

## FINAL PREPARATIONS FOR THE BALTIC ACCESSION TO THE EUROPEAN UNION

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The EU membership of Estonia, Latvia and Lithuania is but five months away. The distant dream of the Baltic countries in the mid-nineties is now becoming a reality. Despite a few scares in the polls during the summer, in all three countries the results of the accession referenda were clearly in favour of the accession.<sup>1</sup> Now is a good time to review the process and terms of accession, the practical changes caused by accession and what still remains to be done by the soon-to-be member states.

### Accession process

The accession to the EU has been a long process and considering the transition periods and the increasing integration of the EU, the process set in motion in the early nineties is not going to stop. In many ways the formal accession on 01.05.2003 is just one step of a long staircase, but of course a step with immense symbolic value.

One possible event starting the accession procedure was the acceptance of the Copenhagen criteria to candidate countries by the EU in June 1993. The Copenhagen criteria required that candidate countries have a democratic rule, respect human and minority rights, have a functioning market system and ability to cope with the competition in the EU. The Copenhagen criteria also required that the future member states would have the ability to implement the *acquis communautaire*<sup>2</sup> and the policies of the EU.

The next important step was the entering into force of the Free Trade Agreements in January 1995. The agreements abolished most tariffs and quantitative trade restrictions on sale of goods between the EU and the Baltic countries, except for agricultural products

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<sup>1</sup> In Lithuania, where contrary to Estonia and Latvia the result never seemed to be in doubt, the referendum was held on 10-11.05.2003 with overwhelming 89,95% of the voters in favor of the accession. The referendum in Estonia was held in 14.09.2003 with the result of 66,83% in favor. Finally 67% of the Latvian voters sealed Latvian membership on 20.09.2003.

<sup>2</sup> The *acquis communautaire* can best be described as the entire body of European law. It comprises of over 12 000 different legal acts.

where restrictions remained. Although reciprocal in principle the agreements were asymmetrical meaning that usually the EU lifted its barriers on trade first allowing a transition period for Latvia and Lithuania.

Perhaps encouraged by the signing of the Europe Agreement in June 1995 Latvia submitted its application to join the EU in October 1995, Estonia followed Latvia's example in November 1995 and Lithuania submitted its application in December 1995.<sup>3</sup> Already at that stage the process of harmonising the local legislation with the *acquis* began.

The Europe Agreements entered into force February 1998 and are still the legal basis of relations between the EU and the Baltic countries. These agreements incorporate the earlier Free Trade Agreements but in addition to goods lifted barriers also for services and public procurements. The Europe Agreements are association agreements covering not only free trade issues but also economic financial and cultural co-operation.

In the Luxembourg summit of 1997, based on a commission report, the EU decided to start accession negotiations with Poland, Slovenia, Czech Republic, Hungary, Cyprus and Estonia. The accession negotiations with this first batch of candidate countries started in March 1998. The Latvian and Lithuanian negotiations started in February 2000. The negotiations were completed in December 2002 and the resulting accession treaty was signed in Athens on 16.04.2003.

However the accession process does not end when Estonia, Latvia and Lithuania are finally members of the EU on 01.05.2003. The process will continue as there will still be some transition periods that vary from a month to fifteen years in length. Also there will be issues such as the accession to the Schengen Agreement and the European Monetary Union.

The Schengen Agreement lifts the internal border controls. Accession to the EU does not automatically lift the border controls, but the new member states are allowed to join the Schengen Agreement some time after the accession if the new member state meets the required legal and practical preparedness level. At this point it is impossible to estimate when these accessions to Schengen Agreement will occur.

As concerns the European Monetary Union the most important practical issue is when can the new member states start using euros. The transition to third stage of the EMU, which includes the use of the common currency requires a two-year period of stability of exchange rates during which the national currency should not be undervalued and must remain in the set fluctuation region vis-à-vis the European Monetary System. Therefore the first Estonian, Latvian or Lithuanian euros will not be seen before the year 2006.

### **Transitional periods**

In principle all of the new EU member states should apply the entire *acquis*, however in the accession negotiations a set of transition periods during which the new member state is not required to comply fully with the *acquis* was agreed.<sup>4</sup> Most of the transition periods

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<sup>3</sup> The exact dates of the membership applications are Latvia 13.10.1995, Estonia 24.11.1995 and Lithuania 8.12.1995

<sup>4</sup> Depending on the method of calculation Estonia has agreed on 21 transition periods in 11 of the 31 negotiations chapters, Latvia 29 transition periods in 13 chapters and Lithuania on 20 transition periods in 12 chapters. Although interesting, it should be noted that this statistic does not really give any relevant insight to the issue.

concern environmental and tax issues. Following is a review of some of the most important transition periods.

From the EU perspective, the most important transition period concerns the direct subsidies to agriculture. For all new members these shall be at the level of 25% of those offered to old member states and will gradually rise until reaching 100% in 2013.

The free movement of workers has raised a lot of concerns in old member states. With most new member states, the accession treaty provides a possibility for the old member states to apply national measures to protect their labor market for two years with the possibility to extend it by five years, if the lifting of the protection measures would result in serious disturbance of the employment market. Some member states, like Finland, have already made clear their intention to use this possibility, while others, such as Sweden, have promised not to implement protection measures.

Under the heading of free movement of capital, a common concern for the new member states have been that the relatively modest price for agricultural and forestry land would lead to a massive buy-out of land by old member state investors who would not use the land. To alleviate the concern Estonia, Latvia and Lithuania have all agreed on a seven-year transition period with the EU. During the seven years local protection measures can be applied for acquisition of agricultural and forestry land, except against farmers who have already been residing in the state for three years and have been actively engaged in farming. It is possible to extend this transition period by additional three years.

Other transitional periods common to all three Baltic countries include protective measures against non-resident hauliers to the national road transport market, value added tax exemption for international passenger travel<sup>5</sup> and lower tobacco excises. Common environmental transitional periods include lower requirements for the quality of drinking water and processing urban waste water.

Estonian concerns are reflected in transitional periods concerning oil shale industry and pollution caused by large combustion plants, such as the Narva power plants. Estonia has also requested and received a special provision concerning the protection of lynx.

Latvia has requested and received a special regime for fishing small size Baltic sprat in the gulf of Riga. Other Latvia-specific transition periods include the lesser requirements for the storage of Asbestos until the end of year 2004 and the health protection of humans against ionizing radiation in medical exposure until the end of year 2005.

For Lithuania the EU has accepted a transitional arrangement concerning the marketing authorizations for pharmaceuticals and although not a transitional period per se, the EU has agreed to assist Lithuania in dismantling the Ignalina nuclear reactors.

### **Effect of accession in practice**

For businesses the immediate effects of accession are quite minimal. In all three Baltic countries most of the major legal reforms have already been made and the accession itself will not bring many changes that would be felt in day to day life.

One of the few effects that can be experienced immediately is the removal of customs between member states and the requirement to fill out quarterly EU value added tax

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<sup>5</sup> Interestingly this transition period is in force also in most old member states.

declarations. For slightly bigger EU importers/exporters, the accession will also bring an obligation to submit monthly intrastat declarations, although at least in Latvia and Estonia, the pilot projects for these are already ongoing and some companies are already submitting the intrastat declarations.

Accession to the EU requires the new member states to terminate free trade and similar agreements with third countries, and to apply the EU customs code in full. Thus the accession will affect some businesses which have relied on raw materials from third countries such as Ukraine.

While to most people the accession will not mean a dramatic change – it will be a considerable challenge for lawyers who will then at the latest have to try and orient in the huge *acquis*. For Baltic lawyers, the accession will also mean that judgments from other EU member states are enforceable in each country and vice versa, which will both simplify, in the sense of more available choice of law and forum options, and complicate, in the sense of vulnerability to claims in other member state's courts, the life of lawyers. It will also mean the possibility to apply for preliminary rulings from the European Court of Justice.

Perhaps the most important effects to ordinary people of accession are indirect. The direct subsidies and other funds from the EU will no doubt eventually affect the entire population as there will simply be more money in the circulation, but maybe even more important will be the changes in perception. The upcoming accession and the perceived new opportunities it brings, has raised the interest of both investors and local entrepreneurs looking for a way to expand internationally.

### **Obstacles on the path**

The commission report issued on 05.11.2003 on the progress of the candidate countries raised both old and new concerns on the Baltic road to accession. The commission has restated its concerns relating to administrative ability of all of the Baltic states, as the implementation of the EU *acquis* and the functioning of the EU structural funds ultimately depends on the capabilities of the local administration.

The commission report highlighted the fact that even though there are only five months remaining before the accession there are still measures required in almost all of the *acquis* chapters. Clearly the legislatures of the Baltic States have no reason to rest on laurels.

In addition to the numerous relatively minor concerns, the commission spelled out some of its more serious concerns where immediate action is required by the candidate countries.

In Estonia the commission demanded immediate action concerning the recognition of professional qualification of health care professionals, as well as the adoption of the new Employment Contracts Act and an act concerning equal treatment of men and women. The latter two issues have been a subject of a lot of political arm-wrestling in Estonia, and although both acts have been entered into the parliamentary proceedings, the parliament has not been able to pass the acts.

In Latvia the commission serious concerns were likewise in the field of recognition of professional qualifications, but also concerning regulation of TSE (transmissible spongiform encephalopathies) and animal by-products. Even more serious concern is however the relative lack of progress concerning the IT systems of customs and tax

officials without which the customs union measures cannot be taken into use in Latvia. It is noteworthy that the same concern was highlighted by the commission already in the year 2002 report.

The recognition of professional qualifications is a problem also for Lithuania. In addition the commission raised an issue concerning the inspection and control of resource and fleet management in the field of fisheries.

The commission didn't regard any of the shortcomings to be sufficiently serious to threaten the accession. However, if no efforts are made to correct the situation, it could easily lead to sanctions. At this point it is too early to tell whether the governments of each state have taken the advice of the commission and whether they will be able to take effective measures before the accession.

Paul Künnap, Legal Counsel  
Sorainen Law Offices, Helsinki