

The Responsibilities of a European Union Member State as a Social Market State in the Implementation of Competitiveness Increasing Measures

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Abstract - *In this paper, the author studies systemic conditions to be taken into account by a social-market state, an EU member state, in the implementation of measures to increase competitiveness. His study is based on the need for balance between the economic and social functions of competition as a condition for the functioning of free competition as a long-term public interest. On these bases, he evaluates measures introduced from the EU's Lisbon strategy for increasing the economy's competitiveness, and the implementation of these measures in the Republic of Slovenia as a member of this integration. He finds that in the implementation of these measures Slovenia has followed only those European Union goals that are – according to its competences under Article 2 of the EC Treaty – only oriented towards supporting the economic functions of competition, without concurrent adaptation of measures to support the social functions of competition. According to the author, the consequence of this omission is a breach of human rights and fundamental freedoms, on which the social-market state and free competition are based. The author believes that the improvement of competitiveness required by globalization can be achieved through the appropriate proportion and combined effect of the economic and social functions of competition. The promotion of economic functions alone leads to liberalism, which has short-term effects, while in the long-term it leads to economic and social instability.*

1. Topic

This paper explores measures aimed at increasing the competitiveness of the economy adopted by the European Union (hereinafter EU) and its member states, as well as the effects of these measures on free competition in the EU single market, and in the national markets, of its member states. Free competition in a social-market state is established as an economic freedom, limited by public interest in order to ensure not only economic but also other social values enabling the market participants put into effect free economic initiatives to an optimum degree. Competition is free when balance is established between its economic and social functions. According to the mentioned systemic frameworks, the measures of the EU and its member states are aimed at improving competitiveness on the market, which then promote the economic functions of competition and should be followed by measures aimed at the appropriate preservation of the social functions of competition, i.e., for their adaptation to the economic ones. This paper explores the nature of the EU measures, and the application of these measures in the Republic of Slovenia (hereinafter RS) as a EU member state, establishing the extent to which these measures are applied at the level of the EU and/or member states, and whether these measures are in conformity with the fundamental principles of social-market state, i.e., to what extent they merely pursue economic effects characteristic for market liberalism.

2. Problem statement

2.1. Free entrepreneurial initiative is a human economic freedom deduced from the human right to freedom as an expression of human dignity¹. It is exercised through numerous fundamental human rights, particularly the right to personal property (Article 1 of the protocol No 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms² - hereinafter ECHR Article 33 of the Constitution of the RS) and its economic, social, and ecologic functions (in the RS, Article 67 of the Constitution); through freedom of work and employment (*mutatis mutandis* Article 4 of CPHRFF, in the RS, Article 49 of the Constitution); the right of assembly and association (Article 11 of CPHRFF, in the RS, Article 42 of the Constitution); the right of equality and/or prohibition of discrimination among people or legal entities (Article 14 of CPHRFF, in the RS, Article 14 of the Constitution), and through providing support to the principles of the rule of law and social state (in RS, Article 2 of the Constitution). In a social-market state, the defined rights and freedoms are the basis of free competition, and its goal is to ensure optimum social welfare. This is optimal when the economic and social functions of competition are balanced, when convergence is established between them, so that the economic functions enable social functions to the maximum possible extent. At the same time, social functions have a return effect on economic functions as support for their functioning. The European Union has not formally acceded to CPHRFF³, but we can note that when regulating competition, the EU has observed CPHRFF in part.⁴ This is reflected in

¹ Korže B., Do takeovers downgrade the contents of human rights and freedoms in EU?, A publication of IPSI Bgd Internet Research Society, New York, Frankfurt, Tokyo, Belgrade, January 2006, vol. 2, No. 1, p. 51 – 60.

² Council of Europe; Convention for the Protection of Human Rights and Fundamental Freedoms.

³ Lalić G., Temeljni akti Evropskih skupnosti (Basic Acts of European Communities), Uradni list RS, 2002, p. 12.

⁴ The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ of the EU C 306 vol. 50, 17. 12. 2007, which is currently in the procedure of adoption by the Member States (Article 6) as the primary source of law in the EU, is formally

that the membership of states in the EU is made conditional on their membership in CPHRFF⁵, and in amendment of Article 2 of the European Community Treaty (hereinafter EC Treaty). Since the initial contents of the treaties establishing the Community⁶, according to which the communities were established exclusively as international economic integrations, the Treaty of Maastricht, in line with the goals of the Single European Act (hereinafter SEA), has established legal foundations for the single market as an economic integration, pursuing not only economic objectives but also harmonious, balanced, and sustainable development of economic activities, a high degree of employment and social security, gender equality, continual and non-inflationary growth, environmental protection, and a high level and quality of life so as to establish cohesion between the economic and social goals.⁷

The subnational competition system⁸ as a whole is not comparable to the objectives of competition which must be pursued – on the basis of the defined human rights and freedoms – by a social-market state. Social goals and environmental protection defined in Article 2 of the EC Treaty only partly correspond to the social goals, which a social-market state is obliged to create through its social functions. The gap between the goals results from the fact that the EU regulates competition protection on

eliminating this deficiency, and in a Protocol to the Treaty announces accession to the Convention in the part relating to the enforcement of hour economic freedoms.

⁵ Leonard M., Why Europe will Run the 21st Century, Fourth Estate, London and New York, 2005, p. 45.

⁶ Treaty establishing the European Coal and Steel Community in 1951, The Treaty of Rome establishing the European Economic Community in 1957, the Treaty establishing the European Atomic Energy Community in 1957.

⁷ Grilc P., Pravo Evropske Unije, druga knjiga (European Union Law, second book), Cankarjeva Založba, 2001, p. 362.

⁸ Grilc P., Plahutnik A., Komentar Ustave Republike Slovenije, Podjetništvo kot temeljno načelo gospodarske ureditve države (Commentary to the Constitution of the Republic of Slovenia, Entrepreneurship as the Basic Principle of the National Economic Organization), Fakulteta za podiplomske, državne in evropske študije, l. 2002, p. 713.

the EU single market alone, i.e., on the market that is broader than the national markets (EU relevant market), and only to the extent required to ensure the four economic freedoms⁹. In addition, certain social objectives of competition can only be implemented in the frame of national states, since these objectives are defined by human rights and freedoms, while the contents of these rights and freedoms are determined by the level of economic development of a particular social community, its historical and wider sociological constants, and social, cultural and other conditions¹⁰. The original responsibility of the member states is thus to establish social goals to be pursued through the social functions of competition. In addition to implementing individual programme objectives of the EU in social and environmental protection areas, the member states are also obliged to use the social functions of competition to ensure legal mechanisms providing economic operators with equal opportunities for entering the market, which prevent discrimination among these operators on the market, which also prevent the market participants from abusing their economic power, which furthermore prevent their influence on political decisions when creating economic and competition-related policies, and as well in the legal regulation of the market, management conditions, and in the broader enforcement of the democratic social order.

2.2 According to the presented concept, 'market' is only conditionally an unconscious creation, functioning according to the "law of supply and demand" since its organization and function is influenced by the state as well as other social formations¹¹. The responsibility of the state is to provide the conditions necessary for the

⁹ Free flow of goods and services, capital and labor (people).

¹⁰ Korže B., Uticaj ekonomske globalizacije i regionalizacije za zaštitu slobodne konkurencije u tržišno socijalnoj državi (Impact of Economic Globalization and Regionalization on the Protection of Free Competition in a Social-market State), Pravni život časopis za pravnu teoriju i praksu, Udruženje pravnika Srbije, Beograd, 1. 11/2004, p. 487 – 503.

¹¹ Zabel B., Tržno pravo: teorija in praksa pravnega urejanja trga (Market Law: theory and practice of (legal)** market regulation), Gospodarski vestnik, Ljubljana, 1999 p. 107.

implementation of free economic initiative, and to establish such mutual relations between the economic and social functions of competition that the social welfare resulting from them will be optimal. By organizing the market, defining market participants, ensuring access to the market for interested participants, and performing the selected economic activity under nondiscriminatory conditions the state creates conditions for the enforcement of free economic initiative, the right to private property, equality of legal persons and their right to free choice of profession and activity. The state creates conditions for implementing the free economic initiative and principles of the rule of law by establishing mechanisms for preventing individual entities from abusing their economic power on the market, and mechanisms for preventing influences on political decisions and influences on legislative regulation of the market – which is the consequence of the economic power of these entities. By defining the type and scope of the citizens' social rights, the state defines conditions for the enforcement of social state and social function of property. In doing so, it must make sure that in terms of their type and scope the social rights will provide optimum support to the economic functions of competition. An important task of a social-market state is also to prevent any performance of activity and acquisition of profit which might threaten the lives and health of other legal entities (conditions for performing some activities), and to take care of healthy and clean environment (ecological function of property).¹²

2.3. In view of the defined baselines, the state's responsibilities in the field of market organization and functioning can be divided into systemic measures used by the state to regulate economic policy, systemic measures used in the public interest to prescribe conditions and restrict economic operators in their execution of free economic initiatives, and measures of limited duration used for market interventions in

¹² Zabel B., Tržno pravo: teorija in praksa pravnega urejanja trga (Market Law: theory and practice of market regulation), Gospodarski vestnik, Ljubljana, 1999, p. 103.

order to prevent the consequences of unexpected market irregularities.¹³

2.4. According to the Lisbon strategy,¹⁴ a synonym for the European Council conclusions adopted in Lisbon in March 2000 and/or conclusions relating to the environmental objectives adopted in Gothenburg in 2001, by 2010, the European economy is to become the most competitive, dynamic, and knowledge-based economy in the world. As stated in this strategy, the set objectives should be achieved by economic measures and measures necessary to modernize the European social model and welfare. The strategy includes the following economic measures: measures in the field of information society, particularly by providing access to the internet, measures relating to research and innovations, particularly by encouraging international research, industrial property development, tax incentives for high-tech companies; establishment of favorable conditions for entry into the market and business operations of small and medium-sized economic operators. These refer, in particular, to decreasing administrative barriers and providing financial incentives, and reducing incorporation costs; acceleration of processes establishing contestable markets by dividing infrastructural activities to the part where competition can be ensured in the successive phase of performing services or by enabling the entry of new competitors into this phase, and by restricting state aids; measures to increase integrations and efficiency of financial markets; and on the macroeconomic level, measures to decrease labor taxes, stimulating taxation of education and research activities, which should also be financed from the budget. Among the measures to modernize the European social model, the strategy includes: measures to encourage education and training for the needs of industry and trade, particularly by increasing public funds for education, as well as for the education of the young; measures to encourage employment policy, particularly lifelong learning and

¹³ Korže B., Vpliv državnih intervencij na svobodno konkurenco (Influence of state interventions on free competition), doctoral dissertation, Ljubljana 2004, p. 80.

¹⁴ Presidency Conclusions Lisbon European Council 23 and 24 March 2000, Presidency Conclusion Gothenburg European Council, 15 and 16 June 2001.

opportunities for education; measures to modernize social security, particularly in association with the development of education, improvement of healthcare system and long-term employment; and measures to provide connection between poverty reduction and knowledge-based society.

2.5. Before joining EU, the RS adopted the Slovenia's Development Strategy¹⁵, in which faster development and the improvement of the competitiveness of the economy are defined as priorities. The measures to improve competitiveness include promotion of technological development, education and training, investments, and strategic development-oriented projects, and enhancing of service activities. In its Action Plans for 2005 and 2006, the RS planned rational implementation of the system for granting aid to the economy, increased financing from the EU funds, improved access to support services for small and medium-sized enterprises, and increased investments in knowledge and development. In 2005, the Government of the RS adopted the Reform Programme for Achieving the Lisbon Strategy Goals in Slovenia¹⁶. While implementing this programme, the Government enacted gradual abolition of tax on paid-out wages (up to 2009) and introduced cedural (severally) 20% dividend tax, and taxation of interests and capital income, reduced the legal corporation tax 25 to 20%, retained allowances for investments in research and development, and decreased progressive income tax. In the social security area, it tightened the payments of unemployment compensations and social relief. In the labor law area, it introduced numerous measures aimed at flexicurity¹⁷. The Government introduced

¹⁵ Šušteršič J., Rojec M., Korenika K., Strategija razvoja Slovenije (Slovenia's Development Strategy), Urad RS za makroekonomске analize in razvoj UMAR, 2005, Ljubljana.

¹⁶ Decision of the Government of the Republic of Slovenia adopted at the 92nd regular session held on 12 October 2006: Reform Programme for Achieving the Lisbon Strategy Goals in Slovenia: Programme implementation report 2006.

¹⁷ Končar P. The Evolution of Labour Law in the new Member States of the European Union 1995 – 2005

measures to reduce administrative barriers to the incorporation of economic operators. It allocated more funds to research. In the protection of competition, it adapted the system to the EU law, and announced the withdrawal of the state from the economy.

2.6. The analysis of the nature of measures aimed at increasing competitiveness provided in the Lisbon strategy shows that the majority of measures are intended directly for support to the economic functions of competition, while the measures of social nature, free movement of goods, services, labor (people), and capital provide indirect support. In this sense, Hatzopoulos¹⁸ finds correctly that the EU has also gradually – in line with the development of economic freedoms – developed mechanisms for restricting economic functions of competition on the single market, and he states that it has developed minimum social standards. He also correctly expresses his misgivings regarding measures to increase competitiveness because of decreasing the prices of production factors, particularly the price of labor (by changing employment and social security), since such measures lead to economic liberalism. However, in connection with this I believe that with the mentioned measures the EU observes only Article 2 of the EC Treaty, according to which individual social functions of competition on the EU single market – in terms of their types and scope – are intended only for undisturbed implementation of economic functions. In order to establish the content-related meaning of the social-market system based on the shown limited economic freedoms, the member states should, concurrently with the implementation of the EU measures, introduce such restrictions of market freedom (market liberalism) that all the social goals of competition are achieved to satisfactory extent and not only the social and ecological ones which are pursued, within a minimum scope, by the EU.

Country study of Slovenia, University of Ljubljana, Faculty of Law, vol. 37.

¹⁸ Hatzopoulos V., A (more) social Europe: a political crossroad or a legal one-way? Dialogues between Luxemburg and Lisbon, Common Market Law Review, Dec. 2005, Netherlands, vol. 42.

3. About existing solutions and their essential drawbacks

On the basis of substantive study of the legal bases mentioned in the preceding chapter, which were adopted by the RS to implement the Lisbon strategy, we can find that with these legal bases the RS quite faithfully pursues their goals of increasing competitiveness. However, in accordance with the presented basic premises, according to which a social-market state must constantly harmonize the economic functions of competition with the social ones, the RS should simultaneously adjust the social functions of competition to the introduced changes and balance them with each other. By omitting this, it acted contrary to the basic principles of free competition in a social-market state.

4. On the proposed solution and why it should not possess the same drawbacks

On a short-term basis, promoting only economic functions of competition can result in higher competitive capacity of economic operators, as is required by the economic globalization, but on a long-term basis such economy stagnates because of inadequate support by products and/or effects of the social functions of competition, and it is also exposed to cyclic oscillations. The effects achieved by countries by favoring the economic functions of competition can be achieved by social-market states through the impacts of the social functions of competition on the economic ones (e.g., preventing the abuse of economic power on the market, preventing the influence on the formation of economic and legal order on the basis of economic power, respective increase of social rights, preventing the discrimination of market participants, providing local supply¹⁹, etc.), whereby free competition on the market

¹⁹ Korže B., Naloge tržno socialne države pri vzpostavitvi varstva majhnih udeležencev na trgu (A market social state tasks at the small economics retail traders security restoration), št. 6-7, GV Založba, Ljubljana 2007, p. 1669.

has a long-term stable effect ensuring optimum social welfare.

5. Types of analyses performed

This paper has been formed according to the prescriptive method, and it evaluates the nature of measures aimed at increasing the competitive capacity of the EU and the implementation of these measures in the legal order of the RS through human rights and fundamental freedoms forming the basis for free competition in a social-market state.

6. Basic conclusion of the analysis

When implementing the EU measures to increase competitive capacity, the RS – an EU member state – implemented only the measures aimed at supporting the economic functions of competition, while as a social-market state it failed to implement the measures to support the social functions or respective adjustments to these functions, which consequently means that they have remained unbalanced with each other.

Index Terms-Key words or phrases in the alphabetical order, separated by commas (in the part referring to the list)

ABBREVIATIONS

EU – European Union

RS – Republic of Slovenia

CPHRFF - The European Convention on Human Rights

EC Treaty – Treaty Establishing the European Community

SEA - Single European Act

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