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THE IMPACT OF THE E.U. INTERNAL COMPETITION AND OF THE STATE ASSISTANCE REGULATIONS ON THE ECONOMIES OF THE ASSOCIATED STATES

This article presents the political and economics steps taken by all countries who are making efforts to join European bodies and the principles of European enlargement. The European Union has a strong policy concerning Central and Eastern Europe to support the efforts of these countries to establish new societies. This article is a review of the programs concerning these issues.

The introduction of competition regulations and the control of state assistance in the Associated States has obviously been the main drive toward market economy and the current economic growth. The adoption of the Treaty of Rome and its sections on the rules of competition that govern trade inside the E.U. is obviously also a must for E.U. accession. There is, however, a growing suspicion that the Union expects the Associated States to implement the most restrictive laws that are not applied inside the Union.

There are two categories of considerations here. Are the rules applied in accordance with the Association Agreement, fair and impartial? Is it truly reasonable that the Union demand the comprehensive implementation of the rules of competition and state assistance without it having to engage itself in any way as to whether the accession will take place? The most serious critique of the Union is probably linked to the fact that it forces Associated States to implement its rules with no guarantee of their participation in its market or accession to the E.U. In the EEA agreement, the tools of the competition policy, the anti-dumping and the guarantees are no longer valid inside the Union, because the rules of competition and state assistance are implemented. During the Essen European Council, the Union suggested that Associated States take up these rules, but no concrete action was taken. No Associated State has ever been forced to adopt the Union legislation prior to accession.
The feeling that the E.U. expects candidate states to implement its laws more strictly than it does itself, comes from the fact that the E.U. actively puts pressure on these states not only to implement these laws in their trade with the E.U., but also in their internal trade market. This is not the case inside the E.U., where there are different national rules. Member States with more important objectives were given levity in implementing the competition laws. Holmes gives Greece as an example, which benefited from special provisions in the liberalization of its telecommunication market, because it had to maintain monopoly profit to finance its investments. However, the E.U. seems to show little interest in special exemptions, which is, probably, good news for Associated States. The greatest danger, however, is that these same rules can be used to favor companies inside the Union, putting local companies and those outside the Union at an obvious disadvantage. Given the degree of politicization in both competition strategies and state assistance, it is a normal thing that these laws are used as a matter of course to prevent Japanese and South Korean investments. Agreements between E.U. companies and Associated States’ companies can also prevent parallel imports, although these are accepted by the Union.

The impact of these regulations on the economies of Associated States may be negative, as they tend to drive away investors from outside the E.U. and local companies. This would be greatly mitigated, however, if the E.U. position would favor a quicker accession, as the Associated States would have already accepted central control from Brussels in many fields. Giving up sovereignty for the certitude of accession in 2002-2003 would be welcomed for most Associated States.

Both competition and state assistance regulations are important for the economies of the Associated States, which is why pushing for their correct implementation is equally important. However, Brussels is expected to also take into account the difficulties related to the adoption of these regulations. As any constant reader of the Handelsblatt or The Financial Times will know, the Union is far from perfection in this respect.

Workers mobility, companies setup and the offer of services

From a technical point of view, workers’ mobility was a highly difficult and complicated issue between the Associated States and the E.U. Politically, the issue has been tender because of the immigration and work related difficulties. After the fall of the Berlin Wall, the stories of millions of Eastern Europeans looking for a better
life in the west became common knowledge. Although the life Easterners found in Germany was no better, the traumatic experience for the country and immigration from other parts of the world led to highly restrictive laws for the mobility of people from outside the E.U. E.U. maintained its caution as criminality increased outside its borders, notably as unsolved car thefts in Eastern Europe.

Nevertheless, this caution was based mostly on the work-market. Because of a great increase in unemployment rates in Western Europe and the contribution of cyclical unemployment, worldwide levels of unemployment have become important ever since the latter part of the 80s. There is, therefore, a growing fear that immigrants from the east will further deteriorate the situation, since they work for lower wages than the local workers inside the E.U. Although the experience of the previous accessions and some basic notions of economics can easily alleviate this fear, the political pressure has been such, that Accession Agreements are currently quite restrictive about workers’ mobility.

The three issues we are discussing in this section all deal with the work-market, although they seem quite different from each other. The regulations of workers’ mobility deal with general immigration issues. The setting up of companies inside the E.U., by regulating the conditions and freedom for Associated States’ companies, gives at least some mobility inside the Union. The offer of services is a vast field, but Associated States benefit mostly from constructions and transportation services linked to workers’ mobility.

Contents of Association Agreements

Workers’ mobility

The Agreements do not offer any new specific improvement of mobility for workers, despite their purpose to treat workers from Associated States in the same way that they treat their own workers, already working legally in a country.

The Agreements state that no discrimination based on nationality shall be made between workers from Associated States who work legally inside the Union and Union-based workers, regarding work conditions, wages and termination of contract. Moreover, the spouse and children of a hired worker also have access to the work-market. These regulations shall not apply to temporary workers and to those who enter a country on a strict bilateral agreement made individually with a Member State
(such as the German “Werkvertrage”). The Associated States make the same provisions for the Union’s workers.

The Agreements make provisions for the payment of retirement, invalidity or death and medical care wages for all legal workers from the Associated States. All these must be transferable according to the Member State’s legislation. The worker’s family members must also receive allocations. The detailed rules are to be set up by The Association Council and must not reduce the existent advantages of the Union workers.

The Agreements also state that bilateral agreements regarding workers’ mobility should be maintained or even improved and that all Member States should consider introducing similar agreements. This usually refers to the German Werkvertrage program. According to the agreements, The Association Council should take into consideration granting the right to professional instruction to all the legal workers from the Associated States. The Association Council is currently looking into other ways to improve workers’ mobility in the second stage of the Agreements. Finally, the associated country is to receive technical assistance to establish a suitable social security system.

On top of all of this, the Member States show little or no flexibility and their main interest is to insure a non-discriminatory attitude toward legal workers from Associated States. There was, however, a hardening of the Member States’ stance between the negotiations of the first Association Agreements and the latest Baltic Agreements.

**Companies’ setup**

A very important chapter of the Agreement deals with the conditions under which companies of one side may be set up and may function on the territory of the other side.

The main goal is to give the other side’s companies the same rights given to national companies.

In this chapter, there are clear distinctions between:

- company, subsidiary and branch;
- setup and operation of a company;
- citizens who are self-employed and citizens looking for work.
The situation of companies from Associated States is very clear. The companies, subsidiaries and branches from Associated States may receive either national or MFN treatment (based on which of these works best for them) and the right to set up business and operate on member state territory after the entry into force of the Agreement.

For Union companies, the treatment varies according to the Agreement. In Hungary’s case, for instance, all Union companies, except financial services companies and other excluded sectors, only receive national setup and operation treatment at the end of the first transition period. Financial services and other companies receive this treatment only ten years after the entry into force of the Agreement, namely at the end of the transition.

Again in Hungary, some sectors are completely excluded from the setup agreement: primary agriculture, forestry and fishing (the refining of raw products excluded), the ownership, selling and long-term lending of real estate, land and natural resources, legal service and gambling.

All the Agreements, except those made with Estonia and Latvia, have such exceptions, concerning mainly agriculture, forestry, real estate and natural resources. Sometimes, gambling, formerly a state monopoly, and national tourism- historical and cultural objectives- are included in the Agreements. In Romania, the Agreement permanently excludes legal services, while in Bulgaria it treats real estate similarly, but solely in certain regions of the country. The exceptions, which the Union hopes to eventually include in the Agreements, are motivated by fears that foreign investors might buy critical real estate or services at predominantly low costs. All Agreements, however, have a clause allowing the above-mentioned exceptions, if they are necessary for the good operation of the business. For instance, a foreign company cannot buy and make money out of farms but it can buy the property where it has its premises. Therefore, the three newest members of the OCDE from Central Europe must liberalize their real estate sale regulations.

The Union has a permanent exclusion from national setup treatment as well, although it is not included in the Agreement with the Visegrad countries. The exclusion deals with the purchase of real estate close to certain national borders and especially the exception in the Maastricht Treaty which allows only Denmark to maintain its restriction on the selling of certain internal real estate.
Temporary exclusions are diverse as well, ranging from the production of vodka to the postal services, in Lithuania, the defense and steel industries in the Czech and Slovak republics, the high-tension lines and pipe transport in Poland and the owning of harbor infrastructure in Latvia. The temporary exclusions are more numerous than the permanent ones, depending on specific circumstances in every associated state.

The Hungarian Agreement is the most restrictive, in the sense that, although the operation of Union companies is receiving national treatment since the entry in force of the Agreement, the setup is not allowed in practice until the end of the first transition period and the temporary exceptions are to be maintained over the same period. In other Agreements, the setup and operation of companies is to receive national treatment from the very entry into force, with the exception the exclusions. Most excluded fields are protected until the end of the transition period, although Poland has liberalized some sectors at the end of the first period.

The Agreements differ greatly when it comes to the citizens’ situation, because, in time, the Member States have become increasingly restrictive. The Agreements with Hungary, Poland, the Czech and Slovak republics, Romania and Bulgaria, which were among the first concluded, granted immediate national treatment to citizens from the above-mentioned states in both setup and operation. For the three Baltic States, the Union only granted these rights from 1999 on, although Estonia has been applying them since the entry into force of the Agreement. The restrictions came after negative experiences for the Member States, where citizens from the Associated States were using their rights of setup only to get a better-paid work position.

However, Associated States have always granted the same treatment to both companies and citizens. The only exceptions in this respect are Latvia and Lithuania, which adopted the same position regarding citizens from the Member States as the European Union did toward Latvian and Lithuanian citizens.

Financial services are dealt separately in the Agreement because of the need for adequate and cautious rules in this field. Every Agreement has an identical appendix identifying financial services, insurance and other banking services. In most cases, Associated States only grant national treatment after the end of the transition period. Member States grant immediate liberalization; however, the Agreements state clearly that:
In the services sector, despite all other provisions of this Agreement, none of the sides shall be prevented to take measures based on caution, including the protection of the investors, depositors, owners of strategies and other persons toward whom any financial services supplier is indebted, or in order to insure the integrity and stability of the financial system. These measures shall not be used as means to avoid the obligations of each side, as stated in the Agreement.

It shall not be possible, therefore, for a financial institution of one side, set up on the territory of the other side, to avoid the caution based regulations of that side. In the financial services sector, the Agreement allows for a certain deviation from national treatment, where this is justified by caution. This happens when subsidiaries of financial services companies are set up on the other side’s territory without also registering the company on that territory.

Generally, each side can regulate the setup and operation of the other side’s companies on its own territory, as long as it maintains the principle of national treatment. This does not apply to foreign companies’ subsidiaries, which may be regulated separately as long as the difference in treatment does not exceed the strictly necessary technical and legal issues.

The same chapter also deals with the work places for the citizens of one side whose companies are set up and operate on the other side’s territory. The Agreements state that “a company from the European Union” or, for instance, “a Latvian company” set up respectively on Latvian or Union territory, has the right to hire in one of its subsidiaries or branches, according to the legislation of the host country, namely the legislation of Latvia or the European Union respectively, workers who are citizens of the European Union and Latvia respectively, on condition that such employees are key-personnel, in accordance with Paragraph (2) of this Article and are hired exclusively by companies, subsidiaries or branches. The residence and work permits of such employees are to cover only the timeframe of this type of employment.

The Agreements define key-personnel as people who work in an upper echelon of an organization, who manage the company and receive surveillance and management related counsel from the Administration Board and the company’s stockholders or the equivalent thereof, whose work description includes the management of the setup of a department or a sub-division of the company, the surveillance and control of other top management executives and the sole authority to
recruit and terminate contracts of hired personnel or to recommend recruitment, termination of contract and other personnel related decisions.

Key-personnel also include other individuals working in an organization whose knowledge is essential for the organization, research, technical and management equipment. The assessment of such knowledge may include, apart from industry specific information, a high level of qualification regarding the type of work or trade requiring specific technical information, including belonging to an accredited profession.

To qualify as “key-personnel”, the employees must work for at least one year in the organization before moving to the other side’s territory.

These clauses appear more or less frequently in the Agreements. In the latest round of Agreements (with the Baltic States and Slovenia) the concept of “person transferred inside the society” was used to narrow the definition of key-personnel, which suggest the increasing insecurity of the Member States. In the general clauses of these latest Agreements, it is made clear that nothing is to impede the sides from applying their own laws and regulations of entry, stay, work and work conditions, residence and offer of services as long as these do not annul or alter the advantages of the Association Agreements.

As regards the regulated professions, the Agreements provide for the establishment of the steps to be followed by the Association Council in order to grant mutual recognition to the two sides’ qualifications.

The last part of the chapter on setup is a unilateral clause of protection for the Associated States, similar to that on trade. The Associated State may deviate from the regulations of setup in states where industry is under restructuring, it is dealing with serious problems (mostly social problems), is suffering from a serious reduction of market share or is new. The use of this protection is, however, limited to the transition period (with certain variations from one country to another), must be necessary and reasonable and must not discriminate against Union companies already established in the country. Although the consultation of the Association Council is compulsory and the measures are to be applied only one month after the notification, there is still the possibility of informing the Council ex post, if there is “a threat of irremediable damage”. After the end of the transition period, (or whatever other deadline is set in the Agreement) such measures can only be introduced after the agreement of the Association Council.
Naturally, these provisions may be modified on bases of health, security, public policy and official authority issues.

The articles on setup are liberal, in the sense that they allow for immediate national treatment for companies and, at least in the first Agreements, for the citizens of Associated States. The liberalization, however, is reduced by the very strict articles on the mobility of the workforce.

The offer of services

The chapter on the offer of services focuses on transportation services not included in the other chapters. There is only one general declaration for the general offer of services, allowing the sides to take progressive measures to accept the other side’s offer of services. The paragraphs about key-personnel are repeated. In the first Agreements, the Association Council promised to take the necessary measures to gradually introduce the liberalization of the services trade. This is another instance where the growing caution of the Union is revealed- the Baltic Agreements state that such measures shall be taken only after 8 years from the entry into force of the Agreement.

The articles on transportation regulate the free access to international sea transportation markets and the national treatment to the sides’ boats and access to harbors and infrastructure. They also refer to future agreements, which should negotiate the status of land, inland water transportation and probably air transportation and decide on a cease of the protectionist measures until the end of the negotiations. Finally, the Baltic Agreement puts forward the negotiation of an inter-modal transit agreement on the territory of the other side.

Experience in application

As shown above, it is still early to make a balanced presentation of the implementation of these sections of the Association Agreements. There are, however, some general trends:

The issues are geographically concentrated

The setup and workers’ mobility are issues affecting countries in Central Europe- mostly Germany, Austria and, to a certain extent, the Scandinavian countries. Germany has had the largest experience, also harboring the largest numbers of Associated States’ companies and citizens. Germany also enjoys the dubious status of
being the country with the biggest number of immigrated workers from Central European countries. The high number of Polish companies in Germany, for instance, has led to the existence of a flourishing German Association of Polish Enterprises.

The general trend for the setup program, organized through the Chambers of Trade and Commerce, was a slow start and some obvious major problems. The biggest issues concerned certain liberal professions, where doctors and dentists from Central Europe could work in the E.U. if their academic qualifications were recognized, while their German counterparts were prevented to do so in the associated countries because of a flooding of the market. There have also been technical problems in interpreting the Agreements, but these were mostly minor.

Germany is also the main destination for the workers from Central Europe headed for the Union. Until mid-1997 Germany had the most important national program because of the Werkvertrage, although the system created deep resentments among German unions, which maintained that immigrants work for lower wages than legal ones (which must be true, since, otherwise, unemployed German workers would be hired). However, the program ended once the European Union accused Germany of granting excessive rights to German companies, as opposed to non-German ones. Throughout this, however, Germany remained the most tolerant Member State, despite dealing with the greatest concentration of cases.

These fields should not be regulated by the Union, but are not included in national legislation

A major issue is that Association Agreements are directly implemented in such matters by Member States, with no national law to back them up. On the other hand, local authorities which deal with the setup directly often have little or no knowledge of the Association Agreements, and no guide to interpret them. It is obvious that, in such circumstances, misunderstandings are rampant. A typical case was the refusal to allow a student to set up as a self-employed artist in Berlin because she was not “exclusively self-employed” as per the Association Agreement. Eventually, the case was solved in the student’s favor.

For certain Member States it is not clear that the Association Agreement has precedence over national and local legislation

There are many national and local laws on workers’ mobility, self-employment and setup which are annulled by the Association Agreements, unbeknownst, voluntarily or not, by the local authorities. A typical case was that of
the Polish airline LOT, whose employee was not allowed to move to LOT’s Vienna office despite being a key-member of the personnel, because Austria had a limitation to the number of foreigners working on its territory. This was in clear breach of the Association Agreement.

*Administrative procedures are used to prevent the use of Association Agreements in these fields*

The possibilities to use administrative procedures to slow down the application of the Agreements are seemingly endless. In Greece, for instance, such delays were used to prevent spouses of legal workers from Associated States from receiving work permits (this is widespread in other Member States as well).

*The recognition of professional qualification by one member state does not give to a worker the right to move to another member state*

Associated States’ freelance workers may work in Member States if their qualifications are recognized. Given the progress in this field, one would expect that once one Member State recognizes these qualifications, they would be recognized in the rest of the E.U. as well. However, this did not apply to France, which decided not to recognize qualifications previously recognized by Germany.

There is not doubt that such problems will continue to plague the application of the Agreements, but one can say that, generally, the rules seem to function well, as opposed to liberalization in other fields, which was never a happy issue in Associated States.
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