

THE "ADJUSTMENT" OF POLISH LAW TO THE LAW OF EUROPEAN COMMUNITY

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I. Introduction

1. The "adjustment" of Polish law to the law of European Community is today among the most important tasks of Polish legislature. Efficient and proper performance of this task requires its setting both in the reality of Polish legal and economic system, and in the state and prospects of Poland's connections with the European Union. The perception of this "adjustment" as a problem "in itself" may negatively affect the Polish legal system and competitiveness of Polish economy with respect to the economies of EU member states.

2. Poland has always had the legal system of a continental European state, that is a civil law system derived from the conception and technique of Roman law. Both the assumptions of the Polish legal system and the achievements of the Polish legal thought are fully comparable with the relevant assumptions and achievements found in EC member states. As regards the comparability of its legal system to Community law, Poland finds itself at a more convenient starting point than some of the states so far admitted to European Communities. This is related to two phenomena. First, the Polish legal tradition and doctrine is the resultant of several legal systems, including i.a. the Romanic and Germanic. Second, some of the Polish legal regulations of special importance for business relations, including in particular the law on commercial companies, have a lot in common with the legal system of Germany — the one that exerted the strongest impact on the development of Community law in the area of law of enterprises.

3. The "adjustment" of Polish law to the law of European Union has to be considered and carried out in three different aspects: adoption of law adequate to Polish economic reform; Poland's fulfillment of its obligations resulting from the European Agreement on Association with European Communities and their member states; and creation of conditions for Poland's admission to European Union. The three

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aspects should be distinguished clearly but made complementary to one another as far as possible. Although the problem of the adjustment of Polish law to the law of the Community is formally closely related to Poland's relations with the European Union, yet of the above three aspects, the one of the greatest importance is no doubt the adoption of laws which would be adjusted to Polish economic reform. It involves a global approach to the problem on the grounds of a comprehensive reform of the Polish legal system. Such an approach, in turn, may prevent ventures which would be dangerous for the system's consistence, resolving themselves into a fragmentary transfer into Polish law of various partial legal regulations developed within Community law but still insufficiently founded on both basic regulations and the current state of economic relations.

4. The term "adjustment" lacks a clearly defined meaning in the context of legislative ventures. In the European Agreement, provisions concerning this question have been included in a chapter entitled "Approximation of Laws". The basic article of that chapter contains little to explain the very essence of such approximation. Besides, a reiterated statement that the problem resolves itself into approximation of Polish to Community law, such approximation is defined as an activity aimed at securing consistence of the law of Poland with that of the Community (Art. 68). The doctrine and practice of European Communities seem to agree that the term "approximation of laws" (*Angleichung der Rechtsvorschriften*, *le rapprochement des législations*) actually lacks its own normative contents and has to be related to a definite form of law-making which will determine its legislative contents. This situation could be found in the Treaty that established the European Economic Community (now the European Community) which, in its fundamental chapter concerning "approximation of laws", provides for "directive" as a possible form of such approximation (Art. 100 of the 1957 Treaty). The European Agreement does not contain any substantiation of this kind which means that the choice of a legal form of approximation of Polish to Community law has been left to the competent Polish authorities and can be made at their discretion. From Art. 68 of the Agreement it follows merely that the essence of "approximation" consists in "securing consistence" of Polish law with that of the Community. The state of such consistence may be expressed both in a transformation or incorporation of Community law into the Polish legal system, and in a specific shaping of that system so as to prevent cases of its inconsistency with Community law or to make it comparable with the legal systems of member states of the European Union.

II. "Adjustment" in the aspect of law adequate to Polish economic reform

5. The systemic changes that occurred in recent years in Poland settled its position among the countries whose legal system of destination is to be fashioned after states with free market economy. Therefore, the very fact of the restructuring of the

Polish economic system makes it necessary for reformers of Polish law to use the legal solutions found in the West of Europe, the EU member states included. It is worth stressing in this context that even before Poland's association with the European Communities became a live issue, the institutions that watch over the directions of development of the Polish legal system — such as the Legislative Council attached to the Prime Minister and the Commission for Civil Law Reform attached to the Minister of Justice — had already borrowed in their work from the legislative achievements of Western Europe and the Community. In this aspect, a broadly conceived and not always intentional "adjustment" of the Polish legal system to the systems of member states of European Communities as European free market states proceeded chiefly on the following three planes:

- a) removal from the Polish legal system of institutions and notions glaringly inconsistent with the legal systems of member states of European Communities;
- b) restoration in practice of upheld legal regulations from the period between the two World Wars;
- c) introduction of new regulations as one of the major elements of the economic reform under way.

6. As regards the first of the above planes, what is of particular importance are the changes introduced into the Polish civil code of 1964 by the amendment of 28 July, 1990. Under this latter act, a specific type of legal persons — units of socialized economy — were removed from the Polish civil law, as were also a variety of legal solutions — relating particularly the obligations from contracts — specially designed for relations between such units of socialized economy. As a result of this operation, the Polish civil code became fully comparable with its counterparts in member states of European Communities: the main difference is that the Polish code does not contain legal regulations from the sphere of family and guardianship law.

7. What proved particularly rich and important was the second of the above-mentioned planes. Changes in the economy resulted in the restoration in practice of such legal regulations as provisions on commercial companies (partnership, private and public limited liability companies) of 27 June, 1934; the law on bills of exchange and promissory notes and the law on cheques of 28 April, 1936; or the bankruptcy law and the law on composition agreement proceedings of 24 October, 1934. In all these spheres of special importance for business relations, Poland has regulations which are fully comparable with or even — as in the case of the systems of the law on bills of exchange and on cheques — identical to the legal systems of continental member states of European Communities. In the law on commercial companies, after restoration of a limited partnership by the act of 31 August, 1991 and introduction, by the act of 23 December, 1988, of the possibility of forming single-member private limited liability companies (the relevant Directive of the EEC only passed on 21 December, 1989), certain changes have to be introduced in practically one case of public limited liability companies: in particular, such changes should adjust the Polish

law on associations of capital to numerous relevant directives of the EEC passed on the grounds of Art. 54 section 3 point "g" of the 1957 Treaty. The changes to this effect are being prepared for some time now by a specially appointed group for reform of the law on commercial companies within the Commission for Civil Law Reform which bases on the Community regulations in its work. The Polish bankruptcy law and the law on composition agreement proceedings is consistent in its essence and basic solutions with the relevant regulations of EU member states. The fact considered, however, that most states with developed economies introduced a number of important changes in that law during the 1980s — with respect first of all to reparatory proceedings — the Polish regulations have to be modernized, the whole of the system left unchanged.

8. As an important element of the economic reform under way since 1989/1990, a whole package of statutes were promulgated from the sphere of the economic administrative law. Concerned here is mainly the customs law, the law on foreign exchange, and the tax law, as well as such borderline spheres fringing upon public and private law as the banking law and the law on monopoly control, and also the law on public securities trading. Also adjusted to the new economic principles have been such spheres as the law on technological inventions (Act of October 1992); besides, a new law on copyright was promulgated which also corresponds with those principles (Act of 4 February, 1994). In all those legislative ventures, a certain and sometimes even important role was played by the legal solutions found in Community law or in the legal systems of the separate member states of European Communities. In a decided majority of cases, though, such solutions were used not with the direct aim of adjusting Polish law to that of the Community but rather for the reason that a given solution proved necessary for the economic reform. Among the new regulations based on the changes in the Polish economic system, the following situations should also be distinguished.

a) Due to their direct relation to the current economic conditions, certain spheres of the law — as in particular the customs law, the law on foreign exchange, and the tax law — cannot possibly be adjusted with no relevance to the reality to any model solutions that are adequate for states with a developed free market economy. Therefore, according to the needs, such spheres inevitably contain and preserve solutions that depart from the standard solutions found in those countries. As a consequence, it is self-evident that introduction into the Polish legal system of Community solutions will only be possible in the course of Poland's economic development that is to accompany the processes of the country's association with European Communities.

b) In certain spheres, as in the banking law and the law on public securities trading, the crucial role is played by organization and the proper functioning of certain institutions, that is banks and the stock exchange in the discussed case. In such spheres, the possibility of introducing legal solutions which would be fully comparable with those found in Community law and the law of economically developed countries depends on the actual or potential conditions that can be created for the set-

ting of those very institutions. Therefore, whatever the degree of comparability of the Polish banking law or the law on public securities trading, the actual effectiveness of this adjustment is bound to depend on institutional solutions which are specially dependent on the current state of Polish economy.

c) Further, such spheres of law as the law on monopoly control or on fighting unfair competition offer broad possibilities of borrowing from foreign systems as their component solutions and mechanisms have a largely general value and only acquire definite contents in contact with the reality. On the one hand, Polish law can achieve (and has already achieved) a high degree of comparability with the Community law or the law of the separate member states of EU in those spheres. On the other hand, though, due to the Polish economic reality, the actual contents of monopoly practices and cases of unfair competition in the Polish conditions are bound to differ from those found in developed free market economies for a long time to come, the differences being sometimes quite considerable.

d) Finally, there are such spheres as patent law or the law on copyright which involve the right to intellectual property and, as shown by the most developed practice of concluding international agreements, clearly prove susceptible to unification. In such spheres, the direction of the general reform of Polish law practically agrees with what is being done in this area both in West-European countries and within the European Communities. This is particularly evidenced by the fact that provisions on computer programs contained in the Polish Act on copyright of 1994 have been directly transferred from EEC Directive of 1991 on legal protection of computer programs.

III. "Adjustment" in the aspect of Poland's obligations resulting from the European Agreement on Association

9. The problem of the adjustment of Polish law to the law of the European Community is present in the European Agreement in the following three formulations:

a) as a separate problem discussed in a separate chapter on "Approximation of Laws";

b) as an element of the contents of those provisions of the European Agreement which relate to the movement of workers, setting up of firms, supply of services (Part IV), as well as payments, capital, competition and other provisions relating to the economy (Part V);

c) as an element of cooperation discussed in provisions under the general title "Economic Cooperation" (Part VII).

10. The chapter on approximation of laws consists of three articles, each performing a different function:

a) the first article provides the general legal grounds for approximation of Polish to Community law (Art. 68);

b) the second one specifies the spheres of law in which this approximation should take place first of all (Art. 69);

c) the third article declares the Community's intention to help Poland with the technicalities of the discussed approximation of laws (Art. 70).

11. The general legal grounds for approximation (adjustment) of Polish law to the law of European Community are composed of the following two elements: a definition of the mutually recognized importance of such approximation for Poland's relations with the Community, and a definition of the way in which Poland should proceed to adjust its domestic law to the law of the Community. Both of these elements require a closer analysis with the aim to find out whether, and to what extent, it follows from the European Agreement that Poland should adjust its entire legal system to Community law.

a) The first element has been formulated as follows: "The Contracting Parties recognize that the major precondition for Poland's economic integration into the Community is the approximation of that country's existing and future legislation to that of the Community". In this context, the verb "to recognize" usually expresses views of the parties entering an agreement, and not their undertaking of any definite obligations. It is found most often in preambles of agreements or other international contracts, and can also be used in outlined provisions that are to be filled with definite contents gradually. Therefore, no specific obligations of Poland as regards adjustment of Polish to Community law follow from the discussed fragment of Art. 68. Not imposing any definite obligations, the formulation is nevertheless of great importance in the context of Poland's application to be admitted to the European Union. Recognizing approximation of Polish law as the main preliminary condition of Poland's economic integration with the Community, the European Communities and their member states have undertaken at least a moral obligation actually to include Poland in the Community once the country can demonstrate "proximity" of its legal system to the Community one. An opinion is justifiable that the discussed provision of Art. 68 is likely to matter more for Poland's endeavors to be admitted to EU than the formulation contained in the Preamble of the Agreement: "Recognizing the fact that the final objective of Poland is to become a member of the Community and that this association, in the view of the Parties, will help to achieve this objective".

b) The other distinguished element has found expression in the sentence: "Poland shall use its best endeavours to ensure that future legislation is compatible with Community legislation". From this formulation it seems to follow that Poland does not undertake any obligations as to the result, that is does not undertake actually to adjust its law to the law of the Community but only to make adequate efforts to accomplish the state of consistence of the future Polish law with Community law. Therefore, Poland's obligation in this respect is that to act conscientiously.

12. The list, contained in Art. 69 of the Agreement, of the spheres of law in which approximation of Polish to Community law should take place particularly requires at least the following comment.

a) As follows clearly from the use of the phrase "particularly", the discussed list is not limitative and can be interpreted mainly as a specification of the spheres of law that have to be approximated first.

b) Striking are the quite considerable differences between the Polish and English version of the article as far as some of the items it specifies are concerned. The Polish version mentions the following spheres: the customs law, company law, banking law, accounts of enterprises, taxation, intellectual property, protection of workers at workplace, financial services, principles of competition, protection of health and life of humans, animals and plants, consumer protection, indirect system of taxation, technical provisions and norms, transport, and the natural environment. The English version does not refer generally to the accounts of all enterprises or to taxation in general, the whole of the related problems — in accordance with the directions and degree of unification of the law in the EEC — being contained under the heading "company accounts and taxes" and thus reduced to the accounts and taxation of companies only.

c) It would be interesting to know what determined the sequence of the items specified in the discussed article. The sequence seems accidental as there is nothing to explain it: neither the criteria of importance of the separate fields for the association processes, nor that of the degree of differences between Polish and Community law.

11. Analyzing the contents of Art. 70 of the Agreement, it has to be stressed that the Community's undertaking to render technical assistance to Poland in the work of approximating Polish law to that of the Community has not only a practical but also a legal meaning. Under the second sentence of Art. 68, Poland has undertaken to make all efforts to secure consistence of its future law with the law of the Community, and an insufficient assistance on part of the Community may significantly impair this obligation. This means that the EC can only blame Poland for insufficient performance of this obligation if, for its part, it does render technical assistance in approximation of Polish to Community law in such forms as e.g. the exchange of experts; provision of information; organization of seminars; training; and help in translating Community legislation (legal provisions) in individual branches of the law.

12. What should be discussed first of all among the relatively numerous references made in Parts IV and V of the Agreement to the task of securing consistence of Polish with Community law or concrete obligations to introduce changes in Polish legal regulations are the problems of setting up and functioning of enterprises, that is the sphere that can be called the law on enterprises or industrial law. The Polish legal system has many gaps as concerning this sphere. Its indirect regulation consists of a variety of provisions scattered among such normative acts as the Act of 23 December, 1988 on economic activity; upheld parts of the 1934 commercial code relating to commercial company and commercial register; or the Act of 14 June, 1991 on companies with a foreign capital share.

13. Under the European Agreement, Poland has undertaken so to shape its legal provisions relating to broadly conceived setting up of enterprises, their legal status included, as to:

a) secure to legal and natural persons who are members of the Community according to the criteria specified in Art. 48, with respect to the setting up of enterprises, a treatment which should not be inferior to that received by Polish legal or natural persons (Art. 44 section 1 (I));

b) secure, with respect to the activity of enterprises set up in Poland by legal and natural persons who are members of the Community, a treatment which should not be inferior to that received by Polish legal and natural persons (Art. 44 section 1 (II));

c) secure to legal persons who are members of the Community and have set up an enterprise in the territory of Poland, to branches and agencies established in Poland by such legal person, and also to natural persons who are members of the Community and pursue activity in Poland as self-employed (basing on independent work), the right to purchase, use, lease out, and sell real estate, and with respect to the natural resources, plough-land and forests — the right to lease, where these are directly necessary for such persons' pursuit of economic activity within the enterprise they have set up (Art. 44 section 7);

d) secure to all persons enjoying the right to set up an enterprise in the territory of Poland the right directly and indirectly to fill their key employment positions with subjects of EC member states, under the conditions specified in the Agreement (Art. 52).

14. Restructuring of the Polish legal system in accordance with the obligations that result from provisions relating to the setting up of enterprises is among the most urgent and at the same time the most difficult legislative ventures within the broadly conceived task of adjusting Polish law to that of the Community. Concerned here is not only application in Polish law of specific Community solutions but also development in Poland of industrial law (law on enterprises) which would meet the European standards valid since a long time in states with free market economy. Further, restoration in Polish law of industrial law (law on enterprises) requires also serious legislative interventions in the civil code, as well as solution of the problem of way and place of announcing the data on persons who run enterprises and on such enterprises. As quick as possible, additions should be made to the civil code: provisions dealing with the status of persons who pursue activity within an enterprise, as well as a regulation which would serve as the grounds for the entire system of registration and announcement of data, especially with respect to the legal effects of the fact of making or not making an entry or announcement of data contained in the register and the way in which such data can be used by third persons. The works on amending the civil code in this direction have so far failed to go beyond the preliminary stage; instead, a draft bill on the Economic Monitor has already been prepared which sho-

uld solve the problem of place and way of announcing data on the entrepreneur and his enterprise.

15. Adjusting provisions of the Agreement relating to the setting up and legal status of an enterprise, the fact was taken into account that the discussed sphere is particularly closely related to the economic reality; hence the considerable caution in formulating the way and pace of Poland's meeting its obligations resulting from Art. 44. This is expressed by the following adjustments.

a) Exclusion from provisions on the setting up and activity of enterprises of purchase and sale of natural resources, plough-land and forests.

b) Preparation of a schedule of implementation of provisions regulating the setting up of enterprises: in some areas, such implementation is to start with the entering into force of the Agreement, while in some other ones it is to follow either of two versions: not later than by the end of the first stage planned for completion of association, or not later than by the end of the transitory period preceding the moment of full association (Art. 44 section 1 (I) in relation to Appendices XIIa through XIIId); included in the first of the above groups has been e.g. building, in the second one — e.g. mining, and in the third — e.g. financial services and purchases of state property in the course of privatization.

c) The principle of equal treatment of the activity of enterprises established in Poland by natural and legal persons from the Community is to become valid on the day of entering into force of the European Agreement; should, however, the valid legislation and provisions relating to certain spheres of economic activity in Poland fail to guarantee such treatment of legal and natural persons from the Community from that day on, Poland has undertaken to amend them so as to secure the due treatment of such persons not later than by the end of the first stage planned for completion of association (Art. 44 section 1 (II)); in connection with this obligation, it has to be decided as prompt as possible which legislative steps should be taken with respect to the act on companies with foreign capital share.

d) The granting to Poland of the right to introduce, during the first stage of association (branches of the economy specified in Appendices XIIa and XIIb) and during the transitory period (branches of the economy specified in Appendices XIIc and XIIId), provisions quashing the regulations relating to the setting up of enterprises by legal and natural persons from the Community; this right, together with strictly specified conditions of introduction, period of validity and principles of application of such provisions, has been included in Art. 50.

e) The adoption of the principle that rights relating to real estates situated in Poland are to be granted on the day of entering into force of the Agreement only to legal persons who have set up an enterprise in Poland; in the case of branches and agencies established by legal persons from the Community, this grant is to take place by the end of the first stage of association, while self-employed natural persons from the Community are to be granted such rights by the end of the transitory period at the latest (Art. 44 section 7).

16. Of the other commitments of Poland which involve steps towards adjustment of Polish law to that of the Community and have been expressed in provisions of Parts IV or V of the Agreement, the following can be mentioned by way of example.

a) Poland's commitment gradually to adjust its legislation to the present legislation of the Community, during the transitory period, in the sphere of air and inland transport — administrative, technical and other relevant regulations included — towards liberalization and mutual access to the markets of parties to the Agreement, and towards facilitation of passenger and freight traffic (Art. 56 section 5).

b) As regards inclusion into Polish law of Community regulations relating to the flow of capital, it is provided that during the first stage of association, parties to the Agreement should take steps towards creation of conditions necessary for further gradual application of Community provisions in this sphere (Art. 61 section 1); moreover, during the second stage, the Association Council is to examine the ways of a full application of Community law on the flow of capital (Art. 62 section 2).

c) As regards consistence of Polish with Community law relating to competition, three types of procedure have first been specified that are considered inconsistent with a proper implementation of the Agreement provided they negatively affect Poland-Community trade (Art. 63 section 1); next, it has been stated that "any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Economic Community" (Art. 63 section 2). It has to be stressed, though, that this principle does not operate automatically: required for its application is the Association Council's decision containing the necessary regulations, to be taken within three years of the day of entering into force of the Agreement.

d) Poland's commitment to introduce a regulation relating to tenders which would provide to legal persons with membership of the Community, by the end of the transitory period at the latest, access to tender procedures where they would receive a treatment at least equal to that guaranteed to Polish legal persons (Art. 67 section 2), and to grant such access to enterprises formed in Poland by such persons starting from the moment of entering into force of the Agreement (Art. 67 section 2).

17. A special position in the European Agreement is taken by provisions relating to the right to intellectual property. The obligations contained in them concern adjustment of Polish law to European standards with regard to international agreements: both those to which EC member states are parties and also other agreements applied by those states despite the fact that they are not parties to them. Therefore, the formal obligations of Poland in the sphere of intellectual property may appear to be further-reaching than those of some of the EC member states. Art. 66 of the Agreement obliges Poland:

a) Further to improve the protection of the right to intellectual, industrial, and commercial property so as to reach, by the end of year five from the day of entering into force of the Agreement, a standard of protection which would approximate the

one found in the Community, also in the sphere of comparable means of vindication of such rights.

b) To apply, within the same time-limit as above, to be admitted to the Munich Convention on granting European patents of 5 October 1973, and to accede to other multilateral conventions on the protection of the right to intellectual, industrial, and commercial property specified in Appendix XIII section 11. In the course of its recent reforms of the right to intellectual property, Poland has largely performed its obligations under the European Agreement. This was done on the grounds of such statutes as the Act on amending the act on inventiveness, and the Act on the Patent Office (30 October, 1992); the Act on patent agents (9 January, 1993); or the Act on protection of topography of integrated circuits (30 October, 1993). Besides, on 25 December, 1990 Poland joined the Patent Co-operation Treaty and became party to the Madrid Agreement on international registration of trademarks on 18 March, 1991 and to the Budapest Treaty on international recognition of deposits of microorganisms for patent proceedings on 22 September, 1993.

18. References to the problem of adjustment of Polish law to the law of the Community found in Part VI of the Agreement, "Economic Cooperation", have been formulated as elements of individual provisions on cooperation as a rule; the formulation is general and involves no definite duties imposed on Poland. Thus for example:

a) In the sphere of banking, insurance and other financial services, cooperation is to aim, among other things, at the adoption of a common set of provisions and norms concerning i.a. accountancy as well as supervision and the regulating systems in banking, insurance, and finances; in this connection, it is planned to prepare dictionaries and translations of the legal provisions of Poland and the Community, and also to organize discussions and information meetings concerning the already valid legislation and provisions in preparation in Poland and the Community (Art. 83 sections 1 and 2), while

b) in the sphere of customs duties, cooperation aiming at approximation of the Polish customs system to the one of the Community is to include, among other things, the introduction of a uniform administrative document and mutual relations between the transit systems of Poland and the Community, as well as simplification of the procedure of customs inspection and of formalities involved in the flow of goods (Art. 91 sections 1 and 2).

IV. "Adjustment" in terms of creation of conditions for Poland's admission to European Union

19. The following has always to be taken into account when deciding about legislative ventures towards adjustment of Polish law to the law of the Community and choosing definite legal forms to secure the former's consistence with the latter:

a) that the system of Community law is designed for EC member states and directly or indirectly created by those member states;

b) that it cannot be appraised or copied as a self-dependent normative value separated from its economic "base";

c) that it is a natural element of a state's status as member of a larger international body — the European Union, and especially its part formerly known as the European Economic Community and now called the European Community.

20. All legislative ventures to secure consistence of Polish law with the law of the Community should take the fact into account that the basic and original competence of creating and deciding about the legal system is situated in the European Union at the level of each and every of its member states. This legal state can be summarized as follows:

a) the EU member states have resigned their law-making powers in such cases only which — as a result of adjustments making up the individual European Communities, including in particular the European Economic Community (today: the European Community) — have lost their former internal character, instead becoming matters of the Community exclusively;

b) at the same time, the law-making competencies granted to Communities in certain spheres bear the nature of so-called parallel competencies in that they are parallel to the competencies still preserved by member states;

c) therefore, the system of Community law is not based on a general competence of law-making; instead, it is a special system which is inseparably related to legal systems of individual member states preserving their original general competencies of law-making;

d) the matters that lost their original internal character, becoming matters of the Community only, pertain first and foremost to relations under administrative economic law; concerned here above all are the regulations that warrant the existence of common trade policy and determine a uniform customs area. It has to be stressed that with transition from common to internal market the range of such matters will grow ever larger;

e) in the sphere of private law, EU does not have exclusive law-making competencies, its parallel competencies concerning chiefly spheres such as the law on associations of capital, the law on intellectual property, the law on securities, banking or bankruptcy law.

21. A number of important statements follow from the origin, essence and aims of the law of EU member states, unified (by way of directives) and common (laid down in regulations), that is of the system of Community law itself. Such statements have to be taken into account when adjusting Polish law to that of the Community:

a) Community law does not resolve itself into separate normative acts to which individual segments of the Polish legal system should be referred and adjusted; the fact has to be borne in mind when adjusting Polish law to the law of the Community

that all such acts function within a bigger whole which is made up of appropriate pails of primary law (rules contained in the treaties that established European Communities, with subsequent changes), the remaining secondary law related to a given act (rules introduced by way of directives and regulations), and decisions of the European Communities Court of Justice based on all such rules.

b) Community law is inseparably related to definite economic reality; states agreed to have their legal systems supplemented with unified and common law for the sake of definite advantages that were to result from the creation and functioning of a common market. Therefore, when adjusting Polish law to the law of the Community, the principle should be observed that the necessary economic connections between Poland and the European Union to protect Poland's interests have to emerge in the first place, only accompanied or followed by appropriate adjustment processes.

c) Community law is a legal system created by a definite group of states and designed for application within that group; Poland has the status of a third party with respect to the sources of that law. Therefore, from its very nature, the system of Community law is a legal system alien to Poland. It has to be decided whether the provisions contained in the European Agreement and relating to the adjustment of Polish law to the law of the Community are specific enough to justify the assumption that, as a result of their implementation and of implementation of the whole of establishments of the Agreement, Poland will cease being a third party with respect to EU member states in definite spheres of regulation making up the Community law. There is a lot to indicate that this situation will only take place once Poland is admitted to European Union. For this reason, in the case of all adjustment processes taking place before that moment, a specific sequence has to be adopted which should be determined by the degree to which a given regulation is related to the common vs. internal market. The sequence should consist in adjustment taking place first in segments based on parallel law-making competencies of member states and European Communities; the legal solutions of purely "Community" nature, that is those based on exclusive law-making competencies of individual Communities, would only be transferred to Polish in the final stage. This principle is no obstacle to using all types of Community regulations when reforming the Polish legal system towards its adjustment to the needs of the country's reformed economic system.

d) The transfer to Polish law of the legal solutions which make up Community law requires an appropriate substantiation of all those provisions of the European Agreement which provide for adjustment of Polish law to the legal system of European Community. In this case, substantiation would consist in establishing in the relations between Poland and European Communities together with their member states an economic reality corresponding with the reality inherent in the origin of uniform and common law. In practice, this means that in many situations, adjustment of Polish law to the law of the Community requires appropriate negotiations and adjustments within the Association Council formed under the Agreement. Such adjustments would aim at protecting the Polish economy against the consequences of irrelevant inclusion of Community law into the Polish legal system.

e) As has already been mentioned, Community law is a special law as compared to the legal systems of member states as general laws. This means that the uniform and common law of the member states constitutes but an appropriate supplement and enrichment of those states's domestic law, a development within that law of norms derived from international sources as compared to those of autonomous origin. From a reference of this characteristic of Community law to the problem of adjustment of Polish law to the EC legal system it follows that such adjustment cannot possibly take place without consideration to the specific nature of the Polish legal system, and that it aims not at replacing individual segments of Polish law with a foreign legal system but at an appropriate reform and supplementing of the Polish legal system.

22. All the above statements considered, however, the fact has to be borne in mind that applying for membership of the European Union, Poland must necessarily meet the expectations of the Union and its member states as far as the degree of consistence of its legal system with the law of the Community is concerned. The degree of this consistence is among the major criteria of appraisal of the newly-admitted members of the EU from the viewpoint of a given state's satisfaction of the conditions of its being granted the status of a member state. To avoid in the future all doubts as to the degree of adjustment of Polish law to the law of the Community, what has to be ascertained at a possibly earliest date, within all of the accessible forums — including in particular the Association Council and the Parliamentary Association Committee — are the minimum degrees of such consistence suggested by the authorities of the European Union with respect to both the whole of the Polish legal system and individual branches of law, those especially which pertain to relations embraced by the European Union.