

The Reform of Latvian Civil and Commercial Law

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A. Introduction

The purpose of this article is to introduce the reader to Latvian civil and commercial legislation, and its reform towards compatibility with European Union (EU) standards. The development of a new Latvian law since the collapse of the Soviet Union has been ongoing for eight years, and still requires a lot of work. The Civil Code has been adopted; different new areas are regulated by secondary law, particularly consumer protection, copyright, patents, commercial affairs and others. Nevertheless, the aim is to develop a fully functioning legislative system, which would enable the country to become integrated into the EU.

B. The Legislative System of Latvia

The current legislative system of Latvia is based on the Constitution, international treaties, the Criminal Code, the Civil Code, other civil acts and laws, and regulations issued by the Cabinet of Ministers. In addition to the Cabinet of Ministers, at least five members of Parliament (*Saeima*), parliamentary committees, 1/10 of all voters, and the President of Latvia can propose new laws. Draft laws are discussed in the Saeima and, if adopted, they are signed by the President and enter into force on the 14th day after the signature, if not determined otherwise.¹

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¹ See the homepage of the Ministry of Justice of Latvia at <<http://www/jm.gov.lv/eReform3.htm>>

C. The Necessity of New Laws Governing the Regulation of Civil Matters and the Imperfections of New Laws

Since the collapse of the Soviet Union, Latvia has been moving away from communism towards a democratic society governed by the rule of law. Many new fields have emerged that need to be regulated. However, the first priority in the legislative reform process was to restore the Civil Code. Only then could the development of secondary law begin.

Nevertheless, the reform of Latvian law is not really satisfactory so far, although much has been achieved by way of legislation in the last ten years. One of the main imperfections of the new laws is a result of the drafting process itself, as emphasis is placed on the wording of the legislation, not on its practical application. On the whole, the problems of Latvian law reform can be considered from three angles. First, the reform of law is not sufficiently planned and defined. Changes have been made to existing civil laws, and laws regulating entirely new matters (e.g., consumer protection, commercial relationships, information system safety etc.), have been adopted. However, the new civil acts and regulations are often made up of parts copied from legislation of other countries. Due to the future expectations of EU accession, many new Latvian laws largely consist of translations of EU Directives and Regulations. More fundamentally, there is no law regulating the adoption of new laws. Second, there is little or no co-operation between ministries and other legal professionals. Each ministry individually, literally without any form of information exchange whatsoever, prepares the new legislation in its sphere of competence. Third, and this makes things even worse, the ministries and the Parliament quite often lack academically trained personnel competent in legislative matters. As a partial solution, there are plans for the Ministry of Justice to take over the sole responsibility for legislative initiatives.²

D. Latvian Civil Law Before and After the Soviet Times

On 4 May 1990 the Parliament of the Republic of Latvia adopted the Declaration on the Reestablishment of Independence of the Republic of Latvia. From this date Latvia began to renew its legislation by reverting to laws that existed before 1940 and by adopting entirely new laws. Realising that the development of an entirely new Civil Code would take a long time, it was decided to use the Civil Code of 1937 as the

² For the imperfections of new laws see also editorial remarks in *Likums un Tiesibas*, August 2000, p. 257.

basis. On 14 January 1992 the Law on the Civil Code of the Republic of Latvia³ was adopted. On this date the Civil Code of 1937 entered into force with several changes in family law and the inheritance and succession laws. However, the Parliament retained the right to propose and adopt secondary laws that would supplement the existing Civil Code.⁴ The Latvian Civil Code was first adopted on 28 January 1937. It entered into force on 1 January 1938. The Civil Code contained standards that had already been tested in legal practice and was based on legal norms of other European countries, in particular Germany and Switzerland.⁵ Until 1938, civil matters were regulated by the Civil Law of Baltic Provinces, which had been adopted in 1864. During the 1940s the Latvian Civil Code was recognized as one of the best civil codes in Europe.⁶ The Civil Code of 1992 (just as the Civil Code of 1937) consists of four parts: family law; succession and inheritance law; property law and law of obligations. The law of property and the law of obligations are based on Roman law principles. However, the Civil Code is considered to be a general law, it does not regulate commercial transactions, thus creating the need for special legislation. Special laws exist in form of legal acts and Cabinet of Ministers Regulations. At the present moment, there is a Commercial Code, additionally there are different laws regulating commercial relations as well as other sectors.⁷

E. Changes in Civil Law through Regulations Issued by the Cabinet of Ministers and through Civil Acts⁸

Since the collapse of the Soviet Union in 1991, many new industries and fields have emerged, creating the need for new laws governing these matters. Additional reform of Latvian Civil Law is taking place through regulations and civil acts. The most important laws adopted recently are the Anti-Dumping Law (16 April 1999), the Copyright Law (6 April 2000), the Consumer Protection Act (18 March 1999) and the Commercial Code (13 April 2000).

I. Commercial Code

The new Commercial Code deals with company law, including mergers and acquisitions. Commercial law is also regulated by the Constitution of the Republic

³ See *Latvijas Republikas Civillikums (Civil Code)*. (1998) *Riga*, at p. 629.

⁴ See editorial remarks in *Latvijas Republikas Civillikums*. (1998) *Riga*, at pp. 1–2.

⁵ See editorial remarks in *Latvijas Republikas Civillikums*. (1998) *Riga*, at p. 1.

⁶ See the homepage of the Ministry of Justice of Latvia at <<http://www.jm.gov.lv/eReform3.htm>>.

⁷ See the homepage of the Ministry of Justice of Latvia at <<http://www.jm.gov.lv/eTies-s3.htm>>.

⁸ See <<http://www.nais.dati.lv/>> to get access to the Latvian Law Database

of Latvia,⁹ the Civil Code and certain international agreements¹⁰ to which Latvia is a signatory. The new Commercial Code is considered to prevail over the existing Civil Code, as *lex specialis*, in case of misunderstandings. The new Code defines such participants of commercial activity as companies, agents, entrepreneurs, wholesalers and retailers. It also regulates the establishment and functioning of sole proprietorships, partnerships and corporations within the boundaries of the Republic of Latvia.¹¹

The third part of the new Commercial Code is regulating an entirely new field in Latvian law – mergers and acquisitions. Any merger should be started with the development of a reorganization contract by each party involved. The contract should include:

1. the amount of capital stock that is to be exchanged;
2. a statement on the methods used in determining that amount; and
3. the clauses of contract offered by each party.

The reorganization contract can be developed by all parties jointly if they so decide.¹²

II. Copyright Law¹³

The amendment to the Constitution of the Republic of Latvia of 15 October 1998 states that Latvia ‘recognises the scientific, artistic freedom and freedom of any other

⁹ For the Constitution of the Republic of Latvia see <<http://www.vernet.lv/VT/constitution.html>>.

¹⁰ International agreements to which Latvia is a signatory are not directly applicable as such. According to Art. 68 of the Constitution, the Saeima (Parliament) must adopt every international treaty, which has been ratified. Commercial and trade affairs are regulated, *inter alia*, by the UNIDROIT Convention on International Financial Leasing (ratified without reservations), the United Nations Convention on Contracts for the International Sale of Goods, the UNIDROIT Convention on International Factoring, the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, which have been adopted by the Saeima and therefore are applicable via the implementing legislation.

¹¹ For details see the Commercial Code: Arts 1–333.

¹² See the Commercial Code, Art 339 II; for specific rules on mergers see Art 354.

¹³ The Copyright Law protects the same rights that are set forth in Art 2 of the Berne Convention: books and other writings; dramatic or dramatico-musical works; choreographic works; musical compositions; cinematographic works; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works; works of applied art; illustrations, maps, plans and sketches related to geography, topography, architecture or science.

Art 9 (Relation to Berne Convention) of the Agreement on Trade-Related Aspects of Intellectual Property Rights states that ‘Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto’, thus Latvia’s accession to the World Trade Organization has required the Copyright Law to be compatible with the Berne Convention. As the Saeima (Parliament) has done only a partial implementation of the Convention, individuals may directly invoke the provisions (not included in the Copyright Law) of the Berne Convention.

creative work, as well as protects copyright and patent rights'.¹⁴ The amendment to the constitution was followed by the adoption of the Copyright Law. This act regulates copyrights on any work that is located in Latvia in any materialized form. The new law does not protect civil acts, court decisions, TV and radio news, ideas, methods and processes. The author has the right to publish, reproduce, distribute, rent and translate his or her work.¹⁵ The work can be used without the agreement of the author if it is needed for informative, educational and research purposes.¹⁶ The work can be used legally through a licence which can be obtained in one of three possible forms: simple, exceptional or general.

A specific part of this law protects the rights of a database creator.¹⁷ In addition to the recently created databases, this law can also be applicable if the following conditions are met – the database has been finished at least 15 years before this law entered into force, or if on the day of entry into force the database met the criteria set forth in Article 5 II. In particular, the development testing, acquisition and demonstration of the database requires significant qualitative and quantitative investments to fall under Article 5.¹⁸ The creator of the database has the right to delay the access to and usage of the information contained in the database. Additionally the creator can delay public usage of the database, however, he or she must hold Latvian citizenship or must be entitled to non-citizen passport or must be a permanent or temporary legal resident to be entitled to the rights set forth in this law.¹⁹ There is a violation of the copyright law if the work has been reproduced, published or distributed without permission from the author. In such cases the author has the right to demand that the offender recognizes his or her rights, pays compensation, destroys illegal copies and ceases the illegal activities.²⁰

III. Consumer protection²¹

According to Latvian Civil Law, the Consumer Protection Act should be applied to all contracts where there is a consumer on one side and a commercial seller on

¹⁴ See the official translation of the Constitution at <<http://www.vernet.lv/VT/constitution.html>>.

¹⁵ See Art 15 of the Copyright Law. (2000) Riga, at p. 33; or *Latvijas Vestnesis* (2000) 27 April, p. 2–3.

¹⁶ For more exceptions see Art 19 of the Copyright Law.

¹⁷ See Copyright Law, Arts 57–62. Database protection in the Copyright Law provides a *sui generis* right.

¹⁸ See Copyright Law, Art 5 II and Part IX.

¹⁹ Arts 57–62 of the Copyright Law are based on Directive 96/9/EC of Parliament and Council of 11 March 1996 on the legal protection of databases. See OJ 1996 L 077, pp. 0020–0028 or <http://www.europa.eu.int/eur-lex/en/lif/dat/1996/en_396L0009.html>.

²⁰ See the Copyright Law, Art 68.

²¹ Entered into force on 1 April 1999. Art 20 (General Requirements for Labelling) of the Consumer Protection Act is based on Art 10 of Directive 99/45/EC of Parliament and Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and

the other. The term 'consumer' means any individual or legal person who is willing to buy, is buying or could buy, a good or service in the future for a purpose not directly connected to his or her professional activity.²² Defining consumers as both individual and legal persons has created a lot of problems in practice, as it is hard to distinguish when consumer protection law and commercial law should be applied.

The Act protects consumers' rights and secures that they are not violated while concluding contracts with producers, sellers and service providers.²³ According to Article 3 of the Consumer Protection Act, the consumer's rights are considered to be violated if one or more of the following three principles have not been taken into consideration:

1. freedom of choice;
2. freedom of expression; and
3. equality of rights.

Consumers have the right to receive full information about the product or service. In addition, consumers have the right to receive high quality goods and services, and to make changes to or withdraw from a contract if they decide to do so during a given period of time that should be specified in the contract. The withdrawal from such a contract does not result in a fine or any other form of liability to the consumer. However, the types of contracts that consumers can withdraw from are limited to the following: distance selling contracts, contracts negotiated away from business premises and rental agreements. In order to withdraw, consumers simply have to send a withdrawal notice to the seller.²⁴ If consumers use their withdrawal rights as a result of the substandard quality of products that they have received, and return the goods at their own expense, the sellers are responsible for compensating the expenses connected with the return of products within seven days.

In addition to the Consumer Protection Act, there are three other new laws that

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labelling of dangerous preparations. See OJ L 200, at pp. 0001–0068 or <http://www.europa.eu.int/eur-lex/en/lif/dat/1999/en_399L0045.html>. Art 9 (Contracts Negotiated Away from Business Premises) is based on Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises. See OJ L 372, at pp. 0031–0033 or <http://www.europa.eu.int/eur-lex/en/lif/dat/1985/en_385L0577.html>. Art 8 (Consumer Credit) is based on Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit. See <http://www.europa.eu.int/eur-lex/en/lif/dat/1987/en_387L0102.html>.

²² See the Consumer Protection Act, Art 1 III.

²³ See the Consumer Protection Act, Art 2.

²⁴ See Art 12 III of the Consumer Protection Act for the requirements of withdrawal notices.

protect consumers: the Safety of Goods and Services Act,²⁵ the Liability for Defective Goods or Services Act,²⁶ and the Distance Act.²⁷

The Safety of Goods and Services Act aims to protect human health and life, and to establish environmentally safe production of goods and services. A Consumer Rights Protection Centre and other state institutions responsible for the supervision of the internal market will control the adherence to this law. The Liability for Defective Goods or Services Act regulates the liability for damages caused to human health, life and property as a result of defects in goods or services.²⁸ According to this act, consumers have the right to receive compensation, which will be determined under the Latvian Civil Code.²⁹ Both the Safety of Goods and Services Act and the Liability for Defective Goods or Services Act are based on the principle of strict liability.

According to Article 10 of the Consumer Protection Act a 'distance contract' is an agreement between buyer and seller, where a seller makes his or her offer through the Internet, e-mail, mass media or catalogues. The Distance Act lists the information that should be included in a 'distance contract'.

In addition to these four acts, there are different regulations adopted by the Cabinet of Ministers in the field of consumer protection, e.g., Regulation No. 128 on the Safety of Toys.³⁰ This regulation includes a definition of toys, safety measurement standards and names of goods not regarded as toys. The regulation aims to protect consumer health and safety. The application of the law will be regulated by a special state institution from 31 December 2005. However, the regulation is in contradiction with the existing Acts for the protection of consumers, as the Safety of Goods and Services Act had already established a state institution responsible for the correct application of consumer protection laws. This problem has appeared because different foreign legislation was simply translated and copied *verbatim* into Latvian national law.

²⁵ Adopted on 20 June 2000. The Act is based on Council Directive 92/59/EEC of 29 June 1992 on general product safety. See OJ L 228, at pp. 0024–0032 or <http://www.europa.eu.int/eur-lex/en/lif/dat/1992/en_392L0059.html> .

²⁶ Adopted on 20 June 2000. The Act is based on Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. See OJ L 210, at pp. 0029–0033 or <http://www.europa.eu.int/eur-lex/en/lif/dat/1985/en_385L0374.html> .

²⁷ In force since 1 October 1999. The Act is based on Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts – Statement by the Council and the Parliament regarding Art 6(1) – Statement by the Commission regarding Art 3(1), first indent. See OJ L 144, at pp. 0019–0027 or <http://www.europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html> .

²⁸ See the Liability for Defective Goods or Services Act, Art 1.

²⁹ See the Latvian Civil Code, Part II: Contracts.

³⁰ See Regulation No. 128 on the Safety of Toys. (2000) *Latvijas Vestnesis*, 7 April, at p. 2. *Latvijas Vestnesis* available online at <<http://www.lv-laiks.lv/>> . Regulation No. 128 is based on Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys. See OJ L 187, at p. 1.

IV. Other legislative measures – amendments and legislative acts adopted in 1999/2000

The Anti-Dumping Law of 16 April 1999 aims to prevent dumping of imported goods if they cause material injury to domestic producers. Any natural or legal person can submit a complaint for the initiation of investigation on behalf of the domestic industry.³¹ While it is somewhat unclear why a foreign producer would dump into the relatively small Latvian market, the new law should supposedly help domestic producers to compete with dumped imports. Upon accession of Latvia to the EU, this law would be replaced by the respective regulations in force in the framework of the EU's Common Commercial Policy.

The Anti-Corruption Law of 21 September 1995 aims to prevent state officials from accepting bribes and from becoming ensnared in corruption. Special provisions are included for members of Parliament. This law can be applied only to state officials,³² their relatives and former officials. It also prohibits state officials from using their position for self-interested purposes. Nevertheless, the Anti-Corruption Law does not provide for any punishment, as corruption is punishable under the Criminal Code.

In addition to recently adopted legal acts and regulations, various amendments to existing laws have been made. Substantial amendments have been made in two fields – taxation and insurance. The amendment to the Law on the State Revenue Service determines the responsibilities and rights of the State Revenue Service regarding the supervision of the flow of products within the country and the application of excise taxes.³³ The functions of the State Revenue Service include issuing licences and controlling those organizations which operate according to the provisions laid down in different taxation laws. On 8 December 1999 a new taxation law was adopted – the Law on Excise Tax.³⁴ The aim of the new law is to determine the imposition of excise tax on precious metals and stones, coffee, cars, motorcycles, and non-alcoholic drinks. The law applies to all products that are imported, exported, produced and purchased within the boundaries of the Republic of Latvia. The law also determines liability for violations.

With this amendment to the Act on Taxes and Duties, the powers of tax officials have increased and 'additional restrictions have been imposed concerning the use of cash in transactions between companies'.³⁵ The amendment of 16 May 2000 to the

³¹ The determination of dumping, injury and causal link between the dumped imports and injury is regulated by Part II and III of the Anti-Dumping Law, which is in conformity to the Agreement on Implementation of Art VI of the General Agreement on Tariffs and Trade 1994 to which Latvia is a signatory as a result of accession to the World Trade Organization.

³² For the definition of state officials see Art 5 of the Anti-Corruption Law.

³³ See Amendments to the Law on the State Revenue Service. (1999) *Latvijas Vestnesis*, 3 November.

³⁴ See the Law on Excise Tax. (1999) *Latvijas Vestnesis*, 8 December.

³⁵ See Legal Update – Latvia: Commercial Law. Sorainen Law Offices, 20 November 1997–11 January 1999.

Law on Taxes and Duties outlines in detail the calculation procedures for late tax payments.³⁶

In the field of insurance, the Law on Insurance Companies and their Supervision has replaced the previous two laws dealing with insurance.³⁷ The new Law on Insurance Contracts regulates the preparation, modification and termination of insurance contracts.³⁸ In addition to the above mentioned new legislation, amendments have been made to the Law on Credit Institutions,³⁹ the National Language Law,⁴⁰ the Law on the Hague Convention on International Access to Justice,⁴¹ the Competition Law⁴² and others.

A field that will be regulated for the first time is the relationship between employers and employees. A draft Labour Law has been proposed by the Ministry of Justice and accepted by the Cabinet of Ministers on 7 March 2000.⁴³ Now it is under consideration in the Parliament. The proposed Labour Law will regulate the procedure of signing a labour contract and is designed to guarantee that the principle of equality of rights will be observed. However, the employers are against this law as it would mean stricter rules for them. Therefore, it is not expected that this law will be adopted soon, as changes are made in each reading of the law in Parliament.

F. The Compatibility of Latvian Law with EU Standards and the Work Towards Harmonized Legislation

From 1998 until 1999 the so-called ALL (Approximation of Latvian Legislation) project was implemented to harmonize Latvian legislation with EU Law. The focus

³⁶ See Legal Update – The Baltic States: Commercial Law. Sorainen Law Offices, 1 April 2000–30 June 2000.

³⁷ See the translation of the Law on Insurance Companies and their Supervision at <<http://www.vaui.gov.lv/likumi/likums.htm>> .

³⁸ See the translation of the Law on Insurance Contracts at <<http://www.vaui.gov.lv/likumi/likums2.htm>> .

³⁹ For the Law on Credit Institutions see <<http://www.bank.lv/Law/English/Kred/credit-institutions.html>> (includes amendments).

⁴⁰ See the National Language Law at <<http://www.jm.gov.lv/likums.html>> and for the Cabinet of Ministers regulations for the implementation of the language law see <<http://www.jm.gov.lv/noteikumi.html>> .

⁴¹ This law determines Latvia's ratification to the Convention, which entitles all persons 'to legal aid for court proceedings in civil and commercial matters in each Contracting State on the same conditions as if they themselves were nationals in that state' (Art 1 of the Convention).

⁴² Adopted by the Saeima on 18 June 1997. It regulates mergers, natural monopolies, and unfair competition. See <<http://www.petpat.lv/Laws/competlaw.htm>> for articles on unfair competition and misleading advertisements.

⁴³ For the draft Labour Law see (2000) *Latvijas Vestnesis*, 21 March, at pp. 4, 5, 6.

of the discussions was placed on agriculture, economics, customs and welfare. In addition to these four sectors, the project was also oriented around the first Copenhagen criterion – democracy.⁴⁴

At present, the situation in the approximation process is the following:

1. Sectors, where the harmonization process has been finished are statistics, small and medium-sized enterprises, science and research, educational training, external and internal politics of safety.
2. Sectors, where harmonization has started but has not finished are free movement of services and capital, entrepreneurship, competition, fisheries, transportation, Economic and Monetary Union, industrial politics, culture, consumer protection, health protection and external relations.
3. Sectors that will be harmonized in 2001 or later are free movement of goods and persons, agriculture, social politics, telecommunications, environmental protection, customs, regional politics, judicial and internal relations, and financial control.

All sectors in which the harmonization process has been finished are regulated by laws that are – at least on paper – compatible with EU law. However, there are many sectors where approximation is still necessary. Agriculture, environmental protection, budget determination, judicial and internal affairs, and regional politics will demand the most extensive reform.⁴⁵

Nevertheless, the compatibility of Latvian law with European standards does not mean that these laws are in fact practically applicable. There can be little doubt at present that ‘the real world situation’ in Latvia, as well as its economic development is still far behind that of even the poorest and least organized Member States of the EU.⁴⁶

G. Conclusion

Although much work has been done in the harmonization of Latvian legislation with EU Law, approximation has been achieved for only half of those laws, which have yet to be harmonized. Many sectors are nowadays regulated with laws that are compatible with EU Law, but many sectors have not even been touched upon. However, the harmonization of legislation is not the only work that has to be done.

⁴⁴ See Likumdosanas Saskanosanas Process un Tehniskas Palidzibas Loma: Phare Likumdosanas saskanosanas programma. Solvita Herbacevica, Assistant to the Secretary-General of the Ministry of Justice.

⁴⁵ From an interview with Dagnija Libane (Representative of European Integration Bureau in Riga).

⁴⁶ Ibid.

The Republic of Latvia has to comply with the Copenhagen Criteria (democracy, functioning market economy, the ability to cope with competitive pressure within the EU, and the ability to fulfill the duties and obligations of Member States) that were set for those Central and Eastern European countries, which want to become members of the EU. In particular as far as the practical application of the law is concerned, much remains to be done.