THE 8TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

**Legal Sciences in the New Millennium**

# Harmonization of Legislation of a Candidate Country with EU Legislation: Insights from the Prism of the Citizens of Macedonia

**Abdula Azizi**[1]

**Abstract**: Since the majority of the Western Balkan countries remain outside the European Union (EU), although they have expressed a willingness to join the EU, it is considered necessary to examine the topic of harmonization of national legislation of these countries with the EU legislation. So while until now, to this problem is not devoted adequate attention in scientific circles, it is considered necessary to explain and analyze the theoretical aspect of the harmonization of the legislation of the candidate countries with EU legislation, while they also learned things from practice the current member states of the EU. In particular, a survey was conducted with the citizens of Macedonia where they express their opinions on the harmonization of Macedonian legislation and government policies related to Euro-integration processes in their country. I hope that in the future this work will encourage research and other activities related to government policy on the harmonization of national legislation with EU legislation.

**Keywords:** Euro-integration; harmonization process; European Union legislation

## 1. Introduction

Harmonization of legislation of a candidate country with EU legislation is one of the preconditions for EU membership. Harmonization of legislation aims to create a legal system in the country that will not conflict with EU rules.

Macedonia has before itself a long way and a lot of work to harmonize its legislation with the EU, in order to meet the political criteria for EU membership. Determination of Macedonia for harmonization of legislation with the EU, noted in Article 68 of the SAA, entitled "Harmonization of legislation and implementation of laws" which expresses the importance of the approximation of the laws now and in the future with the EU, as well as Macedonia expressed readiness to ensure that its legislation will be gradually made compatible with those of the EU.

Harmonization of legislation should not be understood as full identification laws, but may be a few differences or specifics as legal norms must fit the specific conditions in the country. However, it should be within the limits given by the EU, while differences should be reduced over time to full EU membership.

[1]Associate Professor, PhD, SEE University. Address: Ilindenska bb 1200 Tetovo, Republic of Macedonia. Tel.:+38944356132. Corresponding author: a.azizi@seeu.edu.mk.

## 2. Basic Features of EU Legislation: Definition, Resources and Its Relationship with National Law

Law of the European Communities (droit communautaire), namely the European Union Law, based on a set of rules contained in the treaty of Paris, Rome, Maastricht, Amsterdam, Nice and Lisbon, as international agreements which were created communities, but also in acts of the institutions created by these treaties. It is a complex set of norms which create mutual rights and obligations between the contracting states. Precisely, the legal system, takes effect in the territory of Member States for those areas of competencies recognized by the community treaties, and in this way the legal system works alongside national legal systems, namely co-exist, even though in most cases , presented a number of practical problems in the implementation of community law.

It is the specific system of international law, created by the transfer of sovereign rights of states. It is common to the Member States, which among other things regulates the common market, where all differences disappear over the nature, location or subjects of legal relations. While the law that regulates the relationship, became internal law for these relationships (Kapteyn, 1998).

This system is specific as it does not separate the internal legal order of the Member State from the EU itself, and has ambitions to constitute the internal legal order of the Member States with the help of techniques that are based on international treaties (Carton, 2002).

The legal system of the EU is complex because it is characterized by continuous expansion of legal powers and resources.

One of the main features of the EU legal order is that it is based on written legal sources. In general, there are three sources of EU law:

• The right established by Member States through the founding treaties and the rights defined by the EU institutions,

• General principles of law recognized by the European Court of Justice and

• International agreements concluded with non-member states of the EU.

The EU is based on the agreement between independent nations decided to share a common future and to carry its sovereignty to the EU (Fontaine, 2004). Unlike past attempts to unite Europe using force, the EU is based on the compliance of member states (McKay, 1999).

This means that member states will operate under the same rules, and that EU legislation should have the same significance and effect to all member states.

Relationship between EU law and national legislation is characterized by the ability of potential conflict between them. Such a situation is created whenever the provisions of EU law, create rights and set direct obligations of EU citizens, while their content is contrary to the rules of national law. It seems that behind this conflict are two main issues; direct application of EU law over national law with which is in conflict, and the supremacy of EU law.

## 3. Acquis Communautaire

Acquis communautaire is an expression in French that means the rights and obligations set out by the member states of the EU, and its contents include EU legislation which obliges member states (primary and secondary legislation, decisions of the European Court of Justice, general principles of

law, international treaties, other acts, activities that governments take together in the area of justice, home affairs, foreign policy and security).

Any state which tends to become a full member of the EU, after gaining candidate status for membership and negotiation starts, it usually faces the challenges of full acceptance and implementation of the acquis communautaire.

Acquis communautaire is an integral part of the negotiations for EU membership. Accession negotiations with candidate countries focus on harmonization of national legislation with the acquis, and states are required to develop the capacity of the public administration and the judicial system for effective implementation of the acquis.

Candidate countries necessarily need to implement the acquis before accession to the EU. Some exceptions are permissible only if it does not affect the functioning of the EU. These exceptions are transitory and should be limited in volume and duration. Within the negotiations, there is no real agreement on the full sense as the final result is determined in advance and implies complete acceptance of the acquis with the exception of the transitional rules (Braun, 2002).

The corpus of the legislation must first be translated into the official candidate country, then must ensure adequate administrative capacity and financial support for the harmonization of national legislation with the EU acquis (Council Conclusions, 1998); thereafter shall determine the dynamics of the operation of the institutions necessary for implementation of legislation and resources for implementation.

Any future expansion makes the acquis communautaire becoming more voluminous. Since the establishment of the EU so far, have been approved and published over 170 thousand pages acts, while if it continues the intensity of adoption of new laws, is estimated that by 2020 will reach 351 thousand pages in legal acts (Efremova, 2008). So acquis communautaire is matter which varies and usually expands over time.

The capacity to implement acquis includes four phases; transposition, implementation, adaptability and realization (Enlargement of the EU, 1999).

The importance of the acquis is that it ensures the homogeneity of the legal system of the EU, since it is based on the idea that it will not change during the process of cooperation with other subjects of international law. Acquis fully guarantees the integrity of the system through the implementation of EU legislation in the member states, while it must be accepted by candidate countries for EU membership.

## 4. The Approximation of Member States" Legislation with EU Legislation

The term "harmonization" means the adaptation of national law with the acquis communautaire, which include: the rights and obligations of Member States, principles and political objectives set by the founding treaties, secondary law adopted by the institutions, international agreements concluded between States member within the competence of the EU, the case law of the European Court of Justice, framework decisions and other legal acts adopted in the second and third pillar of the EU.

From the legal perspective, the term "harmonization" includes:

• adoption of EU law and mutual harmonization of legislation of Member States of the EU;
• harmonization of legislation of the candidate countries with the EU legislation.

"Harmonization" as the concept has broad sense (approval of EU law in the national legal system as a process through which it becomes part of the internal legal order) and narrow sense (legal approximation of national rules with EU law). In the narrow sense, harmonization means creating a functional entirety, from the different parts, that keep their functional characteristics, which means combination or adaptation of elements from the different legal systems with each other without losing their independence.

The term “harmonization” is often confused with the notion of “approximation”, which means the method by which harmonization is realized. More specifically, this means more authentic approximation of national legislation with EU acts through freely determining of the strategy, methods and techniques and the implementation deadline. Approximation was first used in 2004 with the admission of 10 new member states from the Central and Eastern Europe.

When it comes to harmonization, we often thought of Europeanization of national legislation or its unification with the EU legislation. However, Europeanization means the impact of European integration on national policy and institutions (The domestic impact of the European Law, 2006).

Mutual approximation of laws of the states, which do not reach the level of full unification of the legislation, implies harmonization of legislation. The harmonization can be done by any norm, which should fit the national laws, and if such harmonization achieved full equality, then it comes to unification. Thus, harmonization is the first step towards unification. Unification involves special powers of the EU in many areas, common market, monetary and customs union, four economic freedoms and removing all legal constraints to the Member States, as well as many branches of law (labour, intellectual property, environmental, public procurement, financial, customs, banking, contracting (Falson, 1996).

The harmonization of legislation of the member states serves as an efficient implementation of the Euro-integration processes, as well as the implementation of common principles and standards. Therefore, the EU institutions have the power to adopt directives and other acts to harmonize their legislation.

Usually, in the member states, harmonization means, approximation of legal systems in the areas which are not under the exclusive competence of the EU and where there is a priority and direct enforcement of EU law. Areas where it comes to unification of law, enforcement of the same rules in the all Member States are founding treaties, regulations and directives in the certain cases. Other areas remain competitive competence of the Member States.

EU Treaty envisages harmonization the legal and administrative measures which have a direct impact on the functioning of the common market. In Article 3 (item h) as an instrument for achieving the objectives is "harmonization of legislation the Member States, to the extent necessary for the uninterrupted functioning of the common market". Chapter V is titled "harmonization of legal rules" sections 100-102, which defined the powers of authorities and procedures for the harmonization of legal rules. While Articles 94-97 predict that, for the harmonization of laws should be used directives of the Council, which must be implemented in national law to achieve certain results.

Approximation of legislation can be achieved by direct application of EU resources (treaties and regulations), which from the moment of their adoption are considered as part of the internal legal order and have the same action as national laws. Approximation instruments are also international conventions, to which signatory states regulate certain substances. As the most efficient instrument to harmonize Member States” legal provisions are regulations of the EU institutions, while also have

their importance institutions recommendations, conclusions of meetings of representatives of the Member States, agreements between states, protocols, memorandums etc.

With the Treaty of Maastricht, besides the first pillar, harmonization is also used in the third pillar (in Chapter VI provides an obligation for Member States to harmonize legislation in curbing terrorism, human trafficking, weapons, drugs, corruption and financial fraud, and for determination of harmonized rules for such offenses). Sensitive is the third pillar, where is used the methods of coordination that contains the definition of certain measures and activities, as well as the common assessment results made in legal systems and practices of Member States (Bodewing, 2003).

## 5. Understanding the "Harmonization of Legislation" for Candidate Countries

In terms of candidate countries for EU membership, harmonization involves the establishment of rules of EU law in national law, in specific procedure and the methods of harmonization. Approximation of national legislation with EU law in the process of European integration is a essential step for any country that wants full membership. One of the Copenhagen criteria is the harmonization of national legislation with the EU law.

For candidate countries, harmonization is a process that aims to reform legal systems and to harmonize them with the right of the EU. With the signing of the Stabilization and Association Agreement (SAA) candidate countries are obliged to harmonize their legislation with EU legislation, particularly to meet the Copenhagen criteria and prepare for the next phase of the start of negotiations for EU membership. Candidate country, behaves toward EU legislation as toward international rules, which must be implemented in national legislation, based on the SAA (Stabilization and Association Agreement). Such coordination does not require direct application of EU laws, even if they have such action, but must incorporate them into national legislation, usually those concerning the four freedoms of the internal market, the establishment of a proper legal framework for economic integration and the rule of law.

Harmonization would have its effect, if achieved formal approximation of national legislation, but also effective implementation of adapted legislation, but it will depends heavily on the use of appropriate institutional mechanisms.

Harmonization as a process involves the following phases: identification of acts which should be harmonized with the EU acts, determining the level of harmonization, determining the competent bodies for the adoption of new laws or amending existing ones, determining priorities, dynamics...

Once the candidate state gets full membership in the EU (which just has harmonized its legislation with the EU law), this does not mean that he has performed all obligations, since the legal order at all levels is "under construction", to adapt and respond to current needs in certain areas. This is justified by the fact that the EU institutions, adopt each year more than ten thousand legal acts, in order to harmonize the legislation of the Member States.

## 6. The Macedonian Citizens" Opinion on the Harmonization of National Legislation with EU Legislation

**Table 1. Political Impact on New Employments in PA**

| Questions made to the surveyed | Answer | | |
|---|---|---|---|
| | **Yes** | **No** | **I don"t know** |
| 1. Do you think that Macedonia has harmonized its legislation with that of the EU? | *29%* | *22%* | *49%* |
| 2. Do you think that is enough the harmonization of legjisalcionit to join the EU, without applying it in practice? | *84%* | *3%* | *13%* |
| 3. Do you think that Macedonia should withdraw the part of its legal sovereignty to be an EU member? | *35%* | *41%* | *24%* |
| 4. Are competent institutions seriously committed to the process of harmonization with EU legislation? | *48%* | *39%* | *13%* |
| 5. Is there adequate support from political actors, the process of harmonization with EU legislation? | *62%* | *31%* | *7%* |

## 7. Resume

Although Macedonia is working towards the harmonization of its legislation with the EU legislation, it is clear that this process goes very slowly, sometimes accompanied with political obstacles and disagreements between the government and opposition.

In fact, all those wishing to join the EU, definitely have to understand that constantly changes should be made in the legislation of the country, but also in the main legal act - the constitution, ranging from constitutional amendments related to EU membership.

Macedonia should foresee Constitutional amendments, which would allow the transfer of some sovereign rights to international organizations, should therefore waives some of its sovereignty by setting a "European section" in the Constitution of Macedonia. Besides this, with the Constitutional provision should be given priority to the implementation of the legal acts of the EU.

There is convincing to politicians, but also the part of citizens that state should made concessions and should be adapted to the requirements of the EU, where they initially see only obligations. All this process should be seen as something normal, as part of Euro-integration process, from which we will all have benefits, which will be able to enjoy them as we have completed the tasks.

## 8. References

Bodewing and Voss Thomas (2003). *Die offene methode der koordiniereung in der Europäischen Union: schleidhende harmonisierung oder notwendige konsentierung zur erreichung der ziele der EU? / The Open Method of Coordination in the European Union: Creeping Harmonization or Necessary for the Achievement of Consensus on the Objectives of the EU?*. Europarecht 2, p. 311.

Carton & Jean-Luis (2002). *L"Union europèenne/ European Union,* 4th Edition. Paris, p. 175.

Efremova, V. (2008). Acquis communautaire of EU, p.112. *Metodi na harmonizacija na nacionalnoto zakonodavstvo na EU/ Methods of Harmonization of National Legislation with the EU Legislation*. Summary of scientific papers presented at the conference held in Skopje on April 2, 2008. Skopje: MANU.

Falson, R.H.(1996). *European Union Law after Maastricht*. London.

Fontaine, P (2004). Europe in 12 Lessons. Official publication of *EC*, p.55.

Kapteyn, P.J.G & van Themaat, P. VerLoren (1998). *Introduction to Law of the EC*. London, p. 77.

McKay, D (1999). *Federalism and EU-A Political Economy Perspective*. Oxford, p. 47.

Michael J. Braun (2002). Enlargement and the Acquis Communautaire: The Consequences for Transatlantic Relations. *AICGS/DAAD*, working paper series. Washington DC, p. 1.

*** (1998). Council Conclusions on EU enlargement, General affairs Council, 07.12.

*** (2006). The Domestic Impact of the European Law. Conceptual issues reference, No.13/ D3a, Brussels, February.