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THE FUTURE OF SPECIAL ECONOMIC ZONES IN THE AFTERMATH OF POLAND'S ACCESSION TO THE EUROPEAN UNION

Monika G. Kislowska*

INTRODUCTION

Poland, which became a Member State of the European Union ("EU") on May 1, 2004, came a long way to accomplish its goal of membership in the organization. The especially difficult accession process can be attributed to the fact that during the last fifteen years, Poland was going through a challenging transformation of its economic and political systems. During the early 1990s, Poland moved from a centrally planned economy and communist government to a market oriented economy and democratic government. This transformation influenced the speed and effectiveness of the country's adjustment to the EU, and drew attention to several areas in the Polish economy and political sphere that needed to undergo extensive reform.

For purposes of accession to the EU, a number of areas in Poland's economy underwent changes tailored to the specific EU requirements; among them, State aid proved to be one of the most interesting and complicated to adjust. State aid reform became especially important in light of the fact that this discipline bears directly on competition policy. Competition constitutes an integral part of the EU working mechanism because it ensures the proper functioning of the EU Common Market.\footnote{See Europa: Gateway to the European Union, http://www.europa.eu.int/pol/comp/overview_en.html (last visited Jan. 17, 2006).} In Poland, an extensive network of Special Economic Zones ("SEZs") that constitute a key component of the country's State aid policy added to the difficulty of adjusting this area of Polish economy to the EU requirements. The SEZs were troubling because they were based on legislation that in many aspects directly contradicted the EU State aid guiding principles. The forms of State aid (preferential income and property tax...}

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breaks) offered in the SEZs were perceived by the EU as a serious barrier to the maintenance of the regime of fair competition in the integrated EU market. Consequently, during the years preceding Poland’s accession to the EU, the original SEZs legislation was substantially reformed to meet the EU requirements.

Currently, the Special Economic Zones are prospering very well after their legislation was successfully adjusted to the EU norms; however, new complications are on the horizon. The major problem that the SEZs will soon face is that they are scheduled to cease to exist within the next ten to eleven years. Given how dynamic and beneficial the most recent activity in the SEZs has been to Poland’s economy, the transition to a Poland without SEZs has the potential of causing a serious crisis. Poland still remains well behind its EU western counterparts in terms of standards of living and economic development, and this situation may be seriously worsened by the liquidation of the SEZs. One solution to the problem may be to allow for an extension of the lifetime of the SEZs, or a creation of SEZs in the new regions of Poland. Since SEZs legislation is no longer incompatible with the EU State aid principles, the fears of SEZs becoming a barrier to the maintenance of fair competition in the Common Market are no longer warranted. Moreover, given the most recent disputes regarding the EU budget, SEZs may just become a key to resolving those problems because they can help boost the development and bring standards of living in Poland closer to those within the western EU Member States.

This Note will attempt to analyze the impact of the EU accession conditionality on State aid and SEZs structure in Poland. Section II of this Note will briefly discuss the premises of the EU State aid policy, the changes that occurred within this field in the last fifteen years, and its most current trends. Section III will concentrate on the case study of Poland and will provide some background information on the system of State aid as it existed in the country prior to the EU accession negotiations. Section IV will discuss the SEZs, how they came into existence and the specific changes that the SEZs legislation underwent in order to become compatible with EU law. Finally, Section V will discuss the future of the SEZs and propose solutions that the EU and Poland could consider in order to make the transition from the SEZs less detrimental on Poland’s economy but at the same time satisfactory to the EU.
THE BACKGROUND OF STATE AID IN THE EU.

In the EU, State aid is one of the five areas\(^2\) that comprise the organization’s competition policy\(^3\). Behind this simple phrase lies an elaborate mechanism that the EU put in place to control a form of state intervention that its individual Member States use to “promote a certain economic activity.”\(^4\) The intervention occurs when some economic sectors or activities are treated more favorably than others. In such situations less efficient firms, which receive State aid, are enabled to prosper at the expense of more efficient firms which do not receive aid.\(^5\) This is in sharp contrast to the scenario where general economic measures are “equally applicable throughout the Member State and are intended to favor the whole of the economy.”\(^6\) The EU accepts these general measures and public subsidies because they have no affect on trade and do not distort or threaten to distort competition.\(^7\) State aid measures, on the other hand, are perceived by the EU as destructive to the proper functioning of the Common Market\(^8\) and to the maintenance of fairness in the competitive process among all the Member States;\(^9\) hence, the EU’s commitment to their strict control.

Articles 87 to 89 of the Treaty Establishing the European Community (“EC Treaty”) provide the constitutional basis of State aid in the EU and set up its institutional framework.\(^10\) Article 87(1) spells out the main premise of the law, which is the prohibition of State aid which “distorts or threatens to distort competition by favouring certain undertakings or the production of certain


\(^3\) Since effective competition is the key to a proper functioning of an open market economy, the EU devised a number of rules and regulations designed to ensure fair trade in goods and services by businesses and government of Member States. See Europa: Gateway to the European Union, http://www.europa.eu.int/pol/comp/overview_en.html (last visited Jan. 17, 2006).


\(^6\) See Scoreboard 2005, supra note 4, at 11.

\(^7\) Id.

\(^8\) Id.

\(^9\) Id.

\(^10\) Martin & Valbonesi, supra note 5, at 177.

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The principle in this Article is a rather strict and broad prohibition. Thus, to offset its potentially all encompassing reach, the EC Treaty created mandatory and discretionary exceptions to the rule in Articles 87(2) and 87(3). These mandatory exceptions concern aid of a social character; aid designed to combat damages caused by natural disasters and aid granted to certain areas of the Federal Republic of Germany. The discretionary exceptions encompass such forms of assistance as aid to promote development of poor regions, the execution of projects important to common European interests, culture and heritage conservation, as well as, all aid that may be determined necessary by the Council. The main goal of the EU is to work for the good of its Member States so the general ban on State aid is lifted when “the proposed aid schemes may have a beneficial impact in overall Union terms.”

The European Commission (“Commission”), the only politically independent body in the EU, plays the main role in monitoring and controlling grants of State aid. Its main job is “to uphold the interests of the EU as a whole.” So to effectively ensure its integrity in this field, the Commission does not take instructions from any Member States’ government. Additionally, as the EU’s executive arm and the “Guardian of its Treaties,” the Commission ensures that regulations and directives adopted by the organization’s legislative bodies are executed. In the realm of State aid, it has the exclusive authority to review the various aid schemes proposed by the Member States’ governments and to determine whether they are compatible with the Common Market. The Member States are obliged to give the Commission an advance notification of their aid projects (“ex ante notification”) and none of those projects can be implemented until approved by the Commission (the so-called “standstill principle”). Consequently, any aid that is granted without the Commission’s

12 See Martin & Valbonesi, supra note 5, at 177.
13 EC TREATY, supra note 11, at 33.
14 Id.
16 See id.
18 Id.
approval is illegal, and the Commission has a duty to order recovery of such aid which requires the public authorities in the Member State, responsible for granting of the aid, to seek a refund from the aid recipients.\textsuperscript{20}

The EU recognizes three broad types of State aid measures: horizontal, regional and sectoral.\textsuperscript{21} Horizontal aid deals with market failures which usually entail some sort of externality (i.e. the social cost created by the business activity but not reflected in business cost or revenue), and which affect firms without regard to location or sector.\textsuperscript{22} The main objectives of this type of aid are research and development, rescue and restructuring, employment, environment and small and medium size enterprises.\textsuperscript{23} Regional aid is designed to assist with the development of disadvantaged regions.\textsuperscript{24} Its main objectives encompass aid to regions where the standard of living is abnormally low or where there is serious unemployment as well as aid to regions which do not meet the requirements of the first type of aid but which are still disadvantaged in comparison to other regions of the EU.\textsuperscript{25} Finally, sectoral aid deals with aid to the declining sectors, specifically coal, steel, shipbuilding and synthetic fibers sectors, and to the sectors that may suffer because of difficulty adjusting to the full forces of market competition, i.e. banking, air transport, shipping and motor vehicle sectors.\textsuperscript{26} Planning, restructuring, minimizing harm to competitors and reducing capacity are the key objectives of this last type of aid.\textsuperscript{27}

In the years preceding the 1990s, few reports or analyses discussing the trends in EU State aid levels were available. The situation began to change

\textsuperscript{20} Id. In 1998, the Commission decided to somewhat modernize and loosen its rules by designating certain categories of State aid which would be automatically, without the need for notification and approval, declared compatible with the Common Market if they meet a number of specific requirements (so called "block exemption notifications").

\textsuperscript{21} See id. at 5-6.

\textsuperscript{22} Martin & Valbonesi, supra note 5, at 179.

\textsuperscript{23} Id at 180.

\textsuperscript{24} Id. at 179. Regional aid is covered by the Articles 87(3)(a) and 87(3)(c) of the EC treaty. Article 87(3)(a) applies to State aid to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment. Article 87(3)(a) targets regions that are disadvantaged compared to the EU average. Article 87(3)(c) covers aid to other types of (national) problem regions “aid to facilitate the development of certain economic areas. This Article gives Member States the possibility to assist regions which are disadvantaged compared to the national average. See Ewa Kaliszuk, Polityka Wspolnoty Europejskiej w Zakresie Pomocy Publicznej, 2 (125) Wspolnoty Europejskie, 49, 50 (2002).

\textsuperscript{25} Kaliszuk, supra note 24, at 50.

\textsuperscript{26} Martin & Valbonesi, supra note 5, at 181.

\textsuperscript{27} See id.
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in 1993 when the EU experienced a peak in State aid grants by its Members.\(^{28}\) A serious effort aimed at the lowering of State aid marked the following decade. This was mainly realized through the tightening of State aid control, and ensuring that only the aid that served the Common Market was granted.\(^{29}\) Various European Councils were convened that made the regulation of State aid a priority on their agenda. Initially, at the Dublin European Council in 1996, the EU Member States committed to the improvement of the effectiveness of State aid control and to the reinforcement of the control mechanisms.\(^{30}\) Later, at the Cardiff European Council in 1998, the EU government concluded that strategies needed “to be developed for an overall reduction in State aid.”\(^{31}\) Next, at the Lisbon European Council in 2000, a commitment “to promote competition” was reiterated and the Member States were called upon “to reduce the general level of State aid and shift the emphasis from supporting individual companies or sectors towards tackling horizontal objectives of common interest, such as employment, regional development, environment and training or research.”\(^{32}\) Finally, at the Stockholm European Council in 2001, the Member States were asked to “demonstrate a downward trend in State aid in relation to the Gross Domestic Product (“GDP”) by 2003, taking into account the need to redirect aid towards horizontal objectives of common interest, including cohesion objectives.”\(^{33}\) The Commission, also aware of the need for the reduction in the volume of State aid, asked the EU governments to “make additional efforts to avoid sector specific and especially ad hoc State aid.”\(^{34}\) The effectiveness of the European Councils’ recommendations and of the Commission’s measures designed to increase the transparency of the aid granting process is best illustrated by the downward trend in the overall EU State aid granted in the end of the 1990s. Initially, sectoral aid constituted the most prevalent type of aid in the EU with the aid to the manufacturing sector amounting to 4% of the value added of the twelve Member States in 1990.\(^ {35}\) But by the end of the 1990s, the Member States had already shifted a significant percentage of the aid that was earlier assigned to the specific manufacturing,  

\(^{29}\) See id. at 6.  
\(^{30}\) Id.  
\(^{31}\) Id.  
\(^{32}\) Id.  
\(^{33}\) Id.  
\(^{34}\) Id.  
\(^{35}\) Martin & Valbonesi, supra note 5, at 182.
coal and service sectors to assist with horizontal objectives. As a result, in 1997, State aid to the manufacturing sector in the EU amounted to only 2.5% of the value added of the fifteen Member States. These changes, although at first seemingly nominal, soon became the starting point for the fulfillment of the Lisbon Agenda of 2000 which was implemented to help shift the EU State's aid emphasis from supporting individual companies or sectors to assisting with the horizontal objectives of the Community. This transformation was important because although these horizontal objectives still counted as State aid, they were substantially more in accordance with the common interests of the EU than the previously offered forms of aid. This was mainly because they had "the potential to create benefits that were greater than their cost measured in terms of aid amounts alone." The most recent findings show that the percentage of State aid granted to specific sectors has steadily decreased in favor of State aid committed to achieve horizontal objectives. The share of horizontal aid had risen to 79% of total aid as compared to 50% in the mid-1990s. Sectoral aid, which includes aid to rescue and restructure failing firms, now contributes 21% of all aid. Table One shows a detailed breakdown of each type of aid by its subcomponents and by the individual Member States.

Some skeptics of the EU might argue that other economic reasons, other than EU policy, led to these structural changes in State aid. All the available data, however, seems to suggest that these changes were mainly the result of the reforms undertaken by the EU. The data seems to be even more credible when one considers the fact that it not only discusses the resolutions that were met, but also those that were not fully realized. For example, the situation in EU Member States regarding the level of State aid in relation to the GDP seemed much less encouraging. The trend in this area remained steady rather than downward, although the idea of lowering the ratio of State aid to the GDP was one of the main commitments of the most recent Stockholm European Council. The overall volume of aid decreased from the high levels that

37 Martin & Valbonesi, supra note 5, at 182.
38 Scoreboard 2005, supra note 4, at 4.
40 Total State aid as defined by the Article 87(1) of the EC Treaty covers manufacturing, services, coal, agriculture, fisheries and transport sectors, but not the railway sector.
41 Scoreboard 2005, supra note 4, at 5.
42 See id.
43 Id. at 14.
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existed in the early and mid-1990s; however, from 1999-2003, it remained the
same, amounting to 0.57% of the EU GDP in 2003, compared to 0.63% in 1999
and 1.09% in 1992.44 Expressed in absolute terms, the total aid granted by the
fifteen EU Member States was estimated at €53 billion in 2003, compared to
€74 billion in 1996 and €55 billion in 1999.45

Since State aid can take different forms, the EU Member States have a
number of different instruments at their disposal when assigning aid, including
grants, tax exemptions, soft loans, tax deferrals and guarantees.46 During 2001-
2003, the share of each aid instrument in the EU Member States’ aid to the
manufacturing and service sectors was as follows: grants accounted for 67% of
the total State aid, tax exemptions for 22.7%, soft loans for 4.8%, tax deferrals
for 2.6%, guarantees for 2.2% and equity participation for 0.7%.47 Most
recently, the use of tax exemptions as a form of aid decreased in favor of grants.
For example, the grant aid rose from 48% in the years 1992-94, to 57% in the
years 1995-97 and 67% in 2003. At the same time, tax exemptions decreased in
those periods from 26% in the years 1992-94 and 24% in the years 1995-97 to
22.7% in 2003.48 These changes were attributed to the fact that grants are more
easily adopted by governments than tax exemptions because they do not require
as many changes in the law.49

In sum, since the late 1990s the EU perceived the control and
monitoring of State aid as extremely important to the proper functioning of the
Common Market, with all Member States fairly participating in the exchange
and competitive process occurring within the organization. In light of these
conclusions, it is clear why this area of EU policy has become especially
controversial during the organization’s enlargement process and why the
organization strived so hard to ensure that there existed uniformity in the
legislation of each new Member State and the EU body of law called the
“acquis communautaire.” Allowing any country to become an EU Member
State without first making sure that its laws were compatible with those of the
EU could seriously undermine all of the efforts the EU had put into
administering State aid among the existing Member States and preventing
distortions that threatened to take over the Common Market. Since, in the past,
Poland implemented State aid regulations that differed greatly from that of the

44 See id.
45 Id. at 4.
46 See Martin & Valbonesi, supra note 5, at 185, 187.
47 See Scoreboard 2005, supra note 4, at 27.
48 Martin & Valbonesi, supra note 5, at 185.
49 Id.
EU, it is understandable why the adjustment of this area of the economy became crucial to the success of the accession negotiations between Poland and the EU.

THE DEVELOPMENT OF THE CONCEPT OF STATE AID IN POLAND.

In light of the information provided in the preceding section, it becomes clear that a background introduction to the structure of State aid in Poland is essential to better understand the nature of the problems that State aid and the SEZs posed during the EU accession process. Accordingly, this section of the Note will discuss State aid as it existed in Poland in the beginning of the 1990s and the changes that this area of the Polish economy underwent to become compatible with the EU legal norms.

i. State Aid in Poland in the early 1990s.

Prior to the 1990s, Poland was a communist country with a centrally planned economy, and as a result, the concept of State aid did not exist there during that time. Instead, under the centrally planned economy, the government played a major role in controlling all aspects of economic organization through the direct intervention in the affairs of the enterprise sector. The government used subsidies to link the state budget and the quantitative plans. These plans were the main tool for controlling enterprises because they dictated “what kind of goods and services, how much, and when and where to produce.” The government was responsible for setting the “socially desirable” prices, which were basically prices that created an illusion of serving society but that in no realistic way corresponded to the true cost of goods and services. When the time for transformation came, the government was forced to abandon its control system and allow for the establishment of appropriate institutions that would help in the development of the private sector.

53 Id.
54 Id.
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sector. This was mainly done through the reduction of subsidies and a movement towards liberalization of prices which finally began to reflect real market levels.

These changes were of an unprecedented scale and, not surprisingly, they quickly led to disturbance in the economy. Many enterprises, unable to withstand the new conditions, fell into financial trouble. To help businesses survive, the government intervened by providing firms with financial support. In 1991, in an effort to save some of the hardest hit industries, the government established the Industry Development Agency (“IDA”), which became responsible for promoting industrial efficiency and assisting in restructuring. From 1991-1996, the IDA played the main role in restructuring Ursus, Poland’s largest tractor manufacturer, and the Polish National Railways.

In the initial stages of this economic transformation, the government and its agencies set up State aid programs as they wished. Such freedom in structuring led to a situation where the majority of State aid granted in Poland in the early 1990s was not connected to any long-term policy but was ad hoc and unfocused. Aid programs turned out to be direct support payments to the failing state-owned enterprises, which in many cases collapsed before they could even have a chance to restructure and become more efficient.

Poland’s decision to apply for membership in the EU curtailed, to a certain degree, this process of uncontrolled governmental assistance. In fact, in 1994, a new era began for the country when it signed the European Agreement (“EA”). The EA provided a framework for trade and related matters between the EU and Poland, and called for Poland to respect the boundaries set by the EU State aid rules. “The existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the EU,” were among the most important requirements for joining of the EU. The fulfillment of those requirements was largely dependent upon the tight control of each Member State’s State aid policy. Accordingly, because large

55 Hashi, supra note 51, at 2.
56 Scoreboard 2004, supra note 48, at 11.
57 Id.
58 Sowa, supra note 50, at 4.
59 Id. at 5.
60 Id.
63 Id.
Thus, beginning with the EA, the organization began to specify which forms of Polish State aid it considered incompatible with the well functioning market economy. The policy outlined in Article 63.1 of the EA states, in relevant part: “The following are incompatible with the proper functioning of the Agreement, insofar as they may affect trade between the Community and Poland: ... (iii) any public aid which distorts and threatens to distort competition by favouring certain undertakings or the production of certain goods.”

The EU argued that successful closure of negotiations in this area depended on the fulfillment of the following three requirements: (1) the alignment of Polish competition law with that of the acquis communautaire, (2) the creation of state monitoring agencies responsible for controlling the compatibility of State aid measures with the EU law, and (3) the practical application of the adopted EU regulations.

Poland had considerably little trouble with a timely fulfillment of the second requirement. Starting in 1998, it had a functioning state monitoring agency, the Office for Competition and Consumer Protection (“UOKIK”), responsible for reviewing State aid granting measures. The situation was much more troublesome with respect to the timely achievement of the first and third requirements. Although, theoretically, it made a lot of sense for the EU to request from all its future candidate countries to start implementing the necessary reforms early; in practice, because the EU had not prescribed specific legal rules that would enable Poland to implement the guiding principles of the acquis communautaire, the real progress in this area was initially very slow.

In fact, the country did not begin to implement significant textual and practical changes to its State aid laws until the year 2000. Some experts had explained this situation by pointing to the fact that the EA, while prescribing certain rules...
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to follow, did not have an implementing mechanism. As a result, Poland did not feel as if it was truly obliged to follow the EU law. This phenomenon, as well as the fact that the EA was new legislation, provide a good explanation for why the SEZs created in Poland by the legislative act of December 24, 1994 have since proved to be so incompatible with the EU State aid law.

ii. Changes in the State Aid structure in Poland resulting from the country’s negotiations for membership in the EU.

State aid reforms took on a different character when the full-fledged accession negotiations opened in 1998 and the EU accession authorities more closely evaluated the level of Poland’s compliance with the EU State aid norms. At that time it was discovered, contrary to the Commission’s expectations, that Poland had not been very effective in adapting the EU regulations. Poland had specifically failed to do away with certain fiscal measures, such as various tax preferences offered to investors in the SEZs, which were most in conflict with the EU State aid and regional policy. Consequently, because the EU was not satisfied with the situation in Poland, it began to condition Poland’s accession to the organization on a successful implementation of all required State aid reforms.

In order to fulfill the EU’s accession requirements outlined above and become eligible for accession to the EU, starting with the year 2000, Poland finally began to make some long awaited changes to its State aid policy. First, on June 30, 2000, the Polish legislature adopted the Act on the admissibility and supervision of State aid for entrepreneurs, called the State Aid Act of 2000 (“SAA”). The SAA, encompassing twelve ordinances and regulations, provided for a general prohibition on the grants of State aid, with exceptions for a few, limited circumstances of so called admissible types of aid. Those admissible types of aid consisted of aid for horizontal, regional and sectoral objectives. The SAA also introduced the “de minimis” rule which allowed for all aid cases below €100,000 over three consecutive years to be exempted from all but reporting obligations.

Kaliszuk, supra note 24, at 53.
Id. at 50.
Sowa, supra note 50, at 7.
Id. at 8.
Id. at 9.
legislation regarding the SEZs, which was aimed at adopting the EU State aid norms into Polish law.\textsuperscript{77}

Accordingly, where identified State aid measures were deemed to be incompatible with the EU acquis, Poland was required either to abolish them or align them with the EU norms. In some rare cases, consultations between Poland and the EU resulted in special transitory arrangements, which were strictly limited in scope and duration.\textsuperscript{78} In the end, the negotiations regarding the adjustment of the competition policy were eventually concluded at the Copenhagen European Council in December 2002 and the Treaty of Accession was signed in Athens in April 2003.\textsuperscript{79} Poland entered into transitory agreements regarding the restructuring of the steel industry, the grants of State aid for environmental protection and the grants of fiscal aid in the SEZs. The final review and adjustment of State aid schemes is still underway in the framework of the existing aid procedures.\textsuperscript{80}

\section*{iii. 1995-2003 State Aid trends in Poland.}

During the period 1996-2002, the volume of State aid in Poland viewed as the share of GDP decreased significantly from 2.6\% in 1996 to 1.3\% in 2002.\textsuperscript{81} With respect to the types of State aid granted, subsidies and fiscal operations, followed by soft credits became the most prevalent forms of aid offered.\textsuperscript{82} Operations in equity were very minimal and so were credit warranties, although the latter showed a tendency to increase by 2000.\textsuperscript{83} For the most part, State aid during those years was financed through the reduction in budgetary revenues.\textsuperscript{84} The year 2000 was an exception when the direct expenditures and reductions in budgetary revenues equally contributed to the financing of State aid.\textsuperscript{85} This pattern of aid structure differs significantly from the EU pattern where subsidies prevail. In the EU, more than 60\% of aid is transferred to enterprises in the form of subsidies, and tax exemptions account for about 25\% of aid, while soft credit for about 6\%.\textsuperscript{86}

\textsuperscript{77} Id.
\textsuperscript{78} Kaliszuk, supra note 24, at 53.
\textsuperscript{79} Scoreboard 2004, supra note 48, at 14.
\textsuperscript{80} Id. at 16.
\textsuperscript{81} See Sowa, supra note 50, at 14.
\textsuperscript{82} Id.
\textsuperscript{83} See id. at 15.
\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{86} Id.
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With respect to Polish State aid objectives, 33% of the aid in 2002 went to horizontal objectives, 18% to sensitive sectors and about 5% was appropriated to regional aid.\(^87\) Table Two provides a more detailed description of State aid in Poland categorized by aid objectives. The structure of Polish State aid by aid objective is different from that of the EU where almost half of State aid is put toward horizontal objectives and about one quarter of aid is regional.\(^88\) The post-transition character of the Polish economy, with more support directed at the sensitive sectors, as well as the pressure from the sensitive sector groups are the two factors responsible for this difference.\(^89\) In the years after Poland’s entrance into the EU, this dynamic has begun to change noticeably and Poland’s State aid structure has gradually begun to look more like that of the EU. This state of affairs is mainly due to the successful alignment of Polish law with that of the EU, especially in the area of SEZs legislation, and to the Commission taking a more direct and active role in controlling and monitoring of the grants of State aid in Poland.\(^90\)

THE SEZS: ONE OF THE MOST CONTROVERSIAL ISSUES IN THE ACCESSION NEGOTIATIONS.

i. The creation of the SEZs.

The SEZs were first created in Poland pursuant to legislation passed on October 20, 1994, which was subsequently amended by the statutes adopted on November 16, 2000 and October 3, 2003.\(^91\) They served as an important tool in the government’s struggle for the successful adaptation of the country’s economy to the stringent requirements of the free market system. Accordingly, some viewed the SEZs as special, privileged economic enclaves within which the government decided to either limit its rights or grant special preferences in order to achieve some specified economic or social goals.\(^92\) In general, the

\(^{87}\) Id. at 17.
\(^{88}\) Id.
\(^{89}\) Id. at 18.
\(^{91}\) Szymaniak, supra note 69, at 15.
\(^{92}\) Id.
SEZs were designed to help revive the economy by attracting new foreign capital to the country. The main idea behind their creation was the desire to fight structural unemployment in selected regions of Poland. This goal was accomplished by directing new investment into the SEZs. The SEZs appeared to be especially attractive to investors because they offered a number of fiscal advantages that other regions of the country did not possess.

In accordance with the terms of the 1994 statute, the SEZs were created for a period of twenty years in isolated, uninhabited parts of the country’s selected regions. The aspect of the zones most responsible for encouraging investors to locate their firms there was the unique system of fiscal incentives. Pursuant to Article 12 of the 1994 statute, investors in the SEZs could choose among the following fiscal incentives: (1) a complete exemption from the income tax for the first 10 years of the investor’s activity in the zones, (2) a 50% exemption from the income tax payment for the remaining years of investor’s economic activity, until the zones cease to exist, (3) a possibility of including expenses that are not related to the purchase of permanent means of the business development in the costs of the investment and (4) a possibility of increase in the amortization rates of the permanent means used in the business pursued in the zones. The last two incentives constituted tax preferences available for those investors that did not qualify for exemptions specified in the first two incentives. They allowed investors to lower their tax base in a preferential way and consequently to pay lower income taxes.

The Board of Ministers was responsible for setting the conditions under which an investor in the SEZs was entitled to either a 100% or a 50% exemption from the income tax. They included the following: (1) the creation and maintenance, for a specified period of time, of a certain number of new employment positions linked to the investor’s activity in a zone, (2) the creation of a permanent production investment in a zone with a value exceeding a certain specified amount, (3) the achievement and maintenance, for a specified period of time, of a certain minimal level of income from the goods produced or services offered in a zone, and (4) the achievement and maintenance, for a

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93 Id.
94 See Ministry Report, supra note 90, at 2.
95 Id.
96 Id.

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specified period of time, of a certain minimal level of income from export of the goods produced or services offered in a zone. It is worth noting that because at that time the tax rates in the country were quite high, such complete exemptions presented a valuable advantage to those who decided to invest in the SEZs. In addition to the above outlined income tax incentives, investors in the SEZs could also take advantage of various exemptions and preferential treatments offered by local governments; the most important was a complete exemption from property taxes.

Besides the quite advantageous specific tax incentives, the SEZs 1994 statute also included two other points that made investment in the SEZs even more attractive. First, as indicated in Article 13 of the 1994 statute, all exemptions and preferences outlined above could not have been taken away or deteriorated during the period for which the SEZs were created. Second, the 1994 statute did not specify any limits on these preferential treatments. These regulations were extremely advantageous to the SEZs investors because they provided them with an additional layer of assurance regarding the tax breaks that they were to obtain once they fulfilled the requirements for investment in the SEZs. At the same time, because these provisions were clearly in conflict with the EU’s guiding principles on State aid, they soon became the main obstacles to the EU’s acceptance of SEZs legislation.

ii. Difficulties with SEZs in the face of Poland’s negotiations for EU admission.

The initial results following the creation of the SEZs were very optimistic. From 1994-1998, seventeen SEZs were created in Poland and the investors that were active in them already declared their willingness to invest over 3.9 billion zloty (approx. $1.3 billion) and create about 12,000 new jobs. However, the problems began in March 1998 when Poland began to negotiate with the EU regarding its membership in the organization.

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100 See Article 12, § 6. Id.
101 Ambroziak, supra note 98, at 44.
102 Id.
103 Id.
105 Id.
106 Zloty is the Polish currency. One dollar equals approximately three zloty.
107 Niklewicz, supra note 104, at 26.
108 Id.
The alignment of a candidate country's legal norms with that of the EU has always been one of the main requirements of EU membership. Since, it was clear early on in the negotiation process that the rules governing the establishment and working of the SEZs in Poland were in conflict with the EU competition norms, Poland knew that they needed revision. The lack of limits on State aid offered in the SEZs was especially problematic since the EU law clearly states that State aid cannot exceed 50% of the cost of the investment for large firms and 65% of the cost of investment for small and medium enterprises. At the time, the firms that were investing in Polish SEZs had already or would have in the near future exceeded these limits. Based on the EU’s objection to SEZs legislation, in February 1999 Poland agreed to amend the SEZs law and those modifications went into effect on January 1, 2001.

The revised SEZs statute harmonized Polish SEZs law with the acquis communautaire, although it applied only to those investing in the SEZs after December 31, 2000. The new law did not apply to business that became active in the SEZs before the year 2001, because Article 13 of the SEZs founding statute protected against deterioration in the acquired rights of all those who started their business activity under the old SEZs rules. The 2001 modification was mainly concerned with setting caps on the aid which before was virtually limitless. Accordingly, the businesses investing in the SEZs after December 31, 2000, needed to comply with a number of factors, set separately for each zone, in order to qualify for any type of exemption. This meant that they were no longer automatically relieved of the 100% income tax for the first ten years of operations and 50% for the following ten years. The exemptions were now calculated separately for each SEZ but, in any case, they were not to exceed 50% of the cost of investment for a large company, and 65% for a small or medium enterprise.

The EU accepted this new SEZ law as being compatible with the acquis communautaire; however, the organization was still unsatisfied with the solutions Poland proposed regarding the firms that had invested in the SEZs before 2001. The pre-2001 investors were allowed to keep all of their tax

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109 Id.
110 Id.
111 See Ambroziak, supra note 98, at 44.
112 Id.
114 Id.
115 Niklewicz, supra note 104, at 26.
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breaks and this was unacceptable to the EU. In search of a compromise, Poland asked for a thirteen-year long transition period for the pre-2001 investors that would allow them to keep the rights that they had been granted by virtue of the 1994 SEZs legislation.\textsuperscript{116} The EU did not agree, arguing that Poland should have known from the time when the SEZs were first created that the original law establishing them was in violation of the EU rules spelled out in the 1994 EA.\textsuperscript{117} The EU was referring to Article 63 of the EA which states, in relevant part, that “any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods” is incompatible with the agreement.\textsuperscript{118} According to the EU’s interpretation of this Article, the rights that investors obtained as result of the 1994 SEZs legislation was prohibited because the law was originally enacted in violation of the EU rules. Poland did not agree with that interpretation of this EA provision. The country viewed the Article 63 clause as inapplicable to the 1994 SEZs legislation because at the time the EA lacked implementing rules.\textsuperscript{119} In other words, there were no substantive and procedural rules that allowed incorporation of Article 63 into the Polish competition law as it existed at the time. There was clearly a disagreement as to the interpretation of the EA and no side was willing to accept its opponent’s view of the situation.\textsuperscript{120}

In the end, Poland was faced with several options for resolving this controversial issue: (1) it could arbitrarily take away the rights of investors; (2) it could negotiate with investors and ask them to give up their rights in exchange for reimbursements from the government; (3) the government and the Parliament could decide to radically lower the income tax and get away with SEZs all together (this is what Ireland did in 1970s when it also had a SEZs problem, or (4) the government could initiate strict fiscal controls of all the investors in the SEZs.\textsuperscript{121} The Polish government was quite reluctant to proceed with any of these solutions because each of them offered some negative consequences.\textsuperscript{122} The first option, if adopted, could lead to a flood of lawsuits

\textsuperscript{116} Id.
\textsuperscript{117} Strefy Kompromisu, GAZETA WYBORCZA, Apr. 5, 2002, at 24.
\textsuperscript{119} Strefy Kompromisu, GAZETA WYBORCZA, Apr. 5, 2002, at 24.
\textsuperscript{120} Id.
\textsuperscript{121} See Niklewicz, supra note 104, at 26. All the SEZs laws implemented before 2001 had a provision that stated that a firm investing in a zone would lose all of its privileges if it was found that it had its fiscal obligation in any amount exceeding 3% of total obligation. Most likely all the firms in SEZs would have been found to break the law.
\textsuperscript{122} Id.
against the government and could undermine the country's credibility vis-à-vis the future foreign investors. The second option could also turn out to be quite problematic because it presented the SEZs firms with difficulty calculating the reduction they were to possibly receive had they not accepted the new law. With respect to the third option, it was doubtful that the country could afford such a maneuver. Finally, the fourth solution could potentially have the most negative, long-run consequences because initiating stricter fiscal controls could send a signal to prospective SEZs firms that the country was doing so to destroy all private business.

Eventually, Poland and the EU found a compromise which led to the official closing of accession negotiations in the competition policy chapter in December of 2002. In general, the new legislation divides the pre-2001 investors into three separate groups and assigns them different rights. First, small and medium enterprises are allowed to keep the rights gained under the 1994 legislation until the end of 2011 and 2010. Second, large investors are allowed to receive State aid in the amount of 75% of the cost of investment for those who entered the SEZs in 1999 and 50% for those who entered the SEZs in 2000. Finally, investors from the motor vehicle sector are allowed to receive State aid amounting to no more than 30% of the cost of their investment.


Currently, there are fourteen SEZs operating in Poland: Kamieniogorska, Katowicka, Kostrzynsko-Slubicka, Krakowska, Legnicka, Lodzka, Mielecka, Pomorska, Slupska, Starachowiecka, Suwalska, Tarnobrzeska, Walbrzyska and Warminsko-Mazurska. They encompass 429 enterprises, which have so far invested almost 20 billion zloty (approx. $6.6 billion) and employed 77,600 people. The SEZs differ based on area,
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location, investment character and infrastructure. The Katowicka zone is the largest, covering 1120 hectares, whereas the Cracow Technological Park is the smallest with an area of roughly 122 hectares. Originally, the total SEZs area was not to be increased beyond the territory that it covered as of December 31, 2000. However, due to the increased interest in the possibility of investment in the SEZs, as of May 31, 2004, a new provision was added to the SEZs legislation that now allows for increases in the SEZs area by approximately 1675 hectares, provided that the new area is used for investment of at least €40 million or one that creates 500 and more new job posts.

The first permit allowing investment in the SEZs was issued in the Mielecka Zone in 1996. Applications for permits increased each year for the following four years, reaching a climax in 2000. The year 2000 witnessed the most drastic increase in applications filed, mainly due to the anticipated changes in the SEZs law that were to limit the tax incentives offered. Following the implementation of the 2000 reform in the SEZs legislation, which was unfavorable for most investors, the number of new permits issued fell in the years 2001-2003. There were 250 valid permits in the SEZs by December 31, 1999, 725 by December 31, 2000, 703 by December 31, 2001, 690 by December 31, 2002, and 670 by December 2003. Then, in 2004, as the SEZs law stabilized, the situation began to improve. Many new firms began to invest in the SEZs, and by December 31, 2004 valid permits increased to 679.

The number of new job posts created in the SEZs increased in the years 2001-2003 by about 20% a year. The business activity in the Katowicka and Mielecka zones added the highest number of new job posts, whereas the Slupska zone witnessed the smallest change in its employment level. With respect to the investment dynamic, there has been a visible increase in investment activity in 2004. Based on a two year analysis, the Kostrzynsko-Slubicka zone experienced an increase of over 600% in investment development in the year 2003 as compared to 2002. There were also

133 See id. at 9-10.
134 Id. at 9.
135 Id. at 13.
136 Id.
137 Id. at 9. In its negotiations with the EU, Poland was unable to keep the acquired rights of investors unchanged, and as a result many new investors which applied for permits in 2000 never began their investments and consequently their permits were taken back.
138 See id. at 13.
139 See id.
140 Id. at 16.
141 Id.
142 See id. at 15.
relatively high increases in investment in the Kammienogorska zone—208%, the Warminsko-Mazurska zone—171%, and the Lodzka zone—167%. It is important, however, to keep in mind that it is quite difficult to expect the same level of development in all SEZs because the inflow of investors into each zone is different. It is enough to have one big new investment for the investment dynamic to immediately increase.

The business activity in SEZs not only has a positive effect on the economy of the country as a whole but also plays an important role on the local level by benefiting the areas directly surrounding each SEZ. The increase in investment in SEZs is often accompanied by a considerable increase in employment in construction firms, as well as in firms providing other types of services such as transport, education, finance and culture. Generally, it is estimated that 100 new job posts created in the SEZs generate 50-100 new job posts in the regions surrounding the SEZs.

In sum, SEZs are very beneficial to the country because most of all they are a great tool for attracting new investments. Although the EU does not look favorably on State aid granted in the forms of fiscal relief; this type of aid makes the most sense from the point of view of the country’s budget, especially when taking under consideration the certainty of effects that SEZs bring with them. In the case of direct subsidies, there is no assurance that the investment will be realized; in SEZs, on the other hand, an investor only gets exemptions if he actually goes through with his investment, begins production and earns income.

THE FUTURE OF SEZS IN POLAND.

As illustrated by the preceding discussion and analysis, the legal structure of SEZs in Poland has undergone many significant changes due to the country’s accession to the EU and the accompanying alignment of the country’s law with the acquis communautaire. The negotiation process which lasted for over four years and was characterized by many heated debates and strenuous compromises attests to the degree of difficulty these reforms presented for both Poland and the EU. The Polish government feared that the country as a whole would be seriously undermined in the eyes of foreign investors if it was
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to retrospectively change the law under which investors came to participate in the SEZs. As a result, Poland tried to negotiate transition periods for those investing in the SEZs before 2001 and in defense of its position, it argued that the old State aid regime would not have a negative impact on the competition in the Common Market and the trade between Poland and other EU Member States. On the other hand, the EU did not believe that State aid offered in the SEZs under the 1994 legislation was that harmless, especially in the context of large investors and insisted on an immediate modification of the Polish law to reflect the acquis communautaire. Eventually a compromise was reached and Poland moved one step closer in its goal of accession to the EU.

Although the negotiations regarding the SEZs reform were successfully finalized, the early phases of the implementation of the new SEZs legislation brought a great deal of fear and doubt regarding the future success of the SEZs. The investor activity in the SEZs experienced a significant slow down in the years 2002-2003 when almost no new investors came into the SEZs and when a number of investors who were previously awarded permits to develop in the SEZs decided not to proceed because their rights acquired under the old law had changed. Eventually the new SEZs legislation had not proven to be as destructive to the development of the SEZs as was initially thought. In fact, the past couple of years have shown that the fears and pessimism regarding the future effectiveness of the SEZs have not been realized. New investors entering into the SEZs have come to terms with the new SEZs legislation. The best proof of such attitude is the fact that investors still find the SEZs attractive, although the privileges offered in the SEZs for those investing there after January 1, 2002 are considerably lesser than before. What is most important is that the new rules are compatible with the acquis communautaire and certainly that they will not be taken away by the EU based on their unlawfulness. As a result, the SEZs system is more transparent and stable allowing those who would like to invest to work out their business plans and stay assured that no negative surprises will occur in the future.

After the initial slow down period in the SEZs, there was a considerable awakening in 2004 and 2005. Starting with the year 2004, many new firms invested in the SEZs and the year 2005 experienced a record number of new investors. In 2004, two SEZs issued more than ten new permits, and starting with 2005 more than five SEZs have done so, with the Katowicka zone

149 Id. at 41.
150 Id. at 43.
151 Ministry Report, supra note 90, at 13-14.

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issuing more than thirty permits. The investors in the Walbrzyska zone and Warminsko-Mazurska zone have already promised to expend capital investments worth more than one billion zloty (approx. $333 million) and in the Kostrzynsk-Slubicka zone the investors foresee creating up to 5800 new job posts.\textsuperscript{154} In the Lodzka zone, a record number of entrepreneurs began their investment activity by opening fourteen new factories.\textsuperscript{155} Nine out of the fourteen SEZs have enlarged their area: the Krakowska zone nearly doubled its area to 260 hectares, the Kostrzynsko-Slubicka zone grew from 540 to 804 hectares and the Tambrzesa zone expanded from 810 to 1105 hectares. These latest statistics are the best indicators of the beneficial effects that the SEZs exert on several regions in the country. The activity in the SEZs has lessened unemployment in Poland and the SEZs have also played a crucial role in making use of foreign investment which is the key to gaining new technological advances, which in turn help to ensure the competitiveness of the country’s firms and economy.\textsuperscript{156}

In sum, in the past two years, many positive changes occurred in the Special Economic Zones which have contributed to the increased activity. There is, however, a serious problem concerning SEZs in the future. This problem concerns the SEZs running out of room to accommodate new investors. Although some of the SEZs have increased their areas, the limit on such territorial expansion, which is determined by the legislation, has been almost exhausted.\textsuperscript{157} Moreover, in accordance with the 1994 legislation, the SEZs are scheduled to cease existing by the end of 2017.\textsuperscript{158} So the important question to consider now is what will happen after the year 2017? Will Poland be ready to phase out the SEZs so soon? Is another decade enough time for Poland to bring its standards of living and economic development to levels comparable with that of its EU western counterparts? Or maybe the EU should reconsider and allow Poland to extend the existence of SEZs for another decade? After all, Poland still remains behind the western Member States in terms of standards of living and economic development and it is quite unlikely that it will be able to catch up with them within only ten or eleven years left of the SEZs.

\begin{footnotes}
\footnote{153} Id.
\footnote{154} Id.
\footnote{155} Id.
\footnote{157} Ministry Report, supra note 90, at 8.
\footnote{158} Id.
\end{footnotes}
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As noted by a number of commentators in this area, the EU never really criticized the idea of SEZs themselves. It simply did not approve of the preferential treatment offered to investors in the SEZs because it considered them to be incompatible with the acquis communautaire. After all, special economic areas, similar to the SEZs in Poland, have, for some time now, functioned in the territories of other EU Member States (i.e. Ireland and the Portugal Island of Madera) and they were allowed because they were compatible with the acquis communautaire. Since the Polish SEZs legislation has now been aligned with EU norms, nothing should stand in the EU’s way to allow Poland to create new SEZs after 2017 or extend the lifetime of those already in existence.

The problem is that the SEZs legislation as it is now contains a clause that permanently fixes the total allowable area of the SEZs. The 1994 SEZs legislation did not contain a provision limiting the allowable coverage area of the SEZs. The provision came about in 2000 when certain changes were being worked into the SEZs legislation as a result of Poland’s application for EU membership. The changes implemented in the SEZs legislation in 2000 allowed for: (1) the pre-mature closing down of the SEZs (meaning closing of the SEZs before the end of the period for which they were originally created), (2) the changing in the total area of the SEZs, and (3) the combining of two or more SEZs under the condition that the total combined area of all SEZs did not exceed the total area of the SEZs originally allowed. The reason why, during that time, Poland agreed not to create any new SEZs is that the country was hoping that the EU would approve the maintenance of the acquired rights for the pre-2001 SEZs investors. Poland did not succeed in sustaining the acquired rights; however, the limit on the area of the SEZs to be created in the future remained in effect.

This declaration, fixing the total area of the SEZs, also resulted from the negative evaluation of the SEZs conducted by the Commission during the years 1999-2000. This made sense because at that time the SEZs were still governed by the 1994 legislation which was in conflict with the Community rules regarding State aid. However, the SEZs rules were modified as of

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159 Szymaniak, supra note 69, at 18. See also Ambroziak I, supra note 68, at 20.
160 Szymaniak, supra note 69, at 18.
161 Ambroziak I, supra note 68, at 19.
162 Id.
163 Id.
164 Ministry Report, supra note 90, at 9.
165 Id.
166 Id.
167 Id.
January 1, 2001 and from that date they were approved by the EU as compatible with the acquis communautaire.\textsuperscript{167} Any new concessions gained by the investors would be governed by this new law and thus would be perfectly in line with what the EU regarded as lawful. In light of such conclusions, it seems that it would be more sensible for Poland to be able to create new SEZs. This is one possible and feasible solution to the important problem of the country catching up to its western member states in the EU.

After all, one main reason why the EU would like to do away with SEZs is that the organization is trying to lower the levels of State aid offered by individual Member States because it perceives such aid as destructive to the unity of Common Market. However, we have to remember that not all types of State aid threaten fair competition among the Member States. The EU has been most critical of the sectoral aid but this type has proven to be declining in all Member States. The aid offered in SEZs is not structural but rather regional aid and this type is not so destructive to the maintenance of fair competition among the EU Member States.

There is also another factor that speaks in favor of extending the lifetime of the existing SEZs or the creation of new SEZs in Poland. It is the idea that activity in the SEZs may in the long run assist with solving the important dispute regarding the EU budget. Most recently the EU Member States have shown to be in conflict regarding the budget funds that should be granted to each Member States. This conflict is especially true in the newly admitted Central and Eastern European Member due to their low GDP as compared to their western counterparts. By helping to attract more investment to countries like Poland through creation of SEZs, the EU will help Poland repair its budget and by doing so will eventually decrease the amount of aid that Poland may qualify for from the EU budget.

At first sight, the SEZs might seem to deprive Poland's budget of a significant amount of revenue by granting the preferential tax breaks. However, in the long run they will prove to be extremely beneficial to the country. Since 2001, any new investors in the SEZs are governed by the new SEZ legislation that is compatible with EU law. This law imposes limits on the amount of tax breaks that the government is allowed to grant to investors.\textsuperscript{168} Therefore, as the businesses in the SEZs get stronger, they will eventually exceed those limits and will no long be eligible for the tax breaks. When that happens, the investors' tax rates will increase leading to an effective decrease in the amount of revenue to the country's budget; this is exactly what is happening with the American

\textsuperscript{167} Id.

\textsuperscript{168} Ministry Report, \textit{supra} note 90, at 4.
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investor, Delphi. Delphi is the world’s largest producer of automotive parts.\textsuperscript{169} It first appeared in Poland in 1998 when it decided to invest in the building of the center of research and development in the Katowicka zone.\textsuperscript{170} Currently the center employs 560 Polish engineers who work on the development of the most technologically advanced solutions for the world’s biggest car producers.\textsuperscript{171} At the beginning of October 2005, the company signed a contract with the Ministry of Economy which granted it one million zloty (approx. $333,000) to assist with the employment of an additional 260 workers.\textsuperscript{172} At the same time, the further development of the Delphi research center will bring, in the next two years, almost five million zloty (approx. $1.6 million) to the country’s budget.\textsuperscript{173}

CONCLUSION

During the past decade, the Special Economic Zones constituted one of the most important and controversial aspects of Poland’s State aid structure. Most recently the SEZs have been booming and the dynamic activity of investors in the SEZs has been a crucial factor in the country’s economic development. The problem is that the Special Economic Zones have already almost entirely run out of areas for new investors and most troubling they are scheduled to cease to exist by the year 2017. At this point in time, it is hard to imagine that ten years will be enough time for Poland to catch up with its EU western counterparts in terms of standards of living and employment levels. For that reason, it is crucial that the EU allows Poland to create new SEZs.

Extending the existence of Special Economic Zones will help not only Poland but also the EU as a whole. If Poland’s economic development stagnates, it is likely that the economic gap existing between Poland and other EU Member States will widen. As a result, Poland may qualify for more help from the EU budget which is already overburdened. On the other hand, if Poland is allowed to keep the SEZs or create new ones, it may further awaken the economic activity in the country and accelerate its adjustment to EU levels.

Finally, it is important to point out that the future of Special Economic Zones is not only dependant on the willingness of the EU to extend them because Poland also has to work to ensure that the SEZs remain compatible with EU goals. Most importantly, Poland has to ensure that, if allowed, new


\textsuperscript{170} \textit{Id.}

\textsuperscript{171} \textit{Id.}

\textsuperscript{172} \textit{Id.}

\textsuperscript{173} \textit{Id.}
SEZs are created in those regions of the country that are truly the undeveloped and poor regions. There has been some criticism emerging that the Special Economic Zones are not really functioning in those parts of the country that most need them but rather in those regions where the local governments have the most political leverage. Accordingly, the Polish government has to ensure that SEZs are created in those regions that need them the most and this can be done by working on improving infrastructure and accessibility to those undeveloped regions so that they can become more attractive to investors.
### TABLE 1 - State aid in EU by objective in 2003

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<td>1</td>
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<td>1</td>
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</tr>
<tr>
<td>Coal</td>
<td>14</td>
<td>-</td>
<td>23</td>
<td>-</td>
<td>35</td>
<td>19</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>3</td>
<td>-</td>
<td>6</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>5</td>
<td>27</td>
<td>1</td>
<td>0</td>
<td>9</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>0</td>
</tr>
<tr>
<td>Services</td>
<td>4</td>
<td>-</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>-</td>
<td>9</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>80</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total aid less agriculture, fisheries and transport in million</td>
<td>37,334</td>
<td>655</td>
<td>921</td>
<td>14.4</td>
<td>333</td>
<td>3.174</td>
<td>4.806</td>
<td>417</td>
<td>5.7</td>
<td>36</td>
<td>497</td>
<td>590</td>
<td>1,254</td>
<td>519</td>
<td>1.04</td>
<td>3.01</td>
</tr>
</tbody>
</table>
### TABLE 2 – State aid in Poland by objectives in 2001 and 2002\(^\text{175}\)

<table>
<thead>
<tr>
<th>Aid Title</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>In PLN million</td>
<td>In %</td>
<td>In PLN Million</td>
</tr>
<tr>
<td><strong>1. Horizontal aid of which:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1. Research and development</td>
<td>256.5</td>
<td>32.82%</td>
</tr>
<tr>
<td>1.2. Environmental protection</td>
<td>95.0</td>
<td>0.72%</td>
</tr>
<tr>
<td>1.3. Small and medium-size enterprises</td>
<td>12.0</td>
<td>0.08%</td>
</tr>
<tr>
<td>1.4. Energy savings</td>
<td>466.7</td>
<td>4.13%</td>
</tr>
<tr>
<td>1.5. Training</td>
<td>2.3</td>
<td>0.02%</td>
</tr>
<tr>
<td>1.6. Restructuring</td>
<td>2123.5</td>
<td>19.05%</td>
</tr>
<tr>
<td>1.7. Recreation and cultural activities</td>
<td>128.4</td>
<td>1.15%</td>
</tr>
<tr>
<td>1.8. Employment of handicapped and rehabilitation</td>
<td>198.0</td>
<td>1.78%</td>
</tr>
<tr>
<td>1.9. Other</td>
<td>231.2</td>
<td>2.08%</td>
</tr>
<tr>
<td>1.10. Other</td>
<td>67.3</td>
<td>0.60%</td>
</tr>
<tr>
<td><strong>2. Sectoral aid of which:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1. Steel sector</td>
<td>2709.2</td>
<td>24.22%</td>
</tr>
<tr>
<td>2.2. Ship building</td>
<td>64.1</td>
<td>0.55%</td>
</tr>
<tr>
<td>2.3. Textile industry</td>
<td>280.5</td>
<td>2.43%</td>
</tr>
<tr>
<td>2.4. Furniture industry</td>
<td>464.3</td>
<td>4.05%</td>
</tr>
<tr>
<td>2.5. Other</td>
<td>6.6</td>
<td>0.06%</td>
</tr>
<tr>
<td>2.6. Marine transport</td>
<td>6.6</td>
<td>0.06%</td>
</tr>
<tr>
<td>2.7. Other</td>
<td>382.4</td>
<td>3.43%</td>
</tr>
<tr>
<td><strong>3. Regional aid</strong></td>
<td>2883.9</td>
<td>26.53%</td>
</tr>
<tr>
<td><strong>4. Agriculture</strong></td>
<td>2112.0</td>
<td>21.38%</td>
</tr>
</tbody>
</table>

\(^{175}\) Sowa, *supra* note 50, at 19.