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Activity of Polish Service Providers after Poland's Accession to the European Union

Abstract

In the article the effects of the accession on Polish service providers' activity are analyzed. In the introduction the author presents changes in the access of Polish service providers to the European Single Market that mainly concerns the possibility of taking full advantage of freedom to provide services. Then Polish transactions in services are analyzed in the pre-accession and after-accession period (years 2000-2006). The aim of this analysis is to indicate main tendencies and changes in the service transactions with the EU in the analyzed period. Next the author analyzes the barriers that still impede the functioning of the single market for services, including those that face Polish service providers on the European market. In further work the author presents different actions aimed at strengthening integration of service market, including changes in freedom to provide services that will be implemented thanks to the directive on services in the internal market, approved by member states in 2006. At the end the results of various questionnaire surveys conducted among Polish entrepreneurs are presented, which aim is to show the service providers' assessment of accession effects.

1. Introduction

According to the Community law, a service provider based in one member state can provide services to consumers in another member state either under the freedom to provide services within the Community (article 49 of the Treaty Establishing the European Union) or the freedom of establishment (art. 43

thereof). A service provider established in one member state can temporarily operate in another member state (the provider and/or his personnel stay then in that country for a period necessary to perform a job), or provides services at a distance (by means of telecommunications, the Internet, or satellite links – if the services can be rendered online) from his home country¹. If an entrepreneur decides to establish his business in another member state to provide services on a permanent basis, then the business must be established and run according to the host country's laws². The provision of services under the two types of freedom is covered by the national treatment principle, which states that a service provider based in one member state must be allowed to provide services in other member states, either permanently or temporarily, according to the same rules that apply to national providers³.

In the pre-accession period between Poland and the EU, the freedom to provide services was limited to the possibility of establishing enterprises⁴ and employing the key personnel in the host country. Poland was not granted an easy and direct access to the EU services market, because Polish service providers were required to register firms in order to run their business in the EU (although it could be only a sole trader business), where the owner is the exclusive provider of services (self-employment). However, restrictions imposed on the freedom of transborder transactions combined with incentives offered to Community-based enterprises that encouraged them to join permanently economic processes in Poland minimised threats to the development of the services sector in Poland.

¹ Then the service provider is not obligated to seek registration, where his client resides – a firm must be established for permanent business operation. A service provider taking advantage of the freedom to provide services must comply with regulations and is subjected to control in the country, where the main business is registered; provider's and his personnel's insurance contributions are paid in the same country and the country's rules concerning worker qualifications are effective. The host country holds certain powers with respect to the protection of security, morality, and public health.

² The following situations are possible: (1) a service provider establishes a business in another country (a sole trader business or one with personnel), (2) a service provider active in one EU member state establishes a subsidiary in another member state (a daughter-company, a branch or a representative office). More in: I. Woicka, *Formy korzystania ze swobody świadczenia usług i zakładania przedsiębiorstw na rynku wewnętrznym EU*, Wspólnoty Europejskie No. 11 (156) 2004, pp. 31-43.

³ More in: J. Wyszowska-Kuna, *Handel usługami w procesie integracji europejskiej*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2005, pp. 48-49.

⁴ Poland promised to apply gradually to EU business operating on the territory of Poland the national treatment principle arising from the freedom of establishment (within the ten years of the interim period); the Community implemented the principle on the date the Treaty was signed, i.e. 1 February 1994.

Poland's accession to the European Union essentially changed the services sector, because the full freedom to provide services was introduced to business relations between Poland and the EU⁵. An interim period applying to Poland only concerns adjustments in the banking system and capital market⁶, but Austria and Germany were granted interim periods (up to 7 years) delaying the access of posted foreign workers to certain sectors of services⁷. The freedom to provide services is especially popular among Polish entrepreneurs today, because they usually perceive it as a more favourable option allowing to provide services in other member states than setting up and then operating a service business abroad under the freedom of establishment.

2. Analysis of Poland's trade in services before and after accession

From data presented in table 1 it follows that Poland had a positive balance of transactions involving services throughout the analysed period. The balance peaked in 2000 and in the next years its value considerably declined (in 2001 by almost a half, similarly in 2003). This trend changed after accession, judging by the doubled balance of services in 2004 and 2005. Data show that the balance of services for 3 quarters of 2006 was higher by 15% compared with 3 quarters of 2005. The positive balance of transactions in services comprised the positive balance of „transport services” and „travel”, whereas „other services” showed a negative balance throughout the examined period. The balance of „transport services” deserves special attention, because it grew considerably after accession – in 2005 by 70.6%, and in 3 quarters of 2006 by

⁵ Poland's position in negotiations on „Free movement of services” approved by the Council of Ministers on 27 Aug. 1998.

⁶ The period runs until 31 December 2007 in order to implement article 5 of Directive 2000/12/EC establishing the minimal level of cooperative banks' equity at 1 million euros and article 4 of Directive 97/9/EC on the system of protection for investors in the capital market. In addition, Poland has been permitted to extend the list of institutions exempted from Directive 77/780/EEC (replaced by Directive 2000/12/EC) to include two Polish institutions: the Cooperative Savings and Loan Associations (SKOK) and Bank Gospodarstwa Krajowego, and to exempt Export Credit Insurance Corporation from Directive 73/239/EEC. Wyniki negocjacji z EU: <http://www.umysl.pl/exporter/zarzadzanie/ue/negocjacje.html>, pp. 11-13.

⁷ In Germany, the interim period under the freedom to provide services applies to construction services (including related activities and activities listed in the appendix to Directive 96/71/EC), industrial cleaning and the services of interior designers. In Austria, the interim period covers the same type of activities, excluding interior designers and gardening services, stone cutting, carving, and finishing services, manual production of metal elements and components made of the elements, security services, at-home nursing, social work and work performed without accommodation. I. L. Woicka, op.cit., p. 34.

77%. This growth considerably exceeded growth in the years 2001-2002, but in the period 2003-2004 it declined. On the other hand, the balance of „travel” increased by 43% in the accession year, but it dropped slightly in 2005, and more strongly in 2006 (a fall by 40% in three quarters of 2006). The balance had showed a downward trend already before the accession. As for the balance of „other services”, in the pre-accession period its negative value fell and rose alternately, but accession gradually diminished the deficit in this category of services.

In a more detailed examination of the balance of „other services” (table 3), the balance of „construction services” deserves attention. Between 2000 and 2004, this item showed considerable variations – in 2000 and 2003 its balance was negative, but in 2001 and 2002 it was positive. However, starting from 2004 a clear upward trend could be observed – in 2004, the negative balance of 53 million EUR reached a positive value of 15 million EUR, and in the years 2004-2005 the positive balance became even more advantageous (growing almost 19 times). This upward trend, although less strong, continued also in 2006 – in three quarters of the year the growth was 46% compared with the same three quarters of 2005.

Regarding the balances of other services in the examined period:

- postal, courier and telecommunications services – in the years 2000-2003 their negative balance improved considerably (from -202 to -2 million EUR), but in the next years a gradual, although a much smaller growth of the negative balance occurred;
- insurance and reinsurance; financial services; personal services and maintenance of government representative offices – periods of improvement in the negative balance alternated with periods of its decline. The situation of computer and information services was similar, but in this case, the negative balance was gradually improving after accession;
- patents, copyrights, and licence fees – the highest negative balance, expanding deficit, faster rate of deficit growth after accession. The situation was due to large amounts spent by Polish enterprises on foreign trademarks and patents that were uncompensated by very small receipts from that business⁸;
- other trade services – the negative balance grew considerably in years 2001-2002, but the deficit started to decline distinctly from 2004 (in years 2003-2004, a drop by almost a half, the same trend in the period 2005-2006), a positive balance of 40 million EUR in the third quarter 2006 for the first time in many years.

⁸ Bilans płatniczy RP za I kwartał 2006 r., p. 19, www.nbp.gov.pl.

Negative balances of most services categorised as „others” stem from a large demand for modern solutions and technologies in various segments of the Polish economy.

Table 1

Export and import of services, years 2000-2006 (million EUR)												
	Balance	Receipts	Outgoings	Balance	Receipts	Outgoings	Balance	Receipts	Outgoings	Balance	Receipts	Outgoings
	Total services			Transport services			Travel abroad			Other		
2000	1547	11320	9773	993	2659	1666	2583	6192	3609	-2029	2469	4498
2001	893	10914	10021	1235	3001	1766	1289	5200	3911	-1631	2713	4344
2002	855	10545	9690	1529	3446	1917	1138	4513	3375	-1812	2586	4398
2003	442	9850	9408	1487	3514	2027	1108	3589	2481	-2153	2747	4900
2004	782	10815	10033	1001	3373	2372	1581	4685	3104	-1800	2757	4557
2005	1536	13077	11541	1708	4388	2680	1549	5054	3505	-1721	3635	5356
2005*	1037	9400	8363	1240	3141	1901	1039	3730	2691	-1242	2529	3771
2006*	1192	11945	10753	1611	4050	2439	740	4359	3619	-1159	3536	4695

* Data for first 3 quarters. Data for the 4th quarter of 2006 are not available yet, hence data for 3 quarters of 2005 have been provided for the sake of comparison.

Source: Data for years 2000-2005: *Zbiórca bilans płatniczy w mln EUR – transakcje netto*, www.nbp.gov.pl/statystyka/Bilans_platniczy/BOP_Q_EUR.xls; Data for three quarters of 2005 and 2006 author's calculations based on the data above.

Table 2

Dynamics of the export and import of services, years 2000-2006 (base year =100)								
	Total services		Transport services		Travel		Other	
	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings
2001/2000	96.4	102.5	112.9	106.0	84.0	108.4	109.9	96.6
2002/2001	96.6	96.7	114.8	108.6	86.8	86.3	95.3	101.2
2003/2002	93.4	97.1	102.0	105.7	79.5	73.5	106.2	111.4
2004/2003	109.8	106.6	96.0	117.0	130.5	125.1	100.4	93.0
2005/2004	120.9	115.0	130.1	113.0	107.9	112.9	131.8	117.5
2006/2005*	127.1	128.6	128.9	128.9	116.9	134.5	139.8	124.5

Source: author's calculations based on: *Zbiórca bilans płatniczy w mln EUR – transakcje netto*, www.nbp.gov.pl/statystyka/Bilans_platniczy/BOP_Q_EUR.xls.

From data in table 2 it follows that after a period in which transactions in services declined (2001-2003), accession reversed the trend. Interestingly, in the next years the growth dynamics of services transactions was becoming stronger and stronger and between 2004 and 2005 it was higher for receipts than for outgoings. Trade in services, just like the goods trade, is dominated by transactions with the EU countries – the Community accounted for 71-77% of Poland's receipts from the sale of services and for 71-82% of outgoings.

Throughout the analysed period, value of transactions in „transport services” (table 2) increased steadily excluding the year 2004, when receipts dropped. However, already in the next year receipts reached the highest growth dynamics (higher than outgoings and higher than before the accession). In 2006, receipts continued to show high dynamics, but the dynamics of outgoings caught up with them. An analysis of the structure of receipts derived from the export of transport services reveals that importance of the road transport was evidently growing⁹. In 2003, road transport ranked second (behind the sea transport), accounting for less than 33% of receipts and 34.3% of outgoings. However, already at the beginning of 2004 road transport took the lead, and after accession it has been constantly gaining importance – in 2006 it provided more than half (54.8%) of receipts. As for outgoings, road transport represented a somewhat lower, yet a growing share. It became a more important item mainly in trade with the EU countries (in 2004, EU provided almost 85% of receipts from that business), primarily because of larger volumes of trade in goods between Poland and other member states following accession. EU provided from 68 to 70% of Poland's receipts from total transport services and accounted for 70-72% of the country's outgoings. Since 2004, the air transport has also been increasing its share and in the second half of 2005 it ranked second on the receipts' side (it accounted for 15-18%, slightly above the sea transport). The main reason is that persons departing from Poland use this form of transport more frequently now, due to the extremely dynamics expansion of low-cost airlines in our country in the recent years.

In the years 2001-2004, the category „travel” (table 2) showed a downward trend. In 2004, receipts' growth dynamics was the strongest, but in the next years it lost its impetus (especially in 2005). We also need to note that in 2005 expenditures on „travel” grew higher than it might be explained in terms of increasing numbers of persons crossing the borders. This was probably the result of Poles' longer and longer visits abroad, frequently associated with

⁹ Data on the services are not provided in the balance of payment statistics. However, relevant information can be found in discussions of the balance of payments – *Poland's quarterly balances of payments, years 2004-2006*, www.nbp.gov.pl.

employment¹⁰. As for outgoings, their downward trend also changed after accession. The highest increase took place in 3 quarters of 2006, when it exceeded the growth dynamics of receipts. Poland is usually visited by citizens of the neighbouring countries (over 90%), mainly Germans (a growth trend after accession; in 2006 German nationals accounted for almost 60%), Czechs (a downward trend), Ukrainians and Byelorussians (a decline in arrivals immediately after accession, followed by an increase) and Slovaks. Outside the vacation season business trips prevail; otherwise, tourist trips are more common¹¹. Poles typically crossed the southern and western borders of the country and the main destinations were EU countries. In individual quarters of the period 2004-2006, EU's contribution to receipts from „travel” ranged from 67.9 to 79.2% (75% on average), and regarding outgoings it was 64.7-87.9% (74% on average).

A significant growth dynamics can be observed in „other services” (table 2) from 2005, especially receipts are expanding. An analysis of the dynamics of services in that category reveals (tables 3 and 4) that „Computer and information services” were the only ones, where the value of receipts was increasing throughout the analysed period, reaching the highest growth dynamics in 2006 (230.5). „Construction services” also showed high dynamics of receipts' growth (a drop only in 2004), similarly „other trade services”, „personal services, audiovisual, cultural and recreation”, „maintenance of government representative offices” and „postal, telecommunications and courier services” (here the growth dynamics was the lowest) in the last years. The high growth dynamics of receipts in „construction services” was caused by a quite large increase in the amount of receipts derived from construction services provided abroad, as well as higher costs incurred by foreign enterprises providing construction services¹². On the other hand, periods of decline prevailed in receipts from „financial services” and „patents, copyrights and licence fees” (although in the years 2001 and 2005 both the categories grew considerably, especially „patents ...” in 2005 and „financial services” in 2001). As for receipts from „insurance and reinsurance”, periods of decline took turns with periods of growth. A very high growth appeared in 2006 and the deepest decline (by 74%) in 2004. As a rule, the dynamics of outgoings lagged behind the dynamics of receipts (in the case of „computer and information services” this pattern was typical of the entire investigated period). The exceptions were „financial services” and „patents ...”, where the dynamics of outgoings was usually higher.

¹⁰ *Bilans płatniczy RP za IV kwartał 2005 r.*, pp. 17-18, www.nbp.gov.pl.

¹¹ *Bilans płatniczy RP za III kwartał 2005 r.*, pp. 18, www.nbp.gov.pl.

¹² *Bilans Płatniczy RP za III kwartał 2006 r.*, pp. 18-19, www.nbp.gov.pl.

Table 3

Export and import of services in category „Others”, million EUR															
	Balance	Receipts	Outgoings	Balance	Receipts	Outgoings	Balance	Receipts	Outgoings	Balance	Receipts	Outgoings	Balance	Receipts	Outgoings
	I			II			III			IV			V		
2000	-202	253	455	-23	321	344	-121	226	347	-124	114	238	-170	67	237
2001	-85	225	310	107	481	375	-114	206	320	-290	193	483	-203	92	295
2002	-27	172	199	221	583	362	-141	230	371	-75	143	218	-184	103	287
2003	-2	216	218	-53	644	697	-172	193	365	-110	142	252	-192	118	310
2004	-15	239	254	15	530	515	-156	51	207	-167	128	295	-180	157	337
2005	-43	250	293	281	695	414	-262	55	317	-145	174	319	-178	158	336
2005*	-32	178	210	210	466	256	-201	37	238	-87	132	219	-133	105	238
2006*	-32	230	262	306	661	355	-157	56	213	-86	120	206	-102	242	344
	VI			VII			VIII			IX			X		
2000	-568	37	605	-584	1395	1979	-99	53	152	-138	3	141	0	0	0
2001	-512	54	566	-364	1374	1738	-57	78	135	-113	9	122	0	0	0
2002	-548	36	584	-857	1249	2106	-102	63	165	-101	5	106	2	2	0
2003	-636	26	662	-824	1350	2174	-59	54	113	-105	4	109	0	0	0
2004	-686	24	710	-462	1528	1990	-32	73	105	-117	27	144	0	0	0
2005	-785	50	835	-409	2141	2550	-51	76	127	-129	36	165	0	0	0
2005*	-537	30	567	-331	1500	1831	-21	55	76	-110	26	136	0	0	0
2006*	-756	21	777	-158	2094	2252	-54	78	132	-120	34	154	0	0	0

* Data for first three quarters. Data for the 4th quarter of 2006 are not available yet; hence, data for the first three quarters of 2005 have been provided for the sake of comparison. I – postal, courier and telecommunications services; II – construction services; III – insurance and reinsurance; IV – financial services; V – computer and information services; VI – patents, copyrights and licence fees; VII – other trade services; VIII – personal services, audiovisual, cultural and recreation; IX – maintenance of government representative offices; X – others.

Source: data for years 2000-2005: *Zbiórca bilans płatniczy w mln EUR – transakcje netto*, www.nbp.gov.pl/statystyka/Bilans_platniczy/BOP_Q_EUR.xls; data for 3 quarters of 2005 and 2006, respectively – author’s calculations based on the data above.

Table 4

Dynamics of the export and import of services in category „Others” (base year = 100)												
	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings
	2001/2000		2002/2001		2003/2002		2004/2003		2005/2004		2006/2005	
I	88.9	68.1	76.4	64.2	125.6	109.5	110.6	116.5	104.6	115.4	129.2	124.8
II	149.8	109.0	121.2	96.5	110.5	192.5	82.3	73.9	131.1	80.4	141.8	138.7
III	91.2	92.2	111.7	115.9	83.9	98.4	26.4	56.7	107.8	153.1	151.4	89.0
IV	169.3	202.9	74.0	45.1	99.3	115.6	90.1	117.1	135.9	108.1	90.9	94.1
V	137.3	124.5	112.0	97.3	114.6	108.0	133.0	108.7	100.1	99.7	230.5	144.5
VI	145.9	93.6	66.7	103.2	72.2	113.4	92.3	107.4	208.3	117.6	70.0	137.0
VII	98.5	87.8	90.9	121.2	108.1	103.2	113.2	91.5	140.1	128.1	139.6	123.0
VIII	147.2	88.8	80.8	122.2	85.7	68.5	135.2	92.9	104.1	121.0	141.8	173.7
IX	300.0	86.5	55.6	86.9	80.0	102.8	675.0	132.1	133.3	114.6	130.2	113.2

I – postal, courier and telecommunications services; II – construction services; III – insurance and reinsurance; IV – financial services; V – computer and information services; VI – patents, copyrights and licence fees; VII – other trade services; VIII – personal services, audiovisual, cultural and recreation; IX – maintenance of government representative offices; X – other.

Source: calculated by the author based on: *Zbiórca bilans płatniczy w mln EUR – transakcje netto*, www.nbp.gov.pl/statystyka/Bilans_platniczy/BOP_Q_EUR.xls.

The dynamics of receipts and outgoings by services category is reflected in the structure of services export and import by their type (table 5). The structure shows that the share of „travel” dropped (both receipts and outgoings), while “transport’s” share increased (in both cases), as well as “other services” (i.e. receipts, outgoings did not change).

On the other hand, among “other” services (table 6), the most important role was played by „other trade services”. Here, special attention should be paid to advertising services (both receipts and outgoings doubled; the positive balance of the services also almost doubled), and then to legal and advisory services, and architectural and engineering services (a relatively high turnover, but a negative balance – in the first case the balance increased and in the other

case fell considerably)¹³. In the group „other services” worth distinguishing are „construction services”, „postal, telecommunications and courier services” (a downward trend) and „computer and information services”; „patents, copyrights and licence fees” held a high share in outgoings (the category ranked second after “other trade services”, showing an upward trend). As for receipts, the importance of “construction services” doubled, „computer and information services” more than tripled (their share was the smallest, but they grew the highest in relative terms), but growth in „other trade services” was relatively smaller (the highest share, but the smallest growth in relative terms). On the outgoings’ side, the share of “computer and information services” went up (not so much as on the receipts’ side), as well as the share of „patents, copyrights and licence fees” (slightly). Other categories of services did not change their contribution to receipts and outgoings, or their shares dropped. The category „insurance and reinsurance” declined the lowest in relative terms – by almost four times on the receipts’ side. The probable reason was that after accession the compulsory purchase of civil liability insurance applying to drivers entering an EU country was abolished. As regards outgoings, the “postal, courier and telecommunications services” also dropped by almost a half.

Table 5

Structure of exported and imported services by their type (values as %, export and import of services =100)						
	Transport services		Travel		Other	
	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings
2000	23.5	17.0	54.7	36.9	21.8	46.0
2005	33.6	23.2	38.6	30.4	27.8	46.4
2006*	33.9	22.7	36.5	33.7	29.6	43.7

* Data for three quarters. Sources: calculated by the author based on: *Zbiórca bilans płatniczy w mln EUR – transakcje netto*, www.nbp.gov.pl/statystyka/Bilans_platniczy/BOP_Q_EUR.xls.

¹³ Data on the services are not specified in the balance of payment statistics. However, relevant information can be found in discussions of the balance of payments. See *Bilans Płatniczy RP za I kwartał 2006r.*, pp. 18-19, www.nbp.gov.pl.

Table 6

Structure of exported and imported services by type in category „Other” (values as %, export and import in a given category of services =100)																		
	I		II		III		IV		V		VI		VII		VIII		IX	
	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings	Receipts	Outgoings
2000	2.2	4.6	2.8	3.5	2.0	3.6	1.0	2.4	0.6	2.4	0.3	6.2	12.3	20.2	0.5	1.6	0.03	1.4
2005	1.9	2.5	5.3	3.6	0.4	2.7	1.3	2.8	1.2	2.9	0.4	7.2	16.4	22.1	0.6	1.1	0.3	1.4
2006*	1.9	2.4	5.5	3.3	0.5	2.0	1.0	1.9	2.0	3.2	0.2	7.2	17.5	20.9	0.7	1.2	0.3	1.4

I – postal, courier and telecommunications services; II – construction services; III – insurance and reinsurance; IV – financial services; V – computer and information services; VI – patents, copyrights and licence fees; VII – other trade services; VIII – personal services, audiovisual, cultural recreation; IX – maintenance of government representative offices. *Data for III quarters. Source: calculated by the author based on: *Zbiorecny bilans platniczy w mln EUR – transakcje netto*, www.nbp.gov.pl/statystyka/Bilans_platniczy/BOP_Q_EUR.xls.

In addition to the above categories of services, Polish service providers are interested in rendering in other member states services other than those covered by the balance of payments, such as assembly of machinery, hairdressing, nursing, butcher services, and garden designs¹⁴.

3. Incomplete integration of the services market

The period of building a single internal market has been largely successful, but integration of the services market has not been completed yet. Many obstacles still prevent the full utilization of the services sector's capacity; especially the provision of services in other member states under the freedom to provide services is impeded¹⁵. The obstacles are mainly legal and they stem from

¹⁴ *Recapitulation of the first year of Poland's EU membership (areas within the competence of the Ministry of Economy and Labour)*, Ministry of Labour and Economy, Warsaw, June 2005.

¹⁵ Results of the services sector surveys show that 47% of EU service providers conducting business in other member states derive only 10% or less of their turnover from that activity. *Internal Market: EU Consumers Continue To Benefit, But Reforms Must Be Accelerated*, European Commission, 2000/2001 http://europa.eu.int/comm/internal_market/en/update/economicreform/cardiff01enpress.htm. *Recapitulation of the first year of Poland's EU membership (areas within the competence of the Ministry of Economy and Labour)*, Ministry of Labour and Economy, Warsaw, June 2005.

national, regional, and local regulations, as well as practices of the administrative authorities, including the discretionary use of their powers and unclear procedures that favour domestic organizations. Many other barriers arise from unsatisfactory application of instruments provided in the EU legislation¹⁶.

It is also being stressed that the negative impacts of the existing barriers to the services sector are larger than they would be if goods were a problem, because most service providers are SMEs¹⁷. SMEs are the first to give up the transborder trade in services, when the complications mount and considerable costs of entering a market have to be incurred.

Many barriers are horizontal, which means that they affect many sectors of services, and usually¹⁸:

- The same procedures and requirements are applied to service providers intending to set up a firm and those who plan to provide service in another member states on a temporary basis (e.g. the requirement to set up a business, to have a registered office, to apply for a permit, subordination to the host country's system of certifying qualifications). Businesses registered in their home country that provide transborder services in another member state are already covered by applicable regulations and control measures at home. Subjecting them to the same rules as a firm that formally established its office in another member state is therefore forcing them to handle a double burden of requirements. On the other hand, however, it happens that temporary provision of services becomes sometimes a hidden attempt to establish a firm. Such situations occur, when entrepreneurs abuses regulations allowing the freedom to provide services in order to escape certain obligations that a host country's law applies to persons intending to set a business on its territory. As a rule, the host country prefers the establishment of a regular firm to the temporary provision of services under the freedom to provide services, because the first option gives the authorities stronger control over the service provider. However, service providers usually seek the other option, in which regulations and control of their home country are accentuated more strongly. This issue gives rise to many disputes between the authorities of the host country and service providers. To avoid problems, the provision of services in another EU country should be based upon a well-constructed contract

¹⁶ *Report From The Commission To The Council And The European Parliament On The State Of The Internal Market For Services* – presented under the first stage of the Internal Market Strategy for Services, COM (2002) 441, Brussels 30 June 2002, Executive Summary, p. 7.

¹⁷ Almost 90% of SMEs operate in the services sector. Highlights from the 2001 Survey, Observatory of European SMEs, 2002.

¹⁸ *Report From The Commission To The Council And The European Parliament On The State Of The Internal Market For Services*, p. 7.

concluded with a foreign consumer (e.g. a works contract). In the contract, the parties need to define the scope of the job, terms and conditions, deadlines and the place where the job should be performed¹⁹.

- A country receiving workers posted to provide services on its territory treats them as job seekers and consequently makes them comply with procedures regulating the confirmation of their occupational qualifications (workers posted by a firm are still employed in their home country and so have to meet its qualification criteria). Still another problem is restrictions affecting the free transport of materials and equipment necessary to provide services in the host country.
- Legal uncertainty caused by the fact that situations are judged on a case-to-case basis. Together with unclear procedures, this makes it more difficult to predict what the host country's administrative authorities may decide²⁰.

The Commission has also found that restrictions are applied because (1) member states do not trust each other²¹, (2) the ECJ decisions are not monitored²², (3) the word „protection of public interest” is abused (in most cases the interest of a given country or a region is protected), and (4) the knowledge of laws arising from the single internal market principles is insufficient, both among service providers and their clients.

Barriers in the services market exert an adversary impact on the cost and quality of services used by final consumers. The consumers are not only households, but also enterprises operating in all sectors of economy. The elimination of the barriers and creation of a more flexible system of regulations for the services sector are the key elements in the implementation of the Lisbon Strategy. They are expected to improve competitiveness of the EU economy and accelerate its rate of growth²³.

Polish service providers initiating operations encounter, especially in EU-15, a range of impediments built in the national legislations and resulting from

¹⁹ I. Woicka, op.cit., p. 34.

²⁰ High costs of legal consultations that have to be incurred because a service provider operates in an unfamiliar legal system are another barrier restricting the free movement of services.

²¹ Member states sometimes presuppose that a service provider from another member state wants to provide services taking advantage of the Community freedom in order to bypass requirements ensuring adequate quality of services.

²² A frequent practice is that changes are not deemed necessary, until the European Commission or the European Court of Justice proves inconsistency between the national law and Community law.

²³ *A Single Market for Services*: http://ec.europa.eu/internal_market/top_layer/index_19_en.htm.

the practices of public administration bodies that are reluctant to service providers from the new member states. The legislation of some EU countries allows the discrimination of Polish enterprises, as it demands the submission of a compulsory notification of a worker positing or applying for work permits, when workers are posted to provide services. Poland intervened at various levels (bilaterally, and at the Community level), particularly to solve problems with Austria, the Netherlands and Italy. Poland's pressures and other factors made the Dutch government decide to introduce changes to the national law aimed to remove the posted workers' obligation to obtain permits. Italy started to work on enacting new solutions concerning procedures regulating the provision of services by enterprises based in the new member states.

A very controversial and disputable issue as regards the provision of services is the confirmation of service providers' occupational skills. When a given type of business is regulated in some EU country, then its authorities may require a national of another member state intending to establish a firm there or to provide services (in person or by posting his workers) to provide a certificate proving the person's adequate knowledge and competence²⁴. When harmonizing her legislation with Community *acquis communautaire* applying to the recognition of workers' professional skills, Poland indicated six types of business that the EU citizens can pursue in Poland on approval issued by a competent authority (regarding services, tourist couriers were mentioned, for which the competent authority is the Ministry of Economy). Between the date of accession and the end of 2005, no procedures were initiated to confirm foreigners' qualifications so that they could pursue one of the six types of business in Poland. In contrast, between the accession date and February 2006, the Ministry of Economy filed over 1500 applications (1,150 in 2005) submitted by Polish citizens who requested documents certifying the type and duration of their business activity, or years in trade (as a hired worker) in the home country. Most applicants were sole traders interested in entering markets in Germany, Austria, Belgium, France and Luxembourg. The requirement to present certificates mainly applied to the construction and electric industries. The

²⁴ The document takes the form of a *certificate concerning the nature and duration of the activity pursued as a business or employee issued by the competent authority or body in the home Member State*. In Poland, the institution authorized and notified to the European Commission with respect to the issuance of the certificates is the Entrepreneurship Department at the Ministry of Economy. *Podsumowanie pierwszego roku członkostwa Polski w UE (obszary w kompetencji Ministerstwa Gospodarki i Pracy)*, Ministerstwo Gospodarki i Pracy, Warsaw, June 2005.

applicants usually came from the Pomorskie, Lubuskie, Podkarpackie, Małopolskie, Opolskie, Śląskie, and Podlaskie voivodeships²⁵.

Situations when Polish citizens' rights (such as recognition of their occupational skills, a residence permit, the freedom of establishment, health benefits in kind) are infringed usually arise from the ignorance of EU officers applying law in the member states. Such cases are usually rectified after interventions initiated directly by the Polish Ministry of Economy, by commercial and economic sections in Polish embassies in EU member states, or through the SOLVIT system²⁶. This approach allows to prevent the embedment of administrative practices disfavouring Polish nationals²⁷. Incidents that provoked controversies as to whether the EU law was complied with require further analysis, conducted in cooperation with the European Commission and the interested countries.

4. Activities aimed to strengthen integration of the service market

A new strategy applying to the integration of the services market, being part of Lisbon Strategy's implementation, states that the internal market's goal for the sector is to make the provision of services between the member states as efficient as within one EU member state. It assumes a change in the traditional sectoral approach to services policy, because the traditional borderlines between individual services industries are more and more blurred. Consequently, one ineffective sector (for instance due to the lack of competition, or wrong

²⁵ *Polska 2006 – Raport o stanie handlu zagranicznego*, Ministry of Economy, Warsaw 2006, pp. 89-90.

²⁶ The system SOLVIT is based on a network of Coordination Centres established in each member state that are connected via an internet database in order to find solutions to problems submitted to SOLVIT promptly and efficiently. A solution is provided within 10 weeks (not more than 14) based on the opinions of experts in the relevant country. The solution is not binding. The system is an alternative to solving transborder problems at court, which is frequently a very costly and time-consuming option. *MGiP - SOLVIT – skuteczne rozwiązywanie problemów Rynku Wewnętrznego*, www.solvit.gov.pl.

²⁷ *Przedsiębiorstwa – przypadki dyskryminacyjnego traktowania polskich obywateli i przedsiębiorstw w innych państwach członkowskich Unii Europejskiej*, UKIE, 11 September 2006: <http://www.cie.gov.pl/www/serce.nsf/0/A19D7DB97392BB7CC1256F87003B070B?...> The document discusses the various cases of discriminatory treatment of Polish citizens in different EU countries. Such cases can also be found at <http://www.solvit.gov.pl>.

regulations) affects the effectiveness of other sectors²⁸. The new strategy recognises the relationships and takes a holistic approach to all services. Whenever necessary, the services sector policy must establish commonly applied rules and its flexibility should enable the development of new, innovative services²⁹.

An important element of the strategy was preparation of a draft directive on services in the internal market (based on an EC report and the reactions to the document) that the European Commission put forward in January 2004. In the period of over two years, in which the draft document was developed, countries advocating stronger market integration and their opponents appeared. The first group comprises the new member states and states with traditionally liberal economies (the UK, Ireland). The other group is the “old” member states (the most determined opponents are France and Germany) that are afraid of growing competition from cheaper service providers based in EU-10³⁰.

Initially, the paramount principle in the draft directive was so-called principle of the country of origin, according to which an entrepreneur intending to provide services in another member state could do so in accordance with his home country’s laws. However, it was replaced by a less distinct provision, referring to the freedom to provide services. This means that service providers offering services in other EU member states under the freedom to provide services will, practically, still have to abide by local laws setting minimum wages and the industrial safety and health standards (the EU-15 countries were afraid of new member states’ social dumping with risks such as less favourable working conditions, lower wages and social standards provoked by the posting of workers by service providers based in countries with less demanding labour law and lower wages compared with the “old” EU countries. For service providers in EU-10 this approach translates into lower price competitiveness). Notwithstanding, the host country will not be allowed to require language competence from service providers, to make them take exams in order to prove

²⁸ For instance, a Polish service business wishes to establish its subsidiary in another member state and the project is to use the services of home country realtors, architects, construction companies, financial institutions, etc., that the firm cooperates with on a daily basis. In many cases, this approach is not feasible, unless the contractors are recognized by the host country. As a result, the project is delayed and its costs go up. *Report From The Commission To The Council And The European Parliament On The State Of The Internal Market For Services*, op.cit., p. 8.

²⁹ *An Internal Market Strategy For Services*, Communication From The Commission To The Council And The European Parliament, COM (2000) 888, Brussels 29 Dec. 2000. See also: *Report 2412 from the meeting of the Council (internal market, consumer protection, tourism)*, Brussels 1 March 2002, 6496/02 MI 35.

³⁰ *Internal Market, Service Directive*, UKIE, 2 Nov. 2006: <http://www1.ukie.gov.pl/www/serce.nsf/0/5183E7624D52F5BC12570D500314579...>

qualifications (it is enough to meet qualification requirements at home), to indicate the type of equipment to be used (a Polish plumber will not have to use French pipes when fixing French taps), or to impose any other regulations that might discriminate service providers from other member states. Generally, local authorities cannot demand any additional documents but those required in the country of origin. Contrary to the present situation, the host country will not be allowed to force an entrepreneur with the registered office in another member state to establish a foreign enterprise, to set up specific facilities, e.g. offices, or to apply for permits issued by competent host country's authorities, including registrations, or to seek membership in organizations or professional associations on its territory. The red tape burden involved in the establishment of a services business and the provision of services on a temporary basis will be largely reduced. The entrepreneur will be able to complete all formalities related to the registration and application for a permit at one-stop facility, most of them on-line. Besides, he or she will not be required to provide the host country's administrative authorities with original copies, confirmed copies, sworn translations of certificates and authorizations, or other documents confirming that the person meets requirements allowing the provision of services. In addition, the European Commission will introduce standard forms, as equivalents of the existing certificates or authorizations, that will facilitate the process of recognizing documents in other member states, while eliminating the cost of translating or authenticating the copies. The number of business types for which permits are required today will also be reduced, and the permit granting procedures will be simplified. Additionally, a so-called „silent acceptance” mechanism will be devised, according to which a permit is considered granted, if the competent authority delays its issuance beyond deadlines stipulated in the law³¹.

Access to the local market of services can be restricted, if the application of restrictions can be justified by means of public security, public health, or environmental protection³². Non-economic services (education, social welfare), medical services, gambling and audiovisual services (including filmmaking) have been exempted from the directive. Transport and financial services have

³¹ *Polska 2006 – Raport o stanie handlu zagranicznego*, op.cit., pp. 61-62.

³² Deciding to introduce such restrictions, a member state will have to ensure that the applied measures are non-discriminatory, necessary and proportional. *Polska 2006 – Raport o stanie handlu zagranicznego*, op.cit., p. 61.

also been left outside its scope, as they are subject to separate EU laws. The directive will be made effective in 2010³³.

5. Service providers' assessment of accession effects

The results of a questionnaire survey conducted by the National Bank of Poland in March 2005 revealed growing competitive pressures in the markets where Polish enterprises operate. This situation especially affected organizations that viewed their position as very good, probable because the same markets were found attractive (i.e. very profitable) by other firms active in the EU. It is also possible that the markets had low entry costs, as suggested by the results of the annual survey. It is noteworthy that transport firms (43%), firms in the section „Trade and repairs” (41%) and „Construction” (39%)³⁴ experienced the strongest growth in competition and the entry costs in the branches are lower than, for instance, in the section „Mining” (22%), or „Production of electricity” (10%)³⁵.

Transport deserves special attention. Accession opened the road transport market in both EU-15 and the new member states; consequently, new international connections were established. This situation especially influenced the small and medium-sized transport firms that prior to accession mainly operated in the domestic market for the lack of appropriate concessions³⁶. At the same time, the questionnaire survey showed that among all investigated sectors competition grew the most in transport services – this fact was indicated by 36% of respondents³⁷. It is worth noting that prior to accession, Polish transport firms viewed the sector of transport services as potentially very profitable, which resulted in excessive investment activity. The effect was oversupply of road transport services and reductions in the rates charged. Because of that, some providers were crowded out from the market. In addition, entrepreneurs

³³ *Internal Market, Service Directive*, UKIE, 02.11.2006: <http://www1.ukie.gov.pl/www/serce.nsf/0/5183E7624D52F5BC12570D500314579...> A. Słojewska, in cooperation with Ł. Izakowski, *Usługi w Europie prawie uwolnione*, Rzeczpospolita no. 267/16 Nov. 2006.

³⁴ The same percentage of surveyed businesses indicated growing competition in the section „industrial manufacturing”.

³⁵ *Analiza konkurencyjności przedsiębiorstw na podstawie badania ankietowego*, „Materiały i Studia”, Zeszyt 206, Narodowy Bank Polski, pp. 22.

³⁶ *Polska w Unii Europejskiej – doświadczenia pierwszego roku członkostwa*, [in:] *Bilans korzyści i kosztów przystąpienia Polski do Unii Europejskiej – pierwsza próba weryfikacji prognoz, przegląd wniosków z raportów sektorowych*, pp. 23.

³⁷ *Sytuacja w sektorze przedsiębiorstw w latach 2003-2004 w świetle wyników ankiety rocznej NBP – synteza*, NBP, Warsaw, January 2005.

expected that the small road transport firms would consolidate in the near future³⁸.

The lifting of the customs barriers – the abolition of physical control and administrative and customs formalities, as well as elimination of the required permits' costs – was another important factor for the transport firms. The productivity of the stock of vehicles increased and cargo transportation costs paid by exporters dropped. All this boosted the profitability of Polish firms providing international transport services. However, savings made on the eliminated customs barriers were partly consumed by changes indirectly induced by accession, such as higher prices of fuel and extra charges paid on the use of German freeways that became effective on 1 January 2005; the introduction of the MAUT tax is estimated to increase the costs of transport to, through and from Germany by 5-7% on average³⁹.

However, the survey showed that accession could negatively affect the forwarders. Because of lengthy customs clearance procedures and extended and very scrupulous sanitary examinations in Poland, some shipments of goods coming to Poland from third countries are more and more often cleared at German harbours (e.g. tea or coffee). Yet, the most serious problems are associated with the VAT law and its executive regulations. The law exempts forwarding services offered to Polish shippers by the German or Dutch firms, but the same services provided by Polish forwarders are taxable at 22%. The law largely impedes the provision of transit transport services, or increases their costs. This situation is exploited by foreign forwarders that additionally have stronger capital position and can temporarily charge very low rates on services offered to Polish shippers⁴⁰.

In the opinion of 54% of entrepreneurs, Poland's accession to the European Union improved the condition of the Polish economy – this belief was usually expressed by respondents providing „financial intermediation and real property services” (67%)⁴¹. The act was viewed negatively by entrepreneurs managing transport and telecommunications firms (the difference between negative and positive opinions was as much as 31 percentage points) and those

³⁸ *Polska w Unii Europejskiej – doświadczenia pierwszego roku członkostwa*, op.cit., p. 298. M. Grabowski i inni, *Sektor MSP rok po akcesji – próba oceny*, [in:] see above, p. 301.

³⁹ *Polska w Unii Europejskiej – doświadczenia pierwszego roku członkostwa*, op.cit., pp. 22-23.

⁴⁰ M. Grabowski i inni, op.cit., p. 291.

⁴¹ *Raport z badania sondażowego wśród małych i średnich firm w Polsce*, Polska Agencja Rozwoju Przedsiębiorczości, Opinia – Agencja Badań Rynku, Warsaw November 2004, p. 8, http://pliki.parp.gov.pl/pdf/badania/sondaz_msp05.pdf.

in the trading and repair business (a difference of 7 percentage points)⁴². Generally, most entrepreneurs believed that accession rapidly increased the number of new regulations applying to businesses, which complicated the existing system, and that the adjustment period was short and full of problems concerning the interpretation of the new rules⁴³.

The main effect of Poland's integration with the EU was growing costs of transport and raw materials – representatives of the “construction” industry and “hotels and restaurants” (over 70%) indicated the highest growth in raw materials they used. Entrepreneurs representing „hotels and restaurants” (63%) believed that integration made fixed costs grow. On the other hand, employment costs grew in „transport and telecommunications” (26%)⁴⁴. In addition, entrepreneurs in the „construction” industry pointed to increased fiscal burdens (38%), as a result of higher VAT rate applied to construction materials⁴⁵. At the same time, most construction firms (16%) indicated that accession made their profits grow, while entrepreneurs in the „hotels and restaurants” industry usually expressed a different opinion (30%)⁴⁶.

The largest increase in competitiveness in the area of innovation was reported by firms representing „hotels and restaurants” (48%) and in the area of human capital by firms providing „financial intermediation and real property services” (28%)⁴⁷. More than half of the surveyed firms prepared to conducting business in the internal market mainly by making investments in technical equipment (55% of indications). Equipment investments were usually undertaken by firms in „hotels and restaurants” and „transport and telecommunications” (63%); constructions firms made them the most rarely (50%). Another area of investment that attracted two-fifths of the surveyed firms was human capital – such investments were usually made by firms providing „financial intermediation and real property services” (45%). As for investments in innovations and managerial skills, the leaders were „hotels and restaurants” (37% of them launched such investments)⁴⁸.

⁴² *Raport o stanie sektora małych i średnich przedsiębiorstw w Polsce w latach 2004-2005*, Polska Agencja Rozwoju Przedsiębiorczości, Warsaw 2006.

⁴³ M. Grabowski i inni, op.cit., p. 291. Jednakże było to zjawisko jednorazowe bezpośrednio związane z momentem akcesji i koniecznością wprowadzenia wielu nowych regulacji w tym czasie.

⁴⁴ *Raport z badania sondażowego wśród małych i średnich firm w Polsce*, op.cit., p. 9.

⁴⁵ *Raport z badania sondażowego wśród małych i średnich firm w Polsce*, op.cit., p. 13.

⁴⁶ *Raport z badania sondażowego wśród małych i średnich firm w Polsce*, op.cit., p. 11.

⁴⁷ *Raport z badania sondażowego wśród małych i średnich firm w Polsce*, op.cit., p. 10.

⁴⁸ *Raport z badania sondażowego wśród małych i średnich firm w Polsce*, op.cit., p. 12.

Accession increased the number of service businesses established in Germany by companies based in western Poland and stimulated the demand for services, especially among small firms. The survey also revealed the migration of hard-to-replace, qualified, and experienced workers⁴⁹.

Final comments

Poland's accession to the European Union essentially modified the way the service providers conducted their business. Above all, Polish service providers were granted the freedom to provide services, and from a service provider's point of view this form of doing business in another member state is frequently more favourable than trying to establish a subsidiary. On the other hand, though, the open market for services increased competition faced by the Polish service providers. This situation is explicitly illustrated by the transport firms that export more services to the member states (as expected), but they also suffer from an oversupply of services caused, among others, by the stiffening competition.

An analysis of the balance of payments unveils a clearly growing volume of services transactions after 2004, and because 75% of the turnover usually falls on the EU countries, it seems rational to attribute this growth to Poland's accession to the EU. Among transactions in services, special attention should be paid to the transport services, and particularly to road transport that considerably enlarged its share in the trade in services with the EU countries. The main booster was the expanding volume of trade in goods between Poland and the EU after Poland joined the customs union and the single internal market. The amount of construction services also grew, because Polish firms have good specialists, substantial experience in the industry and cheaper labour compared with the EU-15 countries.

Prior to accession, computer services were frequently indicated as a potential source of Poland's comparative advantage in the trade in services,

⁴⁹ *Zmiany w postrzeganiu korzyści i kosztów członkostwa Polski w EU w środowisku małych przedsiębiorstw*, [in:] *Korzyści i koszty członkostwa Polski w Unii Europejskiej dla sektora małych i średnich przedsiębiorstw – doświadczenia pierwszych miesięcy*, Sociological survey ordered by the Office of the Committee for European Integration, November-December 2004, www1.ukie.gov.pl/WWW/news.nsf/0/4ABF525BCB73B748C1256FA800416F...

because of well-educated and less costly personnel⁵⁰. The predictions came true – data on the balance of payments show that receipts provided by the item had the strongest growth dynamics (exceeding the dynamics of outgoings) and consequently a gradually shrinking negative balance. The condition of the IT industry was favourably evaluated by the IT firms themselves – in 2005, their receipts grew on average by ca 20%, and expectations for 2006 and 2007 were equally optimistic. According to forecasts, Poland is in the group of 10 countries that can benefit the most from the expanding outsourcing of services. Several tens of service centres are already operational in our country today, and because of the cultural and geographical proximity, more investments can be attracted, especially that the British, German, and Scandinavian firms are expected to expand considerably their demand for such services⁵¹.

However, a post-accession analysis of the services market also shows that Polish service providers operating in the EU market have to struggle with various problems. The problems are usually connected with the posting of workers, transportation of necessary machinery or materials, provision of services qualified as a hidden attempt to establish a business, recognition of service providers' occupational qualifications. The same problems were known for years in the markets of the „old” EU member states; however, procedures that the countries apply to the new member states are frequently more restrictive and aimed to undercut the competitiveness of well-qualified and cheaper service providers from the new member states. The new services directive is expected to help lift the barriers, although its effectiveness provokes contrary opinions. Some believe that the directive as it is now will not change much; others think it is good to have it even if the law does not completely meet our expectations. The directive's success will largely depend on the interpretation of its provisions and rulings made by the European Court of Justice⁵² – but to an even larger extent, on the will of the member states to create a truly single market for services. The

⁵⁰ J. Pietras, *Sektor usług na drodze integracji Polski z UE*, [in:] *Dostosowanie w sferze realnej gospodarki Polski do integracji z Unią Europejską*, K. Żukrowska (ed.), Instytut Rozwoju I Studiów Strategicznych, Warsaw 1998, pp. 87-88.

⁵¹ *Unia przyniosła nowe zlecenia*, Rzeczpospolita, no. 101/29.04.2006. Outsourcing mainly covers IT and office services and the providers are specialist external firms. Owing to the development of ICT, most services of this type can be now provided online, hence companies in highly developed countries place them with firms in countries, where labour is high-skilled but cheaper. Today the largest exporter of such services in Europe is Ireland, and India is the largest global player – according to forecasts, around 4 million IT specialists in India will be providing services to British and US computer firms by the year 2008. A. Budnikowski, *Międzynarodowe stosunki gospodarcze*, PWE, Warsaw 2006, p. 24.

⁵² A. Słojewska, in cooperation with Ł. Izakowski, *Usługi w Europie prawie uwolnione*, Rzeczpospolita, no. 267/16 Nov. 2006.

potential of the services sector is huge and for the most part unused by the single market – in the member states services account on average for ca 70% of GDP and employment, whereas transactions in services make up less than 20% of the intra-Community trade. Therefore, the Lisbon Strategy's statement that lifting barriers that impede the functioning of the single market for services is the main road to improving the EU economy seems fully justified, although not necessarily well understood in many EU countries.

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