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Adaptation of the Legal Systems of Candidate Countries - The Case of the Baltic States

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CONTENTS

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1. The Legislative Problem

1.1. The Nature and Size of the Task

In all the countries of Eastern Europe, the collapse of the socialism presented the legal system and the lawyers and administrators with an immense conceptional and practical challenge. In a couple of years, and in a constantly changing economic and political climate, they were required

- To introduce the rule of law and democracy (*der demokratisch-freiheitliche Rechtsstaat*),
- To introduce and implement the rules and institutions of a market economy,
- To modernise the normative acts and the public institutions of virtually all aspects of a modern society, and
- To implement the EU-acquis.

If someone asked political scientists whether this be possible within a decade, the theoretical answer would most likely be in the negative. But experience tells a different story. The turning-around of Eastern Europe (outside then Balkan) has succeeded to a degree that we could hardly hope for 10 years ago. Perhaps this should not come as a surprise to us in a decade that saw a most fascinating mutation in the economic and political history in Europe, which Francis Fukuyama has tried to elevate into the optimistic end of history.

Seen on the background of the four decades after WWII, this development merits fascination, reflection and gratitude. And nowhere more than in the Baltic states, because they hold a very special position. Before WWII they were small, neutral states with a "*bourgeois republic*" model of society, albeit with an inheritance of bad government from czarist Russia and the Polish and German nobility. Then, under the Molotov-Ribbentrop pact, they were "allotted" to the Soviet empire and the Soviet Union itself, thus disappearing as states and

societies for nearly 50 years. During that period they were misgoverned and maltreated both with regard to economy, environment, national identity and human rights. Most importantly, about 20 percent of the populations ”disappeared” during the 1940'ties. And the inheritance of the Soviet system was a worn out economy, a dirty environment, a collapsed social system, and a chaotic legislation that hardly qualified for the term ”system”.

1.2. The Requirements of EU Membership As a Complement and a Supplement

The European Union is a unique chance, but also a huge challenge for the Baltic States. It is easy to see that next to NATO nothing can ensure their independence, democracy, and well being to the same degree as the EU.

To get access to, and to become part of, the first market of the world and its modern and well-developed legislation, and to get a voice and a vote in the decision making process of the EU thus has a greater attraction to the Baltic states than to many others in Eastern Europe. But nobody can become a member of this club without subscribing, in law and in practise, to all its rules, and they are plentiful, and without demonstrating a capacity to become a constructive and loyal member.

This was always the EU policy. But ever since the famous veto of general de Gaulle in 1963, at each accession negotiation it came as a surprise to the applicant states that the EU insisted so firmly that the applicant accept the *acquis communautaire* and undertake to implement it as from day one of membership. Equally surprising has been the parsimonious extent to which transitional measures could be obtained. It should also be added that (except the non-recommendable case of Greece) the Council of the EU never overruled the Commission’s conclusions or proposals in accession matters (which created some practical difficulties for the activist Danish and Swedish Baltic policy).

As the acquis grows like an en ever incoming and never receding tide – to quote Lord Denning’s famous phrase – the political and practical problems linked to this requirement increase. For some candidates, like Poland, with an exalted sense of national pride, this implies a huge element of guided political reorientation. But for all countries it is a technical problem, and for the Baltic states, with a more realistic view of their place in the world, it is first and foremost a technico-legal problem. Like other ex-Soviet republics they did not inherit an efficient bureaucracy which is so characteristic for the development in Western and Northern Europe

The EU’s answer to this challenge has been two-edged, both a stick and a carrot. The European Council restated the requirements for the candidate countries in the *Copenhagen criteria* (1993):

- a functioning democracy and the rule of law as the basis for society,
- a functioning market economy which is developing in such a way that in the medium term it can sustain the competitive pressure from and in the Single Market and the Economic and Monetary Union, and
- a 100% correct implementation of 100% of the acquis, unless otherwise agreed with the EU,
- a public administration that efficiently, correctly, and without corruption applies and enforces the acquis conform legislation.

In 1998, the Commission practically added a further criterion: “the track record”: “the irreversible, sustained and verifiable implementation of reform and policies for a long enough period to allow for a permanent change in the expectations and behaviour of economic agents and for judging that the achievements will be lasting.” This criterion appeared addressed, at that time, to Latvia, Lithuania, and Slovakia. But it will also one day be applied to Bulgaria and Romania.

The criterion on correct acquis implementation is a reinforced requirement when compared to earlier accession treaties. To minimise problems later on, and to get a gage of the

preparedness of candidate countries, it basically requires that the acquis shall be implemented **before** membership, - in certain cases "well before accession" -, and for some core legislation even before substantive accession negotiations can begin.

What mostly distinguishes the approach under the Copenhagen criteria from anything seen so far, is the insistence on the practical implementation and enforcing. One thing is to adopt and publish normative acts. But as the law harmonisation progresses, the attention of the EU more and more turns to the 4th Copenhagen criteria on actual enforcement. And here most Eastern European countries experience real difficulties when measured by EU standards, cf. Chapters 5 and 6 below.

These requirements can, however, not be understood in isolation from the Europe Agreements which all applicant countries concluded with the EU in the mid 1990'ties. In many cases, the candidate countries have agreed to harmonise their law with the EU requirements in or under the Europe Agreements, cf. 4.2. Under the Europe Agreements and the accession preparation arrangements, the implementation of the acquis is prepared through various programs. The candidate country shall establish a National Program for Adoptation of the Acquis (NPAA), see 6.3 below. Concurrently, mixed commissions and sub-committees under the Association Councils control that the candidate countries in reality adapt the legal system and the public administration to the EU requirements. And each summer, all candidate countries shall present the progress realised during the last year in a report in accordance with a format prescribed by the Commission. This report is part of the material for the Commission's Regular Progress Report to the European Council in November in which praise and reproach is handed out, and problems are highlighted. Finally, as an introduction to the accession negotiations, the Commission shall undertake a screening of each candidate country for each of the 31 chapters into which the negotiations have been divided.

The logics of this system also explain a very big carrot element in this policy. The EU and the Member States lavish economic and technical support to the Eastern European countries (as do the USA and the World Bank). A host of experts has descended on Eastern Europe in order to support the realisation of the Copenhagen criteria. Experts train the public administrations of the candidate countries in the art of modern and efficient public administration. As explained in chapter 7, big money is at stake here. And a Polish case some years ago demonstrated that EU sanctions in the form of grants withheld can amount to even very big sums.

1.3. The Special Problems of the Baltic States

Many outsiders presume that the Baltic States are very much alike. And to some extent, of course, they are. They have a (deplorable) past as a kind of autonomous colonies of Czarist and Soviet Russia. But this apart, they differ in historical, religious and legal traditions. Travelling Tallinn-Riga-Vilnius is to move from a Hansa town to a Central European baroque town *via* a *fin de siecle* town of *Jugendstil* and *art noveau*. And they are blessed with languages, which are mutually incomprehensible, and extremely difficult to non-natives.

As a lawyer I would highlight one feature of Baltic legal thinking. The legal traditions are deeply imbued in the continental tradition of codifications. Many streaks of traditions flow together into a mental fabric in which it is difficult to conceive a world without the 5 napoleonic Codes plus the inheritance from the Soviet Union called the Labour Code.

As a civil servant, another feature was very insistent in my daily life. Many speak about gaps in Balticum: a wealth gap, the rift between the nominal nationality and the minorities etc.

In this paper, I focus on the adaptation process in the Baltic States. I have been working with and in them all, but most with Latvia. Therefore I may rely more on Latvian experiences.

But in the decision-making environment, and in the civil service the more striking gap is the generation gap. The EU relevant part of the public administration is overwhelmingly staffed with young people. For them democracy and market economy are the natural reality. The young do of course speak English (and surprisingly many also a Scandinavic language). They have travelled and studied in the West. In fact, they are extremely conscious about the needs for studying abroad. And the modern office equipment with functioning computers and telecommunication, which may make their parents gape, is to them a most normal thing. They think and speak like the youth of any other European country, and from them radiate strong impulses to the surrounding parts of society.

Finally, it is of some importance that the EU-countries in the Baltic region are the most developed countries in the world, i.e. the Nordic countries, and that the Nordic EU member states have taken such keen and active interest in the development of the Baltic states. Among the consequences is the technology level in Estonia. Finland is the most technology-equipped country in the world, measured by the number of households having telecommunication and computers. The short distance from Tallinn to Helsinki and the language relations between Finnish and Estonian has made Estonia one of the advanced countries by the same yardstick

1.4. The Systematic of This Paper

There are many possible systematics for a presentation of the legal problems. In an EU centred presentation, a good framework is that of the Copenhagen criteria (1.2). As this is a legal paper, the acquis implementation will be supplemented by a chapter on the problems of creating a ”legal system”. Finally, the last chapter describes a natural complement to this process, the system for assisting the candidate countries in the uphill struggle of adapting to the Copenhagen criteria.

2. Democracy and the Rule of Law

2.1. Democracy

2.1.1. The Baltic states proclaim the continuation of statehood by resurrecting the old constitutions from the 1920'ties. Whatever were their weaknesses, the constitutions were a reminder of the independence period between the World Wars which had, in the minds of the people, come to symbolise a golden age.

But thereafter Estonia and Lithauania rapidly modernised their constitutions. Latvia stuck to its Weimar-inspired 1922-constitution. A notable feature is the liberal use of issuing law-decrees by the government (later to be ratified by parliament). In 1998, however, human rights were inscribed in the constitution.

And within this one decade parliamentarian democracy established itself as the natural form of government.

2.1.2. When the Soviet occupation withered away, the Baltic states faced a problem from their past – a tradition of governmental instability. They had been plagued during the 1920’ties by endemic government crises, and in the early 1930’ties by authoritarian rule, based on *coups d’état* supported by the military.

Overcoming this requires more than constitutional law. It requires a political culture and tradition which is only slowly appearing. In Lithauania the quest for this caused a remarkable event. The electorate chose a retired US federal trade commissioner as state president. The general elections for the national parliament in 1998-2000 produced a similar picture: More than half of the deputies were thrown out, and some political parties disappeared.

2.1.3. A feature of law production in the Baltic states is a more independent and more active role of the parliaments than appears normal under parliamentarian democracy. Although the governments are majority governments, this does not guarantee a majority or a safe passage for even the more important government bills. This also applies to the acquis-related bills. (To some extend this could be explained by a phenomena which the World Bank recently highlighted. Especially in Latvia it found a high degree of "conquering" of the parliament by economic interest groups.)

During the committee stage, civil servants and experts (national and foreign) participate at par with ministers (if government ministers at all deign to appear), and the secretariats of parliament may have own competencies. Therefore major redrafting outside governmental control may occur during the committee stage. The parliaments may also appoint expert committees to submit reports. Sometimes it also seems that the Baltic parliaments feel less bound by traditions and less *angst* for venturing into a brave new world. Sometimes they venture into continuity breaches which would be less conceivable in Western Europe.

Curiously, this means that during a government crisis the law production may continue quite normally. In countries with recurrent government crises this is of great practical importance for the acquis-implementation.

In this respect it should also be noted that many important state agencies have a great degree of independence in relation to the government, normally reserved in Western Europe for only the Central Bank. The leaders of several agencies may be nominated directly by the parliament, or the leaders have a direct access to the parliament, including the right to submit drafts without prior consent of a minister or the government.

2.2. The Rule of Law

2.2.1. Obviously, the end of occupation and arbitrary Soviet rule caused a keen interest in constitutional procedures and the rule of law. The old constitutions were full of such symbols and values. Furthermore, the importance of **human rights**, and especially of the consequences of their absence, had been learned in the harshest way. This appeared in the human rights rules in the constitutions, in acceding to the Council of Europe's conventions on human rights, and in the creation of constitutional courts in Latvia and Lithuania. (Estonia in stead took the Swedish-Finnish *justitiekansler*-system).

2.2.2. In the Baltic states, the **minority problem** has become a major issue, fuelled by Russian great power chauvinism. As the problem has so often been described, I shall only briefly mention it.

In order to compensate for the many deportees and refugees from the Baltic states, and in order to speed up industrialisation and sovietisation of the Balticum, the period 1945-85 saw a huge influx from other parts of the USSR. The majority, coming only for gainful purposes, left again, but at the end of the occupation all three states were left with several national minorities.

Furthermore, in Latvia during the 1980'ties, an aggressive russification campaign was launched. It left some ugly scars in the minds.

In Lithuania where the ethnic Lithuanians make up more than 80% of the population, and where the relations to Poland and to the Polish minority is the bigger issue, the easiest solution could be afforded: All permanent residents could apply for Lithuanian citizenship.

In Estonia and Latvia the Russian minority makes up about 30%. Here the solution was *jus strictum*: The citizenship law as it stood on June 16, 1940. Thereby a major part of the former *Herrenvolk* became stateless immigrants. Concurrently, many jobs became conditioned upon language requirements in languages which many Russians had referred to as "a language of dogs". Topping up, the Soviet inflation 1989 - 91 removed their savings. These people had a dilemma.

Russian citizenship is not the attractive solution. Most prefer to stay in Estonia or Latvia. They are economically better of there, and the decay and corruption in Russia is not attractive for most people. And for the males, Russians military service (in Chechnya) is a most unattractive aspect of life in Russia.

Citizenship in Estonia or Latvia can be obtained pursuant to rules that have been approved by the OSCE (and in Latvia approved by a referendum). They require of course loyalty to the new country, and a test in history and language. And it implies military service and giving up Soviet passports.

Much has been said about the nationality language laws, especially on Latvia. (Albeit the Russian slander campaign is directed mostly at Latvia, the Estonian language laws appear stricter). But the language laws are hardly stricter than those of Belgium or Quebec. To a large extend the debate is a consequence of Russia's internal policy. Thus Russia's Duma refuses to ratify the draft border treaties with Latvia and Estonia (as it also does in case of Lithuania and Ukraina), albeit the main aim of these treaties is to make the two Baltic states recognise the validity of the "gifts" of 5 % of their territories which Stalin made to Russia after WWII.

A structural consequence of this change is that the ethnic nationals now take the (badly paid) jobs in the public sector. Earlier on Russian was as good or better here, but now citizenship and knowledge of the state language are imperative. Inversely, the Russians take to the private sector, and they are furthermore generally more mobile.

But the practical effects of all this should not be overestimated. In Latvia there are lots of ethnic Russians in the public administration, and the daily life between Latvians and Russians is harmonious. Up to 1/3 of marriages are between Latvians and others. This might earlier on have made the families Russians. Now it rather makes them Latvians.

But the general negative demographic trend should also be mentioned here. All the factors mentioned above makes the demographic development more negative for the Russian minorities than for the societies as a whole.

2.2.3. A much-discussed problem, and a problem of human rights dimensions, is **corruption**, and its twin sisters incompetence and insufficiency. The low public sector salaries would in itself make this probable.

The worst part of the problem is that the three professions mostly targeted here are: the customs, the judges, and the police.

It is not contested that the corruption attains a level that would appear unacceptable in Scandinavia. But the bigger problem was the anti-civic inheritance from the USSR. The USSR was to our minds incomprehensibly inefficient and corrupt till its very core.

To this came the privatisation, which also in Western Europe has caused bizarre morale and transactions. (I return to the positive effects of privatisation under 3.3.)

But maybe worse is the incompetence, be it intellectual insufficiency, insufficient education and training, ignorance, or lax working discipline. These, also, were all to frequent in the inheritance from the USSR. Here, the retraining and the foreign assistance have already scored visible improvements. One visible consequence of the improvement is the increase in tax *provenu*, especially from indirect taxes.

But to some extend we must admit that these are problems whose solution requires that a new generation takes over.

A special branch of this problem is the training of judges. Now the social status of judges is a much higher one than in Soviet times. But the judges are often the same, and reforms of the legal system and procedural laws are slow in making. This has caused the establishment of many national and international projects in order to "upgrade" the mentality and positive knowledges of judges. The UNDP is very involved in these. Equally important is the practical

training which should make the judges better administrators in order to avoid a quirking and slow court system.

One of the best cures for these transition diseases is a free press. And The Baltic states fortunately have a free and critical press and audio-visual media. But two things more are needed: a reformed legislation on administrative, civil, and criminal procedures, and a vast improvement in quality and curriculum of the law faculties.

3. A Functioning Market Economy and the Ability to Sustain Competitive Pressures

3.1. Market and Growth

Estonia and Latvia were the richest parts of the Soviet Union. But Soviet technique was not market conform, and outside the military area it was too backwards to make competition with the Western world feasible. Thus, when the privileged market of the USSR and the COMECON area disappeared, the economic basis of many enterprises equally disappeared. Superinflation and a reduction of the GDP in the early 1990'ties gave the new democracies a difficult start. But since then the fortune has on the whole been with the Baltic economies as can be seen from the annex.

The suddenness of the break-down of the Soviet system, the consumers' preference for western goods, and the absence of an adequate local production changed radically and visibly the market and the towns within a few years. Now the Baltic capitals, also undergoing huge repairs, are "normal" European cities.

A few specific features merit mentioning. The first is the role of the Baltic region in the transit to and from the CIS/SNG-area. Especially the big ports of Latvia have both economic and strategic importance. Ventspils is Europe's 12th biggest port with a natural depth of 13 meters and ice-free. Under normal circumstances, Latvia did have and should have a major part of Russia's foreign trade in transit.

The other is Estonia's role as a free-trade friendly nation with virtually no custom duties.

The third is the harsh way in which privatisation and decollectivisation hit the production and productivity in agriculture. To-day it appears incomprehensible that in the 1930'ties Latvia was Denmark's big competitor in agricultural products.

An important new development is that all three Baltic states are now members of the WTO, and thus an integral part of the world trading community. But Russia is neither a member, nor seems Russia in a shape that makes it eligible for years to come. This makes trading relations with Russia more political and unpredictable.

3.2. The Russian Crisis and Its Effects

A stunning consequence of the break-up of the Soviet Union was its effects that the GDP per capita in Russia and in the Baltic states. It was about the same level in 1989, and dropped dramatically in the whole ex-socialist world in the early 1990'ties. But to-day the Baltic states enjoy a higher and increasing GDP than Russia which experienced traumatic drops.

This article is not about economic aspects, but the effects of the Russian crises from August 1998 merit mentioning because they have long term political and structural consequences.

Before the crises, Russia was the major trading partner, and the Russian trade of the Baltic States was a major source of income. Its virtual disappearance in August 1998 was seen by many at that time as a doomsday spell. The Russian crisis was hard for the Baltic States, but seen in retrospective its predicted doomsday-effects were astonishingly short-termed. This is

illustrated by the predictions in the IMF World Economic Outlook 2000 on the percentage change in GDP:

Country	*1998*	*1999*	*2000*	*2001*
Estonia	4,0	-1,3	4,0	6,0
Latvia	3,6	0,8	4,0	6,0
Lithuania	5,1	-3,3	2,1	4,0
Russia	-4,5	3,2	1,5	1,4

Latvia was hit more than the other two Baltic States due to the Russian transit trade and the concurrent Russian trade restrictions. And Latvia has no currency board, contrary to the two others. But the Russian crises affected Latvia in a so massive way, that the Latvian state took drastic measures in the autumn 1998. And the rewards for this are visible in the table.

A politically very important aspect of the 1998 crisis is the long term effect on trade patterns. The massive fall in the trade with Russia enforced an economic reorientation, and removed a Russian leverage – and seemingly this is becoming a lasting feature.

Trade between the Russian Federation and the Baltic States 1997 and 1999

	Export to Russia		*Imports from Russia*	
Country	*1997*	*1999*	*1997*	*1999*
Estonia	18,8 %	9,2 %	14,4 %	13,5 %
Latvia	350 mio USD	113 mio USD (6,6%)	425 mio USD	309 mio USD (10,5%)
Lithuania	944 mio USD	210 mio USD	1430 mio USD	969 mio USD

Source: www.stat.ee, and information received from ministries

This cannot fail to underpin the Baltic states' reorientation towards the EU, and to give them a greater freedom of action, and also a greater degree of assuredness. Certain regulations restricting the investment of financial enterprises which they had long hesitated to issue because of fear of Russian reactions could be issued during 1998 as a necessity and as lasting rules – and Russia could not afford to protest.

Outside the government circles, the Russian crises must have worked like a shock therapy for many enterprises. Suddenly, dubious quality goods and the Russian language became obsolete values. A reorientation towards the EU market imposed itself. Many enterprises had to take an interest in western marketing, the English language, and most important in our context, the EU rules and norms for trade, goods, and services. After the initial phase, it must be a big bonus for both the industry and the consumers.

3.3. The (Re)Organization of Property Law and Ownership

From the very beginning of re-independence, it was uncontested that private property and market economy should be the basis of the Baltic societies. This contains three intertwined elements: the desire to have private property as a fundamental of the society, the documented superiority of market economy in production and distribution, and the reparation of the injustices of the sovietisation of the early 1940'ties.

Later, other elements added themselves to this. One was the insistence of the EU on privatisation. The European Commission's probing into this is quite intensive. The other was the discovery that lame-duck state enterprises could be a millstone around the neck of the economic development and the quest for a balanced budget.

In the privatisation process, restitution had the primogeniture right. Claimants had a long period for tabling and documenting their claims. Restituting property confiscated in the 1940'ties is technically difficult. This was known from the experiences of Eastern Germany. But is was carried through in a consequent way, even to the detriment of agricultural productivity.

One aspect of restitution was a banality of nevertheless great practical importance. Those who had lost nothing, could not "get back" something. Those who had immigrated during the Soviet occupation thus got nothing. Inversely, many of those who fled to the West in 1944, being of the "capitalist class", got restitution. This created an interesting market, especially in a country where foreclosuring for more than a generation had been regarded as socially highly undesirable.

The biggest problem represented the (large) enterprises which were not restituted. Basically they belonged to "the nation". But how? One solution was to spread the ownership to the citizens via "peoples' shares", i.e. the voucher-system? Should the major enterprises be sold off to national companies or groups, often with the right connections? Should they be sold to foreign companies who could import the vital production capital, management, and know-how? These are sensitive questions, in which many have an ideal and/or (very) material stake. So it is not astonishing that a mixture of solutions was applied in practise.

It is sometimes said that many privatisations should have been adjourned in order to get fairer sales or better prices. But in many instances, later sales due to worn-down production apparatus and products gave lower prices which could have been prevented by earlier sales. Critics often overlooked that privatisation meant the influx of modern management and technology, much needed. And equally important was that as long as an enterprise remains a public enterprise, it could remain less efficient and thus a latent candidates for state aid.

Last, but not least: Once the privatisation is finished, and when there is no more "booty" for politicians to fetch from there, the political life in the Baltic region may become more normal, cf. 2.1.3.

3.4. The Capitalistic Forms of Property: Intellectual and Industrial Rights

The exclusive rights conveyed by intellectual and industrial property rights were of course anathema to the laws of a socialist state. Inventions and arts, like all other work, were done by and for the society/people. In return inventors and artists enjoyed other advantages and privileges.

In 1991 this system crumbled, ideologically and economically. It needed hardly any incitement from the EU. It was left to the market economy and the international organisations, WIPO with its soft persuasion, and WTO with some harsher means, because especially the USA insisted that Eastern Europe accord protection to these rights in accordance with the US model, e.g. concerning counterfeit. Thus Latvia was for several years a hostage of the USA in its intellectual rights combat with the EU.

Therefore huge legal reforms are sweeping Eastern Europe here. And it can often be observed that the intellectual rights legislation (authorship and neighbouring rights) causes many technical and conceptual problems.

The industrial rights gave fewer problems. All countries have patent and trade mark authorities as they should under international law and market economy. The big question is whether such authorities will ever attain the "critical mass" of expertise, given that with EU

membership the staff shall be reduced through the effects of the European Patent Office and the EU Trade Mark Office. But during this interim period they have had an educational function, e.g. some policing, development of national law and legal training. Most importantly for the Baltic states may be the development in terminology and law where little happened in the Soviet Union, and whatever happened did happen in the Russian language.

3.5. The Legal System and the Rule of Law as a Market Force and a Market Regulator

A modern society and a market economy require good legislation. You can win the Nobel Prize in economy for elaborating that. This claims for some qualities from the legislation: completeness, coherence and a not too big degree of complications. The decision-making systems of Eastern Europe have great difficulties in meeting this, both politically and technically.

I revert to this in Chapter 5. But at this place should be underlined that this is a condition that touches the core of market economies, and not just their formal life. The Peruvian economist Hernando de Soto recently recalled that the difference between the developed and developing countries in most cases did not origin in lack of money. There is lot of money in many ex-socialist states. But what the developed countries alone do offer, is an efficient and honest system that gives possibility to, and confidence in, people to put their values into circulation and utilisation (and eventually to regain them with interests).

3.6. The Economic and Monetary Union

The EU market which future member states shall meet, differs fundamentally from the one which e.g. Denmark met when entering in 1973. The acquis is much more voluminous, and there is a common currency. It affects member states, whether they form part of "Euro-land" or not. Therefore an EMU-oriented adaptation forms part of the Copenhagen criteria.

Nobody can predict where the candidate countries will stand in relation to the convergence criteria in 5 – 6 years' time. But the Baltic States already do a lot to prepare themselves to participation in the EMU. And the handling of the Russian crises permits us to say that their economy has been transformed and adapted towards the Western European model.

4. Implementing of the Acquis

4.1. The Negotiation Starting Point

As mentioned in Chapter 1, the candidate countries will have to implement the acquis communautaire completely and correctly. At least 80 % is not at all up for discussion. About 20% are to be discussed, because the arrival of new member states requires technical adaptations to the rules. For 1-2 % of the acquis there will be granted transitional periods. These are areas of technical complications, and areas where the budget or capacity problems necessitate a transitional period, e.g. in environment. The general line is that transitional measures are exceptional, limited in time and scope, and accompanied by a plan with clearly defined stages for the application of the acquis. They must not involve amendments to the rules or policies of the EU, or disrupt their proper functioning, or lead to significant distortions of competition. It should be added that in the Single Market area the Commission considers, as a principle, transitional measures inappropriate.

Important transitional arrangements will be negotiated only during the last phase of negotiations. There is a twist here, because candidate countries may have to present their

demands at the outset, which is a problem because such areas are the last to be mastered due to their difficult technicalities.

But the candidate countries may also expect that the EU will require transitional periods in sensitive areas like free movement of labour and agriculture. This stems from the internal policy problems which delay reforms in the areas of big EU money and the decision-making procedure. The first steps were taken under Agenda 2000 during 1999 and with the Nice Treaty 2000. But more must follow.

Agricultural policy adaptations may not represent a big problem in relation to the Baltic states as their agricultural sectors are small and weak. But this is a horizontal question which must be decided for candidate countries as a whole, considering notably Poland.

Once the EU side has taken its decisions, and whatever they be, it is predictable that they are not negotiable during the accession negotiations. With due regard to *courtoisie internationale*, they will be a leave it or take it.

4.2. The Effects of the Europe Agreements

The Europe Agreements were concluded between the EU and each candidate country in the mid 1990'ties. They are a mix of a free trade agreement and the European Economic Area Agreement, aiming also at preparing the partner of the EU for the full membership.

Under the Europe Agreements the partners of the EU countries have agreed in much detail to align their legislation with much of the EU acquis, especially in the Single Market area. The legislative duties were further detailed by the Commission in the White Book in 1995, cf. 4.3. Further duties may stem from decisions of the Association Councils and their sub-committees, e.g. in the competition and state aid areas, and on mutual recognition and collaboration on accreditation and standardisation of goods.

When discussing the burdens of acquis implementation, the effects and duties under the Europe Agreements are often overlooked: In many areas, and especially in the Single Market area, the duty to implement the acquis has already become a *legal* obligation under the Europe-Agreements. One such area is the protection of industrial and intellectual rights.

A virtually unexplored consequence of the Europe Agreement exists in countries that have given it the force of law, and/or which have a monistic legal system with supremacy for international obligations. Some of the provisions of Europe Agreements are worded in a way that may give them direct effect.

A speciality for the candidate countries is that under the Europe Agreement they may have to implement regulations. This is forbidden for member states, as regulations are directly applicable. Such effect cannot exist in the legal order of states outside the EU, and consequently the candidate countries will have to implement regulations - and then to repeal the implementation acts on day one of actual membership.

4.3. Getting an Overview of and Priorities for the Acquis Communautaire

It is not possible here to undertake an examination of the whole acquis as even the briefest overview would require more than 30 pages. The Commission's White Book from 1995 contains an instructive examination of all the acquis chapters in order to explain what an applicant country needs to implement during a first period (Stage I-measures), what ought to be implemented a bit later (Stage II), and what may be postponed to later stages. It listed about 1000 directives and regulations to be implemented during the first two stages of adaptation, preferably before the year 2000. But it required about 400 pages. Furthermore, all candidate countries have scores of plans – often several sets with varying starting points. Many of these plans (Progress Reports and Action Reports) are required as a technical part of the accession

negotiations, and the National Program for the Adoption of the Acquis (NPAA) is required in order to be able to submit applications for grants from Phare, Accession Partnership etc., cf. 6.3.

The EU Council of Ministers in December 1998 gave a very short direction for the priorities: "...the need for special attention to be paid, in advance of accession, to the effective application of all elements of the single market acquis including the establishment of a functioning system of state aid control. Other sectors requiring attention include the environment, the nuclear sector and justice and home affairs." This implementation of secondary EU law is regularly controlled and screened by the Commission, cf. 1.2 above.

4.4. The Overall Results of Implementation

The Commission's latest evaluations show that the acquis implementation is advancing at a rapid pace in Estonia and Latvia. Of the core acquis (according to the White Book 1995) more than two thirds has been implemented. Lithuania is following, but with a time lag of 1-2 years, probably because of an even more politicised decision-making system.

Evidently, implementation means changes in normative acts, major structural reforms, and changes in the structure of the legal system to an extend and in rapid successions, which is hard to grasp, except by intuition. A consequence of this for a candidate country with weak systems for decision-making and administration is that a major part of the political life becomes what in modern political science language is called reactive, as a response to EU requirements, more than a proactive move to anticipate problems. Seen in a long-term perspective it may be the better solution, as the EU law is technically superior, and it is not a major problem for the smaller Baltic States, which furthermore are relatively well provisioned with foreign experts. But for the big Polish neighbour it may not be in harmony with the traditional conception of the importance of their country.

The demands of the market economy and the EU may also lead to a situation where reflections are only made, once the legal basis for the new and better system is already in place. This places heavy requirements in quality upon the state administration, the parliaments, and the foreign donors. It ought also to place great demands upon the NGO organisations, especially those of industry and trade unions. But they are not so widely oriented that they can cope with the high speed reform work – and they also harbour a mistrust towards the state so that they will hardly be useful sparring partners (but may well be contributors of hindsight).

A practical consequence may be that the political choices which under directives are left to member states, are overlooked in the implementation procedure. Many directives leave important options to member states. But it is often unclear whether parliaments are (made) aware of the fact that they have such options.

Equally important is that directives normally only deal with some major problems of a legislative area. They leave thus to Member states the duty to insert the directives into an operational framework, or to create such one, i.e. to see to it that a legal "system" exists. This is a major problem for candidate countries with which chapter 5 deals separately.

When discussing the implementation duties, it is of utmost importance to underline what was stated in 3.5 above: that implementation is not just an entrance ticket for the EU. The acquis is also the "legal face" of the post-industrial market economy. The implementation of such legislation creates the fundament for the kind of society which candidate countries all desire. Thus implementation of e.g. directives on company law or financial services must be given priority for the reason that they constitute valuable contributions to the smooth functioning of a market economy.

Even though we cannot state that everything has become Pareto-optimal or honest just because the acquis was implemented, the experience of the first years of market economy

demonstrates the opposite: Without a good and modern legislation, chances of efficient and honest behaviour are modest.

4.5. The Reasons for Concentrating on the Single Market in the Following

For the reasons set out under 4.3, I have chosen to concentrate on the Single Market, (the four freedoms and competition). Large and fascinating parts of the acquis will thus be left undiscussed, e. g. consumer protection, transport, agriculture, welfare, and environment protection, including the Lithuanian nuclear power plant of Ignalina, and taxation. But a few observations on other areas are important for the overall picture.

The important role of the Baltic states in the transit of the Russian foreign trade should be noted. It led the Commission to the somewhat surprising conclusion, that the transport-acquis must be rapidly implemented. This is a very costly requirement in a post Soviet structure.

Another costly requirement lurks in environment protection. Both the Baltic States and Poland have expectations as to transitional arrangements. They easily tend to forget that their Nordic friends happen to be the main recipients of their emissions into the Baltic Sea. Of course, limits to the capacity to improve the situation militate in favour of both support and transitional arrangements. But it is equally clear that within the next 10 years a dramatical, investment consuming, improvement in water quality of the Baltic Sea must be brought about.

So far, the EU agricultural and regional policy was a kind of money machine, and of course regions in the Baltic States will be eligible for regional aid. Thus, the Latgale region of Latvia is the poorest region in Northern Europe. But because of Agenda 2000 and the still ongoing reforms, nobody knows how much money will be available, nor the conditions for granting it. We do know that the Common Agricultural Policy may require major structural reforms of the relatively inefficient Baltic agricultural structure, and thus in the regions where agriculture is predominant. But only now, considerations into the consequences thereof begin.

4.6. Free Movement of Goods

The free movement of goods is the basis of the Single Market and the Europe Agreements.

Within the free movements of goods, the Baltic States may have fewer restrictions than Western Europe, because their regulatory system was created around the same time when they began to implement the acquis and the WTO. Estonia may have one of the most liberal foreign trade regimes in Europe. Many present ”restrictions” may be attributed to inefficiency (or corruption) rather than to the legal system, cf. 2.2.3.

But the requirements for the candidate countries are daunting.

First, they must enact a number of laws. Some of them are horizontal (products safety, products liability, conformity assessment and accreditation, standardisation, and metrology). But even more are sectoral (food acts, chemical substances, cosmetics, works protection, pharmaceuticals, machinery, construction products etc.). Because the system had to be created anew, it may be built in a way that differs from the systems of the present Member states. Thus the Products Safety Directive, and the laws implementing it take a bigger importance, and are not just residual laws.

Second, the national administrations have to cope with the basic rules which emanate from the European Court of Justice. This presents a conceptionally difficult task, cf. 5.6.

The biggest problem for the Baltic states is to construct the complex system for accreditation, certification, standardisation, and notably market surveillance. Organising a market surveillance and defining its relations to the emerging consumer protection system for both food and non-food products, is one of the biggest challenges for both lawmaking and

institution building. Some of the biggest land border posts of the future EU will be between the Baltic States and Russia. As Russian goods from here on will be in free circulation throughout the EU, a high quality control must be in place here.

The institution building concerns both the public, the semi-public, and the private level in order to be able to fully meet the requirements under the new method and under membership of CEPT, CEN and CENELEC. This requires expensive testing equipment, laboratories and retrained experts. Eastern Europe has many engineers. But they have to be retrained which often requires stages in Western Europe in order to get ”hands on” experience. And then secondary regulations, norms, standards, procedures, manuals etc. must be issued or rewritten.

In the long run, these procedures and institutions shall be financially self-supported. But initially, much capital is required. This makes the area a natural target for Phare and other support.

One of the challenges in standardisation is the existence of thousands of EU and international standards, which are constantly adapted, and new ones are added. For the new market economies this may look like a Sisyphus work. A firm prioritisation is required to decide which standards are mostly required for the national economy.

This leads to a practical problem: To convince the industries that they must follow EU standards. It can be hard to explain that the EU standards represent a higher technical and safety level, and that their introduction is a very important contribution to the national industrial development and consumer protection. But equally important is to explain the marketing aspects that many Western buyers will not dare to buy non-conform goods, be it for safety reasons or for fear of the economic consequences.

4.7. Establishment and Services: Restrictions and Fees

To some lawyers, the rules on establishment and services represent one of the most fascinating areas of EU law. But it is hard for candidate countries to understand.

At the horizontal level, there are some directives and a number of principles set out by the European Court of Justice with all the conceptual problems it creates for the civil servants of the Baltic States, cf. 5.4 and 5.6. Beneath, there are scores of sectoral directives.

Much has been accomplished. But many of the outstanding questions relate to service business. The service notion of the Treaty is not really understood. And many public autorities feel, with some justification, that they should first concentrate on established business, including branches, and that the time is not yet ripe for regulating service business that has hardly begun. In many cases there will be no proper legal basis, until actual EU membership is into force.

The Soviet legal system had a starting point of “*alles verboten*”, the general prohibition of private economic activity. With independence economic freedom was obtained, but more regulation was issued. Some years ago, 165 trades in Latvia required a special permit (license), and Estonia had about 180 trades with special educational requirements.

This, of course, creates administrative employment in order to protect the general good. It also costs much time and money in filing applications, fees, etc.

The fees are a question in themselves. By fees are here understood fees paid into a public authority, and not corruption that benefits individuals. That fees create administration and thus jobs and vested interests, is evident, and part of the problem. That it is costly and unproductive, is equally evident. Only slowly it is dawning that it deters foreign investors. And we cannot expect this to be an overriding concern for a public authority in budget restraints.

From the jurisprudence of the Court of Justice we know that fees must have a basis in an law, that the law must be EU conform, and that the fee cannot be greater than the costs. This

”formal approach” is somewhat alien to Eastern European authorities facing real budget problems, and which complain that ”Our ministry of finance does not understand that we are a special case”. A fee is seen as the rational and just solution. The rule of law attitude of EU law is a principal, but also a practical problem because it benefits others and not the needy authority.

There is only one solution to this: to remove licence or educational requirements. Therefore the Latvian government reduced the trades needing special licence to 65, and the Estonian government has a corresponding aim for the educational requirements.

4.8. Recognition of Diplomas

For ordinary citizens the ”mutual” recognition of diplomas and professional experience is important for their professional possibilities outside their home country. The complicated acquis here has several layers, and the legal system of the candidate countries will consist of

- several layers of own legislation from before and after regaining of independence,
- the health directives with the detailed regulation of the professional educations,
- the three general directives of 1989, 1991, and 1999 on the professional recognition of diplomas and experiences,
- the general principles of equivalence and procedures set out by the European Court of Justice in its jurisprudence,
- the academic recognition of diplomas, regulated in part by universities themselves (under some framework under Council of Europe conventions), and
- regulation on citizens with a foreign education, including the many diplomas issued centrally by the all-union authorities of the USSR.

The latter problem derives from the fact that under international law Russia is the successor to USSR. Thus USSR diplomas are Russian diplomas. This requires transitional measures.

The general principle of EU law that member states shall recognise ”equivalent” diplomas and cannot maintain requirements that are ”unjustifiable” or ”disproportionate”, provides little guidance to the parties and the public authorities in a concrete case. And if it was difficult for the German authorities to judge the qualifications of Mrs. Vlassopoulos (case C-340/89), how much more difficult must it then be for Baltic authorities to handle such cases.

There is the further complication that in many countries there is far more attention given to the academic recognition than to the professional recognition provided by the directives.

This underlines the need for efficient institution building. But there may be needs for a much deeper reforms. Indeed, the professional recognition and education requirements of the acquis may highlight a need to reform major parts of the educational legislation, institutions and curricula, as well as teaching methods. Such reforms may have to be undertaken anyhow. And they should be approached in a broader way than mutual recognition of diplomas.

Part of the institution building problem is that it may conflict with the cherished concept of academic freedom and the ancient autonomy of the universities. It has especially much hampered needed reforms of the curriculum of law faculties.

4.9. Trades and Industries under Special Regulation

To restate the legislation, written and unwritten, that constitutes the EU law on establishment and services, presents major theoretical and practical difficulties. It requires a combination of the jurisprudence of the Court of Justice, the secondary EU laws and the systems of the corresponding national law. Such an exercise is rarely made in the literature.

To bring about such harmonisation and reworking of the conceptional apparatus in countries with no firmly rooted legal traditions is one of the most difficult tasks. One problem is that only lawyers with a solid knowledge of Western methods can comprehend the task. Another is that very often, within one national system, every ministry has its own terminology.

The first profession to be mentioned here is the *financial services*. The very notion gives rise to a problem, because many believe that all financial activities are services within the meaning of article 49 of the Treaty. Another misunderstanding is that it is possible to implement the financial acquis independently of the general legal system, cf. 5.4.

After the introduction of a first generation of banking and insurance laws, which foresaw the creation of supervision authorities, production of secondary law, and training, the Baltic states were hit by a number of scandals. They culminated in 1995 with the Latvian Bank Baltija, that created one of the 1990'ties biggest cases on white-collar crime in Europe. Out of this came recognition of the need to strengthen the legal basis in general and the supervision. And the reward for this was quick to come. In Latvia which first accomplished this, it contributed to the relatively unscarred way in which Latvia survived the Russian crises in 1998.

There are still some weak spots (securities in Estonia and insurance in Lithuania). But in a couple of years, the system will attain normal Western standards, except for some special services questions, cf. 4.7. The biggest area for improving of the functionality is the capacity to make the various parts of the legal system co-operate, e.g. the financial supervisors and the consumer protection authorities. Much of this will improve as Latvia and Estonia introduce a unified financial supervision on the Nordic model.

Another question is to develop the financial markets as a tool for development of the national economy or for improvements of living standards. This has proven difficult. Thus, in spite of huge, long-term efforts by Denmark and the World Bank to develop a modern mortgage credit, structural and bureaucratic impediments have not yet been overcome. In Latvia, the mortgage and securities legislation has been put in place, but the vital laws on con-dominium and foreclosuring legislation need major improvements.

The *health services* are another area with an intense EU regulation and co-operation. They are not discussed here, as they require much space. A major problem in implementing is the relations to general reform of the education system, as explained in 4.8.

The same applies to *public procurement*. Here the legal structure is mostly in place. (A somewhat bizarre problem has been that the World Bank had tried to import its model instead of the EU directives). But this is an area where the real test is in the practical application, notably by the local authorities, and this psychological education process has not been fully attained.

Finally, the *lawyers and accountants* should be mentioned.

The 8th company law directive on accountants is everywhere in the process of being implemented. But creating chartered accountants requires a difficcult collaboration between the state (law reform), the profession (practical training), and the universities (a new curriculum). Presently, the laws and the professionals are of very varying quality, and in reality the profession is dominated by the "big five". This in turn creates a problem for small and medium sized enterprises which cannot afford the big five.

The lawyers' profession seems to be going on quite well. One reason being that there is penury of lawyers. And especially the few lawyers specialised in business law appear to thrive.

The lawyers are organised in an order like in many continental countries. When pleading in court they seem to be regarded as some kind of *auxiliaire de la justice*. But the civil and criminal procedure still needs a lot of reforming. Both technically and politically the countries have many problems in deciding what they want to end up with, and where to begin. An area in special need of reform is the execution of judgements (also called the courts' bailiffs system).

4.10. Company Law

At the outset, the Baltic States had public enterprises regulated by a mixture of new and old Soviet union and republican laws. These enterprises were going to be transformed into private companies subject to normal European company law.

To this could be added the sure mark of market economy: a bankruptcy legislation. The first acts demonstrated their insufficiency during the banking and other crises in the mid 1990'ties. All countries therefore got new bankruptcy codes. The practise under the new codes proved that there was a big need for such reforms. The codes became the outset for further developments.

It was of no avail to resurrect company law of 1940. It was not too good, and the world had changed much in between.

The first phase consisted of a mass of adaptations to existing Soviet laws and ad hoc laws. The ensuing reform work on company and accounting law did not proceed too rapidly, probably because the area is quantitatively so big. But the Baltic countries were also hostages of their code-tradition, which requires company law to be unified in a commercial code. But once done, it is a good thing in a new market economy because of the transparency it creates. And the end-result will be codes, radiating EU-correctness and a theoretical, German inspired completeness.

The accounting legislation is under another authority than the company law. This gives co-ordination problems on the concepts used, e.g. the notion of groups. The accounting rules will mostly be influenced by the Nordic countries, the IAS standards, and the "big five" international accounting firms. The brave new world where IAS-standards *de facto* prime EU and national laws is difficult to handle everywhere. But in a world of incomplete technical mastering and a heavy regulatory tradition this becomes even more so.

And what about registration? The Baltic States were here in the fortunate situation that they went directly into the computer age. They will therefore end up in a few years time with functioning and centralised registration systems.

4.11. Competition and State Aid

There is one basic fact in competition law: The Europe Agreements oblige all candidate countries to transpose and follow the EU system, not just the laws, but also the principles developed by the administrative practise and by the jurisprudence.

Competition is furthermore an area where the Commission for both politic and economic reasons operates a tight monitoring in order to uphold both the institutional power and the effectiveness of the competition law system.

In the early 1990'ties, all the Baltic countries got beautifully sounding, but not very practical competition laws. During the later years they have been substituted by modern competition laws which establish

- that agreements etc. of the nature forbidden by article 81(1) of the Treaty are null and void,
- the possibility for individual exemptions and block exemptions and *de minimis*-rules,
- a prohibition of abuse of market dominance,
- prior approval for major mergers,
- state aid prohibitions and control rules,
- that these rules are fully applicable to public undertakings,
- a competition authority with a high degree of personal and functional independence.

To this can be added the requirement of the Europe Agreements that all cases ”shall be assessed on the basis of criteria arising from the application of Articles [81], [82] and [86] of the Treaty…”.

Having participated in the preparatory work of the Baltic States and Denmark, what are the main features of the Baltic acts?

The first is that Baltic states had no possibilities of inventing half way measures, but had to copy EU law. The second is that their acts are begun by defining all the notions of this brave new world. Many of these definitions of relevant market etc. are rather circular and banal, and have proved to be not too great a help in practise.

It was rather unproblematic to include public undertakings in the field of application. This was felt to be implicit in a real market economy. And the competition authorities eagerly control public undertakings. That the controlled undertakings do react like anywhere in the world is hardly surprising.

In the Latvian case this was followed up by an interesting innovation, the 2000 act on the “common regulator” for all state-regulated industries (public services): electricity, telecommunications, post, and railways. Municipalities must create one regulator for waste management, water, sewers and district heating.

Competition authorities and privatisation agencies both aim at introducing the market economy. Frequently the privatisation agency would find that its business freedom was restricted by the prohibitions in competition and state aid law, and by the public procurement rules. And clearly these rules do set limits for privatisation agencies as for all others. But the consequences of e.g. prohibitions of abuse of market dominance or certain restrictive practises, or state aid control were felt as barriers to the privatisation process.

This leads on to the procurement rules. The Commission regards them as one of the most important legal instruments for opening up markets, and since the publication of the Cecchini-Report this is hardly contested. But to create functioning rules and authorities here is not easy.

A further difficulty appeared in relation to the consumer protection authorities which are only now being created. The understanding of the fundamental differences between the general efficiency objective of competition law and the contract regulation approach of consumer law is not very perfect. A real problem is that both competition and consumer protection law have rules on unfair marketing and advertising. I have asked what is the solution, if the two authorities take contradicting decisions. The answer was that this is a problem which the citizens and the enterprises must ask the courts to solve. But an other answer seems to be that the legislative and institutional system is still imperfect.

The courts are also a problem. It may be difficult to persuade a Danish judge that agreements contrary to article 81(1) constitute a serious crime, and it must be even more difficult to carry this message to a Baltic judge. This is aggravated by the general penury of good lawyers for the public service under the present salary system. This creates a considerable ”court risk” for the competition authorities when the private party has the better lawyers. (On the other hand the enterprises face the risk under the administrative fine system which has been retained from EU law.)

Part of the solution is to give judges special training in competition law.

Returning to competition law, all countries are confronted with having to introduce general rules on *de minimis* and block exemptions (as the regulations are not directly applicable to them). The first problem is that the concepts are new and rather unfamiliar for both the authorities and the legal world. Even the basic notions like market, dominance and abuse are new. Another problem is a very limited knowledge and experience of the practises of the market. When it comes to the specialised contract types and notions, they may be unfamiliar

also to the market participants and to the most drafters of contracts. But for both political and practical reasons, most block exemptions have been issued. This applies also to transport where great interests are at stake, because the Baltic states have a huge transit traffic to and from the CIS/SNG-states, and most foreign shipping companies expect the block exemptions to be in place.

For merger control the big political question was the threshold value. For Latvia, the figure is rather high, 25 mill. Lats or around 170 mio EURO. For Estonia (100 mio kroon) and Lithuania (30 mio litas) the threshold is about 30 mio EURO.

For the enterprises and their advisors the procedural rules are very important, so that efficiency and due process of law is guaranteed. A way to improve the situation here is very detailed rules on the procedure. The starting point was Regulation 17/62 and the merger regulation. As the general administration procedures are partly not codified, many procedural rules were introduced into the competition laws.

The other branch of competition regulation is the state aid control. Here, the Baltic states have taken different solutions. Latvia got a detailed law that codifies the state aid system on the basis of the practise and jurisprudence of the EU Commission and the Court of Justice and created an independent committee for control. In Estonia, the Ministry of Finance itself manages the control under rules corresponding to articles 87 and 88. In Lithauania, a government decree created a control *ad modum* article 88, vested in the Competition Council.

None of the countries provide a solution to the fact that the state aid rules are not, as in the EU, *lex superior* in relation to other nationals law granting state aid, and that the EU experience demonstrates that the core problems rests in the enforcement of the rules. That the rules function quite successfully, may be due to the strict budgets that do not foresee much state aid at all.

5. Transforming the Implementation and Legislation Into a Legal System

5.1. The Socialist Inheritance

For those who have not had a close look at it, it can be hard to conceive how outdated, insufficient, and qualitatively poor were major parts of Soviet law. Even forgetting the absence of rule of law – due to the supremacy of the party's leading and guiding role – it could in part not be described as functioning within the technical meaning of a "functioning legal system". When the first essays in reforms were begun during the 1980'ies, the reformers did not possess the practical knowledge, experience, and tools for this ave-inspiring task.

A striking feature of the Soviet legal system was its sheer size, and the amounts of uncoordinated and/or detailed technical rules in some areas, and the virtual absence of rules in other areas. That property, contract, and commercial law were not well developed, can hardly be surprising in the Soviet system. But also the rules on technical norms and standards were inadequate. This constituted barriers for the adaptation of the industry to the world market, but also for ensuring an adequate protection of the lives, safety, and economy of the own citizens.

The lack of transparency was increased by the formal Soviet federal structure with several layers plus the sheer number of rules issuing authorities. There were simply too many instances to issue bad rules.

In the Soviet system, a modest place was accorded to lawyers, and the production thereof was relatively small. Thus the University of Tartu (Estonia) produced fewer lawyers in 1988 than in 1938. Worse, both students and teachers were KGB-controlled. To this could be added the Russian tradition of placing the real research in academies outside the universities, and a

lack of textbooks, especially in non-Russian languages. The focus was on public law, criminal law, and on general and classical learning in a way which to day appears ”old-fashioned”.

The legal education’s curriculum still differs from that of Western Europe, and the teaching methods are generations behind the Nordic universities.

5.2. How To Rebuild a Theoretical Legal System

Traditionally, German law heavily influenced the theoretical legal system of the Baltic states. But of course also Russian influence seeped in.

The big problem of to day is that the close contacts to the Soviet system tore out the bottom of the legal education and system, and restricted the development and use of any language other than Russian.

To a large extend not just the laws, but also the legal system must be reconstructed. It requires major reforms of curriculum, study plans, materials, etc., and a radical change in the mentality of university teachers and judges. It also requires a major production of new textbooks. So far, only a minor part has been accomplished. But a solid reconstruction of the legal system seems first and foremost to require the advent of a generation of lawyers with Western inspired experience and outlook.

During the early 1990’ties there was some reuse of books and materials from the inter-war period. But the world had changed so much that this did not correspond to the needs. The legal needs of the post-industrial and internationalised world had to be explained and developed. Another major task of the legal theory is to create a system and systematic that may explain to-day’s concepts and language.

In the Baltic states, the Nordic countries and Germany did a major effort to develop economy and law through the Euro-Faculty with Denmark as the main sponsor. It appeared, however, that optimal results from this would require more general reforms of the university structures and curriculi.

A very focussed initiative came from the Stockholm Business School (*Stockholms Handelshögskola*) which created in Riga two specialised schools (Stockholm School of Economics – Riga, and Riga Graduate School of Law). The law school gives a one year masters study (*magistratura)* in English and with the focus on business and EU law to lawyers already having a (Baltic) bachelor degree.

5.3. The Transition From the Soviet Legal Inheritance Back To the Roman Law Tradition

At the end of the occupation in 1991, the lawmakers of the Baltic States were in a dilemma. They pretended to re-establish the republics *anno 1940*. This included by definition the reestablishment of the legal systems. But it was not feasible, nor realistic, and as time passed it became even more of a fantasy. After 1991 followed several years, where the administration and the politicians grappled with the political and principal problems of a new state, and where the support of the EU and Northern Europe was coming into shape. During that period, the laws were a mixture of

- rules from the period before WWII which often did not meet the needs of a modern democracy or market economy,
- Soviet law (maybe amended) that politically and practically fell more and more out of step with society, and
- A mass of rapidly produced rules that was more statements of political principles and declarations of symbolic value than qualitative laws.

It rapidly became evident that all these rules had to be changed within a short period. The evidence came in part from the EU obligations, but in part from the manifest failure of the

rules to solve the problems in times of pressure or crises. This can be illustrated by the Latvian commercial law ”system” anno 1995:

- A resurrected civil law of 1937 which was largely a Latvian version of *das baltische Gesetzbuch* [1862],
- A criminal code from the days of Stalin with a lot of hasty amendments,
- at least 15 company law laws, amended at least 40 times,
- a competition law, a bankruptcy law, and a consumer protection law that stated general principles of the nature which Eastern Europeans in the early 1990’ties thought must be the laws of a market economy.

All the Baltic states have a civil code bottleneck problem which is discussed under 5.4. First in the year 2000, the bulk of the modernisation was accomplished. In most cases the law is now up to normal European standards.

Had there been no other problems, this would not be very embarrassing. But it was a part of the even bigger problem that everything in these countries needed reforms: The transition into democracy and to market economy, the integration of the minorities, the defusing of a heavy and incompetent bureaucracy, privatisation, and adaptation to the Copenhagen criteria.

5.4. The Conceptual Difficulties in the Change

A major conceptual difficulty is to create a general understanding that legislating is not just issuing a stream of rules, but also the creation of a coherent system and an order in the legislation. As an example, we can take the structures of what is called commercial or economic law:

CIRCLE	SUBJECTS
1st (inner)	· Civil law, including mortgage law, · Bankruptcy law and parts of enforcement procedures · Criminal Code · Intellectual and industrial property law
2nd (middle)	· Company law · Competition Law · Marketing and Consumer protection law · General rules on mutual recognition of diplomas
3rd (outer)	* *Special Legislation* e.g. · Financial supervision law · Special contracts (e.g. insurance, securities, labour, transport, rent and con-dominiumn · Special protection rules (e.g. advertising, products liability and safety) · Standardisation, conformity assessment & accreditation * *Institution Building*, e.g. · Bankruptcy courts · Competition Enforcement Agency · Consumer protection agency · Financial Supervision · Land Book service · Standardisation, accreditation and certification bodies

The good functioning of a normative act depends upon the inner circle(s) being equally or better functioning.

An example of this are the two directives of 1989 on banks' own funds and solvency ratio. They list various categories of assets and obligations, which credit institutions may have, and contain an unusually high density of civil and commercial law notions. Most candidate countries have implemented the directives as they stand. But in many cases the notions used were not defined in civil or commercial law.

Thus the isolated implementation of directives may be an empty gesture, because - in legal terms - they contain too many empty *renvois* to the inner "core law areas". The latter, however, are disfunctioning, because it takes about a decade to develop and adopt such big law areas and to get the hearts and minds trained in their wording, spirit, and system – once they have been formally created. This is illustrated by the ways, in which the Baltic states have approached the civil code problem.

At the end of occupation, all Soviet republics were left with a Civil Kodeks corresponding to the USSR union model. For all the Baltic states, rooted as they were in the traditions of codifications, it was unquestioned that they should have a new civil code. But here the ways parted.

In Latvia, the decision was quickly made to resurrect the Civil Law of 1937. It gave an ideological link back to the golden ages between the wars, and provided the basic needs for society. But when it came to contract law, the Civil Law was probably already in 1937 very conservative and cloaked in an old-fashioned language. However, it was difficult to amend the sacred text. But the device of "legislating around" the Civil Law arose: It is "supplemented" in the Labour Code, the Commercial Law, the Products Safety Act, the Floating Charge Act, the Insurance Contract Act, the Mortgage Credit Bonds Act, the Securities Trade Act, and the Consumer Protection Act. A problem under this method is, however, that there may be difficulties in transparency and unity of terminology, with the consequence that the acts do not form a coherent whole.

Estonia and Lithuania embarked upon the production of a modern and all embracing civil code. This is in principle very laudable. But it took more time than foreseen to write the texts, and when the drafts arrived around year 2000, they were difficult for the parliaments to digest. While waiting, there was no harmony of terminology, and as the codes should be all-embracing, they bottlenecked development in legislation and EU implementation on consumer protection, insurance contracts, labour contracts, products responsibility, and securities trade. A lot of energy and resources were lost in various bureaucratic manoeuvres around the draft civil codes. And a number of problems with timely implementing the acquis surged.

5.5. Legal Economy: Legislation as a Service

The market economy requires the kind of services which legislation and codifications represent, cf. 3.5. This includes non-mandatory rules which apply, "unless otherwise stipulated in the contract". Examples of such rules are found in company law, contract law, inheritance law, and sales of goods act. Such laws, of course, do exist in he Baltic states. But the reasons are more likely to be old-fashioned ideas of the state as the source of law than the advanced thinking behind legal economy which is not so natural for those who grew up in the *Obrigkeitsstaat*-system where the law was supposed to be an emanation of the will of the "people" or the "nation".

To this can be added a general observation on all areas requiring major scale planning. It seems a general feature for all the ex-socialist planning economy countries that the public administration cannot draft a comprehensive industrial policy. There is often too much wishful thinking and banalities, and too little empirical basis.

5.6. Handling the Sources of Law, Including the Jurisprudence

When the lawyers of Western Europe discuss the rules on free movement of goods, persons and services, they first and foremost consider the rules laid down by the jurisprudence of the Court of justice. When reading the European literature, especially on establishment and services, the major flaw is insufficient knowledge of the secondary written EU law and the national legal systems.

In most candidate countries, the inverse situation prevails. Discussions tend to concentrate on the various directives. In the Baltic states only a few lawyers and civil servants have any real knowledge or understanding of the decisions of the Court or of their implications. Many decision makers find it difficult to handle such items as the sources of law and the interpretation methods of the EU Court of Justice. (This is even to-day a problem, because the Europe Agreements contain rules corresponding to the articles 28, 43 and 49.)

It is not so difficult to take a directive and demonstrate that its wording requires certain amendments to national law. But the stumbling block will often be the notions of directives and judgements that form part of the general legal system and which were familiar to the authors and thus left undefined. Therefore Eastern European countries stand the risk of committing errors that will require (frequent) adaptations to implementation rules, because the first implementation(s) only implemented what can be seen from the direct meaning of the words.

For the same reasons, many civil servants find it difficult to perform the opposite operation: take a national law and relate it to the EU legal *system*. But that is, basically, the intellectual operation to be performed in order to correctly implements the acquis.

When there is no legal ”system”, and when nobody has an overview of the law, there is also the risk of a production of contradicting rules. (And that risk cannot be avoided by the use of often highly specialised EU experts).

The first task in many projects ought to be the development of a terminology. All parts of the legislation require new words and concepts unknown to the legal systems before WWII and to Soviet law, e.g. ”merger control” or ”directly applicable law”. There are more problems in e.g. EU establishment law, because it confers fundamental rights upon the Union citizens. But it is a very untried method to try to distil and describe the jurisprudence of the Court of Justice and fit the findings into the national legal system.

A question for most Western lawyers would be whether the local courts could contribute to the developments here. But experience tells that within the first decade they will not perform such tasks.

5.7. The Procedure For Preparation Of Laws

If the legal theory is so weak, it is a safe guess that the law drafting and preparations also face problems. Only a minority of the civil servants have a legal education at all. Draft laws are submitted to parliament without the detailed annotations known to most Europeans. These problems are aggravated now, because the demand for lawyers very much exceeds the supply. The market forces in the form of the upsurge of private law firms now buys the best. And as many civil servants only stay a few years in a job, there is also a quasi-total lack of track record. This creates the absurd cases where, during the discussions on some draft, it is suddenly ”discovered”, that the rules/implementation already exist.

There is also a tradition in which the careful law drafting technique is regarded as something secondary, and no tradition for consulting or co-operation with interested parties and NGOs. And often the NGOs, e.g. associations of industries, do not appear to be very interested, nor staffed to enter into such dialogue.

Thus, the torrent of legislation does not create a coherent legal system. In Eastern Europe it may be difficult to explain how consumer law and civil law relate to securities or insurance contract law. For a Western European lawyer, the ”system” will ultimately provide an answer.

At the organisational level, Estonia differs from the two other countries in that it has a powerful Ministry of Justice. In the two other countries such unifying force is lacking, and the acquis conformity check of draft laws is performed by the EU integration offices. This also means that some problems are disclosed at a (too) late time where a discreet and expedient solution is no longer available.

Therefore, the European Commission’s requests for documentation and explanation, as well as plans like the EU-required NPAA (=National Program for Adoption of the Acquis) get increased importance, because they enforce the creation of track records. When a short annotation to draft laws (corresponding to the general introductory part in Danish bills) was introduced in the rules of the Latvian parliament, it was very much due to the efforts of its European Affairs Committee.

6. A Well-Functioning Public Administration (Institution Building)

6.1. Why Does the EU Insist on Institution Building and a Business Policy?

EU is not unique in printing good laws in the legal gazettes. But the EU and Northern America are the parts of the world with best chances of correct enforcement of laws under due process of law with competent authorities and courts, without corruption, and within reasonable delays. And the EU is adamant that the candidate countries take over this inheritance *hic et nunc*, i.e. on day one of membership. Equal pay and equal treatment may be illustrations of this, because they may have been in the statute books in the Soviet Union long before the EU was created. But nobody knew how to enforce them.

The candidate countries have a weak public administration The administration was traditionally very compartmentalised and with little understanding of co-operation and horizontal projects. The salaries are often not attractive for the best and brightest, and one consequence of this is that many young persons work there for a couple of years only. To this came, as mentioned above, the lack of lawyers, both with good theoretical knowledge and with practical experience.

As discussed in 2.2.3, some branches of the state apparatus have problems of corruption. The combat of this is shared between the EU and some international organisations, IMF, the World Bank and UNDP. Creating efficient and honest state institutions is difficult and time consuming. Even though much progress has been achieved, most work lies ahead.

The economic crisises during the 1990’ties demonstrated a link between a major economic crises and an abnormally high corruption level. They highlighted the link between foreign investments, industrial policy, and institution building, and demonstrated that institution building is the key to realising not just the 3rd Copenhagen criterion on acquis implementation, but also to the 2nd criterion on a well-functioning market economy. A successful business policy is by nature horizontal. It requires a cluster of interrelated legislative, administrative and practical initiatives. Part of the successful policy are administrative honesty, skills' experience and depolitisation. Here the Czarist and Soviet obscure bureaucracy traditions and contradicting rules clash head on with the requirements of modern business on “one stop shop”, coherent and practicable rules supported by a rapid and cost-effective public service.

Many business policy plans end up as a fight between states of the same region for the favours of international enterprises. This may be difficult to grasp in time for an old-fashioned

state apparatus which erroneously feels that the enterprises will and ought to beseech them for favours.

To this came, in the early 90'ties, the misconception that market economy and democracy meant an absence of regulation, in short total freedom. The difference between *deregulating* and *reregulation,* e.g. the need to introduce anti-trust legislation, seemed to many to be the negation of market economy. To acquire the proper understanding of this took some years (as it took decades for many in the EU to understand that state aid and a business policy are not synonyms). That may in itself explain why industrial policy is presented without full considerations on taxation and education, or without the inclusion of the all-important services (incl. transport).

There are thus many reasons why the EU and the member states spend so much money and resources to assist the candidate countries in institution building. It is the key to the practical realisations of both the ideals and to the daily function of the Union. Parts of the acquis, and notably the Common Agricultural Policy, only function if all member states have the foreseen administrative apparatus, and if it functions correctly.

6.2. What Is Then Meant by Institution Building?

There is no short definition of institution building. Technically it implies the existence or development of structures, procedures, human resources, and management skills, which are required to develop the economic, social, legal, and regulatory system which is needed to ensure that the acquis and that the Copenhagen criteria are implemented and enforced correctly, loyally, efficiently, and in a workable way. But there is also a more ambitious long term objective, because the efficient public sector is one of the fundaments of a flourishing market economy and the open, democratic society in which the rule of law and due process of law reign.

Thus the candidate country that fulfils the 4th Copenhagen criterion is well on the way to fulfilling the 1st criterion on democracy and the rule of law. But thereby it also furthers the economic and social convergence and thus the 2nd criterion – as well as the formally non-existing criterion on "sustainable track record".

Institution building ensures what in modern company law is styled "good governance" and in the management language Quality-management. Broken down into practical sub-objectives it implies the production of a gross listing of all needs to be satisfied in order that good governance may reign: political decisions (incl. those on prioritisation which most politicians find so hard), the issuing of normative acts, (re)organisation, training and investments. Then can be elaborated

- a plan for legislative actions, its main contents and timing,
- a financing- or budget plan, incl. the needs for assistance,
- a project description with a clear linkage between means and objectives,
- a time plan with priorities, indications of milestones/ success criteria for both the full project(s) and for each step therein.

6.3. The NPAA and the Accession Partnership

The tasks and challenges in institution building are so big and sensitive, and so intimately linked to the historical inheritance and political systems, that each country must cope with the reforms in its own ways, take the tuff decisions itself and then execute them. Otherwise candidate countries will not end up as western style democracies which can take their full and

loyal part in the EU and its further development. But the EU and the member states assist both in precising the minimum requirements and in providing funds and experts.

The major component in this planning is the National Program for the Adoption of the Acquis (NPAA), which each candidate country must annually submit to the Commission. It is prepared in collaboration with the European Commission under an "Accession Partnership" agreement.

It may be difficult to describe and define a huge and comprehensive instrument like the NPAA. In this context it should be underlined that the NPAA is the single framework for all co-ordination and planning activities related to the EU membership. And as such it will also have to deal with the institution building, restructuring, and training.

The Commission's services and local EU-delegation give the NPAA a close follow-up. The control is especially close on competition, financial supervision, intellectual property, or market surveillance of goods, and other areas relating to the Single Market or to the Europe Agreements. But also some other areas are so heavy that the Commission has to take an active interest therein already now, e.g. the ministries of agriculture.

Through these instruments and controls, the Baltic governments and public get well-developed management tools.

All this amount to a broad-based quality boost for the public administration of the Baltic states. A number of "quality locomotives" have been created, and this and the many requirements of the NPAA, concrete projects etc. confer power to such organs as the State Reform Bureaux and Public Administration Schools who aim at creating an administrative culture and tradition and culture that is both higher and common to the whole public administration.

One of the great factors in creating a uniform and higher administrative culture is the judicial control of the administration. This factor has not yet been seriously felt. And it will probably take another 5-10 years before the judicial control and the ensuing horizontal norms become a natural part of the administrative life.

7. The Support Program for Implementation and Alignment of Eastern Europe.

7.1. Aid As a Political Manifestation

A description of the application of the Copenhagen criteria is incomplete without a short discussion on the assistance which the EU and member states run in support of this effort. And we are talking about huge sums. During the 1990'ties, the EU support[♦] for the Baltic states amounted to about 776 mil. Euros, and during 2000-2002 it is planed to be 625 – 800 mill. Euros (incl. assistance for the decommissioning of the Lithuanian Ignalina nuclear plant).

One of the most fascinating elements in this process is the active role undertaken by the Nordic states, and especially by Denmark. It seems generations ago that Denmark took so active a part in any major European policy as in this case.

First, Denmark is by far the biggest bilateral donor in the Baltic region. 1990-2000 Danish assistance amounted to more than 2 bill. DKR = around 300 mill. EURO. If it is compared to the Phare it should also borne in mind that the Danish projects are often more cost/efficient than Phare, wherefore the Danish assistance is bigger than sheer numbers may indicate. The Danish support consists of a number of centralised and decentralised schemes in

♦ Including Phare, Taiex, Ispa, and Sapard.
FEU-pre-accession preparation, Democracy Fund, the Industrialisation Fund, The Environment Fund (the biggest of all).

central and local government. One of the features of the Danish support is that all ministries shall be engaged in assisting their Baltic colleagues.

Second, contrary to Phare, i.e. the Commission, Denmark is not neutral or lukewarm in its support of Baltic membership, be it in public or behind the closed doors. It should be added that the Danish policy thinking on the Baltic region from the outset contained an important defence/NATO component.

Other countries and the Commission recognise this role. And the Latvian government publicly recognised the part which Danish active, technic and political support had for the upgrading of Latvia by the Commission and the European Council since 1998. But not all quarters in the EU appreciate the Danish and Swedish governments' activism here.

7.2. The Phare Program and the Bilateral Danish Support

No country can advance in a "big jump forward" or undo 50 years of destruction and lethargy within a decade without some inspiration and help. Therefore the Baltic states like all other candidate countries are supported by the EU and the member states by

- the sending out of experts, long-term, short-term, or ad hoc,
- the exchange of experts under so-called twinning-arrangements,
- training during workshops, seminars and the like,
- assistance to perform quality checks and control (peer review),
- investment programs.

Phare and the like EU-support is often given under by major assistance schemes whose planning (except Taiex) requires very long time. Typical, during the 1990'ties there operated two big Phare-teams, one on institution building and one on law approximation. Together with the EU-delegations their permanent staff could advice, run workshops and seminars, and call in the appropriate short-term experts. But the sheer size, the mixture of decentralisation and centralisation, and the linkage to the Commission's overall policy, does not make Phare the instrument for rapid deployment or informal follow-up support. Nor does Phare like small projects.

Part of the Danish assistance concept is complementary here. In some areas like social welfare and environment, there may be big programs, but another part of the Danish programs rely on the fact that some assistance should be accorded rapidly and with a minimum of formalities. Programs for assistance in quite complicated areas have been established within weeks. Part of this is being done by the Danish embassies and the resident advisers who are Danish civil servants working in the local state administrations. They can either on the spot advice or establish the contact to their national experts. Thereby many a problem has been rapidly ironed out. And most importantly of all, they may see to it that the problem is correctly diagnosed.

In agriculture this is supplemented by the "3+3"-collaboration between the Nordic EU-members and the Baltic countries. A somewhat corresponding system is operated in police co-operation via Interpol/Europol.

7.3. Some Observations on the Selection and Management of Projects

Fortunately, many persons and institutions want to contribute to the development, training and knowledge transfer which is taking place in favour of the Baltic states. Most is financed by public means. But enterprises also contribute through co-operations, take-overs, new establishments, etc., through the networks of accountants and lawyers and through the co-

operation of the associations and organisations representing various branches of economic life or ideal interests, e.g. consumer organisations.

When operating in the candidate countries, it is important to decide that it is a need in the donor country that is going to be covered. It sounds banal, but many sin here. Danish projects normally begin with a small "pre-mission fact finding mission". It permits to establish whether there is a problem (which is not always the case), and then to assess the nature of the problem and the remedies.

Many assistance administrators are faced with the problem of (increasing) penury of good experts. The persons employed must be experts with some pedagogical skills. Their practical and theoretical experience, as well as their attitudes should be checked. Non-experts whose main qualification is gainful purpose, can create relatively bigger problems in a candidate country than in a more robust Western environment.

It should also be realised that the barriers to be overcome may be more and bigger than may be guessed by a superficial regard. There are still huge differences in linguistic knowledge, concepts and experience. Equally, experts should try to take a broader look and improve the concepts and the coherence of the legal system and public administration. After all, that is where the assistance shall be ultimately tested and tried.

And then there is the good advice which we were taught as children: Do not speak too well of the good which you did.

Some experts and donor countries wish to export their own systems, or systems which they prefabricated in the belief that this is something which candidate countries *must* need. Sometimes there is scant regard for the local problems or for the local legal and administrative systems. One such example was those who wanted to adapt the public procurement systems to the rules of the World Bank, UN or USA, disregarding the obligation to implement the EU directives.

Even inspirations from several EU members may be the source for future troubles. The competition of systems can, like unregulated competition, have both good and bad effects. It must not be forgotten that a flanking policy of competition is information, and that there are situations where the candidate countries do not have the expertise to choose between or to integrate several donors into a coherent whole. How will insurance contact law work, if the inspirations for the civil code, the insurance contract act, and the insurance business law came from three different EU legal systems? The Danish policy for such cases is that it is better to abstain and to leave the whole battlefield to one other donor.

Finally, it is important to foresee the need for follow-up visits in order to ascertain that the expertise contributed to something working and workable. Many donors desert their local partners here.

7.4.Support for Training and Education

An important element in all support is training and education. It may be general training on EU law or negotiation training, on which there have been many Danish activities, or the many Phare, Taiex or bilateral seminars and workshops on various directives or reforms.

But the Nordic countries have also taken an interest in the more permanent education structures for a number of motives. The Copenhagen criteria require lots of permanent knowledge. A proper administration, democracy, and the rule of law require well-educated people, and a well-functioning market economy requires that lots of up-dated educations are on offer.

The educational system, including the universities with their cherished autonomy, is not the easiest thing to reform. But with the Eurofaculty-project it was tried.

Some bilateral projects should be mentioned. Denmark, having permanent educational advisors in the Baltic states, has i.a. initiated

- the CPT-program (continuous professional training) for merit- and competence-giving education for civil servants in collaboration with universities and the schools of public administration,
- actuarial and accountant educations at local universities, and an EU law training at *magistratura*-level under a Danish university.

The Swedish government and Stockholm's Business School have created the twin schools of Stockholm School of Economics Riga and the Riga Graduate School of Law, both having university status, see 5.1.

Such creations contribute to the development of lasting expertise, and to the improvement of science in the local languages. They may have a kind of kick-start effect for the whole educational establishment which starts a "good circle".

7.5. Public Awareness Support

A major challenge and ambition is to familiarise the public, both NGOs and the population at large, with the EU: the facts, the consequences, the chances and challenges, advantages and disadvantages. This is *Public awareness* which is basically a task for the Commission. For well-known internal policy reasons, Denmark treads carefully here.

Even more frequently than in the present EU, the public administration has a *de facto* monopoly on EU knowledge. The NGOs represent their members against the state apparatus, and demonstrate often a low interest in disseminating EU information or to use resources for this. The same applies to part of the press. Therefore public awareness campaigns target primarily the journalists and the politicians so that they may be better equipped to transmit correct information.

In general terms, the population considers the EU as something good. But it should not be overlooked that for anybody of more than 20-25 years, the word "union" is loaded with the most unpleasant of memories.

8. The Prospects For a Future With the EU

When all the details have been examined, the big question remains: Will this venture succeed, and when.

The first part of the question we can answer in the affirmative as we accord full faith and credit to the decisions of the European Council.

But for the candidate countries the question is: when? For both economic, political and security reasons they want to enter as soon as possible. They often argue that if the waiting period is too long, it is difficult to motivate the civil service, the political system, and the electorate to actively support EU membership.

For many years, optimists spoke about 2002. But that is not realistic. Albeit discretely, the years 2004 - 2005 are aired. Technically, this is more realistic.

Even if negotiations have begun, we cannot overlook the fact that the EU side is not quite ready yet. The EU has not defined its own position on some core questions: free movement of labour, agriculture, and regional funds.

Presently the main worry is still to make candidate countries fulfil the Copenhagen criteria. Some of the Copenhagen criteria have something in common with the morals of those selling elastics by measure. It can be, and is being, argued at great length whether the market

economy of country X is or will be sufficiently well functioning inside the EU, whether it can sustain which amount of competitive pressure, or whether institutions are positively well-functioning. But these are also areas of dynamic developments. The states may indicate a direction of development, but much depends – as pointed out by the WTO, Francis Fukuyama, and anti-globalisation demonstrators alike - of underlying forces which no national state controls.

Otherwise the acquis implementation fully depends upon the public authorities, and the European Commission has well-developed tools for implementation control. But it remains a huge task for the candidate countries.

What does this mean for the timing? If we take the case of Latvia, there is the basic political decision to implement all acquis before 2002. *If* the NPAA is fulfilled, *and if* the foreseen technical assistance arrives, *and if* no unforeseen technical and political events take place, 2002 is technically possible. But all experience does indicate that there will be unforeseen events, and thus 2003 is the more likely year for acquis implementation. Afterwards the market economy and the institution building shall have time to adapt and digest, and then we are in 2004.

Thus, with the possible exception of Hungary and Estonia, no candidate country can be "track-record" ready before 2003. A political problem is that many member states cannot conceive a first round without Poland. And the acquis implementation in Czech Republic, Poland, and Slovenia is in arrears.

There is one further unknown factor to be added. All discussions on acquis implementation rests upon the assumption that albeit the acquis will be further developed between now and the accession date(s), it will not increase or change dramatically. But the European Councils during 1999 and 2000 (from Lisbon to Nice) appeared ambitious in areas like the internal market, IT, or life quality (environment, labour and social affairs). Thus, more acquis which requires efforts to implement may be added *before* the accession.

It is also a question whether a successive intake of candidate countries over more than two rounds is technically desirable.

All this explains why some observers believe that there will be, somewhere around 2004/05, a "mass wedding" accession for all candidate countries except Turkey, Bulgaria, and Rumania. But logically this does not imply that all will enter at the same date, or will have the same transitional periods, albeit this be highly desirable for reasons of legal technique and transparency.

Finally, the technical side of negotiations cannot be overlooked. The acquis of to-day is voluminous and complicated. And the Commission who carries the technical burdens has to cope not with one, but with 12 parallel negotiations. The final round of horse-trading on transitional measures and periods will be more complicated than anything seen before, and many fear that especially Poland will present huge problems.

On the other hand, it must be presumed that a somewhat longer preparation period (until 2004/05) will mean that the Baltic and Central European candidate countries have changed, developed, adapted, and converged so much that their entry into a politically stronger EU and EUROland will be much more unproblematic than feared by many to-day.

Statistic:

To get comparable figures for GDP that could illustrate the development has been a bit more difficult than it ought to be. I finally settled on these:

Country\year	**1990**	**1997**	**1998**

(in USD)			
Estonia	6.760	4.765	5.202
Latvia	12.490	5.638	6.396
Lithuania	13.264	9.585	10.736
Denmark	133.361	170.034	174.870
Russia	579.068	435.953	276.611

Source: www.worldbank.org/data/countrydata

The turbulence of later years are illustrated by the GDP development 1997-99:

Country\year (bill. Euro in current prices)	**1997**	**1998**	**1999**
Estonia	4,1 (+10,4%)	4,7 (+4,7%)	4,8 (-1,1%)
Latvia	5,0 (+8,6%)	5,4 (+3,9%)	5,7 (+0,1%)
Lithuania	8,5 (+7,3%)	9,6 (+5,1%)	10,6 (-4,1)

Sourc: EU Commission Annual Progress Reports 2000

This basically demonstrates a good progress in the economic performances of the Baltic states – and even more importantly the solidity of that development. But another dimension is the GNP pr. capita. It amounted in 1996 to:

Country	**Per capita**	
	1996	**1999**
Russia	2.260	2.270
Estonia	3.360	3.480
Latvia	2.420	2.620
Lithuania	2.540	2.620

Source: www.worldbank.org/data/countrydata

***Litterature and Sources*:**

The above description and analysis builds primarily upon practical and theoretical work, including more than four years in the Baltic States.

On all candidate countries there pours out a constant stream of political, legal, sociologist, and economic reports. Many of these reports will in a world which fortuitously is in constant move and improval, have turned into history so rapidly that it is hardly useful to refer readers to them. The most important documents are the progress reports which are submitted annually by the candidate countries in July, and the reports to the Council by the European Commission in October/November. They can be read at the websides of the European Commission (europa.eu.int/comm/enlargement) or of the Ministries of Foreign Affairs or the integration offices of the Baltic states –

- for Estonia: www.mfa.ee, www.eib.ee
- For Latvia: www.mfa.gov.lv, www.eib.lv,
- For Lithuania; www.urm.lt, www.euro.lt.

This can be supplemented in greater details by the National Programs for Adaptation of the Acquis (NPAA) which all candidate countries establish every spring.

A very informative analysis of the accession processes is *Christopher Preston*:: Enlargement and Integration in the European Union (1997). The French policy on the Baltic region, its various twists and turns (and the French conception of Denmark's role) is described by *Florence Deloche-Gaudez* : La France et l'élargissement à l'Est de l'Union européenne (Les Études du CERI, no 46 – octobre 1998).

For the legal aspects, detailed information can be gathered through the English version of the annual publication *Juridica*, issued by the University of Tartu, Estonia.

A case study on adaptation to the 2nd Copenhagen criteria (economy) is given in: Latvia and the European Union, ed. *Barry Lesser* (Halifax, 1999) and in various OECD publications.

Realistic descriptions of the later years of the Soviet occupation and its problem is given in many works. I found the books by *Helene Carrère d'Encausses* especially helpful as well as *Michael Gorbachov*: Perestrojka (1987) For Balticum special attention should be drawn upon *Georg von Rauch*: The Baltic States, The Years of Independence 1917 - 1940 (1995), and *Romuald Misiunas og Rein Taagepera* : The Baltic States, The Years of Dependence 1940 - 1990 (1993).

A good material on the problems of economies in transition is contained in IMF's "World Economic Outlook" (2000), Ch. 4: Accession of Transition Economies to the European Union: Prospects and Issues, and *Michel Moussa*: Factors Driving Global Economic Integration (www.imf.org/external/np/speeches/2000/082500.htm). The corruption issue is dealt with by "Anticorruption in Transition: A Contribution to the Policy Debate" (World Bank 2000).

The Swedish (and other Nordic) support is discussed and analysed in the Swedish public report: "Att utveckla samarbetet med Central- och Osteuropa", SOU 2000:122.