

POSSIBILITIES OF THE NEW MEMBER STATES' IMPACT ON THE EASTERN POLICY OF THE EUROPEAN UNION – INSTITUTIONAL CONSIDERATIONS

1. Introduction

Between 2004-2007 the EU was enlarged by 12 new Member States. This greatest enlargement of the European Union in its history creates an incredibly significant challenge for its functioning - not only in the institutional sphere - but also in the scope of external relations. The European Union's borders moved visibly eastward and states like Russia or Ukraine became direct neighbours of the EU. In consequence, the redefinition of the Union's Eastern policy was necessary. In that light the new Member States seem to be naturally predestined to form the EU's relations with its Eastern partners - those ones which - due to their geographical proximity, cultural bonds, historical experiences or expressly articulated aspirations see their exceptional role in the above-mentioned aspect of the EU's foreign policy.

At the same time it seems that, from the New Member States' perspective, the accession to the EU constitutes a factor which may favour targeting their own external policy priorities. In the report prepared by the Office of the Committee for European Integration² we read that in relation to Poland (...) *membership was on one hand meant to provide a chance to more effectively pursue its interests and on the other, to become a new foreign policy instrument*³. This statement seems to be in line with the logics of European political integration - in the proc-

1 Tomasz Dubowski, dr, Wydział Administracji Uniwersytetu w Białymstoku w Siedlcach.

2 Report *5 years of Poland in the European Union*, the Office of the Committee for European Integration, Warszawa 2009, source: <http://5lat.ukie.gov.pl/pl/raporty>.

3 *Ibidem*, p. 375.

ess of defining state's own foreign policy the conditions resulting from EU-membership have to be taken into consideration.

The main goal of the following considerations is to indicate the most important possibilities (areas) of impacting the Eastern policy of the European Union by the new Member States in the context of treaty provisions. Then it is required to define the relation between foreign policy of the Member States and the Union itself, to identify the treaty areas of formulation and realization of the EU's external policy together with indication of its institutional environment. Finally, it is worth to analyse shortly the experiences of the new Member States in the discussed matters. These assumptions result in marginalizing any extralegal, undoubtedly significant, considerations of the Member States' impact on the EU foreign policy.

2. EU-membership versus priorities of state foreign policy

Trying to develop further the idea contained in the report quoted above one should admit that the accession to the EU indeed provides the New Member States (including Poland) with an opportunity to impact the shape of Union's external policy - to impact it in a way which considers the priorities of their own foreign policy. However, it is necessary to remember that in this context we are speaking of the EU's policy. That's why, it could be assumed that the possibility to realize own interests through the participation in formulating the EU's foreign policy seems to be an illusion since it is difficult to achieve a strict connection between the national interest of a specific Member State and the interest of the Union being a community of 27 countries. In spite of the above, it seems that each Member State is able to leave its own imprint on the EU's external activities, which, with proper use of Community (Union's) institutions and procedures, may be helpful in realization of one's own foreign policy aims. Obviously, it requires a certain effort and an ability to formulate the main assumptions of foreign policy in a pragmatic way as well as the knowledge of Union's internal mechanisms - in short, an ability to include own external policy in the context of the EU-membership. This task is certainly not easy to carry out, but not impossible either.

It may be useful here to apply the example of Poland and its external policy whose constant element is the problem of the relations with the East European countries. Leaving the evaluation of the so-called Polish Eastern policy aside⁴, it is necessary to emphasize its consequent „bonding” with the membership in the European Union structures. In 2004 Minister W. Cimoszewicz recognized the accession to the EU as fulfilment of one of Polish foreign policy fundamental goals defined already in the nineties⁵. Since then it was time Poland’s position in NATO and the EU structures was established. In this light one of the most important tasks of the policy in relation to the East was to *favour the democratic and economic reform, build a state ruled by law, strengthen the independence and the integration with the Western structures*⁶. Simultaneously, the Minister emphasized clearly the connection between Polish Eastern policy and the EU-membership pointing out that Poland intends to be actively involved in the development of the Union’s common foreign and security policy (CFSP) and, under it, to aim at consolidating the cooperation of the Union with its neighbours, especially in the East⁷ and make it more dynamic. In the following years the formulation of Polish external policy goals was based more and more on the conviction that it is inseparably connected with the Polish participation in the creation of the entire policy of the Union. Not only were the aims of Polish policy consistently defined, but also its European considerations - e.g. institutional - were taken into account. Poland started to articulate expressly the will to participate in CFSP initiatives as well as its readiness to support CFSP reform - particularly important for the effectiveness of the Union’s activity in the East. What’s more, Polish perception of the Eastern policy started to take into consideration the necessity of the adaptation of the policy goals to the possibility of their achievement within the EU. It regarded, among others, the Polish postulate of the Union’s further enlargement towards the East and the South-East. Polish standpoint became more

4 See: S. Dębski, „*Polityka wschodnia*” - *mit i doktryna*, Polski Przegląd Dyplomatyczny 2006, Nr 3(31), p. 5-18.

5 *Informacja Rządu na temat polskiej polityki zagranicznej w 2004 roku przedstawiana na posiedzeniu Sejmu w dniu 21 stycznia 2004 roku przez Ministra Spraw Zagranicznych RP Włodzimierza Cimoszewicza*, source: http://www.msz.gov.pl/Informacja_Rzadu_na_temat_polskiej_polityki_zagranicznej_w_2004_roku._Przedstawiona_na_posiedzeniu_Sejmu_w_dniu_21_stycznia_2004_roku_przez_Ministra_Spraw_Zagranicznych_RP_Wlodzimierza_Cimoszewicza_.1417.html

6 *Ibidem*

7 *Ibidem*

flexible in this area. An important role in formulating Polish foreign policy priorities was now also played by identification of potential partners for the current and future initiatives - in this field the cooperation within Visegrad Group and the partnership with the Scandinavian and Baltic countries were recognized as particularly important. Incidentally, it is worth mentioning that it was the Polish-Swedish project that brought effects in the form of the Eastern Partnership as an initiative of the entire European Union.

In the last two years Polish foreign policy priorities, also in the area of Eastern relations, have been still consistently defined in the context of the membership in the EU. In 2008 Minister Sikorski, describing Poland's superior interests and tasks in the sphere of external relations stated: (...) *our Polish national interest is not in conflict with the European integration. On the contrary, the peaceful European integration is in our immediate national interest*⁸. The Eastern element is here strongly stressed: *Poland should continue to specialize in shaping common foreign policy towards the East. Especially due to our geographical situation, historical experiences, cultural ties to the East, and our competency, we not only feel predestined to such an Eastern specialization, but we are encouraged to take it up by our partners in the Union*⁹. This statement - also in the light of the Eastern Partnership initiative's success - shows that Poland finds its place in the Union's structure and its Eastern policy is not only included in the EU's foreign policy, but it also has a chance to stimulate its future development. The motto: *Poland strong in Europe, a patron and promoter of Europe's Eastern policy*¹⁰ seems to be a good confirmation of the above. Consequently, Polish interests in the East may find their reflection at the level of the entire EU and ipso facto strengthen the Polish foreign policy in this direction.

The above comments take into account the Eastern aspect of national foreign policy in the context of the EU-membership. From the Polish point of view - its aims and expressed aspirations - this is a par-

8 Informacja Ministra Spraw Zagranicznych nt. polityki zagranicznej RP w 2008 roku, źródło: <http://www.msz.gov.pl/Informacja,Ministra,Spraw,Zagranicznych,na,temat,polityki,zagranicznej,RP,w,2008,roku,17317.html>.

9 Ibidem

10 One of the Polish foreign policy priorities, see Informacja Ministra Spraw Zagranicznych Pana Radosława Sikorskiego dotycząca zadań polskiej polityki zagranicznej w 2009 roku, źródło: <http://www.msz.gov.pl/Informacja,Ministra,Spraw,Zagranicznych,25358.html>.

ticularly important issue. At the same time, one may assume that - just because of geopolitical situation - relations with the Eastern European countries will constitute an object of another new Member States vital interest. Formulation of their foreign policy priorities will be therefore subjected to considerations similar to those mentioned above. Among new Member States, apart from Poland and according to B. Piskorska, also Lithuania, Estonia, Czech Republic, Hungary, Slovenia and Romania¹¹ seem to be especially interested in the Eastern dimension of EU policy - even if they emphasize different issues under the proposed conceptions..

It should be however stressed that issues which are particularly important for Poland or other countries in our region, do not have to raise such a deep interest on the part of the rest of the Member States. In this light, a certain role division becomes apparent among the Member States in shaping the EU foreign policy. As far as for Poland the natural direction of interest is the East, another Member States may link their priorities with the Mediterranean Region or South America area¹².

3. Treaty fields and instruments of the EU's Eastern policy shaping

Treaty provisions (Treaty on the European Union - hereinafter TEU¹³ and Treaty establishing the European Community - hereinafter TEC¹⁴) provide for a real mosaic of instruments enabling the EU to define its relations with third countries, also with the partners in the East. From the new Member States' point of view they may be recognized as an important tool of impact on the EU's external policy and realization of their own vision of relations with the Eastern countries. That's why it is worth analysing shortly the treaty regulation in this area. It will allow us to identify the main institutional considerations of Member States impact on the Union's external relations and further to evaluate

11 B. Piskorska, *Wymiar wschodni polityki Unii Europejskiej*, Toruń 2008, p. 178-202. It does not however mean that other Member States don't put attention on the issues of EU Eastern policy.

12 *Ibidem*, p. 29.

13 *Traktat o Unii Europejskiej. Tekst skonsolidowany uwzględniający zmiany wprowadzone Traktatem z Nicei (Treaty on European Union. Consolidated version)* [in:] *Prawo Unii Europejskiej*, Bielsko-Biała 2004.

14 *Traktat ustanawiający Wspólnotę Europejską. Tekst skonsolidowany uwzględniający zmiany wprowadzone Traktatem z Nicei (Treaty establishing the European Community. Consolidated version)* [in:] *Prawo Unii Europejskiej*, Bielsko-Biała 2004.

the most significant examples of to date activities of the new Member States in the analysed field.

One of the main aspects of the EU activity in international relations is the common foreign and security policy (CFSP), which constitutes the so-called second pillar of the European Union. As J. Starzyk indicates, the reason for creating the CFSP was, among others, the will of Member States to increase the role of EU in the global policy and to decrease the disproportion between political and economic “burden” of the Union in international relations¹⁵. Effectively, the system of instruments and inter-institutional ties has been created, which serves the definition and realization of the EU’s external policy.

The proper regime of the II pillar differs in its essence from the Community’s forms of cooperation defined as the first pillar of the EU. The economic integration process within the EC has led to creation of a particular legal order which is often characterized as „supra-national”. It is based, inter alia, on the operation of organization’s bodies independent from Member States and proper majority-voting decision-making which is binding for all of the Member States¹⁶. This regime covers a wide range of issues which are, however, mostly of economic nature. As a result, the Member States - in the area of economic integration - are subjected to law which (to a certain extent) is created independently from them, takes precedence over the national legal order and may influence the legal position of an individual (private entity - direct effect principle). There are no such solutions in the CFSP since the integration in that area is an extremely difficult undertaking¹⁷ and the area of external relations and their autonomous formation traditionally remains a domain of sovereign states’ competence and decisions. That’s why, the institutional framework of CFSP and its decision-making procedures had to be adapted to the nature of issues included in the second pillar. Thus, in principle, as opposed to the Community pillar, CFSP is based on the functioning of bodies representing Member States’ interests and on procedures assuming mainly unanimous decision-making.

15 J. Starzyk, *Wspólna polityka zagraniczna i bezpieczeństwa Unii Europejskiej*, Warszawa 2003, p. 171.

16 M.M. Kenig-Witkowska, *Prawo instytucjonalne Unii Europejskiej*, Warszawa 2007, p. 32.

17 B. Piskorska, *op. cit.*, p. 28.

Decision-making mechanism in the second pillar differs from legislation procedures in the area of community law. All common strategies shall be decided by the European Council (art. 13 par. 2 TEU). What's important, the European Council decides by consensus. The common strategies are recommended by the Council and it is the Council which implements them (art. 13 par. 3 TEU). To this end the Council adopts joint actions and common positions (and other decisions) - in principle unanimously (art. 23 par. 1 TEU). Abstentions by members present or represented do not prevent the adoption of a certain act¹⁸. Each member of the Council abstaining from voting may - by making a formal declaration - be released from the obligation to apply adopted decision, however it does not mean lack of acceptance for binding the EU itself by the decision (art. 23 par. 1 TEU). TEU provides for certain exceptions to the indicated unanimity rule enabling the Council to take a decision by qualified majority. This situation occurs when adopting the common positions or joint actions on the basis of a common strategy and when adopting a decision that executes joint actions or common positions (art. 23 par. 2 TEU). This regulation means that decisions in the area of CFSP may be adopted - at least potentially - contrary to will or interests of particular Member States. Of course it may ensure a larger effectiveness and efficiency of CFSP, which wouldn't be possible to achieve by complete adherence to the unanimity rule. However, it should be kept in mind that we are still operating in the area of acts adopted on the basis of common strategy and these require prior consensus in the European Council. Moreover, members of the Council have a possibility to obstruct a voting. If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. In such cases the Council may - acting by qualified majority - request that the matter be referred to the European Council for decision by unanimity (art. 23 par. 2 TEU).

From the EU Eastern policy's standpoint, it is worth to take a look at a particularly remarkable instrument of CFSP in the form of common strategies. They are implemented in the areas where the Member States have important interests in common. They shall set out their objectives, duration and the means to be made available by the Union

18 J. Barcz, *II filar Unii Europejskiej - Wspólna Polityka Zagraniczna i Bezpieczeństwa* [in:] J. Barcz (red.), *Prawo Unii Europejskiej. Zagadnienia systemowe*, Warszawa 2006, p. 73.

and the Member States (art. 13 par. 2 TEU). Common strategies are mainly implemented by adopting joint action and common positions (art. 13 par. 3 TEU)¹⁹. Common strategies constituted relatively important instrument of the Union's Eastern policy in the end of the nineties and the beginning of the 21st century. In 1999 two common strategies concerning two Eastern partners of the EU - Russia and Ukraine - were introduced²⁰. Both of them were prepared according to the Treaty requirements, both were similar in respect to their inner structure²¹. In both cases the common strategies were extended for one year before they expired. What is interesting - apart from the two above-mentioned common strategies - within the CFSP there was only one more common strategy implemented which concerned the Mediterranean Region²². It is therefore hard to formulate an exhaustive evaluation of that CFSP instrument as effective means of the EU foreign policy - it simply seems that the Union used it too rarely. However, without any doubt, the political potential offered in the area of the CFSP shouldn't stay unnoticed in the context of the Union's Eastern policy.

It should be noticed that also the Community regime (the so-called first pillar) provides for a number of instruments which enable to define the EU relations with the East. A particular notice should be placed on art. 300 and 310 of TEC.

Article 300 TEC describes the procedure of conclusion of international agreements by the Community. This procedure begins with the Commission's recommendations made to the Council, which in turn

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- 19 *Joint actions shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation* (art. 14 par. 1 TEU). *Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity* (art. 14 par. 3 TEU). *Common positions shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common positions* (art. 15 TEU). The legal character of this acts (together with common strategies) differs from the character of Community legal acts (see art. 249 TWE) and frames within the specificity of the intergovernmental cooperation in the second pillar.
- 20 *Common Strategy of the European Union of 4 June 1999 on Russia*, Official Journal L 157, 24/06/1999, source: <http://eur-lex.europa.eu> and *European Council Common Strategy of 11 December 1999 on Ukraine*, Official Journal L 331, 23/12/1999, source: <http://eur-lex.europa.eu>.
- 21 T. Dubowski, *Instrumenty prawno-polityczne wspólnej polityki zagranicznej i bezpieczeństwa UE*, Administracja Publiczna. Studia krajowe i międzynarodowe nr 1(5)/2005, p. 92-93.
- 22 *Common Strategy of the European Council of 19 June 2000 on the Mediterranean region*, Official Journal L 183, 22/7/2000, source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=DD:18:01:32000E0458:PL:PDF>.

shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council and under such directives as the Council may issue. In this stage of the procedure the Council decides by qualified majority. It's worth noticing that TEC does not provide for participation of the European Parliament (EP) in the area of initiating and conducting the negotiations. However we should emphasise that this kind of Parliament's participation is a fact confirmed by the institutional practice based on Parliament's Rules of Procedure (art. 83)²³.

The signing and the conclusion of an international agreement are decided on by the Council acting by a qualified majority upon the Commission's request (art. 300 par. 2 TEC - without agreements covering the fields for which unanimity is required for the adoption of internal rules and for the agreements referred to in art. 310 TEC).

According to art. 300 par. 3 TEC, the Council shall conclude an agreement after consulting the EP. The Council, depending on the urgency of the matter, may specify a deadline by which the Parliament shall deliver its opinion. In case of absence of such an opinion by the specified deadline the Council may act independently. TEC provides for certain exceptions from that rule. When it comes to agreements referred to in art. 133 par. 3 TEC the consultation with the EP is not required. The exception extending the EP's powers is the agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in art. 251 TEC. These agreements shall be concluded after the assent of the European Parliament has been obtained.

The above-mentioned art. 310 TEC provides for the possibility of conclusion of an association agreement with one or more states or international organisations - agreements which involve reciprocal rights and obligations, common action and special procedure.

23 *Rules of Procedure of the European Parliament*, source: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20070903+RULE-083+DOC+XML+V0//PL&language=PL&navigationBar=YES>.

Both TEC regulations seem to be important in the context of the Union's Eastern policy. With reference to art. 310 TEC it should be noticed that the so-called association agreements for a group of Central and Eastern European countries (e.g. Poland²⁴) constituted a fundamental part of their integration process which led to the full accession to the EU. In that sense they may be recognized as an important instrument of the EU's Eastern policy up to 2004, which may be used also in the future. We should also remember that decisions concerning the conclusion of those agreements are taken by the Council unanimously (art. 300 par. 2 TEC).

The weight of the art. 300 TEC for the analysed matter depends on the fact that this regulation is recognized as a legal basis for the Council decisions²⁵ concerning the conclusion of a specific kind of international agreements in form of the so-called *Partnership and Cooperation Agreements (PCAs)*. These agreements were concluded with the countries of Eastern Europe, southern Caucasus and Central Asia (among others with Armenia, Azerbaijan, Kazakhstan, Moldova, Uzbekistan, Russia and Ukraine). Their fundamental goal was to strengthen the democracy and economic development. They involved a wide range of cooperation and they created institutional frameworks for their performance²⁶. Ipso facto, they may be seen as an important element of the European Union's Eastern policy shaping.

4. Actors (participants) of the process of defining the EU's foreign policy

The above considerations let us state that the main participants in the process of defining (and to a large extent of implementing) the Union's foreign policy are certain Community (and the EU) institutions. Their influence on this sphere of the EU's activity is of course diverse. These differences result, inter alia, from the fact that the EU foreign

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- 24 See: *Układ Europejski ustanawiający stowarzyszenie między Rzeczpospolitą Polską, z jednej strony, a Wspólnotami Europejskimi i ich Państwami Członkowskimi, z drugiej strony, sporządzony w Brukseli dnia 16 grudnia 1991 r.*, Dz.U. z dnia 27 stycznia 1994 r., nr 11, poz. 38.
 - 25 See among others: *Council and Commission Decision of 31 May 1999 on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part*, Official Journal L 239 , 09/09/1999, source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999D0602:EN:HTML>
 - 26 See more in: B. Piskorska, *op. cit.*, p. 256-266.

policy finds proper instruments of its realization in the cooperation regimes which are different in regard to their essence (I and II pillar of the EU). However, asking a question through which institutions the treaty regulation enables Member States to influence the shape of EU the foreign policy (also in its Eastern dimension) it is not possible not to notice that the European Council, the Council and the Commission are brought to the forefront. The way they affect the external relations of the EU differs - as it has been noticed - depending on the field of the Union's action (CFSP, community law). At the same time, the Member States' impact on certain institutions' attitude in respect to the EU external policy is also different. Here such differences result from the nature and the composition of these institutions. That's why, they deserve a closer look.

The European Council consists of the Heads of State or Government of the Member States and the President of the Commission. They are assisted by the ministers of Foreign Affairs of the Member States and by a Member of the Commission. As a body of political decision the European Council shall provide the Union with the necessary impulses for its development and shall define the general political guidelines thereof (art. 4 TEU). The European Council is described as the supreme political body of the European Union²⁷. This nature of the European Council, in the area of treaty regulation concerning foreign policy of the EU, manifests itself mainly in the field of common foreign and security policy of the Union. Within the CFSP the European Council defines principles and general guidelines thereof (art. 13 par. 1 TEU) and decides on common strategies (art. 13 par. 2 TEU). The composition of the European Council in connection with its powers, the nature of adopted means and the manner in which it takes decisions (consensus) causes that it has a fundamental influence on the shape of the Union's foreign policy. Membership in the European Council provides therefore the participation in defining the general assumptions of the CFSP and its principles as well as in adopting acts of more measurable nature - common strategies. That way the described legal regulation creates a real possibility of affecting the Union's external policy. It doesn't however determine definitively the degree of certain states' influence on the means adopted by the European Council. The extent

27 R. Zięba, *Wspólna Polityka Zagraniczna i Bezpieczeństwa Unii Europejskiej*, Warszawa 2005, p. 32.

to which the European Council decisions shall reflect the position of Member States depends widely on extralegal factors (among others: the essence of state's foreign policy goals, ability to compromise in relation to certain issues etc.). Treaty regulation, especially consensus in decision-making, constitutes in this case a necessary basis for establishing state's own status in the area of the CFSP. It is worth emphasising that the European Council play a significant role in developing such mechanisms of the Union's foreign policy which go beyond the framework of the CFSP and have an important meaning for the EU relations with Eastern Europe countries. A good example may be the European Council involvement in the Eastern Partnership initiative (described below).

The nature of the Council as an institution which consists of a representative of each Member State at ministerial level seems to create a natural forum for influencing the shape of the EU foreign policy. In the second pillar the influence of the Council is visible already at the level of the CFSP programming - it is the Council who recommends to the European Council the adoption of common strategies (art. 13 par. 3 TEU). It is however worth noticing that in the case of the Council its role is particularly appreciable in the area of implementing the CFSP which is connected with the nature of the Council as the main decision-making body of the second pillar²⁸. We should remind that the Council, on the basis of the European Council's general guidelines, takes necessary decisions to define and implement the CFSP and through adopting common positions and joint actions it realizes common strategies (art. 13 par. 3 TEU). It should be also noted that it is difficult to force through a decision that openly contradicts vital interests of a certain Member State. Of course, the basic guarantee of protection of these interests is the rule of unanimity in the Council. It seems however, that even the exceptions from that rule are flexible enough - they do not paralyse the decision-making process creating at the same time a possibility of protecting state's own arguments. By abstaining from voting we don't block the adoption of a decision and we don't deny that it binds the Union. At the same time - through making a formal declaration - we shall not be obliged to apply the decision in question. Moreover, in matters of particular importance from the perspective of our

28 *Ibidem*. See also: J. Starzyk, *op. cit.*, p. 72.

raison d'état, we are able to block the qualified majority voting in the Council. In such a case the matter in question may be referred to the European Council. The Council decides here again by qualified majority, which still gives a chance to reject this solution. But if the matter in question gets to the European Council, the Council may decide only unanimously. Again, it should be noted that the treaty regulation - giving the Member States the possibility to shape the Council's position - does not automatically ensure full compliance of the Council's activity with the expectations of particular Member States. The priorities of state's external policy may be effectively taken into consideration under the EU foreign policy when the Member States show creativity, flexibility of presented positions or reasonable determination in pursuing their goals. In such a case there is a chance to carry out desirable initiatives - beginning from the political decision level up to the implementation of particular CFSP instruments.

Powers of the Council in the area of conclusion of international agreements by the Community should also be noted. As early as in the stage of negotiations conducted by the Commission the influence of the Council is visible. It is also the Council which decides on conclusion of certain agreements (however upon recommendation from the Commission) and the conclusion of an agreement itself only in certain cases requires the assent of the EP. Additionally, in the analysed area, the Council decides in principle by qualified majority (exceptions are clearly expressed in the TEC), which seems to give the Member States a larger margin of discretion comparing with the situation when the adoption of a decision requires unanimity (CFSP).

In the context of the Council status in the area of the EU foreign policy it is impossible to ignore the role of Presidency²⁹.

Presidency, the office of the President, shall be held by each Member State in the Council for a term of six months (art. 203 TEC). Since the Council is an institution present in all of the EU pillars, the Presidency tasks go beyond the scope of foreign policy of the Union, however in this area they seem to be most interesting from our point of view.

According to TEU, the Presidency represents the Union in matters coming within the common foreign and security policy. It is also

29 It's particularly important concerning Polish Presidency in the Council in 2011.

responsible for implementing decisions taken in the second pillar and in that capacity it expresses the position of the Union in international organizations (art. 18 par. 1 i 2 TEU). It may, out of its own initiative, convene an extraordinary Council meeting in cases requiring urgent decision (art. 22 par. 2 TEU). This regulations emphasise the role of the state holding currently the office of the President - especially as the instruments such as *agenda-setting*, *agenda-structuring* and *agenda exclusion*³⁰ let the Presidency retain relatively large influence on the shape of the Union's policy. One could even say that, based on the Treaty regulation, the Presidency may, with a relative ease, define the EU policy, prioritising its own interests. However, it is only apparent. We should note that, according to TEU, the Presidency is, inter alia, responsible for implementing the decisions taken within the second pillar. Consequently, the Presidency doesn't define the EU foreign policy arbitrarily - it implements it as a main representative of the Union in external relations. The Council Rules of Procedure confirm that³¹. According to them, the Council work programme has to be prepared together by three Member States holding the office of the President in a certain period. Presidency influences the shape of the work of the Council which occupies the central place among institutions responsible for defining and implementing the EU external policy. On the other hand, the preparation of the Council's work programme is a result of a strict cooperation among three Member States (and the Commission). Moreover, work programme prepared in such manner is subjected to the Council's approval, which limits manoeuvring possibilities. Additionally, it should be said that practically Member States avoid using Presidency for their own interests. In J. Tallberg's³² paper we read that even if a Member State holding the Presidency finds instruments enabling it to treat certain issues - particularly important from state's point of view - with priority, in principle the state doesn't make use of it. The reason is usually a habit of a neutral behaviour³³, fear of being criticized³⁴ or the pressure on the Presidency to achieve European com-

30 J. Tallberg, *The agenda-shaping powers of the EU Council Presidency*, Journal of European Public Policy, February 2003, p. 5. See also R. Rowiński, *Europejscy „trend-setterzy”*, Polski Kalendarz Europejski, nr 122/2009, p. 34.

31 *Council Decision of 15 September 2006 adopting the Council's Rules of Procedure*, Official Journal L 285, 16/10/2006, p. 47.

32 J. Tallberg, *op. cit.*, p. 4.

33 *Ibidem*

34 *Ibidem*

promise at the cost of own priorities and interests³⁵. At the same time it seems that holding the Presidency in the spirit of compromise, balancing interests of different states and the Union may bring more advantages than trying obstinately to use it as an instrument of state's own policy. The latter exposes state's credibility and prestige to risk, which in international relations may turn to an irreparable loss.

Trying to summarize the above analysis it's worth to make a few remarks on the possible influence of Member States on the Commission and the EP as institutions involved in the process of creating and implementing the Union's foreign policy.

Powers of both institutions in the area of the EU external relations are of course worth emphasising, however, as it has been noted earlier, none of them plays a leading role in that field. The Commission shares, together with the Member States, the right to recommend to the Council proposals concerning the CFSP. What's more, it shall be fully associated with the work carried out in the field of the CFSP. The European Parliament, on the other hand, fulfils mainly advisory and control functions, however, according to some of the scholars, budgetary competences of the EP and its influence on the CFSP financing facilitates the EP with more and more intense influence in this field of the EU activity³⁶. The situation looks different in the first pillar of the Union. As it has been shown, the impact of both institutions on the sphere of contractual relations with third states and international organisations is in this area quite strong. Let us remind that the Commission is, for example, responsible for conducting the negotiations leading to the conclusion of a specific international agreement. The Parliament has the right to pass an opinion and certain agreements may be concluded only after the EP's assent has been obtained. As a result, both - the Commission and the Parliament - may play an important role in creating the Union's external policy, at least in the field of the community pillar.

We should however remember that the possibilities of influencing the two analysed institutions provided for in the Treaties are limited - not only in the area of foreign policy. It is connected with the nature of the Commission and the Parliament. The supranational nature of

35 R. Rowiński, *op. cit.*, p. 35-36.

36 U. Diedrichs, *The European Parliament in CFSP: More than Marginal Player?*, *The International Spectator*, 2/2004, pp. 31-46.

the Commission is beyond any doubt. It is true that its members come from Member States, but their independence is guaranteed in the Treaty (they are completely independent in the performance of their duties, they shall neither seek nor take instructions from any government or from any other body - art. 213 TEC) and additionally emphasised by a relatively wide range of diplomatic privileges and immunities. Members of the Commission therefore don't represent their Member States - they're international functionaries. The influence on the Commission becomes visible in the stage of its appointment (art. 214 par. 2 TEC), but even in this field the Member States act through institutions representing them (precisely the Council, however acting in a specific composition).

The European Parliament on the other hand is a representative body which is determined by the way its composition is set up. At the same time the fact that the Members of Parliament (MPs) are not appointed either by the Member States governments or by the national parliaments, but they are elected by direct universal elections makes the EP an supranational institution³⁷. It does not represent national or local authorities but the citizens of Member States. Moreover, an attempt to turn the Parliament into a representative of national priorities is hard to do since the MPs may integrate in political groups (fractions) whereas any membership in a certain group is determined by similarity of opinions and not by the MPs' nationality. Of course, it happens that the dividing lines are dictated by the national interests, but it is not an usual and fundamental practice of the European Parliament.

5. New Member States experience

The above considerations show that the present Treaty regulation offers a number instruments of shaping the foreign policy of the European Union - also in its Eastern aspect. These instruments are at the same time available in different fields of cooperation - in the sphere of the community law as well as within intergovernmental cooperation (CFSP - second pillar). In both pillars the main role in defining the directions of the Union's foreign policy and the implementation thereof falls onto the institutions expressing Member States interests. That

37 C. Mik, *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki*, Warszawa 2000, p. 137; M.M. Kenig-Witkowska (red.), *op. cit.*, p. 104.

gives them a possibility to influence the EU external policy in such a way which takes their individual conceptions, interests and even ambitions into consideration. We should therefore look at the way the new Member States try to use the mechanisms and institutional considerations described above in relation to the EU Eastern policy issues.

5.1. The Eastern Partnership

The Polish-Swedish initiative of the Eastern Partnership seems to be a good example of an effective enforcement of new Member States' own conceptions concerning the EU relations with the East. This initiative turned out to be particularly important for Poland who wishes to play the role - as noted above - of a promoter of the Union's Eastern policy. From the Polish point of view the European Neighbourhood Policy (ENP)³⁸ introduced in 2004 required a new impulse with reference to the Eastern neighbours - an impulse which would enable intensification and development of the cooperation with the Eastern European countries to the extent corresponding with their significance for the EU external policy. It seemed also that the ENP, which includes the South European countries too, was not able to fully meet the present needs of the Eastern policy. Establishment of a new instrument under the ENP which would be adapted to the demands and conditions of the partnership with Eastern European countries was therefore necessary.

The proposal of deepening the EU relations with its Eastern partners was presented in the Polish-Swedish *non-paper*³⁹ in May 2008. It was based on a belief that there is a need to *strengthen the European offer in the Eastern direction* based on the current ENP but exceeding its frames. The bilateral cooperation should include issues such as: migration issues (including visa-free regime as a long-term goal), creation of a deep free trade area (on the basis of free trade agreements negotiated individually), intensifying people-to-people contacts (among others through students and scholars exchange programmes). The multilateral cooperation between 27 Union states and 6 Eastern partners (Ukraine, Moldova, Azerbaijan, Armenia, Georgia and Belarus - states embraced by the ENP) on the other hand should be based on the in-

38 See: *Communication from the Commission - European Neighbourhood Policy - Strategy paper*, COM (2004) 373 final, source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0373:EN:HTML>.

39 *Propozycja Polsko-Szwedzka Partnerstwo Wschodnie*, source: <http://www.msz.gov.pl/files/PARTNERSTWO%20WSCHODNIE/1PL.pdf>.

volvement in implementation of certain projects. The cooperation areas were defined in 5 subject fields including: political and security matters, borders and trans-border movement, economic and financial issues, matters of environment and social issues.

In June 2008 the European Council welcomed the Polish-Swedish proposals⁴⁰. It has simultaneously invited the Commission to prepare more precise proposal of the Eastern Partnership. This invitation was renewed by the European Council at its meeting in September 2008 as a result of the situation in Georgia⁴¹. In result, on 3 December 2008, the Commission presented its Communication on Eastern Partnership⁴². The Communication defines more precisely the areas of bilateral and multilateral cooperation, the instruments of Partnership's implementation, its institutional framework and the means of its finance. The inauguration of the Eastern Partnership was planned for spring 2009.

Proposals included in the Commission's Communication were accepted by the European Council in December 2008⁴³. The stress was laid on the fact that the Eastern Partnership shall contribute to important strengthening of the cooperation with Eastern partners embraced by the ENP⁴⁴ in bilateral and multilateral aspect as well as to their rapprochement to the EU through, inter alia, facilitating the progress in their reform process. At the same time the European Council instructed the Council to study the proposals put forward by the Commission. It has been also confirmed that the Eastern Partnership shall officially launch during the Czech Presidency (2009). The European Council finally approved the Eastern Partnership in March 2009⁴⁵. On 7 May 2009 the initiative was launched during the first Eastern Partnership summit in Prague.

Of course, today it is hard to estimate if the Eastern Partnership will turn out to be an effective initiative fulfilling hopes placed on it.

40 *Brussels European Council, 19/20 June 2008, Presidency Conclusions*, source: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/101346.pdf.

41 *Extraordinary European Council, Brussels, 1 September 2008*, source: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/102545.pdf.

42 *Communication from the Commission to the European Parliament and the Council. Eastern Partnership*, COM(2008) 823/4, source: <http://www.ms.gov.pl/files/PARTNERSTWO%20WSCHODNIE/2PW.pdf>.

43 *Brussels European Council, 11 and 12 December 2008, Presidency Conclusions*, source: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/104692.pdf.

44 Mentioned above Ukraine, Moldova, Azerbaijan, Armenia, Georgia and Belarus.

45 *Brussels European Council, 19/20 March 2009, Presidency Conclusions*, source: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/106809.pdf.

It is simply too early for such evaluation. It should be however noted that the fact of successful launch of that initiative already seems to be an important achievement of one of the new Member States of the EU. Poland succeeded in creative involvement in the process of the EU foreign policy shaping in one of the most important fields which - from our point of view - are the relations with Eastern Europe. The proper definition of the goals of the initiative in question, the right placing of own activity in the institutional context of the EU and the ability to acquire allies allow to give the Union's Eastern policy a new dimension. In this light the proper use of institutional considerations of the Union's external policy described above is worth emphasizing - especially on the European Council forum. It is not easy considering the necessity of acting within a body operating on the basis of consensus. Moreover, the favour on the part of the Commission, which doesn't represent state's interests, has also been won. In a situation when, with reference to Eastern European countries, particularly Russia, it's very hard to achieve the uniformity of positions, the Polish-Swedish initiative seems to be an example of proper use of the Union's external policy institutions and mechanisms which enable achievement of the assumed goals.

5.2. Slovenian and Czech Presidency

Previous considerations show that one of the fields of impact on the EU foreign policy is the use of the office of the President (Presidency). So far two of the new Member States have held the Presidency. We should look at the manner they contributed to the process of the EU's Eastern policy shaping from the Presidency perspective.

Slovenian Presidency fell in the first half of 2008. Among the priorities of that presidency in the area of external policy a remarkable attention was put to the Southern-Eastern Europe region and particularly to Western Balkans⁴⁶. In this light the Slovenian will to continue the accession negotiations with Croatia and Turkey as well as to cooperate with Western Balkans states in order to strengthen their European perspective was stressed. In relation to states such as Albania, former Yugoslav Republic of Macedonia, Montenegro, Serbia or Bosnia and Herzegovina, the intention was expressed to take steps enabling these

46 *Slovenian Presidency Programme, Si.nergy for Europe, Januar - June 2008*, source: http://www.eu2008.si/includes/Downloads/misc/program/Programme_en.pdf.

states the accelerated introduction of European standards. Finally, the particular role of the Slovenian Presidency was recognized in the field of Western Balkans stabilization - especially in the context of Kosovo.

We should note that the priorities outlined in the above-mentioned way correspond closely with the Slovenian external policy considerations. The geographical position solely makes Slovenia a natural promoter of the Union's policy in the South-East Europe region. This kind of relation between national policy priorities and the shape of EU foreign policy was already indicated above. Consequently, in the light of Presidency assumptions, the mentioned direction of Union's external activity was treated in a particular way. And in this region the results of Slovenian Presidency influence on EU foreign policy, which include, among others, the continuation of accession negotiations with Croatia and Turkey, the start of dialogue concerning visa liberalization with Western Balkans countries and the official start of „Black Sea Synergy” initiative as a part of ENP, are most visible.

From the Polish perspective in the field of relations with Eastern Europe countries particularly important was the fact that during the Slovenian Presidency the initiative of Eastern Partnership has been taken up. We should remember that it was the European Council who, on its meeting in June 2008, accepted the project of Polish-Swedish initiative and gave it a further process. In that context it may be assumed that Slovenia succeeded to strengthen the eastern dimension of ENP and ipso facto to emphasize the Union's involvement in the region of Eastern Europe.

The Czech Presidency came to an end in June 2009. Among its priorities⁴⁷ with reference to the eastern policy of the Union the particular notice was put on the relations with Russia and Ukraine as well as with Caucasus countries. The weight of strengthening the eastern dimension of ENP was also stressed. We should notice that, as opposed to Slovenian Presidency, the strong accent was laid on the relations with Eastern Europe countries (however the south dimension of ENP or the dialogue with Croatia and Turkey were not ignored). Again the influence of certain Member States' policy conditionings on the shape

47 *Work Programme of the Czech Presidency, Europe without Barriers*, source: <http://www.eu2009.cz/en/czech-presidency/programme-and-priorities/programme-and-priorities-479/>.

of Union external policy - defined from the Presidency position - becomes visible.

The more detailed analysis of Czech Presidency programme lets state, that indeed the priority significance was attributed to the strengthening of cooperation with Eastern Europe and South Caucasus. In that context the particular attention was put on the necessity of launching and developing the Eastern Partnership initiative, which was seen as *a new comprehensive and reinforced policy of the EU eastward* expressly accentuating Union's interest in this region⁴⁸. The Eastern Partnership is also, according to Presidency opinion, a proper instrument of achieving balance between the individual geographical partnerships of the EU. From Presidency point of view, an important element of ENP and Eastern Partnership development is an intensification of bilateral relations with Ukraine, Moldova, Georgia, Azerbaijan and Armenia. The Presidency expressed also the will to support the relations between EU and Belarus through a constructive dialogue and promotion of civil society in Belarus.

The problem of relations with Russia became an important element of Czech Presidency too, particularly in the face of the latest crisis in Georgia. In this area the achievement of a more coherent Union's policy approach to Russia was considered particularly important since *the key to EU-Russia relations is the maintenance of the unity of the entire EU and its ability to speak with one voice*⁴⁹

The evaluation of Czech Presidency caused a number of controversies. It was accused of being not able to provide Union with a strong leadership. In the context of M. Topolánek cabinet collapse in March 2009 the negative influence of state's internal situation on the EU activity was accentuated. A bad impression was left by some statements of Czech Republic highest representatives, including statements given by Prime Minister Topolánek (who described Union's plans of economy stimulation as "a road to hell"⁵⁰) and by the President Václav Klaus (who compared the European integration to communism⁵¹). In result it

48 *Ibidem*, p. 24.

49 *Ibidem*

50 See: *Gazeta Wyborcza*, 28.06.2009, source: http://wiadomosci.gazeta.pl/Wiadomosci/1,81048,6765205,Czesi_popsuli_sobie_wizerunek_przewodnictwem_w UE.html

51 R. Gutkowski, J. Horky, *Czesi oblali unijny egzamin*, *Polska the Times*, 29.06.2009, source: <http://polskatimes.pl/fakty/swiat/135139,czesi-oblali-unijny-egzamin,id,t.html>.

was quite hard for the Czech Republic to play a role of a leader of European policy. The achievements in the field of relations with the East were also burdened by this Presidency imperfection. Among the most interesting achievements in the area of external policy, it's worth noticing that Czech Presidency succeeded in introducing the initiative of Eastern Partnership, officially launched at the summit in Prague (May 2009). Although Czechs accentuate their commitment in developing this initiative, which is recognized as a factor of strengthening the Union's eastern policy cohesion⁵², it is hard to estimate if the success of that initiative should be attributed to the Presidency or if it should be seen as a result of the whole EU effort (with particular regard to the role of its initiators).

It seems therefore that the Czech Presidency is a kind of a proof, that the Treaty regulation in itself gives only a necessary instrument of influencing EU's policy, also in its external aspect. Their proper use depends on a number of extralegal factors. This conclusion seems to be particularly important in the context of Polish Presidency in the second half of 2011.

6. Summary

The above considerations let us draw the following conclusions.

First of all, it is worth noting that the effective influence of the new Member States on the EU's Eastern policy requires adapting the aims and priorities of their own foreign policy (and the manner of formulating and expressing them) to the conditions of the EU-membership. The example of Polish practice in this area shows that this is an attainable goal - even from the perspective of the state with a relatively short EU-membership experience.

It has to be noted that the realization of the Union's Eastern policy may take place in different treaty fields offering proper legal and political instruments. In that context the treaty regulation on the CFSP and TEC provisions concerning treaty conclusion between the EC and the third parties seem to be of particular importance. In the light of the

52 *Results of the Czech Presidency in the EU Council*, source: <http://www.eu2009.cz/en/czech-presidency/programme-and-priorities/achievements/achievements-of-the-presidency--24392/>.

treaty provisions the indicated fields of formulation and realization of the Union's Eastern policy assume the involvement of the Community (and the EU) institutions, which may be seen as the correct forum of expressing Member States' positions and interests (European Council, the Council). This fact may favour the individual states' impact on the EU's external policy, also in its Eastern dimension. It's however worth emphasising that TEU and TEC regulations constitute only the necessary basis in this area - the real impact on the Union's policy namely depends on different (as indicated above) factors which are of non-legal nature.

Finally, it should be noted that the institutions and procedures provided for in the treaties let the new Member States introduce effectively initiatives shaping the Eastern policy of the European Union. The Eastern Partnership seems to be a good example of carrying out a political initiative with the proper use of the present institutional considerations of the Union's external policy. The activity of the Czech Presidency maybe did not lead to such optimistic results. We can't however forget that holding the office of the President of the Council requires a wide membership experience which the new Member States are just now trying to acquire.