hungary: From Europe Agreement to a Member Status in the European Union*, ed. F.Madla, P.-C.Muller-Graff, ESCA series, vol. 3, Baden-Baden 1996, p.86.

³³ See: *Układ Europejski (Europe Agreement)*, “*Dziennik Ustaw*” (“*Journal of Laws*”), 27.01.1994, Appendix to no 11, item 38, Art. 104.

a 4 minute statement on all the issues covered by the EU in its much longer statement. Association Councils do not get to technicalities; the discussion is political.³⁴ Essentially, a lot of time and money is wasted and it imposes extremely high costs on the associate states in order for them to have any political dialogue.

According to Polish officials, the Association Committee is the real “workhorse”.³⁵ It prepares the meetings of the Association Council and it revises the agreements made at the Association Council's meetings. The Association Committee meets twice yearly and is composed of representatives of members of the European Council, members of the European Commission and representatives of the Polish Government, “normally at senior civil servant level”.³⁶ Powers allocated to the Association Committee under the terms of the Europe Agreement include the preparation of the subjects which are to be discussed at the Association Council and the implementation of “decisions and recommendations” produced at the meetings of the Association Council. It is also possible for the Association Council to delegate its power to the Association Committee³⁷ and in these instances the Association Committee may take decisions or make recommendations regarding the implementation of the Agreement.³⁸

But in both cases (the Association Council and Association Committee), the preparations for the meetings are very tight. Meetings are short and do not allow for real discussion or presentation of stands. Polish delegates leave wondering whether their reports and statements on their stance have been taken into consideration or are even looked at again. With regard to structural dialogue, Polish officials believe that the meetings reflect the importance that EU Member States attach to the issues. If the EU attaches great importance to an issue then the Member States come well-prepared and the meetings are generally “good”. Internal market discussions are held to be “good” in so much as they tend to be more thorough than the meetings dealing with other areas, and they tend to produce more concrete results. And there has been some progress made on

³⁴ From interview with senior official ..., op.cit.

³⁵ Ibid.

³⁶ *Układ Europejski*, op.cit. Art. 106.

³⁷ The Poland-EU Association Committee may create Sub-committees and Working Groups to assist it with certain aspects of the implementation of the Europe Agreement. There are separate Sub-committees dealing with the following aspects of European integration: a) Harmonisation of Legislation; b) Statistics; c) Science, Research and Education; d) Environmental Protection; e) Transport and Infrastructure; f) Customs cooperation; g) Competition; h) Agriculture; i) Economy; and j) Coal and Steel. Working Groups were established to deal with issues relating to certification, establishment of enterprises and provision of services, and implementation of Titles VI and VIII of the Europe Agreement.

³⁸ E.Dienes-Oehm, *Problems and Trends* ..., op.cit., p.86.

Internal Affairs and Administration (e.g. co-operation on prevention of crime, drug trafficking). After complaints from the CEE states, the EU has said that structured dialogues should be planned in advance. For Internal Market structural dialogue meetings, Poland receives the agenda two weeks in advance. But this stipulation has still to take effect in other areas. Before it was only known that a certain structural dialogue meeting was to be held in a particular month, the actual date was never confirmed until very near the time. And there was never an agenda available in advance. Now the countries of the CEE region have been invited to present documents in advance of these meetings.³⁹

The third main forum for structured political dialogue takes place under the auspices of the Poland · EU Association Parliamentary Committee. And as its name would suggest, it is composed of elected delegates from both the European Parliament and the Polish Parliament (Sejm). In essence, members of both parliaments meet alternatively in Brussels and Warsaw in order to discuss matters of common interest such as problems arising in the implementation of the Europe Agreement on both sides. Critics have suggested that the Parliamentary Association Committee is essentially just a “talking shop” with no real powers,⁴⁰ and to a certain extent this is true, especially with regard to the Poland · EU Association Parliamentary Committee. In addition, the Parliamentary Association Committee can only make recommendations to the Association Council. But the Association Council must comply with all requests from the Parliamentary Committee for “*information regarding the implementation*” of the Europe Agreement. Furthermore, the Association Parliamentary Committee must be informed of decisions taken by the Association Council.⁴¹

6. Political dialogue within the Second Pillar

Central East European states are, arguably, more aware of the necessity of adopting a Common Foreign and Security Policy. They view its implementation as a “*question of peace and security in Europe*”.⁴² This is not surprising in a region which has only recently regained its freedom after years of domination by a foreign power, and before that experienced ethnic wars, and invasions by other powerful foreign states. One of the importance features of the CFSP from

³⁹ From interview with senior official ... , op.cit.

⁴⁰ L.Ramsey, *The Implications of the Europe Agreements for an Expanded European Union*, “*The International and Comparative Law Quarterly*”, vol. 44, no. 1 1995, p.165.

⁴¹ *Układ Europejski*, op.cit., Art. 108-110.

⁴² J.Sedivy, *Common Foreign and Security Policy: A Central European View* in: *The European Union's Common Foreign and Security Policy: The Challenges of the Future*, ed. S.A.Pappas, S.Vanhoonaeker, Maastricht 1995, p.86.

the CEE states' viewpoint is that it provides an opportunity for the structured co-ordination of foreign policies between the CEE governments and the 15 EU Member States. Whenever the EU does manage to adopt a common foreign policy position then Poland and the other associated members have the opportunity to align their foreign policies with those of the EU by adhering to the EU's foreign policy declarations and diplomatic actions (*demarches*) or by participating in joint actions under the Second Pillar.

The Europe Agreements constitute a broad framework for co-operation in the field of foreign and security policy for the associated members.⁴³

There are three distinct forms of co-operation between the EU and its associated states within the framework of the CFSP. The first involves regular meetings between the Heads of EU States and Governments and the Central Eastern European counterparts. Secondly, there are special CFSP contact points and thirdly, there are also co-ordination at international fora and regular contacts in third countries. As far as regular meetings are concerned, the resolution of the foreign affairs ministers of 7 March 1994 and the Corfu European Council decided that the members of the European Council together with the President of the Commission should meet with each of their Central Eastern European counterparts at least once a year. However, during the Amsterdam Summit it was decided to discuss issues inside the family, so the associated states were not invited.⁴⁴

The content of this participation has a more general character. It involves structural dialogue between the two sides who have unique opportunity to exchange their views at these meetings. The most important aspect of these meetings is that associated members have the opportunity to present their problems at the highest level. As far as regular ministerial, political director and European correspondent level meetings are concerned, those meetings are not comprehensive. It was agreed that the General Affairs Council shall invite the foreign affairs ministers from the associated states in conjunction with one of its sessions. The agenda of this special meeting is decided by the Presidency with a view to discussing foreign policy matters of common interest. In practice, a consultation procedure also exists with the associated countries and as a result, occasionally, the Presidency takes on some of their informal proposals. The experience so far has shown a gradual development from a formal and limited,

⁴³ For more about the legal framework for relations between the EU and the CEE states then see: P.Muller-Graff, *Legal Framework for Relations Between The European Union And Central And Eastern Europe: General Aspects* in: *Enlarging the European Union*, ed. M.Maresceau, Edinburgh 1997, p.25-40.

⁴⁴ P.Dunay, T.Kende, T.Szucs, *The Integration of Central and Eastern Europe into the Common Foreign and Security Policy of the European Fifteen* in: *Enlarging the European Union*, op.cit., p.316-35.

though still useful exchange of ideas towards a substantive dialogue at ministerial level.

Prior to each European Council meeting during each Presidency, the Political Committee arranges at least one meeting with the Political Directors from the national foreign ministries of the associated states. One of the objectives of these meetings is the preparation of the meetings of foreign ministers, who in turn prepare the summit of Heads of State and Government. The agenda normally is already a draft agenda for foreign ministers, therefore these meetings serve as a kind of co-ordination forum with the associated partners before finalisation of their programme.

The meetings of European correspondents and associated European correspondents form an integral part of a special relationship which is also based upon the rules of structured dialogue. The main long term objective of this relationship is gradually to involve associated correspondents in the everyday practice of the Union's foreign policy mechanism through the establishment of regular links with their EU partners, the European correspondents. According to the arrangements of the political dialogue both partners meet twice a year during each Presidency, theoretically once at its beginning and once in preparation for the ministerial and Political Director level meetings.

Meetings of working groups are also within the framework of structural dialogue between national experts of ministries of associated countries with a number of EU working groups. It means that there is a special session for any working group during each Presidency where the associated countries are invited to participate. On these occasions, it is usually not the delegates of the fifteen Member States but only those of the Troika,⁴⁵ together with officials from the General Secretariat of the Council alongside the European Commission which represents the EU. During those meetings several common positions are built upon consensus and the most important result is that associated countries follow the voting patterns of EU members in the United Nations and other international organisations. Referring to the Common Foreign and Security Policy's special contact points based on the General Affairs Council decision on 7 March 1994, several contact points at the Brussels' missions of the Central and East European states were established to maintain regular contacts with the permanent representatives of the Member States, the Commission and the Council Secretariat. This solution ensures fast and reliable communication between EU and Central and Eastern European states. Furthermore, the special CFSP

⁴⁵ The Troika consists of the EU Member State holding the Presidency, the state which held it previously as well as the Member State which is due to assume the Presidency next. Ibid.

counsellors at the permanent representative of the Member States were nominated in order to implement decisions taken under the CFSP framework.⁴⁶

Another very important aspect of co-operation is co-ordination of activities at international fora and regular contacts in third countries. Co-operation between EU members and the Central and Eastern European associated members embraces four distinct areas. The first type is a faraway crisis situation with remote political and hardly any economic interest on the part of the Central and Eastern European states. Co-operation with the EU in this area is relatively easy and the pattern of voting is almost identical. Both partners are trying to get support having in mind the principle of reciprocity which might be used later on.

The second type occurs when the crisis involves the economic interest of the CEE states. Such sensitive issues bring frequently different patterns of voting and the EU examines carefully the loyalty of Central and Eastern European countries.

The third type is a crisis within the immediate neighbourhood of Central and Eastern European countries, particularly on the territory of former Yugoslavia or in the area of the Commonwealth of Independent States. In these crises, on the brink of Central Europe, the commitment of CEE states to follow the policies determined by Brussels has been less than strong.

The fourth type of crisis is between two nations in the region or inside a single Central Eastern European country. These types of crises do not fall within the remit of the CFSP since the Second Pillar is concerned with foreign policy co-operation and does not intervene in a state's domestic affairs or interstate problems between Member States.⁴⁷

The establishment of this type of relationship does not mean that the European Union through the CFSP did not intervene in some crises in this region. Several mechanisms were used and in case if a CFSP mechanism was implemented against one of the Central and Eastern European countries the structural and political dialogue between that state and the EU would cease.⁴⁸

Another very important area is what kind of devices of co-operation in the field of CFSP could be implemented. Currently the associated countries have access to three foreign policy instruments: alignment with EU declarations, adherence to EU political demarches and participation in EU joint actions. It should be mentioned that in each case the condition of participation in each device is decided by the EU. According to the revised guidelines for enhanced political dialogue accepted on 19 October 1995, "*due to time factor involved it may not always be possible to have the associates participate*". In addition, "*the EU reserves the right to derogate from the above guidelines when this is*

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ S.Stebelski, *Wspólna Polityka Zagraniczna i Bezpieczeństwa UE (Common Foreign and Security Policy)*, "Sprawy Międzynarodowe", nr 3 1997, p.40-43.

warranted by the urgency of the matter or other overriding concern". From the point of view of Poland and the other Central and Eastern European states this situation is highly unsatisfactory as it perpetuates the belief that they are still not equal partners in this regard. For instance, the recent developments in Belarus which led to the European Union's decision not to allow permit visas for 131 high ranking Belarusian officials in reciprocity for President Lukashenko's activities against Western diplomats was perceived completely in Warsaw than in Brussels. Poland accepted in principle the European Union's decision but sharing a border with Belarus and trying to shelter Belarusian opposition could not follow such drastic steps. The same refers to the other Central and Eastern European states.⁴⁹

The Maastricht Treaty introduced two new instruments to the area of foreign policy: common positions and joint actions. The EU has denied the CEE states access to direct participation in common positions. Considering joint actions, the European Union has invited the associated countries to participate several times. With regard to declarations and demarches, the Central and Eastern European countries have been invited mainly to participate in declarations and only rarely have invitations been issued for participation in demarches.⁵⁰

There are some procedural problems connected with the alignment of the CEE states to the EU's diplomatic declarations. Firstly, the initial information which is provided by the Council Secretariat to the Central Eastern European countries' permanent missions in Brussels usually does not provide all the information about the details of the declaration or demarchee to be made but rather limits itself to communicating the general direction of the measure which is planned to be taken. Based on that the associated countries have to inform the Council Secretariat whether or not, they accept the proposed declaration or demarchee. Later on when finally the text of the declaration or demarchee has been prepared, the Council Secretariat gives a short period of notice (from a few hours to 3 or 4 days) for associated members to give their acceptance. Since the entry into force of the Maastricht Treaty, the EU has issued over 200 declarations but the CEE states have only had the opportunity to adhere to 30.

The CEE states are only informed about the EU's proposed joint actions when there is a likelihood that their participation may be held to be desirable by the EU. However, the EU reserves the right not to consult with associated members, the necessity for such kinds of actions. In practice, in comparison with the high number of declarations there have been very few situations where

⁴⁹ See: *Polska nie chce naśladować Brukseli (Poland doesn't want to follow Brussels)*, "Rzeczpospolita", 11-12.07.1998. See also *UE-Białoruś: Łukaszenko nie wjedzie (EU-Belarus: Lukashenka will not come)*, "Rzeczpospolita", 10.07.1998, and *Alexander Lukashenka, Europe's odd man out*, "The Economist", 25.07.1998.

⁵⁰ *Legal Issues of the Maastricht Treaty*, O'Keefe & Twomey, London 1996, p.216-18.

invitations to participate in the implementation of joint actions have been submitted.

When the workings of the European Union's CFSP are examined then it soon becomes obvious that the EU rarely manages to achieve its foreign policy objectives through the CFSP and that in fact, the CFSP does not work very well due to difficulty of achieving unanimity among all fifteen Member States. In addition, the actual role of the associated CEE states within the framework of the Second Pillar is rather limited. They have no influence in the decision-making process within the CFSP and may only accept or reject the EU's final foreign policy position (providing the EU does indeed actually manage to achieve a position which has been agreed upon by all fifteen states). So the CEE states have no role in the shaping of the EU's foreign policy because, at present, the EU Member States do not want to give their associated partners any decision-making powers within the CFSP framework. All of this serves only to highlight that it is through the policy framework of the Europe Agreements, as opposed to the CFSP policy machinery, that the greatest impacts of the Union's foreign policy objectives towards Poland and the other states within the CEE region are experienced by the CEE actors because of the greater scope for interaction and the more tangible nature of the Europe Agreements.

7. Final remarks

In spite of the institutional weakness of the CFSP, the Second Pillar is still very important for Central and Eastern European countries. The Europe Agreements provide the legal framework for the links with the CFSP. The Commission in „Agenda 2000” expressing its opinion about Polish foreign policy gave a positive evaluation and stated that “*Contemporary Polish foreign and security policy ensures that Poland as a member of the EU will have no difficulties in complying with the EU's Common Foreign and Security Policy*”.⁵¹ Due to the fact that it is still very difficult for the EU to formulate a common foreign and security policy, with members of the EU quite often expressing various opinions, there is still room for bilateral relations in order to find the best solution. Interestingly, the vacuum which occurred in this sphere has partly been filled by the active role of the largest member of the EU and the dominant power in the region · Germany.

⁵¹ See *Agenda 2000: Commission's Opinion on Poland's Application for the European Union*, European Commission, Brussels 16 July 1997.