



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.10.2002  
SEC(2002) 1408

**2002**

**REGULAR REPORT**

**ON**

**POLAND'S**

**PROGRESS TOWARDS ACCESSION**

**{COM(2002) 700 final}**

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## A. Introduction

### a) Preface

In Agenda 2000, the Commission said it would report regularly to the European Council on progress made by each of the candidate countries of Central and Eastern Europe with preparations for membership, and that it would submit its first Report at the end of 1998.

The Luxembourg European Council decided that:

“From the end of 1998, the Commission will make Regular Reports to the Council, together with any necessary recommendations for opening bilateral intergovernmental conferences, reviewing the progress of each Central and Eastern European applicant State towards accession in the light of the Copenhagen criteria, in particular the rate at which it is adopting the Union *acquis*” [...] “The Commission’s reports will serve as the basis for taking, in the Council context, the necessary decisions on the conduct of the accession negotiations or their extension to other applicants. In that context, the Commission will continue to follow the method adopted by Agenda 2000 in evaluating applicant States’ ability to meet the economic criteria and fulfil the obligations deriving from accession.”

On this basis, the Commission presented a first series of Regular Reports in October 1998, a second in October 1999, a third in November 2000, and a fourth in November 2001.

In its 2001 Enlargement Strategy Paper, which accompanied the 2001 Regular Reports, the Commission indicated that, given the pace of negotiations and the progress made so far, the Commission should be able to make recommendations on those candidate countries ready for accession on the basis of its 2002 Regular Reports. At its meeting in Seville in June 2001, the European Council concluded that “in order to enable the European Council to be held in the coming autumn to decide which will be the candidate countries with which negotiations can be concluded at the end of 2002, [...] the Commission will have to draft appropriate recommendations in the light of the Regular Reports.” The Commission has prepared this fifth series of Regular Reports with a view to the Brussels European Council in autumn 2002.

The structure followed for this Regular Report is largely the same as that used for the 2000 and 2001 Regular Reports. In line with previous Regular Reports, the present Report:

- describes the relations between Poland and the Union, in particular in the framework of the Association Agreement;
- analyses the situation in respect of the political criteria set by the 1993 Copenhagen European Council (democracy, rule of law, human rights, protection of minorities);
- assesses Poland’s situation and prospects in respect of the economic criteria defined by the Copenhagen European Council (a functioning market economy and the capacity to cope with competitive pressures and market forces within the Union);



- addresses the question of Poland's capacity to assume the obligations of membership, that is, the *acquis* as expressed in the Treaties, the secondary legislation, and the policies of the Union. In this part, special attention is paid to nuclear safety standards, which were emphasised by the Cologne and Helsinki European Councils. This part includes not only the alignment of legislation, but also the development of the judicial and administrative capacity necessary to implement and enforce the *acquis*. The European Council stressed the importance of this latter aspect at its meeting in Madrid in 1995 and on a number of subsequent occasions, most recently at Seville in June 2002. At Madrid, the European Council stressed that the candidate countries must adjust their administrative structures, so as to create the conditions for the harmonious integration of these States. The Seville European Council also stressed how important it was that candidate countries should continue to make progress with the implementation and effective application of the *acquis*, and added that candidate countries must take all necessary measures to bring their administrative and judicial capacity up to the required level.

This Report takes into consideration progress since the 2001 Regular Report. It covers the period until 15 September 2002. In some particular cases, however, measures taken after that date are mentioned. It looks at whether planned reforms referred to in the 2001 Regular Report have been carried out, and examines new initiatives. In addition, this Report provides an overall assessment of the overall situation for each of the aspects under consideration, setting out for each of them the main steps still to be taken by Poland in preparing for accession.

Furthermore, in view of the fact that the 2002 Regular Reports will provide the basis on which the Commission will formulate its recommendations as to which countries are ready to conclude negotiations, this Report includes an evaluation of Poland's track record since the 1997 Opinion. As regards the economic criteria, the report also provides a dynamic, forward-looking evaluation of Poland's economic performance.

For each of the negotiating chapters, this report provides a summary evaluation of the extent to which commitments made in the negotiations have been implemented, as well as an overview of transitional arrangements that have been granted. The commitments made by each country reflect the result of the accession negotiations, and, in accordance with the principle of differentiation underlying the negotiation process, may differ between countries. Where negotiating countries have committed themselves to completing specific measures by the time of accession, the Commission assesses the relevant preparatory processes. For chapters on which the accession negotiations continue, and final commitments remain to be defined, an indicative assessment is given of the state of implementation of the commitments that have been made to date.

The Report further includes a separate section examining the extent to which Poland has addressed the Accession Partnership priorities. This section also assesses the progress Poland has made in implementing the measures set out in the Action plan for strengthening administrative and judicial capacity that the Commission developed with each negotiating country in the spring of 2002.

As has been the case in previous Reports, "progress" has been measured on the basis of decisions actually taken, legislation actually adopted, international conventions actually ratified (with due attention being given to implementation), and measures actually implemented. As a matter of principle, legislation or measures which are in various

stages of either preparation or Parliamentary approval have not been taken into account. This approach ensures equal treatment for all the candidate countries and permits an objective assessment of each country in terms of their concrete progress in preparing for accession.

The Report draws on numerous sources of information. The candidate countries have been invited to provide information on progress made in preparations for membership since the publication of the last Regular Report. The information each of the candidate countries has provided within the framework of the Association Agreement and the negotiations, the National Programmes for the Adoption of the *Acquis* where they are available, as well as the process of developing the Action Plans, and various peer reviews that have taken place to assess candidate countries' administrative capacity in a number of areas, have served as additional sources. Council deliberations and European Parliament reports and resolutions<sup>1</sup> have been taken into account in the preparations. The Commission has also drawn on assessments made by various international organisations, and in particular the contributions of the Council of Europe, the OSCE and the international financial institutions, as well as those of non-governmental organisations.

## **b) Relations between the European Union and Poland**

### *Recent developments under the Europe Agreement, including bilateral trade*

Poland has continued to implement the Europe Agreement and contributed to the smooth functioning of the various joint institutions.

The Association Council met in November 2001 in Brussels. An Association Committee meeting was held in Brussels in May 2002. The system of sub-committees continues to function as a forum for technical discussions.

The Joint Parliamentary Committee comprising representatives of the Polish and European Parliaments met in November 2001 in Brussels and April 2002 in Warsaw. The Joint Consultative Committee of the Economic and Social Committee met in Brussels, in November 2001 and in May 2002 in Warsaw. The newly constituted Joint Consultative Committee of the Regions met in November 2001 in Warsaw and in June 2002 in Brussels.

Bilateral trade continues to grow. In 2001 EC exports to Poland stood at €35.4 billion (€ 61.4% of Polish imports), with EC imports from Poland amounting to €26.5 billion (€ 69.2% of Polish exports). The EC trade surplus of €8.9 billion showed a further decline from the 2000 surplus (€10.5 billion) and represents the smallest surplus since 1996. Poland's share in total EC exports remained constant at 3.6% while Poland's share in total EC imports was also stable at 2.6%. EC imports continued the trend established since 1997 growing faster than EC exports; thus the trade gap -(expressed as the ratio of exports to imports) continued to decrease, reaching its lowest level since 1995. Concerning trade by product, machinery and electrical goods represent the largest sector for both EC exports to, and imports from, Poland. On the import side, machinery and electrical goods was by far the best performing sector, with 23% growth.

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<sup>1</sup> For the European Parliament the *rapporteur* is Mr Jas Gawronski

As a consequence of the agreement resulting from the first round of trade negotiations in the agriculture sector (adopted on an autonomous basis, pending the conclusion of an Additional Protocol to the Europe Agreement), approximately 96% of EC agricultural imports from Poland and 70% of EC agricultural exports to Poland are duty free or benefit from preferential reduced duty rates (average trade figures 1998-2000).

Negotiations on a further round of liberalisation, covering more sensitive sectors where current trade is rather low, in particular due to a high border protection, began at the end of 2001 and are still underway.

In the fisheries sector, the Additional Protocol to the Europe Agreement enacting the reciprocal concessions negotiated in December 2001 was adopted in July 2002 and the concessions came into effect in August 2002. Negotiations concerning processed agricultural products remain ongoing.

A number of issues are still outstanding with regard to the implementation of the Europe Agreement, ranging from complex long-standing issues such as steel restructuring and Special Economic Zones, to product-specific trade issues. There is a general willingness to seek solutions through the functioning of the various joint institutions, although in some instances satisfactory solutions have been a long time coming.

Although the Europe Agreement provides for entry into its second stage as of February 1999, a number of legal requirements for this transition have yet to be fulfilled. These requirements were covered in the 1999 Regular Report. The issue of transition is of increasing importance as it is only in the second stage of the Europe Agreement that capital movements from the EC to Poland will benefit from national treatment. During the reporting period there have been a number of high-profile disputes between the Polish administration and investors in Poland, as was also the case in 2001. While difficult to quantify, it is clear that, irrespective of the individual circumstances, such cases have had a negative impact on perceptions of Poland as a location for investment. Transition to the second stage of the Europe Agreement would be an important indicator that efforts are being made to rectify this perception.

Efforts have continued with a view to solving outstanding trade issues. The general level of co-operation is good, but some issues have proved to be more difficult to resolve than others, and problems persist with ensuring that solutions to both specific and general problems are fully implemented. Moreover, there has been a recent tendency to use trade measures as a palliative for difficulties whose root causes lie elsewhere, the increase in excise duty on second hand vehicles being the prime example. Progress has been made on the implementation of the customs code but some difficulties persist and the situation regarding the Polish safeguard measure on yoghurts remains unchanged.

There has been further progress in the area of certification with another amendment to the list of products requiring mandatory certification reducing the coverage of the list. The Polish administration has undertaken to further amend the list as appropriate. The administration has also taken steps to ensure that the process leading to the automatic issuing of certificates for products requiring either mandatory certification or producer certification functions smoothly and rectify the difficulties which had arisen as a result of some of the certifying bodies not implementing the new procedures. More broadly, some difficulties persist with regard to the issuing of certificates for products which fall outside the scope of the automatic procedure.

The Polish authorities asked to negotiate a PECA in February 2002. A mandate for negotiations has been agreed and these are now underway.

Concerning wooden pallets, the Regulation imposing definitive anti-dumping duties published in 1997 was further amended in August 2001, following what is termed a “newcomer” review of the anti-dumping measures. Undertakings were accepted from certain companies in May 2002 and withdrawn from others. A new anti-dumping investigation was initiated in May 2002 on imports of grain oriented electrical sheets and strips. Provisional duties were imposed in May 2002 on imports of welded tubes and pipes (iron and non-alloy steel.)

In March 2002, in response to the protectionist measures taken by the US, which greatly restricted access to their market and created the risk massive trade diversion, the EU initiated provisional safeguard measures, with erga omnes effect, on imports of certain steel products. The measures were partly confirmed in September 2002.

### *Accession Partnership*

A revised Accession Partnership was adopted in January 2002. Its implementation is reviewed in chapter D of this Report.

### *Action Plan for reinforcing administrative and judicial capacity*

As announced in the Commission's 2001 Enlargement Strategy, in spring 2002 the Commission and Poland jointly developed an Action Plan to strengthen Poland's administrative and judicial capacity, on which a common understanding was reached in April 2002. The revised Accession Partnership adopted in January has served as the point of departure for this exercise.

The purpose of this Action Plan is to identify jointly the next steps required for Poland to achieve an adequate level of administrative and judicial capacity by the time of accession, and ensure that all necessary measures in this regard are taken, providing Poland with targeted assistance in areas that are essential for the functioning of an enlarged Union. As such, the Action Plan is a key tool for meeting the common objective of the EU and Poland, i.e. to ensure that Poland's preparations for accession take place as effectively as possible within the planned timeframe.

The implementation of the Action Plan is reviewed in Part D of this Report.

### *National Programme for the Adoption of the Acquis*

No update of the Polish National Programme for the Adoption of the *Acquis* (NPAA) has been submitted to the Commission during the reporting period.

### *Community Assistance*

Three **pre-accession instruments** have been financed by the European Community to assist the applicant countries of Central and Eastern Europe with their pre-accession preparations: the **Phare** programme; **SAPARD**, which provides aid for agricultural and rural development; and **ISPA**, which finances infrastructure projects in the fields of

environment and transport. The support provided by these programmes is focused on the Accession Partnership priorities that help the candidate countries to meet the criteria for membership.

For the years 2000-2002 total financial assistance to Poland amounts to €398 million annually from Phare, 168.6 million from SAPARD (at 1999 prices), and between €312 and €385 million from ISPA.

The **Phare** programme has been providing support to the countries of Central and Eastern Europe since 1989, helping them through a period of fundamental economic and social transition and political change. Its current “pre-accession” focus was established in 1997, in response to the Luxembourg European Council’s launching of the present enlargement process.

Phare provides the applicant countries of Central and Eastern Europe with support for institution building (around one third of the Phare allocation), investment to strengthen the regulatory infrastructure needed to ensure compliance with the *acquis* (also around one third of the allocation), and investment in economic and social cohesion (the remaining one-third of the Phare allocation). This support comprises co-financing for technical assistance, “twinning” and investment-support projects, to help these countries with their efforts to adopt the *acquis* and strengthen the institutions necessary for implementing and enforcing the *acquis*. Phare also helps the candidate countries develop the mechanisms and institutions that will be needed to implement Structural Funds after accession and is supported by a limited number of measures (investment and grant schemes) with a regional or thematic focus. In the context of the Action Plans for strengthening administrative and judicial capacity, particular emphasis is placed on the issue of institution building and associated investment intended to ensure compliance with the *acquis*. For 2002, the Commission has mobilised special financial assistance of up to €250 million to accompany negotiating countries’ efforts, over and above the indicative annual allocations for each of the Phare countries, bringing total Community assistance for strengthening the administrative and judicial capacity of the negotiating countries in 2002 to around €1 billion.

The Phare programme allocated commitments of € 2 534 million to Poland during the 1992-1999 period, € 484 million in 2000, and € 467 million in 2001.<sup>2</sup> The **2002 Phare Programme** for Poland consists of an allocation of € 342.2 million for the National Programme, complemented by € 51.8 million under the Phare 2002 supplementary institution building facility. The 2002 Phare programme focuses on the following priorities:

- the reinforcement of institutional and administrative capacity in the fields of transport, employment policy, taxation, financial control, public finance, regional policy and preparation for Structural Funds, and statistics (€61 million);
- internal market (customs, market surveillance, medicines and medical devices, food safety, public procurement, chemicals, co-ordination of social security) (€25 million);

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<sup>2</sup> These figures include an allocation for Cross-Border Co-operation (CBC) Programmes of € 56 million in 2000, and € 56 million in 2001.

- the strengthening of co-operation in the field of Justice and Home Affairs (border management, fight against organised crime, visa and migration policies, justice co-operation, police co-operation, border infrastructure) (€65 million);
- institution building in agriculture and fisheries (TSE control, reference laboratory, veterinary administration and preparation for EAGGF and FIFG) (€35 million);
- institution building in the field of environment (implementation of the water framework directive, monitoring drinking water quality, control of waste shipments, EMAS, and training for environmental protection) (€14 million);
- economic and social cohesion (human resources development and sectoral SME development programmes in all regions and business-related infrastructure in 13 target regions (€170 million);
- participation of Poland in Community programmes (€24 million).

An additional € 56 million has been allocated for a cross-border co-operation (CBC) programme with Germany, the Czech Republic and Slovakia, and for a special action within the Baltic Sea region.

Poland also participates in and benefits from Phare-funded multi-country and horizontal programmes, such as TAIEX, the Small and Medium-sized Enterprises Facility, a steel restructuring technical assistance facility, SIGMA and the nuclear safety programme. Furthermore, Poland participates in the following Community programmes and Agencies: the Fifth Framework programme on Research and Technological Development, Media Plus, Leonardo, Socrates, Youth for Europe, SAVE II, the Multi-annual Programme for Enterprises and Entrepreneurship, Altener, IDA, CULTURE 2000, European Environment Agency, EMCDDA, Gender Equality, Incentive Measures in Employment, Combating Discrimination, Health Programmes, eContent.

In order to streamline Community legal procedures and thereby facilitate future participation of Poland in Community programmes, a Decision has been adopted by the Association Council establishing the general principles for such participation.

Overall, the impact of Phare has been positive. Effective transfer of know-how, equipment and financial resources has taken place in a number of important fields such as industrial restructuring and privatisation, SME development, trade and investment promotion, energy, land registration, veterinary and phytosanitary administration, environmental investments and institution building. Phare support for agriculture and SME development has succeeded in developing sector strategies and initiating essential institutional and financial mechanisms servicing enterprises in these sectors. In other sectors, such as customs, taxation, justice and home affairs, fisheries, coal and steel, and employment, Phare support has contributed to the establishment of sectoral development, institutional and restructuring strategies and plans, and has helped to alleviate the social consequences of restructuring.

For example, in Poland, Phare played a particularly important role in:

- the transport sector: construction and renovation of the A4 Motorway (Wroclaw-Katowice-Krakov project) (126 km) were financed by Phare (€105 million) together with the EIB (€375 million). In the railways sector, Phare funding (€38 million)

contributed to the renovation of the E30 railway line in the south of the country, following the 1997 floods, together with funds from the EIB (€161 million) and the government (€156 million);

- privatisation: preparatory work, the vouchers for the mass privatisation programme and bad debt work-outs prior to the privatisation of commercial banks were funded by Phare (€20 million) together with the EBRD;
- a regional development programme, where SME development was funded by Phare (€50 million) which co-financed nearly 200 municipal SME infrastructure projects and co-funded over 1,000 SME investment projects through a grant scheme working with commercial banks. This created over €150 million of public and private investment and generated more than 11,000 jobs in the regions concerned;
- numerous institution building projects in the fields of veterinary administration, agriculture and fisheries, regional policy administration, justice and home affairs administration, internal market (e.g. certification and standards, telecommunications regulatory authority) and environment were funded by Phare to reform the sectors concerned and bring them closer to EC standards;
- social alleviation of restructuring of the coal and steel sectors, where Phare funding (€ 61 million) provided in particular for the counselling and retraining of the unemployed, for SME development and for re-conversion measures in Silesia.

The 2000 Phare Review confirmed the accession-driven approach and emphasised the importance of helping countries to prepare for the Structural Funds. The trends introduced in 1997 have continued, with an increased role for Commission Delegations, further streamlining of procedures and increasing emphasis on raising the verifiable and quantifiable impact of Phare projects on institution building, investment in compliance with the *acquis* and economic and social cohesion.

The Review also provided for the possibility of further decentralisation of Phare management, by waiving the requirement for *ex ante* approval by the Commission Delegations for tendering and contracting. For this to be possible, strict pre-conditions covering programme management, financial control and structures regarding public finance must be met. An extended decentralised implementation system (EDIS) should be put in place for each negotiating country at the latest by the time of accession. High-Level Working Groups are being established for each country to oversee this process, along with other key procedural steps in the run up to accession.

The Commission approved the Polish **SAPARD** programme in October 2000. The indicative allocation for SAPARD in Poland for 2002 is € 177 million, at 2002 prices (allocation 2001: € 175 million at 2001 prices).

The operational programme is based on two priorities: improvement of market efficiency in the agri-food sector; improvement of the conditions for economic activities and job creation

A major part of the funds available for the first priority is dedicated to the improvement of marketing and processing of agricultural products. The other measures under this priority concern investment in agricultural holdings. The second priority includes measures for development of rural infrastructure and diversification of economic

activities in rural areas. Supplementing these priorities, the programme includes measures for vocational training and technical assistance and pilot-projects for agri-environment.

*The Multi-annual Financing Agreement (MAFA)*, which sets out the rules for implementing SAPARD, was signed in January 2001 and *The Annual Financing Agreement (AFA) 2000*, which sets out the Community financial commitment to Poland for the year 2000, was signed in March 2001. The AFA 2001 was signed in June 2002, and will enter into force when Poland notifies the Commission of the completion of all requisite national formalities.

The following structures are responsible for the implementation of SAPARD: the National Fund, located within the Ministry of Finance, which will administer SAPARD funds under the responsibility of the National Authorising Officer (NAO), and which is responsible for the national accreditation of SAPARD Agency; the Managing Authority located within the Ministry of Agriculture and Rural Development; the Agency for Restructuring and Modernisation of Agriculture (ARMA), which has been designated by the Polish Government as the SAPARD agency and which will operate from its headquarters in Warsaw with 16 regional offices throughout Poland.

In September 2001 Poland submitted a request to the Commission for conferral of management authority for SAPARD related to five measures, representing 87% of the amount available for Poland. There was a request for approval of additional components in October 2001. The Commission Decision on provisional conferral of management of aid, on a fully decentralised basis, for the five measures initially requested was adopted in July 2002.

A Monitoring Committee has been established by the Managing Authority and has met three times.

**ISPA** programming is governed by the national strategy papers for transport and environment, which the Polish authorities finalised in 2000. In the case of transport, the focus is on large projects on the main transport routes, with particular emphasis on an appropriate balance between road and rail projects. The environment strategy has been updated to reflect new information and recent developments. In 2001, ISPA provided funding for major projects in three of the four sectors which are eligible for support; waste water (which accounts for the largest number of projects and received the largest allocation of assistance), drinking water provision and solid waste treatment.

For the years 2000 and 2001, the mid-range allocation for Poland has been committed, i.e. €713.5 million (€307 million in 2000 and €406.6 million in 2001). The allocation for 2002 will be €357 million. This is slightly below the mid-range, so as to take into account the over-commitment in the environment sector in 2001.

Thirteen environmental projects were approved in 2001: three drinking and sewage water projects in Poznan and Suwalki with a total ISPA contribution of €70.2 million; eight sewage network treatment plant projects in Warsaw, Gliwice, Katowice, Przemysl, Lodz, Olsztyn, Bialystok, and Rybnik, for a total ISPA contribution of €245.1 million; and two solid waste projects in Lodz (€13 million). Six projects in the transport sector were approved in 2001: Three infrastructure projects in the rail sector, concerning modernisation of the Wegliniec-Legnica railway (€92.8 million), modernisation of the Poznan rail interchange (€50.6 million), a rail infrastructure project (€83.3 million) as well as technical assistance for preparation of the E65 railway line (€6 million); and two



road projects: the construction of the Bielsko-Biala-Cieszyn expressway (€103.6 million) and the rehabilitation of the A4 (Wroclaw-Krzyowa) (€189.5 million).

The Commission approved a technical assistance package (with ISPA financing of €1.6 million) to prepare the Polish authorities for the decentralised management (EDIS) of ISPA. Contracts have been awarded for three projects in the transport sector and six projects in the environment sector. Most of the tenders for the remaining ISPA projects approved in 2000 are currently in preparation.

### *Twinning*

One of the main challenges still facing the candidate countries is the need to strengthen their administrative capacity to implement and enforce the *acquis*. As of 1998, the European Commission began to mobilise significant human and financial resources to help them with this process, using the mechanism of twinning of administrations and agencies. In 2001, the Commission strengthened this emphasis on institution building further, through the launch of the Action Plans for strengthening administrative and judicial capacity.

The twinning process makes the vast body of Member States' expertise available to the candidate countries through the long-term secondment of civil servants and accompanying short-term expert missions and training.

A total of 503 twinning projects were funded by the Community between 1998 and 2001. Between 1998 and 2000, these projects primarily targeted the main priority sectors identified in the Accession Partnerships: agriculture, the environment, public finance, justice and home affairs and preparation for the management of Structural Funds. Since 2000, other important sectors of the *acquis* have also been addressed through twinning such as social policy, the fight against drugs, transport, and telecommunications regulation. Twinning now covers all sectors of the *acquis*.

Thanks to the strong support of the EU Member States, 103 twinning partnerships were funded by Phare 1998, involving all the candidate countries and almost all the Member States. These first-generation projects have already come to an end. Under Phare 1999 a further 123 projects are currently being implemented and the programming exercise for Phare 2000 included a further 146 twinning projects. The 2001 programming exercise includes 131 twinning projects embracing all the Phare beneficiary countries, as well as Cyprus and Malta. Under the 2002 programming exercise, 119 twinning projects have already been planned and approved for implementation. A substantial number of additional twinning projects are planned, and these should be approved and implementation launched before the end of 2002. They include twinning projects identified in the Action Plans for strengthening administrative and judicial capacity in the negotiating countries. It is estimated that around 300 twinning projects are operational throughout the candidate countries at any one time. Furthermore, the candidate countries are being offered a further way of drawing on Member States' expertise through Twinning light, a mechanism to address carefully-circumscribed projects of limited scope which emerge during the negotiation process as requiring adaptation.

For Poland, the eight 1998 twinning projects have been completed and 17 twinning projects under Phare 1999 are on-going and/or nearing completion. New areas covered are *inter alia*, financial control, tax and customs, civil service development, and road

transport. Under Phare 2000, there are 44 twinning projects with Poland, all of which are currently on-going, including twinning between regional administrations in order to prepare Poland for regional policy and the management of future structural funds. Under Phare 2001, there are 39 twinning projects, of which 5 are "twinning light" projects, some of which have started. For Phare 2002, there will be 34 twinning projects, of which 4 are "twinning light". Almost all Member States are involved in Poland and a wide range of policy sectors are covered by twinning in Poland.

### *Negotiations*

Since the opening of the accession negotiations, substantial discussions on the individual chapters of the *acquis* started, and by April 2002, negotiations on all chapters (with the exception of chapter 31 – Other) had been opened.

By end September 2002, the following 27 chapters had been provisionally closed: free movement of goods, free movement of persons, free to provide services, free movement of capital, company law, fisheries, transport, taxation, economic and monetary union, statistics, social policy and employment, energy, industry, small and medium sized enterprises, science and research, education and training, telecommunications and information technologies, culture and audio-visual policy, justice and home affairs, environment, consumers and health protection, regional policy, customs union, external relations, common foreign and security policy, financial control and institutions. Negotiations continue for the remaining chapters.

## **B. Criteria for membership**

### **1. Political criteria**

#### *Introduction*

The political criteria for accession to be met by the candidate countries, as laid down by the Copenhagen European Council in June 1993, stipulate that these countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities<sup>3</sup>.”

In its 1997 Opinion on Poland's application for EU membership, the Commission concluded:

*“Poland’s political institutions function properly and in conditions of stability. They respect the limits on their competences and co-operate with each other. Legislative elections in 1991 and 1993, and presidential elections in 1995, were free and fair. In 1993 and 1995, when they led to alternation of power, this was properly achieved. The Opposition plays a normal part in the operation of the institutions. Efforts to improve the operation of the judicial system and to intensify the fight against corruption will need to be sustained.*

*There are no major problems over respect for fundamental rights. There are, however, certain limitations to the freedom of the press. Particular attention will be needed to how a new law limiting access to public service for certain categories of persons is implemented. Poland needs to complete procedures for compensating those whose property was seized by the Nazis or Communists.*

*Poland presents the characteristics of a democracy, with stable institutions guaranteeing the rule of law, human rights and respect for and protection of minorities.”*

In its 2001 Regular Report, the Commission found that:

*“In its 1997 Opinion, the Commission concluded that Poland fulfilled the political criteria. Since that time, the country has made considerable progress in further consolidating and deepening the stability of its institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Over the past year, further efforts have been made in this direction. Poland continues to fulfil the Copenhagen political criteria.*

*In the area of public administration progress in the implementation of the 1999 Civil Service Law continues. Further efforts are required to speed up the pace of*

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<sup>3</sup> In the meantime, through the entry into force of the Treaty of Amsterdam in May 1999, the political criteria defined at Copenhagen have been essentially enshrined as a constitutional principle in the Treaty on European Union. Article 6(1) of the consolidated Treaty on European Union reads: “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.” Accordingly, Article 49 of the consolidated Treaty stipulates that “Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union.” More recently, these principles were emphasised in the Charter of Fundamental Rights of the European Union, that was proclaimed at the Nice European Council in December 2000.

*implementation and ensure that an independent, well trained and motivated civil service is in place by the time of accession.*

*Poland has continued to make progress in reforming the judiciary and in reducing the most pressing bottlenecks. The pace of reform needs to be accelerated and issues relating to judicial immunity further addressed.*

*Additional steps have been taken, including the adoption of much needed legislation, in the fight against corruption, which remains a source of serious concern. The focus must now be on ensuring a coherent approach to corruption, implementing the legislation and above all on developing an administrative and business culture which can resist corruption.*

*There has been some progress in establishing the legal framework for equal opportunities and further work needs to be undertaken in this regard.*

*A new element which has come to light has been the abuse of custody, which has been reported in certain cases. This needs to be addressed and the first steps have already been taken in this respect.*

*The reinforcement of administrative and judicial capacity, improving the operation of the judiciary and its training in EC law were Accession Partnership priorities. Work is under way but further efforts are needed."*

The section below aims to provide an assessment of developments in Poland, seen from the perspective of the Copenhagen political criteria, including the overall functioning of the country's executive and its judicial system. Such developments are in many ways closely linked to developments regarding Poland's ability to implement the *acquis*, in particular in the domain of justice and home affairs. Specific information on the development of Poland's ability to implement the *acquis* in the field of justice and home affairs can be found in the relevant section (*Chapter 24 – Co-operation in the field of justice and home affairs*) of part *B.3.1.* of this report.

### *Recent developments*

As reported in the 2001 Regular Report the current government is formed by the electoral grouping led by the Social Democratic Alliance in coalition with the Polish Peasants Party (PSL).

Poland's political institutions have continued to function properly and in a stable manner. The 1997 Constitution has proved and continues to be a stabilising factor since its introduction.

The government continues to support EU membership as a top political priority and a broad consensus on this issue exists among a majority in the parliament.

## **1.1. Democracy and the rule of law**

Poland has achieved stability of institutions guaranteeing democracy and the rule of law. This was the conclusion of the 1997 Opinion and the subsequent Regular Reports, and

has been confirmed by developments over the past year. This section focuses on the most significant developments since the last Regular Report.

### *The parliament*

At a time when the probity of the political class is under close public scrutiny and following a parliamentary election campaign in which the comportment of elected representatives played an important role, developments over the past year have focused on measures to provide reassurance as to the nature of the political process.

Following the last parliamentary elections, all political parties submitted campaign finance statements to the State Election Commission (PKW). Some 93 reports were submitted and the PKW, upon scrutiny of the statements, rejected a number of the reports. The most common infringement was irregularities in making payments (cash payments or payments by post) or exceeding the limit on contributions from individuals, set at PLN 11 400 (€3 100). Another common problem was that many parties did not establish a separate election fund for the purpose of collecting money for the election campaign. The PKW's decisions have been upheld on appeal and the refund of parties' expenditure has been reduced as a result. It should be noted that this infringement rate compares favourably with that reported after the last presidential election (*see below under The executive*). While the rules for parliamentary and presidential elections are not identical, the fact that the majority of parties participating in the elections did respect the new standards is encouraging.

Once elected, deputies must submit asset declarations. The declarations must contain a range of financial information, are published on the Internet and are assessed by the relevant Sejm and Senate Committees, which present the results to the Presidia of the Sejm and of the Senate respectively. A similar analysis is conducted by the tax offices, which, unlike the parliamentary committees, have at their disposal legal instruments that can be used to check the truthfulness of data included in the statements and tax declarations. The conclusions of this verification are also presented to the Sejm and Senate Presidia.

At the time of writing, all deputies had submitted their declarations although around 50 deputies missed the deadline of 30 April. The sanction for non-submission of the declaration is immediate loss of the annual bonus and the suspension of their parliamentary salary until the declaration is submitted. The Sejm's Ethics Committee may further punish a deputy with an admonition or reprimand. Providing false information or concealing the truth may be punished by up to three years' imprisonment.

In December 2001 the Sejm passed an amendment to the electoral law and the Act on Political Parties of April 2001. This lowered the budget subsidy to political parties for 2002 and 2003. The larger the party, the larger the cut in public finance. A party's exact subsidy entitlement will depend on the number of votes it received in the elections but also on the results of the State Election Commission's (PKW) examination of a party's financial statements. Where it is found that a political party has incorrectly filed a campaign financial statement, the subsidy can be cut by up to 75% of the amount allocated for the subsidy. In addition, falsification of financial statements can lead to imprisonment.

The system of European Committees set up in the parliament to accelerate the adoption of the *acquis*, remains in place. This notwithstanding, there has been a certain loss of momentum in the process with a consequent impact on the pace of adoption of legislation.

### *The executive*

Developments in this field have been variable. The impact of most recent legislative developments vis-à-vis the civil service and with regard to the organisation of state structures is likely to be mixed, whereas the suspension of elements of the civil service law so as to allow the recruitment of high level staff without the need for an open competition clearly represents a backward step. Issues which have been identified in previous Regular Reports as problematic, notably the pace of recruitment within the civil service and the financing of regional government, have not improved over the past year. With regard the question of stability of the civil service which was also addressed there has been a very high rate of replacement of officials notably high level ones, within the system of public administration centrally, regionally and in state run bodies over the reporting period.

As reported in the last Regular Report, the State Election Commission (PKW) rejected the campaign statements of all twenty-one presidential candidates. Thirteen appeals were lodged and PKW's decision was upheld in every case. As a result property acquired illegally by 18 committees will have to be forfeited to the state treasury. The amounts to be forfeited vary from PLN 1.7 million (€0.5 million) to PLN 358 (€100).

In March 2002 some minor changes were introduced into the administrative map of Poland with the addition of seven new *powiats*<sup>4</sup>, bringing the total number to 380. In addition adjustments were made to the borders of a number of *gminas*.

In November 2001 the existing Act on the Revenues of the Self-government Units of 1998 was prolonged until the end of 2002, (*see Chapter 21- Regional Policy*). The *gminas*, *powiats* and *voivodships* (self-government units) will receive slightly over PLN 43 billion (€12 billion) from the state budget. This represents a decline in real terms of 2.7% in 2002 compared to 2001.

One innovation at the level of local government has been the introduction, through the law adopted in July 2002, of directly elected mayors for rural areas, towns and cities. After considerable debate within the parliament and the intervention of the Constitutional Court, it was decided that the elections would be via the d'Hondt method (a system of proportional representation which at the margin favours larger parties) and over two rounds.

In March 2002 the Sejm adopted the Act on Changes in the Organisation and Functioning of the State Administration and Subordinated Units and amendments to other acts. The new law abolishes 23 central administration agencies out of a total of 74 state administration bodies by the end of 2002. It also provides for amendments to nearly fifty

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<sup>4</sup> Poland has three levels of self-government: the voivodship (region), powiat (commune), and gmina (parish). For full details of the administrative structure see the 1999 Regular Report on Poland's progress towards accession.

laws, mostly related to details of the functioning of state administration bodies, in connection with the ongoing structural changes.

The functions of the abolished agencies will be taken over by relevant ministries or other agencies, either existing or newly created. Four new government bodies are being established this year: the Directorate-General for Domestic Roads and Highways; the Insurance and Pension Fund Supervisory Committee (created from a merger of the Pension Fund Supervision Office and the Insurance Supervisory Office); the Main Grain and Plant Protection Inspection Authority; and the Agency for Export Development, formed on the basis of a consolidation of the Polish Information Agency and the Polish Agency for Foreign Investment.

The changes are aimed at producing budget savings in the operation of central administrative bodies. These savings will be realised through the dismissal of half of the 7 000 staff working in the agencies. The remaining 3 500 will be transferred to the new agencies or ministries. One further proposed benefit is intended to be an improvement in financial control. In the past agencies have been criticised for a greater lack of financial rigour than that of the central administration. It is expected that the reorganisation will improve this situation. This should be balanced against the fact that the fourteen largest agencies, when measured by budget, were not included in the reorganisation.

With regard to the functioning of the executive, two amendments were adopted by the parliament in December 2001 to a number of laws relating to the functioning of the civil service.

Under the first amendment the presidents of the Supreme Chamber of Audit (NIK) and the National Bank of Poland (NBP) will now require a prior invitation to participate in Cabinet meetings. This revises the system put in place in 1989 whereby the presidents could participate without prior invitation.

The second amendment suspended until the end of 2002 certain provisions of the Civil Service Act of 1998. During this period the Prime Minister and the directors-general in state institutions are able to fill the most senior administrative posts with people from outside the Civil Service, who as candidates are no longer required to pass a competition. The Government justified the change on the basis of two factors: first, the small number of civil servants who had passed the competition for senior posts, which had resulted in numerous vacancies or *ad interim* appointments, and second, the fact that at local level the criteria necessary to be a civil servant, particularly the requirement to speak a foreign language, deterred candidates. Under the amendment new appointees can be recruited for only six months.

Civil servants can, under the terms of the Law, be recruited exclusively after an open competition or if they are graduates of the National School of Public Administration, entry to which is also by open competition. It is recognised that existing recruitment rates are insufficient to establish a fully staffed independent civil servant corps in the near future, however, there has been little acceleration in the rate of recruitment over the reporting period. In 2001 the number of civil servants increased by 276 of whom 218 people who passed the competition and 58 graduates of the National School for Public Administration (KSAP), to reach a total of about 830, or some 0.8% of the employees of the central administration. In 2002 there were 65 graduates trained by the KSAP to be independent professional career civil servants. It is apparent that recruitment of KSAP

graduates of civil servants proved more difficult in 2002 than has been the case in previous years as the number of job offers made available to KSAP graduates by the government has been reduced by two-thirds.

For matters related to the everyday work of employees in the central administration, each ministry and central office has a disciplinary ombudsman, who reports to the disciplinary ombudsman in the Office for the Civil Service. Since 2000 the Office has provided a training programme on ethics in administration, which will be extended (through distance learning) to 1 000 central administration employees in 2002 and to a similar number in 2003.

A number of measures to improve recruitment and training are underway. These include developing a general human resource management strategy for the Polish civil service and putting into operation both a Civil Service Information Centre and a Recruitment Assessment Centre at the Office for the Civil Service. There will also be a pilot project to assess civil service training needs.

The civil service is under the constitutional responsibility of the Prime Minister, who appoints the Head of the Civil Service, and is assisted by the Office for the Civil Service. The current head of the civil service was appointed by the Prime Minister in July 2001 for a second five-year term. The number of staff has been increasing by four or five a year and is now almost 100.

Budget cuts imposed in 2002 have affected the Office much more severely than other parts of the public administration. The total reduction in planned spending for the public administration as a whole amounted to slightly more than 1%, while for the Office for the Civil Service it exceeded 19% (or 14% if compared to actual spending in 2001). This change will not affect the recruitment of new civil servants, as this is financed from a special reserve for the head of the civil service granted by the Council of Ministers, but it will affect other areas, notably training (not only for the Office's own staff but also for the whole of the public administration) and further development of the activities of the Office. The impact of these cuts on the proposed review of recruitment and training procedures within the Polish civil service remains to be seen.

As noted in the 2001 Regular Report, further efforts have been undertaken to publicise the work of the civil service and improve its image. While some efforts have been made to further address issues raised in previous Regular Reports, the long-standing disincentives to a civil service career, (perceived poor status, profile and rewards) remain and will need to be further addressed in the years ahead to ensure the recruitment and retention of a body of independent, experienced officials.

### *The judicial system*

Over the last year the on-going reform of the judiciary has continued and steady progress has been registered. The introduction of a new layer of courts and, the acceleration of procedures, as well as the computerisation of the judiciary and the prosecutor's office, have improved efficiency. However, efforts are still needed to improve the efficiency of the judiciary, in particular in view of accession, and enhance public access to justice, which remains limited. Concerns persist with regard to perceptions of corruption among the judiciary. The existing penal immunity of judges makes it difficult to determine the real level of corruption within the judiciary.



Implementation of the reforms begun in 2000 continued in the reporting period. In terms of legislative progress, an amendment to the Act on the National Court Register was adopted in December 2001. This has simplified the procedure for making entries in the register. It is hoped that the procedure will now be quicker and, by taking up less time, will be one further step towards reducing delays in court procedures.

As mentioned in the 2001 Regular Report, in October 2001 the Act on the Constitution of Common Courts entered into force, introducing *inter alia* a further reorganisation of the judiciary, establishing the position of judge's assistant, reorganising the inspection of the judicial services and facilitating the assignment of Polish judges to international organisations.

At administrative level further steps have been taken towards completing the reform of the judicial map. In addition secondary legislation implementing the Act on the Constitution of Common Courts has replaced the previous structure and functions of the various levels of court in Poland. Presently there are 296 district courts, 41 regional courts, 10 courts of appeal and the Supreme Court. Reforms were implemented within the structure of district courts, with the establishment of 40 labour and social security courts and the introduction of a new layer of courts – borough courts to deal with misdemeanour cases. By the end of 2001, the number of borough courts reached 314 compared to the target of 346.

The Public Prosecutor's Office has a similar organisational pattern to that of the court system: there are 323 public prosecutor's offices at district level and 41 at regional level. Ten public prosecutor's offices operate at appeal court level.

In April 2002, the position of "court director" was introduced. Court directors will assume the function of managing the court's financial matters and property in the courts of appeal and the regional courts. By September, ten directors had been appointed in the courts of appeal and thirty in regional courts.

At the end of 2001 the number of judges in common courts stood at 8 768, a significant further increase compared to 2000 (8 335), and the number of prosecutors at 5 293, representing a slight decrease compared to the previous year. The number of senior court clerks (*Referendarz*) remained more or less stable at around 600; they are mainly employed in court record offices. 585 clerks also currently work in record offices; an increase of 85 new posts is planned for 2002. The recruitment of more administrative staff to support judges has continued and the number now stands at 20 407. Measures are planned to further increase the numbers of both judges and the necessary administrative support staff.

The reorganisation of the judiciary and the acceleration of proceedings in criminal and civil courts has had an impact on the average duration of court proceedings which have seen some further reductions. According to figures provided by the Polish Ministry of Justice, in district courts the average length of proceedings for criminal cases has fallen from 5.8 in 2000 to 5.4 months in 2001 while the duration of criminal proceedings in regional courts was shortened from 6.5 months in 2000 to 6.1 months in 2001. There has not been a similar reduction in terms of civil cases: in district courts the average length of duration of civil cases has increased by one month to 5.3 months and in regional courts it remains unchanged. The average length of court proceedings in Warsaw has remained considerably longer than average for the rest of Poland. In Warsaw it stands at 40 months.

The system for executing court decisions has also been reformed with the change in the status of bailiffs and some procedural reforms. Currently around 583 bailiffs enforce between 1 and 1.2 million court decisions a year. The average time between the court decision and its execution in civil cases rose slightly in 2001 to 12.7 months at the end of the year compared to 12.3 months in 2000.

Implementation of the 1999 computerisation strategy has continued both in the courts, where in mid-2002 there were around 8 700 computers, and in the public prosecutors' offices, where there were around 2 100. Although the situation is better in the courts than in the prosecutors' offices, the needs of both remain considerable. Work is ongoing to further meet these needs by continuing and stepping up efforts to further computerise the judicial service.

Poland is improving procedures for recruiting, assessing and promoting judges, to make these more harmonised and transparent. However, work remains to be done, especially with regard to the procedures for admittance to apprenticeships. Moreover, procedures for assessing judges' professional performance remain unclear and inefficient.

With regard to training, initial and continuous training is planned at central and regional level but, due to budget constraints facing the Ministry and the courts, has mainly been supported by external donors. At present, 36 training centres continue to operate at regional level (23 for judges and 13 for prosecutors). In addition to the burden which 36 centres place on the budget, it is difficult to ensure uniform quality and content of the training which judges undergo. One of the elements which need to be urgently addressed is the establishment of a uniform national training curriculum for judges, another being the establishment of a national training centre. Training focused on EC law is provided, mainly financed by third countries in the context of assistance programmes. The same applies for the training of Ministry of Justice staff in the area of international legal assistance.

The 2001 Regular Report drew attention to the issue of judicial independence. The entry into force of the Act on Common Courts in Poland means that the courts of appeal, and not the disciplinary tribunals which exist within each judicial district, are now responsible for lifting the immunity of judges. There has been an increase in the transparency of judicial disciplinary processes. The act stipulates that proceedings before the disciplinary courts are now public although criminal proceedings are not made public and the deliberations in a court of appeal on lifting the immunity of a judge are held in closed session.

### *Anti-corruption measures*

Independent surveys confirm that the issue of corruption remains a source of serious concern. The issue is fully in the public spotlight, featuring as it did in last year's electoral campaign but also through the publication of the Supreme Chamber of Control's report on the management of State-owned enterprises and a number of high-profile court cases.

The 2001 report highlighted the need to alter perceptions and the key role which a coherent strategy would play in this process. Such a strategy was adopted in September 2002. While there has been a steady implementation of previous measures, there have been no developments in terms of adopted legislation.

In terms of administrative capacity, the main development has been the establishment of the General Inspectorate of Financial Information (GIFI). This horizontal structure is in charge of collecting, processing and exchanging information received from financial entities on financial transactions with a view to curbing money-laundering. At this initial stage in its development the GIFI requires additional staff, IT equipment and software to digest and analyse systematically the flow of information it receives on financial transactions. To reflect this, the law has been amended to revise the date by which entities have to register and submit to the GIFI information on all cash transactions above €10 000 from 15 March 2002 to 30 June 2004 (*see Chapter 24 - Co-operation in the field of justice and home affairs*).

The impact of the new Law on public information, mentioned in the 2001 Regular Report, has been positive in that it has set out in clear and more comprehensible terms the rights to access which exist. The legislation provides for the first time a clear statutory basis for existing practices and procedures and protects the current level of access, albeit without greatly increasing it.

The concept of criminal liability of legal persons remains to be introduced into Polish legislation.

Elsewhere further efforts are required to step up the fight against corruption both by the police and the border guard service, which remain important areas of concern. Recent data suggest that in 2001 there was a marked increase in the number of cases detected: up to 2384, compared to 1899 in 2000. Convictions also increased, rising from 580 in 2000 to 652 in 2001.

In September 2002, Poland ratified the Council of Europe Civil Law Convention on corruption. Poland has ratified the 1990 Council of Europe Convention on Money Laundering and has signed the 1999 Criminal Law Convention on corruption. Poland has continued to participate in the monitoring of anti-corruption measures effected by the OECD working group on bribery in international commercial transactions and is involved in the Council of Europe Group of states against corruption (GRECO) and in the Task Force Group on the fight against organised crime in the Baltic region.

As a member of GRECO, Poland received a GRECO evaluation mission in spring 2001. According to the evaluation report that was adopted and made public in March 2002, corruption phenomenon in Poland threatens to undermine the functioning of many public spheres. The GRECO report confirmed that the Polish authorities are fully aware of the danger that corruption represents for the further development of the country and that they have adopted a variety of measures. It was added that there were still a large number of measures which could be taken and implemented to put in place a comprehensive approach to this problem. In particular, the report called for the development of a clear and comprehensive Government programme against corruption, for some amendments to the legislation to provide the law-enforcement and judicial authorities with the full range of legal tools for combating corruption, for additional training in anti-corruption issues for several categories of officials, and for the strengthening of the role and functions of the Supreme Chamber. In conclusion, GRECO addressed seventeen specific recommendations to Poland which it is strongly encouraged to follow up.

## 1.2. Human rights and the protection of minorities

Poland continues to respect human rights and freedoms. This was the conclusion of the 1997 Opinion and the subsequent Regular Reports, and has been confirmed over the past year. The following section focuses on the most significant developments since the last Regular Report.

Poland has ratified most of the major Human Rights conventions (*see annex*), but has so far not ratified Protocol 7 to the European Convention on Human Rights. In May 2002 Poland signed Protocol 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances. Poland has an established track record of providing appropriate international and constitutional legal safeguards for human rights and protection of minorities. Poland is the current Chair of the UN Commission on Human Rights.

Human rights and protection of minorities are among the competencies of the Polish Ombudsman (*see below under the heading Civil and political rights*).

The concept of non-discrimination is enshrined in the Constitution, but to date the transposition of this principle into legislation, including the anti-discrimination *acquis*, has been limited (*see Chapter 13 - Social policy and employment*).

The Ombudsman continues to play an important role in protecting civil, political and human rights and the rights of minorities. He is also addressed when economic, social or cultural rights are believed to have been violated.

In 2001, the Ombudsman received 55 404 requests to intervene and looked into 40 000 new requests. Action was taken and completed for over 15 000 requests, of which 26% were settled positively (i.e. as requested by the applicant). The remaining 74% did not reach a positive settlement because of “a lack of confirmation of the allegations”. For most of the negative outcomes no further justification was offered.

### *Civil and political rights*

The last year has been one of consolidation, further progress has been made on a number of issues highlighted in the last year's Regular Report although some areas of concern remain.

There remain concerns over *degrading treatment by the police*. 5 391 complaints made against police officers in 2001, which was a slight increase in comparison with 2000, when 5 255 complaints were filed. Of these complaints, 2 884 led to police officers being punished, and 284 to expulsion from the police service. In 2001, 844 criminal proceedings against police officers were initiated, 300 were closed, and in 77 cases the judgement was against the police officer. Concerns have been expressed by human rights organisations that sentencing in such cases is rather lenient and that the existing mechanisms for redress are insufficient. This having been said, there is no evidence of systemic or systematic mistreatment in police custody.

The *abuse of custody* continues to create some concern. In total Poland has been condemned on 11 occasions. There have been 8 further cases submitted to the European Court of Human Rights (ECtHR) in the Reporting Period four relating to the length of

pre-trial detention, three relating to unfounded pre-trial detention and one concerning both. The majority of complaints concern legislation which was amended in 1998. These amendments and provisions included in the amendments of 2000 to the Code of criminal procedure seek to align Polish legislation with the requirements of the European Convention on Human Rights. As noted in the last Report, legislative measures were taken in 2001 to amend the system of "sobering-up stations" and to better protect the rights of those taken to such stations. It is not yet possible to assess the effectiveness of these measures.

*Trafficking in human beings* remains an issue of concern. Poland finds itself acting as host, source and transit point for human trafficking. In legislative terms Poland has made progress over the past year, ratifying the UN 2000 Convention on combating transnational crime in November 2001 and signing its Protocol on Trafficking in Human Beings in October 2001. On the ground, the number of people indicted declined from 119 in 2000 (which had been a steep increase compared to 24 indictments in 1999) to 71 in 2001. The number of victims involved in these indictments was below 100 for the first time since 1995: 93 in 2001, compared to 172 in 2000. The number of cases taken to court was, however, fairly stable: 35 cases in 2001, compared to 38 in 2000.

The *prison system* continues to be an area where the situation has deteriorated rather than progressed since the Opinion. Budgetary constraints have exacerbated the conditions underlined in previous reports. Although the budget of the prison service rose between 1999 and 2002 these additional resources have been used mainly to meet the daily needs of the greatly increased number of detainees, which rose from 54 367 in 1999 to 81 250 in 2002.

The Commission's opinion on Poland noted the country had a *legal aid* system. The possibility of access to free legal aid currently exists in Polish law and in the provisions for criminal and civil proceedings. A number of different channels exist for the provision of aid, thereby rendering it difficult to determine the total coverage of such aid. The main state channel is the State Treasury, which provided around PLN 54 million (€ 14.7 million) in 2001 and a further PLN 48 million (around € 13 million) of free legal representation via the Ministry of Justice. A third element lies within the responsibility of the courts, but no statistics are available on the number and financial value of exemptions from court costs granted by courts and of appointments of *pro bono* lawyers in civil cases. Associations, such as war veterans, also grant free legal aid to their members, and some legal clinics, located in the law faculties of several universities in Poland, also provide free legal aid.

As for the cases for which legal aid may be granted, it is mainly for the judge to decide in a civil case if legal aid will be granted and then for the defendant to supply documentation to justify the granting of such aid. In criminal cases, the state covers the costs while the proceedings are under way, but, against the principles generally applied to legal aid, the aid received has to be refunded if the accused is found guilty. Exemption from this duty to bear the costs is at the discretion of the judge, as is the appointment of a *pro bono* lawyer. Such exemption is obligatory for certain categories of cases, notably those relating to labour or social security law.

Protection for *refugees* continues to be provided. Poland respects the rights of aliens seeking *asylum* in Poland under the 1951 Geneva Convention. The series of amendments made in 2001 to the 1997 aliens law has significantly improved the handling of

applications, a point which had been of concern (*see Chapter 24 - Co-operation in the field of justice and home affairs*). Weak points remain, however, notably legal assistance and integration, which were highlighted in the previous Regular Report. Although measures exist in secondary legislation, budget constraints make sound implementation difficult and the situation of asylum seekers remains difficult. NGOs are still very active in providing legal assistance, especially in major urban centres.

Concerns have been expressed over cases of *racially motivated crimes*, and the alleged failure of the law-enforcement authorities to take action in a number of these.

*Freedom of expression* continues to be generally respected. However, the slander laws continue to offer politicians a higher level of protection, than that afforded to the general public. This as previously noted is in contravention of the case law of the European Court of Human rights. Freedom of the Media continues to be respected.

As regards the *right to privacy*, the vetting or *Lustracja* process, which provides for members of the government, senior officials, officers of the state and members of the judicial system to be vetted for involvement with the former communist regime, remains in place. The issue continues to be one of great sensitivity: amendments adopted by the government to limit the scope of screening procedures by excluding people associated with intelligence and counter-intelligence, as well as border guards, from the category of "collaborators" with Poland's communist secret services were rejected by the Constitutional Court. There have been no major developments with regard to the implementation of the Classified Information Law and, in contrast to 2001, no new cases have been taken to contest the law.

Article 53 of the Polish Constitution enshrines the principle of *freedom of religion*. Individual acts of religious intolerance do take place but they have no place in mainstream political discourse or society.

In 2001, new registration procedures were introduced, and all NGOs were required to re-register. As a result of stricter registration requirements and administrative difficulties with a new process, many NGOs have been denied registration. This has discouraged the establishment of new organisations and disrupts the work of many active organisations. In March 2002, the Supreme Administrative Court decided that reinvestment of donations in stocks and bonds in order to increase the revenue to be spent on statutory activities would be tax-free. The decision makes it possible for all non-governmental organisations to better manage their finances.

With regard to *property rights*, there has been little change since the last reporting period, particularly with regard to the restitution of property. In the absence of specific legislation (a previous law was vetoed by the President), individual claims must be brought before a court. As the number of cases increases, the relevant case law seems on balance to be favourable to claimants. The process remains, however, long and complex.

### *Economic, social and cultural rights*

In the area of *equal opportunities* there has been no legislative progress since the last reporting period (*see Chapter 13 - Social policy and employment*). Within the political arena the last parliament elections saw a notable increase in the number of women representatives in both chambers. In the Sejm 20% of those elected were women

(previously 13.5%) and in the Senate 23% (previously 12%). There is one female minister, along with seven female secretaries of state and nine under secretaries of state. At the local level there is one female voivod and no marshals.

A government Plenipotentiary for Equal Status of Women and Men was appointed in October 2001. The office has 11 staff and its main functions are: analysing and evaluating equal treatment; initiating and co-ordinating activities aimed at securing equal opportunities for men and women; issuing opinions, and co-operating with relevant state administration bodies, NGOs and educational institutions to promote equal opportunities in educational programmes. There is no indication as to whether the office will cover traditionally sensitive issues such as spousal violence, which have been raised in earlier Regular Reports.

2001 was the first year of operation of the Ombudsman for Children's Rights. During this period, the Office received 960 requests to intervene. During the first two months of 2002, a further 117 requests were received. The Ombudsman for Children's Rights co-operates closely with the general Ombudsman, which is particularly important as the Ombudsman for Children can only seek to persuade, while the general Ombudsman can initiate in his own right cases related to children's rights.

There have been no major changes with regard to the treatment of *disabled persons* over the reporting period.

The *trade union* movement has played a central role in Poland's recent history and continues to be an influential player politically and socially. Over the reporting period there have been no legislative changes with regard to trade unions and the right of association. However, at a practical level union membership is falling and there are increasing concerns that implementation is not duly enforced in all cases.

There have been no developments in the reporting period in relation to *the European Social Charter*, to which Poland is a party. Poland has not signed the revised European Social Charter.

### *Minority rights and the protection of minorities*

In Poland *minorities* continue to be protected and their rights respected, and Poland has previously ratified the Council of Europe Framework Convention for the Protection of National Minorities. In July 2002 Poland submitted its first State report on the implementation of the Convention.

A unit in the Ombudsman's Office monitors the protection of foreigners and the rights of national minorities. The number of complaints in this area continues to be very small, although it is not clear whether this is because the unit is new or it is perceived that there is little to be gained by complaining.

The 2001 Regular Report noted the encouraging signs with respect to measures to alleviate the difficult social situation of the *Roma* community, which is estimated to consist of between 50 000 and 60 000 persons. These good intentions have not, however, fully survived the transition into practice. The pilot project has been launched, but budgetary difficulties have placed severe limitations on the elements of the project which have been undertaken to date.

### **1.3. General evaluation<sup>5</sup>**

In its 1997 Opinion, the Commission concluded that Poland fulfilled the political criteria. Since that time, the country has made considerable progress in further consolidating and deepening the stability of its institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. This has been confirmed over the past year. Poland continues to fulfil the Copenhagen political criteria.

The reinforcement of administrative capacity across the civil service is an important issue, recent developments have been mixed and further efforts are needed. In the area of public administration progress in the implementation of the 1999 Civil Service Law has been limited by the temporary suspension of the system of recruitment by open competition. It is essential that the pace of implementation, most notably with respect to recruitment, is accelerated so as to ensure that an independent, well trained and motivated civil service is in place by the time of accession.

Poland has made further progress in reforming the judiciary and in creating conditions to allow for a reduction in the most pressing bottlenecks. Efforts should now focus on ensuring that the progress to date delivers the desired result in terms of improved efficacy of the judiciary. Issues relating to judicial immunity are being addressed and should be followed up. Similar priority needs to be given to the training of judges, in particular in EC Law. While there have been ongoing efforts a sustainable structured programme of training needs to be put in place.

Corruption remains a cause for serious concern, a comprehensive strategy has been adopted to combat the problem. Substantial efforts are required to ensure concrete results, which to date have been limited, and in particular to develop a political, administrative and business culture which can resist corruption.

Poland continues to respect human rights and freedoms.

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<sup>5</sup> See "Towards the Enlarged Union: Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries", COM (2002) 700.



## **2. Economic criteria**

### **2.1. Introduction**

In its 1997 Opinion on Poland's application for EU membership, the Commission concluded:

“Poland can be regarded as a functioning market economy; it should be well able to cope with competitive pressure and market forces within the Union in the medium term.”

In its 2001 Regular Report, the Commission found that:

“Poland is a functioning market economy. Provided that it continues and intensifies its present reform efforts in a consistent policy environment, it should be able to cope with the competitive pressure and market forces within the Union, in the near term.”

In examining economic developments in Poland since the Opinion, the Commission's approach was guided by the June 1993 conclusions of the Copenhagen European Council, which stated that membership of the Union requires:

- the existence of a functioning market economy;
- the capacity to cope with competitive pressure and market forces within the Union.

In the analysis below, the Commission has followed the methodology applied in the Opinion and the previous annual Regular Reports. The analysis in this year's Regular Report takes stock of developments since the Opinion was drafted.

### **2.2. Summary of economic developments since 1997**

*Poland's impressive track record of economic growth since the mid-1990s has been interrupted by the sharp slowdown in activity experienced since 2001.* The average real GDP growth since the 1997 opinion has been solid at 4.2%, but masks a marked slowdown, primarily attributable to domestic factors, since the second half of 2000. The positive side-effect of the slowdown has been the correction of a number of macroeconomic imbalances that had arisen as a result of strong domestic demand. The current account deficit, after peaking at more than 8% of GDP in early 2000, has now reverted to a level equivalent to the one that prevailed in 1997. Annual average inflation reached a new low of 5.3% last year, resuming a rapid process of inflation reduction that had been interrupted in 1999-2000, in a context combining unexpected supply shocks and an strong easing of policy rates by the central bank after the Russian crisis. The general government deficit has averaged 2.8% of GDP over the period since the Opinion, but has widened significantly in the past year, primarily due to a combination of rapid rise in expenditure and the slowdown in growth and fall in inflation and their combined impact on revenues. With the downturn, high unemployment and inactivity have become the main imbalances in the Polish economy.

Main Economic Trends								
Poland		1997	1998	1999	2000	2001	Average	2002 latest
Real GDP growth rate	per cent	6.8	4.8	4.1	4.0	1.1	4.2	0.5 Q1
Inflation rate	per cent	15.0	11.8	7.2	10.1	5.3	9.9	3.1 July <sup>b</sup>
- annual average								
- December-on-December	per cent	13.2	8.6	9.8	8.4	3.5	11.3	1.3 July
Unemployment rate								
- LFS definition	per cent	11.0	9.9	12.3	16.3	18.4	13.6	19.9 Q2
General government budget balance	per cent of GDP	-4.3	-2.3	-1.5	-1.8	-3.9p	-2.8p	
Current account balance	per cent of GDP	-4.0	-4.4	-8.1	-6.3	-4.1	-5.4	
	Million ECU/€	-5,065	-6,156	-11,716	-10,824	-8,001 <sup>c</sup>	-8,352	-4,418 Jan.-July <sup>c</sup>
Gross foreign debt of the whole economy	per cent of exports of goods and services	110.7	84.1	102.1	79.2	:	:	
- debt export ratio								
	Million ECU/€	35,884	33,477 <sup>a</sup>	38,848	39,838	:	:	
Foreign direct investment in flow	per cent of GDP	3.4	4.0	4.7	5.9	3.2	4.2	
- balance of payments data								
	Million ECU/€	4,328	5,678	6,821	10,115	6,377 p	6,664 p	2,486 Jan.-July <sup>c</sup>

Sources: Eurostat. National sources. OECD external Debt Statistics

<sup>a</sup> series break as a result of some technical changes to the definition.

<sup>b</sup>Moving 12 months average rate of change.

<sup>c</sup> Source: Website of the National Bank

*Poland has completed transition reforms in terms of trade and price liberalisation, is well advanced in privatisation, and has made considerable advances in second generation reforms. This is particularly the case with respect to major systemic reforms in pensions (with the introduction of a three-pillar system), health care, education and the territorial organisation of the country. These reforms will serve to place welfare regimes on a more sustainable financial footing in the medium term and improve efficiency in the*

provision of services, even if they have been confronted, in some cases, with substantial implementation difficulties. The privatisation process is advanced and has enabled enterprises to be restructured in many sectors (notably because the methods used for privatisation have served to avoid major corporate governance problems like the dilution of ownership). However, there are still many companies in state ownership and privatisation has recently slowed down. The business climate is generally conducive to enterprise creation and investment, even though firms are faced with red tape and other impediments to their growth which have contributed to maintaining a significant level of underground activity. Important challenges remain in the restructuring of key sectors, such as agriculture or heavy industry.

*Prior to the 2001 downturn, Poland was slowly, but steadily catching up with the EU in terms of income.* GDP per head in purchasing power standards (PPS) now represents around 40% of the EU average, which means that Poland made some progress in catching up. The overall success of economic reform in the mid 1990s, after the initial transition-related output contraction earlier in the decade, has contributed to a decrease in the incidence of poverty. Income and poverty exhibit significant regional disparities, not least due to the fact that rural areas have gained little from the overall progress in convergence. Four Eastern Voivodships are on a per capita basis below 77% of the national average (update with 2001 data). The overall activity rate has been stable at around a low 66%, and decreasing for men. Mirroring this low activity rate and rising unemployment, the employment rate has fallen from around 59% in 1997 to 53.8% in 2001. Unemployment is also a phenomenon which affects primarily the young and the less skilled, representing respectively 41% and 22.3% of total average unemployment in 2001, and women, whose average unemployment rate is higher by more than 1.5 percentage points compared to the economy-wide average.

<b>Main Indicators of Economic Structure in 2001</b>		
Population (average)	Thousand	38,641
GDP per head <sup>a</sup>	PPS	9,200
	per cent of EU average	40
Share of agriculture <sup>b</sup> in:		
- gross value added	per cent	3.4
- employment	per cent	19.2
Gross fixed capital formation/GDP	per cent	21.5
Gross foreign debt of the whole economy/GDP <sup>c</sup>	per cent	23.3
Exports of goods & services/GDP	per cent	29.8
Stock of foreign direct investment	Million € € per head <sup>a</sup>	36,783 <sup>c</sup> 952
Long term unemployment rate	per cent of labour force	9.2

<sup>a</sup> Figures have been calculated using the population figures from National Accounts, which may differ from those used in demographic statistics.

<sup>b</sup> Agriculture, hunting, forestry and fishing.

<sup>c</sup> Data refer to 2000.

### 2.3. Assessment in terms of the Copenhagen criteria

#### *The existence of a functioning market economy*

The existence of a functioning market economy requires that prices, as well as trade, are liberalised and that an enforceable legal system, including property rights, is in place. Macroeconomic stability and consensus about economic policy enhance the performance of a market economy. A well-developed financial sector and the absence of any significant barriers to market entry and exit improve the efficiency of the economy.

*The overall consensus in favour of economic transformation has been shared by all governments in office since 1997. However in the more recent past, the consensus on macroeconomic policies has weakened.* There has been an increasing divergence of views between the monetary authorities and the government which has led to a sub-optimal macroeconomic mix and a further breakdown in co-operation. In turn, the situation has led to proposals in Parliament to amend the statute of the central bank and potentially curtail its independence. This dispute, together with mixed signals on the commitment to the remaining agenda for privatisation could – if not adequately addressed - have a cost in terms of investor confidence and the attractiveness of the Polish economy. The track record on the implementation of Poland's commitments in international agreements is generally good, even though the full liberalisation of capital movements as per OECD undertakings has been postponed twice and is now set to be completed by October of this year.

*Growth of real GDP has averaged 4.2%, with a slightly falling trend between 1997 and 2000 and a subsequent sharp slowdown.* The highest growth rate was 6.8%, recorded in 1997. The downturn starting in the second half of 2000 led to a weak growth rate of just 1.1% in 2001 and 0.5% in the first quarter of 2002. One of the determining factors behind Poland's high growth since 1997 – and the slowdown since the second half of 2000 – has been private investment. Over the 1997-2000 period, domestic demand has systematically outpaced overall GDP growth. The investment ratio has averaged close to 25% of GDP over the period, with very high rates of growth for gross fixed capital formation, especially until 1999. The deceleration of output has been due to a sharp contraction of investment in 2001, and is continuing into this year, with growth in the first quarter of 2002 at a mere 0.5% compared to the corresponding period of the previous year. In 2001, for the first time, output growth was driven by net exports. Prior to the recent, domestically induced, slowdown the Polish economy had demonstrated a high degree of resilience to external shocks in the face of the Russian crisis in 1998. The loss of export markets in the former Soviet Union amounted to some 3 percentage points of GDP, but triggered a new round of enterprise restructuring that helped to moderate the decline in profitability and allowed a rapid resumption of export growth. Productivity increases, however, translated into higher unemployment, a moderation of household incomes and ultimately lower short-term growth, exacerbated from mid-2000 by excessively tight macroeconomic policies.

*The current account balance has been showing continuous deficits of at least 4% of GDP, which have been increasingly financed by FDI inflows.* The balance of current account has shown an annual average deficit of nearly 5.5%<sup>6</sup>. Whereas in 1997 and 1998, and lately in 2001, the deficit was in a sustainable 4 – 4.5% range, in 1999 and 2000 it

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<sup>6</sup> For 2001 the balance of payment on a cash basis has been used.

reached significantly higher levels (1999: 8.1%), mainly due to a weak export performance in the immediate aftermath of the Russian crisis. Subsequently, Polish exporters were able to continue to penetrate European markets, even with an appreciation of the zloty in real effective terms of almost 30% between the end of 1999 and the middle of last year (CPI-deflated). Export volumes were still growing at around 14% in 2001, while imports were almost flat due to the slowdown in domestic demand. The trade and current account deficit correction experienced since 2000 is therefore a reflection of the re-balancing of the sources of growth in the Polish economy. At an estimated 4% in 2001, the current account deficit is more easily financed through non-debt-creating inflows in the form of foreign direct investment. Among these, net FDI inflows have averaged 3.4% of GDP since 1997, after peaking at above 5% of GDP in 2000.

*The significant rise in unemployment is due to a combination of cyclical, structural and demographic factors.* The unemployment rate rose rapidly from around 11% in 1997, and a subsequent small decline in the year after, continuously over the past years to a high rate of 18.4% in 2001. It is unlikely to contract or even stabilise unless the Polish economy returns to potential output. The rise in unemployment reflects the pace of job destruction, which has accelerated with enterprise restructuring since 1999 and, to some minor degree, a rise in labour force due to demographic developments. On the other hand, job creation is hampered by a skills gap between supply and demand and other barriers in the transition between sectors of the economy, such as the costs of labour, limitations in the labour code, relatively easy access to early retirement, transport and housing impediments to mobility.

*Inflation has been on a falling trend.* Whereas annual inflation in 1997 still amounted to 15%, it has fairly continuously fallen over the past years, translating into an average of 9.9% over the period. After a temporary reacceleration in 2000, inflation has again fallen back rapidly. Headline inflation dropped to 3.5% at end-2001 compared to the corresponding period of the previous year, already below this year's initial target for the end of the year of 4 to 6%. This sharp decline reflects not only demand factors, but also a reversal of previous supply side shocks to food and fuel prices, the tightening of monetary policy and the impact of the currency's appreciation on the price of imported goods. Price growth is stronger in the services sector, which explains why the National Bank of Poland's main measure of "net" inflation<sup>7</sup> is still close to 3% and above other measures of core inflation.

*Poland has switched its exchange rate regime from a crawling peg prevailing until 2000 to a regime of free float since then.* Since the exit of the crawling peg in April 2000, Poland has been maintaining a monetary and exchange rate policy framework combining a floating exchange rate with direct inflation targeting that serves the economy well at this stage of advanced transition and in the run-up to EMU. The set of instruments of the NBP is flexible and has been progressively diversified and extended to effectively carry out monetary policy. Nevertheless, the implementation of direct inflation targeting is proving difficult, in particular because of the uncertainties and lags surrounding the monetary policy transmission mechanism, given the state of development in the financial sector. After overshooting the target in the first two years of existence of the inflation

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<sup>7</sup> "Net" inflation is one of the five measures of core inflation that are calculated by the National Bank of Poland on a monthly and on a yearly basis. "Net" inflation excludes all food and fuel prices, accounting for 33% of the basket, from the headline index. (source: NBP inflation report 2000, Appendix 2)

targeting regime, the Monetary Policy Council is now confronted with the prospect of a significant undershoot. The exchange rate remains, in any case, the most powerful transmission mechanism, and cannot be disregarded as an element of the policy mix. The present exchange rate regime has so far helped to mitigate domestic and external economic policy trade-offs, achieve gradual disinflation and accommodate a trend real exchange rate appreciation in the context of strong capital inflows. With short-term real interest rates close to 6%, monetary conditions are tight, in particular given the appreciation of the zloty. Since the floatation of the zloty, the monetary authorities refrained from direct intervention in the foreign exchange market, as this would probably have yielded little effect on the currency's real value and could only have been undertaken at the cost of higher inflation.

*Poland's effort of fiscal consolidation has been hampered by the slowdown in growth and the reluctance of the Polish authorities to undertake a deep restructuring of public expenditures.* General government net borrowing, on the basis of harmonised EU standards (ESA 95), dropped from 4.3% of GDP in 1997 to levels of around or below 2% in the subsequent three years, but has widened significantly since last year, parallel to the slowdown of economic activity. Last year, the accounts deteriorated to a deficit of 3.9% of GDP. Most of the deterioration of the fiscal accounts is attributable to the deficit of the central government budget, even though the net lending of social security funds was also lower than forecast. Reforms in health care and pensions, which were initiated in 1999, have still not been completed. This forms a liability to the sustainability of government finances over the medium term. In response to the deteriorating budgetary situation, the government adopted an expenditure rule, according to which central government expenditures are limited to an annual rise of one percentage point above the inflation rate, which should allow fiscal consolidation as long as economic growth is sufficiently high and the rule is adhered to at all levels of government. Reflecting the development of the government deficits, government debt had been falling significantly from around 47% of GDP in 1997 to 38.7% at the end of 2000. That trend was reversed in 2001, with the debt ratio reaching 39.3% at the end of last year. Annual interest charges are rising in parallel with debt, and now represent some 3% of GDP.

*After a policy mix in the mid nineties which enabled economic growth and stability, this policy mix has become less supportive since 1999.* After a sharp easing of monetary policy in 1999 and a rapid pick up in inflation and in the current account deficit, macroeconomic policies were considerably tightened in 2000. Since then, the relaxation of monetary policy has been lagging while the deterioration of the fiscal stance in the course of 2001 has gone beyond cyclical factors and reflects a discretionary relaxation of policy. The lack of transparency in the fiscal accounts is also an obstacle to the appropriate setting of monetary policy. In the medium term, further fiscal consolidation will be needed to alleviate current account pressures. The main pressures on the fiscal front are to reduce the tax burden, define an appropriate degree of deficit reduction and make room for increased capital expenditures.

*Prices and trade are broadly liberalised.* Most of the price liberalisation took place very early in the transition. Since 1997, the share of administered prices in the CPI has remained fairly constant at low levels. The NBP defines officially controlled prices as those which are principally made up of excise duties (fuel and alcohol), capped by price ceilings or otherwise regulated (electricity, pharmaceuticals) and or set by local authorities (municipal transport). Together they accounted in 2001 for 25% of the total CPI basket weights. However, it is only the prices of pharmaceuticals, electricity and

heating that are subject to formal regulations, while cost recovery or maintenance is taken into account in the price setting mechanisms for other categories, notably housing rents. Trade liberalisation has been guided by WTO and EU accession-related commitments, that have enabled a fall in Poland's effective trade-weighted average tariff<sup>8</sup> from 5.8% in 1997 to 2.6% in 2001.

*More than 3 million private sector firms now produce over 70% of GDP, compared to about 65% five years ago, and employ more than 70% of the workforce.* Although still in need of deep restructuring and plagued by obstacles to professional and geographic mobility in rural areas, agriculture is also dominated by the private sector. Large state farms now account for 5.2% of total agricultural land compared to 5.8% in 1997, while private ownership has increased over the period from 91.7% to 92.9% of that total.

*Privatisation accelerated in Poland in the period since the Opinion.* The privatisation process is close to full completion in most sectors. However, the number of companies in state ownership, even if falling, is still considerable. It has declined from 3 369 in 1997 to 2 054 in 2001. The key sectors that remain to be privatised and restructured are coal, steel, energy, heavy chemicals and defence-related industries. A large share of privatisation has taken the form of sales of majority stakes to foreign strategic investors, a technique that has fostered effective restructuring in most of the sectors concerned. Over the last year, however, privatisation has considerably slowed down.

*There are no significant legal or institutional barriers to the establishment of new firms in Poland. The main remaining problem is the implementation of bankruptcy procedures and the exit of insolvent firms.* Since the Opinion, the adoption of a new law on economic activity which ensures the equal treatment of private and public entrepreneurs, the introduction of modern statutes for competition, consumer protection and intellectual property, the removal of legal barriers to the development of competition in sectors that were previously exempted by law (since the Opinion notably in energy and the railways) have all contributed to the improvement of the business climate. The government has also established a unified entrepreneurs' electronic registry system for new enterprises whose coverage is progressively becoming more comprehensive. In January 2002, the Polish government adopted a medium-term economic programme which contains a large set of measures to simplify the tax system (corporate tax rates had been reduced, and the tax base broadened, in 1999) and reduce administrative burdens by streamlining procedures. These procedures, notably for the registration of new businesses, are still time consuming and involve a number of steps and administrative actors that can be considered high by international standards. As far as exit is concerned, the new commercial code, in force since January 2001, facilitates consolidation through mergers or acquisitions, but this applies mainly to large firms. Overall, however, the existing bankruptcy and liquidation framework is costly, poorly enforced due to resource constraints on courts and excessively favourable to the debtor. For the public sector, since 1997, 869 state firms have been liquidated under Article 19 of the law on state-owned enterprises.

*In general, property rights are established and transferable.* The main shortcoming that has not been sufficiently addressed in the period since 1997 is the improvement of the land registry. This limits in practice the possibility to establish ownership over land, and therefore makes it difficult to use property as collateral in loans. The entrepreneurial

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<sup>8</sup> including suspended tariffs and free trade agreements.

climate is good, although a certain degree of bureaucracy, the lack in transparency in some government decisions and difficulties with the enforcement of court decisions are general obstacles to activity. Moreover, the continuing uncertainty surrounding cases relating to the restitution of property represents an additional obstacle.

*The financial sector is maturing slowly.* The restructuring and privatisation agenda in banking is well advanced, but not fully complete. The government maintains ownership in only 7 institutions<sup>9</sup> compared to 15 in 1997, but the role of the former State savings bank - PKO Bank Polski SA - remains significant. The market is also fairly concentrated, with the largest 10 banks accounting for more than 70% of assets. One of the main characteristics of the sector is the high degree of foreign ownership. There are now 47 banks with majority foreign equity (against 29 in 1997), representing almost 70% of the total assets of the sector. Financial intermediation is still very low in international terms. Banking assets represented some 64% of GDP at the end of June 2001, while the overall deposit base of the banking sector as a whole represented less than 38% of GDP. The domestic credit-to-GDP ratio has only increased to 29.1% (March 2002), from a level below 25% at the time of the Opinion. For about a third of firms reporting to the Statistical Office, investment is still mostly financed through retained earnings.

*Polish banking intermediation remains characterised by a lack of effective competition. However, the sector seems stable and well capitalised.* Efficiency of banking intermediation, measured in terms of interest rate spreads remains low and is improving only slowly. At 7.7%, the spread between average lending and deposit rates in 2001 was at a similar level to the one that prevailed in 1997<sup>10</sup>. The high degree of foreign ownership in the financial sector is an important factor underpinning soundness and stability. Systemic threats are also limited in view of the fact that the financial sector is still small. Nevertheless, in the banking sector, there has been a rapid and sharp deterioration in asset quality over the last two years. The share of non-performing loans as a percentage of total portfolio has increased to 18.3% in 2001 from 10.5% in 1997. On the other hand, the regulatory and supervisory framework for the financial sector as a whole has been continuously upgraded over the period to keep pace with developments, and is now close to international standards and best practice – and compliance with the *acquis*. The legal framework and the supervisory process had already been significantly improved on the occasion of the previous change to the Banking Law in 1997. A new amendment to the Banking Law entered into force at the beginning of 2001 and has addressed several major shortcomings, including the supervisors' authority to conduct consolidated supervision, capital requirements to apply on a consolidated basis to banks and market risk, improved anti-money laundering legislation and clear rules for bank ownership transfer, as well as large credit exposure and provisioning.

*The non-bank financial sector is relatively small, but growing rapidly.* Insurance companies and – since the 1999 pension reform – pension and investment funds are becoming important players. The Polish equity market is still very small, with a capitalisation of less than 15% of GDP. The corporate bond market (as well as other fixed-income markets) is also small but (notwithstanding relatively high costs and stringent information requirements) should now develop in parallel with the growth of

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<sup>9</sup> Of which 3 directly owned by the State Treasury

<sup>10</sup> This may also reflect prudent pricing policies in the context of the slowdown and the rise in non-performing loans.



institutional investors. The commercial paper market is expanding rapidly and becoming an alternative source of financing for the biggest firms.

*The capacity to cope with competitive pressure and market forces within the Union*

The ability to fulfil this criterion depends on the existence of a market economy and a stable macroeconomic framework, allowing economic agents to make decisions in a climate of predictability. It also requires a sufficient amount of human and physical capital, including infrastructure. State enterprises need to be restructured and all enterprises need to invest to improve their efficiency. Furthermore, the more access enterprises have to outside finance and the more successful they are at restructuring and innovating, the greater will be their capacity to adapt. Overall, an economy will be better able to take on the obligations of membership the higher the degree of economic integration it achieves with the Union before accession. Both the volume and the range of products traded with EU Member States provide evidence of such integration.

*A sufficient degree of macroeconomic stabilisation has been sustained for a sufficient period of time to avoid distortions in the decisions of economic agents. A sound overall legal framework underpins investor confidence. The restructuring and reallocation of resources in the economy can nevertheless be further enhanced.*

*The overall quality of the education system has helped Poland to build up its level of human capital to compete in the single market and the global economy.* The Polish education system has a wide coverage and ensures a satisfactory level of access to education. Net enrolment ratios have increased since 1997, for primary (from 98% to 98.6%), secondary (from 81.2% to 84%) and tertiary education (from 22.2% to 30.6%) The capacity of the education system to deliver to the workforce the skills to match labour market demands is still, however, insufficient. The current government has reversed many of the features of the 1999 education reform. The main shortcomings are issues relating to the quality and relevance of the curriculum, inefficient use of resources in the system against the backdrop of rapid demographic changes, a still relatively low share of the population with higher education (around 7%) and increasing disparities in access to education and training between rural and urban areas. Besides education, other structural policies that are needed to improve the functioning of the labour market have been only partially implemented. There has been for a long time some degree of consensus among policy-makers on the underlying obstacles to reducing unemployment, such as obstacles to workers' mobility, the relatively high cost of labour (tax wedge, lack of differentiation in the minimum wage) and shortcomings of the public employment service. This is reflected in the fact that the unemployment rate for low-skilled workers amounts to a very high 26%. However, the implementation of remedies in these areas has been protracted, even though in the most recent period, the Polish government has committed to – and started the legislative process for implementation of – an ambitious package of measures under the “First Job” component of its new medium-term economic strategy.

*The investment boom between 1997 and 2000 has enabled Poland to continue to replace its obsolete capital stock and foster product innovation and the competitiveness of its firms.* The gross domestic investment ratio has averaged 25.2% between 1997 and 2001, but has fallen sharply in the last year. At 19%, private fixed investment is now low. Gross fixed capital formation of the general government in ESA 95 terms is reported by the

Polish authorities at a modest 3.1% of GDP, a level actually lower than in 1997. Foreign direct investment inflows have also had a key role in lifting the level of technology and competitiveness of the economy. FDI as a percentage of GDP has increased from 2.1% in 1997 to 3.7% last year, with a peak of 5.2% in 2000, marked by a few large one-off transactions linked to privatisation. The stock of accumulated inflows, however, is still not particularly high on a per capita basis at €952. In cumulative terms, the sectors that have benefited the most from FDI are food, drinks and tobacco products (11.1% of total inflows) and transportation equipment (11%), as well as financial services (23%). Even though these sectors are not a priori the most export-oriented, there is considerable evidence that inflows of foreign direct investment have contributed to restructuring, the upgrading of the structure of foreign trade and a greater participation of Polish firms in global production and distribution networks.

*Transport and other physical infrastructure are still bottlenecks to Poland's growth potential.* In particular, the poor quality of the road network, which has suffered from under-investment in renewal and modernisation, is a key factor that increases the cost of doing business. The government has announced, as part of its new medium term economic strategy, plans to considerably increase future infrastructure spending in this area. As far as telecommunications infrastructure is concerned, the number of telephone subscribers has doubled since 1997, but the ratio of telephone density for fixed lines is still half of the EU average. One of the most positive developments in the most recent period is that the internet accessibility ratio (measured as the number of computers with their own address and connected to the internet per 1000 inhabitants) is reported to be growing rapidly. At 0.75% of GDP, spending on research and development is low by international standards, and mainly financed by the state.

*Many sectors that have been privatised have been successfully restructured. But the agenda for reform in this area is not yet complete.* In sectors such as power generation, banking, insurance, telecommunications, privatisation is well advanced and at the same time appropriate regulatory and supervisory legal frameworks have been adopted. Despite these achievements, however, the enforcement of supervision of monopolies tends to remain weak. As far as the remaining state-owned sectors are concerned, corporate governance by the public owner does not function well. Main challenges remaining are the restructuring and privatisation of energy distribution (where the decision to sell majority stakes should accelerate the process), coal mining (the sector is generating an operating profit but still makes losses net of state subsidies, despite substantial capacity reduction since 1997), steel (in which the amended law on restructuring of February 2002 was a step in the right direction), heavy chemicals and defence (only 5 transactions have taken place out of 26 firms targeted for privatisation). In the area of chemicals, the new strategy has not translated into concrete progress to date. The restructuring of the agricultural sector is also lagging, and requires structural measures to help the economy absorb labour that has already been shed in rural areas.

*Shifts in the sectoral structure of the economy have taken place only slowly since 1997, and the industrial sector has continued to make a crucial contribution to catching up.* The share of agriculture in GDP dropped from 5.5% in 1997 to 3.4% in 2001, but this sector continues to account for nearly 20% of employment in 2001, hardly down from the 20.5% share in 1997. The productivity gap between agriculture and other sectors of the economy has therefore further widened since 1997. Between 1997 and 2001, gross value added in agriculture fell by 9%. In contrast, manufacturing rose in the same period by around 14% and private services by more than 21%. The share of services in value added

has increased by about 6.5 percentage points since 1997. Nevertheless, there has been less of a shift from industry to services than might have been expected from initial conditions.

*Small and medium-sized enterprises have been the engine driving the economy, but have been confronted with difficulties in accessing external financing.* The SME sector accounts for two thirds of total employment and half of GDP and exports. For most Polish firms, investment is still mostly financed through retained earnings. For SMEs, guarantee schemes and other access to finance support mechanisms (for example venture or seed capital) have yet to reach a critical mass and do not appear to reach micro-enterprises in rural areas sufficiently well. The range of other difficulties confronting SMEs growing from micro-enterprises are reflected by the relative importance of underground economic activity, estimated by the Polish statistical office at around 15% of GDP and actually rising in the last two years. Available data on the size-class structure of non-primary private enterprises show that the average enterprise in Poland employs five persons, a scale similar to that prevailing in the EU.

*Interference by government in Poland's markets has been relatively contained in the last few years.* The biggest source of market distortion remains the presence of state aid in both private and state-owned firms, even though the entry into force in January 2001 of the new state aid law was an important step in bringing Poland closer to international standards in this area. Hidden subsidies to the state-owned sector take the form of sizeable tax and social security arrears. Inter-enterprise arrears between state-owned firms suggest that there is still a need for tighter financial discipline in the sector. In this context, recent proposals for debt forgiveness from the state to the enterprise sector carry significant potential risks of moral hazard and inadequate targeting. Poland has resorted to the use of non-tariff barriers in order to support sectors in difficulty such as textile, the car industry or ceramics. Remaining problems include the complexity and lack of transparency in standards and certification matters, and the failure to apply in a uniform fashion some provisions of the customs code.

*Poland has successfully reoriented its trade towards EU markets, a shift spurred on by the Russian crisis of 1998.* As an indicator of overall trade integration, the ratio of exports and imports of goods and services to GDP has increased over the period since 1997 from around 47% to 63.3% in 2001. Merchandise exports to the EU have been steady at around 70% of total exports since 1998 (from less than 65% in 1997), after a further reorientation in Polish export markets due to the one-off collapse in trade with Poland's eastern neighbours. Polish firms' ability to penetrate EU markets is also a reflection of the progressive upgrading of the composition of the country's export portfolio over the last five years. The share of raw materials and other non-processed products in total exports is decreasing in favour of manufactured goods in sectors that tend to be more skilled labour intensive or capital intensive. The evolution of the commodity composition of trade as per the SITC classification shows that manufactured goods other than machinery and transport equipment accounted in 2001 for 36.2% of total exports, against 21.6% in 1997. FDI inflows have played a key role in upgrading Poland's manufacturing and export capacity.

*Poland's sustained export performance, in the context of sometime significant real appreciation of the currency, is an indicator of the competitiveness of the manufacturing base.* High FDI inflows, together with the labour productivity gains associated with the acceleration of enterprise restructuring after 1998, have contributed to maintaining

external competitiveness even in the periods in which the Polish currency appreciated against the currencies of the main trading partners, sometimes sharply. The real appreciation has been much more muted when measured by unit labour costs rather than consumer prices. Overall, the zloty has, in real terms, appreciated by only 4.2% since the end of 1997. However, this wage-based measure of the real effective exchange rate has increased more strongly in the recent period, by more than 12.5% over the last two years.

## **2.4. General evaluation<sup>11</sup>**

The 1997 Opinion already acknowledged the comprehensive reform efforts undertaken by the Polish authorities to transform their economy. Since the Opinion, and against a challenging international economic environment, economic performance has improved. Macroeconomic stability has been achieved, reforms have continued while the Polish authorities' commitment to the economic requirements of EU accession has been sustained.

Hence, it is concluded that Poland is a functioning market economy. The continuation of its current reform path should enable Poland to cope with competitive pressure and market forces within the Union.

Improvements can be made to fiscal policy through the implementation of the government's new expenditure norm at all levels of government as part of a more broadly based structural reform of public finances to support fiscal consolidation. Furthermore, restructuring and privatisation, mainly in heavy industry, the financial sector, energy distribution and agriculture, needs to be completed. In addition, bankruptcy procedures and the land registry call for further improvement. Finally, central bank independence must be preserved to ensure macroeconomic stability and investor confidence.

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<sup>11</sup> See "Towards the Enlarged Union: Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries", COM (2002) 700.

### 3. Ability to assume the obligations of membership

#### *Introduction*

This section addresses the question of Poland's ability to assume the obligations of membership – that is, the legal and institutional framework, known as the *acquis*<sup>12</sup>, by means of which the Union implements its objectives. Alongside an evaluation of relevant developments since the 2001 Regular Report, this section seeks to provide an overall assessment of Poland's ability to assume the obligations of membership, and of what remains to be done. Furthermore, it includes an evaluation of Poland's track record since the 1997 Opinion. It also provides, for each of the negotiating chapters, a summary evaluation of the extent to which commitments made in the negotiations have been implemented, as well as an overview of transitional arrangements that have been granted.

This section is structured in accordance with the list of 29 negotiating chapters, and incorporates an assessment of Poland's administrative capacity to implement the *acquis* in its various aspects. Poland's progress in translating the *acquis* into its official language is assessed in a separate section.

In December 1995, the Madrid European Council remarked on the need to create the conditions for the gradual, harmonious integration of the candidate countries, particularly through the adjustment of their administrative structures. Taking up this theme, in Agenda 2000 the Commission underlined the importance of effectively incorporating Community legislation into national legislation, and the even greater importance of implementing it properly in the field, via the appropriate administrative and judicial structures. This is an essential precondition for creating the mutual trust indispensable for future membership.

In June 2002, the Seville European Council repeated how important it was that candidate countries should continue to make progress with the implementation and effective application of the *acquis*, and added that candidate countries must take all necessary measures to bring their administrative and judicial capacity up to the required level. Building on the assessment of Poland's administrative capacity provided in the 2001 Regular Report, the present Report seeks to add further depth and detail, focusing on the main administrative structures required for implementing the various aspects of the *acquis*.

In its 1997 Opinion on Poland's application for EU membership, the Commission concluded:

*"If Poland continues its efforts on transposition of the acquis relating particularly to the single market, and intensifies work on its implementation, Poland should become able to participate fully in the single market in the medium term. Particular effort and investment will be needed to meet the acquis in sectors such as agriculture, environment and transport. Further administrative reform will be indispensable if Poland is to have the structures to apply and enforce the acquis effectively."*

In the 2001 Regular Report, the Commission found that :

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<sup>12</sup> A description of the *acquis* for each chapter can be found in the Commission's 1997 Opinion on Poland's application for EU membership.

*"The reporting period has seen intensive work on the adoption of legislation. In some areas there have been notable breakthroughs with regard to the adoption of primary legislation. In others, there has been a steady consolidation of the achievements of 2000 through the adoption of the necessary secondary legislation on the basis of the framework laws adopted the previous year. This process of consolidation and putting flesh on the legislative bones is vital in terms of the future ability to implement the acquis and one where efforts will have to be further intensified. The need for further effort applies even more to the strengthening of the administrative capacity to implement the acquis. There have been further developments in this regard, but the divergence between progress in this area and in adopting legislation remains great.*

*With regard to the internal market, efforts in a number of areas have, following the earlier adoption of the framework legislation, focused on the secondary legislation necessary to implement the acquis in these areas, in particular standards and certification and state aid. Both of these are areas in which Poland's existing obligations necessitate implementation prior to the date of accession, and where there has been limited progress. In the case of standards and certification considerable efforts are required to develop the necessary administrative capacity. This is not the case in competition where the capacity exists but where implementation has been limited. There has been progress in the elements of food safety which relate to the internal market through the adoption of the framework law but substantial efforts remain in adopting secondary legislation and developing the administrative capacity. The industrial property law has been adopted although short term difficulties remain with regard to data exclusivity arising out of the new pharmaceutical law. While there has been some improvement in administrative structures, efforts need to be intensified with an emphasis on enforcement.*

*Poland's track record in the free movement of services and capital continues to be good and further work has been undertaken to strengthen the administrative capacity in these domains. There has been considerable legislative progress in the area of public procurement and some progress in terms of the free movement of persons. Further efforts will be necessary to ensure the smooth integration of Poland into the internal market.*

*In the telecommunications area implementation of the existing legislation has been gradual. There has been limited progress in further aligning rates of indirect taxation and further work is required to ensure that the systems are in place to allow for the exchange of computerised data between the EC and Poland.*

*With regard to EMU, there have been no legislative developments towards reinforcing the independence of the National Bank.*

*There has been some progress in industrial policy. Necessary steps have been taken to resolve outstanding issues in the steel sector but these will need to be followed through with vigour.*

*In the agriculture sector, a coherent strategy for the sector is still lacking. The substantial transformation which is needed, in terms of policy, legislation and structures has not yet taken place in either the agriculture or fisheries sectors. In both sectors there has been some progress with regard to primary legislation, notably in the case of veterinary legislation for agriculture. The administrative capacity remains extremely*

*weak for fisheries and considerable weaknesses have become apparent in agriculture in particular with regard to the Integrated Administration and Control System (IACS) and border inspection, both in the veterinary and phyto-sanitary fields.*

*In the environment sector significant progress has been made in terms of primary legislation. The energy and in particular the transport sectors have seen some progress. In all three sectors considerable further work is also required to strengthen the administrative capacity. This is particularly the case for the environment where regional as well as national structures need to be reinforced.*

*There have been few developments with regard to regional policy. In the social field, progress has focused on public health legislation, while enforcement remains a matter of concern most notably concerning occupational health and safety. Additional efforts are required in this respect, in particular to strengthen the Labour Inspectorates. Progress continues in justice and home affairs, especially with regard to the border guards and border management, where the Customs business strategy previously adopted is being implemented. Efforts have been made to improve the situation with regard to law enforcement bodies dealing with the fight against organised crime, in particular the police services. These need to be intensified. Further efforts are required in the customs area to align with the acquis and to ensure the establishment of an effective implementation capacity. Significant legislative progress has been noted in terms of internal financial control, the challenge will now be to put in place the necessary control mechanisms.*

*Poland has made further progress in aligning its legislation notably through secondary legislation. As has previously been noted this effort needs to be matched, in order to adapt and strengthen the structures required with a view to accession. In a number of sectors the level of administrative capacity lags behind. Further efforts are also required in establishing the necessary administrative capacity to ensure the sound, efficient and controllable management of EC funds.*

*This disparity between progress in the adoption of legislation and the reinforcement of administrative capacity is reflected in the extent to which the short-term priorities of the accession partnership have been addressed. There has been further progress in meeting the acquis based elements. Continued efforts are needed to set up or strengthen administrative capacities across the board notably on certification, agriculture, fisheries and regional policy, the social field, customs and justice and home affairs.*

*Poland has started to make progress in meeting all the medium-term priorities. Progress has been varied, with the most obvious developments relating to the legislative elements of the priorities. This will provide the basis for the development of the necessary administrative capacity to ensure implementation. Efforts commenced in this regard will need to be intensified."*

### **3.1. The chapters of the *acquis***

As indicated, the following review of Poland's ability to assume the obligations of membership has been structured in accordance with the list of 29 negotiating chapters. Accordingly, this section opens with an assessment of progress relating to the cornerstones of the internal market which are known as the "four freedoms", and continues with a systematic review of progress on each of the chapters, covering all

aspects of the *acquis*, including sectoral policies, economic and fiscal affairs, regional policy, environment, justice and home affairs, external policies, and financial questions.

## ***Chapter 1: Free movement of goods***

### *Progress since the last Regular Report*

Developments in this domain have been variable. Poland has made considerable progress in some areas, whereas in others a step backward has been taken.

In the area of **horizontal and procedural measures**, Poland adopted in August 2002 an amendment to the Law on Conformity assessment system which, *inter alia*, addresses the issue of market surveillance. A new standardisation law was adopted in July 2002.

Efforts over the reporting period have focused on the adoption of **sector specific legislation**, where progress was considerable. In the areas covered by the New Approach Directives, new legislation was adopted aimed at transposing eight Directives: electromagnetic compatibility (EMC), radio equipment and telecommunications terminal equipment, low voltage, simple pressure vessels, toys, personal protective equipment, gas appliances and machinery. The package of pharmaceutical laws (Pharmaceutical Law, Provisions introducing the Law, Law on Medical Products and Law on the Registration Office for Medical, Medicinal and Biocidal Products) entered into force in October 2002 although some provisions, notably concerning data protection, will only come into effect on the date of accession. The Law on Pricing of Pharmaceutical Products of July 2001 entered into force in December 2001. It is partially aligned with the 'Transparency' Directive applicable in this field. Some implementing regulations under this act were also adopted. The 2001 law on Chemical Substances and Preparations was amended in July 2002 and a series of implementing Ordinances were adopted under this Law. Some implementing ordinances under the Law on cosmetics were also adopted during the reporting period.

In the field of motor vehicles, the amendment to the Road Traffic Act adopted in September 2001 fully entered into force in June 2002. A series of UN/ECE Regulations became binding in Poland. These further align Poland's legislation to the *acquis*. One area where alignment with the *acquis* regressed concerned the re-introduction of an old measure concerning emission levels for second hand vehicles. In the field of construction products, the amendment to the Construction Law adopted in July 2001 partially entered into force in February 2002. Other provisions of the law relating to the use of CE marked products and recognition of EC qualifications for architects will come into force from the day of accession. The amendment creates the framework for the implementation of the Construction Products Directive once the appropriate implementing legislation is adopted. This is also the case for the harmonisation of the *acquis* related to explosives for civil use, for which the framework legislation was adopted in June 2002. Legislation on drug precursors was adopted in September 2001 and entered into force in January 2002. An Ordinance on the safety and labelling of textiles partially aligning Polish legislation with the *acquis* was adopted in October 2001 and entered into force in June 2002.<sup>[b1]</sup> Legislation aimed at transposing the *acquis* on safety checks at external borders was adopted in June 2002.

As regards the issue of food safety and foodstuffs legislation (*see also Chapter 7 – Agriculture*), the Law on materials and products intended to come into contact with



foodstuffs, aiming at transposing the corresponding *acquis*, was adopted in September 2001 and will enter into force in November 2002. The May 2001 Food and Nutrition Act has been amended to ensure further compliance with the *acquis*. Amendments which entered into force in September 2002 addressed, in particular, the abolition of the pre-market authorisation procedures which still subject foodstuffs to prior “registration”, “notification” or other forms of control, beyond the limits set by the *acquis*. In June 2002, the Ministry of Health took over the functions of co-ordinator of activities relating to food safety previously undertaken by different ministries and central institutions. The Food and Nutrition Institute developed a Food Safety Strategy the first version of which was adopted in February 2002. It was decided that from January 2003 onwards the control on the commercial quality of agricultural and food products would become the responsibility of the Inspection of Trade Quality of Agricultural and Food Products as well as of the Trade Inspectorate.

As regards the development of Poland’s administrative capacity in this area, the gradual improvement that began in previous years has continued during the period under consideration. Activities to prepare the relevant bodies for carrying out market surveillance tasks have started. The Polish Committee for Standardisation has intensified its efforts to meet the conditions for entry into the European Standardisation organisations CEN and CENELEC. The role of the national information point implementing provisions of the Agreement on technical barriers to trade (WTO/TBT) was strengthened in the light of its future role under the ‘Information’ Directive regarding the notification of standards. In November 2001, the Polish Accreditation Centre officially joined the European Co-operation for Accreditation (EA) and preparations for the signature of all Multilateral Agreements on Accreditation within EA (EA MLAs) are being undertaken. A series of bodies have applied to become ‘notified’ or ‘competent’ bodies under several New Approach Directives. In the area of chemical products, the Inspector for Chemical Substances and Preparations was appointed in November 2001. The Office for Chemical Substances became operational as of January 2002. In February 2002, new tasks in this field were also attributed to a range of bodies including the Sanitary Inspectorate, the Environmental Protection Inspectorate, the border guard and the customs authorities. In the field of pharmaceuticals and by way of a decision of the Ministry of Health adopted in November 2001, a Bureau for the organisation of the Registration Office for Medical, Medicinal and Biocidal products was set up, aiming at putting in place the technical and administrative basis for the creation of the Office.

In the **non-harmonised area**, an inter-ministerial team to analyse Polish legislation in terms of its compliance with Articles 28-30 of the EC Treaty was established on the basis of a Decision taken in March 2002. Where difficulties are identified the team is mandated to propose decisions to insert as appropriate mutual recognition clauses. The amendment to the Law on Conformity Assessment is important in this respect, introducing as it does, the concept of mutual recognition into Polish law.

During the course of the year a number of laws which have been adopted demonstrate that the current procedures for verifying compatibility with the *acquis* requires strengthening. Both the Law on Alcohol Advertising and the Law amending the Act on Unfair competition contain provisions which appear to be in contradiction with the *acquis* concerning the free movement of goods.

In the field of **public procurement**, amendments to the Law on Public Procurement from June 2001 entered into force in October 2001 and January 2002 respectively. The

provisions on equal access for EC firms will enter into force from the date of accession. A further important adjustment related to the requirement that the contracting authority specify the use of Polish standards transposing European standards, or in their absence, European or international standards. Implementing legislation was also adopted and entered into force during the reporting period.

### *Overall assessment*

The adoption of the horizontal and procedural measures and the establishment of the necessary institutional infrastructure allowing for the implementation of New Approach legislation started slowly but has progressed significantly over the last couple of years. Without prejudice to an assessment of the recently adopted laws, the legal framework for implementing the New Approach directives appears now to be in place.

Drafts of implementing legislation transposing the remaining New Approach Directives are in preparation and cover notably: equipment used in explosive atmospheres (ATEX), pressure equipment, recreational crafts, lifts, cableway installations, construction products, non-automatic weighing instruments, medical devices, active implantable medical devices and *in vitro* diagnostic medical devices. The transposition of the Directive on explosives for civil uses still requires implementing legislation under the recently adopted Law on explosives for civil uses.

On completion of this legislative programme, the old system of mandatory certification, which depended largely on 'mandatory standards' will be abolished. At present 644 Polish standards are still mandatory. As regards the Old Approach Directives, similar efforts are required and, indeed, are underway. In the field of motor vehicles, Poland is close to full alignment with the EC *acquis* on motor vehicle type approval. Further implementing legislation is also under preparation for the implementation of the package of pharmaceutical legislation and the 2001 Law on cosmetics. In the case of the pharmaceutical legislation in particular, implementation is being closely monitored to ensure that the new system does not allow *de facto* discrimination against imported pharmaceutical products. Full alignment with the *acquis* on pre-packaging requires some implementing legislation to be adopted under the 2001 Law on pre-packed goods. Alignment in the field of legal metrology is on track but needs to be further pursued. The October 2001 Ordinance on the safety and labelling of textiles will still need to be amended. This is also the case with the legislation on safety of toys. The footwear *acquis* was implemented some time ago. Work is in progress in the fields of glass and wood. Legislation on cultural goods to ensure alignment remains to be adopted. Amendments to the Law on arms and ammunition are required.

The framework legislation for food safety is in place, but further analysis is required to determine whether any adjustments will be required so as to bring the legislation fully in line with the *acquis*. Transposition and implementation of implementing legislation under these framework laws is still at an early stage and efforts need to be intensified significantly if Poland is to be fully in line before accession. Regarding the administrative capacity in this field, further co-ordination between the Ministries and other bodies involved in food safety is required. The decision of the Ministry of Health establishing from September 2002 an inter-ministerial task force for food safety is an encouraging first sign in this respect. Progress has been made in the development of institutional structures for the official control of genetically modified and novel foods and further efforts are needed to set up equipment and analytical controls. Special efforts also need

to be devoted to the area of official control of food hygiene, contaminants and pesticide residues. The process of setting up adequate laboratories, developing and validating analytical methods and the training of staff should be accelerated. It is not foreseen that HACCP principles will be implemented before accession: an earlier application would however give both economic operators and inspectors a longer period of time in which to adjust to the EC principles of food safety. For the Rapid Alert System in particular, Poland still needs to designate a single contact point and further develop documented procedures for the operation of the system. The Ministry of Health which, with the assistance of the Food and Nutrition Institute, has become the co-ordinator for all food safety related matters requires a significant increase in qualified staff.

Staff increases are envisaged for the Ministry of Economy, the Office for Chemical Substances and the Registration Office for Medical, Medicinal and Biocidal Products (to become operational from October 2002 with the entry into force of the 'set' of pharmaceutical laws). Particular attention will need to be given to the further development of a well-functioning market surveillance system. New qualified staff should be hired in the Office of Competition and Consumer Protection, which, in line with the draft amendment to the Law on Conformity Assessment, will become the supervisory body for market surveillance.

In the non-harmonised area, efforts need to be intensified. The Ministry of Economy requires additional resources if it is to identify and abolish potential barriers to trade. A national contact point for the implementation of the EC Decision on the notification procedure for measures potentially creating obstacles to the free movement of goods is required upon accession.

As noted, Poland has replaced its previous, discriminatory system on the setting of prices for pharmaceuticals for human use. However, the system put in place by the new legislation is not fully transparent and further analysis is required to assess its alignment with the *acquis* and, in particular, that there are no *de facto* discriminatory provisions.

On public procurement, alignment has been greatly improved by recent legislative developments. A series of Ordinances, *inter alia* on documents, competition, tender commission and rules of procedure in appeals, need to be adopted to reach full alignment with the *acquis* in this area. Further strengthening of the Public Procurement Office should be envisaged.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that serious efforts would be needed to put in place a sufficiently developed system enabling the full and effective implementation of the *acquis* in this area. The areas identified as having seen inadequate progress and where there was a particular need to accelerate, develop and complete the programme of approximation were New Approach Directives, automotive sector, chemicals (detergents and dangerous substances), foodstuffs and pharmaceuticals. In this context the Opinion recalled the importance of implementing legislation necessary in order to implement the general legislative framework and accompanying infrastructure independent of the government.

Since the Opinion, considerable progress has been made over the last two to three years notably by putting in place the framework legislation needed and by developing further

the institutional infrastructure needed for its implementation. To date a high level of transposition of the *acquis* has been achieved in relation to the primary legislation and administrative capacity has reached a reasonable level.

Negotiations on this chapter have been provisionally closed. A transitional arrangement was granted for medical devices. Furthermore, Poland was granted a transitional arrangement until the end of 2008 for the renewal of market authorisations for existing pharmaceutical products. Poland is generally meeting the commitments it has made in the accession negotiations.

In order to complete preparations for membership, Poland should now focus on finalising its alignment efforts, in particular by the adoption of outstanding implementing legislation, particularly in the field of foodstuffs and public procurement. Poland should also strengthen its administrative capacity, in particular in the non-harmonised area, in the field of market surveillance and in the field of food safety.

## ***Chapter 2: Free movement of persons***

### *Progress since the last Regular Report*

Significant progress has been made in transposing the *acquis* under this chapter during the reporting period. Considerable efforts have also been undertaken to strengthen the administrative capacity to implement the *acquis*.

In the area of **mutual recognition of professional qualifications**, the Act laying down the Rules for the Recognition of Qualifications in respect of taking up or pursuing certain activities was adopted in May 2002. In accordance with this Act, the Ministry of Economy will be responsible for co-ordinating tasks relating to its implementation and for providing information about the system of recognition to individuals and employers.

Progress was also achieved in the field covered by the sectoral directives. The Law on the Provision of Legal Services by Foreign Lawyers within the Territory of the Republic of Poland adopted in July 2002 aligns Poland's legislation in the field of the legal professions. Several legislative measures were adopted in the field of the medical professions (nurses and midwives, profession of medical doctor and pharmacists). Parts of this legislation and of the formerly adopted legislation on architects and the legislation on veterinary surgeons, entered into force during the reporting period. For the sectoral directives, the relevant ministries are responsible for decisions on the recognition of qualifications (possibly relying on self-regulating bodies and professional associations). The Ministry of National Education and Sports co-operates with the competent authorities and the Bureau for Academic Recognition and International Exchange (the Polish contact point in the NARIC/ENIC network) to ensure that this system functions properly. To this end Poland prepared for July 2002 lists of competent authorities in the field of mutual recognition of professional qualifications in the regulated professions.

There has been further progress with respect to alignment with the *acquis* in the field of **citizens' rights**. The Minister of National Education and Sport issued an ordinance aligning Polish legislation with the *acquis* on taking up and conducting of studies by foreigners and their participation in scientific research and training. This will allow, as from accession, EU citizens to take up studies in Poland and to participate in scientific research and training without discrimination (*see Chapter 18 - Education and training*).

Furthermore, with regard to right of residence Poland adopted in July 2002 the Law on principles and conditions of entry and stay of citizens of Member States of the European Union and members of their families in the Republic of Poland.

Regarding **free movement of workers**, Poland adopted an amendment to the Act on Employment and Combating Unemployment in April 2002 which will grant EU nationals, as well as their family members, the right to take up and pursue an occupation without the necessity to obtain a work permit, as well as the right to receive unemployment benefits (under reciprocal conditions). The Ministry of Labour and the *voivodship* and *powiat* self-governments were also given by this law the responsibility for co-ordinating social security systems with regard to unemployment benefits. An amendment to the Act on General Health Insurance came into force in July 2002 which gives migrant workers equal treatment as regards health care.

All legislation in this field will be supplemented by a horizontal law specifying the dates when measures relating to the free movement of workers will enter into force.

Preparatory work has continued to facilitate Poland's participation in the European Employment services system (EURES).

Some progress has been made regarding the preparation and development of the institutional capacity with a view to future participation in the system of co-ordination of social security systems. Within the reporting period, no new bilateral agreements concerning social security were concluded.

### *Overall assessment*

Poland has achieved a good degree of alignment with the *acquis* in the area of mutual recognition of professional qualifications. Further legislative work is however necessary to achieve full alignment and to provide for the establishment of the necessary administrative capacity. By accession it has to be ensured that all Poland's legislation is aligned with the *acquis*, in particular with regard to nationality, language and residency requirements. Poland still needs to amend the official title "*lekarz stomatologii*" to "dentist". Furthermore, implementing regulations will need to be adopted under the framework legislation on veterinary surgeons. The number and qualifications of staff in the respective bodies in charge of the implementation of the *acquis* in this area will need to be given particular attention. Shortcomings have been identified in the curricula and training of nurses and midwives. A major effort is needed in the short term to improve considerably training for these professions. With respect to professional qualifications obtained before harmonisation, Poland needs to introduce measures to ensure that all its professionals can, as of accession, meet the requirements laid down by the directives.

Attention should be drawn to the importance to be attached to the transposition of the EC *acquis* on voting rights. Relevant legislation, in particular relating to European Parliament elections, has still to be adopted. Moreover, it will have to be determined whether there is a need to amend the Polish Constitution.

Alignment seems largely to have been achieved as regards free movement of workers but decisions on the dates of entering into force of the legislation still need to be taken.

As regards future participation in the European Employment Services system (EURES), efforts should continue, in particular for language training.

Efforts should be pursued with a view to achieving the necessary administrative capacity (additional staffing and training) to participate in the system of co-ordination of social security systems. Poland also needs to ensure the financial stability of its social security system in order to be able to meet the additional costs arising from the application of the EC provisions in this field from accession onwards. Poland should establish reliable statistics concerning these financial implications, in particular regarding the reimbursement of health care costs.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that with regard to the mutual recognition of qualifications and diplomas, the task of compliance would be achievable in the medium term if efforts made at that time were intensified. The Opinion further concluded that significant efforts were required to resolve outstanding issues regarding the free movement of persons in the medium term.

Since the Opinion, Poland has made progress in aligning with the *acquis* in this area and has further strengthened the relevant institutions including with regard to the future co-ordination of social security systems. The process of bringing Poland's legislation and structures in relation to the free movement of persons into line with the *acquis* has developed satisfactorily and, although further efforts are required, legislative and other work has generally been carried out in a timely manner. In overall terms, a high level of alignment with the *acquis* has been achieved and administrative capacity is developing satisfactorily.

Negotiations on this chapter have been provisionally closed. Poland has agreed to a transitional arrangement in respect of the free movement of workers put forward by the EU. Restrictions on the movement of workers from Poland to the EU will apply for a minimum two-year period as of the date of accession and may remain in place for a maximum of seven years. Poland is generally meeting the commitments it has made in the accession negotiations in this field

In order to complete preparations for membership, Poland's efforts now need to concentrate on the adoption of outstanding legislation with regard to voting rights and with regard to the mutual recognition of diploma's and qualifications of dentists. Shortcomings in curricula and training for nurses and midwives in both existing and new legislation need to be addressed. Institutional capacity should continue to be given high priority both in the field of mutual recognition and the co-ordination of social security systems.

### ***Chapter 3: Freedom to provide services***

#### *Progress since the last Regular Report*

Since the last Regular Report Poland has made some progress with transposition and implementation of the *acquis* in this area, but much remains to be done, mainly in the area of financial services.

In the field of **the right of establishment and the freedom to provide services** (other than financial services), there have been some legislative developments. The Law on Detective Services entered into force in March 2002. Under the provisions of the law EU citizens will, from the date of accession be able to operate in this sector. The Law on the principles for the recognition of qualifications acquired in EU Member States to undertake or perform certain types of activities was adopted in May 2002. With regard to supervision of the tourism industry, legislation adopted in 2000 came into effect in September 2001.

In the field of **financial services**, there have been developments both in terms of legislative alignment and administrative capacity. With regard to banking most of the amendments to the Banking Law came into force in January 2002. These bring Polish banking law closer to the *acquis*, notably with respect to supervision of banking groups on a consolidated basis. A range of secondary legislation has been adopted. This includes December 2001 regulations establishing the principles for calculating own funds, credit concentration limits and norms of capital adequacy for banks subject to consolidated supervision.

The amendment to the Banking Law also introduced a new requirement that non-Polish citizens on the management board, including the bank's chairman, whose appointment is approved by the banking supervision authority, must "have a proven knowledge of the Polish language". The authority justifies this measure for prudential and supervisory reasons and it is strictly applied. This regulation in its application to non-Polish citizens is not compatible with the Treaty; moreover, the measure is also disproportionate and does not conform to the principles established for protecting the "general good". It is to be noted that a similar provision has recently been proposed for the insurance sector. There has been no legislative progress in the insurance sector. In April 2002 a new body, the Commission for Insurance and Pension Funds Supervision, replaced two existing supervisory institutions: the State Insurance Supervisory Office (PUNU) and the Pension Funds Supervisory Office (UNFE).

A number of pieces of secondary legislation have been adopted in the field of securities including regulations relating to the amended Law on Public Trading in Securities and the Law on Investment Funds (both of which came into force in 2001). These regulations concern, among others, conditions for conducting brokerage activity, the detailed requirements for prospectuses, conditions for managing joint securities portfolios and producing financial reports on them, and information prospectuses for open-end investment funds.

Amendments to the Act on **Personal Data Protection** came into force between October 2001 and January 2002. These aimed at bringing Polish legislation closer to the *acquis*. Poland ratified Convention 108 of the Council of Europe in May 2002.

In the area of the **information society directives**, the Law on Electronic Signature entered into force in August 2002. Under the law, an e-signature placed under a document sent via the internet has the same legal effect as a hand-written signature and unambiguously defines the identity of the person using it. It may be used by both natural and legal persons. The Law on the Protection of Certain Services Provided by Electronic Method based on or Consisting in Conditional Access was adopted in July 2002 as was the Law on the provision of services by electronic means. The Law on electronic payment instruments was adopted by the Parliament in August 2002.

## *Overall assessment*

In the field of the right of establishment and freedom to provide services, natural or legal persons from EU Member States may freely set up companies in Poland and/or acquire up to 100% of existing companies in most sectors. However, there remain a few sectors (detective services, radio and television stations, public utilities games of chance) which are governed by specific restrictive legislation, such as the requirement of Polish nationality or permanent residence. Some of these restrictions run against Poland's existing Europe Agreement obligations. In some of the laws such restrictions will expire on accession; this is the very least which should be done and all such restrictions should be removed by accession.

Banking legislation is in the main well defined and to a large extent adjusted to the *acquis*. The issue related to the language requirement for members of the boards of Polish banks needs to be resolved. As noted in the last Regular Report, the Law on the Bank Guarantee Fund requires further modification to align it with the *acquis*. The legislation complies in part with the Basle Core Principles for Banking Supervision. The operational independence of the supervisors requires further attention. The fact that all supervisory decisions of major importance have to be taken by the Commission for Banking Supervision, which is partially composed of political representatives, is problematic. With regard to cross-border supervision, the Commission for Banking Supervision may share with foreign supervisors information that is subject to secrecy regulation, and give a home supervisor on-site access to local offices of foreign banks, provided a Memorandum of Understanding has been signed with the other country. To date only one such memorandum, with Lithuania, has been signed. Consequently, the access of foreign supervisors to banks established in Poland and the possibility for Polish supervisors to supervise overseas activities of Polish banks are limited.

In the insurance sector, a range of primary and secondary legislation is being prepared and must be adopted and implemented to bring Poland in line with the *acquis*. All of the necessary directives remain to be adopted. In the area of securities, while a range of legislation has been adopted, this has on examination been found to be insufficient to align Poland with the *acquis*. Further work is required to strengthen the legislation, give it the necessary focus and adapt it to EC standards.

The Commission for Banking Supervision is entrusted with the responsibility of supervising banking institutions. The Commission is chaired by the President of the National Bank of Poland and composed of the Deputy Minister of Finance and representatives of the President, the Bank Guarantee Fund, the Securities and Exchange Commission and the General Inspector of Banking Supervision. Its executive body is the General Inspectorate of Banking Supervision (GINB), an autonomous unit of the National Bank of Poland.

The General Inspectorate of Banking Supervision employs about 500 people. It has continued to be regarded as an efficient and well-organised institution. The quality of domestic banking supervision in general is high, as are the expertise and commitment of the employees of the Inspectorate. Because the legal framework for consolidated supervision was laid down only in the amendments to the Banking Law of August 2001 and secondary legislation enacted in December 2001, General Inspectorate of Banking Supervision inspectors have only recently started to familiarise themselves with consolidated supervision principles and to apply them in their work. Some time may be



needed to develop capacity in this element of the Basle Principles. More generally the operational independence of banking supervision should be strengthened and cross-border supervision needs to be brought into line with international standards.

The Commission for Insurance and Pension Funds Supervision is responsible for insurance supervision. It is composed of the chairman, appointed by the Prime Minister, two deputies appointed by the Finance and Labour ministers, and representatives of the Securities and Exchange Commission and the Office for Competition and Consumer Protection. The composition of this Commission and the means by which its members are selected suggest that there is scope for strengthening the operational independence of the supervisors.

The office of the Commission for Insurance and Pension Funds Supervision is a new institution and it is difficult to assess its administrative capacity at this stage. This having been said, the "inherited" staff of the old institution were experienced and well-trained for their duties, and the existing information technology system is of good standard. In order to address the weakness of its predecessor the Commission needs to be fully independent and to have sufficient autonomy including authority to issue and withdraw licences which is currently the prerogative of the Minister of Finance. It should also have the power to exert greater control over the governance of insurance companies and their management boards as well as internal controls of insurance companies. The implementation of the *acquis* with respect to insurance groups is important, as will be the ability to share information with foreign supervisors and domestic banking and securities supervisors.

The government agency charged with supervising public trading of securities is the Polish Securities and Exchange Commission (PSEC). The Commission is composed of its chairman (nominated by the Prime Minister), 2 deputies and 6 representatives of ministries. In 2001, the Commission met 26 times and made 889 decisions, including 18 decisions on admitting securities to public trading. The Commission has long been considered a mature and professional institution, performing its functions well. It is generally considered that the PSEC has sufficient well-skilled staff to perform its tasks, as well as possess adequate tools and procedures to perform on-site and off-site inspections. The Commission is also an active member of the International Organisation of Securities Commissions (IOSCO).

Areas where more could be done to enhance the capacity of the PSEC include further enhancing the independence of the PSEC by reducing the presence of government officials, and giving the PSEC more comprehensive powers to supervise listed companies. An agreement with the insurance supervisor for the exchange of information would also be of use, as would a take-over code including provisions on the protection of minority shareholders. Finally, the development of an electronic system for monitoring the transactions on the Warsaw Stock Exchange would greatly assist the PSEC.

Further efforts are required to align Polish legislation in the area of information society directives. Poland has made further progress in the area of data protection. Poland has ratified Convention 108 of the Council of Europe and Polish law has to a great extent been harmonised with EC standards. This notwithstanding, the Data Protection Act is still not fully compliant and further amendments will be needed to bring it in line with the *acquis* and resolve the issues which currently render implementation problematic for the supervisory authority.

The supervisory authority for the protection of personal data is the Inspector General for Personal Data Protection who satisfies the requirement for complete independence imposed by the *acquis*. The Inspector's office is operational and has achieved a great deal in terms of ensuring compliance with the Law and raising awareness. However, lack of office space makes it difficult to hire all the personnel allocated in the budget and thus the Office remains understaffed. Furthermore, the Inspector should be given stronger administrative powers to better ensure implementation of the data protection rules. The Law should also be amended in order to simplify some procedures which currently unnecessarily burden the activities of the Office, such as the lack of a system of prior checking for risky operations as provided for in the *acquis*. The office requires strengthening, to perform its future duties connected with the launching of the National Schengen Information System (protection of personal data contained in this system).

### *Conclusion*

In the Commission's Opinion of 1997 it was noted that significant progress had been achieved in the banking sector but that further reform was required, in particular in relation to capital adequacy for market risks, consolidated supervision and special requirements regarding establishment of foreign branches. The assessment of the capital market and the insurance sector was similar. Taken as a whole, the Opinion concluded that the Polish financial sector was supervised in a satisfactory way by the competent authorities, and it was expected that there would be significant improvement.

There has been considerable improvement since the Opinion was adopted: good progress has been made in the area of banking. This notwithstanding, further significant efforts are required, particularly in the securities and insurance field, to ensure an adequate alignment with the *acquis* and particular attention needs to be paid to issues of supervisory independence.

Negotiations on this chapter have been provisionally closed. Poland has been granted transitional periods (until 31 December 2007) in which to ensure its provisions on capital requirements for co-operative banks and the investor compensation scheme fully comply with the *acquis*. In addition Poland has been granted the exclusion of credit unions and a specialised bank (BGK) from banking *acquis*. Poland is generally meeting the commitments it made in the accession negotiations in this field.

In order to be ready for membership, Poland now needs to focus efforts on completing alignment, in particular for non-financial services but also in the insurance and securities sectors, data protection and with regard to the outstanding issue in the banking law, eliminating provisions which discriminate against non-nationals as regards the right of establishment and freedom to provide services and further enhancing the capacities of the respective supervisory bodies including assuring their functional independence. In order to fill the remaining gaps, a first step would be the adoption of the range of legislation currently before Parliament, notably the package of legislation on insurance. The Polish action plan for financial services, if fully adopted, meets a number of concerns relating to administrative capacity although the independence of supervisory bodies would require further attention.

## ***Chapter 4: Free movement of capital***

### *Progress since the last Regular Report*

Since the last Regular Report some further progress has been made, in particular in the area of payment systems.

In the field of **capital movements and payments**, no progress can be reported.

Amendments to the Banking Law and Regulations of the Ministry of Finance on Cross-border Credit Transfers and the Act on Settlement Finality largely transpose the *acquis* on **payment systems**. The Polish Banks Association has established a Banking Consumer Arbitration body to deal with the settlement of complaints between banks and their customers. A judge was appointed and the arbitration body commenced its operations in March 2002.

The 2001 law on **money laundering** has been amended in order to postpone registration of all cash transactions above € 10 000 from April 2002 until July 2004. The obligation to report “suspicious” transactions to the General Inspector of Financial Information remains to be implemented. By March 2002, the General Inspectorate for Financial Information (GIFI) which, together with the Department for Financial Information, constitutes the Financial Intelligence Unit (FIU), had received 351 reports of suspicious transactions from the reporting entities. Following GIFI analysis of these reports, 38 cases have been passed to the Prosecution Office, out of which for 37 cases the criminal proceedings have been initiated. To date, there has been one conviction.

### *Overall assessment*

While the overall level of alignment with the *acquis* in this area remains high, the substantial restrictions referred to in the previous report (direct investments from foreign entities in specific economic sectors) remain. These restrictions concern air transport (*see also Chapter 9, Transport policy*), broadcasting, telecommunications, gambling and legal services. In general these restrictions are limited and in a number of cases legislation has been adopted which will see them abolished from the date of accession. The new Foreign Exchange Law, which is presently before Parliament is intended to abolish most of the restrictions on short-term capital transactions. Legislation is also pending with regards to the outstanding issues related to the ownership of land. Legislation is not yet under preparation to amend the Laws governing investment rules for occupational pensions so as to align this field with the *acquis*.

Foreign Direct Investments, which reached a peak in 2001, have fallen. While this is in part a result of declining privatisation receipts, there are also concerns that Poland's image as a host country for investment has suffered as a result of recent disputes (*see - Economic Criteria*).

As regards payment systems, further fine-tuning is needed for full alignment with the directives on cross border credit transfers and on settlement finality. The appropriate infrastructure in relation to payment and securities settlement is in place.

As regards money laundering, increased efforts are needed to complete transposition of the money laundering *acquis* (identification of customers, keeping of records). Further

alignment is also necessary, notably in order to introduce the obligation to identify customers when entering into business relations and to keep records of transactions over €15 000. Staffing and technical resources of the Financial Intelligence Unit (FIU), which currently employs 37 people, need to be strengthened. Efficient routines within the FIU in line with the requirements of the *acquis* should be established and reporting should be limited to suspect transactions.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that the Polish government's efforts to liberalise capital movements have met with considerable success. It added, however, that further efforts were still required to eliminate the remaining restrictions on the movement of capital and that the application of the *acquis* regarding the ownership of land and related assets by foreign nationals might present a significant problem in the medium term.

Since the Opinion, Poland has made steady progress, both in aligning its legislation and in developing the necessary administrative structures. However, the aim for full liberalisation of medium- and long-term capital movements by 1998 and of short-term capital movement by 1999 has been postponed to the date of accession.

Negotiations on this chapter have been provisionally closed. Poland has been granted transitional arrangements concerning the acquisition of secondary residences (for a period of five years following accession) and the acquisition of agricultural and forestry land (for a period of 12 years following accession). The latter transition period, however, does not apply to self employed farmers from European Economic Area Countries who have been leasing land for three respectively seven years, depending on the region. Poland is generally meeting the commitments it has made in the accession negotiations in this domain.

In order to complete preparations for membership, Poland's efforts should now focus on passing the legislation necessary to ensure the timely elimination of all remaining restrictions, including on the purchase of land, and on reinforcing the administrative capacity of the bodies involved in the fight against money laundering.

## ***Chapter 5: Company law***

### *Progress since the last Regular Report*

Since last year's Regular Report, Poland has made further progress with regard to company law and the protection of intellectual and industrial property rights. Legislative progress had been greater than progress in enforcement and implementation. This continues the steady pace observed since 1997.

Regarding **company law** as such, an amendment to the Law on the National Court Register (for registration of businesses and companies) has simplified the formal requirements for applications; the elements relating to the registration of natural persons will come into effect in January 2003.

As regards **accounting**, there have been no legislative developments to report. However, in June 2002 a new Control Commission was appointed within the Chamber to control the work of auditors.

In the field of **industrial and intellectual property rights**, two amendments to the Law on Industrial Property Rights were adopted and came into force. These introduce legal protection of biotechnological inventions and designs, removing the ban on sub-licensing and providing that the Supplementary Protection Certificates will apply to any product which, on the date of accession, is protected by a valid patent and for which the first market authorisation was obtained after the beginning of January 2000. An application for a certificate will have to be submitted within six months of the date of accession.

In March, the Government adopted a report prepared by the Committee on the Protection of Copyright and Related Rights. The report shows that between 1995 and 2000 a sizeable (twenty-fourfold) increase occurred in the number of crimes against intellectual property detected by the police. Preliminary data suggests that these figures have levelled off during the reporting period. Prison sentences and fines remain relatively low: in 2000 only 7.2% of custodial sentences exceeding one year and 88% of fines being under 2000 Zloty. (€499).

### *Overall assessment*

An analysis of Polish company law shows that some inconsistencies with the *acquis* remain (e.g. court fees for copies from the register have to be just cost-covering). The Polish law on auditors does not specify the subjects to be included in the qualifying examination as set out in Article 6 of the 8<sup>th</sup> Directive. As far as administrative capacity is concerned, training for judges and administrative staff needs to be intensified. The average time for entries in the company register needs to be shortened.

In the field of industrial and intellectual property rights, the protection of copyright and related rights has to a large extent been brought into line with the Community *acquis*, notably through amendments to the 1994 Act on Copyright and Related Rights in 2000 and the introduction of the Law on Database Protection in 2001. The Directive on legal protection of biotechnological inventions and the designs Directive remain to be implemented. Some additional adjustment of trademark legislation will be necessary upon accession. Poland has not yet acceded to the two 1996 WIPO Treaties. A new amendment to the Act on Copyright and Related Rights is being prepared in view of the new Internet environment, to address collective management of copyright and related rights and to introduce Community exhaustion. This amendment should also take due account of the *acquis* with regard to the Copyright in the Information Society Directive.

Substantial changes are still necessary to align legislation with the *acquis* on legal protection of design as well as with the Copyright and Neighbouring Rights in the Information Society Directive and the Resale Directive.

Improvement of collective management is an important challenge in the years to come. At present, 13 collective management organisations are active in Poland. Collecting societies are playing a fundamental role, but there is too much overlapping of competence and permissions.

Piracy remains a matter of major concern. In 2001, pirated software was estimated by the industry as being at 53% and pirated music at 30%. Despite good police co-operation against piracy, Warsaw's "Stadion Dziesięciolecia", one of the largest open-air flea markets in Europe dedicated to illegal software, music and video products, remains a source of rampant piracy.

Further efforts are required to strengthen law enforcement capacity, especially as regards border controls and combating piracy and counterfeiting. Particular attention should be paid to the effectiveness of the administrative and judicial bodies involved in enforcement, such as the customs services, the police and the judiciary, in particular by improving co-ordination among them. Targeted training for both copyright officials and enforcement officials, including judges and prosecutors, should continue.

Concerning the Regulation replacing the Brussels Convention on jurisdiction and enforcement of judgements in civil and commercial matters and the Rome Convention on the law applicable to contractual obligations, the Government is in close contact with the judiciary for the designation of the relevant courts which will have to deal with applications and appeals. Further efforts are required to ensure full implementation of the Convention (see also *Chapter 24 - Co-operation in the fields of justice and home affairs*).

### *Conclusion*

In its Opinion of 1997 the Commission concluded that Company law would not provide an obstacle to accession, assuming that existing plans were fulfilled. In accounting, no major problems were foreseen. As regards data protection, it was underlined that effort would be needed to fill the legislative gap. The Opinion concluded that Poland should be capable of adopting the intellectual and industrial property *acquis*, while underlining that special attention would be required to ensure that the measures adopted in this field were effectively implemented. The importance of implementing the provisions of the Europe Agreement was recalled.

Since the Opinion, Poland has made steady progress in aligning company law, and has in the last two years also aligned its laws on trademarks and patents with the *acquis*. Poland has to a large extent achieved alignment with the *acquis* in the area of company law, and transposition in the field of industrial and intellectual property rights is continuing at a steady pace. Gradual progress has been made with strengthening administrative capacity which has achieved a reasonable level with the possible exception of intellectual property enforcement.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area and has agreed to a proposal put forward by the EU regarding industrial property rights for pharmaceutical products and Community Trademark. Poland is generally meeting the commitments it made in the accession negotiations in this field.

In order to complete preparations for membership, Poland's efforts now need to focus on ensuring full alignment with the *acquis* along the lines set out above, intensifying measures to combat piracy and counterfeiting, strengthening border controls and, more broadly, further improving co-ordination between enforcement bodies (customs, police, judiciary).

## ***Chapter 6: Competition policy***

### *Progress since the last Regular Report*

Since last year's Regular Report, Poland has made further progress in this area.

In the **anti-trust** field, further alignment with the *acquis* has taken place. In October 2001 the Regulation of the Council of Ministers on conducting inspections of firms in the course of anti-trust proceedings entered into force, and the Regulation on the detailed conditions to be fulfilled when giving notice of an intention of concentration which entered into force in April 2002. As regards implementing legislation, the necessary block exemption regulations, taking account of the Community's new policies on vertical and horizontal restraints entered into force in August and September 2002.

The *Office for Competition and Consumer protection (OCCP)*, which is the national competition authority in Poland, has continued to build on its enforcement record over the past year. In 2001, a total of 654 decisions were adopted, of which 20 concerned restrictive agreements, 218 abuse of dominant position and 416 were adopted under the modified merger control regime. Since the ceiling for obligatory notification of merger cases was increased, the OCCP has received fewer notifications and has, therefore, had the opportunity to concentrate on merger cases that seriously undermine competition.

In the field of **state aid**, in July 2002, Poland adopted the new Law on the conditions of admissibility and supervision of state aid for entrepreneurs. The aim of the Law is to define more accurately and extend the statutory definitions of state aid, to strengthen the responsibility of the organs that grant the aid, to introduce the institutions for aid schemes. Furthermore regulations on regional, horizontal and sectoral aid as well as on procedures have been adopted. The state aid report for 2000, adopted by the Council of Ministers in April 2002, follows the methodology and presentation of the European Commission's survey on state aid in the EC.

The *Office for Competition and Consumer Protection* is also responsible for the control of state aid. In 2001, the Office adopted 50 decisions on aid schemes and 56 on individual aid measures.

In September 2001 a new OCCP President, selected for the first time by competition, was appointed for a 5-year term. Extensive reorganisation of the Office has followed with the objective of shifting the focus of activities towards own initiative investigations and cartel fighting. In particular, new departments, such as the Department of Market Analysis and EU Jurisdiction were created.

In April 2002 the Council of Ministers adopted the report on the status of Competition and Competition Policy for 2002-2003. The analysis and the diagnosis it contains provide a basis for the formulation of the objectives of activities aiming at further development and strengthening of competition. The report also defines the aims of competition policy for 2002-2003.

Poland has proposed a regional aid map for adoption under the Europe Agreement mechanisms.

### *Overall assessment*

The Polish Competition Act entered into force in 2000 and contains the basic principles of Community anti-trust rules as regards restrictive agreements, abuse of dominant position and merger control.

The *Office for the Competition and Consumer Protection* is an independent authority and has satisfactory resources in place. Currently, the Office employs 220 officials. Of those staff who work in the field of competition policy, 20 officials work in the state aid departments and 65 in the corresponding anti-trust departments.

In the area of anti-trust, the most important challenge for the Office is to continue to ensure the effective application and enforcement of the rules. Efforts to develop a more deterrent sanctions policy should be continued.

Focus of the anti-trust activity has been usefully shifting towards anti-competitive practices that most seriously distort competition, e.g. cartels. This approach should be further developed. With regard to mergers, the amended system is expected to improve the old control system, which resulted in a relatively large number of unnecessary notifications.

It is essential that the Office can continue to actively develop its resources, in particular in view of the planned modernisation and decentralisation of the application of the EC anti-trust rules which, after accession, would bring about new important tasks and responsibilities for national competition authorities.

As regards state aid, the overall assessment is not yet positive. While Poland has incorporated the basic principles of the *acquis* into Polish state aid control legislation, a more precise transposition of the EU guidelines on restructuring and environmental aid into Polish regulations is still necessary. Work is under way in this respect.

The office has made progress in developing its enforcement record in the state aid field. Nevertheless, there is still room for further improvement. In particular, the existing fiscal aid of the investors in the Special Economic Zones, with permits granted before 2001, still has to be aligned. Furthermore, in areas where the transposition of the *acquis* has been less satisfactory, for example restructuring aid arising from the cancellation or rescheduling of public liabilities, and environmental aid, the enforcement record has not been adequately developed. On the other hand, the quality of enforcement appears good with respect to regional aid and aid for research and development.

With regard to sensitive sectors, special attention is required. In the steel industry, aid for restructuring can only be given if the national and individual restructuring programmes of the companies would include necessary measures for reaching viability and necessary cuts in production capacity, in line with the requirements set out in Protocol 2 of the Europe Agreement. In the shipbuilding sector, recent measures taken or envisaged by the Polish government in favour of this sector must be granted in accordance with the EC shipbuilding regulation and Polish state aid rules.

Furthermore, in connection with the implementation of the "anti-crisis programme" of July 2002 aimed at fighting unemployment and boosting economic growth, it is essential that the EC state aid rules be fully taken into account. In particular, measures to cancel or reduce certain public debts of enterprises, or tax breaks for banks which assist in



restructuring, can only be permitted if linked to restructuring programmes leading to the viability of the target companies. In relation to the banking sector, it is important any measures be reviewed under the *acquis* and Polish state aid rules, including all measures that may have been given in the past and which will continue to have effect after accession.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that, even if efforts were still indispensable, Poland was well positioned as regards alignment with the *acquis* in the anti-trust area. It also noted the effective functioning of the Office for Competition and Consumer Protection in the area of anti-trust. In the field of state aid, the Opinion noted that considerable efforts would be required to build the necessary legal framework and ensure the functioning of the monitoring authority.

Since the Opinion, Poland has, over the last two years, made progress in adopting anti-trust and state aid legislation and in developing the administrative capacity of the Office for Competition and Consumer Protection. Overall, on legislative alignment, administrative capacities and enforcement record Poland is reasonably advanced, except in the areas of fiscal aid and steel.

Negotiations on this chapter continue.

In order to complete preparations for membership, Poland's efforts now need to focus on ensuring that it continues to update its alignment as the *acquis* in this area evolves and ensuring a more effective and transparent state aid control, in particular in the sensitive sectors, notably the steel sector. Poland also needs to continue to develop a track record of proper application and enforcement of both anti-trust and state aid legislation.

## ***Chapter 7: Agriculture***

### *Progress since the last Regular Report*

Since the last Regular Report, Poland has made steady progress in the alignment of legislation and rather slow progress in the strengthening of administrative capacity. Progress on veterinary issues, with the exception of the Law on animal welfare, has been limited in particular with regard to the adoption and implementation of implementing legislation.

Agriculture (including hunting, forestry and fishing) in Poland accounted for 3.4 % of gross value added<sup>13</sup> in 2001 compared to 3.7 % in 2000. Employment in agriculture<sup>14</sup> accounted for 19.2% of total employment. The agricultural census was undertaken together with the population census between 21 May and 8 June 2002<sup>15</sup>.

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<sup>13</sup> The source for all agricultural statistics is EUROSTAT unless otherwise stated.

<sup>14</sup> In Labour Force Survey definitions (LFS): Agricultural employment is defined in LFS terms as economically active persons who gain a significant part of their income from agriculture.

<sup>15</sup> Preliminary results will be available in the second half of 2002.

In 2001, overall agricultural production increased in comparison to 2000, primarily due to better results in crop production. Animal production remained approximately at the same level as in 2000<sup>16</sup>.

In 2001, overall agricultural trade<sup>17</sup> between Poland and the EC increased significantly, largely due to the "double-zero-agreement" to liberalise trade in agriculture. EC imports of agricultural products originating in Poland increased by 20 % to € 1 477 million. EC exports to Poland increased by 8 % to € 2 052 million. The trade balance in favour of the Community amounted to € 575 million compared to € 663 million in 2000. EC imports were dominated by fruit and nuts, preparations of vegetables, fruit, nuts or other part of plants; vegetables and meat. Fruit and nuts, residues from food industries, miscellaneous edible preparations and fats and oils were the main export goods from the EC.

The new government's strategy in the field of agriculture builds upon four objectives: improvement of agricultural profitability, strengthening of competitiveness in the agriculture and food-processing sectors, support for economic activities in rural areas, legal and institutional adjustment to EU integration. This approach has not entailed major changes in policy instruments. Structural measures (such as interest-rate subsidies, loans, credit guarantees and warranties) as well as fuel subsidies and crop insurance have been continued. Furthermore, structural pensions in the agricultural sector have been introduced. Poland has kept, and partly reinforced, its market policy measures in the form of intervention and export subsidies for a number of basic products as well as some support schemes (testing programmes in selected regions relating to dried fodder quotas, organic farming, top quality milk). However, the intervention policy aimed at maintaining high prices on the market has led to excessive stocks and storage costs for cereals.

In total the agricultural budget for the year 2002 decreased by 10.8 % to € 971 443 million (3.88 billion PLN). To this has to be added € 3.99 billion (15.96 billion PLN) for the Agricultural Social Insurance Fund (ASIF), which remains stable. As in 2001, around 40% of the agricultural budget was allocated to the Agency for Restructuring and Modernisation of Agriculture (ARMA) for rural development measures, while the Agricultural Market Agency (AMA) was faced with budget cuts of 46%.

Concerning the land market, the Agricultural Property Agency (APA) continued to manage state-owned land and agricultural property. By the end of 2001, APA had sold off 1 113 689 ha (agricultural and non-agricultural land), i.e. 23.6% of the 4.7 million ha taken over from 1991 until now.

### **Horizontal issues**

Since last year's Regular Report, Poland has made further progress on the implementation mechanisms of the *European Agricultural Guidance and Guarantee Fund (EAGGF)*. With the Commission Decision of July 2002 conferring the management of aid for SAPARD to ARMA, a decisive step has been taken to prepare the agency for its future role in the implementation of rural development programmes under the

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<sup>16</sup> source: Polish Central Statistical Office

<sup>17</sup> Source of trade figures: WTO definition of agricultural products, figures from EUROSTAT COMEXT (see U.E. 12.15: Commerce des produits agricoles 1998-2000, 1 Partie D.G. AGRI/G.2 Analyses quantitatives, prévisions, statistiques, études, 2001, pp. 10-57 et 86-89).

EAGGF. For AMA, the Regulation of the Prime Minister of March 2002 amending the statute of AMA has laid the basis for adjusting its organisational structure entirely to the needs of a paying agency. Organisational adjustment has taken place by the creation of the Internal Audit Office and the European Integration Office with 4 market divisions for the development of organisational and functional models and procedures for the management of Community market mechanisms. An accreditation team has been appointed in order to prepare the national accreditation of AMA by mid-2003.

With the Ordinance of March 2002, one of the last steps for the creation of the legal framework for the *Integrated Administration and Control System* (IACS) was taken. It defines the technical aspects and organisational rules for keeping a national register of farms and farm animals. Poland has elaborated a strategy for the establishment of IACS describing the basic elements and the timetable for their implementation, including the corresponding financial and human resources. According to this strategy, Poland has opted for the methodology of "cultural blocks" for the establishment of the Land Parcel Identification System (LPIS), i.e. blocks or parcels cultivated by one farmer with one or more crops. The creation of the information technology system for IACS has been outsourced together with the development of software for ARMA's role as paying agency for direct payments. Human resources are being further increased at central and regional level for the purpose of running IACS. In 2001, ARMA spent € 18.5 million on the preparation of IACS.

Regarding *trade mechanisms*, the Agricultural Markets Agency(AMA) has elaborated an organisational and functional model for the administration of imports and exports of agri-food products, and has continued to set up procedures relating to foreign trade in different commodities after accession. The development of a data communication system for handling trade mechanisms has commenced.

Following the adoption of the Law on organic farming in 2001, the Chief Inspectorate for the Purchase and Processing of Agricultural Products (GISiPAR) was appointed as the certification body and an Organic Farm Division was established in the Ministry of Agriculture and Rural Development (MARD). This division is to provide the control bodies with appropriate technical equipment and manage training schemes for the control and certification staff as well as for farmers. Implementing legislation was adopted on the detailed conditions of production of organic farming produce and on the list of food additives, processing aids and ingredients for organic products. In 2001, subsidies for organic farming were continued.

The liaison agency, the Institute of Agricultural and Food Economics, has continued the preparation for the implementation of the *Farm Accountancy Data Network (FADN)*, in particular by defining the procedures and methodology for the collection and use of farm data. The implementation of the pilot projects for FADN has continued in several regions where the current sample size is one tenth of that required by the *acquis*.

### **Common Market Organisations**

Since last year's Regular Report, Poland has made progress in legal harmonisation as regards Common Market Organisations (CMOs). The degree of implementation varies between specific sectors.

The Ministry of Agriculture and Rural Development increased its staff for the management of the CMOs. Training, in particular on the use of the newly established

database, and the increase in staff for the management of the Integrated Information System for Agricultural Markets (IISAM) set up to comply with the reporting requirements in the CMOs has continued. The Act on agricultural market survey became effective in January 2002. It lays down the basis for the reporting system as required for the CMOs.

With regard to *arable crops*, a model for the intervention mechanisms on the cereals markets and respective procedures was elaborated. A review of the intervention centres is currently ongoing. The Ordinance on the minimum prices of potatoes entered into force in January 2002. It introduces a quota system for the production of potato starch and lays down the rules for setting the minimum price and for the compensatory payment to be paid to potato starch and potato producers inside the quota. With regard to dried fodder, the legal basis has been laid down by three Ordinances adopted in October and November 2001 and the practical implementation of the CMO for dried fodder has been prepared, including the registration of dried fodder producers and the distribution of quotas.

Since the entry into force of the amended Law on the *sugar market* in November 2001, seven implementing acts have been adopted transposing the basic mechanisms of the sugar CMO. The Agricultural Market Agency's Sugar Division manages both production quotas for sugar and iso-glucose, fixed by the Ordinance of November 2001 and the A and B sugar levies applied since the start of 2002.

With regard to *specialised crops* further rules have been laid down for tobacco (definition of quotas and cultivation of areas ) and hops (definition of regions for hop cultivation and minimum quality requirements) accompanied by preparation for the practical implementation of these mechanisms by AMA and GISiPAR throughout the reporting period. The law on spirit drinks was adopted in September 2002.

As for animal products, the legal basis for the management of the CMO for milk entered into force in January 2002. AMA has established the Milk Production Quota Office. The basic concept for the quota management system has been developed as a result of a pilot project. In 2002, information technology specifications for purchasers and survey forms for direct sellers were developed to enable the acquisition of data on milk marketed in the reference period 2002/3. The price system for milk and milk products has been aligned to Community principles.

### **Rural development and forestry**

The most significant progress made in this area has been the accreditation of ARMA as the SAPARD agency, an objective which was achieved in July 2002 (*see Section A.b. – Relations between the European Union and Poland*). For rural development in the post-accession period, the Ministry of Agriculture and Rural Development has started preparing programmes for both the Guarantee and the Guidance Sections. With regard to the preparation of the accompanying measures, implementing rules for the Polish early retirement scheme (structural pension scheme) as adopted in 2001 entered into force in January 2002. The implementation was given to the Agricultural Social Insurance Fund (KRUS). The Law on afforestation of agricultural land adopted in June 2001 entered into force at the same time. It is supplemented by the Ordinance of February 2002 on the principles for drawing up afforestation plans, simplified forest management plans, training schemes, supervising afforestation works and supply of seedlings which entered into force in February 2002.

No progress can be reported on the *agri-environmental measures*. Indeed, the Monitoring Committee of the SAPARD programme has decided to seek deletion of the pilot agri-environmental measures under SAPARD.

For less-favoured areas, different scenarios for classification have been developed and respective lists of communities and farms have been compiled as a preliminary step.

### **Veterinary and phytosanitary issues, including food safety**

Since last year's Regular Report, some limited progress has been made in transposing the *acquis* in the **veterinary** sector. The Veterinary Act entered into force in February 2002. Some provisions including those relating to the provision of veterinary services, the system of laboratory diagnostics, and the provisions relating to trade will not be applicable until the date of accession. The Act provides the legal framework for implementing veterinary rules and fifty sectoral regulations are pending.

The amended law on animal welfare has been adopted and entered into force in September 2002. It facilitates the implementation of rules concerning keeping animals on farms and livestock transport. In the other sectors of the veterinary domain, progress has been limited mainly with regard to the adoption and implementation of secondary legislation. The completion of the timetable for the adoption of the secondary legislation is ambitious.

No progress has been made to enhance the administrative capacity for enforcing the legislation regarding contingency plans, animal health, animal welfare and public health, as this issue can only be solved by an amendment of the Veterinary Act as regards the chain of command in the veterinary sector. During the past year the human and financial resources of the Veterinary Inspectorate have seen some small increase.

The Veterinary Border Inspectorate is responsible for inspecting imports and exports. Work is underway to upgrade the seven Border Inspection Posts (BIPs) which Poland wishes to maintain as of the day of accession. Development appears to be progressing well on land borders but progress is slower at sea and air ports.

Poland has made progress in preparing the internal market control system and is technically ready to introduce the computerised network linking veterinary authorities ANIMO. With regard to the identification and registration of animals in Poland, the Polish authorities have decided to carry out a general operation for identifying in conformity with EC rules all bovine animals present on Polish territory. This operation will be accompanied by the registration of bovine animals and holdings and the setting-up of an operational bovine database. In parallel, ARMA is developing the database software and will be responsible for its operation. The successive delays of the implementation of the system of bovine identification give rise to serious concern.

Poland is now testing all cattle aged over 30 months for BSE in line with the *acquis*, and has adopted most EC requirements in this area. However, with a view to implementing the EC *acquis* concerning the testing of fallen stock, the system of collection of cadavers must be effective. The biggest concern in this field is the rendering of *animal waste*. None of the existing animal-rendering establishments meets EC standards. The project to set up a system for rendering of high risk animal wastes is not yet finalised.

In the **phytosanitary** sector, a substantial amount of new legislation has been issued, but further amendments are necessary to make it fully compatible with the *acquis*. Moreover, the registration of producers and importers of certain plants, plant products and objects as well as the plant passport system remain to be launched. However, border controls already comply with the *acquis*. In the *pesticides* sector, further efforts are required to transpose and implement the *acquis* regarding authorisation of plant-protection products.

Administrative structures for phytosanitary issues have been changed by the creation of the Plant Protection and Seed Service (PPSS) in April 2002, following the merger of the Seed Inspectorate and the Plant Protection Inspection Service. This new unified body will carry out the same functions as the previous bodies and as a result of the merger the overall administrative capacity of the new authority is sufficient to carry out these tasks.

As regards **food safety** (*see also Chapter 1 - Free movement of goods*), legislation has been adopted which seeks to rationalise the structure of the Inspection services by merging two existing inspectorates involved in the control of non-animal food products, the Central Standardisation Inspectorate (CIS) carrying out border inspections and the Inspectorate of Purchase and Processing of Agricultural Products (ISiPAR) in charge of internal controls. The Law on Trade quality of agri-food products defines the tasks of the new authority; mainly labelling, trade quality standards, controls of imports and exports. The legislation is to enter into force in January 2003.

The upgrading of food-processing establishments has been progressing well, particularly in the meat sector. Progress in the dairy sector is less advanced. However, the classification of the majority of establishments appears not to have been fully reliable and the severity of the deficiencies to be rectified to have been underestimated. A significant number of establishments evaluated as having little prospect of meeting the relevant *acquis* have been closed but many establishments in this category still exist. Poland has established a detailed action plan, reviewed in September 2002, to tackle this problem and all establishments needing to comply with EC rules upon accession or after a transition period have produced an upgrading plan in order to be in compliance in accordance with the envisaged date. The regulation of the Ministry of Agriculture and Rural Development on detailed veterinary conditions required for the collection, processing, storage and transport of milk and dairy products adopted in June 2002 is intended to harmonise Polish Law with the *acquis*.

BSE testing measures are being implemented, but further progress is needed to fully implement the regime of rapid testing. Further work is required to meet EC standards regarding animal-waste processing.

### *Overall assessment*

The institutional framework necessary for the management of the mechanisms of the CAP is, with some minor exceptions, now clearly defined. Some decisions remain to be taken to finalise the organisational structure and empower the relevant bodies.

In the area of **horizontal measures**, both paying agencies, ARMA and AMA, are on track for assuming their designated roles. The key priority for both agencies is to reinforce their preparatory work, so as to secure national accreditation as paying agencies in time for accession. This implies a considerable increase in human resources. With regard to IACS, many decisions remain to be taken in key areas for building the LPIS,

and, more generally, IACS. Very serious efforts are urgently needed for Poland to be able to build up an operational IACS by accession. The suitability of the cadastre data as the source material for creating the LPIS remains to be confirmed. This needs to be addressed immediately if Poland is to be in a position as of accession to administer and control efficiently the CAP aid-schemes. If the required administration and control structures are not fully operational, or do not operate correctly upon accession, Poland will be unable to fully benefit from the support systems under the Common Agricultural Policy, or will be required to reimburse EC funds already received.

The legal framework for the *Farm Accountancy Data Network* is in place. The institutional set-up has been defined. It is essential, if the practical work is to be finalised in time for accession, that there is greater preparation of the bodies involved in the system. The training of the accountancy offices in the agricultural advisory services responsible for data collection is one element which requires specific attention.

As for organic farming, the institutional set up and administrative capacity, in particular with regard to the control and certification bodies needs to be finalised.

With regard to the **Common Market Organisations**, implementation is at different stages for the specific sectors. Although the sectors of sugar, potato starch, dried fodder, specialised crops such as fresh fruit and vegetables, hops and tobacco can be considered as sufficiently advanced with regard to legal enforcement and practical implementation, the other sectors will require increased attention in the months to come.

The reporting mechanisms common to all CMOs should be operational upon accession, as should the marketing standards. However, the carcass classification system in the meat sector for which the entry into force of the legal base has been postponed would require further alignment. As for intervention, Poland had sufficient experience to take over the respective Community rules. Some question marks remain for the implementation of supply management instruments, in particular in the milk sector. Poland has presented a clear concept for the management of the milk quota. Significant efforts will be required if this is to be implemented in the envisaged timeframe.

The legal framework for **rural development** is well advanced but needs completion for some of the measures covered by the EAGGF Guarantee section. This concerns, in particular the agri-environmental measures and less-favoured areas. In particular, the decision of the SAPARD Monitoring Committee to drop the pilot agri-environmental measures, and the absence of any equivalent nationally-funded measures needs to be urgently addressed for Poland to be ready to implement the rural development *acquis* upon accession. The institutional and implementation arrangements for the early retirement scheme need to be finalised. In terms of administrative capacity, the approval of the SAPARD agency was an important step which now has to be followed by further up-grading of the agency to enable it to run the full set of rural development measures under EAGGF after accession.

Concerning the **veterinary field** further progress is need in terms of legislative alignment. There are around 50 regulations still to be adopted. Further work is also required to develop the necessary capacity to implement the *acquis*. An early implementation of those elements of the Law which relate to internal and external trade controls would greatly facilitate Poland's preparations for participation in the Internal Market. While the readiness of the seven Border Inspection Posts at the external borders

of the EU is progressing in a timely manner, efforts will have to be redoubled in order to upgrade another four BIPs after accession and to increase staffing levels in the 11 designated BIPs to acceptable levels.

Implementation of a control system has not progressed as foreseen as planned. The final result of the mass action of identification and registration of both bovine animals and holdings has revealed the need for a substantial increase in effort if Poland is to implement the bovine database on schedule. Finally, the timetable for the establishment of an operational animal waste system has still to be elaborated.

Progress has been made with plans for upgrading food establishments. The implementation and management of the plans will require careful monitoring by the regional veterinary services. The situation in the area of animal welfare is far from complying with the requirements of the *acquis*, and further efforts are needed.

In the **phytosanitary sector**, further efforts are required to align with the *acquis*: there is no system for registration of producers, exporters, importers and distributors of plants and plant products. Further legislation is required with respect to seeds and plant propagating material.

With regard to **food safety** (*see also chapter 1 - Free movement of goods*), considerable progress has been made regarding the upgrading of food establishments and the increase in measures to deal with BSE. Substantial efforts are required to ensure the effective implementation of the Food Safety Strategy, especially with regard to the co-ordination of the Ministries and Inspectorates involved in the process.

With regard to Pulawy, as this laboratory has been designated as the national reference laboratory for animal and public health, its upgrading is of the utmost importance.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that an important effort to align with the *acquis* was necessary, although significant progress had been made in adopting the measures mentioned in the Commission's White Paper of 1995 on the Internal Market. The Commission added that particular efforts were needed on: the establishment of a coherent structural and rural development policy to deal with the problem of Poland's agricultural structure; the implementation and enforcement of veterinary and phytosanitary requirements and upgrading of establishments to meet EC standards (an aspect particularly important with regard to the inspection and control arrangements for protecting the EU external borders); strengthening of the administrative structures to ensure the necessary capacity to implement and enforce the policy instruments of the CAP; and further restructuring of the agri-food sector to improve its competitive capacity. The Commission further pointed out that if such progress was accomplished, accession in the medium term should not be accompanied by significant problems in applying the common agricultural policy in an appropriate manner although a solution to Poland's structural problems would require a long-term approach.

Since the Opinion, Poland has made sharply differentiated progress toward alignment with the different elements of the EC agricultural *acquis*. With regard to the Common Agricultural Policy (CAP), legal adjustment is well advanced but needs further efforts in some specific agricultural sectors. Also, for the practical implementation of CAP



mechanisms, major efforts are still necessary before accession. In particular, limited developments with regard to the Integrated Administration and Control System (IACS), including animal identification and registration, represent the major obstacle to Poland's readiness for accession in the field of agriculture. In the veterinary and phytosanitary field, whereas considerable progress has been made as regards the seven Border Inspection Points selected for protecting the EU external borders, slow progress has been made in the implementation of veterinary requirements during the last two years. This raises serious concerns.

Negotiations on this chapter continue. Poland is meeting the majority of the commitments it has made in the accession negotiations in this field. However, delays have occurred with regard to the implementation of the animal identification and registration system. This needs to be urgently addressed.

In order to be ready for membership, Poland will need to give urgent attention to completing legislative alignment, notably with regard to the veterinary and phyto-sanitary *acquis*. Of equal importance will be the strengthening of administrative capacity in all areas to ensure the effective implementation of the *acquis*. It must be ensured that the Integrated Administration and Control System is in place if Poland is to be in a position to administer and control efficiently the Common Agricultural Policy support schemes. The necessary legislation in the veterinary field is in inter ministerial consultation; its accelerated passage through the legislative system would substantially increase alignment with the *acquis*. A master plan for IACS has been prepared and is currently being refined. Efforts now need to be substantially stepped up.

## ***Chapter 8: Fisheries***

### *Progress since the last Regular Report*

Since the last Regular Report, some legislative progress has been made through the entry into force of the Law on Maritime Fisheries: the framework law for the legal introduction of the main instruments necessary for the implementation of the regime on access to waters.

The Department of Fisheries in the Ministry of Agriculture and Rural Development (MARD), together with the three Regional Inspectorates for Maritime Fisheries and the Agency for Restructuring and Modernisation of Agriculture (ARMA) are responsible for the implementation of the *acquis* in the area of fisheries. The administrative capacity of the Fisheries Department of the MARD has been strengthened by increasing the staff, and it currently employs thirty persons. A resolution of the Council of Ministers has been adopted, which foresees the assignment of additional posts to the Department of Fisheries in the MARD and the three Regional Inspectorates for Maritime Fisheries.

As regards **resource management, inspection and control**, the satellite-based fishing vessel monitoring system (VMS) has been introduced through the Law on Maritime Fisheries. Furthermore, the purchase of technical equipment for the coastal stations and installation of hardware and software is underway.

In the field of **structural actions**, the fishing vessel register has been introduced by the Law on Maritime Fisheries. Re-measurement of fishing vessels is ongoing. An

"Assessment of the Fishing Effort Required to Fully Utilise the Available Resources in the Polish Maritime Zone" has been completed.

As regards **market policy**, no further progress can be reported since the last Regular Report.

No particular development has occurred since the last Regular Report with respect to either **State aid** or **international fisheries agreements**.

### *Overall assessment*

Poland has a clear view as to the attribution of competencies between the Fisheries Department of the MARD, the three Regional Inspectorates for Maritime Fisheries and ARMA as regards the implementation of the *acquis* in the areas of fisheries. This will need to be further reinforced by the forthcoming regulation implementing the Law on Maritime Fisheries, which foresees enhanced co-operation between fisheries inspectors, border guards and the police, and is to improve effectiveness as regards monitoring and control. Co-ordination between the Fisheries Department of the MARD and the three Regional Inspectorates for Maritime Fisheries needs to be further strengthened.

While some progress has been made at the central level, administrative capacity at both central and regional levels needs to be considerably strengthened.

The process of adopting legislation related to resource management, inspection and control as well as market policy needs to be considerably speeded up. This is essential in order to allow Poland to set up, well ahead of accession, all the instruments that are necessary for the implementation of the Common Fisheries Policy and to allow staff to get familiar with these instruments.

In the field of resource management, inspection and control, the regulations implementing the Law on Maritime Fisheries need to be adopted without any delay as they are a pre-condition for the practical introduction of the satellite-based vessel monitoring system (VMS), fishing licences, fishing logbooks and landing declarations and for allowing a comprehensive data collection.

The functions associated with resource management, inspection and control are mainly based on controls carried out by the three Regional Inspectorates for Maritime Fisheries; the collecting and processing of data on catches as well as the preparation of control schemes are carried out by the Fisheries Department of the MARD. The three Regional Inspectorates for Maritime Fisheries currently employ 75 staff, of whom 34 are inspectors. Poland's inspection capacity needs to be strengthened, in particular by upgrading and intensifying inspections and controls.

The setting up of technical facilities for inspection and control needs to be accelerated, in particular by taking the necessary steps to provide a satellite-based vessel monitoring system. For full-scale satellite monitoring in line with the requirements of the *acquis*, substantial work is needed to set up a fisheries-monitoring centre and to equip all vessels with "blue boxes". Poland also needs to introduce first sales notes as well as computerised data retrieval in order to allow for cross-checking data on catches and landed fish. In addition, Poland should start to introduce fisheries statistics that are

compatible with EC requirements. Poland needs to substantially improve its inspection capabilities.

As regards structural policy, Poland has yet to adopt the National Development Plan for Fisheries which describes the general objectives of the structural policy for the Polish fisheries sector. The Fisheries Department of the MARD is responsible for drawing up the operational plan for the Financial Instrument for Fisheries Guidance (FIFG). Regarding administrative capacity for dealing with the Structural Funds, ARMA of the Ministry of Agriculture and Rural Development has been designated as the body responsible for financial management of the FIFG. The establishment of the institutional arrangements required for programming, implementation, financial control, monitoring and evaluation of Structural Fund measures needs to be accelerated.

With regard to the fishing vessel register, work to set up this register in practice should be accelerated. The completion of the re-measurement of fishing vessels and the subsequent finalisation of the separate and exhaustive fishing vessel register required by the *acquis* remain to be achieved. These actions are a pre-condition for the future management of fleet capacity relating to EC structural aid. Poland should also define fleet capacity objectives with a view to reaching a sustainable balance between available resources and their exploitation.

Concerning market policy, no instruments in conformity with the *acquis* are yet in place. Poland needs therefore to accelerate the adoption of the Law on the Fisheries Market Organisation as well as its implementing regulations. The adoption of these legislative acts is crucial for the introduction of the intervention mechanisms (setting up of producers' organisations, collecting and transmitting data concerning the price reference regime as well as data on markets), the common marketing standards, and control at first sale as well as organising first sales.

State aid to the fisheries sector is provided in the form of an exemption on value added tax and excise tax on fuels for fishing vessels, subsidised loans for the purchase and storage of sea fish and subsidising the restocking of rivers with salmon and sea trout.

With regard to international fisheries agreements, Poland has bilateral fisheries agreements with eight countries and is a member of several conventions and regional fisheries organisations.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that Poland needed to make further progress in modernising the sector and creating structures which corresponded to the features of the EU fishery industry. Once the problems of access to resources and mutual trading concessions had been solved, no major problems were to be expected.

Since the Opinion, Poland has made some progress, though not consistently so. In particular, progress has been slow in adopting the relevant legislation and more generally implementation and enforcement need further work. Poland has achieved a limited degree of alignment and the administrative capacity needs considerable reinforcement, in particular in the area of control.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements. Poland is partially meeting the commitments it has made in the accession negotiations in this field. It has repeatedly rescheduled its implementation timetable. In addition, delays have occurred in adopting legislation related to resource management, inspection and control, and in the area of market policy. This needs to be urgently addressed.

In order to be ready for membership, Poland will need to give urgent attention and priority to adopting all outstanding legislation, and to the timely setting up of all instruments necessary for the implementation of the Common Fisheries Policy. Also, Poland needs to further strengthen its administrative capacity, including with respect to control functions at both central and regional level. The current legislative package for the fisheries sector which has been submitted to the parliament, when adopted, will enhance alignment with the *acquis*. Efforts now need to be significantly strengthened to ensure that the measures envisaged in the Action Plan are fully achieved, in order to create the basis of an adequate implementing capacity.

## ***Chapter 9: Transport policy***

### *Progress since the last Regular Report*

During the past year, Poland has continued to align its legislation with the *acquis* and made good progress in the air, road and maritime transport sectors.

The Polish Government adopted, in January 2002, a new national infrastructure development plan **in accordance with the Trans-European networks** that foresees investment of around 36 billion PLN (€9.2 bn) for the upgrading and construction of motorways, expressways and other main roads from 2002 until 2005. The programme includes the construction and refurbishment of 550km of motorways and 200km expressways and the adjustment of 1500 km of main roads to EC standards for weights and dimensions. The investments are planned to be financed through taxes, revenues from the *vignette* (sticker) system and grants from the EC (ISPA, structural funds) and international organisations. The adoption of the plan has been accompanied by the reorganisation of the administrative structure in the Ministry of Infrastructure establishing the Department for Infrastructure Financing (10 employees). Furthermore, since April 2002, the Directorate General for National Roads and Motorways (GDDKiA) which reports to the Minister of Infrastructure, has been, responsible for the implementation of road projects. In 2001, 42 km of new roads were constructed and 34 km upgraded on the pan-European corridors.

In the **land transport** sector, very good progress has been achieved in the field of *road transport*. An important step was taken in January 2002 when the following laws entered into force: Law on road transport, Law on road traffic, Law on local taxes and charges and the Act on working time and rest periods for drivers. A legal framework in line with EU requirements is now in place and further progress has been achieved in adopting implementing legislation to these laws. Concerning admission to the profession, following the adoption of the January 2002 Ordinance, the Government designated the Road Transport Institute in Warsaw to issue the certificates of professional competence for access to the profession. A computerised database of examination questions has been

developed, and there are already 25 examination centres in operation, supervised by the Institute. By June 2002, the Institute had issued 5000 new certificates.

As regards administrative capacity, implementation of the Law on road transport paved the way for the creation of the Road Transport Inspectorate, which will be essential to enforce EC standards in the field of social legislation and technical requirements. In December 2001, the Chief Inspector of this organisation and 16 regional Voivod inspectors were appointed. The first 80 national inspectors are being trained and they become operational in October 2002.

On *railways*, no major developments can be reported regarding legislative alignment. The difficult restructuring of the national railway company, PKP, is continuing. The labour-restructuring programme, approved by the trade unions, began in 2002; by January 2002, 71 362 employees out of 223 924 had been made redundant. It is expected that by the end of 2002 the target level of employment will have been reached. PKP had already become a holding company in the beginning of 2000. The infrastructure manager PLK S.A., PKP Cargo, PKP Intercity, PKP regional services have been set up and are operational. However, there have been delays on the separation of activities and the transfer of assets prior to the intended privatisation, for legal and financial reasons. The financial situation of Polish railways is continuing to deteriorate and at the same time figures in 2001 for freight (-14%) and passenger traffic (-7%) are falling. Competition on the national freight market is still limited, and concessions to private companies have been mainly given to specialised enterprises.

With respect to *inland waterways* transport, Poland adopted, in July 2002, the secondary legislation transposing technical requirements for inland waterways vessels and reciprocal recognition of navigability licences for inland waterways. In March 2002 there were 8 inland waterways inspectorates in operation responsible for carrying out the vessels inspections and issuing certificates of professional competence.

As regards **air transport**, significant legislative progress has been made through the adoption, in July 2002, of the Aviation Law which transposes important parts of the aviation *acquis*. In terms of administrative capacity the Main Commission on Aircraft Accidents Investigation became a functionally independent body operated by the Ministry of Transport and Maritime Economy. It has 5 permanent employees. The financial situation of the Polish national carrier deteriorated following 11<sup>th</sup> September and the bankruptcy of the outside stakeholder. An ongoing restructuring programme includes a 15% reduction in personnel. A co-operation agreement was signed in April 2002, under which the carrier will join one of the major alliances.

As regards **maritime transport**, the Maritime Code the Law on maritime safety and the amendment to the Law on seaports have entered into force respectively in June 2002, January 2001 and November 2001, putting in place the main legislative framework. In Poland there are 3 Maritimes Offices, under which operate the inspectorates which conduct the Flag State Control and the Port State Control, and the Inspectorate of Maritime Environmental Protection.

According to 2001 statistics under the Paris Memorandum of Understanding, the percentage of Polish flag vessels detained following Port State Control has been further reduced to 1.6% and lies below the average for EU-flagged vessels detained in 2001 (3.1%).

## *Overall assessment*

As regards Trans-European Transport Networks, with the adoption of a new national infrastructure development plan, Poland has identified the main priorities for upgrading the road network; this is of particular importance for a transit country such as Poland, especially given the condition of the infra-structure network. In this context, Poland should intensify its preparations to rehabilitate the connections to the Baltic States. Poland has also to strengthen its administrative capacity in preparation for the significant investment that will be needed in road and rail infrastructure. A strengthening of administrative capacity is necessary and provisions to this end have been made in the 2003 budget. It is essential that they are accepted and fully realised.

As regards road transport, further efforts should concentrate on complete alignment with EC standards, in particular for social legislation, access to the profession and technical requirements. The full establishment and effective operation of the Road Transport Inspectorate, which is developing successfully, will be a key issue in this context. Poland should increase its efforts to improve road safety.

In the railways sector, the situation of Polish railways provides cause for concern. The share of rail in the freight transport market is continuing to decrease; and service in passenger transport is worsening, in particular in regions. The financial position of PKP is deteriorating due to lack of revenues and decreasing state subsidies. The restructuring of PKP needs to be given high priority. The Government is encouraged to pursue the restructuring of Poland's railways. Further efforts are necessary in order to allow for the transposition and implementation of the revised railway *acquis*. Legislative alignment needs to be completed, in particular the rail infrastructure charging framework should be revised. Particular attention should also be paid to ensuring the independence of the management of railway undertakings, the separating of infrastructure management from transportation operations and the strengthening of the railway administration, notably transparency in the accounts. Voivodship and Powiat authorities need to develop capacity significantly in preparation for assuming responsibility for regional and suburban passenger services.

Problems relating to the proper maintenance of the railway infrastructure resulting in an increasing number of speed limitations on the network require the preparation of a comprehensive rail infrastructure development. Poland is encouraged to further improve inter-operability of its rail system with neighbouring countries, in particular the Baltic states.

On inland waterways, the main elements of the *acquis* have been transposed following the adoption of the Inland Navigation Law in December 2000. Further alignment is still necessary as regards the adoption of implementing legislation and legislation on the Inland Waterways Fund and Reserve Fund. Further efforts are needed to strengthen administrative capacity in this sector.

Following the adoption of the aviation law, Poland needs to accelerate the adoption of the necessary implementing legislation and the establishment of the planned administrative structures to ensure the effective functioning of the Civil Aviation Administration and the Polish Air Traffic Agency.

In the field of maritime transport, the administrative capacity is generally sufficient to implement the *acquis*. Poland vessel detention rates as a result of Port State control are

below the average for EU-flagged vessels. Implementing legislation needs to be adopted and increased co-ordination between the different levels of the relevant authorities is necessary. One issue outstanding is recognition of the Polish Register of Shipping as a classified society under the International Association of Classification Societies. Further efforts are also necessary to ensure compatibility with EC state aid guidelines.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that Poland had made notable progress in the adoption of the *acquis* in the transport sector and that, provided it moved swiftly and decisively on the operation of its domestic road haulage market and clarified the procedures for implementing the *acquis* in the rail sector, the sector was unlikely to pose major problems as regards adoption of the internal market *acquis*. The Opinion noted that it would be necessary to make sure, however, that the resources were available which were needed to lay the foundations for the future Trans-European transport network extended to the candidate countries, including transshipment centres such as sea ports and crossing points on the borders with the CIS countries, if these were to become the future external borders of the Union. The Opinion also underlined that it would be advisable for Poland's administrative structures, and in particular bodies supervising areas such as safety, to be rapidly reinforced.

Since then, Poland has made progress in aligning legislation, in particular over the last two years. Its legislation in the transport sector is now to a great extent in line with the EC *acquis*; the relevant framework laws are in place. However, implementing legislation remains to be adopted. Poland has also gradually reinforced its administrative capacity, but further strengthening is needed in some sectors.

Negotiations on this chapter have been provisionally closed. Transitional arrangements were granted to Poland in two areas: until December 2010 Poland may maintain lower maximum weight values for road vehicles than those laid down in the *acquis* and until the end of December 2006 Poland would not need to grant unlimited access to the Trans-European Rail Freight Network in Poland to railway undertakings established in other Member States. Poland has agreed to a transitional arrangement put forward by the EU concerning the gradual reciprocal access to the cabotage market in the road haulage sector. Poland is generally meeting the commitments it made in the accession negotiations in this field.

In order to complete preparations for membership, Poland's efforts now need to focus on the implementation of the aviation *acquis*, the fiscal and social/technical *acquis* in the road sector, further liberalisation of rail transport and continuous improvement of the maritime safety record. Particular attention will need to be paid to further strengthening the maritime safety authorities, and guaranteeing their independence. Administrative capacity to prepare infrastructure projects in the road and rail sector should be enhanced.

## ***Chapter 10: Taxation***

### *Progress since the last Regular Report*

Since the last Regular Report, Poland has continued to make steady progress in developing its institutional capacity in the area of taxation and in aligning its legislation.

In the area of **indirect taxation** there have been a number of legislative changes. On VAT, Poland has made good progress in further aligning its rates with the levels required by the *acquis*. Marine transport means and marine fisheries means have become zero rated and the definition of specialist journals benefiting from zero rating has been refined. The principles for refund of input VAT to importers and the conditions and methods for refunding VAT in certain specific situations were established. VAT exemption was introduced as regards certain imports, and, import charges and other compulsory duties collected by the customs authorities in connection with imports have been included in the taxable amount for the calculation of VAT.

Concerning excise, duties have been increased on motor fuels and LPG used for motor vehicles, as well as on cigarettes. Energy from renewable sources and pumped storage plants are now exempt from excise duty.

With regard to **direct taxation**, a new 20-per-cent tax on income from savings (interest from bank deposits, dividends from bonds, etc.) was introduced in March 2002. In January 2002 Poland introduced a 2% tax on all outward capital movements, which applies to residents only and will cease at the end of December 2003.

In the reporting period the Polish tax authorities intensified their efforts to improve the effectiveness of the Polish tax administration. In August 2002, the Council of Ministers adopted the 'Tax Administration Modernisation Strategy by 2004' with the aim of ensuring a sufficient level of operating ability to apply and enforce the *acquis*.

Efforts during the reporting period have focused in particular on training, improving tax enforcement and computerisation. A system of training by internal trainers (who are tax officials themselves) was conducted for the first time in the domain of VAT and direct taxation, and involved training of 760 tax officials. Furthermore, the status of the Training Consulting Council was modified, giving it power to assume a real role in guiding training through the whole tax administration.

Following the integration of the customs services into the Ministry of Finance (*see Chapter 25 – Customs Union*), the excise and customs administration merged in the second quarter of 2002.

Further improvements were observed in tax enforcement and in computerisation of tax administration. An amendment to the Law on Bailiffs and Enforcement of September 2001 allowed for enforcement procedures to be simplified and for the efficiency of enforcement to be improved. A newly operational information technology tax enforcement module facilitates the gathering and processing of information about taxpayers, their bank accounts and links with other taxpayers. The construction of the Wide Area Network connecting the Ministry with tax chambers and offices has recently been completed, and the network is now fully operational. In the Ministry of Finance a Unit has been set up to co-ordinate the organisational preparation of the Central Liaison Office.

### *Overall assessment*

With regard to VAT Poland has brought its legislation more closely in line with the *acquis*. Some further adjustment of rates, in particular zero-rating and the scope of exempt transactions remain necessary. In addition, action should be taken immediately to



abolish all discriminatory VAT imposed on domestic and imported products. Further alignment is also necessary to extend the definition of the scope of taxable transactions to assignment of copyright and other intangible property, to introduce the special schemes for taxation of travel agents and second-hand goods and the provisions for intra-Community transactions. In addition, the special scheme for farmers should be completed.

With regard to excise duties, the main challenge Poland has to face is the implementation of the duty suspension system. Poland has so far lacked any equivalent to the suspension system stipulated by the *acquis*. This should receive due attention. Moreover further efforts are required to ensure that duty rate levels are risen to the minimum levels set out in the *acquis*.

Concerning direct taxation Poland will have to align its legislation further with that of the *acquis*. Legislation will have to be reviewed in order to eliminate potentially harmful tax measures, so as to comply with the Code of Conduct for Business Taxation to the same extent as current Member States upon accession. The Commission's initial technical assessment of potentially harmful measures applied in Poland is ongoing.

Regarding administrative capacity, Poland appears to be well aware of what needs to be accomplished and progress is in principle proceeding in a positive manner, although a significant number of actions still need to be implemented. The main difficulty relates to tax collection, which remains deficient. The effects of the recent organisational changes which transferred the excise administration to the customs administration (which itself has gone through an important reform lately) remains to be seen, and particular care should be taken to ensure the minimum of disruption during the time it takes for the new structure to settle down so as to ensure the proper and effective functioning of the administration upon accession.

In the field of information technology, significant steps have been taken to achieve the key indicators for interoperability with the VAT Information Exchange System. However, the centralisation of data remains the major information technology challenge. More generally, significant efforts are required at regional and local levels.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that there should be no significant difficulties with regard to the *acquis* for direct taxation and that in so far as indirect taxation was concerned, Poland would be able to comply with the *acquis* in the medium term provided significant efforts were made. Finally it noted that it should be possible to start participating in mutual assistance once the tax administration developed its expertise in this respect.

Since the Opinion, significant efforts have been made and Poland has made real progress in this field, most noticeably with respect to legislative alignment (although the Code of Conduct for Business Taxation remains an essential issue requiring attention), but also, to varying degrees, with respect to its administrative capacity. As a result Poland, has achieved a reasonable level of alignment with the *acquis* and moderate development of the necessary implementing capacity.

Negotiations on this chapter have been provisionally closed. Poland has been granted transitional periods until 31 December 2007 for the continued application of the reduced VAT rate on the supply of restaurant services and the VAT zero-rate on the supply of books and specialist periodicals. Poland has been granted, for an indefinite period of time, the right to apply a VAT registration and exemption threshold of € 10 000 for small and medium-sized enterprises. Poland has been granted a transitional period until 31 December 2008 to gradually reach the Community minimum excise duty levels on cigarettes. Poland was granted a one-year technical transitional period for the application of a reduced excise duty rate on ecological fuels (petrol manufactured with anhydrous alcohol, gas oil with a low sulphur content and petrol containing ethyl butyl alcohol). Poland is generally meeting the commitments it has made in the accession negotiations.

In order to complete preparations for membership, Poland's efforts now need to focus on finalising its legislative alignment, in particular on VAT (except for those areas where transition arrangements have been agreed), duty rates and intra-community transactions, and making the necessary efforts to finalise the establishment of the necessary administrative capacity (information technology in particular) for VAT and even more so for excise duties.

## ***Chapter 11: Economic and Monetary Union***

### *Progress since the last Regular Report*

A detailed assessment of the various aspects of Poland's economic policy has been given above, in the Chapter discussing the economic criteria (B-2). Therefore, the present section is limited to a discussion of those aspects of the Economic and Monetary Union *Acquis* — as defined by Title VII of the EC Treaty and the other relevant texts — which candidate countries should implement before accession, i.e. the prohibition of direct public sector financing by the central bank, the prohibition of privileged access of the public sector to financial institutions, and the independence of the national central bank. As to the process of liberalisation of capital movements, upon the completion of which compliance with the EMU *acquis* is conditional, this aspect has been covered above, in the section on *Chapter 4 – Free movement of capital*.

Since the last Regular Report, no further progress towards alignment with the *acquis* has occurred.

### *Overall assessment*

Poland will participate in EMU upon accession with the status of a country with a derogation under Article 122 of the EC Treaty, and it will need to implement the necessary changes to its institutional and legal framework by the date of accession.

Direct public sector financing by the central bank is prohibited in line with Article 101 of the EC Treaty and no regulations have been identified which would create privileged access of the public sector to financial institutions.

As regards central bank independence, the 1997 Act on the National Bank of Poland (NBP) is already close to full compliance, but necessitates amendments regarding the conditions for the participation of the government representative in the Monetary Policy

Council and provisions relating to financial and personal independence. The process of adopting these amendments has been complicated by the ongoing debate on the appropriateness of monetary policy in Poland. This debate has already led to a number of legislative initiatives by individual parties aimed at modifying the status of the NBP in ways that would not be wholly compatible with the *acquis*. In this context, it is important that Poland abides by its stated objective and its timetable to achieve full alignment with the *acquis* by the end of 2002.

### *Conclusion*

In its 1997 Opinion, the Commission, referring to the pending reform of the NBP, concluded that it was important to make central bank legislation compatible with EC rules.

Since the Opinion, Poland has achieved a high level of alignment with the EMU-related *acquis* and developed a strong administrative capacity.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is currently generally meeting the commitments it has made in the accession negotiations in this domain.

In order to complete preparations for membership, Poland's efforts should focus on ensuring full independence of the NBP as scheduled.

## ***Chapter 12: Statistics***

### *Progress since the last Regular Report*

Poland has continued to make good progress since the last Regular Report.

As regards **statistical infrastructure**, the Head Office of the Central Statistical Office was reorganised in the first half of 2002.

There has been no progress with regard to **classifications**.

In the field of **demographic and social statistics**, a Population and Housing Census was conducted in May and June 2002. First results will be available by the end of 2002 and subsequently integrated into all other fields of statistical production. As regards the Labour Force Survey, which is already continuous with quarterly reporting, a fully compliant questionnaire was introduced in 2001.

Statistics at **regional** level have seen further progress. The Polish statistical office (GUS) has made a major effort to re-calculate historical time-series, which suffered a break due to the administrative territorial reform of 1999. Many indicators are available also at level 4 and 5 of the Nomenclature of Territorial Units for Statistics (NUTS 4 and 5). A geographical information system is being put in place to further improve the use of regional data by both internal and external users.

In the field of **macro-economic statistics** a number of methodological improvements were implemented in 2002. Seasonally adjusted time series are being prepared and will be available by the end of 2002. Quarterly national accounts were further improved, but delays still should be shortened. As regards Government finance statistics, the GUS's co-

operation with the Ministry of Finance has been enhanced but should be further developed. The methodology of Foreign Direct Investment statistics was improved in 2001 leading to an enhancement of monetary, financial and balance of payments statistics.

For **external trade**, work concentrated on the preparations for the INTRASTAT system, which monitors trade between Member States. A framework programme for the implementation of INTRASTAT was adopted in June 2002 along with the appointment of an inter-ministerial team to oversee the implementation of the programme.

In the field of **agricultural statistics**, Poland conducted an agricultural census in 2002, which should greatly improve the quality of agricultural statistics, in particular through an update of the sampling frame for structural surveys. Co-ordination of statistical production between the GUS and the Ministry of Agriculture and Rural Development has made significant progress over the past year. Both authorities have created a joint task force, which is working on a strategic plan for the future development of the agricultural statistical system.

### *Overall assessment*

Poland has a well established statistical system with an EC-compliant statistical law in force since 1995. The Polish Central Statistical Office (GUS) is an independent state agency. The Prime Minister nominates the GUS's President on a proposal by the Statistical Council for a six-year term.

Almost all major classifications, which are relevant for *acquis* implementation, are in force in Poland. However, in the field of industrial production a joint classification for statistics and tax authorities which would be compatible with the list of Products of the European Community (Prodcom) has not yet been implemented. There is a regional sub-division of the country's territory which corresponds to the NUTS classification and divides Poland into 16 units at level 2, coinciding with the 16 voivodships created in 1999. New regional sub-divisions at level 3 and 4 have also been created in the meantime.

Macro-economic statistics are produced on the basis of the European System of Accounts (ESA-95) methodology at a very high level of compliance. Poland is a member of the European comparison programme, which supplies the data for the compilation of Purchasing Power Standards. As regards Government finance statistics, there is also still room for improving the consistency with ESA-95 in this field. Some details on the delimitation of the Government sector still need to be clarified.

Monetary, financial and balance of payments statistics are compiled by the National Bank of Poland. Annual Balance of Payments statistics are produced at a very high level of compliance. However, the breakdown by item and geographical zone of quarterly and monthly Balance of Payments statistics should still be refined.

Structural business statistics and industrial production statistics are produced at a very high level of compliance. However, industrial production statistics still suffer from the problems connected with Prodcom implementation. Short-term business statistics are well developed.

In agricultural statistics, Economic Accounts for Agriculture (EAA) are compiled together with the Ministry on the basis of the EAA-97 methodology. They are considered to be EC-compliant. Certain weaknesses persist in animal production statistics and in balance sheets. These must be addressed.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that Poland should be able to comply with EU requirements for official statistics within the next few years.

Since the Opinion, Poland has made very good further progress in most areas of statistics; in addition a population and housing census and an agricultural census were conducted in May and June 2002. Poland has achieved a high level of alignment and developed a strong administrative capacity.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is generally meeting its commitments made in the accession negotiations.

In order to complete preparations for membership, Poland's efforts now need to focus on further improving the quality of Government deficit and debt statistics, implementing INTRASTAT, introducing a Prodcom-compatible classification also for tax purposes and addressing the remaining weaknesses of agricultural statistics.

## ***Chapter 13: Social policy and employment***

### *Progress since the last Regular Report*

Some progress has been made in this area since the last Regular Report.

In the field of **Labour Law**, most amendments made to the Labour Code in August 2001 entered into force in January 2002. These amendments aim to further align Poland's legislation with the *acquis* on a range of issues including, fully or partly, the Directives on the protection of young people at work, the employment contract, the safeguarding of employees' rights in the event of transfers of undertakings and the health and safety of fixed term and temporary workers. A Law on European Works Council was adopted in April 2002 and will enter into force upon accession.

The *acquis* on **equal treatment** for women and men has been largely transposed by the above-mentioned amendments to the Labour Code of August 2001 which entered into force in January 2002. In October 2001, a Government Plenipotentiary for Equal Status of Women and Men was established. An Ordinance adopted by the Council of Ministers in June 2002 has extended the competence of the Plenipotentiary.

In the area of **health and safety at work**, the legislation adopted since the last Regular Report partly transposes Directives in the field of mineral-extracting industries, safety signs and personal protective equipment.

There were a few developments in the area of **social dialogue**. The Law on the Tripartite Commission for Social and Economic Issues and on voivodship commissions for social dialogue of August 2001 entered into force in October 2001, and providing tripartite

social dialogue institution with an appropriate legal basis. On the basis of this law, voivodship commissions of tripartite social dialogue started to operate in March 2002.

Regarding **public health**, an important step forward was the partial entry into force in January 2002 of the September 2001 Law on combating communicable diseases and infections. There was further alignment with the tobacco *acquis*, though it falls short of satisfying the current *acquis*. Work was undertaken to develop the health monitoring system with a view to obtaining health indicators comparable with those of the EU. The Government also adopted a National Health Care programme aiming to replace the 17 regional health funds established in 1999 with a single fund, the National Health Care Fund, with 16 regional divisions from January 2003 onwards. The health status of the Polish population is still lower than the EU average.

In terms of Employment Policy, the Joint Assessment of Employment Priorities (JAP) was signed in January 2001. As part of the monitoring process of the Employment Policy Review, a progress report on the implementation of the priorities identified in the JAP was submitted by Poland in July 2002. This report is an important step in assessing the extent to which Poland is progressing towards its objectives of labour market reform and adaptation of its employment system in order to prepare for future participation in the European Employment Strategy after accession.

The labour market situation did not improve during the reference period. The unemployment rate continued to increase from 16.3% in 2000 to 18.4% in 2001. The unemployment rate for women (20%) is higher than for men (17%). Long term unemployment is high and still increasing. In 2001 the share of long term unemployed was 50%. Youth unemployment continues to be the most serious problem, in particular for poorly educated school leavers with primary or vocational education but also, to a lesser extent, for well-educated university graduates. The situation varies by region. The Government's Economic Strategy for 2002-2005, adopted in January 2002, provides for a variety of measures aimed at improving the **employment** situation, notably amendments to the Labour Code increasing the flexibility of the labour market which were adopted in July 2002 and programmes such as the First Job Programme, stimulating the creation of jobs for school leavers. This programme became operational in June 2002.

As regards measures to be financed under the European Social Fund, the description of measures, project selection criteria and final beneficiaries under the Sectoral Operational Programme 'Human Resources Development' on the one hand and in the section on human resources development within the Integrated Regional Operational Programme on the other hand has started. The Ministry of Labour and Social Policy was appointed as Managing Authority for the Human Resources Development Sectoral Operational Programme.

As a follow-up to the Gothenburg European Council, where the EU invited the candidate countries to translate the EU objectives into their national policies, the Commission and Poland have initiated a joint co-operation exercise to prepare for future participation in the EU **social inclusion** process after accession. This exercise consists in joint identification of the social exclusion challenges and relevant policy responses. In this context, the Polish Central Statistical Office co-operates with Eurostat to produce data on poverty and social exclusion. Preliminary figures suggest that overall income disparities seem to be relatively high, as is the poverty rate after social transfers (16%).

As regards other areas of **social protection**, significant progress was made in setting up a computer system in the Social Insurance Board (ZUS), operational since June 2002 which should allow implementation of the pension reform which has suffered serious delays in the previous years.

As regards **anti-discrimination**, Poland adopted an ordinance in June 2002 which mandates the Plenipotentiary for the Equal Status of Women and Men to establish, as required by the *acquis*, an office for combating discrimination on the grounds of racial or ethnic origin, religion or belief, age or sexual orientation. Until this body is established the plenipotentiary will carry out these tasks (*see also section B.1.2 - Human Rights and Protection of minorities*).

### *Overall assessment*

The Labour Code will need further amendments to ensure full alignment in the field of Labour Law (working time, part-time work, employment contract, collective redundancies, posting of workers). The Law on special conditions for the termination of employment for reasons relating to the employer will also be modified to further align with the collective redundancies provisions. Following the liquidation of the National Labour Office in April 2002, Poland will need to appoint a new liaison office responsible for the obligations resulting from the Posting of Workers Directive. Poland will need to take steps to ensure workers' information and consultation in enterprises where workers are not represented by trade unions.

Further legislative alignment is necessary to complete the process in the field of equal treatment for women and men, notably as regards parental leave.

Poland's alignment and enforcement of the *acquis* on health and safety at work still requires considerable effort. This applies in particular to the necessary secondary legislation including chemicals, carcinogens and asbestos.

Social dialogue mechanisms, notably the establishment of sectoral dialogue committees, and preparation of social partners for active participation in social dialogue at European level will need to be strengthened further.

In the field of public health, Poland should continue its efforts to fully align with the tobacco *acquis*. Following the progress in adopting the communicable diseases legislation, a substantial implementation and enforcement effort will now be required in particular with regard to the following: outbreak management, systematic vigilance, greater data analysis, laboratory capability strengthening, data confidentiality, rapid response capability and implementation of EC case definitions. Efforts also need to be continued to further adjust the health monitoring system to obtain health indicators comparable with those of the European Union. Efforts to improve the health status of the population should be continued. The devotion of adequate resources to health should be ensured.

Regarding employment, the Joint Assessment of the employment priorities for Poland (JAP), represented an important step in the preparations for accession. Progress in the implementation of these policies is assessed regularly and it will be important to ensure effective monitoring of the phasing-in of the priorities and commitments contained in the JAP. Particular attention has to be given to low-skilled workers, to increase the

education level and to adapt qualifications to labour requirements. The public employment system needs improvement in terms of administrative capacity (greater organisational consistency and upgrading of staff qualifications). Employment policies need to be focused on preventive and active measures.

Preparations for the European Social Fund need to be intensified so as to facilitate the absorption of funds after accession. In particular, the administrative capacity of the Ministry of Labour and Social Policy as well as of future intermediate bodies and final beneficiaries (for example the Ministry of Education and Sport, the Voivodship Labour Offices) will need to be enhanced, notably in the areas of monitoring, audit and financial control. The timely functioning of an effective IT system for financial and physical monitoring of ESF interventions needs to be guaranteed.

A national integrated strategy on promoting social inclusion, taking into account the EU objectives, needs to be drawn up and then implemented. As poverty and social exclusion are multi-dimensional by nature, it is important to promote an integrated approach mobilising various governmental bodies and all relevant stakeholders in the process. It is also crucial to improve and develop social statistics systems on poverty and social exclusion in line with the EU commonly agreed indicators on social inclusion.

In other areas of social protection, efforts need to be sustained to implement earlier reforms such as the health care and pension reform.

Full transposition and implementation of the Anti-Discrimination Directives will require a further amendment of the Labour Code as well as other changes to the legal framework in order to transpose the aspects of the *acquis* which do not relate to employment. The Plenipotentiary for equal status of women and men still needs to establish an anti-discrimination body.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that many legislative adjustments were needed in the field of health and safety at work to ensure alignment with EU standards, and efforts to implement the *acquis* effectively would need to be continued. It was further noted that provided Poland pursued its efforts, in terms of adoption and of application of the EC *acquis*, it was likely to be able to take on the social *acquis* in the medium term.

Since the Opinion, overall progress in aligning with the *acquis* has been achieved. In particular, good progress has been made in the spheres of labour law, equal treatment, public health and social dialogue. Compared to the reasonable level of alignment with the *acquis*, the development of administrative capacity has not followed at the same rate and capacity in this field remains modest.

Negotiations on this chapter have been provisionally closed. Poland has been granted a transitional arrangement (until 31 December 2005) for work equipment installed before 31 December 2002. Poland is generally meeting the commitments it made in the accession negotiations in this field.

In order to be ready for membership, Poland should focus further efforts on completing transposition (amendments to the Labour Code, occupational health and safety, tobacco



and anti-discrimination) effectively implementing the *acquis* in the areas of equal treatment, public health, social dialogue, and strengthening the active employment measures and the preparation for European Social Fund implementation. Adoption of the amendment to the Labour Code as well as implementing measures hereunder in the legislative pipeline and foreseen for adoption before the end of the year would do much to further alignment with the *acquis* in the fields of labour law, anti-discrimination and occupational health and safety.

## ***Chapter 14: Energy***

### *Progress since the last Regular Report*

Since last year's Regular Report, Poland has made some progress with regard to transposition and implementation of the *acquis*. The restructuring and privatisation process has not advanced at the same pace as in previous years.

With regard to energy policy in general, the Council of Ministers adopted the biannual Energy Policy Outlines in April 2002. This sets out further changes in the energy sector and evaluates the progress made so far to achieve the objectives of the Assumptions of Energy Policy in Poland until 2020.

With regard to **security of supply** and in particular oil stocks, the law amending the Act on national reserves entered into force in January 2002. Poland has made steady progress towards the required level of 90 days.

As regards the issues of **competitiveness and the internal market**, progress has in general been moderate. As regards legal transposition however, a number of amendments were made in July 2002 to the Energy Law allowing to make further progress in alignment with the *acquis* in this sector.

Concerning electricity, in January 2002 the market was opened to customers with a total annual purchase of more than 10 GWh produced in the country. Thus, about 51% of the Polish market is now open for domestically produced electricity. A significant part of the Polish market (52%) is still covered by long-term agreements between Polish Energy Grids (PSE) and electricity producers. An appropriate mechanism for dealing with these contracts has not yet been implemented. The transaction volume of the Warsaw Power Exchange has fallen rapidly since the introduction of a day ahead balancing mechanism and the relationship between these two functions is now unclear.

There has been little progress in restructuring the gas sector and in implementing the strategy for privatisation of the gas sector, adopted in May 2001. The diversification of gas supplies has not progressed, despite the contracts signed in July and September 2001 with Denmark and Norway, as these still need to be approved by the government. A new programme for restructuring and privatisation of the gas sector was adopted in August 2002.

In the oil sector, only limited progress has been achieved. The privatisation of Rafineria Gdanska and Polish Oil Concern (PKN Orlen) is ongoing in spite of delays.

The situation in the coal sector is characterised by continued restructuring, although the pace of restructuring appears to have slowed over the reporting period. Productivity has

increased to 700 tonnes per worker; this output remains lower than in other significant coal exporting countries. The level of debt is still very significant and is estimated at about 20 billion PLN (€ 5.4 billion).

In the field of **energy efficiency**, the Government adopted several ordinances aimed at transposing the *acquis* on European efficiency requirements for household equipment and hot-water heater boilers. Within the National Energy Conservation Agency, the establishment of a new Centre for Energy Efficiency in Industry is planned.

With regard to **renewable energy**, the Government introduced in 2001 an obligation to purchase electric energy produced in co-generation with heat from unconventional or renewable sources.

As regards **nuclear energy**, Poland currently does not operate nuclear power plants. As regards nuclear safety, however, there are a number of activities involving the use of nuclear materials, which give rise to some radiological concern, namely the operation of the high flux pool-type Maria research reactor (30 MWth) at Swierk; the storage of spent nuclear fuel at Swierk; the disposal of institutional radioactive waste in the Rożan repository; and uranium mining activities. All these issues are currently being addressed by the Polish authorities.

In January, a number of implementing decrees to the new Atomic Law of November 2000 were issued. The new law provides for a clearer separation of responsibilities between the National Atomic Energy Agency (NAEA) as the regulatory authority, and the different operators of the Swierk nuclear centre. The new act creates the framework for the introduction of Euratom safeguards. Five new regulations out of twenty-five concerning basic safety standards have so far been issued.

### *Overall assessment*

With regard to security of supply, Poland needs to continue its efforts towards achieving the required level of oil stocks, including the construction of new storage space. Further steps need to be taken to ensure that the Agency for Material Reserves becomes fully operational for its tasks as regards oil stocks.

As regards the internal energy market, a reasonable level of alignment with the internal energy market *acquis* has been achieved. Poland has, inter alia, opened up its domestic market for competition. Further efforts are however required to bring the legislation fully in line with the *acquis*, including the adoption of the necessary secondary legislation as a follow-up to the July 2002 amendments to the Energy Law, and taking into account the conclusions of the European Council in Barcelona. In addition, cross-subsidies and import restrictions for EU companies have to be eliminated upon accession.

Whereas Poland has reached a certain level of transparency and legal harmonisation concerning the electricity market, the development of a competitive electricity market has not progressed and proves to be difficult as a result of residual long term contracts. The restructuring of the gas sector needs urgently to be enhanced. Plans to restructure the Polish Oil and Gas Company have been delayed several times. Poland should increase its efforts to improve the transparency of the sector. Restructuring in the coal sector continues to be very important for the further development of the Polish energy sector.

Despite the efforts made in the last years, the situation in the coal sector remains difficult and a fresh impetus is required.

Privatisation in all energy sectors has not advanced as most of the previous privatisation programmes were suspended. New strategies are being developed, the adoption of which needs to be accelerated. Delays in privatisation may hamper the ability of the privatised firms to adequately prepare for the planned opening of the market.

As regards energy efficiency, Poland has advanced its legislative approximation. Poland has also made first steps to strengthen administrative capacity in this field. Nevertheless, further efforts are required to complete the reinforcement of the administrative organisation, reduce the high energy intensity and to ensure a level playing field for renewable energy resources. With regard to renewable energy, Poland needs to continue its efforts to promote their increased use and to meet its planned objective of increasing the share of electricity produced from renewable resources to 7.5% in 2010.

With regard to administrative capacity at central level, the energy sector is supervised by the Department of Energy in the Ministry of Economy. The coal sector falls however within the responsibility of the Department of Industry Restructuring. The Ministry needs some reinforcement as regards personnel and their training in order to ensure that tasks related to preparing for accession can be fulfilled properly.

In June 2001, the Council of the European Union took note of a Report on Nuclear Safety in the Context of Enlargement. Although Poland does not generate electricity from nuclear power sources, the Report contains recommendations of relevance to Poland with regard to other nuclear installations, including the safe management of radioactive waste and spent nuclear fuel, and the operation of research reactors. During the first half of 2002, a special Peer Review on nuclear safety assessed the progress made by candidate countries in implementing all the recommendations. This exercise, conducted under the auspices of the Council, resulted in a Status Report published in June 2002, which concludes that Poland has accepted and adequately addressed all the recommendations contained in the June 2001 Report on Nuclear Safety in the Context of Enlargement.

The management of spent nuclear fuel and radioactive waste will need continued attention. The Nuclear Atomic Energy Agency and the Radioactive Waste Management Plant need to be strengthened. Poland will need to ensure compliance with Euratom requirements and procedures. In this respect, due attention will need to be given to preparing the implementation of Euratom Safeguards, in particular regarding the reporting of nuclear material flows and inventories directly by the persons or undertakings operating nuclear installations or storing nuclear material. This includes small holders like universities, hospitals and medical practises. It should be noted that Poland has concluded a Full Scope Safeguards Agreement with the IAEA.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that, provided efforts were maintained, Poland should be in a position to comply with most of the then existing EC energy legislation in the medium term, adding that matters such as the adjustment of monopolies including import and export issues, access to networks, import barriers for oil products, energy pricing, emergency preparedness (including the building up of mandatory oil stocks), state interventions in the coal sector, and the development of energy efficiency

needed to be closely followed. No major difficulties were foreseen for compliance with Euratom provisions.

Since the Opinion, progress has been made, although not consistently. Most notable has been the advances with regard to oil stocks, some improvement of energy efficiency, nuclear issues, and the gradual development of administrative capacity. Progress in implementation, in particular as far as transformation of the gas and coal sub-sectors is concerned, has significantly slowed down. Overall, Poland has achieved a good level of alignment with the EC energy *acquis*.

Negotiations on this chapter have been provisionally closed. One transition period has been granted to Poland in relation to the build up of oil stocks (end of 2008). Poland is generally meeting the commitments it has made in the accession negotiations in this field.

In order to complete preparations for membership, Poland's efforts now need to focus on ensuring full and timely adoption and implementation of legislation in this area, in particular with regard to the internal energy market (notably gas) and on strengthening the administrative capacity of the newly established bodies. The restructuring of the sector also warrants due attention, as does the progressive building up of oil stocks.

## ***Chapter 15: Industrial policy***<sup>18</sup>

### *Progress since the last Regular Report*

Poland has made some further progress in developing its industrial policy. Following the change in administration there has been a flurry of activity with regard to the definition of industrial policy. There have also been legislative developments in respect of the restructuring process. The advancement of the restructuring process and privatisation on the ground has been rather more varied, with a slow down in particular in privatisation.

With regard to Poland's **industrial strategy**, a number of new initiatives and strategies have been adopted. In January 2002, the government adopted a medium-term strategy 2002-2005 ("Entrepreneurship - Development - Labour") to revive the Polish economy and to restore rapid economic growth. One of the pillars of this strategy is the "Entrepreneurship First" programme, whose main focus is the business environment and SMEs (see Chapter 16 - *Small and medium-sized enterprises*) It envisages the introduction of a number of changes designed to simplify and streamline the tax system, to simplify the social insurance system, to make labour market regulation less onerous for companies, to improve the administration of justice and to ease the burden of administrative obligations on companies.

The strategy document also signalled the Government's intention to reinforce investment promotion. Subsequently a law on financial support to investment was adopted, in March 2002 with the aim of increasing investment by both domestic and foreign investors (see Chapter 6 – *Competition policy*).

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<sup>18</sup> Developments concerning Industrial policy should be seen in relation to the overall enterprise policy, including the SME policy (see Chapter 16 – *Small and medium-sized enterprises*).

Such an initiative is particularly important at a time when foreign direct investment flows declined in 2001. Foreign direct investment, while still higher than in any other candidate countries in absolute terms, is relatively low in per capita terms compared with some other countries of the region. (see Section B.1.2. - *Economic criteria*).

The latest initiative is the "anti-crisis programme" adopted in July 2002 which aims at reducing unemployment and boosting economic growth. The programme contains legislative and financial measures including the cancellation of certain public debts of enterprises, introducing tax relief for banks which assist in restructuring and tax credits, the simplification of the bankruptcy procedure and the strengthening of credit institutions. (see Chapter 16 – *Small and medium-sized enterprises*). In particular, measures on debt reduction for large, often state owned, companies which are considered important in terms of the employment they generate could have significant implications for State Aid (see Chapter 6 – *Competition policy*).

With respect to **restructuring and privatisation**, there have been developments in a number of sectors, although the pace of progress on the ground remains slow. The *steel* restructuring law came into force in October 2001. Related secondary legislation has also been adopted. A revised national steel restructuring plan was adopted in March 2002. The plan assumes faster consolidation and restructuring of the sector before privatisation, as well as the rescheduling of the debts of Polish steelworks. One of the pillars of the plan is the creation of Polski Huty Stali SA, a holding company that will take over the shares of the four largest Polish steel companies. The holding company has already been established. The plan assumes involvement of strategic investors in the privatisation process. The national plan, along with individual viability plans foreseen under the steel restructuring law, forms the basis of Poland's efforts to fulfil its obligations under the Europe Agreement as concerns state aid in the sector. In the light of analysis carried out, both the national and the individual plans are under revision with a view to ensuring that these obligations can be met.

Restructuring of the *coal* sector has continued. Further reductions have been made in production capacity and employment but at a slower pace than in the previous year. In the *Chemicals* sector a new strategy for the sector until 2010 has been adopted.

Overall, the pace of privatisation has slowed. The number of privatisation transactions decreased from 259 in 2000 to 137 in 2001. Privatisation revenues amounted to PLN 6.8 bn (€1.85 bn) in 2001 and were lower than projected, in contrast to 2000, when the reported budget receipts from privatisation transactions amounted to PLN 27.2 bn (€6.76 bn) and exceeded the budget assumptions. The slower pace partly reflected the fact that most of the attractive assets had already been privatised, and that those remaining were less easy to privatise.

In addition, there has been a shift in this aspect of industrial policy during the past year. The current Government has focused on consolidating state companies in different sectors (the power industry, energy distribution, petrochemicals, heavy chemicals, sugar and steel) before privatising them. This shift has created some delays in the privatisation process.

With regard to the regulatory environment the adoption of industrial product legislation to transpose the *acquis* has made progress (see Chapter 1 - *Free movement of goods*). However, this had no immediate effect for industry as the entry into force has been

postponed. Polish producers continued to suffer heavy administrative burdens, since they had to produce according to two different rules for the national and EC market.

### *Overall assessment*

The main objective of Polish industrial policy continues to be to create an appropriate environment for the development of industrial operators, to promote innovation, to improve the competitiveness of industry, and to facilitate and encourage its adaptation to the business environment and industrial structures in the EU. The basic legal framework for business activity is in place and the private sector has developed well. Some issues still need to be resolved, notably property rights to real estate are still unsatisfactory. There should also be further efforts to implement the legislation in a more consistent and transparent manner. Activities to promote innovation need to be reinforced.

Although Poland is well advanced in its programme of privatisation, the State continues to own a dominant stake in a number of Polish companies in sectors such as steel, energy, gas, petrochemicals, heavy chemicals, air transport, railways, spirits, sugar and the armaments industry. The aim of the Government, as presented in the medium-term strategy, is to complete ownership transformation by 2005, when Poland should reach an ownership structure similar to that of EU countries, i.e. where the value of state assets represents 10-15% of GDP, compared with 32-34% at present. To date the number of State owned companies (not including companies owned by regions or local communities) has been reduced from about 8 400 in 1990 to about 2 000 in 2002. Considerable efforts must still be made, most notably with regard to steel and other heavy industries, such as coal, chemicals and the armaments industry.

The Ministry of Economy is responsible for industrial and SME policy and its co-ordination. The policy is developed in an integrated manner with the involvement of other ministries that take part in the policy-making process. Poland has the necessary key implementing agencies in this area at national and regional level, with the exception of an export promotion agency, which is to be established as of January 2003

It should be noted that an important element of any industrial policy is the control of state aid and the compatibility of support schemes with EU rules, which will have to be examined (*see Chapter 6 - Competition policy*).

### *Conclusion*

In its 1997 Opinion the Commission concluded that the key challenge Poland faced under this chapter was to restructure its traditional industries.

Since the Opinion, good progress has been made in developing industrial policy, and restructuring is underway. Poland has achieved a high degree of alignment with the *acquis* and administrative capacity is at a simpler level. Poland's policy towards industry generally complies with the concepts and principles of EC industrial policy, i.e. it is market-based, stable and predictable.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements under this chapter. Poland is generally meeting the commitments agreed in the negotiations in this field.

In order to complete preparations for membership, Poland's efforts now need to focus on seeing through the restructuring process, notably with respect to steel and other traditional industries, completing alignment with the *acquis* and more broadly ensuring that a stable transparent environment, for businesses and particularly investors is maintained and enhanced. Great care will have to be taken that the policy of restructuring is implemented in a manner which conforms to the competition and state aid *acquis* so as to create efficient competitive firms.

## ***Chapter 16: Small and medium -sized enterprises<sup>19</sup>***

### *Progress since the last Regular Report*

Since the last Regular Report, Poland has continued to make further progress in the implementation of SME policy.

Poland has for a number of years had a well defined **SME policy**. The main development over the reporting period was the adoption by the Government of the medium-term economic strategy for 2002-2005 with programme "Entrepreneurship First" (*see Chapter 15 – Industrial policy*), which is first and foremost addressed to SMEs. The programme is expected to simplify and minimise the administrative burden on SMEs. Among other things, it provides for deferring income tax payments by new businesses; raising the upper limit of sales income qualifying for lump-sum payment of income tax; simplifying formalities required for registering a new company; requiring quarterly (instead of monthly) social security payments; and liberalising the labour code.

As has been noted in Regular Reports in the past, access to finance continues to be regarded as a significant constraint on SME development. As part of the "anti-crisis package " (*see Chapter 15 - Industrial Policy*) the Government adopted the programme "Capital for Enterprising Persons" (2002-2006) in August 2002. It provides for the establishment of a national loan guarantee system through the BGK Bank (the state-owned bank, Bank Gospodarstwa Krajowego) and the network of local loan guarantee funds. Other measures are aimed at encouraging the banking sector to make the financial products of banks more accessible to SMEs.

In April 2002, Poland endorsed the European Charter for Small Enterprises as the basis for its action to support and develop small enterprises. The European Charter, adopted by the European Council in June 2000, is the reference document in the field of enterprise policy within the socio-economic strategy set up at the Lisbon European Council. The reporting process on the implementation of the European Charter in Poland started in May 2002.

With regard to the implementation of policy, the main change has been the merger of the Technology Agency, the Polish Agency for Regional Development and the Polish Agency for Enterprise Development. As a result, the Government has managed to streamline its activities in support of SMEs, which are under the supervision of the Ministry of Economy. A single government organisation, the Polish Agency for Enterprise Development, implements programmes and activities for SMEs financed both

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<sup>19</sup> Developments concerning SME policy should be seen in relation to the overall enterprise policy, including industrial policy (*see Chapter 15 - Industrial policy*).

from the state budget and EU funds. A network of regional financing institutions has been established in each of the Polish regions, which will serve as the regional partners of the Agency. They provide information and advisory services for SMEs in the regions.

The budget resources allocated by the Government for SME support were reduced in 2002: about €14 million was allocated in 2002 for the implementation of the “Government policy guidelines for SMEs until 2002”, against €18 million in 2001.

Aside from the measures set out above, there have been few significant changes in the broader **business environment** over the last year. Despite efforts to reduce delays, the tardy functioning of the judiciary system in the area of commercial courts remains an issue for small firms with limited resources. The complexity and frequent changes of the tax system are another frequently cited issue. As part of the anti-crisis programme mentioned above tax credits for very small companies in their first year of operation will be introduced, along with changes to the bankruptcy law intended to simplify and shorten bankruptcy procedures.

No further development has been recorded as regards **SME definition**, which is in line with the Commission Recommendation.

### *Overall assessment*

The directions of the programme “Entrepreneurship First” are in line with the priorities of EU enterprise policy. The effort to tackle the improvement of the business environment as a whole rather than sticking to a few selective measures deserves recognition.

The institutional changes around the Polish Agency for Enterprise Development and the establishment of the network of Regional Financing Institutions should further improve and strengthen assistance to the SME sector. The Agency continues to co-ordinate the National SME Services System with over 150 SME support organisations of various forms all over the country. In addition, continuous efforts are needed by all the parties concerned at national (Ministry of Economy, Polish Agency for Enterprise Development) and regional levels (regional authorities, Regional Financing Institutions) to prepare for full use of EU structural funds in the area of enterprise development.

Efforts should be strengthened to prepare for the full use of the structural funds in the area of enterprise development.

Elsewhere, there are ambitious plans to improve the business environment, but their implementation and impact have yet to be seen. Some efforts have been undertaken to improve access to finance, information and advisory services, but in the past they were too limited in scope to have a broad impact and need to be reinforced.

The representation of the business community in Poland continues to be still very dispersed, with a large number of organisations representing different interest groups and operating on different levels and speaking with different voices. In particular, the interests of SMEs remain poorly represented. A more concentrated and better organised representation of the business community, and of SMEs in particular, would help their opinions and needs to be better heard and more readily taken into account by decision-makers both in Poland and in the European Union.



## *Conclusion*

In its 1997 Opinion the Commission concluded that, while no particular problems were foreseen for Polish accession with respect to SME policy, and the basic structures were in place, there was a need for better and clearer co-ordination of efforts directed towards SMEs, measures aimed at simplifying legislation to make it more SME friendly, strengthening the support infrastructure, improvement of the tax environment, and development of SMEs' access to financing.

Since the Opinion, much has been done to define and implement an SME policy which is close to the *acquis*. Some progress has been achieved in improving the business environment for SMEs. Poland's policy towards SMEs is generally in line with the principles and objectives of EU enterprise policy.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is generally meeting the commitments it has made in the accession negotiations in this field.

In order to complete preparations for membership, Poland's efforts now need to focus on consolidating the functioning of the new administrative structure and on ensuring that sufficient resources are allocated to the sector.

## ***Chapter 17: Science and research***

### *Progress since the last Regular Report*

Poland has continued to make progress in enhancing its policy towards science and research and in improving the administrative capacity necessary to implement this policy.

In terms of resources devoted to the sector there were substantial cuts in the 2002 state budget. In comparison to 2001, the total planned spending was reduced by nearly 20%.

In January 2002 an agreement on co-operation with the European Space Agency was signed, providing a framework for the participation of Polish institutions in the Agency's research projects.

Poland continues to be associated with the Fifth EC **Framework Programme** and has expressed an interest in being associated with the Sixth Framework Programme. Both the Government and the National Contact Point, who will continue in the Sixth Framework Programme, have committed themselves, to undertaking further efforts to increase participation of Polish science and business in the Framework Programme.

### *Overall assessment*

The framework for co-operation in the field of science and technology (including National Contact Points) is well established. The research-related administrative capacity and infrastructure of Poland need, however, to be further improved. One important element will be spreading information to, and promoting the involvement of, small and medium-sized enterprises, among which knowledge of the Programme and capacity to deal with its procedures are limited.

The institutional arrangements in the sector are well established and have been reinforced over the years. Further improvements in the functioning of the KBN and the National Contact Point (NCP) network are envisaged with a view to strengthening science and research and, more importantly, ensuring that its benefits are made more broadly available. This will represent an important step in the necessary process of strengthening science and research and, more importantly, ensuring that its benefits are made more widely available.

Financing remains a major challenge: gross domestic expenditure on research and development needs to be increased significantly. The share of the business sector in financing R&D is relatively low, with less than half the funds for research coming from the private sector. Promoting science will, therefore, require a further increase in spending on R&D activities by industry, small and medium-sized enterprises and the business sector in general. Furthermore, a better co-operation between science, education and economy is essential for the further development of the sector.

### *Conclusion*

In the Opinion of 1997, the Commission concluded that no major problems were expected in this field and that accession would be of mutual benefit.

Since the Opinion, steady progress has been made, and Poland is now better equipped to benefit from the scientific climate fostered by the European Union.

Negotiations of this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is generally meeting the commitments it has made in the accession negotiations in this domain.

In order to complete preparations for membership, Poland's efforts now need to focus on strengthening the links of research institutes with industry and small and medium-sized enterprises and ensuring a firm financial basis so as to create the necessary conditions to nurture innovation.

## ***Chapter 18: Education and training***

### *Progress since the last Regular Report*

Further legislative progress has been made in this area during the reporting period.

Poland continued to participate in the second generation of the Leonardo da Vinci, Socrates and Youth **Community programmes** (*see section A.b – Relations between the European Union and Poland*).

The Minister of National Education and Sport issued two ordinances. The first one, aligning Polish legislation with the **Directive concerning education of children of migrant workers**, was adopted in October 2001 and entered partially into force in December 2001. The other, signed in April 2002, concerns the taking up and conducting of studies by foreigners and their participation in scientific research and training. The latter will allow, as from accession, EU citizens to take up studies in Poland and to participate in scientific research and training without discrimination.

Concerning **reforms in the education and training system**, the Ministry of National Education was reorganised and renamed in October 2001 as the Ministry of National Education and Sports. A new department for Vocational Education and Training and Continuing Vocational Education and Training was introduced with additional capacities.

Regarding the education reform initiated in 1998, a new direction was taken at the end of 2001 by the adoption of a Law amending the Law on the Teacher's Charter, the Law on the Education System and the Law introducing provisions implementing the reform of the school system, that puts more emphasis on vocational education and training. Most importantly, this new legislation aims at re-introducing technical schools at secondary level as well as qualifications at that level. The duration of tuition periods is intended to become more flexible, the approach of broad profiles in vocational education and training is to be strengthened as is the system of external examinations certifying vocational profiles.

This change is based on the Strategy for Development of National Education for 2001 - 2006 adopted in October 2001. The strategy underlines the need for wider pre-school education, stimulating innovative approaches, development of continuous education, improvement of access to education for the rural population and creating conditions for the development of the information society. The strategy is part of the implementation of the National Strategy for Employment and Human Resources Development and both strategies are linked through the importance they attach to the need for proper adaptation of vocational education to the requirements of the labour market.

### *Overall assessment*

Legislative alignment has been completed.

Poland is performing well in the relevant Community programmes, for which the national agencies are very active. For the Community Programmes, two separate organisations have been established as State Treasury Foundations, reporting to their respective supervisory boards: the National Agency for the Leonardo da Vinci Programme and the National Agency for the Socrates and Youth Programmes. They have staff of about 30 people, which seems sufficient to fulfil the tasks assigned to them.

The Ministry of National Education and Sport's administrative capacity is judged satisfactory overall with regard to both staff and equipment. Specific reinforcement in certain areas may be required, and the necessary infrastructure will need to be put in place to ensure the application of the legislation concerning the education of children of migrant workers.

The further implementation of the education reform should be given high priority. While the effects of the new policy line adopted at the end of last year are still to show results, greater attention should also be given to the area of continuing vocational education and training, as well as the idea of lifelong learning which is not yet sufficiently embedded in society's mentality.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that no major problems were to be expected in this field.

Since the Opinion, Poland has achieved steady progress, including with regard to its participation in the relevant Community programmes. A high level of alignment with the *acquis* has been achieved and the administrative capacity is broadly in place.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangement in this field. Poland is generally meeting the commitments it has made in the accession negotiations in this domain.

In order to complete preparations for membership, Poland's efforts now need to focus on ensuring an appropriate administrative capacity to implement the *acquis* in this area and more broadly on implementing its education reform.

## ***Chapter 19: Telecommunications and information technologies***

### *Progress since the last Regular Report*

Poland has made some progress in further aligning its legislation with the EC *acquis* on telecommunications and with further liberalising its telecommunications market.

With regard to the **liberalisation of the telecommunications market**, local telecommunications services became fully liberalised in January 2002. Also from January 2002, long-distance telecommunications operators need no longer apply for licences but can operate after authorisation of the Office of Telecommunications and Post Regulation

Penetration in mobile services has reached 26%. There are three GSM operators but UMTS licences have been issued so that operations can begin as soon as market conditions permit. Fixed network penetration reached 32% and is growing slowly. Network modernisation is almost complete and price rebalancing is well advanced.

With regard to the **regulatory framework** the telecommunications law was amended in November 2001 and again in January 2002.

A new Office of Telecommunications and Post Regulation (URTiP) was established in March 2002. This has become the National Regulatory Authority in Poland for both telecommunications and postal services. It is independent from market operators and its responsibilities have been defined by law.

In addition, several other organisational changes have taken place. In October 2001 responsibility for telecommunications was shifted from the Ministry of Economy to the Ministry of Infrastructure. The Government Plenipotentiary for Rural Area Telecommunications was abolished in October 2001

In September 2001, the Council of Ministers adopted the "ePoland" – Action Plan on the Information Society Development in Poland for the years 2001 – 2006, which follows the approach of the eEurope+ action plan and has to be updated annually. In terms of administrative capacity a new "computerisation" division of the government administration was introduced. This division includes, among other areas of responsibility, computer infrastructure, tele-information systems and networks, computer education, computer science application for the needs of the information society and international co-operation in the area of computerisation.

Apart from the above-mentioned establishment of the Office of Telecommunications and Post Regulation in April 2002, there have been no further developments in the **postal sector**.

### *Overall assessment*

The ambitious objectives at the beginning of the 1990s to open up the sector did not materialise in practice, and Polish telecommunications policy makers were slow to develop competition in the sector. The search for a strategic partner was also relatively late. This slow start has a legacy today, in particular in the low fixed network penetration in non-urban areas. But the success of competition in mobile services prompted a new approach and policy for liberalising and developing the sector. The legislation adopted in 2000 was an important consequence of this new approach. However, the legislation and legal procedures contained a number of loopholes which permitted easy delaying tactics. It is only recently that the Government's firmness in promoting sector policy for the benefit of all has been demonstrated. The degree of liberalisation was increased by the removal of restrictions on the issue of licences. Only the provision of international telephony services remains to be liberalised, and is scheduled for the start of 2003. Universal service and cost oriented interconnection prices should receive more attention in the near future. Poland has not yet been able to evaluate the economic implications of fully implementing the universal services *acquis* so as to achieve affordability, and a decision on this point remains outstanding.

Further legislative efforts are needed to reach full alignment in the area of telecommunications. In particular, the telecommunications law still needs to be amended further, addressing the definition of universal service, the conditions for the provision of universal service, pre-selection and carrier selection, asymmetric regulation, interconnection, market definition, number portability and local loop unbundling. Some elements of the *acquis* on electronic payment instruments still need to be transposed and intensified efforts are needed to adopt all the necessary secondary legislation. The total number of staff in the Office of Telecommunications and Post Regulation, even with the envisaged decrease, is sufficient. However, more appropriately qualified staff are needed to improve the capacity of the regulatory authority to oversee and regulate the sector in an efficient and independent manner. The institutional changes combined with extensive personnel changes (including at the highest level), have had a destabilising effect. A period of consolidation is necessary to set the new authority on a firm footing.

The Polish legislation on postal services is not yet in place. Draft legislation has been under discussion since February 2000.

The administrative capacity of the Office of Telecommunications and Post Regulation to carry out its designated functions in the postal area requires reinforcement. There is a need to establish the Council of Postal Services which will operate on a similar basis to the existing Council of Telecommunications. Both will express opinions on cases submitted by the Minister of Infrastructure and the President of the Office of Telecommunications and Post Regulation and to present, at their own initiative, opinions on cases under the competence of the President of the Office of Telecommunications and Post Regulation. The liberalisation of the postal sector is not very advanced, nor is the issue of universal service.

## *Conclusion*

In its 1997 Opinion, the Commission concluded that Polish policy for the sector since 1990 had at that time, failed to deliver the degree of expansion in the basic public infrastructure that had been achieved in some other applicant countries. This had been caused by insufficient demonopolisation and privatisation which had resulted in poor investment and service performance. It further concluded that recently taken pre-competitive policy measures for licensing and interconnection of local network operators would need to be substantially strengthened if Poland were to show compliance with the *acquis* and to achieve its undoubted potential in the medium term.

Since the Opinion, Poland has made steady progress in aligning with the *acquis* and liberalising its market. The level of alignment is generally high and administrative capacity good.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is generally meeting the commitments it has made in the accession negotiations in this area.

In order to complete preparations for membership, Poland's efforts need to remain focused on continuing alignment in the telecommunications sector, on further liberalising its telecommunications and postal markets and on aligning and implementing its legislation in the postal sector.

## ***Chapter 20: Culture and audio-visual policy***

### *Progress since the last Regular Report*

Poland has made little progress with regard to **audio-visual policy**, with no further legislative alignment since last year's Regular Report and no significant developments with regard to administrative capacity.

A Co-operation Agreement between the National Broadcasting Council of the Republic of Poland and the Supreme Audio-Visual Council of the Republic of France was signed in March 2002, allowing for the exchange of experience in the area of the EC *acquis* and its transposition into Polish law.

A Memorandum of Understanding providing for the participation of Poland in the Media plus and Media training Community programmes was signed in June 2002, taking effect from 1 January 2002.

In the field of **culture**, the Association Council decision allowing Poland to participate fully in the Culture 2000 Community Programme as from 2001 was adopted in October 2001. Some organisational changes and staff reinforcement occurred during the reporting period relating to the Cultural Contact Point This is now situated within the Ministry of Culture.

### *Overall assessment*

Since the adoption of the Law amending the Broadcasting Act in 2000, many aspects of the Polish legislation are in line with the *acquis*, but further amendments remain

necessary in order to reach full alignment. Further amendments and/or implementing legislation are still needed on matters relating in particular to; jurisdiction criteria, the definition of European works, some aspects regarding the promotion of European and independent works, including proportionality in the promotion of works originally produced in Polish, major events and the principle of capital liberalisation. New legislation is pending.

Administrative capacity is judged satisfactory overall, although the planned amendment of the Broadcasting Act will increase the need to strengthen the National Broadcasting Council in particular to monitor observance of the new rules (for example, computer equipment to monitor obligatory programme quotas and to evaluate transmitted content and listeners' complaints about broadcasts). The budget for 2001 was cut drastically due to state budgetary problems, but was increased again in the year 2002.

Judicial procedures are slow, for example, appeal procedures to the Supreme Administrative Court against National Broadcasting Council Decisions; This renders the implementation of the legislation in the sector sub-optimal.

Poland is a party to the Council of Europe Convention on Transfrontier Television and its amending protocol.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that Poland would need to make further efforts to adapt its regulatory framework and industry structures if it were to meet EC requirements in the audio-visual sector.

Since the Opinion, Poland has made significant progress in legislative alignment, especially through the 2000 amendment of the Broadcasting Act, and the strengthening of its administrative capacity. Poland has achieved a high level of alignment. The necessary administrative structures are in place.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is generally meeting the commitments made in the accession negotiations in this field.

In order to complete preparations for membership, Poland's efforts should now focus on completing the final legislative amendments still necessary to be fully in line with the *acquis* and on ensuring that, within the framework of this new legislation, the monitoring and sanctioning powers of the regulatory authority are both effective and comprehensively applied.

## ***Chapter 21: Regional policy and co-ordination of structural instruments***

### *Progress since the last Regular Report*

Since the last Regular Report, important progress has been made in preparing for the implementation of structural policies.

Concerning **territorial organisation**, Poland adopted a government decree on the establishment of a provisional NUTS classification and this classification was agreed with the Commission in June 2002.

There has been one significant development since the last Regular Report regarding the **legislative framework**. This was the adoption in September 2002 of amendments to the Public Finance Act providing for sufficient flexibility and multi-annual programming.

With regard to **institutional structures**, Poland adopted a government decision in March 2002 which designated the management structures for the implementation of the Structural Funds and the Cohesion Fund. The Ministry of Economy has been designated as the managing authority for the future *Community Support Framework* and for the Cohesion Fund and is already fulfilling the role of inter-ministerial co-ordination. The Ministry of Finance has been designated as the future paying authority for all the Funds. The broad lines of implementation arrangements have been drawn up. All managing authorities, of future operating programmes have been designated. This also includes the Ministry of Labour and Social Policy as the Managing Authority for the use of the Human Resources Development Operational Programme and the Equal programme in the context of its overall responsibility for the use of the European Social Fund.

With regard to **programming**, Poland submitted the first draft of its National Development Plan 2004-2006 to the Commission in June 2002. When finalised, this plan will serve as the basis for the establishment of the Community Support Framework. Poland intends to implement six Sectoral Operational Programmes, one Integrated Regional Operational Programme and one Technical Assistance Operational programme. For the implementation of the Integrated Regional Operation programme, important roles will be played by the Marshalls' offices and the Voivods' offices at the regional level.

In order to ensure that the **partnership principle** is applied, an extensive consultation process regarding the National Development Plan was initiated in July 2002. The Monitoring Committee has not yet been set up.

With regard to **monitoring and evaluation**, a macro-economic impact assessment has taken place and work on an ex-ante evaluation, which started in the course of 2002 is ongoing. Some progress has been made on the development of an information technology monitoring system. Work is ongoing regarding the definition of indicators in the context of developing the Operational programmes.

With regard to **financial management and control** some limited progress has been made. Poland has moved forward with the legislative alignment of its Public Internal Financial Control (PIFC) systems, following the entry into force in January 2002 of the amendment to the public Finance Act, which provides a basis for PIFC in line with the *acquis*. With regard to administrative capacity in this field, no significant developments can be reported.

As regards **statistics**, the compilation of regional data for analysis, evaluation and monitoring is continuing.



## *Overall assessment*

Poland has already organised its territory into units corresponding to the NUTS classification. It has made good progress with the adoption of the amendments to the Public Finance Act allowing for multi-annual budgeting as regards the legislative framework for the *acquis* covered by this chapter.

Poland has made important progress as regards the setting up of institutional structures. It has designated the bodies which are to be responsible for the implementation of the Structural and Cohesion Funds. However, the on-going detailed allocation of tasks has to be further developed. Steps must be taken to strengthen effective inter-ministerial co-ordination. Poland should decide as soon as possible on the detail of the implementation structures and will have to meet its detailed commitments to bring the administrative capacity of the Managing and Paying Authorities, intermediate bodies and other relevant bodies up to the level required.

Project selection and decision-making should be managed within a framework that ensures transparency, efficiency and reliability in the implementation of programmes. Poland should also continue to work towards developing the necessary structures and co-ordination mechanisms to manage financial assistance from the European Social Fund in the context of the European Employment Strategy and the inclusion process.

With regard to programming, the contents of the draft National Development Plan for 2004-2006 underlines that progress has been made. However, Poland still needs to further improve its programming capacity. To that end, there will need to be an effective inter-ministerial co-operation. Real partnership needs to be pursued, not just throughout the whole process of preparing the National Development Plan and Operational programmes, but subsequently as well. Further urgent and substantial progress must also be made with the technical preparation of projects eligible for Structural and Cohesion Funds assistance (project pipeline).

Work on ensuring compliance with the *acquis* requirements for monitoring and evaluation must continue. To ensure effective and efficient implementation of the Structural Funds programmes, it is crucial that an effective monitoring system should be up and running in good time. Notably the development of the Structural Funds overall IT system, under the lead of the Ministry of Finance and its interface with the ESF IT module, remains an important concern.

Poland is continuing its efforts in the field of financial management and control. It is preparing the specific procedures for financial control, auditing, certification of expenses and correction of irregularities specifically applicable to the Structural and Cohesion Funds. However, much more progress will be needed to implement the system of financial flows between the Paying Authority, Managing Authorities, Intermediate Bodies and final beneficiaries and putting in place the appropriate systems and procedures for financial management and control at all levels. In this context, considerable increases in adequately trained staff are required, notably within the Paying and Management authorities and Intermediate bodies to ensure their effective operation. Internal audit units have not yet been established in the ministries responsible for the implementation of the Funds and this requires attention. The central audit service within the Ministry of Finance has been set up but the training of internal auditors will have to be a priority. Common guidelines for the internal audit services still need to be drawn up.

Poland still needs to implement procedures for multi-annual planning of budgetary expenditure.

As far as statistics are concerned, more needs to be done to bring them up to the level required for programming, monitoring and evaluation, in particular as regards ex-ante evaluation.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that Poland was committed to establishing a regional development policy adapted to its regional disparities, and added that measures needed to be taken to establish and develop Poland's institutional structures in this field and to improve inter-ministerial co-ordination, and that its administrative capacity needed to be enhanced to implement various operational programmes efficiently and that, subject to these modifications, Poland should, in the medium term, be ready to apply the Community rules and channel funds from the EC structural policies.

Since the Opinion, Poland has made important progress in legislative terms, and, more especially over the last year, has made progress with developing the necessary administrative set up and capacity. A reasonable degree of legislative alignment has been achieved, although the current level of administrative capacity needs to be substantially improved.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is generally meeting the commitments it has made in the accession negotiations in this domain.

In order to be ready for membership, Poland should focus further efforts on defining the detail of the implementation structures and on reinforcing the administrative capacity through sustained action on all levels in line with agreed timetables, strengthening inter-ministerial co-ordination and the partnership process, and further reinforcing systems and procedures for effective monitoring, financial management and control. Poland is committed to a close follow up of the operational programmes of the structural funds and implementation structures and has developed implementation and administrative capacity plans, including the increase of personnel in the managing and paying authorities, for that purpose. These plans should be implemented with due vigour.

## ***Chapter 22: Environment***

### *Progress since the last Regular Report*

Since the last Regular Report, Poland has made legislative progress through the adoption of several executive regulations and has continued its efforts to strengthen its administrative capacity to implement and enforce the environmental *acquis*. However, transposition still needs to be completed through a wide range of ministerial regulations and the environmental administration, particularly at regional and local level, needs to be further strengthened.

With regard to the **integration of the environment into other policies** and the promotion of sustainable development, the government has prepared an executive programme specifying the investment and non-investment tasks under the second

National Environmental Policy of 2001. This programme facilitates the integration of environmental concerns into sectoral policies at national, regional and local level and provides a clear strategy on how the objectives of the second National Environmental Policy are to be met.

In the field of **horizontal legislation**, an environmental information centre has been established in the Ministry of Environment. Regulations regarding environmental impact assessment and access to information have been adopted without completing transposition. A forecast for greenhouse gas emissions has been developed. This forecast will be taken into account in the strategy on climate change, which still needs to be drawn up. Poland completed the ratification process of the United Nations Framework convention on Climate Change (Kyoto Convention) in August 2002.

As regards **air quality**, no progress can be noted other than that zones for air protection have been classified on a preliminary basis.

In the area of **waste management**, several regulations aimed at completing transposition of the waste Framework Directives and the waste oil Directive have been issued.

In the field of **water quality**, no further progress can be noted.

In the field of **nature protection**, 3 regulations have been issued aimed at completing transposition of the birds and the habitats Directives. Poland has made some progress in establishing the list of NATURA 2000 sites - this list has to be finalised in the timeframe set out by Poland.

As regards **industrial pollution control and risk management**, a Centre for “Best Available Techniques” has been established to facilitate implementation of the Directive on integrated pollution prevention and control. A pilot programme for integrated permits has been carried out in three regions. As regards the “Seveso II” Directive, a regulation aimed at completing transposition has been issued.

In the field of **genetically modified organisms and chemicals**, a Commission on genetically modified organisms has been established as well as the Office of the Inspector for Chemical Substances and Preparations. However, the latter Office is not yet operational as it is not fully staffed. Three regulations concerning ozone-depleting substances have been adopted.

With regard to **noise**, a regulation aimed at completing transposition of the Directive on noise emissions by equipment used outdoors has been issued.

As regards **nuclear safety and radiation protection** (*see also Chapter 14 - Energy*), no further developments can be reported.

Poland has continued to carry out some actions to develop its **administrative capacity** in the field of the environment. The staff at the Ministry of Environment and at the regional and local level has been further strengthened (in total, 123 new posts were provided for during 2001). Training has been provided in particular as regards the *acquis* on environmental impact assessment, water quality, Natura 2000, genetically modified organisms and noise. As regards the issuing of permits, Poland's system is still media-based; integrated permits have only been tested on the basis of pilot projects. As regards planning and programming, Poland's programmes for air quality as well as a national

waste management plan are still under preparation. It is of particular importance to ensure that these air quality programmes are available at accession. Half of the regions and about a fifth of districts have prepared waste management plans. As regards monitoring, Poland has continued to make investments. Inspections continue to be carried out regularly. As regards enforcement, non-compliance with environmental standards continues to be subject to fees and fines; these are waived in most cases provided a compliance programme is put in place.

### *Overall assessment*

While Poland has achieved considerable alignment with the EC environmental *acquis*, it still needs to adopt a large number of ministerial regulations in order to complete transposition in practically all areas. This is notably the case as regards air quality directives, water-related directives, chemicals, Integrated Pollution Prevention and Control, nature protection and some waste directives (packaging waste, landfills). Many drafts have been prepared, but completion of transposition by end of 2002 is crucial in order to give sufficient lead-time for putting these new regulations into practice. Close attention should also be paid to the implementation of the *acquis* with regard to waste management (drafting of management plans, upgrading of landfills, strengthening of administrative capacity), water quality (designation of vulnerable zones under the nitrate *acquis*, review of permits for discharges of dangerous substances), industrial pollution control (issuing of integrated permits), nature protection (need to accelerate the identification of sites and species) and chemicals (strengthening of administrative capacity).

The principle of integration requires continuous attention both at national and at Community level. Poland needs to continue integrating environmental protection requirements into the definition and implementation of all other sectoral policies so as to promote sustainable development.

Poland's administrative capacity to implement the EC environmental *acquis* requires close attention. Additional staff resources have been allocated, but, due to budgetary constraints, these are substantially less than originally envisaged. Implementation of environmental laws has largely been decentralised to the regions and districts which were newly established following the 1999 state system reform. This allows environmental problems to be dealt with at the level at which they occur. However, the environmental departments in voivodships and counties still need to become fully operational and the national and 16 regional Environmental Impact Assessment Commissions which were planned have not yet been established. Poland will most likely also need to further increase environmental staff in regional and district authorities and ensure that the available staff resources are allocated in a way that reflects the new and wider tasks arising from EC environment *acquis*, notably the integrated pollution prevention and control (IPPC) Directive. Further training of staff at regional and local level is also necessary. Poland needs to address these issues if it is to be ready to implement EU environmental directives at accession.

As regards the issuing of permits, delays have occurred in introducing integrated permits which should now be launched by the end of 2002. This will constitute a significant challenge for the regional and local authorities. Some 70% of the installations covered by the Directive on IPPC will have to be dealt with at district level. Therefore, Poland needs urgently to train staff at regional and district level in issuing integrated permits, notably

as regards process-issues and technology. In some cases, staff increases are also likely to be necessary. Moreover, clear guidelines from the central authorities on how to implement the new laws are necessary to ensure a coherent approach in all regions. The newly established Centre for “Best Available Techniques” will play a key role but, at present, the Centre is in need of more staff. Far-reaching co-operation between regional and local authorities will also be necessary to maintain the appropriate expertise.

Poland still has limited environmental planning and programming. Most measures are carried out on a case-by-case basis. However, the situation is improving, and deadlines have been set to establish plans and programmes required under the *acquis*. Poland has recently launched the preparation of programmes for air quality, the national waste management plan is also in preparation, although the regional and district plans still need to be improved to meet EU requirements. Poland needs to reinforce its monitoring capacity further. In the field of air, the monitoring capacity needs to be strengthened, in particular as regards particulates (PM10). As regards water, monitoring at the tap of drinking water needs to be extended and it needs to be ensured that all laboratories are able to measure the full set of parameters covered by the drinking water directive. At present, this is not the case. Modern laboratory equipment continues to be lacking. In this context, a more efficient pooling of laboratory facilities in regional centres is necessary to meet the requirements of EU directives at lower costs.

Poland’s environmental inspectorates are well established and well staffed. However, a transfer of staff from laboratories to monitoring and inspection is necessary to meet the requirements of EU directives. In some cases, the frequency of inspections also needs to be improved, in particular for small and medium-sized installations. Nonetheless, large installations are sufficiently inspected and voivodship inspectorates have a good basis for planning and carrying out inspections and for ensuring follow-up to non-compliance.

As regards enforcement, fines are an effective source of revenue and provide an incentive for operators to agree on improvement programmes with the environmental authorities. Poland continues to make significant investments in the field of the environment. However, it needs to step up its efforts to establish comprehensive investment strategies which would improve investment efficiency by focusing the available resources on implementing the requirements of the EC *acquis*. Poland needs a more strategic approach to environmental investments with clear investment planning and listing of priorities. Considerable investments need to be secured, also in the medium-term, to ensure the implementation of the environment *acquis*.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that full transposition of the environmental *acquis* in Poland could be expected in the medium term. It added that effective compliance with a number of pieces of legislation requiring a high level of sustained investment and considerable administrative effort could be achieved only in the long term, and would necessitate increased levels of public and private investment.

Since the Opinion, Poland has achieved considerable progress in aligning with the EC environmental *acquis*, in particular over the past two years, and, more recently, has progressed in developing the necessary administrative capacity to implement the *acquis* in this area. Poland has also maintained a significant investment level.

Negotiations on this chapter have been provisionally closed. Poland has been granted transitional arrangements with regard to the sulphur content of liquid fuels (until 31st December 2006), volatile organic compound emissions from storage and distribution of petrol (until 31st December 2005), aspects of waste management relating to packaging (until 31st December 2007), non-hazardous waste in landfills and shipments of certain wastes (until 31st December 2012), urban waste water treatment (until 31st December 2015) and the discharge of certain dangerous substances (until 31st December 2007), existing Integrated Pollution Prevention and Control installations (until 31st December 2010) and ionising radiation from medical equipment (until 31st December 2006). Poland is meeting the majority of the commitments it has made in the context of the accession negotiations. It had originally planned that most of the *acquis* would be transposed by the end of 2000, but then postponed this deadline to the end of 2001. This revised schedule has been respected to a very large extent as regards Acts of Parliament, and this represents an important achievement. However, delays have occurred in the adoption of implementing legislation, notably in the areas of water quality, industrial pollution control and risk management, and chemicals. Furthermore Poland still needs to provide some information requested during the accession negotiations. This includes an implementation programme for the drinking water directive, a final list of IPPC installations, an investment plan for the landfill Directive. These issues must be urgently addressed.

In order to be ready for membership, Poland should focus further efforts on finalising transposition through implementing legislation, and strengthening administrative capacity in general and for integrated permitting in particular. There is a substantial pipeline of draft legislation across the chapter, including in the areas of water, waste, air quality, GMOs and as concerns NATURA. The adoption of this pipeline legislation would see significant advances in the level of alignment. Within the Action Plan measures are envisaged in every area. Their implementation will strengthen administrative capacity at the national level and give necessary guidance to regional authorities.

### ***Chapter 23: Consumers and health protection***

#### *Progress since the last Regular Report*

There has been further progress in alignment with the consumer protection *acquis* and in improving the administrative capacity necessary for its effective implementation.

In the field of **safety-related measures**, certain ordinances of the Council of Ministers came into force in 2002 relating to safety of toys and safety/labelling of textiles (*see Chapter 1- Free Movement of Goods*).

In the area of **non-safety-related measures**, the Law on consumer credit entered into force in September 2002 while the Law on prices which contains legislative delegation for the Ministry of Finance to issue implementing regulations came into effect in December 2001. An ordinance concerning detailed principles of indication of the prices of goods and services was adopted in June 2002 and entered into force in July 2002. A law on special conditions of consumer sale was adopted in July 2002

From an administrative capacity point of view, positive developments have taken place in several areas (consumers' ombudsmen, conciliation courts, system of dangerous product information and monitoring consumer accidents). Furthermore, some progress has been

made in developing a **functioning market surveillance mechanism**. The law on conformity assessment, which includes the framework for market surveillance under the New approach was adopted by the parliament in September 2002. An important regulation on co-operation between the Trade Inspectorate, local consumer advocates, central and local government institutions, as well as NGOs dealing with consumer protection was adopted in March 2002. All these institutions will have the right to carry out activities such as joint control of entities, shops and other economic operators that infringe consumers' rights. In July 2002, an agreement was concluded between the Federation of Consumers, Polish Consumer Society, Consumer Ombudsmen Board and the Office for Competition and Consumer Protection, assuming the establishment of a Consumer Council which should become a consultative body of the President of the Office for Competition and Consumer Protection.

In March, 2002 the government approved two basic documents: The "Report on the state of legal protection of consumers' rights in Poland" which analyses the current situation and indicates the changes necessary in the Polish legal system to improve protection of consumers' rights and the "Government Programme on Consumer Protection Policy for 2002-2003" implementing projects that will help to develop a consumer awareness policy as a part of the economic policy of the state.

Further progress was made in appointing consumer advocates (360 at the time of writing). These are *powiat*-based consumer ombudsmen, incorporated in the structure of the *powiat* authorities. Moreover, 35 conciliation courts, operating under the auspices of the Trade Inspectorate, supplement and partly relieve ordinary courts, and significantly facilitate consumer access to justice.

In 2001, the Office for Competition and Consumer Protection received 1201 complaints, communications and requests for advice concerning consumer rights. In 989 cases decisions were issued. The rapid acceleration in the rate of complaints continued, with 810 complaints received by the end of April 2002 and decisions issued in 588 cases. Acts of unfair competition consisted in most cases in inadequate marking of products, misleading or prohibited advertising, and imitation of other products.

The Trade Inspectorate is, as market surveillance body for consumer products, composed of the Head Office in Warsaw and 16 branches (Voivodship Inspectorates). The branches have 34 sub-branches located in big cities. Human resources have been increasing over time with almost three thousand staff employed centrally and in the regions by the end of 2001. In 2001, 35 conciliation courts of the Trade Inspectorate received 3117 communications. Of these, 356 led to judgements being passed, including 149 favourable to consumers, and 1202 cases being settled amicably. The rest were general enquiries. In the first half of 2002, 1603 motions were received, 199 decisions were issued, including 107 favourable to consumers, and 467 cases were settled amicably.

Support to consumer organisations in Poland is provided through funds from the national budget. These funds are used to finance activities commissioned by the OCCP from consumer organisations, such as free-of-charge advisory services to consumers, information and education campaigns, comparative tests, and publication of leaflets. In the year 2001, the OCCP devoted 2.65 million PNL (€0.58 million) to supporting consumer organisations in carrying out these kinds of activities (in 2000 this amounted to 2.232 million PNL (€0.56 million)). In August 2002, the Council of Ministers approved a Resolution assigning 20 additional posts: 10 for the Office for Competition and

Consumer Protection and the Trade Inspectorate to deal with market surveillance tasks and 10 for the Office for Competition and Consumer Protection to deal with the protection of consumer groups' interests.

### *Overall assessment*

The activities undertaken since 1997 have had a significant impact, especially as regards the construction of the legal framework for the protection of consumers and harmonisation of relevant national regulations with the corresponding EC directives.

However, further alignment efforts are required. The Consumer Protection Act from March 2000 which includes some provisions concerning product liability, should be revised in order to complete the proper legal framework.

The heavy workload of the staff of the OCCP and the Trade Inspectorate in the area of consumer protection places a considerable strain on resources, and, while noting the August 2002 Resolution of the Council of Ministers allowing additional posts in this area, a further strengthening of administrative capacity coupled with the necessary budgetary resources is essential.

The implementation of the Law on Trade Inspection together with the Law on General Product Safety has made the market surveillance system for consumer products much more compatible with the system in operation in the EC. However, to ensure full compatibility the amendment to the Law on Conformity Assessment will require careful implementation.

The main structures for market surveillance are in place, but fine-tuning remains to be done, in particular completing co-operation between market surveillance bodies and improving the national system of contacts between chambers of commerce, trade bodies and consumer associations as well as the market surveillance information system for Polish enforcement authorities. Finally, the existing system of pre-market certification remains to be removed.

It is necessary to develop intensively the awareness of consumers as regards their rights and the principles governing the operation of the market, as well as the awareness of business entities as regards the applicable regulations, the principles of fair competition, and the advantages of shaping a positive image of a company among its customers. Development of this awareness will require wide-ranging educational and promotional activities. It is necessary to expand and reinforce actions taken so far in the field of information and education, so that they reach a wide audience, including especially consumers in small towns and rural areas and small and medium-sized enterprises.

Consumer organisations should get more financial resources in order to carry out their activities. They should be more actively involved in the enforcement of consumer protection legislation and in market surveillance activities. The capacity of consumer organisations to carry out comparative testing should be enhanced and their point of view better taken into account in the standards' making process.



## *Conclusion*

In its 1997 Opinion, the Commission concluded that the level of consumer protection in Poland was insufficient and that Poland would need to make substantial efforts to update its legislation and bring it in line with the *acquis*.

Considerable progress has been made since that time, and in particular over the last two years, especially with regard to ensuring that the necessary legislation has been adopted. Alignment with the *acquis* in the area of consumer protection is advanced and administrative capacity has seen a reasonable development.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements and is generally meeting its commitments made in the accession negotiations.

In order to complete preparations for membership Poland, should continue its efforts with regard to the adoption of the *acquis* and increase its efforts to further improve the capacity to implement this legislation. The most important challenge at this time is, however, to ensure that the general public and business operators have a sufficient understanding of the legislation and of the rights and obligations which it generates.

## ***Chapter 24: Co-operation in the field of justice and home affairs***

### *Progress since the last Regular Report*

Since the 2001 Regular Report, further progress has been made in Poland in the fields of data protection, migration, asylum and police co-operation. Little progress can be reported as regards visa policy, fight against organised crime and money-laundering. Severe budget constraints have been experienced both in the areas of border management and combating of organised crime. In particular, staffing problems in the Border Guard remain.

Poland has made decisive progress in aligning its legislation on **data protection** with the *acquis*. The amendments to the Personal Data Protection Act of June 2001, which in turn amended the Law of 1997, are now fully in line with the *acquis*. The provisions concerning the processing of sensitive data and liability were addressed. The 1981 Convention of the Council of Europe for the Protection of Individuals with Regard to Automatic Processing of Personal Data was ratified in May 2002. The Convention entered into force for Poland in September 2002. The body responsible for data protection, the Bureau of the Inspector General for Personal Data Protection (GIODO), currently employs a staff of 99, of whom only 14 are directly involved with the inspection process. The Inspector General has a wide range of powers, including the right to intervene for the purpose of correcting or erasing personal data contained in data files. The institution also issues opinions on bills and regulations with respect to the protection of personal data and deals with complaints lodged by the public (*see Chapter 3 - Freedom to provide services*).

As far as **visa policy** is concerned, adjustments have been made since the last Regular Report to the timetable set out in the Polish National Programme for Preparations for membership for completing alignment with the *acquis*. Visas for Cuba were introduced, with some delay, in February 2002. As a first step in introducing visas with the Russian

Federation, Belarus and Ukraine, in May 2002 Poland notified the national authorities about the termination of the agreement of 1985 (with the then Soviet Union) on simplified border crossing with these countries. The termination will take effect 12 months after notification, but until the full introduction of visas this measure is not expected to have a marked impact on bilateral traffic with these countries, since the agreement with the Russian Federation has in essence been frozen since 1994, and those for Belarus and Ukraine nationals concern about 6000 people a year. FYROM was notified in July 2002 of the termination of the visa-free agreement, with effect as of November 2002.

With regard to development of human and material capacity during the reporting period, in December 2001 the Ministry of Foreign Affairs established a Co-ordination Unit for preparations for the introduction of the EU visa regime with the Russian Federation, Belarus and Ukraine as from July 2003. The plans include the development of infrastructure, including the opening of 2 new consulates in Ukraine (in Lutsk and Odessa), adjustments at 10 existing consulates in the Russian Federation, modernisation of three consulates in Belarus, information technology equipment, staffing and training. The design phase of the information technology infrastructure for delivering visas in consular posts abroad has been almost completed, but implementation is not yet evident. Little progress seems to have been made since October 2001.

Following the extension of the list of countries subject to visa obligations before entering Poland, the number of visas issued in the consular posts increased in 2001 to some 244 000, which was a 30% increase compared to 2000. The number of visas issued in Poland at the *voivodship* level (figures originating from the Office for Repatriation and Aliens) has, conversely, decreased, following the entry into force of the new Aliens Law, in July 2001. In 1998, almost 44 000 visas had been issued in Poland, compared to 13 446 in 2000 and 11 232 in 2001. In December 2001 a decision was taken by the Chief of the Border Guard Headquarters in consultation with the Ministry of Foreign Affairs to radically decrease from January 2002 the number of visas issued at border crossings. Actual practice should be in line with Schengen rules, which provide for visa issuance at the border only in exceptional cases. The results are tangible: whereas 2 825 visas were issued at the borders in the first quarter of 2001, only 256 were issued during the same period of 2002, which means a decline of more than 90%.

Continued progress can be noted as regards the management of the **external borders** and preparations for **Schengen**, in spite of considerable financial constraints on implementing foreseen improvements, in particular recruitment, as scheduled.

Traffic continued to decrease at the borders during 2001 and the first months of 2002 (-18.9% in 2001). This decline mostly concerned foreigners (-28%), while only a slight decline in the number of Polish citizens was noted (-5%). Small border traffic also declined significantly (-31.6%). In terms of illegal attempts to cross the border to and from Poland, an overall decline was recorded (-6.5%). The situation was, however, not uniform: the number of people apprehended at the eastern border increased (+5.6%). More than 50% of all those apprehended were stopped outside border crossing points. The number of re-admissions continued to fall: 11 299 people were readmitted to Poland in 2000, against 7 623 in 2001 (-32.5%). This involved 2 224 foreigners in 2001, against 2 414 in 2000 (-7.9%). More than 90 % of these were readmitted from Germany. With regard to checks on the legality of stay, the number of apprehended foreigners increased by 8% and the number of expulsions by 4.6%. The pressure at the eastern border remains

substantial, but the detection rates indicate a significant increase in efficiency by the Border Guard, be it in terms of the still rising number of entry refusals, apprehensions of foreigners at and outside official border crossing points, or the still decreasing readmission rate from Germany.

With regard to implementation of the Schengen Action Plan, one of the main elements the division of internal and external traffic, at both air- and sea ports, is proceeding at a slow pace with only three airports having been identified for adaptation.

The tightening of the network of border patrol units along the eastern border is broadly following the plans of the Border Management Strategy of June 2000. In 2001, another five new border patrol units went into service at the border with Belarus (Plaska, Dolhobrody and Narewka) and Ukraine (Krylow and Horodlo). An additional unit in Hawniki was opened in June 2002. The land border surveillance system was further strengthened in the first half of 2002 through the upgrading of a range of surveillance equipment. By 30 June 2002 all border stations had been connected to a dedicated communications network the POLPAK-T, replacing the traditional telephone system.

As regards training of border guard officers, the necessary legal provisions have been made, which made it possible to start implementation of a new training concept in May 2002.

Recruitment remains, however, a major problem and a weak point for the Border Guard, as the plans to make the service fully professional have been repeatedly delayed since the Border Management Strategy of June 2000 was agreed. For the time being, no shift from the western to the eastern border is in evidence, except that since 2001 all new recruits are being posted to the future external borders and staff retiring from postings on the western border are not being replaced.

A co-operation agreement on combating cross-border criminality was signed with Germany in February 2002 between Border Guards and police services functioning on both sides of the border. A first special contact point for combating cross-border crime was opened at the Polish-Lithuanian border in March 2002.

The location of the future national interface for the Schengen Information System (SIS) II has changed. It was originally to be an administrative entity enjoying some degree of autonomy within the structure of the Ministry of Internal Affairs, but is now to be located within the KCIK (National Centre for Criminal Information).

As regards **migration**, there have been few new developments. Since the entry into force of the New Aliens Act in 2001, Poland complies to a large extent with the migration *acquis*. In terms of administrative structure, the staffing of the Office for Repatriation and Aliens (ORA), which was set up in July 2001, has not significantly increased. This is both because of budgetary constraints and because at the time when the 2002 budget was prepared, the government was seriously considering dismantling the then six month old office as one element in its broader restructuring of the Polish administrative system (*see Section B.1. - Political criteria*).

In respect of **asylum**, Poland experienced a slight decrease in asylum applications in 2001 (4 513) compared to 2000 (4 644). Among the main candidates for asylum, Russian Federation nationals continued to be the most numerous with 1 493 applications, most of them lodged by Chechens. Asylum-seekers originating from Armenia came second with

636, and Afghan nationals third with 414. The number of positive decisions remains very low: 282 at first instance (104 in the first half of 2001, and 178 in the second, i.e. after the entry into force of the new Aliens Act), which means a recognition rate of slightly more than 5%. Readmission agreements were signed with Spain and Austria in May 2002 and June 2002 respectively.

The reception centres have seen the duration of stay extend significantly during the reporting period. This would indicate that asylum-seekers more and more often prefer to stay in Poland until at least a decision has been given. This development has resulted in capacity being exceeded by 50% (1 506 asylum-seekers being hosted in slightly less than 1000 places as at August 2002). In view of the current situation and possible developments after accession, ORA has developed a plan aimed at strengthening the network of reception centres (all situated in the eastern-central part of Poland). Integration of refugees and protection of unaccompanied minors (11 unaccompanied minors were being accommodated in the reception centres in March 2002) remain a problem, with limited resources being available to assist in the process.

In the field of **police co-operation and the fight against organised crime**, it should be noted that the process of ratification of the co-operation agreement between Poland and Europol was accomplished in July 2002. In November 2001, a new organisational unit for co-operation with Europol was established within the Office for International Co-operation of the Police. In February 2002, an agreement on police co-operation and organised crime was signed with Germany. This agreement allows, *inter alia*, for joint cross-border surveillance. The 2000 UN Convention against Transnational Organised Crime (Palermo Convention) was ratified by Poland in November 2001. As for its three protocols, the two protocols concerning trafficking in human beings and smuggling of migrants were signed but have not yet been ratified; the third protocol, on firearms has not been signed.

The Act of July 2001 on collecting, processing and communicating criminal information entered into force in April 2002. Further amendments concerning the institutional framework of the National Centre for Criminal Information (KCIK) are being prepared. There has been a reversal in the trend of criminal offences and the crime detection rate, which demonstrate both successes and shortcomings in the work of the Polish police. In 2001, the number of criminal offences reported in Poland declined by 26 000 cases to 1 107 073. The upward trend from 1997 to 2000 seems to have stopped. The overall crime detection rate in 2001, for the first time since 1998, passed the 50 % mark, reaching 53.8 %, which continued the positive trend of 2000.

The rate of common criminal offences, such as car theft, thefts with break-in or burglary, declined considerably in 2001, which might reflect the first effects of the implementation of the plan to fight common crime launched in February 2001. In contrast to this development, in other categories more crimes occurred, especially in the area of drug-related crime, economic crime, corruption-related crime and forgery.

The staffing situation in the police remains difficult. In January 2002 the Police had 103 309 available posts out of which 100 725 were actually filled, resulting in 2 584 vacancies. This represents a small increase in posts available, up by 514, and posts filled, up by 535, compared to 2001. The Central Bureau for Investigation (CBI), set up in 2000, continues to be a key actor in the police's efforts to combat organised crime. Recruitment

to the CBI is proceeding rather slowly owing to budgetary restrictions. The current staffing is 1 476 with 431 vacancies.

The strategy to upgrade technology in the police service has continued. On the regional level, the main high-speed telecommunications nodes are coming on stream in the police stations. The extension and strengthening of the national police network also comprise the purchase of terminals, to give an increased number of police officers access to the central databases. The integration of different databases has started and is a continuing exercise. The Automated Fingerprint Identification System (AFIS), set up centrally in early 2000, is being extended to regional and local levels.

As regards the **fight against fraud and corruption**, Poland has made some progress in terms of legislative alignment over the reporting period. The ratification of the 1999 Council of Europe Civil Law Convention was completed in September 2002. Institutional developments have been piecemeal, but an anti-corruption strategy was adopted by the Council of Ministers in September 2002 (*see Section B.1.1. - Democracy and the rule of law*). No further legislative developments are to be reported as regards alignment with the Convention on the protection of the financial interests of the European Communities.

Further progress has been made in the field of **drugs**. The Council for the Prevention of Drug Addiction was formally established in March 2001, in June 2002 the Council became operational by the decision to appoint its members. Poland continues to be an important drug-producing country, mainly of synthetic drugs and amphetamines, as well as a consumer country. To respond to this threat a new Drugs strategy was approved in July 2002. Some legal changes in the law to counteract drugs came into force in January 2002, introducing stronger controls on the import and export of different groups of precursors.

In the area of **money laundering** (*see also Chapter 4 - Free movement of capital and section B.1.1. - Democracy and the rule of law*) Poland's international co-operation intensified. Poland initiated further co-operation with the Egmont Group, the Council of Europe, and the Task Force on the Fight against Organised Crime in the Baltic Region. Poland has signed a co-operation agreement with the Czech Republic.

There has been little progress in aligning Polish legislation with the *acquis* as efforts and attention were focused on an initiative which provides for not only registration but also reports of all transactions over 15,000 Euro, even if they are not suspect. These plans would have placed a huge administrative burden on the General Inspectorate for Financial Information and are under review.

With regard to **customs co-operation**, this area has been subject to important organisational changes. On 30 April the Central Board of Customs (CBC) was dissolved, and on 30 June, the General Customs Inspectorate was liquidated. The law stipulates that some functions and tasks of the Central Board of Customs will be taken over by the Ministry of Finance, and the remaining functions will be delegated to lower levels of the customs administration. The Act on Liquidation of the General Customs Inspectorate entered into force in July 2002, with the exception of the operational powers for customs officials, which will enter into force in January 2003.

Further progress has been made in the field of customs co-operation. In April 2002 Polish authorities concluded three Memoranda of Understanding with business organisations to

combat drug trafficking. Agreements for mutual assistance with Slovenia and Macedonia have reached a final stage and talks continue with other countries. Steps have been taken to improve relationships with other authorised agencies at both central and local level. Better co-operation has been achieved with the veterinary and phytosanitary inspectorates.

Progress has been sustained also in the area of **judicial co-operation in criminal and civil matters**, which continues to be based both on international conventions and on a vast series of bilateral agreements covering issues such as the direct transmission of requests, spontaneous information, requests for extradition, and the transfer and enforcement of criminal judgements, whose implementation is satisfactory.

The training of staff dealing with international co-operation in the Ministry of Justice has continued over the reporting period. Better regulation of the secondment of magistrates to other institutions was introduced in the Act on the Constitution of Common Courts, which entered into force in October 2001.

Plans have been finalised to create a Polish judicial network that will become part of the European Judicial Network after accession. Contact authorities have been designated: 40 judges and 20 prosecutors. Care has been taken to ensure a rational geographical distribution, with a specific focus on cross-border co-operation in organised crime issues. One public prosecutor was nominated in April 2002 as the contact person for co-operation with EUROJUST.

### *Overall assessment*

The legal framework is broadly in line with the *acquis* although progress with regard to the capacity to implement has been rather limited. This has been put under significant constraint because of the recent budgetary crisis, which has limited recruitment and training in all areas of justice and home affairs, and also limited the purchase of equipment required for satisfactory implementation of the new *acquis*-related legislation. In addition the impact of the broader restructuring of the Polish administration on the capacity to implement the *acquis* in this field remains to be seen.

In the field of **data protection**, the ratification of the Council of Europe 1981 Convention on the Protection of Personal Data has ensured full legal compliance. Co-operation of the Inspectorate General for Personal Data Protection with law enforcement agencies should be further enhanced in order to ensure full implementation.

Further efforts are required with respect to **visa** policy. The most difficult aspects of achieving full alignment with the EU visa *acquis* remain to be tackled. Poland still has to make provision for introducing visas for three of the countries with EU visa obligations: the Russian Federation, Belarus and Ukraine. As for the EU visa-free travel list, Poland has not yet completely aligned its visa policy. Indeed, nationals of some countries on that list are still required to obtain visas for travel to Poland (Australia, Canada, Brunei, Guatemala, Panama, El Salvador, New Zealand and Venezuela). Moreover, further adjustments may be required to the "invitation" procedure so as to address concerns that it does not fully meet the requirements of the *acquis*. Alignment with the list of countries for airport transit visas is also needed.

The full alignment of the Polish visa policy will require a very significant strengthening of the administrative capacity to enable a number of visas several times greater than the current rate to be issued. Substantial efforts are required in terms of staff, since the consular staff should be considerably increased, and in terms of infrastructure, notably the extension of the consular network and the related information technology systems to diplomatic and consular representations and border crossing points. The equipment required for the detection of falsified documents, as recommended in the Council recommendations of May 1998 and April 1999, is not yet in place. The same applies for most of the border crossing points. Full compliance is still needed as regards the visa sticker and its security features.

Further progress has been made towards the management of the future **external borders**, as confirmed by positive statistical trends on detection of illegal migrants along the eastern border and re-admission from Germany. The implementation of the border management strategy has been more limited than during the previous reporting period, primarily for budgetary reasons. The networking of patrol units continues at a satisfactory pace, but the establishment of a fully professional Border Guard has been significantly delayed. In addition to this, the Polish border guard is still facing over 30% vacancies. Poland needs to take further steps to improve the quality of the control of the borders by increased numbers of specialised trained professionals, properly equipped and with the powers to tackle border-related crime. This cannot be achieved without the necessary funding and enhanced co-operation between all authorities, working in the field of border security.

Preparation with regard to **Schengen** provisions relevant for accession is still broadly satisfactory, but significant efforts will be needed to achieve the timely lifting of internal borders and full implementation of the Schengen *acquis* after EU accession. Indeed, separation of traffic at air- and seaports should be the subject of active attention. The preparation of the future national interface for SIS II is still at a very preliminary stage, in terms of both the development of national applications and the setting up of a national platform.

The handling of **migration** has in general improved over the past year. Some legal adjustments are still required. These include adjustments to legislation on seasonal work and the admission of third-country nationals for study purposes. There is also a need to bring in line with EU standards the uniform format for the residence permit, and resolve an apparent contradiction between the provisions of the Aliens Act and the European Convention on Human Rights as regards appeal procedures in expulsion cases. Further work is also needed to increase the number of agreements on voluntary return.

As for the fight against illegal migration and employment, full co-ordination between the Ministry of Labour and the relevant law enforcement agencies is required. Further integration measures for legal migrants would be a constructive step. The establishment of a central authority in charge of migration issues, the Office for Repatriation and Aliens, has been positive. Its administrative capacity should be further strengthened. Harmonised implementation of the provisions of the 2001 Aliens Law at regional level still needs to be fully ensured. A coherent system of training for the staff of Polish migration services needs to be developed. Poland should pursue its efforts to conclude re-admission agreements with the Russian Federation and Belarus.

Positive developments are also noted in the field of **asylum**, where the Office for Repatriation and Aliens is the lead authority. The 2001 amendments to the Aliens Law have resulted in greater efficiency of the office. Further analysis of the legislation has shown that complete alignment with the *acquis* provisions and more transparent legislation are to be achieved through new legislation, which should focus only on asylum and related temporary protection issues. Preparations should be accelerated for the full implementation of "Eurodac" for the comparison of fingerprints. Further preparation for full co-operation in the framework of the criteria and mechanisms for determining the responsible Member State (Dublin Convention) should include training and the setting up of a co-operation unit. The reception facilities need increased capacity, significant upgrading and special provision for following up special applicants, such as unaccompanied minors. Integration of refugees remains weak and requires specific attention.

In the area of **police co-operation and combating organised crime**, efforts are still required to ensure that Poland has an accountable, reliable and fully co-ordinated police organisation by accession. Special attention needs to continue to be dedicated to the co-operation and co-ordination between the police and the prosecuting and judicial bodies, including for cases of a cross-border nature. There is a rising trend in economic and organised crime, and efforts to combat it need to be stepped up. The severe budgetary constraints, experienced already in 2001 and even worse in 2002, have caused a shortage of personnel and of equipment.

International co-operation has been further developed through the ratification of the Europol agreement and also through additional bilateral agreements. This positive development contrasts with the problems experienced in some inter-agency co-operation, which was especially affected by the reorganisation of the Polish agencies in the customs area and the state protection office. These difficulties in the area of co-operation hamper increased efficiency in the fight against organised and economic crime. To improve such co-operation mutual access to databases through the National Centre for Criminal Information (KCIK) is necessary. Under the mandate set out in the Act on gathering, processing and transmitting criminal information, which entered into force in April 2002, the KCIK will collect and store in one single institution criminal information regarding, for example, cases being investigated, criminal proceedings or fiscal proceedings pending. The Centre is to become the National Interface for the SIS II. Statistical instruments for measuring crime rate should be improved, while new methods of technical crime investigation, including development of forensic investigation should be further developed.

In the **fight against terrorism** further efforts are required to fully comply with the *acquis* and other international standards on the fight against the misuse of the financial system and terrorism. Poland needs to sign and ratify the protocol on firearms to the 2000 UN Convention against Transnational Organised Crime and ratify the protocols concerning trafficking in human beings and illegal migration.

With respect to the **fight against fraud and corruption**, in legislative terms Poland needs to adopt amendments to the Penal Fiscal Code and the Penal Code, in particular so as to make a specific reference to Community Funds in order to avoid ambiguous interpretation of the concept of public funds. The Penal Code still needs to be amended to align it further with the 1997 Convention on the Fight against Corruption involving officials of the EC or officials of Member States of the European Union and the 1997



OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. More broadly, determined implementation of the recently adopted anti-corruption strategy is needed, along with further strengthening of administrative capacity. Poland should pay more attention to the fact that prevention through transparency and accountability standards is as important as repressive tools. Continuity of the work of OLAF in Poland needs to be ensured.

Poland's legislation does not yet cover liability of legal persons in the case of fraud and needs still to comply with the requirements on jurisdiction. The ratification of the 1999 Council of Europe Criminal Law Convention on Corruption is also necessary. Efforts to set up an independent structure combating financial abuse should be speeded up as should efforts to achieve final legislative alignment with the Convention on the Protection of the Financial Interests of the European Communities.

Progress has been made in the legal aspects of the **fight against drugs**, but development over the past two years has been very slow, with the development of the necessary administrative capacity hampered by limits on budget and resources. It should be noted that the recently adopted Drugs strategy is not accompanied by a significant increase in resources to ensure its effective implementation. Many different actors are involved in the fight against drugs, which makes co-operation and decision-making difficult. Poland should adopt and implement a balanced and co-ordinated National Drugs Strategy and intensify its co-operation with Member States and Europol. Fight against drug production and trafficking, especially synthetic drugs, should be strengthened both at the borders and inland.

Poland should speed up its preparation for the future co-operation with the European Centre for Drugs and Drugs Addiction (EMCDDA), especially as regards institution building (the national focal point which is to be put in the National Information Centre for Drugs and Drug Addiction). Legislation on drug precursors is aligned with the *acquis*.

Poland needs to ensure the effective transposition and implementation of the *acquis* on **money laundering** by accession, making sure that the relevant provisions obliging reporting entities to identify customers for transactions of €15 000 or more and to keep records of such transactions are in place.

Of particular importance are increased efforts in terms of providing appropriate training to all professionals involved in the entire chain of institutions for combating money laundering. Furthermore the Financial Intelligence Unit needs to be strengthened by providing it with appropriate staff, equipment and training. In the area of **customs co-operation**, there is broad alignment as regards agreements for increased co-operation with other authorised agencies, foreign customs authorities and the trading community. Efforts are being made to work more closely with the Border Guard. More co-operation at all levels is required to bring the two services together so as to achieve a more efficient performance at the border posts. Poland should speed up preparations to accede to the Naples II Convention and the CIS Convention. Furthermore, competence and rights in operational activities should be clearly defined in the light of the administrative changes which have taken place recently in the customs administration. Finally, an enhanced role for the new customs structure in operational activities would assist in the fight against corruption. In terms of administrative capacity, the appropriate resources need to be allocated to the new structure so as to ensure its effective operation.

The process of accession to international conventions constituting the *acquis* in the area of **judicial co-operation in civil and criminal matters** has been sustained. Judicial co-operation can be considered satisfactory across a range of issues, such as the direct transmission of requests, spontaneous information, requests for extradition or the transfer and enforcement of criminal judgements. Poland still needs to ratify the Council of Europe Convention on Cybercrime. Poland should take further measures to ensure the implementation of the Community instruments in the area of judicial co-operation in civil matters, notably as regards mutual recognition and enforcement of judicial decisions. Direct contacts between competent judicial authorities should be made possible.

All the **human rights legal instruments** under the justice and home affairs *acquis* have been ratified by Poland with the exception of Protocol No 7 to the Convention on the Protection of Human Rights and Fundamental Freedoms, which lays down the *ne bis in idem* principle.

### *Conclusion*

In its 1997 Opinion the Commission noted that Poland was facing significant challenges in the JHA field, particularly concerning drugs, border management, migration and transnational crime. However, it went on to say that, provided that continuing efforts were made to improve the situation, Poland could be able to meet the requirements of the justice and home affairs *acquis* (present and future) in the next few years.

Since the Opinion very significant progress has been achieved in the area of legislative alignment with most of the necessary legal approximation with the relevant *acquis* having been achieved. There has also been progress in putting in place the necessary administrative capacity although not to the same extent and further work is required in each of the areas which fall under this chapter.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transition periods under this chapter in the negotiations. Poland is meeting the majority of the commitments it has made in the negotiations in this field. There have been some delays in meeting the time-tables for introducing visas to third countries and in the case of the Russian Federation, Belarus and FYROM, these timetables have been revised.

In order to be ready for membership, Poland should focus further efforts on completing legislative alignment (in particular on money laundering and visa policy) and in particular on ensuring that the necessary administrative capacity is in place to implement the *acquis* in each of the specific areas which fall within the scope of the Justice and Home Affairs chapter. Aside from the Schengen action plan, a number of specific implementing plans, including the new anti-corruption strategy, the national plan for countering drug addiction, and the anti-crime programme have been developed. Their full and timely implementation would do much to advance the situation and address the issues covered in this chapter.

## ***Chapter 25: Customs union***

### *Progress since the last Regular Report*

Since the last Regular Report, Poland has continued to make progress, both in alignment of legislation and in developing its institutional capacity in the area of customs.

During the reporting period, Poland has adopted certain legislative measures in order to align its legislation further with the **customs acquis**. An amendment to the Polish Customs Code, *inter alia* introducing amendments made to the EC Customs Code in 2000, entered into force in July 2002. A number of ordinances under the Polish Customs Code relating to duty reliefs entered into force in the first quarter of 2002. Moreover, an amendment to an existing ordinance on simplified procedures was adopted and implemented in February 2002. The latter provides for the facilitation of customs clearance for authorised importers and exporters.

As far as **administrative and operational capacity** to implement the *acquis* is concerned, important developments occurred and efforts have continued.

Two laws were adopted that provided the legal basis for a fundamental restructuring of the customs service accomplished in 2002. As a result, both the Central Board of Customs and the General Inspectorate of Customs were abolished. Poland's customs administration is now largely decentralised. The recently reformed Customs Chambers at regional level have become responsible for all tasks involving individual dossiers (including appeal procedures), while legislative, strategic and co-ordinating responsibilities belong to a newly created customs service within the Ministry of Finance. An amendment to the Act on the Customs Service on the investigation and control powers of customs officers entered into force in July 2002.

Steps have been taken to enhance the capacities of customs laboratories in terms of facilities, equipment and personnel.

Customs Offices, in particular those on the Eastern and Northern borders, are being modernised and control equipment and facilities have been improved. Action has been taken to tackle the problem of waiting times at the border, including by increased use of simplified procedures. Staff are being trained continuously.

Regarding computerisation, Poland has taken steps to develop and install systems such as the integrated customs tariff system ISZTAR, a counterpart to the Community's TARIC system, which was officially launched in October 2001, and the new computerised transit system NCTS. Since June 2002, the customs-entry system CELINA has been operating as a pilot project in two locations. The financial and accounting system ZEFIR is in use in 11 locations. The Legal Information System ALEXIS has been completed.

The Polish customs administration's website has been extended by adding mobile telephony functions under the WAP system (this is particularly useful for indicating waiting times at the borders).

An updated Business Pre-Accession Strategy for 2004 and beyond has been approved. Its implementation will be monitored through six-monthly implementation reports.

### *Overall assessment*

The long term objective of the new structure for the customs administration is to offer a consolidated management structure which will ensure a more effective, and efficient service. The changes have had an immediate and serious destabilising effect, in particular where they have involved extensive personnel replacements. The integration of both the customs administration and the Inspectorate into the Ministry of Finance has led to a certain uniformity of powers between the two and should improve co-ordination. The Polish customs administration has experience of applying many similar provisions to those of the Community, including the Common Transit system and limited export refunds. This notwithstanding, the fact that certain commercial policy measures will not apply until accession has an impact on the application of provisions in areas such as non-preferential origin and inward and outward processing. In addition, the quota management system is currently based on licensing rather than a first-come, first-served system.

In some local offices, instructions and practical information are still paper-based (compendium of origin stamps). Therefore, these local offices do not always have access to complete and up-to-date information. The implementation of information technology-based systems should resolve this problem in the future.

The results of post-clearance import controls are not always followed up as rapidly as Community legislation would require, and customs debt provisions are not yet applied exactly as they would need to be in the Community. These practices affect the timely collection or recovery of duties and should be reviewed in the light of safeguarding the Community's own resources after accession. Similarly, upon accession, the Polish authorities will need to apply certain international agreements on behalf of the Community, and must in that context review the practice of systematically breaking seals on lorries arriving under the TIR procedure in response to requests by other services (Border Guard) at certain locations.

As regards operational capacity in the information technology area, a nation-wide customs declaration processing system is still lacking, which leads to inefficiencies in handling customs clearance and a lack of quick and comprehensive information for control and management activities. Although progress is noted, many complex and time-consuming tasks still lie ahead in the customs information technology area. Due to the reorganisation of the Polish customs administration, customs information technology projects were delayed and certain projects (e.g. the risk analysis system CELESTA) could not be pursued. The current time plan does not leave room for contingencies in order to have the systems ready, tested and operational by the time of accession. It is of the utmost importance that the necessary human and financial resources be allocated urgently by Poland to enable its customs administration to meet the major computerisation and interoperability requirements in the customs area, otherwise it will not be ready in time.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that Poland needed to continue and reinforce its efforts, referring in particular to computerisation, in order to be ready to fulfil the responsibilities of Community customs administration.

Since then, Poland has made steady progress in aligning with the *acquis* in this area (almost complete) and in strengthening its administrative capacity. However, preparations for computerisation and connection to Community information technology systems, which were progressing well until the end of 2001, have encountered very serious delays due to the reorganisation of the customs administration. Poland's customs legislation is already largely aligned with the *acquis* but further efforts will be necessary to reach full alignment upon accession, in particular in the field of warehousing, free zones and customs regimes with economic impact. In terms of administrative capacity, the capabilities of the staff are satisfactory, but the necessary information technology systems are lacking.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is generally meeting the commitments it has made in the accession negotiations in the customs area.

In order to be ready for membership, Poland should focus further efforts on accelerating the work on computerisation and interconnectivity and overcoming the disruption caused by the reorganisation of the central customs service, pursuing the implementation of the Business Change Management Plan and on taking the necessary steps to prepare for the implementation of measures that will only be introduced upon accession. Efforts should also focus on completing the alignment of Poland's customs legislation on that of the Community, in particular by adopting the amendment to the customs code currently under preparation.

## ***Chapter 26: External relations***

### *Progress since the last Regular Report*

Since the previous Regular Report, Poland has continued to align with the *acquis* on common commercial policy and to co-ordinate positions and policies within the World Trade Organisation with the EU, in particular with regard to the Doha Development Agenda negotiations.

As regards the **common commercial policy**, upon accession Poland will be required to align its tariffs with those of the EC. Poland's applied tariffs currently average 15.1% (MFN) on all products, 33.8% on agricultural products, 18.5% on fishery products and 9.9% on industrial products. By comparison, EC tariffs currently stand at 6.3% on all products, 16.2% on agricultural products, 12.4% on fishery products and 3.6% on industrial products.

In November 2001 the law on protection against excessive imports of textiles and clothes into the Polish customs territory and the law on protection against dumped imports of goods into the Polish customs territory came into force. The former law is applicable to textiles and clothing falling under the WTO Agreement on Textiles and Clothing (ATC). The trade defence measures and procedures specified in this law will respect the provisions laid down in the ATC. The list of textiles and clothing not subject to this law will be specified in an ordinance of the Council of Ministers. The latter law transposes the provisions of the *acquis* with respect to protection against dumped imports from countries not members of the European Community. For both laws the necessary secondary legislation has been adopted.

The law on protection against subsidised imports of goods into the Polish customs territory was adopted in June 2002. The law furthers alignment with the WTO Agreement on Subsidies and Countervailing Measures, and with the *acquis* regarding protection against subsidised imports from countries not members of the European Community.

There are no further developments to note concerning the *acquis* on dual-use goods. With regard to the *acquis* in the field of export credits, the law on interest subsidies for fixed-rate export credits became operational in December 2001. The law specifies the conditions for subsidising fixed-interest export credits from the state budget, bringing Polish legislation in line with the EC and OECD regulations. Institutionally the proposed system will be covered by the Programme for Subsidising Interests of Export Credits (DOKE), under which Bank Gospodarstwa Krajowego (state bank) and banks that extend export credits will effect interim settlements of their mutual obligations. Within the framework of this programme, banks may apply for state export financing support.

With regard to **bilateral agreements with third countries**, there have been few developments. The non-preferential agreement with the United States mentioned in last years report has been implemented. Poland has commenced discussions on a BIT with the Russian Federation. Within CEFTA, Poland signed the Additional Protocol No. 10 relating to the liberalisation of agricultural and food trade, and the Additional Protocol No. 11 relating to the rules of origin of goods.

In the area of **development policy**, co-operation and assistance, Poland continues to participate actively in the OECD's work and is adapting its development practices to the guidelines laid down by the Development Assistance Committee. For the implementation of **humanitarian aid** initiatives, the government co-operates with non-governmental organisations established in Poland. Total bilateral and multilateral **external assistance** given by Poland to developing and eastern countries in 2001 amounted €48.7 million. More than €200 million have been put aside in the form of highly preferential tied aid credits.

### *Overall assessment*

The EU and Poland have established a framework for co-operation regarding WTO issues at both ministerial and departmental level. Poland has been supportive of EU policies and positions within the WTO framework, in particular during the preparation for and the launching of, the Doha Development agenda. Close co-ordination is needed and should continue to ensure the smooth alignment of Poland's GATS commitments with the EC's commitments and MFN exemptions. Steps have been defined to this extent. Poland is a signatory to the Information Technology Agreement, and an observer to the WTO plurilateral agreements on trade in Civil Aircraft and Government Procurement. With regard to the WTO Agreement on Trade in Textiles and Clothing (ATC), Poland has not used its third stage of integration under the ATC to align its integration programmes on those of the EC. As a result, some discrepancies remain.

Poland has reached a high level of alignment with the *acquis* in both the areas of export credits and dual use goods. In the case of the latter further alignment in particular regarding the list of dual use goods remains to be completed. Full alignment to the *acquis*, in particular the general export authorisations, can only take place upon accession. Poland keeps the industry regularly informed of developments in this field and

has developed bilateral contacts with the EU Member States to exchange best practices on export control issues.

In addition to its bilateral free trade agreements with Estonia, Latvia and Lithuania, the EFTA countries, Turkey, Croatia and Israel, Poland is a member of CEFTA. Further efforts are required to ensure that Poland keeps the Union fully informed both about existing trade agreements and about any negotiations aimed at the conclusion of new trade agreements with a third country. Prior to accession Poland will need to renegotiate or renounce all international agreements concluded with third countries that are incompatible with its future obligations as an EU Member State, including the Friendship and Navigation Treaty with Japan. Decisive steps are needed, as a matter of urgency, to bring bilateral investment treaties in conformity with the Treaty obligations. Failure to do so will mean that the conflict between the bilateral investment treaties and Treaty obligations will need to be resolved in the Accession Treaty.

Poland's alignment with and future participation in the common commercial policy is administered by the Ministry of Economy. The administrative infrastructure which needs to be in place with respect to customs services is discussed in the chapter on customs union (*Chapter 25 – Customs union*).

Development and humanitarian aid are administered by the Ministry of Foreign Affairs.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that Poland was well placed to meet Community requirements in this field, provided existing trade barriers were eliminated so as to align more closely with the Community's trade regime.

Since that time, Poland has made gradual progress and has achieved a generally high level of alignment with the *acquis*, although on a number of occasions measures have been adopted which led Poland away from the *acquis* in the field of commercial policy, rather than towards it. Poland has also developed a considerable administrative capacity.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is generally meeting the commitments it has made in the accession negotiations in this field.

In order to complete preparations for membership, Poland's efforts now need to focus on finishing the process of legislative alignment, on taking decisive steps, as a matter of urgency, towards the renegotiation or abrogation of its bilateral investment treaties in full conformity with its EU membership obligations, on bringing its development policy in line with that of the EU as well as on ensuring that the capacity exists to fully implement and enforce the EC *acquis* in this field upon accession.

## ***Chapter 27: Common foreign and security policy***

### *Progress since the last Regular Report*

Since the previous Regular Report Poland has continued to align its foreign policy with that of the European Union and has participated constructively in the framework of the Common Foreign and Security Policy.

The regular **political dialogue** established by the Association Agreement with Poland is proceeding smoothly, and Poland continues to orient its foreign and security policy towards that of the European Union. It continues to participate actively in the framework of the Common Foreign and Security Policy (CFSP), including in meetings at the level of Political Directors, European Correspondents and Working Groups.

Poland has shown a keen interest in the development of European Security and Defence Policy (ESDP) as part of the CFSP, and has actively participated in the exchanges in this context with the EU, in EU + 15 format (i.e. non-EU European NATO members and candidates for accession to the EU) and in EU + 6 format (i.e. non-EU European Members of NATO).

As regards alignment with **EU statements and declarations**, Poland has regularly aligned its positions with those of the Union and, when invited to do so, has associated itself with the Union's **common positions and joint actions**. Since October 2001, Poland has associated itself with five declarations and four common positions.

Poland has continued to comply with **international sanctions and restrictive measures** imposed by the UN or the EU. However, further adjustment to align with both the introduction and the withdrawal of such measures is still needed. The administration has also carried out an information campaign targeting export companies concerning the new legal situation.

Poland has confirmed its preparedness to contribute both to EU Rapid Intervention Force missions and to EU civilian instruments for crisis management. It participated in the Pledging Conference for Capacities' Improvement (November 2001) and the EU15 +6 Defence Ministers' meeting in May 2002. It has shown an active interest in participating in the forthcoming EU Police Mission in Bosnia and Herzegovina.

As for defence co-operation, Poland has made considerable efforts to support international peacekeeping missions. It has participated in a series of UN (SFOR, KFOR and ISAF) and OSCE peacekeeping and observer operations.

Poland has ratified the Rome Statute establishing the International Criminal Court in November 2001, and has passed new legislation against the financing of terrorism. It has ratified relevant international conventions relating to terrorism. In November 2001 Poland organised in Warsaw a CEEC conference on the fight against terrorism. It has aligned with the EU Action Plan of September 2001 and with the four Common Positions on combating terrorism.

Relations with the Russian Federation continued to improve significantly with the visit of the Russian President to Poland in January 2002. This was the first visit to Poland of a Russian President in nine years. Poland has demonstrated a keen interest in contributing to the definition of the position of the Kaliningrad enclave within the EU after Poland's and Lithuania's accessions, and has contributed actively in consultations with the Russian Federation, Lithuania and the Commission.

Poland continued to participate actively in regional co-operation fora, such as the Visegrad group, the Central European Initiative and the Council of the Baltic Sea States, which held an extraordinary meeting on Kaliningrad in the Russian enclave in March 2002. It has supported the Stability Pact for South-East Europe.



Poland continues to participate in regional security co-operation schemes, such as the structure established with Lithuania, Latvia and Estonia, and the trilateral co-operation with Germany and Denmark. Within these frameworks, joint battalions are operational. Poland also co-operates closely with France and Germany in the context of the Weimar Triangle, in which common exercises are being organised on a rotating basis. In addition, Poland has also developed bilateral defence co-operation agreements with Ukraine and with Lithuania. In addition, a tri-national brigade comprising soldiers from Poland, the Czech Republic and Slovakia was set up at the end of May 2002.

With regard to administrative co-operation structures, work was completed on the definition of the prerogatives of the Political Director in the CFSP context. A plenipotentiary was designated at the Polish mission to the EU to represent Poland in the ESDP context.

### *Overall assessment*

On the regional level, Poland takes part a number of co-operation forums. It continues to support the Stability Pact for South-East Europe and participate in the EU Action Plan on the Northern Dimension. It continues regional security co-operation with Germany and Denmark, with the Czech Republic and with the Baltic States. Poland's bilateral relations with neighbouring European partners remain strong. Relations with the Russian Federation in general, and the Kaliningrad District in particular, have improved considerably. Relations with Ukraine remain very close. Relations with Belarus are hampered due to the political situation in that country.

Particular effort has been made by Poland to ensure contact with, and between, regional authorities, especially as regards cross-border co-operation, in the context of the Euroregions established along all the Polish borders. Poland has sought to strengthen its bilateral relations with neighbouring European partners. In particular, contacts at the highest political level continue to be very frequent with Lithuania and Ukraine.

Poland continues to basically comply with sanctions regimes imposed by the UN and the EU, and Polish legislation is to a great extent aligned with the *acquis*. Further amendments to administrative rules are needed and planned with a view to smoothening and speeding up decision-making procedures on sanctions implementation.

With regard to the EU code of Conduct for Arms Exports, Poland has integrated the principal criteria into its domestic legislation. The Polish Ministry of Foreign Affairs is well staffed and has an administrative set-up compatible with EU CFSP structures. Since 2001 it includes the post of a Political and Security Committee interlocutor. A liaison officer to the Military Committee has been appointed. The Ministry of Foreign Affairs has a European Correspondent but, as yet, no Political Director. However, there is an equivalent official who assumes the Political Director's tasks at co-operation meetings with the EU. Further strengthening in terms of supporting staff will still be required for the European Correspondent Bureau and ESDP co-operation. The necessary resources to achieve this will have to be secured. The Ministry of Foreign Affairs is connected to the Associated Correspondent's Network information system, through which the EU communicates within the CFSP with the associated partners.

## *Conclusion*

In its 1997 Opinion, the Commission concluded that it was expected that Poland as a member could effectively fulfil its obligations in this field.

Since the Opinion, Poland has made good progress in the field. Poland's alignment with the *acquis* in the CFSP is overall satisfactory and significant efforts have been made to ensure that the appropriate administrative capacity will be in place by accession.

Negotiations on this chapter have been provisionally closed and Poland has not requested any transitional arrangements. Poland is generally meeting the commitments made in the accession negotiations in this field.

In order to complete preparations for membership Poland's efforts now need to focus on ensuring its foreign policy orientation remains in line with the Union's developing foreign and security policy, adopting the legislation on economic sanctions and finalising the development of the necessary administrative structures.

## ***Chapter 28: Financial control***

### *Progress since the last Regular Report*

Since last year's Regular Report, Poland has made some progress in this area both in legislative alignment and in improving its administrative capacity.

Poland has moved forward with the legislative alignment of its **Public Internal Financial Control** (PIFC) systems, following entry into force in January 2002 of the amendment to the Public Finance Act, which provides a legal basis for PIFC in line with the *acquis*. The amendment to the Act describes managerial accountability in respect of financial management and control systems, establishes functionally independent internal audit services in the budget spending centres, and gives the Ministry of Finance responsibility for developing and coordinating methodology for the PIFC systems, including compliance assurance. The central unit harmonising PIFC methodology in Poland, is a department within the Ministry of Finance. It was created in January 2002 and currently employs 11 staff. The head of this department, the General Internal Auditor is currently being recruited. In February 2002 the Implementation Strategy for the System of Financial Control and Internal Audit was approved. This Strategy Paper lays down the principles for further implementation of the Public Finance Act and the development of secondary legislation. In July 2002 the Ministry of Finance approved the Detailed Method and Procedure of Performing Internal Audit. This regulation lays down rules for internal audit in the public sector.

Regarding **external audit**, the Supreme Chamber of Control (NIK) has set up a task force to implement the recommendations on external assessment of its functioning and has drafted a strategic development document, as well as working versions of audit manuals. The NIK co-operates with the European Court of Auditors and is an active member of the European (EUROSAI) and international (INTOSAI) networks of supreme audit institutions.

Poland has made limited progress in the area of **control over structural action expenditure**. With respect to ISPA, good progress has been made in setting up an

adequate management and control system that can ensure proper implementation of the ISPA assistance, in particular with regard to the development of working procedures, manuals and checklists. Nonetheless, further steps need to be taken to meet the requirements for internal financial control and internal audit, and administrative capacity needs to be assessed. While the amended Public Finance Law, referred to above, has established the legal base for the PIFC system, little progress has been made in introducing the Extended Decentralised Implementation System (EDIS) for the Phare programme, although some progress has been made in the case of ISPA. In July 2002 the Commission adopted a decision provisionally conferring management authority for SAPARD, on a fully decentralised basis, on the SAPARD Agency. (see *Introduction*)

With regard to the **protection of the Communities' financial interests**, an administrative reorganisation has resulted in the transfer of the horizontal, multi-disciplinary anti-fraud co-ordinating structure (GAFU) from the customs administration to the treasury control structure of the Ministry of Finance, where it will continue to perform similar tasks. Given that this decision was only recently taken, it is too early to give an evaluation at this stage.

### *Overall assessment*

With regard to Public Internal Financial Control, Poland needs to further enhance the functions of managerial accountability and to establish operational internal audit units in all line ministries and provide for an adequate number of staff. Development and approval of implementing regulations of the Public Finance Act are of particular importance. The General Internal Auditor should be appointed as soon as possible so that the leadership necessary for developing PIFC in the public sector in Poland is not further delayed. Manuals for financial management and control, an Internal Audit Charter and a Code of Ethics for internal auditors have to be developed. Internal audit manuals are being drafted but await implementing secondary legislation for approval. Some training courses have already taken place for internal auditors, but much more training will have to be provided, as and when internal auditors in line ministries are recruited.

In the area of external audit, the Supreme Chamber of Control (NIK) is considered to fulfil the criteria for the adequate functioning of a supreme audit institution. Operational and functional independence of the NIK and its audit scope are broadly satisfactory, as are the formal mechanisms for discussing the NIK's recommendations in Parliament. The audit manual needs to be finalised and approved and some attention paid to bringing its formal audit opinion into line with internationally recognised auditing standards. Further efforts on the part of the NIK but even more importantly on the part of Parliament and the Government are required to enhance procedures for following up actions to be taken on audit findings.

With regard to the control of structural action expenditure, substantial efforts need to be made in order to enhance Poland's capacity to manage pre-accession funding and future structural funds, in particular through the establishment of clear, public, internal financial control rules and procedures, together with substantial reinforcement of Poland's administrative capacity in this regard. Poland needs to reinforce and accelerate efforts leading to the extended decentralised implementation system before mid 2003 in order to allow EDIS accreditation to be achieved in the second semester of 2003. The development of mechanisms for the rapid recovery of lost EC funds is equally important (see also *Chapter 21 - Regional policy and co-ordination of structural instruments*).

With a view to ensuring effective protection of EC financial interests, Poland needs to ensure that the experience and operational capacity of the multi-disciplinary anti-fraud co-ordinating structure (GAFU) is transferred to the new service within Ministry of Finance, and that its legislative framework and administrative capacity to prevent and fight against fraud is substantially reinforced.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that the process of implementation of financial control systems would need significant efforts by the Polish administration, both in terms of institutional structures for adequate financial control and basic legislation. This having been said, it further remarked that provided the necessary resources were made available, Poland should be in a position, in the medium term, to fulfil the EU requirements in the field.

Since the Opinion, steps forward have been taken, mainly over the past two years. A reasonable level of alignment with the *acquis* has been achieved, implementing capacity, however remains considerably below even this level. Further substantial efforts are required therefore to bring Polish legislation in line with the *acquis* and ensure that the necessary administrative capacity is in place.

Negotiations on this chapter have been provisionally closed. Poland has not requested any transitional arrangements in this area. Poland is generally meeting the commitments it has made in the accession negotiations in this field.

In order to be ready for membership, Poland will need to give urgent attention to successful implementation of its new Public Internal Financial Control legislation, to completion and strengthening of its legislative framework and administrative capacity for the protection of the Communities' financial interests, to moving substantially forward on the management of pre-accession funding and to the establishment of the necessary structures and adequate administrative capacity for future structural funds, in particular regarding control and audit. The full implementation of the measures in the Action Plan relating to, notably the strengthening of the internal audit function and the development of an anti-fraud unit, would go a long way to ensure that the current gaps in administrative capacity are filled.

## ***Chapter 29: Financial and budgetary provisions***

### *Progress since the last Regular Report*

Poland has made modest progress in this area since the last Regular Report.

Further progress has been achieved concerning the **national budget and EC co-financed measures**. An amendment to the Public Finance Act providing for multi-annual budgeting in Poland has been adopted. This regulates the relationship between foreign assistance funds and the state budget and will allow multi-annual co-financing of assistance projects from the assistance funds. (*See Chapter 21 – Regional Development and Co-ordination of Structural Instruments*)

As regards the **own resources system**, some further progress can be noted. In January 2002 a unit to co-ordinate the administrative preparations of the own resources system

was created within the Ministry of Finance and in March 2002 Poland adopted a detailed timetable of actions regarding the responsibilities within the Polish administration in the area of own resources.

With regard to the VAT resource, the Ministry of Finance has begun to prepare the draft VAT statement and first preliminary budgetary calculations of Poland's overall contributions to the EU budget have been conducted

National legislation for collecting sugar production levies, in line with Community sugar provisions, came in force as from October 2002.

### *Overall assessment*

The necessary legal framework for collecting the own resources is in place. In terms of Poland's administrative capacity, all the institutions necessary for applying the own resources system already exist but for some of them the responsibilities and organisational structure are still to be specified. The co-ordinating unit created within the Ministry of Finance in January 2002 is still understaffed. This unit is supposed to co-ordinate the establishment of the necessary procedures, infrastructure and capabilities to fulfil the administrative conditions in the area of own resources and would co-ordinate from accession as a permanent own resources unit, the calculation, control and payment of own resources and contacts with and reporting to the Commission in this area. Its administrative capacity needs to be considerably strengthened.

The Polish administration has adopted a timetable of actions, made progress in terms of basic analysis and made the first calculations. Co-ordination between the institutions involved should however be further improved, and the links between the system of own resources and the state budget should be established.

As noted under chapter 25 (Customs Union) Poland has made significant efforts to align with the Community Customs code. Sufficient staff and an adequate infrastructure for collecting customs duties are available. However, the new customs clearance (CELINA) and accounting (ZEFIR) systems have yet to be implemented in all regional Customs Chambers and their customs offices. A sugar unit exists within the Agricultural Market Agency but the procedures for collecting, accounting for and controlling sugar levies have still to be defined and put in place. The systems and procedures for keeping the 'A' and 'B' accounts, for making traditional own resources (TOR) available and for reporting on cases of fraud and irregularity still need to be set up. The responsible service for conducting internal checks/audits in the area of TOR has also yet to be determined.

With regard to the VAT resource there has been a significant effort to align with Community legislation. Considerable efforts are required in order to be able to calculate the weighted average rate (WAR) in accordance with ESA-95 and to determine the impact on the VAT base of any special arrangements agreed under the Taxation Chapter. Poland should continue to participate in the VAT simulation exercise, which is the key tool for effectively testing its capacity regarding the VAT resource. Sustained efforts are also needed to improve the actual collection and control of VAT. Another problem remaining is that the classification of goods for VAT purposes is not yet consistent with the classification of products used by the Central Statistical Office (GUS). Moreover, GUS does not have access to detailed figures from the VAT administration system.

As far as the GNP resource is concerned, Polish national accounts are fairly complete and the concepts used are in general in accordance with ESA-95 requirements, with some exceptions. The Central Statistical Office has made efforts to ensure and improve the exhaustiveness of GNP statistics (investigation of hidden economy, survey of non-registered exports and imports, compilation of supply and use tables). Nevertheless, in order to fully comply with the *acquis*, further efforts and fine-tuning remain needed on methodology, quality and completeness of data. Also, Poland should ensure an appropriate staffing and sufficient staff training in the national account Unit. The full *acquis* implementation could be accelerated by enhanced co-operation between the responsible authorities.

With regard to the control of future EC own resources, Poland should continue its efforts to set up effective instruments to combat VAT and customs duty fraud so that the financial interests of the EC can be protected.

### *Conclusion*

In its 1997 Opinion, the Commission concluded that, in order to ensure that own resources were established, monitored and made available in line with Community regulations, Poland would have to overhaul its existing customs system. Furthermore, for the purposes of accurately calculating the GNP resource, considerable improvements would have to be made to the national accounts to ensure that they were reliable, homogeneous and complete. The Commission added that improving the statistics would also be essential for drawing up the VAT own resources base, which would mean bringing Poland's VAT system fully into line with the Community directives.

Since the Opinion, Poland has made steady progress in these areas, in particular as regards the alignment of its customs system and progress towards applying the ESA-95. The legal framework for budgetary management and for the transparency and efficiency of financial flows to and from the EC budget is in place and Poland has achieved a high level of alignment with the *acquis*. The level of administrative capacity does not show a similar state of advancement.

Negotiations on this chapter continue. Poland is generally meeting its commitments made in the accession negotiations in this field.

In order to complete preparations for membership, Poland's efforts should now focus on its administrative capacity to be able to implement the own resources system and in particular on ensuring the timely operation of the customs clearance and accounting information technology systems, on improving its calculation of the VAT base and on setting up a series of procedures (for collecting, accounting for and controlling sugar levies, for keeping 'A' and 'B' accounts, for making own resources available and for reporting on cases of fraud and irregularity). Further efforts are needed with a view to securing co-ordination between the relevant authorities.

### **3.2. Translation of the *acquis* into the national languages**

Applicant countries are required to translate the various legal texts constituting the *acquis* into their national languages by the time of their accession. Primary and secondary legislation alone represents a considerable volume of texts, roughly estimated at 60 000-70 000 pages of the Official Journal. In the framework of the translation of the *acquis*, the

Court of Justice has defined a set of key judgements to be translated as a priority (representing about 15 000 pages). To help the candidate countries in this process, assistance is being provided under the Phare programme. With the help of TAIEX, a dedicated database has been set up to act as a repository of all translated acts and as a tool through which candidate countries forward their translations to the Commission and the Council. The legal revisers of the Commission and the Council vet the submitted texts; they meet regularly and liaise with representatives of the centralised Translation Co-ordination Units in each country.

The work of translating all the *acquis communautaire* into Polish was launched in 1996, and in July 2000 a Translation Department was created in the office of the Committee for European Integration to rationalise and speed up the translation and verification procedure. The department which oversees the translation exercise, most of which is carried out under tender, currently has 20 members of staff. A database of translations has been in existence since 2001 which facilitates access to translations of the *acquis*.

As at September 2002, 8 200 pages of revised text and 68 400 of unrevised text were registered in the dedicated Commission database. The timetable set out in Poland's National Programme of Preparations for Membership states that "a vast majority of the translation is expected to be completed in 2001", with the verification to be completed 6-7 months before the date of accession. Significant additional efforts will be required in the immediate future, if Poland is to meet this target.

Due attention must also be paid to the training of conference interpreters.

### **3.3. General evaluation<sup>20</sup>**

Since the Opinion, Poland's progress has been characterised by a slow start and a subsequent acceleration in respect of the adoption of legislation. As a consequence the vast majority of primary *acquis* is now in place, although in some sectors there are considerable gaps in the necessary implementing legislation, for example, in the veterinary, environment and food safety areas. There has been a knock on effect in terms of administrative capacity which has progressed since the Opinion, but not to the same extent as legislative alignment.

Over the past year, Poland has further advanced its alignment of primary legislation, notably in the areas of transport and free movement of persons. The performance in adopting implementing legislation has varied considerably between sectors. The development of administrative capacity has mirrored the progress of implementing legislation.

Overall, Poland has achieved a high degree of alignment with the *acquis* in many areas, and is well advanced with reaching adequate administrative capacity to implement the *acquis* in a number of fields, although further efforts remain to be made across the board with respect to administrative capacity, and in a number of sectors in particular with regard to alignment with the *acquis*. Detailed plans have been agreed, in particular in the negotiations and in the Action Plan, to cover the remaining gaps.

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<sup>20</sup> See "Towards the Enlarged Union: Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries", COM (2002) 700.

With regard to the internal market, in the area of *free movement of goods* considerable progress has been made over the last two to three years, notably by putting in place the framework legislation needed and by developing further the institutional infrastructure needed for its implementation. To date a high level of alignment has been achieved in relation to the primary legislation and administrative capacity has reached a reasonable level. Legislative developments in the area of market surveillance need to be built on through the development of the necessary administrative capacity. The area of food safety has not seen the progress in the adoption of implementing legislation identified as necessary in the last Regular Report and administrative capacity remains weak. Further work is also required to ensure the structures are in place to implement the public procurement *acquis*. In overall terms, a high level of alignment with the *acquis* has been achieved and a strong administrative capacity developed in the area of *free movement of persons*. In the field of *free movement of services*, there is generally a good level of alignment and sound administrative capacity. However, further efforts are required in aligning existing legislation concerning banking, insurance and securities. A course of action to resolve these difficulties has been agreed. Following the peer group review, Poland has produced an action plan but several problems such as discriminatory language requirements, problems with administrative structures and ensuring independent supervisory structures remain. Poland's track record in the *free movement of capital* has been one of steady progress, both in aligning its legislation and in developing the necessary administrative structures. Poland has to a large extent achieved alignment with the *acquis* in the area of *company law*, and gradual progress has been made with strengthening administrative capacity which has achieved a reasonable level, with the exception of intellectual property enforcement. Building up administrative capacity is essential if effective implementation is to be ensured. In the field of *competition*, legislative alignment is largely complete, although there remain some gaps on State aid, and efforts have focused on establishing a credible record of enforcement in the area of State aid. These efforts will need to be continued and intensified, with a specific and urgent focus on the restructuring of the steel sector where aid can only be given if an acceptable overall restructuring programme including necessary measures for reaching viability and necessary cuts in production capacity is reached.

In the *telecommunications* area, Poland has made steady progress since the Opinion in aligning with the *acquis* and liberalising its market. Implementation of the existing legislation has improved over the last year; further legislative alignment is awaited, as is the evaluation of the economic implications of full implementation of the universal service *acquis*.

With regard to *EMU*, alignment is almost complete, however the legislative amendment necessary to ensure the degree of independence of the National Bank as set out in the *acquis* remains to be undertaken.

There has been further progress in aligning rates of indirect *taxation*. In overall terms, Poland has achieved a reasonable level of alignment with the *acquis* and moderate development of the necessary implementing capacity. Significant further work is required to ensure that the systems are in place to allow for the exchange of computerised data between the EC and Poland by the date of accession. In the *customs* area the situation is similar, with a respectable record on alignment but a weaker one on administrative capacity. The establishment of the necessary information technology infrastructure will require considerable further effort if the intended deadlines are to be respected. This will require an approach which gives urgent attention to accelerating the work on



computerisation and interconnectivity and overcoming the disruption caused by the reorganisation of the central customs service. Steps have been taken to secure the necessary funding but this matter will need to be kept under close scrutiny and the Commission intends to report on progress at the end of the first half of 2003. Efforts should also focus on completing the alignment of Poland's customs legislation on that of the Community, in particular by adopting the amendment to the customs code which is currently under preparation.

Further transformation is needed, in terms of policy, legislation and structures in the *agriculture* sector, where the overall situation in terms of legislative alignment and in particular administrative capacity has been weak. There has been some progress with regard to primary legislation. In the veterinary sector the good work of the previous year has not been built on and requires urgent attention. There have been some efforts to address the considerable weaknesses in administrative capacity. However these will need to be intensified, in particular at the regional level, if they are to have any significant impact. Considerable further efforts are needed in upgrading establishments and ensuring that adequate inspection arrangements at the borders are in place. The Integrated Administration and Control System (IACS) in particular must be in place, if Poland is to be in a position to effectively administer and control the CAP support schemes. This has been acknowledged through the efforts which the Polish authorities are undertaking. These need to be substantially stepped up.

In the *fisheries* sector, there has been a moderate degree of alignment. Some further legislative progress has occurred and there have been efforts to reinforce the administrative capacity at the central level, although the capacity at the regional level continues to be weak. Greater effort needs to be put into meeting the objectives set out in the Action Plan.

In the *social* field, the degree of alignment varies considerably between sectors. The capacity to implement the *acquis* has received some attention but this needs to be intensified. Additional efforts continue to be required, in particular to further align and implement the EC labour law and the *acquis* on occupational health and safety. Adoption of the pending legislation would do much to further alignment in this area. There have been further developments with regard to legislation in the area of *regional policy*. Specific attention is required to carry through in a timely manner the implementation plans and further reinforce the administrative capacity including strengthening inter-ministerial co-operation and partnership. To this end the objectives set out in the Action Plan should be realised as soon as possible. Particular attention needs to be paid to the technical preparation of projects eligible for Community funding. Existing implementation and administrative capacity plans, including the increase of personnel in the managing and paying authorities, should be implemented with due vigour.

In the area of *environment*, further progress has been made in terms of primary legislation, where there is a high level of alignment. The adoption and implementation of the necessary implementing legislation, and the accompanying administrative capacity, especially at the regional level, is required; given the limited strength of administrative capacity the implementation of the objectives set out in the Action Plan should be one focus of attention. Ensuring adequate investment, as set out in the environmental investment plans, is also essential.

The *energy* sector has a good level of alignment and the administrative capacity is adequate. Work to further align the existing legislation with the *acquis* is required, in particular on the internal energy market (notably gas). In the *transport* sector there is also a good level of alignment. The focus of attention should now be on putting in place the necessary implementing legislation and strengthening the administrative capacity to implement this legislation. The Action Plan sets out a range of objectives in this respect.

There has been further progress in *justice and home affairs*, especially with regard to the border guards and border management. There has been a continuation of efforts to improve the situation with regard to law enforcement bodies dealing with the fight against organised crime and drugs, in particular the police services. These need to be intensified and adequate resources, financial as well as human, allocated to implement the Schengen Action Plan and other strategies so as to ensure that the necessary administrative capacity is in place to implement the *acquis*. In overall terms alignment with the *acquis* is good but administrative capacity has not progressed to the same extent.

Further legislative progress has been noted in terms of internal *financial control* where there is now a reasonable level of alignment with the *acquis*. The challenge continues to be to put in place the necessary control mechanisms by completing alignment (PIFC and protection of EC financial interests), by completing and strengthening the required institutional structure, and by moving forward substantially on the management of pre-accession funding and the establishment of the necessary structures and adequate administrative capacity for the implementation of the future structural funds, in particular regarding internal financial control. This will require the full and vigorous implementation of the Action Plan.

There continues to be some disparity between progress in the adoption of legislation and the reinforcement of administrative capacity. Continued efforts are needed to set up or strengthen administrative capacities across the board, notably on market surveillance, agriculture and food safety, fisheries and regional policy, the social field, environment, customs and justice and home affairs. Particularly close attention is required regarding the structures necessary to implement those parts of the *acquis* which will become applicable only from the date of accession, with a special focus on those parts which are essential for the sound and efficient management of EC funds.

In the accession negotiations, 27 chapters have been provisionally closed. Poland is generally meeting its commitments made in the negotiations. However, delays have occurred in the areas of agriculture (implementation of the animal identification and registration system), fisheries (adoption of legislation related to resource management, inspection and control, and in the area of market policy), environment (adoption of implementing legislation with regard to water quality, industrial pollution control and risk management, and chemicals). These issues need to be addressed.

Bearing in mind the progress achieved since the Opinion, the level of alignment and administrative capacity that Poland has achieved at this point in time, and its track record in implementing the commitments it has made in the negotiations, the Commission considers that Poland will be able to assume the obligations of membership in accordance with the envisaged timeframe. In the period leading up to accession, Poland needs to continue its preparations in line with the commitments it has made in the accession negotiations.

## C. Conclusion<sup>21</sup>

In its 1997 Opinion, the Commission concluded that Poland fulfilled the political criteria. Since that time, the country has made considerable progress in further consolidating and deepening the stability of its institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. This has been confirmed over the past year. Poland continues to fulfil the Copenhagen political criteria.

The reinforcement of administrative capacity across the civil service is an important issue, recent developments have been mixed and further efforts are needed. In the area of public administration progress in the implementation of the 1999 Civil Service Law has been limited by the temporary suspension of the system of recruitment by open competition. It is essential that the pace of implementation, most notably with respect to recruitment, is accelerated so as to ensure that an independent, well trained and motivated civil service is in place by the time of accession.

Poland has made further progress in reforming the judiciary and in creating conditions to allow for a reduction in the most pressing bottlenecks. Efforts should now focus on ensuring that the progress to date delivers the desired result in terms of improved efficacy of the judiciary. Issues relating to judicial immunity are being addressed and should be followed up. Similar priority needs to be given to the training of judges, in particular in EC Law. While there have been ongoing efforts a sustainable structured programme of training needs to be put in place.

Corruption remains a cause for serious concern, a comprehensive strategy has been adopted to combat the problem. Substantial efforts are required to ensure concrete results, which to date have been limited, and in particular to develop a political, administrative and business culture which can resist corruption.

Poland continues to respect human rights and freedoms.

The 1997 Opinion already acknowledged the comprehensive reform efforts undertaken by the Polish authorities to transform their economy. Since the Opinion, and against a challenging international economic environment, economic performance has improved. Macroeconomic stability has been achieved, reforms have continued while the Polish authorities' commitment to the economic requirements of EU accession has been sustained.

Hence, it is concluded that Poland is a functioning market economy. The continuation of its current reform path should enable Poland to cope with competitive pressure and market forces within the Union.

Improvements can be made to fiscal policy through the implementation of the government's new expenditure norm at all levels of government as part of a more broadly based structural reform of public finances to support fiscal consolidation. Furthermore, restructuring and privatisation, mainly in heavy industry, the financial sector, energy distribution and agriculture, needs to be completed. In addition, bankruptcy procedures

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<sup>21</sup> See "Towards the Enlarged Union: Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries", COM (2002) 700.

and the land registry call for further improvement. Finally, central bank independence must be preserved to ensure macroeconomic stability and investor confidence.

Since the Opinion, Poland's progress has been characterised by a slow start and a subsequent acceleration in respect of the adoption of legislation. As a consequence the vast majority of primary *acquis* is now in place, although in some sectors there are considerable gaps in the necessary implementing legislation, for example, in the veterinary, environment and food safety areas. There has been a knock on effect in terms of administrative capacity which has progressed since the Opinion, but not to the same extent as legislative alignment.

Over the past year, Poland has further advanced its alignment of primary legislation, notably in the areas of transport and free movement of persons. The performance in adopting implementing legislation has varied considerably between sectors. The development of administrative capacity has mirrored the progress of implementing legislation.

Overall, Poland has achieved a high degree of alignment with the *acquis* in many areas, and is well advanced with reaching adequate administrative capacity to implement the *acquis* in a number of fields, although further efforts remain to be made across the board with respect to administrative capacity, and in a number of sectors in particular with regard to alignment with the *acquis*. Detailed plans have been agreed, in particular in the negotiations and in the Action Plan, to cover the remaining gaps.

With regard to the internal market, in the area of *free movement of goods* considerable progress has been made over the last two to three years, notably by putting in place the framework legislation needed and by developing further the institutional infrastructure needed for its implementation. To date a high level of alignment has been achieved in relation to the primary legislation and administrative capacity has reached a reasonable level. Legislative developments in the area of market surveillance need to be built on through the development of the necessary administrative capacity. The area of food safety has not seen the progress in the adoption of implementing legislation identified as necessary in the last Regular Report and administrative capacity remains weak. Further work is also required to ensure the structures are in place to implement the public procurement *acquis*. In overall terms, a high level of alignment with the *acquis* has been achieved and a strong administrative capacity developed in the area of *free movement of persons*. In the field of *free movement of services*, there is generally a good level of alignment and sound administrative capacity. However, further efforts are required in aligning existing legislation concerning banking, insurance and securities. A course of action to resolve these difficulties has been agreed. Following the peer group review, Poland has produced an action plan but several problems such as discriminatory language requirements, problems with administrative structures and ensuring independent supervisory structures remain. Poland's track record in the *free movement of capital* has been one of steady progress, both in aligning its legislation and in developing the necessary administrative structures. Poland has to a large extent achieved alignment with the *acquis* in the area of *company law*, and gradual progress has been made with strengthening administrative capacity which has achieved a reasonable level, with the exception of intellectual property enforcement. Building up administrative capacity is essential if effective implementation is to be ensured. In the field of *competition*, legislative alignment is largely complete, although there remain some gaps on State aid, and efforts have focused on establishing a credible record of enforcement in the area of

State aid. These efforts will need to be continued and intensified, with a specific and urgent focus on the restructuring of the steel sector where aid can only be given if an acceptable overall restructuring programme including necessary measures for reaching viability and necessary cuts in production capacity is reached.

In the *telecommunications* area, Poland has made steady progress since the Opinion in aligning with the *acquis* and liberalising its market. Implementation of the existing legislation has improved over the last year; further legislative alignment is awaited, as is the evaluation of the economic implications of full implementation of the universal service *acquis*.

With regard to *EMU*, alignment is almost complete, however the legislative amendment necessary to ensure the degree of independence of the National Bank as set out in the *acquis* remains to be undertaken.

There has been further progress in aligning rates of indirect *taxation*. In overall terms, Poland has achieved a reasonable level of alignment with the *acquis* and moderate development of the necessary implementing capacity. Significant further work is required to ensure that the systems are in place to allow for the exchange of computerised data between the EC and Poland by the date of accession. In the *customs* area the situation is similar, with a respectable record on alignment but a weaker one on administrative capacity. The establishment of the necessary information technology infrastructure will require considerable further effort if the intended deadlines are to be respected. This will require an approach which gives urgent attention to accelerating the work on computerisation and interconnectivity and overcoming the disruption caused by the reorganisation of the central customs service. Steps have been taken to secure the necessary funding but this matter will need to be kept under close scrutiny and the Commission intends to report on progress at the end of the first half of 2003. Efforts should also focus on completing the alignment of Poland's customs legislation on that of the Community, in particular by adopting the amendment to the customs code which is currently under preparation.

Further transformation is needed, in terms of policy, legislation and structures in the *agriculture* sector, where the overall situation in terms of legislative alignment and in particular administrative capacity has been weak. There has been some progress with regard to primary legislation. In the veterinary sector the good work of the previous year has not been built on and requires urgent attention. There have been some efforts to address the considerable weaknesses in administrative capacity. However these will need to be intensified, in particular at the regional level, if they are to have any significant impact. Considerable further efforts are needed in upgrading establishments and ensuring that adequate inspection arrangements at the borders are in place. The Integrated Administration and Control System (IACS) in particular must be in place, if Poland is to be in a position to effectively administer and control the CAP support schemes. This has been acknowledged through the efforts which the Polish authorities are undertaking. These need to be substantially stepped up.

In the *fisheries* sector, there has been a moderate degree of alignment. Some further legislative progress has occurred and there have been efforts to reinforce the administrative capacity at the central level, although the capacity at the regional level continues to be weak. Greater effort needs to be put into meeting the objectives set out in the Action Plan.

In the *social* field, the degree of alignment varies considerably between sectors. The capacity to implement the *acquis* has received some attention but this needs to be intensified. Additional efforts continue to be required, in particular to further align and implement the EC labour law and the *acquis* on occupational health and safety. Adoption of the pending legislation would do much to further alignment in this area. There have been further developments with regard to legislation in the area of *regional policy*. Specific attention is required to carry through in a timely manner the implementation plans and further reinforce the administrative capacity including strengthening inter-ministerial co-operation and partnership. To this end the objectives set out in the Action Plan should be realised as soon as possible. Particular attention needs to be paid to the technical preparation of projects eligible for Community funding. Existing implementation and administrative capacity plans, including the increase of personnel in the managing and paying authorities, should be implemented with due vigour.

In the area of *environment*, further progress has been made in terms of primary legislation, where there is a high level of alignment. The adoption and implementation of the necessary implementing legislation, and the accompanying administrative capacity, especially at the regional level, is required; given the limited strength of administrative capacity the implementation of the objectives set out in the Action Plan should be one focus of attention. Ensuring adequate investment, as set out in the environmental investment plans, is also essential.

The *energy* sector has a good level of alignment and the administrative capacity is adequate. Work to further align the existing legislation with the *acquis* is required, in particular on the internal energy market (notably gas). In the *transport* sector there is also a good level of alignment. The focus of attention should now be on putting in place the necessary implementing legislation and strengthening the administrative capacity to implement this legislation. The Action Plan sets out a range of objectives in this respect.

There has been further progress in *justice and home affairs*, especially with regard to the border guards and border management. There has been a continuation of efforts to improve the situation with regard to law enforcement bodies dealing with the fight against organised crime and drugs, in particular the police services. These need to be intensified and adequate resources, financial as well as human, allocated to implement the Schengen Action Plan and other strategies so as to ensure that the necessary administrative capacity is in place to implement the *acquis*. In overall terms alignment with the *acquis* is good but administrative capacity has not progressed to the same extent.

Further legislative progress has been noted in terms of internal *financial control* where there is now a reasonable level of alignment with the *acquis*. The challenge continues to be to put in place the necessary control mechanisms by completing alignment (PIFC and protection of EC financial interests), by completing and strengthening the required institutional structure, and by moving forward substantially on the management of pre-accession funding and the establishment of the necessary structures and adequate administrative capacity for the implementation of the future structural funds, in particular regarding internal financial control. This will require the full and vigorous implementation of the Action Plan.

There continues to be some disparity between progress in the adoption of legislation and the reinforcement of administrative capacity. Continued efforts are needed to set up or strengthen administrative capacities across the board, notably on market surveillance,

agriculture and food safety, fisheries and regional policy, the social field, environment, customs and justice and home affairs. Particularly close attention is required regarding the structures necessary to implement those parts of the *acquis* which will become applicable only from the date of accession, with a special focus on those parts which are essential for the sound and efficient management of EC funds.

In the accession negotiations, 27 chapters have been provisionally closed. Poland is generally meeting its commitments made in the negotiations. However, delays have occurred in the areas of agriculture (implementation of the animal identification and registration system), fisheries (adoption of legislation related to resource management, inspection and control, and in the area of market policy), environment (adoption of implementing legislation with regard to water quality, industrial pollution control and risk management, and chemicals). These issues need to be addressed.

Bearing in mind the progress achieved since the Opinion, the level of alignment and administrative capacity that Poland has achieved at this point in time, and its track record in implementing the commitments it has made in the negotiations, the Commission considers that Poland will be able to assume the obligations of membership in accordance with the envisaged timeframe. In the period leading up to accession, Poland needs to continue its preparations in line with the commitments it has made in the accession negotiations.

## **D. Accession Partnership and Action Plan for strengthening administrative and judicial capacity: Global assessment**

Poland's progress and overall state of preparation in respect of the Copenhagen criteria has been examined and conclusions drawn above. The present section assesses the extent to which the priorities of the Accession Partnership have been met and the measures foreseen under the Action Plan implemented according to schedule. It should be noted that both the Accession Partnership and the Action Plan have a time perspective of two years covering 2002 and 2003, providing for another 15 months for priorities to be met. Furthermore, much has already been achieved based on previous Accession Partnerships. The present one focuses on remaining specific and well-circumscribed topics identified as requiring more work to prepare Poland for membership. Therefore the analysis below only focuses on these specific topics and does not give an overall picture of the state of preparation of Poland in each domain.

The purpose of the Accession Partnership is to set out in a single framework:

- the priority areas for further work identified in the Commission's Regular Report;
- the financial means available to help candidate countries implement these priorities;
- the conditions which will apply to this assistance.

The Accession Partnerships are revised on a regular basis, to take account of progress made, and to allow new priorities to be set. The Council adopted a revised Accession Partnership for Poland in January 2002, based on a proposal from the Commission.

The revised Accession Partnership has served as the point of departure for the Commission and Poland to develop jointly an Action Plan to strengthen Poland's administrative and judicial capacity.

The purpose of the Action Plan is to identify jointly the next steps required for Poland to achieve an adequate level of administrative and judicial capacity by the time of accession, and ensure that all necessary measures in this regard are taken, providing Poland with targeted assistance in areas that are essential for the functioning of an enlarged Union.

Developing adequate administrative and judicial capacity for EU membership is a demanding and wide-ranging task, which requires detailed preparations in each and every domain covered by the Union's policies and legislation. In preparing individual Action Plans, the Commission has taken a comprehensive approach. All priorities from the revised Accession Partnerships which relate to the development of administrative and judicial capacity have been included in the Action Plans. Each of these priorities is treated separately in the Action Plans, and specific measures have been designed to address each of them.

In the following, progress in addressing each of these priorities is reported. For ease of reference and to avoid repetitions, wording from the *Accession Partnerships* is rendered in italics. As regards the measures foreseen by the Action Plan, implementation is checked against timetables and reported.



### *Political criteria*

With regard to *Democracy and the rule of law* Poland has undertaken measures to improve the functioning of the judicial system through extra recruitment and logistical and clerical support as foreseen in the Action Plan. The training of judges and in particular the establishment of a national training standard for magistrates requires particular attention. Further efforts are needed to ensure public access to the law and first steps have been taken with regard to reviewing the degree of immunity of judges. The implementation of *civil service* legislation has taken a step backwards and little has been achieved in establishing a permanent training capacity for the civil service, in particular related to *acquis* issues. A comprehensive *anti-corruption* policy has been adopted but awaits implementation.

Overall the Accession Partnership priorities with regard to the political criteria have not been met. Implementation of the Action Plan is progressing slowly.

### *Economic criteria*

Considerable efforts have been made to maintain *macroeconomic* and budgetary stability and there has been further progress on the *institutional framework* for the market economy and sound economic policy management.

Legislative measures have been taken which seek to provide an environment in which the *competitiveness* of the Polish economy can be improved, with a particular focus on SME development and human resources development measures. The first steps towards further *structural reforms* are underway in particular improving the functioning of labour markets, progress in privatisation has been less marked.

Steps have been taken to facilitate a coherent, comprehensive *restructuring* of the *steel* sector; in the *Coal* sector progress has been less marked whereas efforts to restructure the *railways* are broadly encouraging.

There have been further improvements in the functioning of the *land market* and the development of the property register as set out in the action plan.

Overall, the Accession Partnership priorities with regard to the economic criteria have been met to a considerable extent. The time schedule set in the Action Plan is being largely respected.

### *Ability to assume the obligations of membership*

#### **Chapter 1: Free movement of goods**

Work is ongoing on the adoption and implementation of secondary legislation in the field of *pharmaceuticals*, which was identified in the Accession partnership as in need of particularly urgent attention, but has not been completed. Elsewhere the transposition of *New Approach* directives and adoption of related European standards continues. Legislation on *standardisation* has been adopted. The *pre-market approval system* has been deleted, considerable further efforts are required to ensure the transposition and implementation of legislation in the field of *foodstuffs*, the rationalisation and

reinforcement of the food control administration and the training of inspectors and food operators as set out in the Action Plan.

There has been some progress in the transposition and implementation of *traditional sectoral legislation*, and legislative progress with regard to the establishment of a well-functioning *market surveillance* system although actions are lagging behind the timetable set out in the Action Plan. First steps have been taken towards the elimination of outstanding *non-tariff market access barriers*. The National Preference Clause for *Public Procurement* remains in place. As included in the Action Plan steps have been taken to implement SIMAP (Public Market Information System). An initial screening of legislation in the *non-harmonised area* to ensure that it is in compliance with Articles 28-30 of the EC Treaty has been undertaken. Overall, the Accession Partnership priorities in the area of free movement of goods have been partially met. Implementation of the measures under the Action Plan is partially on track.

## **Chapter 2: Free movement of persons**

Progress has been made towards the reinforcement of the administrative structures for the co-ordination of *social security systems* as set out in the Action Plan. With respect to the alignment of *mutual recognition* of professional qualifications and diplomas progress is in line with the elements included in the Action Plan. Some initial measures have been introduced to ensure that all Poland's professionals can, from accession, meet the requirements laid down by the directives. Overall, the Accession Partnership priorities in the area of free movement of persons have been partially met. Implementation of the measures under the Action Plan is largely on track.

## **Chapter 3: Freedom to provide services**

Action Plan. There has been some progress in developing *monitoring and regulatory bodies* in the case of financial services but also for other services. Poland has also elaborated a specific Action Plan for the financial services sector. As a result the Accession Partnership priorities in the area of freedom to provide services have been partially met. Implementation of the measures under the Action Plan is partially on track.

## **Chapter 4: Free movement of capital**

Measures are under way to amend the sectoral legislation restricting *foreign direct investments* and to abolish remaining restrictions- identified as an action in need of immediate attention in the Accession partnership. Some small steps have been taken to strengthen *regulatory bodies* including the Financial Intelligence Unit through IT improvements (computers and databases) as set out in the Action Plan. Legislation is now in place to progressively liberalise *short-term capital movements*. The implementation of the recommendations of the Financial Action Task Force is under way. The Accession Partnership priorities with regard to the free movement of capital have been met to a considerable extent. The time schedule set in the Action Plan is being largely respected.

## **Chapter 5: Company law**

The implementation of the *Copyright and Neighbouring Rights Law* and amendments (an urgent action in the Accession partnership) has not advanced. Some steps have been taken to upgrade *intellectual and industrial Property enforcement* (another urgent action)

at administrative and judicial level and to increase the efforts to fight against piracy and counterfeiting. As per the Action Plan steps have also been taken to intensify *training* for enforcement bodies including judges and prosecutors and ensure better *co-ordination* among enforcement bodies. First steps have been taken towards ensuring an equal level of protection of *industrial property rights* with regard to *pharmaceuticals*. Overall, the Accession Partnership priorities in the area of company law have been partially met. Implementation of the measures under the Action Plan is broadly on track.

## **Chapter 6: Competition**

Steps have been taken to ensure the *enforcement* of the anti-trust and state aid rules, but in the latter area the situation is not yet satisfactory. Efforts have also been made to carry out the urgent action of improving *transparency* and flow of data especially with regard to information on state aid so as to ensure a *credible enforcement record*. Efforts have been made to find a solution on the alignment of existing fiscal aid for investors in the special economic zones. There has been some analysis of the state aid granted to the *sensitive sectors*, in particular the automotive and steel industries and some steps have been taken to improve alignment. There has been an *administrative reorganisation* of the anti-trust and State aid control authority. The actions foreseen in the Action Plan to improve *co-ordination and training* at all levels are under way. Efforts foreseen in the Action Plan have commenced with a view to increasing *awareness* of the rules among all market participants and aid grantors and efforts are required in the *training of the judiciary* in the specific fields of anti-trust and State aid where the timetable set out in the Action Plan has been respected. The Accession Partnership priorities in the area of competition have been partially met. The implementation of the measures under the Action Plan is progressing slowly.

## **Chapter 7: Agriculture**

There have been some steps towards upgrading the *capacity of agricultural administration*, an issue identified as needing *urgent action*, and completing preparations for the enforcement and practical application of the management mechanisms of the Common Agricultural Policy, in particular the Integrated Administration and Control System, the Paying Agency and preparation for setting up the milk quota management system. Considerable further efforts are required in all of these areas if the timetable foreseen in the Action Plan is to be maintained. This applies equally to the reinforcement of the administrative structures needed for the design, implementation, management, monitoring, control and evaluation of EC-funded rural development programmes.

Some efforts have been made towards the *alignment of veterinary legislation and food safety standards*, an issue identified by the Accession Partnership as being in urgent need of action, but this has not yet been achieved and significant efforts will be required to ensure implementation. This is even more the case for the upgrading of *inspection arrangements* in particular at the future external borders and the implementation of the comprehensive development programme of *phytosanitary and veterinary administration border posts*. The system of *animal identification and registration* remains to be completed and further efforts are required to implement *national laboratory* plans for testing and diagnostic facilities, in particular the national reference laboratory. Some steps have been taken to ensure adequate education on *disease surveillance* and EC animal health legislation at all levels although more is required in this area. Actions in

these areas are included in the Action Plan and are under way. Significant efforts will be required if the objectives set in the Action Plan are to be met in a timely manner.

The upgrading of *agri-food processing* establishments so that they are in a position to respect EC food safety standards and legislation continues but is not yet near completion. Considerable further efforts are required in addition to those foreseen in the Action Plan and which are under way, in order to implement food hygiene, control system, animal waste treatment, residue and zoonosis control programmes and modernise dairy farms. Overall the Accession Partnership priorities with regard to agriculture have not been met. Implementation of the Action Plan is progressing slowly.

### **Chapter 8: Fisheries**

Some steps, as envisaged in the Action Plan, have been taken towards the establishment of adequate *administrative structures* and equipment at central and regional level that can ensure the *implementation of the Common Fisheries Policy*, including management of resources, inspection and control of fishing activities, the market policy, structural programmes co-financed by the Financial Instrument for Fisheries Guidance, a fishing vessel register and a management plan for the fleet capacity in accordance with available fish resources. These steps include the establishment of the shipping register and the recruitment of three new staff in the Ministry of Agriculture. This notwithstanding, in all of these areas further efforts will be required, in some cases very significant ones. Overall the Accession Partnership priorities with regard to fisheries have not been met. Implementation of the measures under the Action Plan is progressing slowly.

### **Chapter 9: Transport Policy**

In the *air transport* field there has been an alignment of legislation and in general the steps foreseen in the Action Plan to reinforce *administrative capacity* in road transport and maritime transport have commenced, notably through the nomination of a body to certify professional competencies in the road transport sector so as to facilitate access to the profession and the strengthening of the marine transport department. Further efforts are required in both these areas as well as for the necessary administrative structures in air transport. There have been some moves to continue legislative alignment and restructuring in the *railways sector*, however, further measures are necessary to implement the revised railways *acquis* and to set up an independent infrastructure manager and regulatory body as also foreseen in the Action Plan. Overall, the Accession Partnership priorities in the area of transport policy have been partially met. Implementation of the measures under the Action Plan is largely on track.

### **Chapter 10: Taxation**

Legislative alignment with particular attention to *VAT and excise duty rates*, including the transitional VAT regime has seen some progress but requires further attention, as does the elimination of *discriminatory duties* against imports from the EC. Review of legislation to ensure compliance with the *Code of Conduct* for business taxation is in progress. There has been some progress in the implementation of the *national strategy* for the improvement of tax and revenue collection and the reinforcement of administrative capacity including control and enforcement procedures, this progress needs to be continued. Similarly in terms of administrative co-operation and mutual assistance current efforts should continue. Training has seen some delays in relation to the schedule set out in the Action Plan. The development of IT systems, notably VIES

and SEED so as to allow for the exchange of electronic data with the Community and its Member States, identified as an urgent action in the Accession partnership, is progressing well. The Accession Partnership priorities in the area of taxation have been partially met. Implementation of the measures under the Action Plan is broadly on track.

### **Chapter 11: Economic and Monetary Union**

Legislation is being prepared but has not yet been adopted to consolidate the *independence of the National Bank of Poland*. The Accession Partnership priority in this area has therefore not been met. Implementation of the measures set out in the Action Plan is progressing slowly

### **Chapter 12: Statistics**

Steps are being taken to further improve *quality and coverage* of statistics. The provision of adequate *resources* including at the regional level remains difficult. In line with the Action Plan, some efforts have been made to further adapt and harmonise *agricultural statistics* and statistical systems. The Accession Partnership priorities in the area of statistics have been partially met. Implementation of the measures under the Action Plan is largely on track.

### **Chapter 13: Social Policy**

*Legislative Alignment* has not yet been completed although some progress has been made and considerable further efforts are required to ensure proper implementation of EC legislation in the fields of *labour law, equal treatment for women and men and health and safety at work*. Initial steps have been taken to strengthen the related administrative and enforcement structures, including the *labour inspectorates*. In these areas the measures set out in the Action Plan have commenced, notably the creation of the plenipotentiary for equal status of Women and Men. In all of these areas there will need to be a focused follow through of these actions if the objectives of the Action Plan are to be met.

The adoption of legislation against *discrimination* and a timetable for its implementation is awaited. There has been progress towards aligning the national system for *surveillance and control of communicable diseases* and health monitoring and information with those of the EU and the measures set out in the Action Plan are being undertaken on schedule. Further support for *social partners'* capacity-building efforts, in particular with a view to their future in the elaboration and implementation of EU employment and social policy, including the European Social Fund is being provided as foreseen in the Action Plan. More is required notably concerning autonomous *bipartite social dialogue*, and measures to this end were included in the Action Plan and are now underway. The national strategy on *social inclusion* will be developed in the future on the basis of the EU approach. In overall terms, the Accession Partnership priorities in the field of social policy have not been met. Implementation of the measures under the Action Plan is progressing slowly.

### **Chapter 14: Energy**

Preparations for the *internal energy market* have continued although further efforts will be needed to complete the alignment with electricity and gas directives and to ensure that price distortions are eliminated. Efforts to restructure the gas sector need to be stepped

up. The alignment with the *oil stock requirements* in a non-discriminatory and transparent manner continues and there has been progress towards ensuring the actual constitution of stocks, including the necessary investments, towards the level of 90 days. Some measures have been taken to improve energy efficiency and promote the use of renewable energy sources. The first steps towards strengthening the relevant institutions in this area have been taken as set out in the Action Plan; this comprises the identification of the body responsible for transmitting information to the Commission. However, there have been some delays in the adoption of the necessary implementing legislation. The recommendations contained in the Council report on “Nuclear Safety in the Context of Enlargement” are being addressed. Overall, the Accession Partnership priorities in the energy sector have been partially met. Implementation of the measures under the Action Plan is under way.

### **Chapter 19: Telecommunications and information technologies**

Further steps have been taken towards ensuring both alignment with the *acquis* and transparent and effective implementation actions identified as urgent in the Accession Partnership. There has been a further consolidation of national regulatory authority for telecommunications as envisaged in the Action Plan. The Accession Partnership priorities with regard to telecommunications and information technologies have been met to a considerable extent. The time schedule set in the Action Plan is being largely respected.

### **Chapter 20: Culture and audio-visual policy**

Measures are under way to complete the alignment of legislation in this field. Further efforts are required to continue and complete the training actions set out in the Action Plan with respect to strengthening the capabilities of the independent television/radio regulatory authority. In overall terms the Accession Partnership priorities in the area of culture and audio-visual policy have been partially met. Implementation of the measures under the Action Plan is largely on track.

### **Chapter 21: Regional policy and co-ordination of structural instruments**

A *National Development Plan*, which will serve as the basis for the implementation of the Structural Funds after accession is under development and will need to be accompanied by the Operational Programmes. The *implementation structures* of the final plan has defined the bodies in charge of the implementation of Structural Funds and the Cohesion Fund, and a clear division of responsibilities has been established. As foreseen in the Action Plan, steps have been taken to ensure effective inter-ministerial co-ordination and clarify responsibilities for regional policy issues. Further measures will be required. There has been some progress in setting up the required *monitoring and evaluation systems for Structural Funds*. Significant progress is still required for the collection and processing of the relevant statistical information. Additional actions are required to improve the *budgetary system* according to structural funds standards and to establish *financial control* arrangements for Structural Funds management. Initial efforts have been made concerning the establishment and proper staffing of future *managing and paying authorities* for Structural Funds management as set out in the Action Plan. A continuation of these efforts, respecting the commitments made, is critical for success. Training must accompany the hiring of additional staff. Much greater efforts are required to build on the initial steps which have been taken to develop the technical preparation of

projects eligible for Structural and Cohesion Funds assistance (*project pipeline*). In general the Accession Partnership priorities in the area of regional policy have been partially met. Implementation of the measures under the Action Plan is partially on track.

## **Chapter 22: Environment**

Some progress in the transposition of the *acquis* has been made although further efforts are required with regard to *air quality water quality, chemicals, waste management, waste management and industrial pollution*. Implementation of the *acquis* has continued, although further efforts are required as regards air quality, waste management, water quality, chemicals and industrial pollution. In line with the activities set out in the Action Plan, there has been a strengthening of the *administrative, monitoring and enforcement capacity at national level*. The competent authorities have been reorganised at the national level. However, considerable further efforts are required at *regional and local level*. At all levels further efforts will be required to see through the measures in line with the timetable set out in the Action Plan. More needs to be done with respect to permitting, monitoring and planning and the establishment of the institutional structures to these tasks. The integration of environmental protection requirements into the definition and implementation of all other sectoral policies with a view to promoting sustainable development has continued although this needs to be given a higher priority. The Accession Partnership priorities in the area of the environment have been partially met. Implementation of the measures under the Action Plan is partially on track.

## **Chapter 23: Consumers and health protection**

There have been efforts to ensure a continued alignment of *legislation* although some further measures must be taken. Similarly further measures are required to strengthen *market surveillance* and improve *enforcement* including, as described in the Action plan, through a strengthening of consumer organisations and consumer awareness. The Accession Partnership priorities in the area of consumers and health protection have been partially met. Implementation of the measures under the Action Plan is broadly on track.

## **Chapter 24: Co-operation in the field of justice and home affairs**

A broad range of measures were included in the Action Plan and these are being implemented. For example the Implementation of the *Schengen Action Plan* is under way and preparations for future participation in the *Schengen Information System* by developing national databases and registers have continued through improvements in IT systems as foreseen in the Action Plan. Likewise efforts in upgrading the equipment at *border crossing points* are ongoing. At the green border and blue border and in particular at the future external border of the Union there has been progress as specified by the Action Plan but this should be reinforced. More needs to be done to ensure adequate national *budgetary and administrative resources*. A decision has been taken to align visas which will be effective in July 2003. *Full co-operation* between national and EU law enforcement agencies through the provision of the necessary *administrative and logistical support* set out in the Action Plan is under way but is not yet ensured. There have been steps towards alignment of *data protection practices* and cross-border surveillance. There is no civilian *co-ordination of crime fighting services*.

Steps have been taken towards the adoption and implementation of a strategy to combat *organised crime*. The fight against *trafficking in human beings* has been intensified. As set out in the Action Plan, there have been initial moves towards the adoption and

implementation of a national *anti-drugs strategy* including the establishment of a National drugs Focal Point to co-operate with the European Monitoring Centre on Drugs and Drug Abuse. *Money-laundering* and *economic crime* continue to be addressed.

There have been initial steps taken to improve the internal *co-operation* within the *police*, with other *law enforcement agencies* and with the *judiciary*. Further steps are required in particular so as to strengthen the fight against organised crime and eliminate overlapping investigations. Some steps in order to ensure the implementation of the Community instruments in the area of *judicial co-operation* in civil matters have been taken, mainly through training measures included in the Action Plan. The pre-requisites for the conclusion of a *co-operation agreement with Europol* are met and are in the process of being met. The necessary steps to complete alignment with the Convention on the *Protection of the Communities' Financial interests* and its Protocols are being prepared. Overall, the Accession Partnership priorities in the area of justice and home affairs have been partially met. Implementation of the measures under the Action Plan requires additional effort.

## **Chapter 25: Customs Union**

The *Business Strategy for the Customs Service*, identified as needing urgent action in the Accession Partnership, has been adopted. The implementation of the *information technology strategy* of the Polish customs administration, as included in the Action Plan is continuing with some significant difficulties in particular with regard to developing IT systems so as to allow for the *exchange of computerised data* between the EC and Poland. There has been some strengthening of *integrated border management*; this includes co-operation with the national partner services and neighbouring countries. Plans concerning integrated/joint working procedures with the latter have not always worked in practice and to date the reorganisation of local units of the border guard as set out in the Action Plan has not taken place. The implementation of the *integrated tariff* and the modernisation strategy for the *customs administration* including regional levels as envisaged in the Action plan is ongoing. There have also been actions aimed at ensuring *uniform application of the Customs code* throughout the country and at completing alignment of provisions on *simplified procedures*. There has been some strengthening of the *administrative and operational capacity* of Polish customs. Overall, the Accession Partnership priorities in the area of the customs union have been partially met. Implementation of the measures under the Action Plan is broadly on track with the exception of establishing the necessary IT systems.

## **Chapter 26: External Relations**

Poland has continued to inform the Union of negotiations aimed at the conclusion of new trade agreements with third countries. However, Poland needs to make further efforts to take the necessary measures to renegotiate or renounce all *international agreements and treaties* concluded with third countries, including the Bilateral investment treaty with the USA and the Treaty of friendship, Commerce and navigation with Japan, that are incompatible with its future obligations as a Member State. As a result some progress is being made towards the fulfilment of the external relations Accession Partnership priority.

## **Chapter 28: Financial control**

The *Public Internal Financial Control* policy paper has been completed. Relevant secondary legislation at national and regional level is being prepared. A central unit for



co-ordination and harmonisation of the methodology for *financial management and control* as well as for internal audit throughout the government has been established. *Internal audit/control units* in spending centres are foreseen but are not yet fully established in contradiction to the deadline set in the Action Plan. Functional independence for internal auditors at both central and decentralised levels has not yet been introduced. As set out in the Action Plan, measures need to be taken to strengthen public internal financial control functions at all levels through an enhancement of the administrative capacity, and in this respect training of staff is underway. Further efforts will be required to ensure that additional staffing reaches the levels set out in the Action Plan. The concept and practice of *managerial accountability* needs to be strengthened. Measures to bring the activities of the *Supreme Chamber of Control* in line with international and EC standards are underway, the NIK audit manual was prepared ahead of the schedule set out in the Action Plan. As regards the protection of the Communities financial interests, the horizontal, multi-disciplinary *anti fraud* co-ordinating structure (GAFU) was transferred from the Customs administration to the treasury control structure of the Ministry of Finance in August 2002 following an administrative reorganisation. Further consolidation of this unit is required. Considerable further efforts are required to ensure the correct use, control, monitoring and evaluation of *EC pre-accession funding* as a key indicator of Poland's ability to implement the financial control *acquis*, progress in this respect can be noted in the accreditation of ARMA for Sapard funds. Overall the Accession Partnership priorities with regard to financial control have not been met. Implementation of the measures under the Action Plan is progressing slowly.

## **Annexes**

***Human Rights Conventions ratified by the Candidate Countries,  
15 September 2002***

<i>Adherence to following conventions and protocols</i>	<b>BG</b>	<b>CY</b>	<b>CZ</b>	<b>EE</b>	<b>HU</b>	<b>LV</b>	<b>LT</b>	<b>MT</b>	<b>PL</b>	<b>RO</b>	<b>SK</b>	<b>SI</b>	<b>TK</b>
<b>ECHR (European Convention on Human Rights)</b>	X	X	X	X	X	X	X	X	X	X	X	X	X
Protocol 1 (right of property)	X	X	X	X	X	X	X	X	X	X	X	X	X
Protocol 4 (freedom movement et al.)	X	X	X	X	X	X	X	X	X	X	X	X	O
Protocol 6 (death penalty)	X	X	X	X	X	X	X	X	X	X	X	X	O
Protocol 7 (ne bis in idem)	X	X	X	X	X	X	X	O	O	X	X	X	O
<b>European Convention for the Prevention of Torture</b>	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>European Social Charter</b>	O	X	X	O	X	X	O	X	X	O	X	O	X
<b>Revised European Social Charter</b>	X	X	O	X	O	O	X	O	O	X	O	X	O
<b>Framework Convention for National Minorities</b>	X	X	X	X	X	O	X	X	X	X	X	X	O
<b>ICCPR (International Covenant on Civil and Political Rights)</b>	X	X	X	X	X	X	X	X	X	X	X	X	O
Optional Protocol to the ICCPR (right of individual communication)	X	X	X	X	X	X	X	X	X	X	X	X	O
Second Optional Protocol to ICCPR (death penalty)	X	X	O	O	X	O	X	X	O	X	X	X	O
<b>ICESCR (International Covenant on Economic, Social and Cultural rights)</b>	X	X	X	X	X	X	X	X	X	X	X	X	O
<b>CAT (Convention against Torture)</b>	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>CERD (Convention on the Elimination of All Forms of Racial Discrimination)</b>	X	X	X	X	X	X	X	X	X	X	X	X	O
<b>CEDAW (Convention on the Elimination of All Forms of Discrimination against Women)</b>	X	X	X	X	X	X	X	X	X	X	X	X	X
Optional Protocol to the CEDAW	O	X	X	O	X	O	O	O	O	O	X	O	O
<b>CRC (Convention on the Rights of the Child)</b>	X	X	X	X	X	X	X	X	X	X	X	X	X

X = Convention ratified

O = Convention **NOT** ratified

BG=Bulgaria; CY=Cyprus; CZ=Czech Republic; EE=Estonia; HU=Hungary; LV=Latvia; LT=Lithuania; MT=Malta; PL=Poland; RO=Romania; SK= Slovak Republic; SV=Slovenia; T=Turkey

## Statistical data

	1997	1998	1999	2000	2001
<b>Basic data</b>	<b>in 1000</b>				
Population (average)	38,650	38,666	38,654	38,646	38,641
	<b>in km2</b>				
Total area	312,685	312,685	312,685	312,685	312,685
<b>National accounts</b>	<b>1000 Mio Zloty</b>				
Gross domestic product at current prices	472.4	553.6	615.1	685.0	722.3
	<b>1000 Mio ECU/euro</b>				
Gross domestic product at current prices	127.1	141.3	145.5	170.9	196.7
	<b>ECU/euro</b>				
Gross domestic product per capita a) at current prices	3,300	3,700	3,800	4,400	5,100
	<b>% change over the previous year</b>				
Gross domestic product at constant prices (nat. currency)	6.8	4.8	4.1	4.0	1.1
Employment growth	1.4	1.2	-3.9	-1.6	:
Labour productivity growth	5.4	3.6	8.3	5.6	:
	<b>in Purchasing Power Standard</b>				
Gross domestic product per capita a) at current prices	7,300	7,800	8,300	9,000	9,200
Structure of production	<b>% of Gross Value Added b)</b>				
- Agriculture	5.5	4.8	4.0	3.7	3.4
- Industry (excluding construction)	29.3	27.6	27.1	26.5	25.4
- Construction	7.9	8.7	8.8	8.4	7.5
- Services	57.2	59.0	60.1	61.4	63.8
Structure of expenditure	<b>as % of Gross Domestic Product</b>				
- Final consumption expenditure	79.8	79.0	80.0	80.8	82.0
- household and NPISH	63.7	63.6	64.4	65.3	66.5
- general government	16.0	15.4	15.5	15.5	15.5
- Gross fixed capital formation	23.5	25.2	25.5	24.9	21.5
- Stock variation c)	1.1	1.1	0.9	1.2	0.1
- Exports of goods and services	25.5	28.2	26.1	29.4	29.8
- Imports of goods and services	29.8	33.4	32.5	36.3	33.5
<b>Inflation rate</b>	<b>% change over the previous year</b>				
Consumer price index	15.0	11.8	7.2	10.1	5.3
<b>Balance of payments</b>	<b>Mio ECU/euro</b>				
-Current account	-5,065	-6,156	-11,716	-10,824	8,001e
-Trade balance	-8,661	-11,450	-14,142	-13,326	:
<i>Exports of goods</i>	27,099	28,960	28,205	38,871	:
<i>Imports of goods</i>	35,760	40,410	42,346	52,197	:
-Net services	2,797	3,761	1,296	1,507	:
-Net income	-996	-1,051	-948	-1,582	:
-Net current transfers	1,794	2,584	2,077	2,577	:
- <i>of which</i> : government transfers	106	391	204	328	:
- FDI (net) inflows	4,328	5,678	6,821	10,115	6,377p
<b>Public finance</b>	<b>in % of Gross Domestic Product</b>				
General government deficit/surplus d)	-4.3	-2.3	-1.5	-1.8	-3.9p
General government debt d)	46.9	41.6	42.7	38.7	39.3p

<b>Financial indicators</b>	<b>in % of Gross Domestic Product</b>				
Gross foreign debt of the whole economy	28.2	23.7	26.7	23.3	:
	<b>as % of exports</b>				
Gross foreign debt of the whole economy	110.7	84.1	102.1	79.2	:
Monetary aggregates	<b>1000 Mio ECU /euro</b>				
- M1	18.6	19.9	23.9	24.4	29.7
- M2	45.5	54.0	63.4	76.5	95.8
- M3	:	:	:	:	:
Total credit	46.2	52.9	62.9	73.5	90.0
Average short-term interest rates	<b>% per annum</b>				
- Day-to day money rate	22.7	21.1	14.1	18.1	17.1
- Lending rate	25.4	23.6	17.4	20.3	18.9
- Deposit rate	17.2	16.8	10.4	13.5	11.2
ECU/EUR exchange rates	<b>(1ECU/euro=...New Zloty)</b>				
- Average of period	3.715	3.918	4.227	4.008	3.672
- End of period	3.880	4.089	4.159	3.850	3.495
	<b>1990=100</b>				
- Effective exchange rate index	33.7	31.9	29.0	29.5	32.1
Reserve assets	<b>Mio ECU/euro</b>				
-Reserve assets (including gold)	19,405	24,239	27,219	29,551	30,289
-Reserve assets (excluding gold)	19,167	23,413	26,288	28,587	29,254

<b>External trade</b>	<b>Mio ECU/euro</b>				
Trade balance	-14,647	-16,416	-17,420	-18,752	-15,832
Exports	22,737	25,179	25,727	34,407	40,335
Imports	37,384	41,595	43,147	53,159	56,167
	<b>previous year = 100</b>				
Terms of trade	99.4	104.3	100.8	96.0	102.3
	<b>as % of total</b>				
Exports with EU-15	64.0	68.3	70.5	69.9	69.2
Imports with EU-15	63.8	65.6	64.9	61.2	61.4

<b>Demography</b>	<b>per 1000 of population</b>				
Natural growth rate	0.9	0.5	0.0	0.3	0.1
Net migration rate (including corrections)	-0.3	-0.3	-0.4	-0.5	-0.4
	<b>per 1000 live-births</b>				
Infant mortality rate	10.2	9.5	8.9	8.1	7.7
Life expectancy :	<b>at birth</b>				
Males:	68.5	68.9	68.8	69.7	70.2
Females:	77.0	77.3	77.5	78.0	78.4

<b>Labour market (Labour Force Survey)</b>	<b>% of population</b>				
Economic activity rate (15 - 64)	66.2	65.9	65.8	66.1	66.1
Employment rate (15-64), total	58.8	59.2	57.5	55.1	53.8
Employment rate (15-64), male	66.2	66.3	63.6	61.2	59.2
Employment rate (15-64), female	51.6	52.2	51.6	49.3	48.4
Average employment by NACE branches	<b>in % of total</b>				
- Agriculture and forestry	20.5	19.1	18.1	18.7	19.2
- Industry (excluding construction)	25.3	25.0	24.4	23.6	24.0
- Construction	6.6	7.0	6.9	7.4	6.7
- Services	47.6	48.9	50.6	50.3	50.1
	<b>% of labour force</b>				
Unemployment rate, total	11.0	9.9	12.3	16.3	18.4
Unemployment rate, males	9.3	8.4	11.5	14.6	17.0
Unemployment rate, females	13.0	11.8	13.2	18.3	20.0
Unemployment rate of persons < 25 years	22.8	21.3	31.3	35.7	41.5
	<b>as % of all unemployed</b>				
Long-term unemployment share	46.1	47.6	41.6	44.7	50.1

<b>Infrastructure</b>	<b>in km per 1000 Km2</b>				
Railway network	75	74	73	72	68
	<b>km</b>				
Length of motorways	264	268	317	358	337

<b>Industry and agriculture</b>	<b>previous year = 100</b>				
Industrial production volume indices p	111.5	103.5	103.6	106.7	99.9p
Gross agricultural production volume indices	99.8	105.9	94.8	94.4	105.7

<b>Standard of living</b>	<b>per 1000 inhabitants</b>				
Number of cars	221.0	230.0	240.0	259.0	272.0
Main telephone lines	197.1	227.8	263.2	283.3	294.1
Number of subscriptions to cellular mobile services	21.0	50.3	102.1	174.6	248.6
Number of Internet subscriptions	:	:	:	:	:

p= provisional figures

- a) Figures have been calculated using the population figures from National Accounts, which may differ from those used in demographic statistics.
- b) Including FISIM.
- c) These figures include changes in inventories, acquisitions less disposals of valuables and the statistical discrepancy between the GDP and its expenditure components.
- d) Data for 1999-2001 are subject to verifying the sector classification of open pension funds in accordance with ESA95 methodology. The decision could raise the deficit and debt in terms of GDP by 0.5% and 0.2% respectively in 1999, 1.6% and 1.0% respectively in 2000, and 1.2% and 1.9% respectively in 2001.
- e) Source: Website of the National Bank

## Methodological Notes

### Inflation rate

As part of the preparations for the common currency the EU Member States (MSs) have designed a new *consumer price index* in order to comply with the obligations of the EU Treaty. The aim was to produce CPIs comparable between Member States. The main task was to harmonise methodologies and coverage. The result was the Harmonised Index of Consumer Prices (HICP). A similar exercise has been started with Candidate Countries (CC). In respect to enlargement, it is equally important that their economic performance is assessed on the basis of comparable indices. Some progress has already been made towards adapting the new rules. Since January 1999 CCs report monthly to Eurostat so-called proxy HICPs that are based on national CPIs but adapted to the HICP coverage. They are not yet fully compliant with the HICPs of the MSs. In the table, the proxy HICPs are back-calculated to 1996 (rates from 1997).

### Finance

*Public finance:* The government deficit and debt statistics of the Candidate Countries are provisional, in the sense that they do not yet fully comply with EU methodological requirements. Broadly speaking, the general government deficit / surplus refers to the national accounts concept of consolidated general government net borrowing / net lending of ESA95. General government debt is defined as consolidated gross debt at end-year nominal value. The series are available from 1997; the 1996 data are an approximation derived from the IMF's GFS methodology.

*Gross foreign debt* is of the whole economy, covering both short- and long-term, but excluding equity investment and money market instruments. The source for stock of outstanding debt is OECD, while the source of GDP is Eurostat. For the ratio of gross foreign debt to exports, the national accounts definition of exports of goods and services is used (source: Eurostat). The data for 2000 are Eurostat estimates, based on joint OECD/IMF/BIS/World Bank series.

*Monetary aggregates* are end-year stock data, as reported to Eurostat. Generally, M1 means notes and coin in circulation plus bank sight deposits. M2 means M1 plus savings deposits plus other short-term claims on banks. M3 means M2 plus certain placements in a less liquid or longer-term form. Not all countries produce an M3 series. Total credit means loans by resident monetary financial institutions (MFIs) to non-MFI residents.

*Interest rates:* Annual average rates based on monthly series reported to Eurostat. Lending rates refer to bank lending to enterprises for over 1 year. Deposit rates refer to bank deposits with an agreed maturity of up to one year. Day-to-day money rates are overnight interbank rates.

*Exchange rates:* ECU exchange rates are those that were officially notified to until 1 January 1999, when the ECU was replaced by the euro. Euro exchange rates are reference rates of the European Central Bank. The effective exchange rate index (nominal), as reported to Eurostat, is weighted by major trading partners.

*Reserve assets* are end-year stock data, as reported to Eurostat. They are defined as the sum of central bank holdings of gold, foreign exchange, SDRs, reserve position in the IMF, and other claims on non-residents. Gold is valued at end-year market price.

## **External trade**

*Imports and exports (current prices).* The recording is based upon the special trade system, according to which; external trade comprises goods crossing the customs border of the country. Trade data excludes direct re-exports, trade in services and trade with customs free zones as well as licenses, know-how and patents. Value of external trade turnover includes the market value of the goods and the additional costs (freight, insurance etc.). The term FOB means that all costs incurred in the course of transport up to the customs frontier are charged to the seller. The term CIF means that the purchaser pays the additional costs. Exports are recorded here on FOB basis. Recording of data is realised with the date on which the commodities cross the customs border. Value of external trade turnover in the case of imports is expressed in terms of CIF.

*Terms of trade.* Transaction price indices of exports and imports (in polish currency terms) are calculated on the basis of observations of prices of selected commodities on the lowest PCN level, utilising data regarding external trade turnover (exports - FOB, imports - CIF). Annual price indices are compiled by utilising the structure of turnover value in the surveyed year as the system of weights. *Terms of trade index presents relation of changes in prices of exported commodities to change in prices of imported commodities.*

*Imports and exports with EU-15.* Data declared by the Republic of Poland.

## **Demography**

*Net migration rate.* Crude rate of net migration (recalculated by EUROSTAT) for year X, is:  $\text{population (X+1)} - \text{population (X)} - \text{Deaths (X)} + \text{Births (X)}$ . This assumes that any change in population not attributable to births and deaths is attributable to migration. This indicator includes therefore also administrative corrections (and projection errors if the total population is based on estimates and the births and deaths on registers). Figures are in this case more consistent. Further, most of the difference between the Crude rate of net migration provided by a country and the one calculated by Eurostat is caused by an under reporting or delay in reporting of migration.

## **Labour market**

The European Labour Force Survey is conducted in spring each year in accordance with Council Regulation (EEC) No. 577/98 of 9 March 1998. A detailed description of the sampling methods, the adjustment procedures, the definitions and the common Community coding currently used in the labour force survey is presented in the publications 'Labour Force Survey – Methods and definitions, 1998' and 'Labour Force Survey in central and east European countries – Methods and definitions, 2000'.

All definitions apply to persons aged 15 years and over, living in private households. The concepts and definitions used in the survey follow the guidelines of the International Labour Organisation. Persons carrying out obligatory military service are not included.

*Persons in employment* were those who during the reference week did any work for pay or profit for at least one hour, or were not working but had jobs from which they were temporarily absent. Family workers are included.



*Unemployed* were all persons aged 15+, who concurrently met all three conditions of the ILO definition:

have no work,

are actively seeking a job and,

are ready to take up a job within a fortnight.

Duration of unemployment is defined as:

(a) the duration of search for a job, or

(b) the length of the period since the last job was held (if this period is shorter than the duration of search for a job).

*The active population* is defined as the sum of persons in employment and unemployed persons.

*Inactive persons* are those who are not classified as persons in employment nor as unemployed persons.

*Employment rates* represent employed persons aged 15-64 as a percentage of the same age population.

*Unemployment rates* represent unemployed persons as a percentage of the active population aged 15 years and more.

*Economic activity rates* represent the active population aged 15-64 as a percentage of the population of the same age.

## **Infrastructure**

*Railway network.* All railways in a given area. This does not include stretches of road or water even if rolling stock should be conveyed over such routes; e.g. by wagon-carrying trailers or ferries. Lines solely used for tourist purposes during the season are excluded as are railways constructed solely to serve mines; forests or other industrial or agricultural undertakings and which are not open to public traffic. The data considers the construction length of railways.

*Length of motorway.* Road, specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

(a) is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other, either by a dividing strip not intended for traffic, or exceptionally by other means;

(b) does not cross at level with any road, railway or tramway track, or footpath;

(c) is specially sign-posted as a motorway and is reserved for specific categories of road motor vehicles.

Entry and exit lanes of motorways are included irrespectively of the location of the signposts. Urban motorways are also included.

### **Industry and agriculture**

*Industrial production volume indices.* Data on industrial production relate to sold production (sales) for domestic and external destination as well.

*Gross agricultural production volume indices.* Indices based on evaluation of all individual products of gross agricultural production in constant prices of the year preceding the examined one. The indices of the gross agricultural production are calculated on the basis of the previous year.

### **Standard of living**

*Number of cars.* Passenger car: road motor vehicle, other than a motor cycle, intended for the carriage of passengers and designed to seat no more than nine persons (including the driver).

The term "passenger car" therefore covers microcars (need no permit to be driven), taxis and hired passenger cars, provided that they have less than ten seats. This category may also include pick-ups.

*Telephone subscribers.* Excluding mobile phone subscriptions.

### **Sources**

Total area, , infrastructure, demography, labour market, industry and agriculture, standard of living (except Internet connections): National sources.

Balance of payment National accounts, inflation rate, external trade, finance: Eurostat.

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[b1]This section is probably too detailed in comparison with the texts for other CCs. I suggest we keep the section dealing with pharmaceuticals, given its sensitivity but abridge the text on other sectoral legislation. Have looked at this but short of cutting out the laws themselves there is little abridging which can be done