

THE IMPLICATIONS OF BALTIC EU MEMBERSHIP FROM LEGAL PERSPECTIVE

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As Estonia, Latvia and Lithuania get closer to EU accession it becomes more important to study practical implications of the accession to everyday life. The sheer amount of new legal regulation that will become applicable upon accession is overwhelming. The entire body of European law, the *acquis communautaire*, may well exceed the amount of current legal regulations in force in each of the Baltic states.

Harmonisation of national law

As candidates to join the European Union, Estonia, Latvia and Lithuania, each have to adopt, implement and enforce all (or more realistically the vast majority) of the *acquis* to be allowed to join the union. For the enlargement negotiations the *acquis* is divided into 31 chapters and the progress of the harmonization of the local legislation with the *acquis* is monitored by the EU Commission, which issues yearly reports on the matter.¹

Because of the ongoing harmonization process, the implications of EU accession to the national law are felt well before the actual accession due to the harmonization process. A good example of this in Estonia is the new Law of Obligations Act and other acts adopted in conjunction with this act, which left almost nothing of the Estonian civil law unchanged while at the same time implemented several EU directives. Thus, despite the huge amount of new regulation, the accession itself is unlikely to mean a radical change in the everyday work of lawyers.

¹ 08.11.2002 Estonia and Lithuania had opened negotiations on 30 chapters and had closed negotiations for 28. Latvia had also opened 30 chapters, but closed 27. The open chapters shared by all candidate members are the agriculture and the financial and budgetary provisions chapters. In addition Latvia has not closed the institutions chapter. The other issues chapter has not been opened for negotiations.

Direct effect and European Court of Justice

The above does not mean that lawyers not involved in drafting legislation can forget about the EU. Even though the state is responsible to ensure that the *acquis* is implemented and enforced, this will not always happen and sometimes the *acquis* is implemented or enforced incorrectly. Many provisions of the treaties encompassing the European Communities² and its secondary legislation - regulations, directives and decisions - directly confer individual rights on nationals of member states which national courts must uphold regardless of the national legislation. In issues concerning the interpretation of the *acquis*, the national courts may refer the case to the European Court of Justice in Luxembourg for preliminary rulings.

The direct effect of the *acquis* and a possibility to involve the European Court of Justice are the most important changes from a legal perspective that will happen with the accession. The challenge for a lawyer will be to understand how the national law and the *acquis* mesh and to be reasonably up to date on what the *acquis* encompasses and when analysis of a legal problem also requires consideration whether the European Communities treaties or secondary legislation may have a direct effect.

In keeping up to date with the *acquis*, a more specific challenge is to keep up to date with the case law generated by the European Court of Justice. As the Baltic states have shared the German family of civil law legal tradition where judicial precedence has not carried the same significance as in the common law legal tradition. The idea of judicial precedence as a hierarchically more important source of law than national legislation will be a tough bite to swallow for many Baltic lawyers, but as the index of European Court of Justice case law includes everything from bananas to wine it is impossible to disregard it.

Scope of the community law

Free movement of goods

The principle of free movement of goods requires that member states allow goods move from one part of the EU to another as freely as they would within the boundaries of an individual member state. In practice this means that basic technical standards, product certification and metrological definitions must be governed by rules established at a European level. The general rule is that if a product can be legally sold on the market of one country in the EU, then it can be sold in all the countries of the EU. Examples of recent legislation adopted to implement the *acquis* of this chapter include the Product Conformity Attestation Act in Estonia and the Law on Construction in Lithuania. The free movement of goods chapter also includes the European legislation governing rules for public procurement.

This chapter has been provisionally closed by all candidates except Romania. Latvia and Lithuania have not agreed on transitional arrangement, but Lithuania has received a transitional period concerning the renewal of marketing authorizations of pharmaceuticals until 01.01.2007.

² European Communities is part of the first pillar of the three pillars that make up the European Union

Free movement of persons

Free movement of persons covers mutual recognition of professional qualifications, citizens' rights, free movement of workers and co-ordination of social security schemes. Mutual recognition of professional qualifications requires member states endeavors to implement the principle that a person fully qualified to practice a regulated profession in one member state should be entitled to do so anywhere in the EU. The citizens' rights regulate the voting rights in European and municipal elections and the right of residence. Free movement of workers and co-ordination of social security schemes are rather self explanatory.

The chapter on free movement of persons has been provisionally closed by all Baltic states. As to free movement of workers a transitional arrangement has been agreed, whereby during a two year period after the accession current member states may apply national measures to new member states to protect their labor markets. After the initial two year period it is possible to extend it for up to seven years in member states where the end of the transition period may result in serious disturbances of the labor market. Estonia, Latvia and Lithuania have accepted the transitional arrangement but have required reciprocity vis-à-vis current member states and a possibility to apply safeguards against new member states, if any current member applies national measures to any new member state.

Freedom to provide services

The chapter on freedom to provide services concerns issues such as freedom of establishing agencies, branches and subsidiaries, rights to take up and pursue activities as a self-employed person and to set up and manage undertakings, but it also covers more specific regulation concerning financial services (banking, insurance and investment services) and a directive on the protection of personal data and free movement of such data. The aforementioned Law of Obligations Act in Estonia implemented a lot of *acquis* relevant to this chapter.

This chapter has been provisionally closed by all Baltic states. With Estonia the EU has agreed lower levels of bank deposit guarantee and investor compensation until the end of 2007 as a transitional measure. In addition to this transitional arrangement Latvia and Lithuania have agreed on exclusion of credit unions.

Free movement of capital

The Rome Treaty prohibits all restrictions on movement of capital between member states and also between member states and third countries, although some restrictions may be retained in relation with countries outside the EU. Free movement of capital covers not only payments and transfers of money over the borders, but also other transactions such as investments in companies and real estate. In addition, the *acquis* in this chapter deals with the directives on prevention of money laundering.

All Baltic states have provisionally closed this chapter without any transitional arrangements. However during the recent municipal elections in Estonia some political parties campaigned for reopening the chapter to negotiate a transitional period to restrict the acquisition of real estate.

Company law and competition policy

Two chapters provisionally closed by all Baltic states without transitional arrangements.

The acquis in the company law chapter covers company law, accounting law, protection of intellectual and industrial property rights, as well as the issues related to the jurisdiction and the enforcement of judgements in civil and commercial matters and the applicable law to contractual obligations in international situations. The relatively recent Latvian Commercial Law and Law on Sworn Auditors are examples of legislation passed to implement the acquis of this chapter. The difficult issue of combating counterfeit and pirated music recordings, software and videos is also covered by this chapter.

The competition acquis includes regulation concerning state monopolies, competition between private enterprises, including merger control provisions, and state aid. In Estonia, Latvia and Lithuania the harmonization process in competition policy is either complete or nearly complete and the primary focus has shifted from new legislation projects to proper enforcement.

Transport policy

The transport policy chapter contains 10% of the total EU acquis and covers road, rail, maritime and aviation transport. The chapter is provisionally closed by all Baltic states with several transitional arrangements for each.

Taxation

The EU jurisdiction on taxation issues is limited to value added tax, excise duties and administrative co-operation and mutual assistance issues. As to direct taxation, such as corporate tax, the code of conduct for business taxation is a political commitment by the member states to not introduce new tax measures which are harmful within the meaning of the code and to examine their existing laws and practices regarding the principles of the code and to amend them if necessary. The taxation chapter is provisionally closed by all Baltic states and each negotiated several transitional arrangements to this chapter.

Social policy and employment

The social policy and employment chapter covers public health and safety issues, labor law, equality between women and men, anti discrimination, social dialogue and protection.

The labour law directives deal with collective redundancies, safeguarding of employment rights in case of transfer of undertaking, employer's obligation to inform employees of the condition applicable to the employment contract, guarantee for the employees in case of insolvency of the employer, posting of workers and organization of working time. The new Latvian Labor Code implemented the majority of the acquis under the labor law heading in Latvia. In Estonia the new Employment Contracts Act is still in parliament.

Estonia, Latvia and Lithuania have provisionally closed this chapter. Latvia closed the chapter with some transitional arrangements.

Environment

The EU has set quality standards for air, water, waste management, nature protection, industrial pollution control, chemicals, genetically modified organisms, noise and nuclear safety and radiation protection. The environment acquis is in constant rapid development so that candidate countries must not only worry about implementing the current acquis, but also keep up with the rate of new legislation.

Estonia has provisionally closed the environment chapter with transitional periods for complying with the acquis for emissions of volatile organic compounds from storage of petrol until 2006, landfill of oil shale until 2009, treatment of urban waste water until 2010 and quality of drinking water until 2013. Latvia is in a similar situation with the following transition arrangements: emissions of volatile organic compounds from storage of petrol until 2008; recovery and recycling of packaging waste until 2007; landfill of waste until 2004; treatment of urban waste water until 2015; quality of drinking water until 2015; integrated pollution and prevention control until 2010 (instead of 2007 for member states); storage of asbestos waste until 2004; and health protection of individuals against ionising radiation in relation to medical exposure until 2005. Lithuania is capable of implementing more of the acquis upon accession than the other Baltic states and has agreed on transitional periods for emissions of volatile organic compounds from storage of petrol until 2007, recovery and recycling of packaging waste until 2006, and treatment of urban waste water until 2009.

Consumer and health protection

The consumer policy chapter includes the acquis on misleading advertising, comparative advertising, product safety and liability, doorstep and distance sales, unfair terms in consumer contracts and consumer credit, dangerous imitations, package travel and holiday tours, time-share, prices on foodstuffs and guarantees for sale of consumer goods. No doubt the acquis of this chapter is having the most effect on everyday life of the residents of the candidate countries. All Baltic states have provisionally closed this chapter without requiring transitional periods.

Agriculture and financial and budgetary provisions

The agriculture chapter is a difficult chapter of acquis to close due to the issue of direct payments. With the exception of veterinary and phytosanitary legislation, this chapter consists mostly of regulations that are directly applicable from the date of accession and does not need separate implementation to national legislation on the part of the candidate countries. The emphasis in the preparations for accession is therefore on the candidate country's ability to apply and enforce the acquis.

The financial and budgetary provisions chapter deals with the EU budget and like the agriculture chapter have not been closed by any candidate country as the bargaining on the final financial package of the EU accession continues.

Conclusion

The vast amount of the EU legislation gives an impression that the acquis is all encompassing and that national sovereignty left to the member states is almost non-existent. Looks are deceiving though, as the EU does not have general supranational

jurisdiction. The supranational jurisdiction is reserved only for the European Communities part of the first pillar comprising the EU.

The European Communities supranational law concentrates on rather narrow fields of law and specific rights within these fields while allowing considerable differences between member states on how the *acquis* is implemented. For example the *acquis* on company law concerns the public disclosure on the identity of those empowered to represent a company, its financial situation, raising, maintenance and alteration of capital of public liability companies. It does not contain a uniform and complete company law.

Paul Künnap
Sorainen Law Offices, Helsinki