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LEGAL PROBLEMS IN TRANSPOSING THE AQUIS COMMUNAUTAIRE IN SERBIA

Although the political criteria are always in the focus of media and wider public when discussing the accession of Serbia to the EU, one should not forget the third Copenhagen criterion which represents, beside the political and economic criteria, a great challenge for the Serbian administration. The Copenhagen criteria may now seem in the distant past, they still constitute the prerequisites for accession to the European Union. After all, the third criterion entails the adoption and implementation of the *acquis* in Serbia – the ability to assume the obligations of membership, in particular adherence to the objectives of political, economic and monetary union. As any other accession state Serbia is facing significant problems in adopting and implementing the *acquis*.

- The transposition of the *acquis* is especially difficult in cases of directives due to their legal nature. Most of the legal difficulties involve the proper transposition of specific EU legal concepts which are not familiar in the national legal system, as well as the issue of transposition of certain key definitions and of building a national legal and expert terminology in particular policy areas.
- The other problem is the expert proofreading of translated texts, which again might slow down the process due to the fact that bare translation is not sufficient for a proper transposition.
- Improvement of the cost-benefit analysis of each piece of legislation in the process of transposing the *acquis* is required. This mechanism is of great significance in all areas, especially in the field of environment, where the transposition often requires the use of new technologies, new and complex procedures concerning the various types of installations as well as the establishment of different administrative bodies.
- Another relevant point in connection to the cost-benefit analysis is the ability of companies to adjust to the new legislation that is adopted in the process of the *acquis* transposition.
- The lack of public debate in the decision-making process is one of the weaknesses in the transposition process that characterises all areas covered by the *acquis*. Two problems are apparent here. First, the public is generally not interested in this process. Second, the procedure for the participation of the public in the decision-making process undermines public participation.

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- Both the horizontal and vertical coordination between state bodies still needs to be improved. Horizontal coordination is between line ministries while vertical is within ministries and local self government. The lack of horizontal coordination that entails the coordination between the line ministries may result in conflicting provisions or incomplete regulation of certain issue. In some cases it may also lead to incomplete protection of individuals. Not less important are the overlapping competences in certain policy areas that require a multi-sectoral approach. This often renders the transposition more complex and leads to overlapping competences.
- Implementation and enforcement cause problems in Serbia. As for the administrative bodies it may be said that the administrative capacity is still weak in various policy areas in terms of the number of personnel and their expertise. The judiciary is still undergoing significant reforms.



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