

CHAPTER 5

POLAND



GREGORZ PASTUSZKO

Abstract

This report aims to provide a synthetic description of the mechanism and course of accession negotiations effected by Poland with the European Union in order to become a member of this organisation. The author discusses the genesis and development of the negotiation process, the conditions necessary for both parties to meet, the legal and institutional framework, and also – which is a particularly important element of this study – the difficulties and problems related to Poland's adaptation to the requirements set by the 'Old Union' countries. The report is divided into two parts: (1) the requirements laid upon the candidate countries before the accession process started and before they joined the EU; (2) the legal aspects of the procedure of accession, and is prepared in the form of questions and answers. Its main research assumption aims to show the specificity of Polish accession negotiations.

Keywords: EU accession, candidate countries, conditions for EU accession, compliance of Polish law with EU law, harmonisation of national law

1. Initial Requirements From Candidate Countries

The first Sec. deals with the requirements laid upon the candidate countries before the accession process started and before they joined the EU. The text should cover the following questions, but may be more extensive when necessary.

Gregorz Pastuszko (2026) 'Poland'. In: Michal Petr (ed.) *EU Enlargement and Successful Integration: Is There a Way?* Volume II., pp. 731–752. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2026.mpeesitw_5



Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join The EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

The accession process aimed at introducing Poland to the group of countries constituting the European Union was initiated in the final phase of native communism. This was concretely achieved by establishing diplomatic relations with the European Economic Community (EEC) in September 1988.¹ This step was a clear announcement of the reorientation of national policy towards a pro-Western one, and created the basis for taking further actions to bring Poland closer to Europe. In the face of this challenge, the priority of the Polish authorities was to launch reforms that were to lead to breaking with the old economic and political model and replacing it with a model typical of liberal democratic countries. For this reason, taking into account the pro-Community aspirations of the Polish people, a deep systemic transformation was initiated in 1989 aimed at adopting Western models. The beginning of this process coincided with the fall of communist rule and the commencement of discussions at the so-called Round Table.

At that time, it was clear that Poland needed to meet several conditions to join the community structures. It was widely understood that achieving this goal would take time, and the application for membership itself would have to be preceded by a series of efforts aimed at modernising the country. Ultimately, the structural and economic differences remaining between Poland and the Community countries were too great, and the adjustment processes too complicated, for the scale of the needs of the post-communist state to be met in the short term.

In addition, it is worth pointing out that the same problems concerned other countries in the region, such as Czechoslovakia (later transformed into the Czech Republic and Slovakia) and Hungary. For this reason, already in 1991, these countries concluded an informal agreement called the Visegrad Group. Its creators intended it to be an additional instrument stimulating work aimed at preparing accession talks. This intention has been fully confirmed by history, as the Visegrad Group undoubtedly became an important forum for shaping pro-accession policy in the early 1990s.

The conditions that Poland was faced with even before the official presentation of its candidacy concerned various issues, with economic and political-systemic issues coming to the fore. Their fulfilment affected the Polish authorities' ability to submit an application for membership.

The conditions included in the Europe Agreement, the document concluded on December 16, 1991, which established an association between the Republic of Poland and the European Communities and their Member States, were undoubtedly of significant importance. The agreement's main goal was to legally regulate the principles

1 Chruściel and Kloc, 2013, p. 91.

of economic cooperation of its signatories and created the basis for political dialogue to be conducted by Poland and the European Community. It was formally ratified in February 1994, although its provisions regarding the liberalisation of the flow of goods, and subsequently that of services, people and capital, became effective in March 1992.²

Basically, the creators of the agreement in question decided to embark on the path of liberalisation and the creation of a common market, while adopting specific restrictions in particular areas. This involved concessions on the Polish side (and on the Community side as well) and thus the need to adapt its legislation regarding issues covered by the consensus. As Arkadiusz Domagała writes,

under the Association Agreement, Poland undertook to take the necessary steps to ensure compliance of its legislation with Community law. Both sides recognised that this is an important precondition of Poland's economic integration with the Community. Provisions relating to competition rules, company law, customs law, and the protection of commercial, industrial and intellectual property were particularly important. The agreement also provided for the opening of public purchasing markets.³

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

Poland submitted an application for accession to the European Union through the Minister of Foreign Affairs of the Republic of Poland in Athens on April 8, 1994. Accession negotiations formally began on March 31, 1998.

Question No. 3

*What Conditions Did Your Country Need to Satisfy Before Joining The EU?
To Your Knowledge, Were These Conditions Different From Those Applied to Counties
in a Comparable Position?*

The key conditions that Poland had to meet in order to join the European Union were defined at the summit in Copenhagen, held on June 21–22, 1993, i.e. before submitting the application for membership. The Copenhagen criteria – as this is the title under which these conditions came to history – were intended to set out the general framework for bilateral dialogue between the Member States (including Poland), and consequently to establish modernisation priorities in the policies pursued by countries aspiring to membership.

Due to their general nature, they did not provide a clear starting point for the national authorities, but only an incentive to continue efforts to develop a free market and democracy. Taking into account the objective criterion, they could be divided

2 Chruściel and Kloc, 2013, p. 93.

3 Domagała, 2011, p. 59; see also: Duda, 2004, pp. 28–31.

into political criteria and economic criteria. The former included: the existence of institutions guaranteeing stable democracy, the rule of law, respect for human rights, and respect for minority rights. The second is the existence of a market economy ready to face competition and the free market, the ability to adopt the *acquis communautaire* and the ability to face political, economic and monetary union.

It should be emphasised that the Copenhagen criteria, when created, applied not only to Poland, but also to countries with similar political and economic experiences of the so-called Visegrad Group, i.e. the Czech Republic, Slovakia and Hungary.⁴ Poland, therefore, faced the same challenges and had to meet the same requirements as the ones imposed on the indicated countries. In its case, however, this was particularly difficult as, according to authoritative data, the country's economy was in the worst situation. It stood out in a particularly negative way compared to the Czech and Hungarian economies.⁵

Question No. 4

Were There any Specific Features of Your Member State's Accession to the EU, Compared to Other Countries in a Comparable Position?

2. Institutions and Procedures of Accession

The second Sec. focuses on the legal aspects of the procedure of accession, including institutions set up for that purpose, legislative changes at national level and monitoring of the process by the EU institutions.

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Till the Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Where There Any National Rules Specifically Governing the Procedure of Accession?

The accession negotiation process, launched as a result of the application submitted by the Polish authorities on April 8, 1994, took place in subsequent stages and was based on legal acts and other documents in force in the European Union and Poland.⁶

4 Wallas, 2023, p. 147.

5 See Kowalski, 2009, pp. 253–254.

6 I refer to the documents indicated in: *Integracja Polski z Unią Europejską. Dokumenty i Kalendarium 1988–2002*, p. 9.

When it comes to the Union, the key role was obviously played by the existing treaties, i.e. the Maastricht Treaty (providing the institutional basis for the inclusion of countries from Central and Eastern Europe into the European Union)⁷ and the Treaty of Amsterdam (setting quite precisely the legal and time frames for the admission of new members).⁸ In addition, documents adopted on an ongoing basis were also important, as they determined the legal and political course of the ongoing talks. The most important ones include: (1) the strategy for preparing the countries of Central and Eastern Europe for EU membership (the so-called pre-accession strategy) adopted at the meeting in Essen by the European Council, (2) the White Paper of the European Commission entitled 'preparation of the associated countries of Central and Eastern Europe for integration with the Single Internal Market of the European Union from 1995', (3) The Response Questionnaire, presented by the European Commission, among others. Poland on April 26, 1996, to which Poland responded with a document of July 26, 1996, (4) Opinions (Avis) presented by the European Commission to the European Parliament on applications for membership in the European Union submitted by the associated countries of Central and Eastern Europe and Cyprus, (5) Agenda 2000 – package submitted to the European Parliament by the European Commission on July 16, 1997 reforms, which included, among others, the issue of negotiations with 10 countries of Central and Eastern Europe, including Poland, on the accession to the European Union, (6) Council Regulation No. 622/98 of 16 March 1998 regarding assistance granted to candidate countries under the pre-accession strategy, (7) decision concerning the Poland Council of 30 March 1998 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership for the Republic of Poland.

In turn, when it comes to Poland, the legal framework for the negotiations was determined primarily by legal acts such as the Constitution of 1997, the Act of August 8, 1996 on the Council of Ministers and the regulations of the Sejm and Senate. At the same time, these issues were regulated in more detail by the Regulation of the Council of Ministers of March 24, 1998 on the establishment of the Government Plenipotentiary for Negotiations for the Membership of the Republic of Poland in the European Union (Journal of Laws of 1998, No. 39, item 225) and Order No. 19 of the President of the Council Ministers of March 27, 1998 (establishing the Negotiating Team for the Negotiations for the Membership of the Republic of Poland in the European Union), later amended by Order No. 129 of the Prime Minister of October 31, 2001.

During the accession negotiations between the European Union and Poland, a number of international agreements subordinated to future accession were concluded. These were partly agreements enriching the provisions of the above-mentioned Europe Agreement: (1) Additional Protocol to the Europe Agreement initiated on December 23, 1994 on the opening – towards Poland – of Community programs

⁷ Wensierski, 2003, p. 227.

⁸ Wensierski, 2003, p. 228.

and (2) Additional Protocol to the Europe Agreement establishing a trade agreement on certain fish and fishery products. Partially, however, also other international agreements regulating various thematic areas. These were: (1) Agreement on the liberalisation of trade in agricultural goods (in accordance with the so-called double zero option) of September 26, 2000, (2) Agreement of January 22, 2001, under which Poland joined the Academy of European Law in Trier, (3) Agreement of October 19, 2002 on the liberalisation of trade in processed agricultural products, (4) Joint Declaration on Poland's accession to the European Union signed by the signatories of the Pact for Democracy of November 20, 2002.

Of course, the negotiation efforts culminated in the conclusion of the Accession Treaty, also known as the Treaty of Athens, signed on April 16, 2003. This act became the legal basis for the accession of 10 countries of Central and Southern Europe, including Poland.

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both the EU and National Level?

On the Polish side, the bodies that carried the political burden of conducting accession negotiations were the Council of Ministers and its President. Their obligations in this respect resulted from the adopted constitutional regulations and were related to the implementation of the government's systemic mission in the field of managing state policy.

The Sejm and Senate, which constitute the Polish Parliament, also took part in the talks and were kept informed about the negotiation progress. This information was presented to both houses by the Chief Negotiator, by participating in parliamentary debates, but also by sending appropriate letters to the speakers of the chambers and the chairmen of the relevant committees (in the Sejm these were the Committee on European Integration and the Committee on Foreign Affairs, in the Senate the Committee on Foreign Affairs and European Integration).⁹ The knowledge obtained in this way allowed the Sejm and Senate to indirectly influence the course of negotiations and at the same time made it possible to enforce political responsibility towards the government and its members for actions taken in this field¹⁰.

Additionally, several other institutions were created for the purposes of talks with the Community, including the accession negotiations formally conducted from 1998 on. These include:

- (1) Government Plenipotentiary for European Integration and Foreign Assistance, appointed by the Council of Ministers by Resolution No. 11 of January 26, 1991 as a consequence of signing the Europe Agreement with the Euro-

⁹ Trzeciak, 2010, pp. 95–96.

¹⁰ Domagała, 2011, p. 148.

pean Union in December 1990. In terms of legal status, the Plenipotentiary remained embedded in the structure of the Office of the Council of Ministers. His tasks included coordinating Poland's integration with the EU and obtaining and using foreign aid. The implementation of these tasks was handled by an Office created especially for this purpose.

- (2) Committee for European Integration, established by the Act of 8 August 1996 on the Council of Ministers (Journal of Laws 1996, No. 106, item 492). This body, gaining the status of the supreme government administration body, replaced the Government Plenipotentiary for European Integration and Foreign Aid and took over its functions. The committee was chaired by the Prime Minister himself or one of the ministers. The permanent members of the Committee were the ministers of foreign affairs, internal affairs, economy, labour, public finances, state treasury, environment, agriculture, infrastructure, health and justice. Additionally, the Committee included a maximum number of 3 people nominated by the Prime Minister, whose experience and functions could be important for the implementation of the committee's tasks. The tasks of the Committee included: (a) coordinating Poland's adaptation and integration processes with the European Union and initiating, organising and coordinating activities shaping these processes, especially in the economic and social sphere, (b) initiating and coordinating adjustment works in the field of legal institutions and giving opinions on draft legal acts as to their compliance with European Union law, (c) cooperation with the European Commission in the implementation of an individual integration requirements programme, (d) coordinating projects related to obtaining and using funds from foreign aid, (e) assessing the course of adjustment processes, (f) taking actions aimed at preparing information, conceptual and human resources for integration processes, (g) cooperation with local government organisations aimed at the participation of these organisations in various institutional structures of the European Union, (h) performance of tasks in the field of state defence and security, in accordance with the competences specified in separate regulations, (i) performance of other tasks entrusted by the President of the Council Ministers or resulting from separate regulations.
- (3) Government Plenipotentiary for Negotiations for the Membership of the Republic of Poland in the European Union, appointed by regulation of the Council of Ministers of March 24, 1998 on the establishment of the Government Plenipotentiary for Negotiations for the Membership of the Republic of Poland in the European Union, entrusted in particular with: (a) preparing a work schedule for negotiations, (b) initiating and conducting work related to the preparation of draft legal acts and organisational projects related to negotiations, (c) participating in the process of preparing draft negotiation instructions provided for in separate regulations, (d) coordinating the prepa-

ration of the treaty on the membership of the Republic of Poland in the European Union.¹¹

- (4) Negotiating Team for the Membership of the Republic of Poland in the European Union, established pursuant to Order No. 19 of the Prime Minister of March 27, 1998, as amended by Order No. 129 of the Prime Minister of October 31, 2001. This team comprised a total of 18 members, including negotiators and the Government Plenipotentiary for Negotiations for Poland's Membership in the European Union, who served the chairman and the team included the secretaries of state from the Ministry of Foreign Affairs and the Office of the Committee for European Integration as deputies, along with representatives from key ministries holding the positions of secretaries or undersecretaries of state. These members were specifically appointed by the President of the Council Ministers.
- (5) Interministerial Team for the Preparation of Accession Negotiations (originally called the Interministerial Team for the Preparation of Documentation for the Negotiations for Poland's Membership in the European Union), established in 1997 to assist the Negotiation Team and responsible for the preparation of various analyses and documents. This team consisted of 38 thematic sub-teams composed of experts from individual ministries in the position of undersecretaries and secretaries of state, as well as presidents of relevant offices.

On the EU side, the institution involved in the negotiations was the Task Force for Accession Negotiations, created especially for this purpose in 1997. This team, functioning as an organizational unit of the European Commission, was transformed in 1999 into the Directorate-General for Enlargement (DG ENLARG). The scope of the body's tasks included, among others: (a) managing the negotiation process with EU candidate countries, (b) helping candidate and potential candidate countries meet the 'Copenhagen criteria' – defined in the Treaty and the European Council – and monitoring their progress, (c) managing the EU's bilateral relations with candidate and potential candidate countries, (d) coordinating the review of the law, (e) seeking solutions to problems arising during negotiations with candidate countries, (f) coordinating work on draft common EU positions.

At the same time, the Commissioner for EU Enlargement – a member of the European Commission – acted as a negotiator, whose task was to coordinate the negotiations on behalf of the Community.

11 Regulation of the Council of Ministers of March 24, 1998 on the appointment of the Government Plenipotentiary for Negotiations for the Membership of the Republic of Poland in the European Union (Journal of Laws 1998, No. 39, item 225).

Question No. 7

What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in a Comparable Position?

Poland was obliged to adopt the entire *acquis communautaire* before joining the European Union. The harmonisation of national law with EU law was to be based on the already mentioned Copenhagen criteria, which – let us recall – included the existence of: institutions guaranteeing stable democracy, the rule of law, respect for human rights, respect for minority rights, a market economy ready to face competition and a free market, the ability to adopt the *acquis communautaire* and the ability to cope with political, economic and monetary union. In this respect, Poland's situation did not differ from that of other candidate countries.

Question No. 8

What Procedures on the EU Level Were in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

The model for monitoring the fulfilment of the accession criteria adopted at the European Union level assumed primarily the active participation of the European Commission in this area. The Commission, which did not itself conduct the negotiations, was responsible for presenting draft common positions,¹² as well as issuing opinions and preparing reports on the progress of the adjustment process. It is worth recalling the opinion delivered by the Commission on Poland's application (also by other countries seeking accession) in a key document published in July 1997 on the development of the European Union and the conditions governing the accession of new Member States. It is also worth mentioning its special report on each applicant country, focusing on its ability to meet the 1993 Copenhagen criteria, in which it confirmed that Poland displays the characteristics of a democracy with stable institutions guaranteeing the rule of law, respect for human rights and respect for, and the protection of, minorities; in this report, the Commission indicated that in the medium term full participation by Poland in the internal market will be possible, provided that extra efforts are made to meet the criteria of the *acquis* in the areas of agriculture, the environment and transport.¹³

The Directorate-General for Enlargement also played an important role within the Commission in monitoring the adjustment process. One of its basic tasks was to

¹² Trzeciak, 2010, p. 99.

¹³ Briefing No 12, Note on Poland's Political and Economic Situation and its Relations with the European Union with a View to Accession, The Opinions Expressed in this Document are not Necessarily Those Held by the European Parliament as an Institution, see: European Parliament, 2000.

help candidate and potential candidate countries meet the ‘Copenhagen criteria’ – defined in the Treaty and the European Council – and to monitor their progress.

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission’s or Council’s Working Groups, Participation of Your Representatives at the Commission’s or Council’s Meetings, etc.)?

The structure of the accession negotiations assumed the joint operation of Polish and EU working groups at several levels.

Firstly, negotiations in this formula were conducted at the level of the Council of the European Union, where the participants of the talks on both sides had the opportunity to confront the agreed positions of the EU countries and the ministers of foreign affairs of the Member States or their deputies. The official forum for talks held within the Council was the Intergovernmental Accession Conference. During the conference, the meeting was chaired by the minister from the country holding the presidency,¹⁴ conducting the deliberations, on the one hand, among the heads of delegations of the member and candidate countries, who were the ministers of foreign affairs, and on the other hand, among the deputy heads of delegations – ambassadors of the Member States (COREPER), as well as the main negotiators from the candidate countries.

Secondly, negotiations of this type were also carried out on the forum of the Association Council – a body established by the provisions of the Europe Agreement, creating conditions for maintaining permanent contacts, exchanging opinions, and partly for making joint decisions by both parties. The Association Council meets once a year to examine the problems inherent in bringing Polish legislation into line with Community legislation. Members of parliament (12 from the European Parliament and 12 from the Sejm/Senate) meet twice a year in the Joint Parliamentary Committee.

Question No. 10

Has Your Country Experienced Any Particular Difficulty Meeting Some of the Accession Criteria?

The negotiations between Poland and the EU encountered particular difficulties in several thematic areas.

Firstly, the issue of direct payments to farmers was controversial. From the very beginning, representatives of the European Union maintained a clear distance from the idea of providing this type of support not only to Poland, but also to other candidate countries, claiming that it would contribute to disrupting the functioning of the economies of the EU countries, and at the same time would deprive the candidate

¹⁴ Trzeciak, 2010, p. 99.

countries of their determination in reforming their agriculture. In response, the Polish side argued that agriculture could not be modernised without additional money and at the same time emphasised that the conditions offered to Spain and Greece were much more favourable.¹⁵

Secondly, the issue of purchasing real estate by foreigners has also become a bone of contention. The parties seeking a compromise in this regard, wishing to ensure the implementation of one of the fundamental EU freedoms: the free movement of capital between the Member States and Poland, had to face the resistance of the Polish public opinion, the vast majority of which expressed concerns about the prospect of the then envisaged mass purchase of Polish lands by citizens, the so-called Old Union, especially the Germans. The negotiations undertaken therefore required breaking the barrier of negative Polish resentments that had their origins in World War II (specifically, in the fact that Poland, as part of the post-war division of Europe, was enriched with the so-called Reclaimed Territories, which were once part of German territory) and related to the belief that the too far-reaching ease of purchasing real estate by foreigners will threaten the territorial integrity of Poland and at the same time will lead to limited opportunities on the market for the poorer Polish people.¹⁶ The decisions were supposed to serve this purpose.

Thirdly, the issue that caused divergent opinions was the problem of the free movement of workers between Poland and EU countries. It was based on strong fears of old EU members that the mass inflow of workers from less developed countries of Central and Eastern Europe, especially Poland, which has nearly 40 million citizens, would reduce the competitiveness of their labour market and, as a result, limit the professional development opportunities of the local population. When presenting this point of view, the EU side had to take into account the expectations of Polish society, which insisted on the possibility of freely taking up employment, studying and living in other countries as one of the main values of Poland's accession to the European Union¹⁷.

Fourthly, difficulties arose in the area of environmental protection. They resulted '(...) from the discrepancies between the actual standards in force in Poland and the European Union'.¹⁸

Fifthly, a number of problems emerged during negotiations on internal affairs, especially the issues of migration, asylum, protection from securing external borders, organised crime, terrorism, etc. This ensued from the fact that the Member States attached the greatest importance to the so-called area of freedom, justice and security that was being created within the EU at that time (...) and, not wanting to allow for a deterioration of the security situation in the EU, they demanded credible

15 See Trzeciak, 2010, p. 115.

16 See Trzeciak, 2010, p. 164.

17 See Trzeciak, 2010, pp. 201–202.

18 Wensierski, 2003, p. 243.

confirmation by Poland, the largest acceding country, responsible for the protection of the external eastern border of the EU, of the fulfilment of all commitments in this respect.¹⁹

Question No. 11

In What Way Was the Constitution of Your Country Changed in Order to Accede the EU? Was the Accession Legally Challenged (e.g. the Constitutional Court)?

Poland's accession to the European Union was possible thanks to the application of Art. 90 of the Constitution. This provision was introduced in the original version of the Constitution of 1997 due to the prospect of Poland's membership and the further process of European integration. According to it: (1) The Republic of Poland may, on the basis of an international agreement, transfer the competences of state authorities in certain matters to an international organisation or international body; (2) An act expressing consent to the ratification of the international agreement referred to in Sec. 1, is adopted by the Sejm by a 2/3 majority of votes in the presence of at least half of the statutory number of deputies and by the Senate by a 2/3 majority of votes in the presence of at least half of the statutory number of senators; (3) Consent to ratification of such an agreement may be adopted in a nationwide referendum in accordance with the provisions of Art. 125 on national referendum; (4) The resolution on the choice of the mode of expressing consent to ratification is adopted by the Sejm by an absolute majority of votes in the presence of at least half of the statutory number of deputies.

In the post-accession period, an attempt was made to question the Accession Treaty of April 16, 2003. This initiative was supported by a group of MPs who, in their motion of April 30, 2004, formulated a number of allegations pointing to the lack of compliance of the Treaty with the Constitution. They argued that (1) Art. 1, Secs. 1 and 3 of the Accession Treaty and Art. 2 of the Act concerning the conditions of accession are inconsistent with the Preamble to the Constitution in the part relating to the sovereignty of the Polish Nation under Art. 8, Sec. 1, Art. 91, Sec. 3, Arts. 188 and 235 of the Constitution, (2) Art. 234 of the EC Treaty – in the part in which it imposes the obligation on courts of last instance and tribunals to present questions on the validity and interpretation of Community provisions also in the event these provisions are inconsistent with the Constitution, and establishes that Polish courts and tribunals are bound by the position of the Court of Justice when this position requires the issuance of a judgement inconsistent with the Constitution, and inconsistent with Art. 8, Sec. 1, Art. 174, Art. 178, Sec. 1, Art. 188 and Art. 195, Sec. 1 of the Constitution.

The consequence of the application in question was the judgement of the Constitutional Tribunal of May 11, 2005.²⁰ The Tribunal ruled that the accession treaty

¹⁹ Harasimowicz, 2005, p. 100.

²⁰ Decision on 11 May 2005, no. K 18/04.

as a whole and the individual challenged provisions of the treaty do not violate the provisions of the Constitution of the Republic of Poland referred to by the applicants. Justifying its ruling, the Tribunal put forward several key theses. It emphasised in particular that:

(1) (...) the recognition of the Constitution as the ‘supreme law of the Republic of Poland’ (Art. 8(1)) is accompanied by the Polish legislator’s respect for the provisions of international law properly formed and existing in the territory of the Republic of Poland (Art. 9 of the Constitution),

(2) Pursuant to Art. 91, Sec. 1 of the Constitution, a ratified international agreement, after its publication in the Journal of Laws, is a component of the legal system of the Republic of Poland and is directly applicable, unless its application depends on the issuance of an act. Provided for in Art. 90, Sec. 1 of the Constitution, international agreements on the transfer of competences of state authorities ‘in certain matters’ to an international organisation or international body constitute one of the categories of international agreements subject to ratification. However, ratification of such an agreement is carried out in accordance with a procedure with clearly stricter requirements compared to the procedure for ratification of other agreements (Art. 90(2–4) of the Constitution). These safeguards apply to all cases of transfer of competences to bodies of the European Communities or the European Union.

(3) (...) Under Art. 90 of the Constitution, the subject of the transfer may be competences belonging to various segments of state power – legislative, executive and judicial. However, in none of these areas can there be a transfer of competences that would undermine the existence and functioning of state bodies and create a situation in which an international organisation would become the sovereign. Transfer of competences pursuant to Art. 90 of the Constitution cannot deprive the state of the ability to act independently, as this would mean a violation of the principles expressed in Art. 4 (‘The supreme power in the Republic of Poland belongs to the Nation’) and Art. 5 (‘The Republic of Poland protects its independence’). The Constitution therefore prevents the transfer of competences to the extent that the Republic of Poland will lose the status of a sovereign state.

(4) Poland’s accession to the European Union does not undermine the status of the Constitution as the ‘supreme law of the Republic of Poland’ (Art. 8(1)).

(5) On the territory of the Republic of Poland, the Constitution has primacy of validity and application, also in relation to all international agreements binding on Poland, including agreements transferring the competences of state authorities to international organisations, and even more so in relation to the norms of secondary Community law. Provided for in Art. 91, Sec.s 1 and 3 of the Constitution, the priority of application of a ratified international agreement, as well as the law established by

an international organisation on the basis of such an agreement over the Polish Act, in no case means their priority over the Constitution,

(6) After Poland's accession to the European Union, we are dealing with the parallel existence of two autonomous legal orders – the Polish and EU law. This does not exclude their mutual influence and, a possible conflict between European law and the Constitution. In the event of such a conflict, the sovereign decision of the Republic of Poland would be to either amend the Constitution accordingly, or cause changes to Community regulations, or – ultimately – withdraw from the European Union,

(7) The Constitutional Tribunal did not agree with the applicants' arguments pointing out the impossibility of reconciling the competences of the Court of Justice of the European Communities (ECJ) specified in the treaty with the principles of the sovereignty of the Republic of Poland and the supremacy of its Constitution in the Polish legal order, as well as with the systemic position of the Constitutional Tribunal. The Tribunal noted in particular that the ECJ is the legitimate, but not the only, depositary of the correct understanding of the treaties. The interpretation of Community law by the ECJ should be within the scope of the competences and functions assigned to it by the Member States and respect the principle of mutual loyalty of the Community institutions and the institutions of the Member States. This principle implies an obligation for the ECJ to respect national legal systems, and for EU Member States, an obligation to maintain the highest standard of respect for Community norms.

Question No. 12

Was There a Referendum in any Stage of the Accession Procedure?

The national referendum on Poland's accession to the European Union took place in the last phase of the accession process and served to enable the head of state to ratify the Accession Treaty. This was held on June 7–8, 2003 and was carried out on the basis of Art. 90, Sec. 3 in connection with Art. 125 of the Constitution. According to Art. 90, Sec. 3, expressing consent to the ratification of an international agreement, on the basis of which the international agreement transfers the competences of state authorities in certain matters to an international organisation or an international body, may be adopted in a nationwide referendum in accordance with the provisions of Art. 125. In turn, pursuant to Art. 125, a nationwide referendum may be held on matters of particular importance to the state. The Sejm has the right to order a national referendum by an absolute majority of votes in the presence of at least half of the statutory number of deputies, or the President of the Republic of Poland with the consent of the Senate expressed by an absolute majority of votes in the presence of at least half of the statutory number of senators. If more than half of those entitled to vote took part in the national referendum, the referendum result is binding. The validity of the national referendum is confirmed by the Supreme Court.

According to the official data of the National Electoral Commission, the turnout is 58.85%, i.e. 17,586,215 people out of 29,868,474 entitled to vote took part in the voting. The subject of the referendum was Poland's accession to the European Union and the adoption of the Treaty of Athens. Those taking part in the referendum were asked the following question: 'Do you consent to Poland's accession to the European Union?' The positive answer was given by 77.45% of the voters, i.e. exactly 13,516,612 people, and the negative answer was given by 22.55% of them, i.e. 3,936,012. The vast majority therefore believed that accession is a good future prospect for Poland.

Question No. 13

In Addition to the Above, Were There Any Noteworthy Legal Aspects Concerning the Negotiation And Ratification of the EU Accession Agreement in Your Country?

3. Legal and Economic Support for Candidate Countries

The third Sec. concentrates on the support provided to the candidate countries by the EU.

Question No. 14

Before the Accession, Was There any Institutionalised Support for the Approximation of the Legal Order of Your Country From the EU?

In the process of the approximation of the legal order of Poland from the EU, the European Commission provided Poland with key support.

Even in the period preceding the actual negotiations, the European Commission applied the previously known screening procedure. As part of these activities, it prepared the legal acquis of the community into 31 thematic chapters and presented it to the candidate countries, including Poland. Thus, the indicated countries were obliged to review and verify their own compliance with the *acquis communautaire*.

During the screening procedure, the European Commission organised multi-lateral (with the participation of all candidate countries) and bilateral (with the participation of Poland) law review sessions, during which specific findings were made, particularly identifying areas where the implementation of EU law could pose negotiation challenges and outlining the consequences this might entail.²¹

The end of the *screening procedure* in the most important areas meant that proper substantive negotiations could begin. This finally happened in November 1998.²²

²¹ Domagała, 2011, p. 145.

²² Chruściel and Kloc, 2013, p. 96.

In 1995, the European Commission released a White Paper entitled ‘preparing the associated countries of Central and Eastern Europe for integration with the Single Internal Market of the European Union’. In this document, it presented an overview of the *acquis communautaire* in the area of the single market, thus creating a guide for Poland and other candidate countries when it comes to adapting their own legislation in this respect.

In 1996, the Commission submitted a questionnaire which obliged Poland and other candidate countries to provide extensive and comprehensive answers to individual questions. These answers then became the basis for the Opinions (Avis) presented by the European Commission to the European Parliament on applications for membership in the European Union. Both the Questionnaire and the Opinions were shaped according to the Copenhagen criteria. Both documents served to show the extent to which Poland and other candidate countries meet these criteria.²³

Question No. 15

Did Your Country Benefit From Any Funds Providing Financial Support in Relation to EU Accession Immediately After the EU Accession?

Immediately after accession, in the years 2004–2006, Poland received financial support under a number of EU programmes. The support programmes were specified in detail in the National Development Plan 2004–2006. These were specifically: (1) Integrated Operational Programme for Regional Development (European Regional Development Fund – EUR 2,530.4 million, European Social Fund – EUR 438.4 million), (2) Sectoral Operational Programme Human Resources Development (EUR 1,470 million), (3) Sectoral Operational Programme Increasing the Competitiveness of Enterprises (EUR 1,251.1 million), (4) Sectoral Operational Programme Transport (EUR 1,163.4 million), (5) Technical Assistance Operational Programme (EUR 28.3 million), (6) Sectoral Programme Operational Restructuring and modernisation of the food sector and development of rural areas (EUR 1,192.7 million), (7) Sectoral Operational Programme Fisheries and fish processing (EUR 201.8 million), (8) Cohesion Fund, allocation of EUR 4,178.6 million, support equally for both sectors, i.e. projects in the field of transport and environment, (9) EQUAL – promotion of equal opportunities for women and men (allocation of EUR 133.9 million), (10) INTERREG III (jointly with neighbourhood programmes) – cross-border, transnational and interregional economic cooperation of regions (allocation of EUR 221.36 million).²⁴

Question No. 16

Were There Any Other Noteworthy Aspects of the EU Support, Provided to Your Country Before the Accession?

23 Domagała, 2011, pp. 68–69.

24 The presented data can be found on the website: European Funds Portal, 2020.

4. Specific Rules Applicable to Candidate Countries Before and After Their Accession

The final Sec. deals with any country-specific exemptions from the general approach, adopted by the candidate countries, both during the pre-accession period and after the actual accession.

Question No. 17

After The Formal Application to Join the EU, Was Your Country Willing or Able to Negotiate Any Specific Exemption From the Accession Procedure (e.g. Areas of Law Not to Be Approximated, Limits to the Approximation etc.)?

After submitting the application to join the EU, Poland for the first time acknowledged the significance of EU law, which importantly reflects on its implications within Polish realities, emphasising its importance. This was served by the preparations carried out earlier, preceding the accession negotiations, which consisted of a review of Community law and familiarisation with Polish law. As a result of its public release, Poland presenting its own negotiating position, submitted a declaration on making the EU *acquis* in a specific technology available before the extension of membership. If the analyses were conducted, it was believed that harmonising the original regulations with Polish regulations would not occur. Instead, either a transitional period was proposed, or a so-called derogation was established, which allows for a permanent application of European Union law.²⁵

Question No. 18

What Country-Specific Provisions Were Contained in the EU Accession Agreement of Your Country?

Annex XII of the Accession Treaty referred directly to Poland, which contained provisions ensuing from negotiations, regulating specific thematic areas, including those indicating transition periods. Protocol No. 8, regulating the issue of restructuring the Polish iron and steel industry, concerned Poland in a similar way. Moreover, Poland submitted three declarations included in the Final Act to the Treaty of Accession to the European Union. These were namely Declaration 38 on the competitiveness of Polish production of certain fruits. It stated that

Poland draws attention to the fact that the application of the EU common customs tariff in Poland may have an immediate negative effect on the competitiveness of Polish producers of soft fruit, cherries and apples. If, after accession, serious difficulties appear in these sectors and may persist, Poland will request the urgent

25 See Sejm Rzeczypospolitej Polskiej, 2002, p. 12.

application of the general safeguard clause and the adoption of instruments to permanently eliminate distortions of competitiveness in the soft fruit, cherry and apple sector.

Declaration 39 on public morality. According to this document:

The Government of the Republic of Poland understands that nothing in the provisions of the Treaty on European Union, the Treaties establishing the European Communities and in the provisions of treaties amending or supplementing these treaties shall constitute an obstacle to the Polish State in regulating matters of moral importance, as well as matters relating to protect human life.

Declaration 40 on the interpretation of the derogation from the requirements laid down in Directive 2001/82/EC and Directive 2001/83/EC. According to the declaration: 'Poland considers that the pharmaceutical products included in the list in Appendix A to Annex XII to this Act, which have a marketing authorisation, may be placed on the market in Poland'.

Question No. 19

Were There Any Country-Specific Transitory Provisions?

The accession treaty contained a number of country-specific transitory provisions that were intended to protect Polish interests, and in some cases also the interests of European Union countries. As an example, the provisions regarding: (1) the right to purchase real estate by foreigners (5 years from obtaining membership in relation to the so-called second homes – with the exception of recreational properties, purchased for the purpose of running a business and 12 years – in relation to agricultural and forestry), (2) fat content in drinking milk and the minimum volume of raw tobacco produced required for the recognition of producer groups (3 years), (3) qualification of beef from specific breeds of cows (3 years), (4) application of specific VAT rates in the national tax system (from 4 to 5 years, depending on the case), (5) exemptions from business tax granted before January 1, 2001 on the basis of the Act on Special Economic Zones of 1994 (subject to the following conditions: for small enterprises (8 years), for medium-sized enterprises) (7 years), (6) the weight limit of the reserved postal services area reduced to 100 g (3 years), (7) the obligation to maintain minimum stocks of crude oil and liquid fuels (5 years)²⁶, (8) freedom to take up work in a given country (up to a maximum of 7 years in all Member States), (9) direct subsidies for agricultural production for new Member States from the EU budget (it was assumed that these subsidies will reach 25% of the full level in 2004, 30 % in 2005, 35% in 2006, 40% in 2007 and in the following years will increase by 10%), (10) certificates issued by the Institute of Medicines for medical devices

26 Information on the indicated transition periods can be found in: Domagała, 2011, pp. 173–180.

defined as ‘medical materials’ (2 years) (11) marketing authorisations for certain pharmaceutical products (5 years).

Question No. 20

Was Your Country Able to Negotiate Any Permanent Exemptions From the EU Law?

During the accession negotiations, Poland obtained exemptions in some areas of EU law. This concerned, for example, the area of freedom to provide services. In this respect, it was negotiated that the provisions of Directive 77/780/EEC, the so-called First Banking Directive, would not apply to certain Polish institutions. The institutions were specifically: *Spółdzielcza Kasa Oszczędnościowo-Krednościowo* (SKOK) and Bank Gospodarstwa Krajowego (BGK). In addition, due to the nature of their activities, the Export Credit Insurance Corporation was also excluded from the operation of EU law (Art. 2 of Directive 73/239/EEC).²⁷

Another area in which permanent exclusions from the operation of Community law were negotiated was fishing. Despite joining the EU fishing policy, which is a Community responsibility, Poland retained its previous catch quotas resulting from previously concluded bilateral agreements with third countries.²⁸

It is also worth noting that the Polish government attached Declaration No. 39 to the Accession Treaty, in which it declared that

nothing in the provisions of the Treaty on European Union, the Treaties establishing the European Communities and in the provisions of treaties amending or supplementing these treaties constitutes an obstacle for the Polish State to regulate matters of moral importance, as well as matters relating to the protection of human life.

Question No. 21

To Your Knowledge, Were There Any Notable Differences in the Content of Your Country's EU Accession Treaty From Other Countries in a Comparable Position?

At the time of Poland's accession to the European Union, it was widely believed that the transitional periods it had obtained regarding the purchase of real estate by EU citizens (let us recall: 5 years for the so-called second homes and 12 years for agricultural and forest real estate) were the best among similar privileges granted to the other candidate countries.²⁹

It was also believed that Poland stood out from other negotiating countries due to the particularly large number of transitional periods in the area of veterinary and

27 See Sejm Rzeczypospolitej Polskiej, 2002, pp. 21–22.

28 See Sejm Rzeczypospolitej Polskiej, 2002.

29 Trzeciak, 2010, p. 190.

phytosanitary issues. These solutions allowed Polish farmers and food processing plants to be included in the functioning within the EU single market.³⁰

It is also worth mentioning the inclusion in the Accession Treaty, thanks to the initiative of the Polish side, of a clause protecting domestic agriculture, which could be activated in the event of serious and long-term difficulties in the functioning of the agricultural sector, causing a significant deterioration in the situation in that sector.³¹

Question No. 22

Are There Any Other Noteworthy Exemptions From the Application of the EU Law in Your Country?

The only exemptions from the application of the EU law in Poland is provided in the so-called British Protocol – Protocol No. 30³² annexed to the Treaty of Lisbon, which is an opt-out clause limiting the application of all the provisions of the Charter of Fundamental Rights to citizens of Great Britain and Poland.

It follows from the text of the Protocol that the Charter does not extend the ability of the Court of Justice of the European Union or any court or tribunal of Poland or the United Kingdom to find that any laws, regulations or administrative provisions, practices or administrative actions of Poland or the United Kingdom are incompatible with fundamental rights, freedoms and the principles confirmed therein.³³ In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates rights enforceable in court applicable to Poland or the United Kingdom, except where Poland or the United Kingdom has provided for such rights in its national law.³⁴ Where a provision of the Charter refers to national laws and practices, it applies to Poland or the United Kingdom only to the extent that the rights and principles contained in that provision are recognised by the laws or practices of Poland or the United Kingdom.³⁵

30 See Sejm Rzeczypospolitej Polskiej, 2002, p. 18.

31 See Sejm Rzeczypospolitej Polskiej, 2002.

32 *Wersja skonsolidowana Traktatu o funkcjonowaniu Unii Europejskiej – PROTOKOŁY – Protokół (nr 30) w sprawie stosowania Karty praw podstawowych Unii Europejskiej do Polski i Zjednoczonego Królestwa*, 12008E/PRO/30, *Dziennik Urzędowy* 115, 09/05/2008 P. 0313 – 0314.

33 Art. 1(1).

34 Art. 1(2).

35 Art. 2.

4. Conclusions

Poland belongs to the group of Central European countries that made their first efforts to join the European Union immediately after the fall of the communist regime, and the start of official accession negotiations – in the late 1990s. This process required the creation of an appropriate institutional framework and substantive preparation. It took place in an atmosphere of mutual understanding, but not without certain difficulties. Both sides were forced to make significant compromises many times and ‘play into the hands’ of negotiators sitting on the opposite side. Sometimes, however, they set tough conditions, persuading their partners to seek compromise. Negotiations devoted to the issue of the amount of agricultural subsidies, as well as protection periods for the purchase of real estate by foreigners and the possibility of employment of Polish nationals in Member States were particularly problematic. In these cases, the talks lasted the longest and required a lot of energy. Ultimately, the negotiations were successful and – as is commonly known – resulted in Poland gaining membership in the European Union in 2004.

References

- Domagała, A. (2011) *Integracja Polski z Unią Europejską*. Warszawa: Wydawnictwo Akademickie i Profesjonalne.
- Duda, R. (2004) *Integracja Polski z Unią Europejską. Wybrane aspekty polityki integracyjnej w latach 1991-2004*. Wrocław: Oficyna Wydawnicza Arboretum.
- European Funds Portal (2020) 'European Funds 2004–2006', 30 June 2020 [Online]. Available at: <https://www.funduszeuropejskie.gov.pl/strony/o-funduszach/zasady-dzialania-funduszy/poprzednie-perspektywy-fe/fundusze-europejskie-2004-2006/> (Accessed: 08 October 2024).
- European Parliament (2000) 'Briefing No 12, Note on Poland's Political and Economic Situation and its Relations with the European Union with a View to Accession' [Online]. Available at: https://www.europarl.europa.eu/enlargement/briefings/12a3_en.htm (Accessed: 25 January 2025).
- Harasimowicz, A. (2025) *Integracja Polski z Unią Europejską 1989-2004, Wyższa Szkoła Gospodarki Krajowej w Kutnie*. Kutno: Wyższa Szkoła Gospodarki Krajowej.
- Chruściel, M., Kloc, K. (2013) 'Polska w Unii Europejskiej – proces akcesyjny i priorytety polskiej polityki w ramach UE', *Poliarchia*, 1(1), pp. 89–108 [Online]. Available at: <https://doi.org/10.12797/Poliarchia.01.2013.01.08m> (Accessed: 25 January 2025).
- Kowalski, T. (2009) 'Polska transformacja gospodarcza na tle wybranych krajów Europy Środkowej', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 71(2), pp. 253–278 [Online]. Available at: <https://repozytorium.amu.edu.pl/server/api/core/bitstreams/c25265b2-a6b2-48af-a8d8-5c3933ef9fa2/content> (Accessed: 25 January 2025).
- Sejm Rzeczypospolitej Polskiej (2002) 'Report of the Council of Ministers on the results of Poland's membership negotiations in the European Union', Warsaw, 17 December 2002 [Online]. Available at: [https://orka.sejm.gov.pl/Druki4ka.nsf/wgddruku/1213/\\$file/1213.pdf](https://orka.sejm.gov.pl/Druki4ka.nsf/wgddruku/1213/$file/1213.pdf) (Accessed: 12 October 2024).
- Trzeciak, S. (2010) *Gra o Europę. Negocjacje akcesyjne Polski z Unią Europejską*. Warszawa: Polski Instytut Spraw Międzynarodowych.
- Wallas, T. (2023) 'Poland's Road to Membership in the European Union from the Perspective of the 20th Anniversary of the Accession Treaty', *Przegląd Politologiczny*, 2023/2, pp. 144–154 [Online]. Available at: <https://doi.org/10.14746/pp.2023.28.2.10> (Accessed: 25 January 2025).
- Wensierski, P. (2003) 'Poszerzenie Unii Europejskiej: proces akcesji Polski', *Słupskie Studia Historyczne*, 2003/10, pp. 227–248 [Online]. Available at: https://ssh.upsl.edu.pl/images/NR10/13_-_Piotr_Wensierski.pdf (Accessed: 25 January 2025).