REPUBLIC OF POLAND

MINISTRY OF FOREIGN AFFAIRS

Treaty of Nice -

the Polish Position

Warsaw, 15 February, 2001

Foreword

The decisions taken by the European Council in Nice in December 2000 are of fundamental significance for the process of European Union enlargement. The European Council accepted the new strategy proposed by the European Commission on the question of accession negotiations which to a significant degree meets the postulates submitted by the candidate states, including Poland. At the same time the European Council specified a possible accession date for the first group of candidate states, expressing the hope that these states ought to have the possibility of taking part in the elections to the European Parliament in 2004 - and in the next Intergovernmental Conference (the commencement of which is also planned for 2004). This assumes that the first group of candidate states will achieve membership of the European Union by January 1, 2004. The Nice decisions therefore are leading - and this ought to be noted with particular satisfaction - to a significant convergence of the positions of the EU member states and the expectations of the candidate states, including Poland, as far as the tempo of the enlargement process is concerned.

However the fundamental significance of the decisions taken at the meeting of the European Council in Nice, which find their expression in the Treaty of Nice, lies in the institutional preparation as well as the preparation of the decision-making process of the European Communities and the European Union to work effectively in the conditions of an increased number of member states to 27. The announcement that the European Union will be ready to accept the new member states by the end of 2002 was thus fulfilled. Currently on the EU side there are no barriers of a structural nature which might tend to slow down the tempo of the enlargement process.

The document presented includes an analysis of the most important provisions of the Treaty of Nice from the point of view of Polish interests. The starting point of the assessments contained in it is Poland's position specified in my predecessor, Bronisław Geremek's letter of February 2000 to the Portuguese foreign minister, J. Gama, the then president of the EU Council; and in the document "Intergovernmental Conference 2000 - the Polish Position", presented in June 2000. Anticipating the detailed analysis of particular problems, I would like to draw attention to the following issues which are of fundamental significance from the Polish Position:

- Irrespective of the difficult discussions at the European Council meeting in Nice, the treaty contains sound solutions, which comprise a balanced, solidary compromise in the interests of the "small", "medium-sized" and "large" member states; from this point of view Poland - as a future member of the European Union - will from the beginning have a guaranteed position conforming to its demographic potential.

- The Treaty of Nice includes solutions which guarantee the effectiveness of action of the European Communities and the European Union and the strengthening of the dynamic of the integration processes in a Europe confronted by the new challenges of the 21st century. This fully meets the expectations of Poland, in whose strategic interests lies active membership in effective European and Euroatlantic integration structures.

- The Treaty of Nice strengthens the idea of an open and democratic European Union. This has a particular significance from Poland's point of view since as soon as membership is achieved, Poland will take on a particular responsibility for the development of active relations with its neighbours to the east as well as in backing the democratic and economic reforms in the central and eastern European region. The history of Poland

means that it is just here that a particular understanding of the direct link between democracy, prosperity and peace exists.

- The Declaration on the future of the Union appended to the Treaty of Nice informs of the calling of the next Intergovernmental Conference in 2004. This is to deal with the solution of problems which will decide the shape of the European Union in the future. It is a matter of fundamental significance that the first group of candidate states will have the opportunity of taking part in this conference as new member states, and thus directly jointly decide on the future shape of Europe. Poland declares its constructive and solidary participation in this process.

The Treaty of Nice is a sound and good starting point for European states on the threshold of the Third Millennium.

Władysław Bartoszewski
Foreign Minister of the Republic of Poland

1.1 The Treaty of Nice as the basis for the institutional preparation of the European Union for the acceptance of new member states

The Treaty of Nice is an important stage in the institutional development of the European Union in the sense, above all, that its coming into force will be synonymous with the readiness of the EU to accept new member states. In the Declaration on the future of the Union it was stated that "the conclusion of the Conference of Representatives of the Governments of the Member States opens the way for enlargement of the European Union and... with ratification of the Nice Treaty, the European Union will have completed the institutional changes necessary for the accession of new Member States."

Understandably Poland followed the proceedings of the Intergovernmental Conference 2000 and the work on the Treaty of Nice with close attention. This is because the results of the work of the Conference and the text of the Treaty have a direct influence on the realisation of one of Poland's fundamental priorities - the fastest possible accession to membership of the European Union.

In the document "Intergovernmental Conference 2000 - the Polish Position", which was submitted on June 14, 2000 - the following issues were stressed:

„... Poland is in favour of an active and future-oriented EU reform process, as it is in Poland's strategic interest:

- ***To join an effectively functioning Union**, which would allow to strengthen Poland's position in Europe as a democratic state with a functioning market economy;*
- ***To join a Union offering a strong sense of belonging and partnership**, which is of particular importance to countries implementing profound transformations of their political and economic systems;*
- ***To join a Union skilfully balancing the interests of 'large', 'medium-sized' and 'small' Member States**, for Poland, due to its historical experience and geographical location, is particularly guided by the partnership principle;*
- ***To join an open Union**, ensuring economic stability and political security, since it is a major challenge to Poland to shape its relations with its neighbours to the East in such a way as to make them constructive and stable;*
- ***To join a Union respecting the history, culture, tradition and national identities of its Member States**, as Poland, following a several-decade-long separation from Europe is also in the process of reconstructing its national and cultural identity, and wishes to strengthen its contribution to all-European values".*

Taking into account the above guidelines and the results of the work of the Conference it is necessary to state that the Treaty of Nice accords with the strategic interests of Poland:

- the changes introduced **guarantee the effective action of the European Union** after the increase of the number of its member states to 27 and in the conditions of an increased differentiation in their economic potential;

- despite the difficult discussions at the Intergovernmental Conference, the solutions included in the Treaty **represent a compromise in the interests of the "large" , "medium-sized" and "small" states**; they also guarantee the interests of Poland to an extent appropriate to its demographic, economic and political potential;

- the reforms being introduced **strengthen the openness of the European Union** - both "on the outside", emphasising the openness of the process of EU enlargement, and "towards the

inside", guaranteeing that the new member states will be fully included in all the integration mechanisms.

1.2. The provisions of the Treaty of Nice - the agenda of the Intergovernmental Conference 2000

The changes introduced by the Treaty of Nice institutionally prepare the European Union to act in the conditions existing when the number of member states increases to 27. This fully meets the requirements of the mandate of the Intergovernmental Conference 2000. At the meeting in Cologne on June 3 and 4, 1999, the European Council confirmed its "intention of convening" an Intergovernmental Conference at the beginning of 2000 with the aim of "solving the institutional problems which were left open at Amsterdam and which need to be solved before enlargement". At its meeting in Helsinki the European Council decided on December 10, 1999, that the Intergovernmental Conference ought to concentrate on three basic problems:

- the shape and composition of the European Commission,
- the new weighting of votes on the Council,
- the extension of the scope of qualified majority voting.

This was the so-called basic agenda of the Intergovernmental Conference. The European Council in Helsinki also stated that the Intergovernmental Conference ought to deal with "other necessary changes to the Treaties concerning European institutions in connection with the above-mentioned problems and the implementation of the Treaty of Amsterdam." These "other necessary changes" covered in particular the reforms of:

- the European Parliament;
- the community organs of justice (the Court of Justice and the Court of First Instance)
- the Court of Auditors;
- the advisory organs - the Economic and Social Committee and the Committee of the Regions.

Even so the Conclusions from Helsinki - independently of the problems mentioned above - foresaw the possibility of a further extension of the Intergovernmental Conference agenda. At issue were two extensive areas of complex problems:

- at the Helsinki meeting in December 1999, the European council took a crucial decision on the question of the Common European Security and Defence Policy, announcing among other things the creation of new institutions in this area. It was therefore necessary to consider to what extent changes were necessary in the treaties constituting the European Union;
- the decisions taken by the European Council in Helsinki also gave the EU member states the right to "propose other additional problems", which could be included on the Intergovernmental Conference agenda. Before the beginning of the Conference proceedings a dozen or so important problems of this kind emerged, including: the Charter of Fundamental Rights, strengthening the democratic legitimation of the EU on the way to

modifying Art. 7 TEU, the division of the provisions of Treaties into two separate parts - the basic texts and the implementing texts, concerning which less complicated mechanisms of revising the treaties would be introduced (this proposal was in Dehaene's report). Other proposals made were: the extension of the TEU provisions in the question of so-called enhanced co-operation, the specification of the division of areas of competence between the EU (Communities) and the member states and the setting up of the institution of European public prosecutor to fight corruption within the EU.

Irrespective of this the Intergovernmental Conference proceedings passed in an atmosphere of growing general discussion on the future of the European Union, begun by the famous speech by Joschka Fischer, Germany's foreign minister. Poland's voice was not absent from the discussion. In a lecture delivered in Brussels on July 25 Władysław Bartoszewski, Poland's foreign minister, comprehensively presented Poland's position in this field.

On the question of the Intergovernmental Conference agenda Poland's position was unambiguous. In the document entitled "Intergovernmental Conference 2000 - the Polish Position" it was stressed that:

„The agenda of Intergovernmental Conference 2000 ought to be shaped dynamically and be future-oriented. ***It should, however, focus primarily on achieving the objective set before the Intergovernmental Conference by the Cologne and Helsinki European Councils in 1999: to prepare the European institutions for the enlargement process by the end of 2002, as scheduled. Poland can see the need for extensive reform of the European Union, and advocates an active and future-oriented programme of such reform. It should, however, be harmonised with the agenda of Intergovernmental Conference 2000 in such a way as not to prolong its work, and, consequently, not to decrease the dynamics of the enlargement process".***

It should be stressed with satisfaction that the member states of the EU accepted an analogous point of view. Only two crucial questions were added to the Conference agenda:

- the modification of regulations concerning so-called enhanced co-operation;
- and the modification of the art. 7 TEU provisions.

Irrespective of this the Treaty of Nice introduces a series of changes which increase the efficiency of performance of specific institutions and necessary changes to the II pillar of the EU.
Therefore a method was adopted which guaranteed the achievement the basic aim - the institutional preparation of the EU to accept new members.

1.3. The influence of Poland on the decision-making process during the Intergovernmental Conference

Because of the linking of the results of the Intergovernmental Conference 2000 and the content of the provisions of the Treaty of Nice with Poland's strategic interests, an extremely important problem was the guaranteeing of a far-reaching discussion in this area between the member states of the EU and the candidate members. The European Council stressed at its meeting in Helsinki that "candidate states will be regularly informed ... abut the progress made in discussions and will have the opportunity of presenting their views." In the document "Intergovernmental Conference 2000 - the Polish Position", it was emphasised that *"Poland is looking forward to a further, regular and deepened dialogue on institutional reform"*.

Poland states with satisfaction that during the Intergovernmental Conference 2000 it had the opportunity of presenting its position and it took advantage effectively of this opportunity, in particular:

- just before the formal opening of the Intergovernmental Conference which took place in February 2000, the then president of the Council, Portuguese Foreign Minister J. Gama addressed the foreign ministers of the candidate states in a letter, presenting the standpoints on the problems covered by the Conference agenda; Polish Foreign Minister Bronisław Geremek presented such a standpoint in his letter of January 24, 2000.

- Poland also submitted a detailed position in this area in the document already mentioned - "Intergovernmental Conference 2000 - the Polish Position" which was presented by Foreign Minister Geremek on June 14, 2000 in Luxembourg at the fifth session of the Intergovernmental Conference on Poland's accession to the EU;

- the basic problems, covered by the Intergovernmental Conference agenda were the subject of intensive talks in the political and diplomatic dialogue with representatives of the EU member states, especially Portugal and France, which in 2000 were the successive presidents in the Council. Both presidencies organised special information meetings devoted to the IGC;

- foreign ministers of the candidate countries took part in the meeting of the European Conference in Sochaux in France on November 23, 2000, which was devoted to a discussion on the subject of the progress made in the IGC on the eve of the Nice summit;

- immediately before the beginning of the European Council meeting in Nice on December 7, 2000, the heads of state and government of the candidate states had the opportunity of presenting their standpoints at the second meeting of the European Conference;

- as early as the European Council meeting in Nice, during the difficult discussions conducted by the heads of state and government of the member states, Poland's Prime Minister Jerzy Buzek directly presented Poland's position in telephone conversations, in this way he influenced the course of the negotiations.

2. The basic agenda of the Intergovernmental Conference 2000

2.1. European Commission

The document "Intergovernmental Conference - the Polish Position" stated:

„Poland's position is that each Member State should retain the right to propose a candidate for a European Commission member. This is a condition of maintaining the democratic legitimisation of the Commission's operations. The effectiveness of the work of the European Commission's college will depend primarily on the transparency of its structure and a clear-cut division of responsibilities among individual Commissioners, rather than on its size. (...) Particular attention should be paid to the process of institutional reform that does not involve amendments to the Treaties. (...) *The need to enhance the Commission's credibility as a European institution* ***is an argument in favour of introducing the principle of the Commissioners' individual responsibility while preserving its collective character.***

The discussion at the Intergovernmental Conference 2000 on the matter of reforming the European Commission covered the question of the size of the Commission after EU enlargement, its internal organisation, the vote of no confidence in the Commission and its individual members and the question of the treaty regulations concerning the resignation of the members of the Commission.

On the matter of the size of the Commission two options were considered at the same time, each of them in several versions. The majority of delegates thought that the acceptance of public opinion could be maintained only by a Commission acting as a collegiate body in which every member country of the EU had one commissioner. Apart from guaranteeing the equal treatment of all the EU member states, this was to ensure the effective action of the Commission, taking into account the increasing tasks which it would have to take on. The opponents were of the contrary opinion, considering that enlarging the composition of the Commission when the EU was enlarged would weaken the effectiveness of the Commission, and in addition threaten its position as a body independent of governments. Supporters of the minority option claimed that a Commission exclusively composed of a small number of commissioners (e.g. 20) would be an independent and collegiate body, having the opportunity of guaranteeing the cohesion and effectiveness of its actions. They thought that with around thirty members it would be a more deliberative than executive organ.

Although no compromise was achieved between the supporters of both options before the European Council meeting at Nice, all the EU member states were of the opinion that the agreed solution ought to be accepted before enlargement and that this could neither be partial nor temporary but definitive.

The changes adopted in Nice concerning the numerical composition of the European Commission will be introduced in the two stages described in article 4 of the Protocol on the enlargement of the European Union attached to the Treaty of Nice. It is stated there that starting on January 1, 2005, Article 213, Paragraph 1 of the Treaty establishing the European Community will change as follows: "The Commission shall include one national of each of the Member States. The number of Members of the Commission may be altered by the Council, acting unanimously."

But when the EU attains 27 member states, Article 213, Paragraph 1 of the Treaty establishing the European Community will be changed as follows:

" The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously. " Further on there is an explanation of what will no longer be included in Article 213 of the Treaty establishing the European Community, that it will be possible to introduce this change on the same day as the first Commission takes office after the acceptance by the EU of the twenty-seventh member.

In the Protocol on the enlargement of the EU we also read that after signing the treaty of accession of the twenty-seventh member, the EU Council will unanimously make a decision concerning: the number of members of the Commission and the principle of equal rotation, covering all the necessary criteria and rules for automatically determining the composition of successive Commissions based on the following principles: the principle of strict equality of all states on the question of determining the order of their citizens moving onto, and remaining on, the Commission so that the difference between the total number of seats held by the citizens of two member states would never be greater than one. With the proviso that the composition of each successive Commission was determined in such a way that it reflected in a satisfying way the demographic and geographic diversity of all the EU member

states. Finally it is added that each state acceding to the EU has the right , at the time of its accession, to nominate one member of the Commission up to the time when the regulations on rotation are applied.

Other changes concerning the European Commission were directly introduced into the Treaty establishing the European Community and refer in Articles 214 and 215 to the choice of its president and members and, in Articles 217 and 219, to the organisation of the Commission and the strengthening of the prerogatives of its president. The changes in Article 217 take into account the majority of the postulates of the European Commission itself and of the Dehaene group.

The term of office of the members of the European Commission, defined as 5 years, remains unchanged. On the other hand the principles of election of the members of the Commission and its president have been changed. And so the president of the European Commission is chosen by a qualified majority of the EU Council, acting on the level of heads of state and government, with the approval of the European Parliament. The EU Council, by qualified majority and in agreement with the selected president, adopts a list of people whom it intends to appoint as members of the Commission, decided on the basis of proposals from each of the member states. The president and the remaining members designated in this way are subject, as a group, to confirmation and a vote by the European Parliament. After acceptance by the European Parliament, the president and remaining members are appointed by the EU Council by a qualified majority. In the case of death of resignation of a European Commission member, his or her place is taken, up to the end of the term of office, by a new member appointed by qualified majority by the Council. In the case of this concerning the Commission president the election procedure of his or her successor is the same as that which applied at his or her election.

The political direction of the activities of the Commission is set by the president who also decides on the internal organisation of the Commission's work with the aim of ensuring its cohesion, effectiveness and collegiate nature. The president also sets the structure of the Commission and the extent of accountability of individual members. During the Commission's term of office he may make changes in this area. The members of the Commission perform the functions defined by the president and under his direction. The president selects vice-presidents from among the Commission members and with its complete agreement. A member of the Commission may resign if he or she is asked to do so by the Commission president in agreement with the whole Commission college.

The provisions concerning the numbers on, and organisation of, the European Commission are derived from three main elements:

- the need of preserving the collegiate and democratic character of the EC.
- guaranteeing the effective functioning of the EC and the "Community method" with the much higher number of EU members.
- the lack of a scenario of moving from EU-15 to EU-27.

The compromise and outline character of the adopted agreements opens up big opportunities for their flexible operation. This concerns especially the setting aside until later of decisions on the target composition of the EC and the method of realisation of the principle of egalitarian rotation. These questions will certainly be the subject of difficult negotiations in the future. It needs to be stressed that the decisions on the question of the target composition of the EC and the principle of rotation of Commissioners will have to be taken unanimously,

which may turn out to be a very serious barrier to achieving an agreement. An important novelty in the Treaty of Nice is that the European Commission will be elected on the basis of qualified majority voting.

The resignation of one seat in the college by the big member states will not weaken their influence on the decision-making process in the heart of the Commission. The position of the "big ones" might even grow stronger because of:

- the election of the EC president by qualified majority,
- the granting to the EC president of greater prerogatives,
- the introduction of the rotation of Commissioners.

The transitional increase of the number of EC members to 27 does not have to cause a fall in efficiency in the Commission's work. However there is no doubt that on the accession of the new states the internal differentiation of posts and interests will increase, which may complicate and prolong the decision-making process.

Although the practice until now does not confirm a general conflict of interests between the big and small countries, it cannot be excluded that with the increase in significance of the former and the increase in number of the latter a certain polarisation in the heart of the EC may ensue with consequences for the effectiveness of the decision-making process.

The efficiency of the Commission's work will first of all depend on the political will of member states to take full advantage of community mechanisms and methods, on the skill and competence of the president and the members of the college, and also on the appropriate distribution of tasks in the heart of the EC. A real problem, which the conference did not deal with, remains the lack of a precise division of areas of competence between the EU and the member states, which, considering the increasing tendency for key decisions to be taken on the international level may lead to the marginalisation and decreased significance of the EC.

The European Commission reforms, both the internal ones and those requiring treaty changes, must be ruthlessly subordinated to the requirements of the productivity and effectiveness of this institution. The Commission is the basic element of the so-called single institutional framework of the European Union which was already outlined by Robert Schuman. The crisis in the European Commission in March 1999 paradoxically showed everybody, including the candidates for membership, what key role the European Commission played in the public life of the EU. For the candidate countries the Commission is at times a difficult and demanding partner, but it is such because it is always motivated by the general good. The areas of competence dealt with and the enormous amount of work put in by the commissioners and the co-workers on their staff in the project of enlargement deserve recognition and respect. Europe cannot allow itself another crisis of confidence in this institution. That is why it is necessary to fully support Romano Prodi who undertook the task of internally reforming the Commission so that it could become more efficient and flexible and its members could bear full political responsibility for their actions. The reform of the Commission cannot stop - and certainly it will not stop - on a purely rhetorical level. The Commission, like the remaining European institutions, needs a new democratic legitimation. The changes introduced at Nice are subordinated to the same requirement. For the candidate countries the crucial guarantee of legitimation of the European Commission in the eyes of their public opinion is the guaranteed opportunity for them to appoint one member of the college.

The European Commission also personifies as the "guardian" of treaties the community method of European integration. This means the Commission's exclusive right of legislative initiative in all the areas of community politics (I pillar) and - to an ever greater extent - the European Parliament's right to jointly decide. **There is no reason why new member countries, and especially present candidates, should fear the community method. It will be advantageous for them because the treaty defined areas of competence of the European Commission demand that it be guided by the interests of all European Union members.** In the past it also allowed for a better consideration for, and protection of, the interests of smaller and economically weaker states. Before the new member countries gain experience and completely master the complex procedures of co-operation binding in the EU, they will be able to count on the support above all of the so-called institutional memory of the European Commission, which means not only knowledge of the procedures mentioned above, but also full awareness of the consequences of decisions taken or cancelled.

No fundamental contradiction should be seen to exist between the community method and the intergovernmental method. The absolute domination of one of them would necessitate the "dismantling" of the European Communities (in the case of the intergovernmental method) or the creation of a federal state in Europe (in the case of the community method). The community method is a guarantee of the progress of integration, progress in the limits marked out by the governments of the member states which preserve a whole palette of measures, allowing them to protect national interests (e.g. the right of veto on matters of a constitutional nature). It is to be expected however that as the integration processes deepen the resultant of both methods will be used ever more frequently (vide the mechanism of enhanced co-operation within the I pillar).

The decisions in Nice concerning the EC are generally advantageous for Poland as a new member. Deferring to the future the target composition of the college and the rotation of commissioners is also a guarantee for new members of the EU of a seat in the EC from the moment of accession.

2.2. Extending the scope of using qualified majority voting in the EU Council.

The document "Intergovernmental Conference 2000 - the Polish Position" stated:

„The debate on modifying the voting procedure in the Council, which has been going on incessantly since at least 1995, i.e. since the beginning of preparations for the 1996/1997 Intergovernmental Conference, ***is in fact a debate on the effectiveness of the decision-making system. The need to ensure efficient decision-making mechanisms in the enlarged European Union*** *is one of the main arguments by advocates of extending the principle of majority voting.*
Any extension of qualified majority voting ***should be preceded by a thorough analysis of all Treaty articles to which the unanimity principle has applied to date. Unanimity should continue to apply to matters of a constitutive nature***".

The compromise in the question of extending the range qualified majority voting on the EU Council is certainly more modest than expected. There was a failure when it came to raising qualified majority voting to the rank of a principle from which it would be binding only in the case of clearly defined exceptions. The negotiations in the Intergovernmental Conference applied to around 50 articles. Changes in the Treaty of Nice apply to 30 to 40 areas depending on the method of calculation. Voting by qualified majority was introduced into 28 articles. In the case of four of them this principle will be binding only on some areas of a field regulated by a given article (e.g. Art. 24 of the Treaty on the EU concerns making international agreements in the area of CFSP in the field, in which EU decisions are adopted by majority voting). In some cases the change in voting procedures were deferred in time

(e.g. until 2004 where some aspects of migration and visa policy are concerned - Art. 62 and 63, or to the year 2007 in the case of the functioning of the Structural and Cohesion Funds - Art. 161).

The progress achieved in the area of the I pillar has a quite limited character. There was a failure to completely cover the principle of qualified majority voting in the common trade policy and in the sphere of services and intellectual property (Art. 133.5 TEC). Trade in cultural, audiovisual, educational, social and human health services remains in the domain of the responsibility of the community and of the member states. In particular cases this also concerns services in maritime transport.

Social problems remain the domain of international co-operation. It is worth noting the creation of a treaty basis for the summoning of the Social Protection Committee which is to promote the coordination of the activities undertaken by governments in this sphere.

The use of qualified majority voting in the area of structural and cohesion policy (Art. 161 TEC) was deferred as mentioned above until 2007. Defining the duration of the next financial perspective remains a controversial issue - in this matter Greece, Spain and Portugal appended their common declaration to the Treaty of Nice. These countries are demanding the setting of the duration of the next financial perspective at 7 years as in the past, including in the case of Agenda 2000. The final version of the Treaty will not prejudge the duration of the next financial perspective, stating only that it will begin in 2007.

A serious difference in standpoints made it impossible for the taxation problems and the fiscal aspects of the environment protection policy to be covered by qualified majority voting. The member states adopted the declaration on promoting environment protection inside the EU and on a global scale.

The stipulations of the treaty concerning co-operation for development were rebuilt. Initiatives in the area of economic, financial and technological co-operation achieved a new dimension (New Title XXI, Art. 181a TEC). Only the conclusion of agreements on associate membership and the agreements concluded with the associate member states remain in the domain of unanimity.

The resignation from unanimity for the appointment of the president of the European Commission, the composition of the college and the external representation of the community in questions of EMU is a crucial change. This will certainly facilitate the process of forming the EC, encouraging states to seek a compromise and not stiffen their standpoints, which the requirement of unanimity encourages (see also point 2.3); it will also strengthen the status of the president. Majority voting creates, especially for the states with a stronger position, greater opportunities for the possible contestation of the actions undertaken by the commissioners, confirmed without their agreement.. It cannot be excluded that in case the proposed composition of the college is contested the opposition of big states will be taken into account more than the opposition of small states. The introduction of qualified majority voting for the election of the EC does not especially weaken the position of the leading states in the EU, it will however force the smaller countries to pay more careful attention to the standpoints of the biggest states.

In the area of the II pillar the modifications concern above all the resignation from the principle of unanimity in appointing the Secretary General. The deputies to the Secretary General of the EU Council and the special representatives for the CFSP (the possible implications present themselves in a similar way to the case of the EC).

In the III pillar limited progress has occurred in the field of problems of co-operation in the judiciary being covered by majority voting (Art. 67 TEC - civil matters with cross-border implications, excluding family law) and selected aspects of refugee status. There has been no success in achieving a horizontal agreement for including migration and asylum policy in the domain of qualified majority voting as well as the question of coordinating vertical activities in the internal affairs of member states. At the same time a declaration on taking the appropriate decisions on this and the remaining issues from May 1, 2004 was adopted.

The conservative position of the "15" concerning the extension of majority voting in the III pillar reflects above all:

- the lack of readiness by a part of the member states to limit the government prerogatives in this field,
- the lack of trust in the current functioning of community mechanisms,
- the fear of worsening conditions of internal security in connection with EU extension and the desire to preserve direct influence on the development of the situation.

As early as the introductory phase of the conference it was clear that the ambitious intentions of the French presidency, the European Commission and especially the European Parliament concerning the extension of the scope of qualified majority voting, and a stronger linking of the principle of majority voting to the principle of common decision-making of the EP, have no chance of success. The provisions of the Treaty of Nice confirm this in full. **The standpoint of the opponents of further development of the community method determined the quantitative rather than qualitative character of the changes.** The question of the extension of the principle of majority voting turned out to be so difficult that France did not undertake negotiations on the subject at all at the EU summit in Nice. The meeting confined itself to the acceptance of the results of the work of the Preparatory Group, confirmed by the General Affairs Council. The lack of agreement on the extension of the use of majority voting, especially with the prospect of a significant number of new members being accepted into the EU, may lead to increased internal tensions and a slowdown in the integration processes with harm being done to the long-term interests of the community. Such a danger is all the more real in that the accession of new states (they will certainly want to execute in full their newly achieved influence on the functioning of the EU), will probably encourage the "old members" of the EU to adopt an even more conservative approach to the problem of majority voting. The limited range of the extension of the principle of common decision-making in the EP, concerning decisions taken by a qualified majority, may lead to a weakening of the feeling of democratic legitimation of the decision-making process and an increase in tensions between the European institutions, especially the EU Council and the European Parliament.

From the point of view of the present interests of Poland as a candidate country to the EU, the limited range of the extension of qualified majority voting seems to be advantageous. The following factors determine this:

- a decrease in the negative effect of the feeling of resignation in part from national sovereignty which may emerge in Polish society immediately after achieving membership,
- a decrease in the possible additional economic burdens for Poland which qualified majority voting, covering such areas as environment protection, taxation, welfare, structural and asylum policy, might imply,

- gaining the opportunity of a "fuller" influence on the shaping of EU common policies,

- in the case of quick accession the opportunity of influencing the evolution of majority voting e.g. on the Intergovernmental Conference 2004 forum.

It should be remembered however that there is a potential influence of preserving unanimity concerning structural and cohesion funds until 2007 on the interests of new member countries. If it is assumed that negotiations on a new financial outlook in 2007 begin in 2005, it should be remembered that all changes in the field of structural and cohesion policy, including especially the amount and distribution of the budget, will have to be taken unanimously. This means very difficult negotiations in which the interests of at least three groups of states will clash: the current cohesive states, the new member states and the net payers into the EU budget. The opposition of only one of these is needed to block any decision.

2.3. The system of weighting votes in the European Union Council

The document "Intergovernmental Conference - the Polish Position" stated:

„ (...) The number of small Member States will rise considerably following EU enlargement, which will change the proportions between the large, medium-sized and small countries in the EU Council. ***The demographic criterion should remain the principle governing the distribution of votes in the Council of European Union"***.

The reform of the system of decision-making by qualified majority on the EU Council was to have been linked to the resignation of the five biggest states from the right of having a second commissioner in the European Commission. It was assumed that this would depend on either a new division of weighted votes or on the introduction of a double majority. However difficult it was to agree a joint standpoint of member states on this matter at the Intergovernmental Conference 2000, they did agree in general on some principles which ought to be observed when reaching a compromise. It was stressed that the system adopted would have to reflect the dual character of the Union as a union of states and a union of nations, to be fair, transparent, efficient and comprehensible, to propose a qualified majority such that its permanent element would be the support of over 50% of the population of the Union, which would facilitate and not hinder the EU Council's decision-making.

Fulfilling these conditions required a decision by the Intergovernmental Conference on three questions: the choice of the formula of double majority voting and a renewed division of the weighted votes, the fixing of thresholds for the number of votes for the qualified majority, the stipulation of the time it would take for the new voting method to come into force. The states favouring the double majority thought that the very fact that the qualified majority would be created by a majority of Union states would represent a legal basis for the decisions of the EU Council. States opposed to the double majority argued that it would be a too radical change in relation to the system binding hitherto, difficult to use in practice and would complicate decision-making because it was not easy to fulfil both conditions of the double majority.

It was proposed that the number of votes in the threshold for the qualified majority should be fixed as before at around 71%, taking into account the so-called Ioannina compromise and the declaration appended to the Treaty of Amsterdam. This speaks of prolonging the time of validity of the Ioannina compromise and declares the intention of finding a solution for the case of Spain, which demanded an equal number of weighted votes on the EU Council with

the four states disposing of the greatest number of votes. Differences of opinion existed between states as to the time when the weighted system of voting ought to be changed: some favoured the gradual introduction of this system as the Union became larger, others were for introducing it in one go or at the moment when the modified Treaty on the EU came into force.

At the European Council meeting in Nice, as in the case of the European Union Commission, amendments concerning the weighting of votes were written into the Protocol on the enlargement of the EU and the Declaration on the enlargement of the European Union.

According to the Declaration on the enlargement of the EU the system of weighting votes in an EU comprising 27 member states will be as follows:

Member States	**Number of votes**
Germany, Great Britain, France, Italy	29
Spain, Poland	27
Romania	14
Netherlands	13
Greece, the Czech Republic, Belgium, Hungary, Portugal	12
Sweden, Bulgaria, Austria	10
Slovakia, Denmark, Finland, Ireland, Lithuania	7
Latvia, Slovenia, Estonia, Cyprus, Luxembourg	4
Malta	3
Total	**345**

Decisions will require to be adopted at least 258 votes in favour cast by a majority of members in the case when, according to the treaty, they are adopted on the basis of a proposal from the European Commission (the community procedure). In other cases 258 votes cast by at least two thirds of the members are required.

The above mentioned changes come into force on January 1, 2005, in relation to the present member states. As from January 1, 2005 every member state will have the right to demand that, when a decision is taken by the Council by a qualified majority, there will be a verification to see that the qualified majority represents at least 62% of the total population of the Union. If it turns out that this condition has not been met, the given decision will not be adopted.

In Point 2 of Article 3 of the Protocol on the enlargement of the EU, we read that "at the time of each accession, the threshhold referred to in the second subparagraph of Article 205 (2) of the Treaty establishing the EC (...), shall be calculated in such a way that the qualified majority threshhold expressed in votes does not exceed the threshold resulting from the table in the Declaration on the enlargement of the EU".

In this context it is important to mention the Declaration on the qualified majority threshold and the number of votes for a blocking minority in an enlarged Union. According to this from January 1, 2005, which is the date when the new division of weighted votes on the EU Council comes into force, because not all the candidate states listed in the Declaration on the enlargement of the EU, will already have acceded to the Union, the qualified majority will be equal to a percentage of votes which is lower than at present. The required percentage of votes will increase until a maximum of 73.4% is achieved. When all the named candidate states become Union members , the blocking minority will be raised to 91 votes.

The haste with which work was done at Nice and the changes were introduced into the Treaty at the last moment (an amendment to the number of votes to the advantage of Romania and Lithuania) mean that the adopted agreements on the question of the threshold for the qualified majority with 27 EU member states, disposing of a total of 345 votes - expressed in numerical terms (258 votes) and as a percentage (73.4%) - not only do not meet their own requirements but in addition do not meet the requirements for a blocking minority, which is 91 votes. With a total of 345 votes and a blocking minority of 91 votes, the qualified majority threshold ought to be 255 votes which makes up 73.9% of all the votes. The attempt by small states, which already tried after Nice to increase the blocking minority to 93 votes, met with opposition from those countries which because of this would lose the opportunity of blocking decisions which were disadvantageous for them in an EU of 27 members with two big states and one small disposing of 7 votes.

The issue of dividing the weighted votes on the EU Council between the present and future member states and the question of the blocking minority dominated the main part the European Council meeting in Nice. Big countries benefited most from the changes in the way votes were weighted on the EU Council, proportionally 25% each. In the case of Spain - and also of Poland - this is even 30%. Until now Germany's 10 votes (out of 134) represented 7.5% while the 29 (out of 345) given to Germany in Nice represents 8.4% of all weighted votes.

Taking decisions by qualified majority according to the principles adopted at Nice will however require the compatibility of three elements: the required majority of weighted votes, the agreement of over 50% of the states and 62% of the population. In this way despite the fact that the idea of double majority was formally rejected in Nice, its derivative version was finally accepted in the form of the so-called demographic verification clause which increases the possibility of decisions being blocked by three big states - including Germany on account of its population potential - even if they do not manage to gather 91 votes for this purpose.

It is worth drawing attention to the additional clause which secures the requirement of the support of two thirds of member states for legislative proposals not submitted by the European Commission. This mechanism binding until now in the I and II pillars (see Articles 23 and 35 TEU) may be treated as a safeguard against the domination of big member states, as should the requirement to support decisions whose draft has been submitted by the European Commission by the majority of member states.

The system of division of votes adopted in Nice is the result of a compromise which was exceptionally difficult to reach, taking into account:

- the stronger linking of the number of votes with the demographic potential of member states,

- the maintenance, although to a lesser extent, of an excessive representation of smaller states in relation to the size of their populations,

- the increased threshold for taking decisions by a qualified majority of votes from 71% to 73.4% (target),

- the strengthening of the democratic legitimation of the decision-making process by qualified majority by introducing, in addition to the minimum threshold of two thirds of the number of states, a minimum ceiling of 62% of the EU population.

The new balance of power in the heart of the Council will undoubtedly bring an increased significance for the big states achieved at the cost of their resigning from one seat in the EC (it should be noted that Germany agreed to the same number of votes as the remaining big countries). As a consequence of this, the position of the smaller states will be weakened, despite the fact that in exchange they hold one seat in the EC in the period of transition from EU-15 to EU-27. It is difficult at present to forecast how the coalition of interests will form itself in the decision-making process in the heart of the enlarged Council. The experience until now indicates that it rarely corresponds to a "big state - small state" division. Rather it should be assumed that there will be a continuation of previous tendencies:

- *ad hoc* agreements between states,

- the influence of traditions and cultural links,

- the confrontation of liberal-minded states with the supporters of protectionism,

- the avoidance of formal voting (the very possibility of qualified voting leads the member states to seek a consensus).

The introduction of even a three-stage voting procedure by qualified majority undoubtedly complicates the Council's decision-making process. This may also have a negative influence on the functioning of the EU's interinstitutional agreement, making it even more opaque and less comprehensible for the citizens.

An increase in the number of members of the Council will change the character and method of its work. An increase in the diversity of posts, the number of statements, bilateral consultations, prolonged linguistic and legal procedures may additionally lower the efficiency of the decision-making process.

The provisions of the treaty are advantageous for Poland. Receiving the same number of votes as Spain, Poland has achieved the potential opportunity of playing a crucial role on the EU Council. We shall be a natural partner for the big states in executing their leading role in shaping the features of the EU - for the smaller states we shall remain a desirable partner in building majority coalitions as well as in forming a blocking minority. Poland will be able to do the latter with two big states and one small state, having 7 votes.

3. Other institutional changes

3.1. European Parliament

The document "Intergovernmental Conference - the Polish Position" stated:

„Poland is generally in favour of strengthening partnership within the EU, and, what follows, of balancing the interests of 'large', 'medium-sized' and 'small' States. ***A modified degressive proportionality principle seems to meet these expectations in the highest degree.*** *While modifying the principle, one has to have regard to the fact that the question of being adequately represented in the EU institutions and in the decision-making process is of particular importance to the new Member States to join the EU in the near future".*

During the enlargement of the Union, while maintaining the currently binding formula of degressive proportionality determined in the Treaty of Amsterdam (Art. 189) at 700, the number of MPs in the European Parliament would be exceeded. In this connection, during the proceedings of the Intergovernmental Conference 2000, the subject under consideration concerned two basic questions:

- the question of the legitimacy of maintaining the upper limit at 700 MPs;
- the new formula for the division of seats in connection with EU enlargement;

As far as the first problem is concerned - during the IGC a clear viewpoint favouring decreasing the number of MPs in the European Parliament began to take shape. Such a solution was suggested by the need to increase the efficiency of the work of the European Parliament, which is especially critical in connection with the continuous growth in its importance in the decision-making process and the maintenance of a certain comparability with the number of MPs in national parliaments. Poland shared this view, stressing the need to ensure the effectiveness of the work of the European Parliament. The Treaty of Nice increases somewhat the number of MPs in the European Parliament. The amended Art. 189 TEC states that the Parliament will have 732 MPs after the European Union attains the 27 member states. In general such a solution is in accordance with the main direction of the discussion during the Conference and the postulates announced by Poland. It allows for the raising of the level of efficiency of the European Parliament's activities.

The determination of an upper limit for the number of MPs required the setting of a new formula for dividing up seats between the member states. Two basic options were considered during the Conference:

- strictly applied proportionality linked directly to the size of the population in individual member states and - in connection with this - the modification of the formula of proportionality by degression currently in force;
- a linear reduction in the number of MPs, set according to the currently binding principle of degressive proportionality.

In general Poland favoured strengthening partnership within the European Union framework - in this case as well: on the one hand it balanced the interests of "big", medium sized" and "small" states, on the other Poland understood the need for the states which had resigned from a second commissioner obtaining a certain political compensation precisely in this area - as

well as a greater consideration of the demographic factor in the system of the distribution of seats. The modified formula of degressive proportionality met these expectations to the greatest extent, while at the same time - according to Poland - it was necessary to take into account that for the new member states which would be joining the European Union in the coming years, the question of proper representation in the community organs and in the decision-making process was of particular significance.

According to the Declaration on the enlargement of the EU, the number of members of the European Parliament split into the 27 member states would be as follows:

Member states	**Number of representatives**
Germany	99
Great Britain, France, Italy	74
Spain, Poland	50
Romania	30
Netherlands	25
Greece, Belgium, Portugal	22
Czech Republic, Hungary	20
Sweden	18
Bulgaria, Austria	17
Slovakia, Denmark, Finland	13
Ireland, Lithuania	12
Latvia Slovenia	8 7
Estonia, Cyprus, Luxembourg	6
Malta	5
Total	**732**

The changes foreseen in the Treaty of Nice concern the period from January 1, 2004. Assuming the signing and coming into force of the accession treaty before that date the previous provisions and regulations in the accession treaty will be used. A candidate state

may appoint deputies up to the time of elections or conduct special elections to the European Parliament (the precedent of the previous enlargement).

During the 2004-2009 parliamentary term the existing member states will be represented according to the distribution of seats described in Art. 190 (2) (total of seats - 535). The distribution of seats for the new member states which have signed the accession treaty by January 1, 2004 at the latest comes from the Declaration on the enlargement of the EU.

a) if no state accedes in this period - a proportional increase to the previous level will take place.
b) candidate states which sign the accession treaty on January 1, 2004 at the latest, obtain seats according to the above-mentioned declaration. If the number of deputies turns out to be less than 732, a proportional correction of the number of seats for each member state will be conducted, but this will not exceed the number of seats in the previous parliament. (According to the letter of the rules it seems that the limit of the correction would not apply to the new member states. However it is difficult to imagine such an eventuality). To achieve this aim the Council will make the appropriate decision (where there are no relevant rules - by a simple majority).
c) If during the 2004-2009 parliamentary term any other accession treaty comes into force, the given state will obtain the number of seats appropriate to the provisions of the declaration - and the whole number of seats may temporarily exceed 732 in the period in which this decision is binding. Apart from this, in relation to these states the correction is made proportionally. This rule does not refer to a situation in which the accession treaty is signed during the current parliamentary term. One can however imagine arrangements concerning observers.

The signing of the accession treaty by January 1, 2004, is of crucial significance. Then the candidate state will be taking part in elections to the EP irrespective of its coming into force, and those deputies already elected (and not appointed) have observer status. Parliamentarians elected in this way achieve full deputy status on the day the accession treaty enters into force. In the case of a state acceding during the 2004-2009 parliamentary term, the important thing is the moment the treaty comes into force, not its signing. Then a given state will either assign deputies or organise special European elections.

A change can be expected in the limit on the number deputies - to 736 - after taking into consideration the two additional deputies from the Czech Republic and Hungary so that the number of deputies from these countries is equal to the number of deputies from Belgium, Greece and Portugal. Assuming that the accession treaties of those states in which these changes have to be made will be signed before January 1, 2004 it would seem that the use of this ceiling must be expected only at the moment of their coming into force, i.e. during the 2004-2009 parliamentary term. In fact, however, guided by the stipulations of the treaty one can neither a priori determine the total number of deputies nor the number for a given member state until the end of the term following on from the one in which the accession process for all candidates ends.

It is difficult to assess the possible influence on the balance of interests of various states. This will not be a linear reduction in the number of deputies determined according to the present principles. The EP discussed in the work on its standpoint on this question the use of the principle of proportionality and a limit of 700 with a minimum of four seats - according to this calculation Poland would obtain 51 seats. With the new distribution it seems that it is mainly the medium-sized states which have lost out. From Poland's point of view and taking into account the need for proper representation in the decision-making institutions and process, the number of 50 deputies is satisfactory.

From the point of view of efficiency the present composition of the EP makes it the fifth biggest parliamentary chamber in the EU. The limit foreseen in the Treaty of Amsterdam was surpassed and is still to increase. With regard to the increased significance of the EP in the institutional set up of the EU the assurance of the efficiency of its functioning will be of fundamental significance. Of course changes will include limits concerning the quorum for voting at the plenary session, and the necessity of forming political fractions etc. However the most important problem remains the problem of languages used in the EP's work, since their reduction should not be expected.

Seats reserved for national parliaments in the post-Nice declaration deserve attention: on the one hand as a subject, on the other as the object of future discussion. Because one of the main subjects in the post-Nice process will be the role of national parliaments in the European architecture.

Other changes concerning the European parliament cover:

a) The declaration on interinstitutional agreements in Art. 10 TEC which speaks of the obligation for institutions to cooperate among themselves and refers to the already established practice of concluding such agreements.
b) Extending the range of agreements, in which the EP ought to be informed in accordance with Art. 300 (2) TEC.
c) Allowing the EP to go before the Court of Justice to request an opinion on the conformity of agreements with the provisions of the TEC. In the case of a negative ruling, the agreement may only come into force after charges have been made to the TEC by member states.
d) The extension to the EP of active jurisdiction in matters of deciding the inapplicability of community acts.
e) Allowing the EP to regulate the status of a deputy with a qualified majority would suggest that the many years of discussion on this subject will be completed more quickly. However it should be remembered that one of the more important barriers in this process is the taxation question, and decisions on this continue to be taken unanimously.
f) The gaining by the EU Council of the competence to regulate the status of political fractions at a European level in the joint decision-making procedure (instead of the current party federation - a European fraction). This is of particular importance for the way they are financed (the last report of the Court of Auditors is of no small significance in this respect). Neither a big influence on the way elections are conducted nor their efficient functioning should be excepted however. The appended declaration refers to the clear division of areas of competence between the European fraction and the national party, the principles of subsidy and equal representation. In the near future the European Commission intends to present a draft decree on financing political parties represented in the EP as a transitory solution up to the time the Treaty of Nice enters into force.

3.2 Reform of the Community organs of justice

The document "Intergovernmental Conference - the Polish Position" stated:

„Poland generally supports the reform of the EU judicial authorities designed to improve their effectiveness. *While working in this area, it would be advisable to take into account not only the problems faced by the EU judicial authorities that have emerged to date,* ***but also the fact that it will be necessary to include the new Member States effectively in the functioning of the system.***

Two issues, in particular, will be of importance in this area:

- ***To enable representatives from these States to participate directly in the work of the EU judicial authorities:*** *this aspect should thus be taken into account while considering the numbers of Court of Justice and Court of First Instance judges as well as Advocates-General;*
- ***To shape appropriately the preliminary ruling under Article 234 (ex Article 177) of the EC Treaty;*** *in improving the effectiveness of preliminary ruling, allowances should be made for the fact that the national courts of the new Member States will need some time to join effectively in the functioning of the EU law protection system;* ***the improvements introduced by Intergovernmental Conference 2000 should not create any additional barriers to an effective application of Community law in the new Member States****".*

The Treaty of Nice is carrying through a thoroughgoing reform of the community justice system, supplementing it with the setting in place of flexible mechanisms, allowing further changes to be conducted insofar as they turn out to be necessary during the enlargement process. The reforms introduced cover:

- **setting up new structures for the judiciary organs** - the Court of Justice will concentrate on watching over the homogeneity and cohesion of community law, there will be a strengthening of the position of the Court of First Instance, which will gain the status of a Communities' institution and a general competence in all matters. The setting up of specialist "judicial panels" is foreseen;

- **changes in the structure of particular courts** - aimed at raising the level of efficiency of work (setting up Great Chambers, changes in the structure of the chambers, concentrating the activities of general spokespeople on the most important tasks, improving the functioning of the appeal system);

- **the introduction of a clear division of jurisdiction for particular courts.**

The reforms conducted fully meet Poland's expectations as a future member state of the European Union:

- setting up a clear structure for the community organs of justice will make it easy for Polish people, companies and national judicial organs to cooperate with theses organs and refer to community law;

- the clear division of jurisdictions has similar implications, especially in the first period after attaining membership of the European Union.

In the Polish position, attention was drawn to another two additional questions:

- **Firstly** - the necessity of allowing representatives of the new states to participate directly in the work of the community judicial organs (because in the first period of the Conference proceedings conceptions emerged aimed at reducing the number of judges); **the solutions adopted in the Treaty of Nice meet these expectations**: the amended Art. 221 TEC foresees that one judge from each member country will sit on the Court of Justice, however in the Court of First Instance (amended Art. 224 paragraph 1 TEC) "at least" one judge from each member state will sit;

- **Secondly** - in the Polish position attention was drawn to the caution maintained in the new formation of the so-called preliminary ruling. **The introduction of reform in this area in**

the Treaty of Nice creates a relatively clear division of jurisdiction between the Court of Justice and the Court of First Instance (the system will therefore be transparent for national courts) does not however burden national courts with additional obligations, which - particularly in reference to the judicial organs of the new member states - could lead to difficulties, above all in the first years of membership.

3.3. Reform of the Court of Auditors

The document "Intergovernmental Conference - the Polish Position" stated:

„ (...) Access to practical knowledge on financial and legal aspects of the functioning of the Communities will be of key importance to the new Member States. For this reason, they should be offered an opportunity to participate in the work of the Court of Auditors, particularly at the first stage of their membership".

The Treaty of Nice takes these postulates into account. The amended Art. 246 (1) TEC foresees that one citizen from each member country will join the Court of Auditors. **Poland will thus have its representative in the Court from the day it attains membership of the European Union.**

From Poland's point of view this is important because access to practical knowledge in the financial-legal questions of the functioning of the Communities has enormous significance for us. In this respect also advantageous for us is the declaration concerning the Court of Auditors inviting an intensification of co-operation between the Court and national supervisory institutions and announcing the setting up of a special contact committee for this purpose.

3.4. Advisory organs

3.4.1 Reform of the Committee of the Regions

The document "Intergovernmental Conference - the Polish Position" stated:

„The issue of adequate involvement of its regional and local authorities in integration matters is one of key importance to Poland. One of the fundamental motives for instituting an in-depth administrative and self-government reform in Poland was precisely to prepare the state structures for EU membership. ***The Committee of the Regions should thus be a body operating effectively and, at the same time, having an adequate mandate of the Member States' regions and local authorities. Having regard to the above, Poland supports the European Commission's proposals to:***

- *Limit the* ***number*** *of the members of the Committee of the Regions to one third of the number of Members of the European Parliament (i.e. to a maximum of 233 members);*
- *Apply, as regards the distribution of seats among the Member States, a* ***formula analogous*** *to the one that will be adopted for the distribution of seats in the European Parliament".*

According to the Declaration on the enlargement of the EU the number of members of the Committee of the Regions split up among the 27 member states will be as follows:

Member States	**Number of representatives**
Germany, Great Britain, France, Italy	24

Spain, Poland	21
Romania	15
Netherlands, Greece, Czech Republic, Belgium, Hungary, Portugal, Sweden, Bulgaria, Austria	12
Slovakia, Denmark, Finland, Ireland, Lithuania	9
Latvia, Slovenia, Estonia	7
Cyprus, Luxembourg	6
Malta	5
Total	**344**

Poland will therefore have a representation on the Committee of the Regions corresponding to its demographic potential.

The second important aspect of the reform introduced by the Treaty of Nice is the strengthening of the "regional mandate" of representatives from particular member states. The amended Art. 263 Paragraph 1 TEC states that a representative on the Committee of the Regions must have the appropriate legitimating confirmed either by a seat won by way of election to a local or regional organ or a post arising from an election politically subordinate to the local or regional organ. **Such a solution is completely in line with the reform of local government carried out in Poland.**

At the same time a method of election of representatives to the list of Polish candidates should be drawn up.

3.4.2 Reform of the Economic and Social Committee

The document "Intergovernmental Conference - the Polish Position" stated:

„Poland attaches considerable importance to the involvement of broadly defined 'social partners' in the accession process; they will continue to play an important role also upon Poland's accession to the EU. *Strengthening* ***civil society*** *is among the basic objectives of the transformation of Poland's political and economic system initiated in 1989.* ***Therefore, Poland supports (...) proposals to improve the effectiveness of the Committee's work".***

According to the Declaration on the enlargement of the EU the number of members of the Economic and Social Committee split into 27 member states will be as follows:

Member States	Number of representatives
Germany, Great Britain, France, Italy	24
Spain, Poland	21
Romania	15
Netherlands, Greece, Czech Republic, Belgium, Hungary, Portugal, Sweden, Bulgaria, Austria	12
Slovakia, Denmark, Finland, Ireland, Lithuania	9
Latvia, Slovenia, Estonia	7
Cyprus, Luxembourg	6
Malta	5
Total	**344**

This is the representation corresponding to Poland's demographic potential. At the same time the amended Art. 258 TEC extends the circle of social partners who have to be taken into account for the composition of the Committee - it clearly names the representatives of civil society, consumer representatives and "general organisations". **This fully corresponds to the evolution taking place in Poland since 1989.**

4. Additional elements of the Intergovernmental Conference programme

4.1. Enhanced co-operation

The document "Intergovernmental Conference - the Polish Position" stated:

*„Poland generally believes that the present provisions concerning closer co-operation provide a **good starting point**. One should focus primarily on **using them effectively**. (...) Closer co-operation **must not lead to the emergence of a group of States not fully involved in the dynamic progress of European integration**; in particular, it must not lead to a limited application of the important Internal Market principles to the citizens and businesses of the future Member States; **closer co-operation should provide additional stimuli for advancing integration**, in no case should it lead to the exclusion of the future Member States from important new co-operation measures".*

During the Intergovernmental Conference 2000 a great deal of attention was devoted to the enhanced co-operation. This concerns 16 clauses, from A to P, which will be included

respectively in Title VII of the Treaty on the EU (*clauses A to F*), in the first part of the Treaty on the EU (*clauses G to H*), to Title V of the Treaty on the EU (*clauses I to M*) and to Title VI of the Treaty on the EU (*clauses N to P*). These constitute a very much broadened amendment of articles 43, 44 and 45 of the Amsterdam Treaty on the EU. In the general part (*clause A*) the reduction to eight of the number of states participating in enhanced co-operation deserves attention (*formerly "at least eight member states"*). In further clauses there is talk of enhanced co-operation being open to all member states (*clause C*) but it can be undertaken only if the EU Council decides that the aims which are set in such co-operation cannot be achieved on the basis of existing treaty provisions. The Commission and the member states participating in the enhanced co-operation are to ensure that as many member states as possible take part in it.

The introduction of enhanced co-operation into a given area occurs when an appeal by interested states is directed to the European Commission which issues an appropriate proposal in this matter to the EU Council. The Commission may refuse to pass on the proposal to the EU Council and informs the interested states about this. The EU Council grants permission to introduce enhanced co-operation by way of a decision taken by qualified majority voting after consultation with the European Parliament. Decisions concerning the implementation of enhanced co-operation are taken on the EU Council only by the states participating in it either on the basis of unanimity or on the basis of a qualified majority. Decisions of this kind do not constitute the *acquis*. The states not participating in the enhanced co-operation cannot hinder it. The costs connected with the enhanced co-operation are borne by states participating in it, unless the EU Council after consulting the European Parliament, unanimously decides otherwise. The EU Council and the European Commission guarantee the cohesion of activities within the enhanced co-operation and also the cohesion of these activities with the policies of the Union and the Communities.

Each EU member state interested in participating in the enhanced co-operation which has already been started, informs the EU Council and the European Commission about this. The latter expresses its position to the Council on this matter within three months. The Council takes a decision within four months from the date the state declares its wish to join in the enhanced co-operation. The enhanced co-operation under the Title V of the Treaty on the EU which concerns the Common Foreign and Security Policy ought to serve the interest of the European Union as a whole. This may concern only joint actions and common positions with the exception of matters having military implications or a defence character (in this case the so-called *enabling clause* is being referred to). The Secretary General of the EU Council and the High Representative for CFSP ensures that all the members of the EU Council and the European Parliament are informed about the enhanced co-operation in the CFSP area.

The increased role of the European Commission and the European Parliament marks an important change in the field of enhanced co-operation. Particular attention should be paid to Clause G which in its present form - being the result of long-term discussions in Nice - means removing the possibility of one member country blocking decisions on the taking up of enhanced co-operation by appealing to important reasons of national policy (compare Article 11 of the Treaty of Amsterdam). Each member country preserves the right of referring a given question of conflict for discussion at the European Council (according to the Treaty of Amsterdam this could be done by the EU Council). After a possible discussion on the forum of the European Council the EU Council can take the appropriate decision by qualified majority voting. It should be remembered however that all the rulings of the European Council are made unanimously. The possibility of one member country blocking a decision on starting enhanced co-operation therefore continues to exist, although causing such a blockade is much more complicated than before.

Despite agreement on the appropriate points of the treaty, the practical implementation of enhanced co-operation will depend above all on the political will of member states to overcome the serious differences in standpoints on this question. Up till now initiatives undertaken on the basis of the provisions of the Treaty of Amsterdam (in the area of harmonising the taxation of electricity and the principles of mutual recognition of diplomas) did not meet with success. It seems that taking advantage of the new opportunities for closer co-operation will not take place quickly and not immediately on a wide scale. The very opportunity of applying it will probably however act on the member countries like the possibility of majority voting, i.e. it will tend to make them seek compromise solutions which all the EU members find it possible to accept.

The debate on the subject of the future of European integration which was renewed by Joschka Fischer's Berlin speech in May 2000 indirectly influenced the course of the Intergovernmental Conference. It exerted its own peculiar pressure which induced the negotiators to "escape to the front" and to agree to quite fundamental changes concerning the procedures of intensified co-operation. Including the problems of intensified co-operation on the agenda of the Intergovernmental Conference increased to a significant extent the room for manoeuvre of the negotiating member states. The position of the candidate states concerning enhanced co-operation evolved. The debate organised by the French presidency on the forum of the European Conference in Sochaux (November 22, 2000) showed that the candidates were not afraid of enhanced co-operation, on condition that it would not be used as an "exclusion mechanism".

The points of the Treaty of Nice referring to enhanced co-operation allow the fears formulated by the current and future members of the EU to be reduced. The former obtained an effective instrument for flexible integration. The very opportunity of applying it cancels out the threat of a permanent blockade of the decision-making processes and the associated implosion of the European Union after enlargement. The latter obtained a guarantee of the openness of the formula for enhanced co-operation, which allows for the participation of all the member states interested in it and prepared for it. The Treaty of Nice means the rejection of the conception of the closed, "hardcore" of countries decided on enhanced co-operation which for the remaining states might have meant second-class membership.

Enhanced co-operation cannot of course be an abstract notion. The experience of the common currency or Schengen is still too fresh to become, in the eyes of European public opinion, the basis for raising enhanced co-operation to the rank of a universally binding method of integration. That is why the member countries ought to attempt to take advantage of the mechanisms of enhanced co-operation described in the Treaty of Nice in those areas which are priorities in the eyes of their citizens. For instance such an area is internal security and especially its aspects such as migration policy, fighting drugs and organised crime and co-operation between police and judicial organs.

A gradual development of enhanced co-operation lies in our interests and provides an opportunity for spreading out in time the investment and organisational effort. To take up a position in the EU appropriate to our potential and aspirations would require participation is as many initiatives as possible serving this purpose. It should however be remembered that participation in some undertakings e.g. in such costly areas as environment protection or welfare policy, may at first turn out to be impossible.

4.2. Amendments to Art. 7 TEU

The amendment to Art. 7 TEU foreseen in the Treaty of Nice is about introducing and regulating the procedure preceding the taking of a decision on recognising a member state as

having been guilty of a serious and continuous infringement of the principles listed in Art. 6 (1). This procedure serves to determine the existence of an obvious serious risk of infringement and of directing an appropriate recommendation to that state.

The stages of the above-mentioned procedure are as follows:

- lodging a substantiated appeal by one third of the member states, or the EP, or the Commission,
- a questioning of a given state by the Council and possibly entrusting independent experts with the task of preparing a report on the situation in that state;
- a decision by the Council taken with a four fifths majority of member states and with the agreement of the EP,
- directing a recommendation to a given state.

The changed Art. 7 also foresees a regular verification of the situation being the basis for issuing a decision. The procedure introduced by Art. 7 is subject to the supervision of the Court of Justice.

The amendment to Art. 7 is dictated by the situation which took place last year after the formation of a government in Austria which included the Freedom Party (FPÖ) and makes use of the experience gained in its solution. It also assumes the real possibility of such a situation being repeated. It is supposed to allow action at an earlier stage, the adoption of a position by a given state, involving Union institutions to a greater degree at an earlier stage, and is meant to avoid the taking of decisions under political pressure. In addition to this it gives an interested state the right to defend itself, allowing on one side of the dialogue the right to speak and on the other formal guarantees - the opportunity of initiating judicial control of procedural aspects.

The existence of such an early warning system is a practical and democratic complement to the procedure which may have serious consequences for the rights of a given state as an EU member and concerns in an identical way both the present member states and the candidate states (with the only difference being the opportunity for the candidate states to make use of this argument internally against the creation of extremist parties even before they accede). The way the decision is taken allows for non-discrimination between states to be maintained (it does not favour especially some states in the decision-making process and does not allow decisions to be blocked in an opportunist way). This mechanism is more democratic and probably more effective. On the other hand the first use of this procedure will be the subject of special attention because some of the formulations leave a big margin for interpretation (the substantiated draft, the obvious risk, the character of the recommendation, the method of verification for the further existence of the basis for the decision).

5. Other problems

5.1. Changes in the field of the Common Foreign and Security Policy

NB: The account below concerns only changes introduced in the Treaty of Nice, however it does not take into account the remaining decisions of the European Council in Nice concerning the Common European Security and Defence Policy

The EU-WEU relationship

As a consequence of the decisions contained in the Marseilles Declaration (November 13, 2000), the European Council took a decision at the meeting in Nice to change the points in the Treaty concerning the EU-WEU relationship. Provisions concerning the WEU as an integral part of the development of the European Union and the executive role of the WEU in relation to the decisions of the EU which have military implications, were removed from Article 17.

The decision-making procedure

An important change is the introduction of the qualified majority voting procedure into Article 23 when the special representatives for the CFSP are appointed. The change in the case of Article 24 concerning the granting of permission for the conclusion of international agreements concerning CFSP, with states or international organisations on the question of CFSP, majority voting will be possible only in clearly defined circumstances e.g. when such an agreement will concern the implementation of a joint action or a common position (Art. 24.3).

New bodies of the EU Council

Article 25 was broadened to include a point concerning the Political and Security Committee having political control and strategic direction over crisis operations - with the preservation of the EU Council's general responsibility. The Council may in addition allow the PSC to take the necessary decisions connected with the above mentioned control and direction concerning a given operation.

We hope that the changes in the field of the decision-making procedures will help achieve a better functioning and more effective action of the CFSP. Tightening up the principles of concluding agreements, contained in Art. 24 ought to allow for the finalisation of agreements serving the realisation of the CFSP including the EU and NATO agreements in the field of crisis reaction. Setting up the Political and Security Committee and giving it important areas of competence in the field of security policy and conducting crisis operations is a qualitatively important change in the internal structure of the organs of the EU, as is the broadening of the Union's area of competence. We think that the EU's taking over of the tasks of the WEU ought to be linked to a broader approach to the problems of security, based on common participation and co-operation with all the countries having the will and potential to undertake such co-operation. The EU's security and defence policy ought to be based on co-operation with the North Atlantic Alliance.

5.2 Charter of Fundamental Rights

NB: The work on the Charter of Fundamental Rights was carried out in parallel with the work of the Intergovernmental Conference, and the question of its possible inclusion in the Treaty on the European Union was postponed until the next institutional debate in the so-called post-Nice process (vide Point 6). Despite this the proclamation of the Charter at the summit in Nice should be treated as an element in the broadly understood reform of the European Union. In this respect the subject of the Charter of Fundamental Rights was taken up in the present section.

The document "Intergovernmental Conference - the Polish Position" stated:

*„**Poland has been closely following the work on the Charter. It has welcomed the decisions enabling participation** by both government authorities and organisations concerned **in this work at a certain stage**. For obvious reasons, connected with Poland's historical experiences and efforts to ensure the maximum guarantees of fundamental rights, of which the provisions of the new 1997 Polish Constitution are an expression, **Poland supports the work on the Charter**. There remains a separate concern, however, that the work on strengthening the fundamental rights of EU citizens, which has been going on for some time already and still requires considerable commitment, does not slow down the pace of IGC 2000".*

The Charter of Fundamental Rights is a complex instrument for the protection of human rights; it groups together in one text three categories of rights: civil and political rights; citizens' rights and socio-economic rights. What is new in the Charter - in European legal practice with reference to human rights - is not only the linking of civil and political rights with socio-economic rights in one international instrument ("first" and "second" generation rights, and therefore negative rights with positive rights - declarative rights with rights requiring determination). New in the Charter also are many dispositions of norms.

The Charter - numbering 54 articles and prefaced with a Preamble - contains normative regulations for six fundamental values: dignity (Articles 1-5), freedoms (Articles 6-19), equality (Articles 20-24), solidarity (Articles 25-26), citizens' rights (Articles 39-44) and the judicial system, (Articles 47-50). The catalogue of rights of the Charter includes not only individual rights, it also includes collective rights: children (Art. 24), workers (social rights), citizens of the Union (Articles 15.2, 32.2, 37, 38. 43.1, 44), persons residing in a member state (articles 40-42). The Charter creates a broad framework of normative legislation and states' practice in accordance with their legal-international obligations, European traditions and common values.; it uses "neutral" language from the point of view of the gender of the addressees of the fundamental rights. The dispositions of the Charter of Fundamental Rights of the European Union take their normative content from a rich catalogue of sources of binding agreements of European states concerning human rights and fundamental freedoms: they are the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on Human Rights and Biomedicine, the European Social Charter, the Convention on Children's Rights, the Charter on the Fundamental Social Rights of Workers and also the common norms of all European constitutions. At the same time the Charter takes up challenges, the sources of which are the possible evil methods of taking advantage of the achievements of science; confirming (in Article 3) the right to the integrality of the human being, it commands respect for the will of the interested person in the area of medicine and biology and confirms the prohibition of eugenic practices, the cloning of humans and trade in human organs.

At the Nice summit the EU institutions ceremonially proclaimed the text of the Charter of Fundamental Rights. These problems have found themselves completely in the post-Nice process, despite the campaign conducted by the EP and supported by the EC to include the Charter of Fundamental Rights in the Treaty or at least to place references in Art. 6 TEU. The status of the Charter of Fundamental Rights is one of the points on the agenda of the post-Nice process. Therefore in accordance with the conclusions of the Cologne summit, further work on the Charter of Fundamental Rights ought to lead to giving it a binding character and including it in Treaties. This would of course require appropriate changes in the text of the Charter itself.

Poland followed the work on the Charter with close attention and with great satisfaction took advantage of the invitations to express its opinion in this matter. Poland's experience connected with the protection of fundamental rights deserves to be made use of in this process.

Proclaiming the Charter of Fundamental Rights of the European Union at the Nice summit constitutes a reply however not only to the desirable political challenges (leaving the question of human rights beyond the sphere of its immediate areas of interest) but also the legal weaknesses of the EU system of human rights protection: their expression is the inadmissibility from the point of view of Article 308 of the Treaty establishing the European Community, of the EU's joining the European Convention on the Protection of Human Rights and Fundamental Freedoms. This is a compromise reply which takes into account the differences in views and traditions of human rights among European societies. The legal formula for constituting the Charter was also a compromise: by proclamation; as a consequence the Charter does not however have the character of a legally binding text in the system of legal norms of European law. At the same time however the organs proclaiming the Charter: the Council, Commission and Parliament are recognised as being bound by its dispositions when they apply European law. The Charter therefore neither changes the Union's and the member states' previous system of protection of fundamental rights nor does it create a new one; the Charter catalogues existing law.

The Charter sets a difficult challenge for the candidate states; and at the same time specifying the catalogue of criteria of accession, it facilitates the application of Article 46 TEC - it makes the procedures for acceding to the EU more transparent and the assessments predictable. At the same time from the point of view of the Republic of Poland there is no doubt that the Charter serves the building of a European Union in accordance with our expectations, respecting the values and traditions common to our nations - a Union to which we want to accede because this is in accordance with the aspirations of Polish society.

6. The post-Nice process

The Declaration on the future of the Union enumerates the following problems which the European Union ought to deal with in the future:

- the division of areas of competence between the European Union and the member states taking in to account the principle of subsidiarity;
- the future status of the Charter of Fundamental Rights;
- the simplification of treaties;
- the role of national parties in the EU.

The so-called post-Nice process is to begin as early the Swedish presidency which ought to present its first report in Gothenburg in June 2001. The European Council in Laeken in December 2001 will adopt a declaration on the future of Europe. As broad a group of interested parties as possible should participate in the discussion, including also the candidate countries, "in ways to be defined".

As early as the stage of preparations for the Intergovernmental Conference 2000 it was clear that the conference would not be able to solve all the problems facing the EU. The fear of the reforms turning into a fiasco, stimulated by the negative experience of the work on the Treaty of Amsterdam, induced the member states to reduce the agenda to a minimum. It only covered questions which were most important from the point of view of enlargement. The course of the conference confirmed the correctness of a minimalist approach. During the work it turned out that some of the matters of fundamental significance had anyway to be set aside for the future. The "fifteen" are fully conscious of the insufficient character of the

changes adopted in Nice. Some of the states are pleased with this, others are more or less disappointed. The provisions of the Declaration on the future of the Union are very ambitious and mean that the continuation of the reforms will not be an easy process. The following circumstances suggest that this is the case:

- simple methods of deepening European integration are becoming exhausted,
- the disappearance of traditional external and internal dangers weakens the will and the understanding for the continuation of the integration effort, especially in the societies of the EU member states,
- the prospect of enlargement increases the polarisation of the standpoints of the member states in the matter of the range and shape of the reforms; some of them would want to "escape to the front" others are counting on the accession of new countries weakening the trend towards integration,
- among the above-mentioned problems the hardest will be to achieve agreement concerning the division of areas of competence between the EU and the member states (the principle of subsidiarity) and the status of the Charter of Fundamental Rights (a possible future EU constitution). Deciding these questions will be of fundamental significance for the future shape of the EU.

Among the factors mobilising the member states to continue the reforms needed to ensure the effectiveness and cohesion of the EU, the following should be listed:

- an increased internal differentiation alongside the progress made in the enlargement process.
- the necessity of ensuring social support by bringing the EU closer to the citizen,
- the globalisation of political and economic processes will force the EU to show a much more distinct external "face" to ensure its deserved position on the international arena.
- the more determined activities of the big states of the EU (Germany especially will probably present a tougher standpoint on the question of reforms, which will be helped by its stronger position, its vital interest in the problem of subsidiarity and the importance of this state in realising the enlargement process).

The aspiration to a "final" reform of the European Union is a project not so much noble as unrealistic because it is hard to imagine the adoption of an institutional *ultima ratio*, which would once and for all provide the European Union with a form allowing it to face all the challenges of the future. Therefore it is inevitable that the idea of a creeping reform is adopted which allows for the maintenance of an appropriate dynamic of development for the European institutions. According to this conception, the Treaty of Nice regulates questions overlooked or insufficiently regulated in the Treaty of Amsterdam. And in accordance with the provisions of the Nice summit the next institutional reform, in which the candidate countries will already be participating will take on the next challenges. This is fully in accordance with the expectations of the candidates. Fundamental changes in the institutional order of the Union conducted while overlooking the opinions of those who will shortly become an integral part of this order, can only increase the democratic deficit of the EU.

The universal criticism of the course of the final phase of negotiations within the framework of the Intergovernmental Conference 2000 concerning mainly the lack of transparency in the

activities of the negotiators and the marginalisation of the role of the European Commission and the European Parliament, induce one to reflect on the method of conducting further reforms of the European Union. The reform of Union institutions usually takes place in three stages: the first is devoted to the agenda-setting of the Intergovernmental Conference (this time it began at the European Council in Cologne and ended at the summit in Feira), the second are the basic negotiations and finally the third, the shortest, is the stage of taking decisions. In the light of the criticisms mentioned above the proposal put forward by, among others, Romano Prodi deserve our full support - they want the next reform of the EU to be prepared at a forum similar in form and way of operating to the "convention" which drew up the Charter of Fundamental Rights of the EU. The convention method allows for a broad-based participation on the part of the European Commission, the European Parliament, national parliaments, non-governmental organisations (NGOs), the academic world etc. in the first and perhaps also in the second stage of the reform. In accordance with Article 48 of the Treaty on European Union, treaty changes must be agreed within the framework of a conference of the EU member states but the next Intergovernmental Conference could be significantly shorter and its participants would dispose of a mandate to act based on the social consent of the citizens of the member states. This procedure can and must be applied as early as the preparations to the Intergovernmental Conference 2004.

The provisions of the Declaration on the future of the Union are advantageous for Poland. Achieving membership by 2004 would give us the opportunity of taking part in the Intergovernmental Conference 2004 and a direct influence on decision-making. The clear and not too distant prospect of a renewed taking up of the subject of reform requires of us that we conduct an internal discussion on the question of defining the Polish vision of the future EU and the place of Poland in European structures. It would be helpful in guaranteeing a position in an enlarged Union corresponding to Polish aspirations. In case of delayed accession some of the candidate states obtain observer status which will allow them to present their standpoint. The European Union ought to propose a means of including the candidates in the discussion without delay within the framework of the Nice process., so that they can for instance proclaim the Laeken declaration jointly with the present member states.

7. The Treaty of Nice and the process of EU enlargement

From the point of view of the candidate countries the Treaty of Nice is a value in itself because the very fact of its signing makes enlargement possible - in accordance with the European Council's conclusions in Cologne and Helsinki. The question of European Union enlargement arises directly in the Declaration on the enlargement of the EU mentioned above. Attention ought to be paid to the sentence beginning the Declaration. For it says that the provisions contained in it - the tables presenting the distribution of votes on the Council, the number of members of the European Parliament etc. - will be the basis for a common position of the present member states of the EU in the negotiation chapter "Institutions". Each of the 12 candidates has therefore a picture of the standpoint the European Union will adopt at the negotiating session, during which precisely this part of the negotiations will be opened. Despite the fact that the Treaty of Nice determines in advance the institutional order of a European Union numbering up to 27 member countries, it is worth drawing attention to those elements which will require renewed discussion in the course of the next stages of enlargement. The first of these is the final number of European parliamentarians. Guided by the points of the Treaty of Nice there can neither be an *a priori* determination as to the total number of deputies nor the number for a given member state up to the ending of the parliamentary term after, during which the accession process for all candidates will be completed (*vide* Point 3.1).

The second problem concerns the determination of the numerical and percentage threshold of the qualified majority and blocking minority when qualified majority voting takes place (*vide* Point 2.3). The qualified majority threshold for the 15 current members of the EU with the increased number of votes they dispose of (in total 237 votes) is 169 votes (i.e. 71.4%) and the blocking minority 69 votes. When the number of EU members increases to 27 states, the blocking minority will be 91 votes but the threshold for taking decisions by qualified majority vote will increase to 73.4 - 73.9%. In the period of transition from EU-15 to EU-27 the qualified majority threshold will have to be renegotiated with each enlargement. Both the above-mentioned questions will be regulated in the accession treaties of the future members of the EU.

The signing of the Treaty of Nice makes the postulate put forward by Poland in its position concerning the Intergovernmental Conference 2000 topical - namely the postulate for parallel ratification of this Treaty and the Polish accession treaty. If, in accordance with the assumptions of the Polish government, the accession negotiations end during the ratification of the Treaty of Nice, then Poland will expect the ratification procedure of the accession treaty to begin independently of the former and it will be conducted in parallel with it. This will allow the avoidance of unnecessary delays and duplication of parliamentary procedures having basically the same aim - the enlargement of the European Union.

8. Conclusions

It is too early to conduct a complex and fully objective assessment of the Nice compromise and the influence of the adopted solutions on the functioning of the future EU. The government circles of the member states present above all positive opinions, drawing attention to the lack of opportunities for carrying through deeper changes because of the existing objective circumstances. The European Commission and the European Parliament have a significantly more critical standpoint. The latter especially is contesting the positive character of the Nice provisions. At the present moment it is difficult to predict whether this will cause potential problems in the process of ratifying the treaty by the national parliaments. This seems not very probable although one cannot exclude the possibility of stormy discussions and attempts to force the governments of the EU states to take on possible additional obligations concerning the future Intergovernmental Conference. It seems just as unlikely that the ratification will be prolonged with the aim of delaying the enlargement process.

The Treaty of Nice specified the institutional conditions of the future membership of Poland in the EU. The conclusions of the European Council say that the European Union will be ready to accept new members at the end of 2002 in the hope that the new member states will be able to take part in the following elections to the European Parliament in 2004. This narrows down the time horizon for the first enlargement which ought to take place in 2003, or at the latest 2004. The above-mentioned point recalls the Warsaw speech of the Prime Minister of Great Britain, Tony Blair and the earlier position of the European Parliament itself.

Compromise in institutional matters, despite it being more modest than at first assumed, is in accordance with Polish expectations presented in the Polish position on the Intergovernmental Conference. The possibility of designating one member of the European Commission in the first years after accession - in accordance with the Nice conclusions, the principle of "one country, one commissioner" will be binding up to the moment the EU attains 27 member states - allows for the appropriate legitimation of this institution in the eyes of citizens. Granting Poland an equal number of votes with Spain - 27 - places Poland in the group of the biggest member states who have a fundamental influence on the decisions of the EU Council.

Among the candidate states only Poland gained such an increased potential. A new weighting was conducted for the voting in the European Council to the advantage of the big countries, taking into account the demographic factor. Unfortunately its weakness is that it requires a complicated procedure for counting votes. On the other hand this may consolidate the tendency of the EU Council to seek agreement instead of voting, the result of which may be uncertain. The extension of the qualified majority voting mainly has a quantitative and not qualitative character. It is also important that the Treaty of Nice guarantees to present and future member countries that enhanced co-operation will have an open character. The Treaty of Nice of course is not revolutionary, but it makes enlargement possible. And the very fact agreement has been reached is important insofar as its lack would surely have led to crisis. The solution for crisis in the Union as we have seen, even if only in the case of Austria, has lasted for at least six months, from the point of view of Europe this would have been a wasted six months.

A series of conclusions can be drawn from the course and conclusions of the Nice summit. Firstly, there are now permanent alliances in the Union and one has to be reconciled to this. Alliances are always short-term and success is always achieved by the country which is able to choose the right allies on concrete issues. Secondly, it is difficult to assess whether Europe has drawn closer to the federalist model or to the international one since these conceptions never appear in pure form. It could be said that a stage has been reached where the emphasis has been moved in the direction of the concept of intergovernmental co-operation. It is precisely the European Council which will play an ever larger role in co-ordinating the policies of the European Union. This should not take place, however, at the cost of reducing the prerogatives of the European Commission. Thirdly, the outcome in institutional matters is in accordance with Poland's earlier expectations. Our position presented in June last year was known to the participants of the Intergovernmental Conference and met with a very good reception. This confirms the necessity of the active participation of candidates in the internal discussions of the EU in the period preceding accession. Fourthly, the Treaty of Nice is further evidence of the need to simplify the primary law of the EU and make it more comprehensible for the citizens.