

# WORLD TRADE ORGANIZATION

RESTRICTED

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**Committee on Regional Trade Agreements**

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## **EUROPEAN COMMUNITIES-POLAND EUROPE AGREEMENT, SERVICES**

### Joint Communication from the Parties

#### Addendum

This document reproduces additional questions addressed to the Parties and the joint responses provided by them.

Note by the Parties: In answering the questions, we have focussed on the liberalisation provisions of the Europe Agreement. WTO Members should, however, be aware of the relationship of this Agreement to the wider process of economic integration and law approximation between the European Communities (EC) and its Member States and Poland in view of preparing Poland for EU membership. This process is in itself liberalising.

**1. Please provide more information on how movement of workers is addressed under the Agreement. Chapter I (Movement of Workers) of Title IV indicates that during the second stage of the agreement or earlier, the Association [Council] shall examine further ways of improving the movement of workers. Has this work begun? How does this commitment relate to Chapter III, Article 55 which addresses liberalisation of temporary entry of key personnel? What time period is envisaged for liberalisation?**

Chapter I of the Title IV of the Europe Agreement provides for, in particular, an application of the national treatment principle in respect to the workers who are legally employed on the territory of the other Party, as well it addresses the issues related to access to the labour market.

Chapter III deals with movement of persons connected with cross-border supply of services and refers to the right of the temporary movement of natural persons providing services and key personnel of the service supplier, including persons responsible for negotiating the sale of services or for entering into agreements to sell services for that service supplier. Article 55(1) stipulates that "The parties undertake in accordance with the provisions of this Chapter to take the necessary steps to allow progressively the supply of services by Community or Polish companies or nationals who are established in a Party other than that of the person for the services are intended taking into account the development of the services sectors in the Parties." Article 6 which lays down a transition period of a maximum duration of ten years is a horizontal provision applicable to Article 55. It is therefore the objective of both Parties to achieve the undertaking under Article 55 within the transition period. As far as the liberalisation of temporary entry of key personnel is concerned, Article 55(2) stipulates that the liberalisation should take place "in step with the liberalisation process mentioned in paragraph 1."

**2. Article 45:5 of Chapter II (Establishment) in Title IV seems to provide flexibility to introduce transition periods on top of the existing very long 10-year transition periods. How do the EU and Poland see this as meeting the requirements under Article V to eliminate discrimination between the Parties?**

The scope of this Article is limited as this provision only applies to Poland and can only be granted with the EC's agreement within the Association Council. This could only be done in exceptional circumstances and for a limited period of time.

Such a very limited flexibility to extend the duration of a transition period for one of the two Parties is justified given the asymmetric nature of the EC and Poland economies and in relation with the overall framework of integration of Poland within the EC.

**3. Earlier documentation states that mode 1 (cross-border) and mode 2 (consumption abroad) are "covered" by the Agreement in Chapters 55-58. Unfortunately, in reviewing these provisions, it is not entirely clear how these modes are covered. For example, Article 55 of Chapter III seems to address cross-border services but the commitment is limited to progressive liberalisation taking into account the development of the particular services sector. Please clarify.**

Article 55(1) covers the "supply of services by Community or Polish companies or nationals who are established in a Party other than that of the person for whom the services are intended." Despite the difference of wording which is due to the fact that the Europe Agreements were negotiated before GATS was concluded, this must be understood as covering consumption abroad and cross-border supply of services.

As indicated above, Article 6 which lays down a transition period of a maximum duration of ten years is a horizontal provision applicable to Article 55. It is therefore the objective of both Parties to achieve the undertaking under Article 55 within the transition period.

For the purpose of implementing Article 56 of the Europe Agreement, the EC, on the one hand and other countries (including Poland), on the other hand, signed the Agreement Interbus in the year 2000. Another example of the implementation of this provision is an agreement signed in 1998 between the EC and other countries (including Poland) on passenger inland waterway transport. Furthermore, the EC and other countries (including Poland) are conducting negotiations on European Common Aviation area.

**4. What constitutes "contractual services" and how are they covered under the Agreement?**

The Europe Agreement between the EC and its Member States and Poland functions on the basis of negative listing. The agreement covers all services sectors. Only those services which are excluded or for which specific transition periods are given, or special rules apply, are mentioned, either in the text of the Agreement itself or in Annexes XII:b to XII:e. As contractual services are not specifically excluded and as no specific transition periods are given in the Europe Agreement, these services are covered by the general provisions of the Europe Agreement.

**5. The general information provided in WT/REG51/2/Add.3, including the charts, indicates that several sectors are "covered" by the EU-Poland Agreement. Could the Parties provide a deeper analysis of whether financial services and telecommunication services will be fully liberalised at the end of the transitional period?**

#### Telecommunication Services

Telecommunication services are covered by the liberalisation process which principles are determined in the Europe Agreement.

As regards establishment (equivalent to mode 3 and part of mode 4), the EC grants full national treatment for the establishment and operation of Polish firms and nationals in the EC from the date of entry into force of the Agreement. From the entry into force of the Agreement Poland has granted national treatment for the operation of Community nationals and companies established in Poland. Poland must grant right of establishment and full national treatment to EC firms and nationals at the latest by the end of the first stage of the transitional period. The right of establishment includes the right of employ key personnel.

As regards supply of services (equivalent to modes 1, 2 and part of mode 4), telecommunication services are not excluded from the scope of Article 55(1) and 55(2). It is therefore the objective of both Parties to achieve the undertaking under Article 55 within the transition period.

As regards movement of workers, telecommunication services are not excluded from the provisions of Article 37, 41 and 42 (application of national treatment in respect of legally employed workers).

#### Financial Services

Financial services are covered by the liberalisation process which principles are determined in the Europe Agreement.

Financial services are defined in Annex XII:c of the Agreement (see Article 49).

As regards establishment (equivalent to mode 3 and part of mode 4), the EC grants full national treatment for the establishment and operation of Polish firms and nationals in the EC from the date of entry into force of the Agreement. From the entry into force of the Agreement Poland has granted national treatment for the operation of Community nationals and companies established in Poland. Poland must grant right of establishment and full national treatment to EC firms and nationals at the latest at the end of the ten-year transitional period (Article 44(1)). The right of establishment includes the right to employ key personnel.

As regards supply of services (equivalent to modes 1, 2 and part of mode 4), Financial services are not excluded from the scope of Article 55(1) and 55(2). It is therefore the objective of both Parties to achieve the undertaking under Article 55 within the transition period.

As regards movement of workers, financial services are not excluded from the provisions of Article 37, 41 and 42 (application of national treatment in respect of legally employed workers).

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