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**ENLARGEMENT OF THE EUROPEAN UNION:  
AN ANALYSIS OF THE NEGOTIATIONS WITH  
THE CENTRAL AND EASTERN EUROPEAN  
CANDIDATE COUNTRIES**

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ENLARGEMENT OF THE EUROPEAN UNION: AN ANALYSIS OF THE  
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CANDIDATE COUNTRIES

**Abstract**

The negotiations between the European Union's member states and the first five candidate countries in central and eastern Europe (the Luxembourg Group) started over two and a half years ago. Yet they have hardly progressed beyond the easiest chapters and the real negotiations are still to come.

This paper examines the reasons for the slow progress in admitting these and five other central European countries (the Helsinki Group) into the Union and concludes with a proposal consisting of solutions for the most difficult problems.

The key questions in the negotiations are quite predictable. They include true policy questions such as the reform of the Common Agricultural Policy and the nature of the external frontier of the Union. There are also financial issues such as the size and distribution of the structural funds or the speed with which environment policy can be implemented. But this analysis identifies the lack of mutual trust between the EU and the candidate countries to be the most difficult barrier to rapid enlargement.

## **Enlargement of the European Union: an analysis of the negotiations with the central and eastern European candidate countries**

### 1. Objectives and scope of the paper

Since early 1998 six countries have been actively negotiating for accession to the European Union; five central European states (Czech Republic, Estonia, Hungary, Poland and Slovenia) and Cyprus (referred to as the Luxembourg Group). They were joined by six others at the beginning of 2000 (Bulgaria, Latvia, Lithuania, Romania and Slovakia in central Europe, and Malta) called the Helsinki Group.

Considerable progress has been made in these negotiations, especially with the first six countries. However while the negotiations with the second six have accelerated, there is a general perception that those with the first six have progressed very slowly. To explain why this is so and how the negotiations can be brought to a satisfactory conclusion is the main objective of this paper.

This paper has five sections, which aim to:

- trace the background to the negotiations and their political preparation and to consider the institutional and procedural structures in the negotiations;
- consider the constraints on negotiations, to explain the opening negotiating positions of the parties involved and to critically analyse the current state of the negotiations;
- to analyse the core negotiating questions;
- to analyse the requirements to reach the conclusion of the negotiations;
- to develop a proposal to conclude the negotiations.

The paper considers essentially only the accession of the ten countries of central Europe. The situation and concerns of the two Mediterranean islands of Cyprus and Malta are rather different and are not dealt with here.

The question of candidate countries joining the monetary union is also not dealt with. This is not part of the negotiations, even though there is a negotiating chapter on economic and monetary union. It may of course be dealt with in a parallel negotiation. It was perhaps significant that the recent Commission strategy paper encouraged the candidate countries to concentrate their efforts on fulfilling the Copenhagen criteria rather than the Maastricht criteria.<sup>1</sup>

### **A. The structure of the current negotiations**

#### 2. The political background to the negotiations

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<sup>1</sup> European Commission, November 8<sup>th</sup>. 2000, Enlargement Strategy Paper, Brussels

Long before the Hungarian breach in the Iron Curtain in May and the Polish elections in June 1989, the reformers in central Europe were planning their countries' participation in the European Community. The early policy statements of these countries made clear that accession was their objective. A Government Office for European Integration was established in Warsaw as early as January 1991. On the European Community side, the early political statements following these events in Hungary and Poland, and then the fall of the Berlin Wall, were also very supportive of their integration into the European structures.

The first serious public discussion of accession came with the negotiation of the Association (Europe) Agreements between Czechoslovakia, Hungary and Poland on the one side and the European Community on the other in 1991. The dispute between the new democracies and the Community about the Preamble to the Agreements demonstrated for the first time that the objective of accession to the European Community, long assumed by the central European countries, had not been accepted by all member states of the Community.<sup>2</sup> This dispute soured relations to a degree between the EU and the three leading reform countries. It also demonstrated that accession to the Community would not be easily or quickly achieved.

Two developments were taking place at the same time that the Association Agreements were being negotiated, which would make accession far more complicated. The first was the completion of the Community's internal market and the establishment of an economic zone without internal frontiers. The second was the negotiation of the Maastricht Treaty establishing the European Union, which extended the role of the Union into new areas like the Common Foreign and Security Policy and Justice and Home Affairs and reaffirmed Economic and Monetary Union as an objective of Union policy, with the detailed design of the different stages towards its achievement.

These two developments considerably complicated the accession of the central European countries compared to earlier accessions. They extended the *acquis communautaire* massively, making preparation for accession far more difficult for countries, which were independently undergoing root and branch reform from a planned to a market economy. The completion of the internal market was a complex undertaking even for the Member States of the European Community (testament to which are the enormous sums of money spent by Governments and business organisations between 1985 and 1992 to help business understand the changes which the 1992 Programme would bring to the way business was done). For the central European states preparing for accession, the internal market *acquis* added another large layer of new legislation to that occasioned by their own systemic reform.

The creation of an area without frontiers (including the incorporation of the Schengen *acquis* in the Treaty on European Union via the Treaty of Amsterdam) led to growing problems of mutual confidence between Member States in the Union. These problems would also affect the accession of the Central European Countries. The

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<sup>2</sup> while Czechoslovakia, Hungary and Poland wanted to write that the 'final objective of the parties to the agreement is for Czechoslovakia (Hungary or Poland) to become a member of the Community, the Member States would only agree to the phrase '...the final objective of Czechoslovakia (Hungary or Poland) is to become...' see: Mayhew, 1998, *The European Union's Policy towards Central Europe; Design or Drift*, in Carolyn Rhodes, *The European Union in the World Community*.

links between BSE and human health were being discovered, which led to the catapulting of food safety to the top of the political agenda and to a weakening in confidence between the existing Member States (for instance between the United Kingdom and France) and to clear breaches of Community law. Economic globalisation went together with the globalisation of crime, which accelerated with the break-up of the Soviet Union and led to international crime becoming a major subject within the EU. The increase in immigration to the Union, accompanied by rising numbers of people seeking asylum from brutal regimes elsewhere in the world at a time of relatively high unemployment in the Union also led to a tightening of regimes in these areas and a higher profile for these subjects in public debate on the EU.

While these questions were also posed at the accession of Spain and Portugal, they were less important for two main reasons. The first is that at the time of that accession, the level of public interest in the European Community was far lower. Public interest was first seriously aroused by the passing of the Maastricht Treaty. The second is that the Community was not at that time an area without frontiers in which goods, services, capital and persons could move unhindered by border controls. Enlargement was therefore seen as a far less dangerous affair in the early nineteen-eighties than in the following decade.<sup>3</sup>

Nevertheless the impact of these developments on relations between the EU and the central European states became clearer only later in the decade. Between 1992 and 1997 the Union moved slowly but smoothly from the association agreements to membership negotiations.

The Union acknowledged that these countries could become members of the Union under certain general conditions (the Copenhagen criteria) in June 1993 at the Copenhagen European Council. (see table 1). The Copenhagen criteria have come to play a central role in the discussion about accession to the Union in spite of their generality. They have formed the structure for the Commission's opinions on the applications for membership and the reports of the Commission on progress towards accession.

Table 1: The criteria for accession to the European Union

<i>Copenhagen criteria:</i>
1. the existence of democracy and the observation of human rights and protection of minorities
2. the existence of a market economy
3. the ability to cope with competitive pressures from the EU
4. the ability to take on the responsibility of membership (to implement the <i>acquis communautaire</i> )
5. the capacity of the EU to absorb new members
<i>Madrid 'criterion'</i>
the Madrid Council Conclusions also mentioned 'the adjustment of their administrative structures' as being important as a preparation for accession though not as a condition

<sup>3</sup> nevertheless the free movement of labour was treated as a sensitive issue in the negotiations between the EC and Spain, Greece and Portugal

Following the Copenhagen European Council meeting and the ratification of their Association Agreements, Hungary and Poland officially applied for membership of the Union in the Spring of 1994. The remaining applications from the central European associated countries were made in the following two years, generally soon after the ratification of the individual association agreements, and ending, provisionally at least, with Slovenia in June 1996.

The creation of a 'pre-accession strategy' for the central European countries at the Essen European Council in December 1994, including the proposal to produce a White Paper on the transposition and implementation of the internal market regulation, marked the first practical policy steps of the EU to realise the perspective of accession opened at Copenhagen. The associated countries generally reacted rapidly, preparing their own strategies for transposing and implementing the internal market acquis. One year later, in December 1995, the Madrid European Council asked the Commission to draw up its opinions on the membership applications and to review the financial aspects of enlargement and its impact on other EU policies.<sup>4</sup> The result of this work, the opinions and 'Agenda 2000', were presented to the Council of Ministers in summer 1997.

The decision to begin negotiations with the Czech Republic, Estonia, Hungary, Poland, Slovenia, and Cyprus was taken by the European Council in Luxembourg in December 1997. The negotiations were officially opened under the British Presidency in Spring 1998, the first working sessions being held under the Austrian presidency later in that year. The EU financial package and certain reforms to the structural funds and the Common Agricultural Policy (Agenda 2000) were decided at the Berlin European Council in March 1999. Finally the decision to open negotiations with Bulgaria, Latvia, Lithuania, Romania, Slovakia and Malta was taken at the Helsinki European Council held in December 1999.<sup>5</sup> The negotiations with these countries opened in early 2000.

It is interesting to note that, in the enlargement to Portugal and Spain, although the whole enlargement process took around 8 years, the progress from the deposition of the official application for membership to the completion of the Commission opinions took only one year, while from the opinions to the opening of negotiations the time span was far less than a year. For Hungary and Poland, the same progress was made in 3 years and 2 years respectively. The political urgency of the current enlargement cannot be less than that at the time of the Iberian enlargement. Of course in the nineteen-nineties, there was far more on the agenda of the Union than at the end of the seventies, when the Community was going through one of its less active periods. And the current enlargement is complicated by the large number of applicants. Nevertheless, the speed with which the EU has moved on eastern enlargement suggests that enlargement has not been consistently at the top of the political agenda in the nineteen-nineties.

The slow progress made in this enlargement can be ascribed to both a lack of urgency in the member states of the Union and by a weakness of the Community institutions. There has been a notable lack of engagement on the side of the Member States, after

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<sup>4</sup> the Madrid Council Conclusions also mentioned 'the adjustment of their administrative structures' as being important as a preparation for accession though not as a condition

<sup>5</sup> it was also decided to consider Turkey as a candidate for accession to the EU

the enthusiasm of 1989. Politicians have promised rapid accession on numerous visits to central Europe but the discourse at home has been totally different.<sup>6</sup> The declaration at Copenhagen on accession was agreed to without any strong feelings expressed, suggesting that at that stage the Member States considered enlargement to be so far away as not to worry about it. In the period between the Madrid European Council and the Luxembourg Council practically no work went on in the Member State Governments to prepare for enlargement. The decision to open negotiations taken at Luxembourg in December 1997 was made without serious thought having been given to the main questions raised by the enlargement.

The second potential institutional force, which could promote enlargement, the Commission, has been far less a leader than a follower in the second half of the last decade. It was of course gravely damaged by its institutional tussle with the European Parliament, which led to the resignation of the Commission and the reinforcement of the Council of Ministers as the dominant EU institution. It is essential that the Commission takes a leadership role in the enlargement process. The recent 'Strategy Paper' of the Commission is a first clear sign that the Commission is keen to take up this role again and to present the Council of Ministers with a credible strategy to finish the negotiations.<sup>7</sup>

As the active negotiations with the 'Luxembourg' group of countries enters their third year, there is a strong case for insisting that the negotiations have not yet begun. All sessions of negotiations have been purely formal and have rarely lasted for more than 45 minutes. While with this group of countries all negotiating chapters are now 'open', no negotiations have taken place on the core areas; indeed officially the core areas of the negotiation have still not been identified.

### 3. Negotiations, conditionality and verification

The negotiations for accession to the Union appear to be following a well-developed path. It is essentially the one used in the previous four enlargements. But close inspection suggests that there are a few significant differences in this accession process to those in the past.

Although following the same basic pattern, previous enlargements have all shown a particularity, which separates them from the others. The EFTA enlargement negotiations were strictly speaking the fastest but they in fact took place in two parts, with the earlier negotiations on the creation of the European Economic Area more or less concluding the negotiations on the internal market. The negotiations with Spain and Portugal were held up by the dominance of domestic issues implicit in the enlargement process: the Greek Government demanded a compensation mechanism for allowing another Mediterranean country to join the EU, the UK budget rebate issue became involved in the enlargement debate and the perennial inability to reform the Common Agricultural Policy. These problems had to be solved to the satisfaction of the existing members before accession could be considered. The Greek accession process started with a negative opinion from the Commission on Greece's application. The first enlargement was characterised by the de Gaulle vetoes on British accession to

<sup>6</sup> Chancellor Kohl and President Chirac separately mentioned the year 2000 as the date for the EU accession of Hungary and Poland during visits to those countries in 1996.

<sup>7</sup> European Commission, November 8<sup>th</sup>. 2000, Enlargement Strategy Paper, Brussels



the Union which led to 12 years elapsing between the application to join and Britain's membership of the Community.

The enlargement to central Europe introduces two major new elements to the traditional enlargement process – financial assistance with reinforced conditionality and the question of verification of the implementation of the Community acquis.

*i. Conditionality*

Conditionality is of course associated with the granting of financial assistance to the candidate countries rather than the negotiations for accession themselves. However the two overlap in an important way.

Following the systemic changes in central Europe, the European Community decided to allocate grant assistance to the countries of the region in the PHARE programme. PHARE was originally aimed at supporting the process of economic reform, but as the need for such support declined, the preparation of accession became the major objective of the programme. With the adoption of many of the Agenda 2000 proposals at the Berlin European Council in March 1999, additional grant assistance was decided, specifically to support investment in the environment and infra-structure sectors. This has brought the current level of funding to approximately EURO 3 billion annually.<sup>8</sup>

At the same time that the Commission proposed to increase the level of funding, it also proposed to increase the conditionality applied to the funding. The existing PHARE project-based conditionality was augmented by unilateral policy conditionality in the form of 'Accession Partnerships'. This unilateral conditionality instrument was fairly unique in being imposed quite openly; conditionality is often imposed but usually at least the façade of agreement by the recipient state is preserved. The conditions imposed related generally to EU policy objectives in the candidate countries. The Accession Partnership for Poland adopted at the end of 1999 included the following 'conditions': (exact citations)

- implement steel restructuring programme (complete privatisation and return to viability)
- continuation of privatisation of state-owned enterprises
- free movement of capital: amend the sectoral legislation restricting foreign direct investments, and liberalise progressively short-term capital movements
- align the excise duty legislation as regards alcoholic beverages and the taxation of cigarettes

These conditions can be related to real needs of the candidate countries but also to particular commercial interests in the EU; the wisdom of the second condition in a country with a current account deficit of around 8% of GDP must be questioned.

Because unilateral conditionality does not bind the partner into the realisation of the conditions, these 'Partnerships' are bound to fail. Nevertheless they do have an

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<sup>8</sup> The term billion is used in this paper to mean thousand million; 1 billion = 1 000 000 000

impact on the negotiations. This is implicit in the Accession Partnerships themselves. Under the heading ‘Monitoring’, the following statement appears: ‘...it is important that the institutions of the Europe Agreement continue to be the framework within which the adoption of the *acquis communautaire* can be examined, according to the same modalities, irrespective of whether or not negotiations have been opened.’ It is clear that the conditionality can conflict with negotiating positions taken by the candidate countries. It is true however that because of the conceptual weaknesses of the accession partnerships, such interference with the negotiating process is bound to be limited.

## ii. verification

A second difference from previous enlargements is that the adoption of the *acquis communautaire* is not only a condition for accession, as in previous enlargements, but that its implementation is being verified before accession can take place.

In previous enlargements, accession treaties have been signed on the understanding that the *acquis* will be implemented by the candidate country as agreed in the treaty. If parts of the *acquis* are not implemented or are badly implemented, the country can be (and almost certainly will be) taken to Court and forced to comply. Verification by the Commission or by member states before accession did not take place.

This change in procedure is understandable given that the candidate countries this time are still in the process of transition from centralised planning to the market economy and that the *acquis communautaire* is far larger than at the time of the Iberian enlargement. There are, however, two problems with such verification:

- It is an attempt to create ‘perfect member states’ in that higher levels of compliance are required from the candidates than from the existing Member States ( there are currently around 3000 ‘infraction’ procedures against Member States)
- It gives opponents of enlargement in general or of the accession of a particular state in particular the excuse to hold up the negotiations on the basis that part of the *acquis* has not been implemented. This is particularly dangerous given that, even though all studies show that the next enlargement will have positive economic impacts for the EU, there will be certain individuals, groups or regions which will lose or feel that they will lose from enlargement, who will be prepared to exploit verification to hold up accession.

The degree of compliance is assessed annually by the Commission in its ‘Progress Reports’ on each candidate country, which are generally published in October or early November. These reports have moved from being assessments of the state of the transition process and the general compliance with the Copenhagen criteria to assessments of detailed compliance based on the negotiating chapters. They can therefore be seen not only as part of the verification process for the negotiations but also as part of the conditionality assessment linked to the available financial instruments.

Information for these reports is provided by the candidate countries themselves, by the member state and Commission representations in the countries and by member state officials seconded through EU programmes to work in the administrations of the candidate countries. However, as with the accession partnerships, these reports are unilateral and not agreed with the candidate countries.

The Progress Reports have improved in quality since being launched and are considered by the candidate countries as being rather useful in highlighting the areas of accession preparation, which need to be given more emphasis in the future. They are however a core part of verification, which may well prove to be major blockage in the accession process.

Finally the French Presidency of the Council has put emphasis on implementation of the *acquis* in its work programme for its Presidency and has decided to present a progress report for each candidate country to the Nice European Council. The basis of this work will be an inventory of implementation under preparation for each country in the Commission.

The best way to achieve implementation of the *acquis* in the candidate countries is to give a clear perspective on accession rather than the confused messages, which are being sent today. If it is not clear that accession is going to take place in the near future, there will be less enthusiasm to implement parts of the Community *acquis*, which are not in the interests of the candidate country while it is outside the EU.

The problem of verification in the negotiations is a symptom of the lack of trust, which exists between Member States of the Union and between them and the candidate countries. This lack of confidence requires not only that the candidate country should state that it is going to implement the *acquis communautaire* but also that the EU should, like Thomas, verify the facts directly.

The interference between the imposed conditionality, the emphasis being put on verification and the conclusion of the negotiations is likely to complicate relations if the negotiations continue to follow the slow traditional route.

#### 4. Structures, institutions and procedures of the accession negotiations

A detailed account of the structures, institutions and procedures of the enlargement are given in Annex 1.

The current enlargement process is following the classic enlargement method of the Union. The member states and the candidate country form together an inter-governmental conference (IGC) on accession negotiations. The Commission provides assistance to the IGCs. The *acquis communautaire* is divided into around 30 sectoral chapters to ease the negotiations. The candidate countries submit their position papers on these chapters at the invitation of the member states, which then in their turn provide a common position on each chapter. At this point the negotiations begin.

The problem with this method is that it is long, especially when there is other important business on the EU's agenda. A very lengthy process will lead to political

and perhaps economic instability in the region as citizens realise that while the economies have been opened to EU business and the legal system has been adjusted to prepare for integration, the EU is delaying accession; the prize for all the pain of change is no longer on offer.

It is unlikely that this traditional process can lead to enlargement without major political and economic problems arising. Political initiative is required to cut through the current impasse and this can probably only come through changes in policy decided by the European Council.

## **B. Factors determining the opening negotiating positions of the parties**

### 5. Rigidity and flexibility in the negotiations

The scope for negotiation in an accession is limited. This is essentially for two reasons:

- the negotiation is about the conditions for joining a club. This involves the new member taking over the rules of the club – in this case the *acquis communautaire*
- unlike most clubs, new members are not accepted with a majority vote of existing members but only on a unanimous vote. Thus not only must the whole club be satisfied that the accession is in its interest, but each individual member must be satisfied. This eliminates much of the flexibility which is needed to accommodate the real needs of the candidate countries.

The ‘club’ system of accession should be contested on a variety of moral, political, strategic and economic grounds. But the current accession is being dealt with no differently from previous accessions and member states are always tempted to put short-term national interest before medium-term strategic European interest. It must therefore be assumed that this will be a constraint on enlargement throughout the process.

#### *i.) The tools of flexibility in the negotiations*

The whole *acquis* has eventually to be adopted by the candidate country. The main flexibility in the negotiations is the agreement to delay the implementation of part of the *acquis* until after accession.

Transition periods can be requested by both parties. In the Spanish accession, the EU requested transition periods for the free movement of labour and for free access to the EU market for certain Spanish agricultural products. In the EFTA enlargement, the candidate countries obtained transition periods in agriculture and on environmental standards. In the current negotiation again both sides will request transitional periods.

Transition periods for the candidate countries from the EU point of view should be kept as short as possible. They should be accompanied by a timetable for the progressive achievement of full compliance with the *acquis* and their application

should be monitored. Obviously the candidates on the other hand are sometimes interested in obtaining long transitions, in order to reduce the financial strain of accession.

Transition periods are agreed for a number of different reasons:

- technical: it is sometimes technically impossible to apply the *acquis* from the exact date of accession. A case in point might be where adoption of the *acquis* depends on the revoking of an international treaty, which cannot be completed by accession or where equipment cannot be procured in time to meet standards demanded by the *acquis* before accession
- the need to mitigate the impact of systemic change: the payments to EFTA farmers to ease the transition to lower CAP prices are a case in point, access to the EU market of Spanish agricultural products or labour is another
- the need to protect higher standards existing in the candidate countries: for instance transition periods on higher environmental standards in the EFTA countries
- the political need to defend perceived key national interests: restrictions on land sales to foreigners or remaining controls on the passage of heavy lorries through Austria
- the need to help the candidate countries complete their social and economic transition
- major financial concerns: for instance where the rapid implementation of the *acquis* might have destabilising effects on the enterprise sector or the state budget or where accession might lead to strains on the Community budget.

In the position papers of the Luxembourg group of countries in the current negotiation, certain transition periods are requested in years from the date of accession, while others are defined by end-dates. Technical problems can usually be dealt with in a certain period from the present and therefore can be given a set date for resolution independent of the date of accession. In cases where the problems of adjustment are financial or more complex, a date is usually given from the date of accession, because the implementation of the measure is considered to have negative near-term impacts.

Derogations can also be requested in negotiations. In the past permanent derogations have been agreed in rare cases. The most famous is perhaps the permanent derogation for 'chewing tobacco' negotiated with Sweden, the most contested the derogation obtained by Denmark on the purchase of certain real estate by foreigners in the context of the completion of the internal market. Such permanent derogations are unlikely to be agreed in the future except for exceptional situations which have practically no impact on the internal market (the Swedish derogation is a case in point)

Temporary derogations may be given on a similar basis to transition periods, the only difference being that a candidate country is allowed to set aside the implementation of Community law for a set period without having to present a plan for the transition.

In addition to transition periods and derogations, the financial and institutional settlements have to be negotiated and agreed. The financial settlement is usually

complex and is likely to be especially so in the case of the relatively new member states from central Europe. The institutional settlement (number of Commissioners, votes in the Council etc.) is usually less complex because precedents exist with current Member States. It is for instance assumed that Poland, with the same number of inhabitants as Spain, will be treated in the same way. The situation may however be much more complex this time, partly because many of the new member states will be very small (the three Baltic states, Slovenia, Malta and Cyprus) and partly because some of the existing member states are attempting to change their relative positions in the Community institutions (Spain).

It should be possible to negotiate innovative solutions to the particular problems of the candidate countries without affecting the operation of the internal market. Unfortunately only the traditional forms of flexibility (limited transitional periods) have been discussed to date.

Even though the EU will not want to agree generous packages of transitional arrangements with the candidate countries, potentially everything can be negotiated. However each request for a concession from the Union uses up part of the negotiating capital of the candidate countries and this limits their ambitions.

## 6. The initial negotiating positions

### *i.) The negotiating position of the European Union*

The initial position of the member states of the European Union in any accession negotiation is 'the *acquis* and nothing but the *acquis*'. This is clearly laid out in the Copenhagen criteria, in the opening position of the Union, which precedes the detailed negotiation, and in each Common Position. The new member states will have to transpose and implement eventually the whole of the *acquis* existing today including that referring to Monetary Union. As in past enlargements however, a certain amount of flexibility will be shown, within this overall constraint.

In the Iberian enlargement the EU insisted on transition periods for the full opening of the EU market to both agricultural products and to workers. In the EFTA enlargement not only were many transition periods allowed but also significant changes were made to the functioning of EU policies. In the structural funds regime for instance a new 'objective' was added to deal with the problems of the extreme northern parts of the Nordic member states.

Comparing today's enlargement with that to Portugal and Spain, the major difference is the size and scope of the *acquis*. The internal market *acquis* is today a major part of the total, increasing greatly the scope of the *acquis*. Scope has been added by the development of the Common Foreign and Security Policy and Justice and Home Affairs, the incorporation of the Schengen *acquis* in the Treaty and Monetary Union. But existing policies have also been developed leading to considerably more *acquis* having to be transposed and implemented than was the case in the Iberian enlargement. Environment policy is perhaps the most dramatic example of a major expansion of legislation since the mid-nineteen-eighties.

For the current candidates, adjustment is also complicated by the continuing high rate of legislative activity in the Union. As they adjust to one directive so a revision appears forcing them to adjust again. Areas like the environment, food safety or financial regulation are producing significant new legislative initiatives, which the candidates will have to adopt.

The combination of an unfinished transition process in the candidate countries and a large and rapidly expanding *acquis* is certain to lead to a greater need for flexibility in this enlargement than in previous ones. From a European Union perspective, the objective will be nevertheless to keep transitional measures to a necessary minimum and to ensure that they do not affect the essential working of the Union.

For the Union, some parts of the *acquis* are more important than others. In some areas no concessions will be made to the candidate countries, in others there will be much more flexibility shown. A good understanding of the significance of different parts of the *acquis* for the EU is important to the design of any negotiating position by the candidate countries.

- product regulation in the internal market:

The internal market remains the core of the European Union and it relies for its smooth functioning on the transposition and implementation of the specific internal market legislation. The application of this regulation on accession, with perhaps a few unavoidable but limited technical adjustment periods, will be non-negotiable for the EU. This includes traditional harmonisation legislation, new approach directives and all the institutional adjustments needed to apply this legislation – certification, accreditation, voluntary nature of standards and so on.

- essential market economy rules

The Union as a whole, and the internal market in particular, relies on the implementation of a series of market economy rules, which it will be necessary to apply at the latest at accession. EU competition policy, the control of state aids, rules on public procurement and company law form the backbone of this regulation. The full implementation of intellectual and industrial property rights should also be considered part of this *acquis*, although there are some interesting questions to be resolved particularly on intellectual property rights as applied to pharmaceuticals. There may be more room for manoeuvre in some parts of the market economy rules for limited transition periods. Consumer protection regulation would be one such area.

- process regulation

Regulation which affects processes - the way in which goods and services are produced - is less important for the operation of the internal market because it does not impinge directly on the functioning of the internal market. Typical here is much of the environmental and social regulation. It is in these areas that a spirit of compromise from the Union is to be expected. However further EU criteria restrict the scope of this compromise:

- regulation directly affecting enterprise competitiveness

Where regulation directly affects the costs of enterprises there will be less enthusiasm on the EU side to grant transitional arrangements. Some social legislation may be of this type, for instance health and safety at work regulation or regulation on working hours. It is interesting to note that one of the EU-15's worries in the negotiations is to protect the competitive advantage of its enterprises, yet one of the Copenhagen conditions for accession is the ability of the candidate countries to withstand competitive pressure from the Union!

- regulation of high political concern in the EU

This category includes areas such as food safety law, international organised crime, nuclear safety and migration and asylum rules. Certain areas of the *acquis* are of particular interest to lobby groups, which exert power through the political process. Agriculture and environment policies are typical here. The agricultural lobby has been most effective in obtaining protection in the past. Environment policy, apart from its general importance for citizens, also has particular support from the Green Party, especially in the European Parliament and in the German Government.

- regulation affecting cross-frontier movement

The member states will be particularly reticent about offering transition arrangements for regulation, which is likely to lead to negative cross-border externalities. Transition arrangements for regulation affecting long-range pollution or the quality of water in rivers or seas to which the other member states have access are the type of problems which occur under this heading.

These categories would appear to exclude most of the *acquis* from any flexibility in the negotiations. Some parts of the *acquis* however have relatively little to do with any of the above categories; the drinking water directive is a case in point. But the power of the Union to refuse reasonable transition periods is not unlimited and it is bound to prioritise its resistance to requests for transition periods in the face of pressure from the candidate countries and from third parties. Even within the internal market regulation there are degrees of importance and some flexibility should be shown, if it does not compromise the essential operation of the internal market.

There is already pressure from some Member States to clarify the Union's position on the degree of flexibility to be shown to the candidate countries.<sup>9</sup> The British Foreign Minister, Robin Cook, speaking in Budapest at the end of July 2000 said:

'We should be fair. Existing member states benefited from transitional arrangements when they acceded. The EU should be sympathetic to requests for transitional periods from the present applicants as it has been to past applicants. ....The EU should not expect every expensive capital investment to be completed on the date of

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<sup>9</sup> A British Government paper on this subject was circulated in the Council Working Group in July 2000 and a Commission paper was also submitted to the Council in September 2000. The Commission's strategy paper (November 8<sup>th</sup>. 2000) formalises these proposals on flexibility and proposes them to the Council



accession....We should be generous. Existing members of the EU have a huge economic advantage over applicant countries. The EU can afford to open its markets rapidly to the new members.'

However the capacity of individual member states to fight for national interest in the negotiations should also not be underrated. Before detailed positions are agreed in key areas, there will be negotiations between the Member States, which are at least as difficult and complex as those between the Union and the candidate countries.

An early example of such negotiation between the Member States is that which took place on the Common Position on the free movement of persons (negotiating chapter 2). While some of the Member States appear to wish to impose a transition period after accession for the free movement of labour (possibly Germany and Austria), others, further away from central Europe are less worried (for instance Spain). Such differences of interest in the EU show up either in straightforward policy battles over what is the right attitude to take or, more sinisterly, in the complex linking of sometimes unrelated policy issues. In the case in point the problem was to draft a sentence which would leave open the possibility in further negotiations for the EU to impose transition periods.

This example highlights the fact that the EU will probably wish to impose certain transition periods itself in areas about which individual member states feel particularly nervous, as it did in the accessions of Spain and Portugal. This question is dealt with below.

#### ii) *The negotiating position of the candidate countries*

At the end of 2000, the countries of the 'Luxembourg Group' have submitted Position Papers for virtually all negotiating chapters. The 'Helsinki Group' have already submitted position papers on roughly half the negotiating chapters.

The candidate countries basic negotiating position is of course that they will implement the whole *acquis* of the Union. However for the candidates it is clear that this process cannot be completed before accession. All the 'Luxembourg' countries have submitted requests for transition periods or other forms of derogation.

For technical reasons, the candidate countries have adopted dates for accession. Hungary chose 2002, the others decided to adopt the start of 2003.<sup>10</sup> Although this is a technical assumption on which basis impact analyses are carried out and requests for transition periods made, it goes beyond the technical, representing the assessment of the candidates about the earliest realistic date for accession. As the 'realistic' date appears to drift further into the future, some of the negotiating positions will have to be reconsidered.

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<sup>10</sup> in some cases the 'Helsinki' group of candidate countries have adopted later dates.

The candidate countries must take into account a series of domestic and external factors in assessing their negotiating positions. Amongst these factors are the following:

- The impact of Community regulation has to be considered in the light of the continuing requirement of economic transition in the candidate countries. Accession should not delay or prevent changes, which are essential to complete the transition. Ideally the candidate countries will have undertaken thorough impact analysis of the key parts of the *acquis* before defining their negotiating positions.<sup>11</sup> Such analysis will enable them to assess the impact of accession on the key challenges of transition which remain, such as completing privatisation and transforming state-owned enterprises as well as institutional reform.
- The impact on the financial situation of enterprises and of the State. This is perhaps the most important constraint on accepting the implementation of the *acquis* on accession. Implementation of the *acquis* must be planned in such a way that neither the State budget deficit is increased significantly nor the financing of investment in the private sector made more difficult.
- The impact of accession on the candidate's relations with third countries, especially those in the same region of Europe. Accession should not worsen the bi-lateral relations of the candidate with third countries and should not destabilise the region.
- Essential national interests must be defended. Essential national interests is a very imprecise term. These interests may appear to be very significant for the negotiating partner, such as the question of land ownership in the candidate country, or of minor importance except to the candidate – the example of Swedish chewing tobacco.
- Finally the domestic political situation and maintaining the support of the majority of the electors for accession must be uppermost in the minds of Governments in the candidate countries. The apparent 'ceding' of such recently regained sovereignty to Brussels together with the growing dominance of West European and American economic interests and the frequently arrogant attitudes shown by the EU towards these countries makes them particularly susceptible to arguments that the Government is not governing in the best interests of the people. Domestically, as in the Union, democratic governments need to try to get re-elected and this will put strong pressure on the government to adopt negotiating positions in key areas, which are popular with the electorate.

The interesting revelation of the negotiating positions of the 'Luxembourg group' is that they do not seem to be following the 'precautionary principle'. There has clearly been an attempt by Government to reduce the number of transition periods requested

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<sup>11</sup> In practice this is only partially the case. The Hungarian Government established a non-government body under the Chairmanship of Prof. Inotai, which evaluated major policy areas in the Union and considered their implication for Hungarian society and its economy. In Poland the approach has been less comprehensive, though a series of interesting exercises has been completed. In some of the 'Helsinki' group countries, the advantage of learning from the 'Luxembourg' group is shown in the approach of for instance Latvia and Lithuania to impact analysis.

to a minimum in order to speed up the negotiations. Early entry into the Union is considered the best way of defending national interests.

This is obviously a gamble. The candidates might nevertheless not achieve early accession and, by not applying the precautionary principle, they may be taking on a financial burden which holds back economic reform and development. They may also find that if enlargement is delayed, popular opinion may move against accession, leading to significant political changes.

This is not to say that there are no requests for transition periods. As discussed below, there are important areas of the *acquis* where transition periods and other derogations from the *acquis* are significant. The most obvious are agriculture and environment. Some of the requests underlined the lack of knowledge of the real impact of accession – they include reserving the right to add to the negotiating position as more information becomes available and to reconsider transition periods in the light of the first few years of membership.

In fact many of the positions were drawn up by Government with little or no public debate. This was particularly true for the early straightforward chapters and some of the more technical ones, such as the free movement of services or goods. However in certain countries major national discussions did take place on very key issues such as agriculture or land ownership. The relative lack of public debate is also testimony to the weakness of interest groups in most of these countries.

### **C. The Core of the Negotiations<sup>12</sup>**

For the purposes of the negotiations, the *acquis* has been divided into thirty operational chapters - the thirtieth consists of the representation of the candidate countries in the Community institutions and will not be dealt with until the end of the process.<sup>13</sup> The traditional sectoral approach involves working through these chapters, taking the easiest first. Individual sectoral problems are solved in turn and chapters are provisionally closed, as described in Annex 1.<sup>14</sup> Gradually the core areas of negotiation can be identified. These cannot be solved independently of other chapters and usually are resolved together in one 'end-game' final package of measures.

#### **7. The Chapter-by-Chapter approach**

##### *i) The 'easy' chapters*

A series of five chapters pose no problems for the negotiations, basically because they cover areas where there is hardly any Community regulation. These are areas where a constitutionalist might question whether the Union should be active at all, dealing

<sup>12</sup> this section is based on the experience of the negotiations between the EU and the Czech Republic, Estonia, Hungary, Poland and Slovenia. It is anticipated that most of the problems discussed here will reoccur in the case of the 'Helsinki' candidates

<sup>13</sup> it is no coincidence that this disaggregation of the *acquis* mirrors the organisation of the Commission prior to the reorganisation of directorates general in 1999.

<sup>14</sup> Provisionally closed chapters can be reopened though this will not be welcomed. They may have to be reopened when new EU regulation is adopted between the provisional closing and the signing of the Accession Treaty.

essentially with policy issues, which are primarily Member State responsibilities. The following group come into this category:

- Science and research
- Education and training
- Small and medium-sized enterprises
- Industrial policy
- Statistics

These five chapters have been provisionally closed for the 'Luxembourg' group and the first three have been closed for all the 'Helsinki' group as well.

*ii) Chapters with negotiating problems of limited significance*

A series of ten chapters contain only rather insignificant problems, which have been or will be resolved separately from other parts of the negotiation:

- telecommunications and information technology
- the Common Foreign and Security Policy (CFSP)
- consumer protection and health
- financial control
- Economic and Monetary Union (EMU)
- culture and audio-visual policy
- structural policy
- customs union
- external economic relations
- common fisheries policy (problems only for Poland in the 'Luxembourg' group)

**Table 2****Transitional arrangement requested by the Luxembourg Group of Candidate Countries**

Chapter	Transitional arrangements
Science/research	None
Education/train.	None
SME	None
CFSP	None
Statistics	None
Telecoms and IT	TP for public network telephony, for paid and cable TV, for full liberalisation
Culture and audio-vis	None - though one request to make sure national language given equal treatment
Industrial policy	None - though the question of what follows the ECSC Treaty in 2002 raised
Company Law	TP for SPCs in pharmaceutical patents; questions on trade mark law and patent exhaustion
Free Movement of Goods	Tps for data protection on pharmaceuticals, authorisation of pharmaceutical products (both because national regulation stricter than EU) and export of cultural goods
Consumer protection	TP on threshold value of product liability (national law stricter)
Common fisheries policy	request maintenance of international rights and obligations. Extension of state aid available for restructuring. addition of species to list of controlled species.
External economic relations	Tps to maintain existing free trade agreements or customs unions. TP to maintain bilateral national market protection after accession
Agriculture	multiple TP requests: generally for veterinary controls and hygiene requirements in meat and milk establishments; for local selling of milk not reaching EU standards; animal welfare standards, for milk quotas and suckler cow premia, for specific national products (alcohols, wines, tomatoes, hops etc.) and a five year safeguard clause in case markets disturbed
Customs union	TP on trade with regional partners - want to keep lower tariffs than in EU
Competition policy	Nothing on competition: on State Aids: request for flexibility clause on state aids for transitional economies; TP for state aid in special economic zones;
Social policy/employment	TP on certain health and safety directives (minimum standards in the workplace and of machines) and on tar content of cigarettes
Energy	TP on need to keep minimum stocks of crude oil and petroleum; internal market in natural gas, interconnection problems in Baltic region
Transport	TP on access of Community airlines; liberalisation of road transport and weight of lorries; technical requirements of some planes; development of Community railways; inland waterway liberalisation; tachographs; cabotage
Free movement of capital	TP for sale of agricultural land and licensing of real estate sales to foreigners; regulation of investments by pension funds (stricter than in EU); worries about current account stability
EMU	None; invocation of article 109k as derogation to the Treaty
Environment	Multiple TPs; urban waste water; drinking water directive; packaging and packaging waste; nitrate pollution of water; discharge of dangerous substances into ground water; habitats directive; various waste directives
Freedom to provide services	TP minimum level of own funds; protection of investor's interest; exclusion of credit unions from 1 <sup>st</sup> banking directive; capital adequacy in 2 <sup>nd</sup> banking directive; on deposit guarantee schemes;
Taxation	TP on VAT levels for certain products (books, restaurants, fuel etc.); taxation of parent companies and subsidiaries; excise duties on tobacco and alcohol; and on other country-specific tax anomalies
JHA	one country wants TP for implementing Schengen rules at airports
Free movement of persons	Problem of financing health care for nationals treated in other EU countries; certain worries about the mutual recognition of diplomas and qualifications
Structural policy	no TP; requests to be included in objective 1 areas and in Cohesion Fund
Financial control	None
Finance and budget	TP on contributions to EU budget

Note: Cyprus, Czech Republic, Estonia, Hungary, Poland and Slovenia constitute the Luxembourg Group. TP = transitional period.

These chapters contain regulation, which is of great economic significance, and also provides interesting negotiating problems. The first is clearly the case in **telecommunications, consumer protection and health**. The regulation and liberalisation of telecommunications is however a policy, which fits in well with the aims of economic transition in the candidate countries and is therefore welcome as an additional spur to reform. Consumer protection is another area of regulation which was largely absent under the central planning system and has to be developed in the move to the market economy. In each of these cases the negotiating problems, which were raised (for instance requests for short transition periods for full liberalisation) were easily solved and these chapters have been provisionally closed for all the 'Luxembourg' group. Implementation of consumer law may be slow as this is a new area of regulation for most candidates. This will not however disturb the working of the internal market.

**CFSP** and **EMU** are two key areas of EU policy, which are developing very rapidly. However neither is likely to pose serious problems today for the candidate countries, though they may well do in a few years time, probably after accession. The Common Foreign and Security Policy, including new defence initiatives, is growing rapidly in importance but has barely developed any hard *acquis* in the period since the Treaty of Maastricht and is essentially an area of loose inter-governmental cooperation. Economic and monetary union is obviously one of the most important areas of Union policy but entry into EMU is not an essential part of accession. Some of the candidate countries have declared that they will apply for membership of the Monetary Union as soon as possible after accession (two years after accession) but this will have to be assessed at that time. These two chapters have been closed for the 'Luxembourg' group.

**Financial control, structural policy, the Common Fisheries Policy and customs union** are technical chapters which concern the detail of how the European Union works in these areas. There are few real policy concerns involved. In financial control there are none. In structural policy (regional fund etc.) the candidate countries wish to be classed as 'objective 1' countries (receiving the highest intensity of aid), while Estonia has asked to be included in the 'Cohesion Fund'. These are questions, which will be decided somewhat nearer the end of the negotiations and should be solved strictly objectively – inclusion as an objective 1 region is determined by the level of GDP per capita. There is a possibility however that the structural instruments chapter will be reopened in order to solve the financing problem (see below).

The Common Fisheries Policy only poses a problem to Poland and only because it is a policy typical of centralised planning, whereas the Poles deregulated the sector after 1989. Given that the policy is in rather a mess within the EU-15, there may be some difficulty in the negotiations with Poland. The customs union *acquis* is somewhat more disputed, with Hungary asking for a transition period for tariff levels for trade with Russia and Slovenia wanting to maintain trade agreements with other states of the Former Yugoslavia. These problems are policy issues and may well be considered as part of the external economic relations chapter.

Finally **culture and audio-visual policy and external economic relations** do contain real policy issues, which give rise to negotiation, but which are not likely to persist into the end-game of negotiation. In the former, the key problem has been the ‘television without frontiers’ directive (89/552), which is honoured in the breach by most member states and which will probably be implemented in a similar way by the new member states. In external economic relations there are indeed serious questions about the extension of current trade arrangements with third countries beyond accession. This is part of the complex of foreign affairs and regional stability issues which may persist into the final stage of the negotiations. On the specific issue of trade agreements with third countries however, it is probable that agreement can be found well in advance.

*iii) Chapters with serious sectoral policy concerns*

A series of chapters contain serious sectoral policy concerns, which however should be solved within the negotiating chapter, although there is clearly a risk that these problems may flow over into the final end-game. These are the following:

- free movement of goods
- free movement of services
- company law
- taxation
- competition policy and state aids
- social policy and employment
- energy
- transport

The chapter on the **free movement of goods** contains the heart of product-regulation in the internal market. The scope for derogations from this regulation is obviously very restricted, as mentioned above. The negotiating positions show that the requests from the candidate countries, though significant, are technical in nature and rather limited in extent.

Trade and production of pharmaceuticals posed major problems for the negotiations with Spain in the nineteen-eighties. Now Poland, Hungary and Slovenia have asked for transition periods for the implementation of Directive 65/65 on the marketing of proprietary medicinal products, to enable them to continue to supply domestic markets with generic drugs after accession; without this concession the impact on state health insurance schemes could have important budgetary consequences. The Czech Republic and Slovenia have asked for agreement to maintain stricter norms than those applied in the EU in toy safety and the use and trade of chemicals and pesticides. Finally Hungary has asked for confirmation that its strict control of the export of cultural goods can be maintained after accession, as well as the continuation of the use of non-cocoa vegetable fats in chocolate.

These problems may perhaps be quite difficult to solve. Pharmaceutical companies established in the EU will not be happy with transition periods, which keep their higher priced branded goods out of the new member state markets. And if transition periods are agreed for the new Member States, they will normally be allowed to

export their products in the internal market, thereby undercutting EU-15 - based products. Nevertheless these are not the sort of problems, which are going to have to wait to be solved in the final stage of the negotiation. They may well not be solved in the most economic way, but technical compromises will be found.

The chapter on the **free movement of services** reveals other problems. Slovenia and Poland both requested transition periods for their cooperative banks in the context of the directive on capital adequacy (89/646). This request turned out to be unnecessary on a thorough study of the directive by the Commission. There have been several examples of problems which have been more apparent than real when the relevant directive has been reconsidered.

Both countries and Estonia and Hungary have also requested transition periods to implement the directive on the minimal level of guarantee of depositors' funds in credit institutions. In the candidate countries the average level of bank balances is far smaller than in the EU-15. Hence these countries maintain that for an interim period lower levels of depositor guarantee are adequate and this will reduce the strain on local banks' capital and help them to compete with western banks. Such requests are determined by the far lower level of GDP per capita in the accession countries and by their lower wealth. The young financial markets of central Europe might also find it difficult to raise the capital necessary to underwrite an insurance scheme at the EU level immediately. This is the type of problem linked to the transition and development processes, which will probably be met with a degree of understanding by the EU Member States. While it represents a breach in the internal market in financial services, a transition period in this area is unlikely to have any major impacts on competition.

In the **company law** field the only real problems are in the area of intellectual and industrial property rights. The countries which have registered problems in implementing the *acquis* in these areas (Estonia, Hungary and Poland) are essentially worried about the value of patents and trade marks registered by them nationally in the past and about the impact of the application of certain EU patents on their own domestic industries. The West European and American pharmaceutical companies for their part are concerned that some of their patents will not be valid in the new Member States. The European Federation of Pharmaceutical Industries and Associations (EFPIA) clearly considers this to be a significant problem for its members.<sup>15</sup>

In the **taxation field** all five Luxembourg countries in central Europe request transition periods and in addition Poland and Slovenia request two derogations each. The problems encountered here are those encountered by the Member States themselves, namely the application of specific rates of VAT to goods and services, which are regarded as a special national priority. These priorities differ from one state to the other. Frequently they reflect the national choice to support poor or large families by charging a lower indirect tax rate on 'necessities' (such as energy supplies and food served in canteens in Hungary) or on 'cultural items' (such as books in Poland). There is also the worry that major tax hikes will lead to a sudden jump in inflation as the whole of the tax increase is added to the price (Czech Republic). The

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<sup>15</sup> EFPIA, June 2000, EU enlargement and pharmaceuticals: key issues. Brussels.



level of excise duty on cigarettes poses yet another general problem across most of the accession countries. This is a reflection of the higher impact of expenditure on cigarettes on the general price level than in existing EU countries, the potential negative impact of higher duties on budget revenues and the general unpopularity of a sharp rise in smoking costs.

A further specific request concerns the level of turnover below which businesses can choose to be excluded from the VAT system (Poland and Slovenia).

These are serious problems potentially affecting competition in the internal market, as well as price stability and the popularity of European integration in the applicant countries. The position of the European Union is relatively weak in much of the indirect taxation and excise areas, given that most of the existing member states have been granted exemptions in Community directives. This applies equally to the question of the maximum turnover level for exemption from VAT.<sup>16</sup> Arguments concerning the impact of tax changes on the level of inflation in the applicant countries are also strong.

The requests where it will be more difficult to obtain agreement from the EU are those affecting competition across the Union and those where very strong commercial interests in the Union are affected. This certainly is true for the taxation of cigarettes. There has been enormous pressure on the European Commission and Member State Governments from American and European cigarette manufacturers to eliminate distortions to competition arising from differences in excise rates in some of the applicant countries. The interest of important commercial interests is clear (and in the case of distortionary excise rates justified). However the impact on national budgets is perhaps the dominant motive both for the EU Member States and the applicant countries in the discussion about transition periods. The applicant countries worry that a tax-induced price rise of cigarettes may lead to a fall in tax income deriving from lower consumption and higher smuggling. The Member States no doubt worry about the impact on revenues from the legal and illegal import of cigarettes bearing lower tax rates.

While most of these taxation problems are likely to be solved in within–chapter negotiations, the sensitivity of these issues may mean that some of them remain unsolved until the final negotiating round.

**Competition policy and state aids** are essentially a question of mutual confidence. There are no negotiating problems in the area of strict competition law. In the management of state aids, Poland and the Czech Republic have requested a general ‘flexibility’ clause, in order to take into account their needs as transition or ‘post-transition’ countries. This request has been influenced by the history of the former DDR’s integration into Germany and the Union. Massive quantities of aid were pumped into the former DDR after German reunification. The EU agreed to this aid outside all Union rules because of the political priority of reunification but also because of the objective challenges presented by the rapid transformation of a centrally planned economy to the market economy.

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<sup>16</sup> in its common position on Poland, the EU has indicated that it will accept a higher VAT registration and exemption threshold.

More specifically Poland requests that it should be granted 'transitory admissibility' for a series of state aids which it is already granting as assistance to transition in the environmental, regional and industrial sectors. Finally, and perhaps most difficult, Poland requests a transition period until 2017 for certain state aids granted to businesses in the Polish 'Special Economic Zones'. This latter request is by no means unique in accession negotiations. It is provoked by the fact that the state has already signed legal contracts with companies which were prepared to invest in these zones, most of which lie in areas of particular economic difficulty. In certain cases the level or the character of these aids would not be allowed in the EU. The accession country is then faced either with requesting a transition period until the end of the contract or compensating the companies for breaking their contracts.

Compromises on transitional arrangements in some of the above cases will be found. It is perhaps unlikely that the EU will agree, at least at the outset, to a 'flexibility' clause for state aids as requested by the Czechs and the Poles, even though this would seem to be justified both through the experience of the integration of the New Bundesländer in Germany and through the objective needs of a transition country. Indeed there was a Commission draft of a special regime for countries in transition, which however was subsequently withdrawn.

On the Polish Special Economic Zones there is likely to be very hard bargaining as the special conditions offered to businesses will be considered a competitive distortion by businesses in the EU (and indeed in the other applicant countries). The Polish Parliament has however recently adopted a new law on these Zones which does improve the situation for the EU, notably by abolishing the possibility of giving tax privileges to exporting companies.

The real problem in this chapter, as in several others, is the degree of mutual confidence in the application of the rules. The history of state aids control in the Union clearly shows that many decisions are strongly influenced by political pressure from Member States, which have a long tradition of supporting their domestic champions. The Commission sometimes bows to national pressure in order to avoid open clashes with Member States. In the case of the applicant countries, which have undergone a transition from a centrally planned system where state aid was all pervasive, the Member States assume that something from the previous system lives on and wish to see stronger rules imposed than exist in the EU-15. Given that there is a lack of mutual confidence within the EU, it is not surprising that this distrust is even greater in respect of the new member states.

The **social policy and employment** chapter was generally expected to create more negotiating problems than it is apparently doing. There are three requests for transition periods and each for only three years. Hungary has requested a transition period for the application of the directive on the tar content of cigarettes (actually an agricultural problem), Poland for the directive on minimal safety standards for work equipment and Slovenia for the directive on workers exposure to biological, physical and chemical agents. The requests made by Hungary and Poland are limited by a fixed date (31.12.2005) and if accession is delayed, the practical value of such transition periods must be doubted.

The reason that the applicant countries have so few requests in this chapter is perhaps that they realise that non-application of health and safety directives would be politically very sensitive to the Member States. But another reason is perhaps that it is mainly the private sector, which is affected by this legislation. Especially where serious impact assessment has not been carried out, government negotiators perhaps do not realise the extent to which business will be affected. Realistically, as the length of the accession process steadily grows, the adjustment problems will become less serious, as machinery is depreciated and new investment respecting EU standards takes place.

The energy and transport sectors contain requests from all countries for transition periods and other measures. While there are significant problems, it is unlikely that they will survive until the end-game.

In **energy**, all the countries except Hungary, ask for a transition period for the implementation of the directive which requires member states to maintain oil stocks at the 90 day consumption level. The justification is the investment cost that the extension of storage capacity would entail. The transition period requested is rather long (8 years in the case of Estonia and Poland). The only other major problem is the requests of the Czech Republic and Poland for transition periods for the liberalisation of energy markets – in Poland gas, in the Czech Republic gas and electricity.

The requests for slower energy market liberalisation may well be agreed to as they are requests for only brief transition periods, especially brief if accession is delayed. Agreeing to the long transition period for oil stocks may well be more strongly resisted by the Union, although some transition period will no doubt be agreed. Here it is worth noting that oil stocks can be stored outside the national territory in another Member State; this weakens the financial argument for a long transition period.

In **transport**, there are two principle concerns leading to a request for transition periods. The first is the unfinished restructuring and privatisation of state transport companies (air, rail, road and inland waterways). The second is the fear that local service providers may become uncompetitive in the internal market for transport services if not given more time to adjust. In addition Poland wishes to restrict access to its road infrastructure for the largest size of EU lorry, to reduce damage to its roads, while Hungary wishes to allow planes to land at its airports until the end of 2004 even if they do not meet the technical requirements of the EU (this is aimed at maintaining services with certain CIS and Middle Eastern countries).

These questions are most unlikely to remain unresolved into the final negotiating round. They are nevertheless not simple to resolve. The questions related to unfinished restructuring and privatisation are linked to the value of the companies in privatisation. The sales of LOT and MALEV (respectively the Polish and Hungarian state airlines) are considered likely to attract more revenue for the State Treasury if their restructuring can continue after accession in a somewhat less than free competitive environment, than if they have to meet EU liberalisation at accession. However the requests which have been made are all either fixed dates (until between 2005 and 2006) or are for short periods (3 years for instance in the case of Polish air liberalisation). The same short periods are requested to help local service providers

compete. In these areas it is likely that given the delays to accession, compromises will be achieved.

The Polish request to prevent the heaviest lorries using its roads for a transition period of indeterminate length is a type of absolute technical constraint. It is simply not possible that these lorries use the narrow and poorly maintained roads in the state they are today (as was indeed the situation in the United Kingdom, which also obtained a special regime). The solution will be to agree a programme of infrastructure development and, at the same time, a formula for bringing the transition to an end.

iv) *The 'end-game' negotiating problems*

The remaining chapters are those where the most difficult problems lie:

- agriculture
  - environment
  - justice and home affairs
  - free movement of persons
  - free movement of capital
  - finance and budget
- and possibly
- institutional questions

They will probably not be solved until the final round of negotiation and they will probably be solved as a package deal rather than within 'chapter-by-chapter' negotiations.

These problems are quite diverse. Certain of these questions contain real **policy issues**. Agricultural policy is of vital importance for the countries of central Europe, where the result of the negotiations will to some extent condition the structural reform of the farm sector. Justice and home affairs are also an important policy issue because it will define and probably change the foreign policy of the candidate states. Other questions are largely **financing issues**. The environment chapter should contain real policy issues but in the end is likely to be a financial discussion about how quickly the applicants can be expected to implement the environmental acquis. The finance and budget negotiations, including the financing of the CAP and the structural funds, will lead to an agreed financing package for the whole enlargement. There are also **political issues**. The problems in the free movement of persons and the free movement of capital include the politically high profile issues of the free movement of workers and the purchase of land by EU foreigners. Both of these questions are issues because they have been made so by politicians and the media. **Institutional issues** will be very significant throughout the negotiations: deciding on changes to the Union Institutions awaits the outcome of the current Inter-Governmental Conference.

**Agriculture** is an important issue because:

- agriculture is far more important as both an employer of labour and as a share of national GDP in the applicant countries than in the EU Member States; a

satisfactory solution to the agriculture negotiations is therefore essential to several of the candidate countries (see Table 3)

- agriculture receives high levels of subsidy through the EU budget and takes around one half of all EU budgetary resources; enlargement has important budgetary significance, it is therefore extremely important to the EU Member States as well
- the World Trade Organisation's negotiations on the liberalisation of trade in agricultural products is forcing the EU to accelerate the reform of the Common Agricultural Policy.

Table 3: Basic data on the candidate countries in central and eastern Europe

	GDP/cap. 1999 current prices + exchange rates	GDP/cap. 1999 current prices and pps	Agriculture and fishing in gross value added 1998	Agriculture in total employment 1996
	as % of EU average		%	% (1)
Bulgaria	7	22	21.1	23.4
Czech Rep.	23	59	4.6	4.1
Estonia	16	36	6.3	9.2
Hungary	21	51	6.8	8.2
Latvia	11	27	4.3	15.3
Lithuania	13	29	10.3	24
Poland	18	37	4.8	26.7
Romania	7	27	16.1	37.3
Slovak Rep.	16	47	4.6	6
Slovenia	45	71	4.1	6.3
EU	100	100	2.3	5.1

Source: Eurostat

(1) statistics for agricultural employment in these countries are difficult to compare to statistics within the EU member states. Generally they exaggerate the size of farm employment considerably. The 'real' comparative figure for Poland is probably around 12-15%, when differences in statistical definitions are taken into consideration.

Whereas for most of the negotiating chapters, the EU's negotiating position is straightforwardly 'the acquis', in agriculture it outlined its position through the Berlin European Council decisions based on Agenda 2000. Agenda 2000 dealt with the some of the issues of CAP reform in the light of enlargement. The Berlin summit decisions on CAP reform were disappointing in the sense that they reduced the scale and scope of the modest reforms proposed by the Commission in Agenda 2000. The question was therefore immediately raised as to whether the degree of reform was adequate to avoid the accumulation of large food surpluses in the future, especially considering the impact of higher prices on production in the new member states.

It seems most unlikely that the EU can achieve an agreement in the WTO and on enlargement without further reforms to the CAP. Clearly negotiations are rendered extremely difficult if the policy which is being negotiated is changing during the negotiations as will almost certainly be the case.

In the narrow field of negotiation, three major issues can be distinguished:

- *Levels of subsidy:* The Berlin summit ‘resolved’ the budgetary issues on agriculture simply by deciding that farmers in the applicant countries would not receive the direct income subsidies, which are becoming the major subsidy component in the CAP and which are paid to EU-15 farmers. This astonishing proposal from a Union, which otherwise is so strict in ensuring that enlargement does not lead to distortions in the internal market of the Union, forms the basis of the budgetary offer in agriculture. The Berlin decision suggests that the Member States were trying to demonstrate that enlargement could be achieved at minimum cost to the Union. This will clearly be one of the main issues in the negotiations as it is unacceptable to all the applicant countries.
- *Base reference dates for quotas and other base-linked allowances:* the base for quotas (sugar and milk for instance) or for various payments (suckler-cow premium, area payment scheme for arable crops or special beef premia for instance) defines the scale of production and/or the level of subsidy for all products for which there is a Common Market Organisation. The fixing of these reference bases is made more difficult by the nature of the economic transition in the applicant countries. Reprivatisation of the land and the break-up of state farms caused major declines in agricultural production in many of these countries in the first half of the nineteen-nineties. For this reason the applicant countries prefer to take as reference points, periods in the nineteen-eighties, the last time that agriculture was producing in relatively ‘normal’ conditions. The EU-15 on the other hand, are proposing base reference years where output was far lower (1995-99). This problem was also present in the negotiations with Spain and Portugal.
- *The proper implementation of veterinary controls and food hygiene standards on farms and in food processing units:* the political importance of food hygiene and food quality in the Union is so great that there is no room of manoeuvre in these areas. The problems will be on the one hand practical; can the applicant countries physically implement the necessary controls in meat factories, dairies and other installations before accession? And if they cannot how will they dispose of products not meeting EU standards? On the other hand there is the problem of confidence again; how can the applicants persuade consumers in the EU-15 that their food exports meet the high EU standards, even when they do? Clearly these questions, like those in the chapter on justice and home affairs touch on one of the great unresolved problems – will the enlargement of the Union start with intra-EU frontiers still in place between the EU-15 and the new member states?

There are many other detailed problems in the agricultural chapter reflecting in some cases the particularities of agricultural policy in the different countries. The following, though not an exhaustive list, gives a flavour of the complexities of this chapter:

- Slovenia wishes not to be forced to distribute milk and other quotas to individual producers, because this would interfere with the process of restructuring agriculture
- The Czech Republic, Estonia and Hungary request transition periods for bringing the standard of battery cages for chickens up to the level required by the EU – animal welfare

- Wine producers, Czech Republic, Hungary and Slovenia, request various transitional periods or permanent derogations to facilitate the continued production of traditional national wines
- Poland asks for the creation of a new Common Market Organisation for potatoes and the introduction of support mechanisms for herb growers
- Most countries request permission to keep higher standards in certain areas or to prevent the import of substances considered dangerous (certain seed varieties or some bovine semen for instance)
- Czech Republic, Hungary and Poland each request a safeguard clause in order to protect their markets in the case of severe disturbance after accession.

The Common Positions adopted to by the Union to these requests suggests that many of the detailed requests may be solved fairly easily but the budgetary issues and the veterinary/food standard issues may be extremely difficult (see below).

More important of course than these negotiating points is the nature of the future policy, which the Union and the applicant countries wish to develop. To a certain extent, the restructuring of agriculture in both west and east will be defined by the agreements, which are made in these negotiations. However these agreements themselves are constrained by the negotiations which both sides will undertake at the international level in the WTO. They are above all both constrained by the decisions on the nature of the agricultural policy which both parties wish to see implemented.

These questions are particularly acute for the countries which still have large agricultural sectors; Hungary and Poland in the Luxembourg Group and Bulgaria, Latvia, Lithuania and Romania in the Helsinki Group. Agriculture in these countries will be undergoing an accelerated restructuring process in the coming decade, which will be affected by the deal negotiated with the EU.

These questions will be linked to other chapters in the negotiations and therefore cannot be solved independently. The linkages to the budget are perhaps the easiest to understand, but there are also interrelationships with consumer protection, the internal market and the free movement of goods, land ownership issues, establishment and the free movement of services, and the environment. In addition, negotiating linkages will be made with other chapters independently of any real policy linkage. Concessions in agriculture may well simply be traded against concessions in other unrelated chapters.

**The Environment Chapter** is expected to be difficult because of its financial implications. There are however also important policy alternatives in environment policy, which unfortunately do not appear to be being discussed in the negotiations.

The important policy issue is the role of economic incentives versus command and control policy. The reputation of economic incentives appears to have been damaged in the course of the negotiations on the Kyoto Protocol, and especially following the failure of the follow-up conference in The Hague in November 2000. In the context of the capital-starved countries of central Europe however, a policy of approaching Union standards progressively and by the economically most efficient method would hold great attraction. However in the negotiations in this area the EU has shown no enthusiasm to consider any other approach than the traditional command and control

policy which has grown up over the past three decades in the Union. It appears likely that the *acquis* will be imposed on the applicant countries, with suitable transitional periods essentially for financial reasons.

The environment chapter is the one, which has attracted the largest number of requests for transition periods and derogations. The sole reason is the financeability of implementing Community environment policy in the new Member States.<sup>17</sup> There is no question that the countries do not want to achieve the same environmental quality as the existing member states. The Communist period left major problems of environmental degradation to be tackled. It is true that environment policy was often not given the highest priority in the early years of the transition in central Europe mainly because of more urgent demands on administrations everywhere. But with growing public awareness and the development of a sizeable middle class, the demand for higher environmental standards has become more pronounced. The problem is how to finance the implementation of the Community *acquis* in the context of other pressing demands on public finance.

The financial cost of implementing Community environment policy, consisting of both investment costs and operating and maintenance costs, has been estimated by the World Bank and various other reliable sources.<sup>18</sup> Although some of the more macro-estimates may be corrected by detailed impact assessment, the fact remains that none of the countries concerned can afford to finance all environmental measures, both private and public sector measures, before accession. Even if the finance was to be made available for instance from foreign loans or grants, it would still not be in the best interests of the applicant states or of the EU to proceed to a massive environmental investment in a short period, which would have considerable inflationary impacts, and in some circumstances could raise interest rates to other sectors of economic activity.

The requests for transition periods concern principally three policy areas; urban waste water, drinking water and discharges into water, and waste. These three areas make up a large proportion of the estimated total cost of implementation. In terms of the priorities of EU policy towards the negotiations (see above), the requests for transition periods in these areas should be considered relatively sympathetically by the Union. The direct effects of the non-implementation of directives in the first two areas in terms of the distortion of competition or trans-boundary externalities are likely to be of minor importance. It is true that water discharges flow into the Baltic, the Mediterranean and the Black Sea, and in small measure, the North Sea, but progressive improvement over a decade after accession is better than no improvement or rapid improvement, which cannot be sustained (for instance through an inability to meet annual operating and maintenance costs). Waste is a more complex issue but

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<sup>17</sup> The problems of implementing the *acquis* in this area should not be underestimated. This is indeed the area where the existing member states' performance is relatively poor. The large number of proceedings against Member States for non-application or wrong-application of Community environmental law are described in detail in the European Commission's annual report on the 'Monitoring of the Application of Community Law'.

<sup>18</sup> World Bank (1999), *The Czech Republic, complying with the European Union environmental directives*. Washington DC  
EDC Ltd. (1997), *Compliance costing for approximation of the EU environmental legislation in the CEEC*. Brussels (study commissioned by the European Commission)



here too some of the requests for transition periods touch purely domestic waste issues.

However environment issues are very sensitive politically, with a strong representation across all parties in Parliaments. The environment is also a policy area where the main supporters of tighter environmental controls are exactly those countries which have the greatest interest in enlargement - the Nordic countries, Austria and Germany. For this reason alone, it is unlikely that the Union will be able to accept all the requests for derogations from the applicant countries.

The most sensible strategy for both the EU and the applicants would therefore be for the two sides to consider together the most appropriate way to implement Community policy in the context of available financing sources and in the light of the need to maintain macro-economic stability and economic development, while establishing effective intermediate verification of progress. The need to consider the available financing obviously requires this chapter to be considered together with the financing and budgetary questions and the agriculture chapter.

**The Justice and Home Affairs chapter** is unique in that while only one of the first group of applicant countries has asked for a (short) transition period, it is likely to be one of the main problems in the end-game of the negotiations. This comes back to the problem of mutual confidence the nature of frontiers.

The area of justice and home affairs is one of the fastest expanding areas of work in the Union.<sup>19</sup> The new member states must adopt the Schengen acquis in full as laid out in Article 8 of the Protocol of the Treaty of Amsterdam. They must adequately control the external frontier of the Union. They must implement regulation on visa policy, negotiate readmission agreements, promote cooperation in criminal matters (notably on trafficking in drugs and human beings) and police cooperation. All the applicants agree to do this in spite of the fact that it is a complex and expensive task to bring border controls up to the level required by the EU for its external border. Of course both the existing member states and the candidates can request transition periods in the course of the negotiation.

The problem is one of credibility. There are major doubts in several EU member states that the controls exercised by the new member states will be sufficient to protect the Union from international crime as well as increased illegal migration. These doubts extend beyond this chapter to for instance doubts about the ability of the applicants to control adequately the movement of live animals across the external frontier.

Much still remains to be done between now and accession to meet the demands of the Union. It seems likely however that even if controls are perfected, the public demand in the Union for protection from international crime and illegal migration will force Union negotiators to be extremely tough and perhaps to require transitional measures to protect the EU-15.

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<sup>19</sup> A remarkably succinct but comprehensive briefing note on Justice and Home Affairs has been written by Jörg Monar, November 1999, An emerging regime of European governance for freedom, security and justice, ESRC One Europe or Several? Programme, Briefing Note 2/99.

The other aspect of this chapter, which is important, is the relationship between the internal justice and home affairs policy and foreign policy. The hard line on the creation of impenetrable external frontiers of the Union is justified by the removal of internal frontiers, which means that individual member states can no longer control the flow of persons from other member states. The argument is that if this is the case, the spread of international crime as well as the (independent) immigration of aliens must be controlled at the reinforced external frontiers. However this concept is being progressively criticised as the evidence accumulates that crime and the illegal movement of persons is not seriously affected by the strengthening of frontier controls. The European Union risks justifying its reputation as 'fortress Europe' without any real improvement of security for its citizens.<sup>20</sup>

In effect, the exclusive policy of the Union is leading to the establishment of a new divide in Europe replacing what was a growing region of cooperation and stability. The applicant countries have all tried to establish zones of stability in central Europe through the conclusion of bilateral treaties with their neighbours. Frequently they have introduced or maintained visa-free travel with these neighbouring countries. Local cross border trade has flourished in this environment. The imposition of hard external border controls and the Union visa regime is leading to radical changes in the quality of cooperation in the region and will lead to far more strained relations with neighbouring countries.

Some of the applicants will have especially difficult problems to solve once the external border is established. If Romania and Slovakia do not join the Union at the same time as Hungary, Hungary will be faced with the situation of seeing its minorities in these countries divided from it by the external frontier. A similar situation would exist between the Czech and Slovak Republics if Slovakia did not enter the Union at the same time as the Czech Republic. If by accession Romania has not been dropped from the list of countries from which travellers to the Union need visas, this would mean Romanian citizens from the Hungarian minority would also require visas to visit Budapest.

The economic importance of the external frontier should also be noted. A not insignificant part of Poland's external trade since 1990 was through local border markets. Already the measures which have been taken to reinforce controls of movement across the eastern frontier have led to significant declines in this trade. The effective closure of the frontier to persons without visas will spell the end of border trade and to the growing shuttle labour markets across the frontier with Belarus and the Ukraine.

The discussion of the nature of the external frontier, and the measures to control movements across it, is likely to be more significant in the end game of the negotiations than the lack of requests for derogations suggests.

The essential problem in the chapter on the free movement of persons is **the free movement of labour**. There will be problems over the mutual recognition of qualifications (for instance people in Estonia with Soviet qualifications) and there

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<sup>20</sup> Jörg Monar, 2000, Justice and home affairs in a wider Europe: the dynamics of inclusion and exclusion, ESRC, 'One Europe or several? Programme, Working Paper 07/00

may be problems over the coordination of social security systems, but these will hopefully be settled at the technical level.

The free movement of labour is an issue where it seems likely that the European Union will require a transitional period, while the applicant countries do not have any major problems. There is a potential problem for the applicant countries; namely whether there will not be an outflow of highly skilled staff in the public sector (doctors, dentists, nurses) once their qualifications are recognised. However this 'brain-drain' argument does not play any part in the negotiations. Generally the free movement of labour is regarded in the applicant countries as a symbolically important component of membership of the Union. It is also an important economic issue. The movement of workers from the less developed member states to the more developed has always been an important part of the improvement of the quality of the workforce of the former. Ireland is a case in point where large numbers of Irish citizens, who moved to other member states, have now returned to Ireland with improved skills and have contributed greatly to the 'Irish economic miracle'.

A large number of studies have been made on the potential for the movement of labour after the accession of the ten central and eastern European countries.<sup>21</sup> There will almost certainly be an increase in the amount of cross border employment and there may be larger movements in some specific areas or professions, but there is very little evidence that there will be major flows from east to west. It is also true that any flow of labour from east to west would probably consist of lower skilled workers (higher skilled workers in the private sector enjoying relatively high wages in central Europe), and these lower skilled workers would compete on price with the same group of workers in the Union. The answer of course in the longer term is the liberalisation and reform of the labour market in western Europe and stronger growth in the whole continent. As unemployment falls in Germany with the introduction of major economic and social reforms, and the demographically determined shortage of labour becomes more acute, the resistance to the employment of foreigners will decrease. Already changes in public attitudes are resulting from the growing concern about longer term demographic problems.

The tone of the discussion on free movement is already changing in Germany, one of the two countries where free movement is considered a major problem. The demographic development will leave Germany with a very high dependency rate in coming generations, unless there is considerable inward migration of persons in working age. A United Nations study estimated recently that in order for the German population to remain constant in the period up to 2050, an annual inward migration of 324,000 persons would be needed.<sup>22</sup> In the absence of migration, the population of Germany would decline from 81.7 million in 1995 to 58.8 million in 2050. The potential support ratio would decrease from 4.4 in 1995 to 1.8 in 2050.<sup>23</sup> The same study suggests that for the European Union (EU-15) as a whole, it would be necessary

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<sup>21</sup> see for instance a good overview in: Quaisser W. et al, March 2000, Die Osterweiterung der Europäischen Union: Konsequenzen für Wohlstand und Beschäftigung in Europa. Friedrich Ebert Stiftung, Berlin.

<sup>22</sup> United Nations' Department of Economic and Social Affairs Population Division, March 2000, Replacement migration: is it a solution to declining and ageing populations?, New York.

<sup>23</sup> the potential support ratio is the relationship between the population aged 15 to 64 to the population over 65 years of age

to absorb 950,000 migrants annually in order to keep the population constant up to 2050. In a few years time, the problem for Germany will not be that it is being overrun by labour migrants but that it is having to compete for migrant labour with the other industrialised countries and may have a competitive disadvantage.

This question is a political question rather than an economic or social question. There is considerable anxiety in regions of high unemployment in the Union (for instance the Neue Bundesländer) that a flow of workers from the east, happy to work for lower wages, will 'steal' jobs. Politicians will have to pay attention to these fears in the enlargement process. If the EU demands a transition period, an arrangement must be found which will allow regular reviews of the labour market situation so that any agreed transition period can be ended as soon as the political resistance to free movement has ebbed.

The chapter on **the free movement of capital** has two potentially difficult areas of negotiation; the liberalisation of short-term capital movements and the purchase of agricultural land and forest by EU-foreigners.

The liberalisation of short-term capital movements is considered by many to be extremely dangerous in a situation where short-term capital could leave the financial system very quickly leading to a fall in the exchange rate and considerable difficulties for enterprises which have borrowed in foreign currencies. It would be unwise to liberalise short-term capital movements until financial markets have stabilised in order to avoid the sort of crisis, which enveloped South East Asia in 1997-98.

The European Union has agreed that complete liberalisation of capital markets can wait until accession but insists on receiving a timetable for the step-wise liberalisation between now and then. The problem here is that it is quite difficult to 'timetable' such a relaxation of controls today, as some of the applicant countries are in the middle of financial stabilisation programmes. High real interest rates are already drawing in volatile capital and the announced abolition of controls on short-term capital movements might lead to far greater speculative movements.

In spite of the difficulty of this issue, it is unlikely to be one, which enters the 'end-game'. The last thing the EU wants is a destabilised economy joining the Union. It is likely to agree on a regime which helps to protect these countries from instability.

The sale of land to EU-foreigners however is a question, which will almost certainly be part of the final settlement. Four of the five central European 'Luxembourg' group have asked for transition periods. Just as with the question of the free movement of labour, this problem appears to be more political than real. Nevertheless this is a problem, like the free movement of workers, because it is considered a problem by politicians and the electorates. Tough negotiations over land ownership have a long tradition in the EU, with Denmark, Austria and Norway all standing out for restrictions in land markets.

There are three serious issues:

- the danger that large enough areas of land will be bought up by foreigners that social tension will result

- the danger that foreigners are buying land simply for the capital gains that they expect to achieve
- the danger that rising prices due to the entry of foreigners into the market will make the restructuring of farming more complicated.

There have been numerous cases of EU-foreigners circumventing national restrictions in the candidate countries to buy up land, which is often only one tenth of the price of similar quality agricultural land in the Union. Although these illegal or quasi-legal purchases remain at a low level, they obviously lead to major worries on the part of nationals and become an important point in political discussions. This is especially so in these countries, which have often had to contend with foreign occupation of the land in the relatively recent past. There would clearly be social tension and a backlash against accession if large areas of land were to be bought up by foreigners.

The key factor is of course the price differential between land in the EU and in the applicant countries. If a totally liberalised land market develops, it is to be expected that in the next decade, land prices will rise considerably, closing some of the gap with those in the EU-15. This will lead to significant capital gains for both Polish and foreign landowners. Clearly while the applicants have an interest in welcoming foreign direct investment in agriculture, in order to develop the sector, they have no interest in speculative land purchase.

There is also a worry that rising land prices will make the restructuring of agriculture more difficult. The Hungarian Position Paper states it briefly 'It (the price increase in land) would prevent Hungarian farmers from having access to land at affordable prices and interfere with the policy of the Hungarian Government aiming at the creation of a more viable ownership structure'. The restructuring process will rely on dynamic farmers in these countries buying or leasing the land from farmers who are giving up the profession. If prices rise considerably as a result of foreign buying, this process of restructuring will be made that much more difficult.

The real unknown here is how high the pressure for land purchase by EU-foreigners will be after accession. Many think that it will not be strong because land ownership in foreign countries is usually complex and because reform of the Common Agricultural Policy will put downward pressure on agricultural land values in the EU-15. However there is no doubting that this issue is of great importance to the voters in these countries.

Finally there is the chapter on **finance and budget**, which is clearly related to all the other difficult negotiating chapters and will be a major battleground, though perhaps more between the existing Member States than with the new Member States. The general wisdom is that enlargement will not fail over the budget. After all the European Union budget is only about 1.2% of the EU GDP or about 2.5% of EU public spending. However measured on the amount of discussion it leads to, one would imagine that it is the most important problem. There will have to be a financial settlement in the accession treaties, which is acceptable to all parties even if it satisfies nobody.

The applicants have all asked that there should be a mechanism, which protects them from being net contributors to the Union budget in the first years of membership.

Some have been more formal and proposed specific mechanisms based on previous accessions which will effectively guarantee net financial benefits from accession over the first five years of membership, through intervention either on the own resources or the expenditure sides of the budget.

While finance and budget should not be as difficult as agriculture to resolve because there are less policy issues involved, it will be immensely complicated. Over recent years the net contributors to the Union budget have become much more strident in their demands for reductions in their contributions, while the net beneficiaries apparently see financial transfers from Brussels as a right, even when they grow out of the criteria used to establish rights to structural and cohesion funds.

Two sets of related problems have to be resolved:

- the financial settlement within the EU-15 on future funding of the Union
- the financial settlement between the EU-15 and the applicant countries.

Within the EU-15 there is no agreement on final ‘side-payments’ to existing member states.<sup>24</sup> With some countries gaining from enlargement and others losing, there is likely to be a negotiation before enlargement which redistributes some of these gains from enlargement. Some measures were taken at the Berlin European Council to accommodate the ‘cohesion countries’ but more may well be needed to enable enlargement to proceed. Nicolaides put it succinctly in the following way: ‘Member States have not yet agreed on a date for enlargement because they still have to negotiate among themselves the size of the compensatory “side payments”.’

As most of the Union budget still concerns redistribution through the agricultural policy and the structural funds (approximately 80% of the EU budget), reform in these two areas as well as on the own resources side will effectively decide the budget outturn in the first years after enlargement. Reform of own resources has been put off until the next financial perspective, but the reform of the CAP and of the structural funds, agreed at the Berlin European Council, will take place in the current financing period 2000-2006.

Additional reform of the CAP will almost certainly take place in the next two to three years, under pressure from the enlargement process but also from the negotiations in the WTO. Reform will normally lead eventually to a reduction of expenditure on agriculture. If this is achieved through a price reduction and a partial ‘renationalisation’ of the CAP, it will lead to an increase in the net contributor position of France and a reduction in the German contribution to the EU and to a considerable distortion in the Common Market. If it happens through a price reduction combined with degressive direct income subsidies for farmers, it will lead overall to a sharp reduction in Community agricultural spending, a reduction in net contributions from Germany but a much more profound restructuring of German agriculture. In any case CAP reform will generally leave the position of the large net

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<sup>24</sup> P. Nicolaides, (September 2000), The “End Game” of the Enlargement of the European Union: the Significance of the Feira European Council, unpublished paper submitted to Natolin Workshop on Enlargement, September 2000

beneficiaries little changed but will change the distribution of financial flows in the northern Member States.<sup>25</sup>

Once enlargement is added the situation becomes more complex. The short-term need to compensate farmers in the new member states in the same way as those in the EU-15 will add to financing needs; and longer term the potential for product surpluses will rise if reform of the CAP is insufficient. These trends may lead to an increase in CAP funding requirements in the period up to 2006 but especially in the following financing period.

The proposal on the structural funds, which underlies the figures of the Berlin financial perspective are probably quite realistic for the period up to 2006. The problem will lie in the following financial perspective (from 2007), when net funding to Spain, Portugal and Greece is likely to fall considerably unless overall spending on the structural funds rises. This might be one reason to end negotiations with the candidate countries before the discussions on the 2007-2012 period begin seriously.

The negotiations between the Union and the applicant countries is liable to concentrate on the issue of the transition arrangement towards the full net contribution of the applicant countries to the Union budget. Given the low level of wealth and income in these countries, it is difficult to imagine that they would be net contributors to the Union budget. There is however a strong risk that this will be the case if they have to pay full contributions to own resources from the first day of accession. The actual net position will depend on the outcome to the agricultural negotiations to some extent: however reducing their net contributions for a transitional period will be the key to ensuring that they are not net payers in the first years.

These negotiations will be very difficult because the Union will be faced both with demands for increased spending within the EU-15 as well as the demands of enlargement.

The final area for negotiation will be that of **institutional questions**. This would not normally be a controversial area, but it may be quite difficult in the current period of institutional flux to agree on questions such as the number of Commissioners or votes in the Council of Ministers, which the new member states will have a right too. This question is complicated by the small population size of several of the applicants. It is entirely possible that institutional reform may have 'moved the goalposts' before the negotiations are concluded, leading to disappointments in the candidate countries. This area has not been discussed as yet and will be tackled at the end of the negotiations on other issues.

## 8. The current state of the negotiations

It is difficult to justify the term stagnation applied to the current state of the negotiations on a superficial view of what has already been achieved.

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<sup>25</sup> J. Pelkmans, D. Gros, J. Nunez-Ferrar, (September 2000), Long run economic aspects of the EU's Eastern Enlargement, WRR Working Document, The Hague.

All the negotiating chapters have been opened with the six countries in the Luxembourg group and (excluding Cyprus) between 11 and 15 chapters have been provisionally closed with each. More had not been promised by the EU. With the Helsinki group (excluding Cyprus), the negotiations were initiated as promised under the Portuguese Presidency and between four and six chapters have been provisionally closed with each. The French Presidency is aiming to open a further 40 chapters during its presidency so that at the end of the French Presidency (December 2000), in purely statistical terms, there will be little difference between the two groups.

However it is important to look behind the headline achievements. There are several worrying signs:

- The Member States have only barely entered the negotiations, having left the running to the European Commission. They have only just begun to concentrate on the implications of enlargement and are not therefore in a situation to move to the 'end-game' in the negotiations. Where the Member States have intervened, the intervention has been inconsistent. They have made unbelievably optimistic promises to the candidates while reinforcing the Commission's tough stance in the EU Common Positions.
- The Commission, which is playing the major role at this point in the negotiations (as in past enlargements), is institutionally far weaker today than in previous enlargements. This makes it more difficult for the Commission to help to broker compromises than previously.
- The Member States refuse to consider any change to the financial perspective agreed at Berlin as a matter of religion, even though they all realised at Berlin that the adopted financial perspective was excessively approximate. This does not exclude small changes within the overall limits of that perspective but it means that an enlargement nearer the end of the current financial perspective would be preferable to many delegations.
- Unofficially neither the French nor the German Governments show any willingness to reach the core areas of negotiation until after their national elections in 2002. The French Presidency of the Union in the second half of 2000 has made it abundantly clear that it is not interested in promoting enlargement. The discussion about the long-term aims of the Union has tended to spill over into the negotiations. Union and some applicant country politicians have started to use the enlargement in their political platforms, frequently distorting the truth for political ends. A leading CSU politician attributed the weakness of the EURO against the dollar to the market expectations of enlargement!
- The emphasis being put on verification of implementation of the *acquis* today suggests a severe lack of trust but also opens up many avenues for opponents of enlargement to exploit. Can accession now founder on the non-implementation of one directive?

The lack of obvious progress beyond the easy chapters of the negotiations is understandable but is causing major tensions with the applicant countries, especially those in the first group. It may of course be greeted by the Helsinki countries because it gives them a chance to catch up with the Luxembourg Group. However this is not too difficult a challenge, given that only the easy chapters have been closed with the first group and there is no likelihood that difficult chapters will be concluded



in the near future. However the Helsinki group must also feel worried that the negotiations are not progressing and their accession too may be considerably delayed.

The problem for the applicant countries in the face of delay is to maintain voter and parliamentary support for the process of accession preparation, with no clear promise that accession will take place in the life of most Parliaments. Without firm commitments to enlargement from the Union, legal and institutional preparation for accession is seen by many to be an opening of the markets of central Europe to west European companies without any counterpart from the Union. Resistance is bound to grow and the pace of accession preparation to fall.

The problem for the EU-15 Member States is that the longer the process takes the more the political platform is likely to be dominated by nationalistic politicians who are both against enlargement but also against the European Union itself. On the other hand a well-prepared enlargement, in which the majority of the electorate can be won over would be worth striving for.

#### **D. The 'End-Game' in the Negotiations**

##### 9. Conditions required to reach the end-game

To reach the end of the enlargement negotiations five things are necessary:

- The European Union must make the key political decisions to move towards the end of the negotiations
- The level of certainty about accession needs to be raised to permit compromises to be struck.
- The Union will have to decide whether it wishes to enlarge to all the applicant countries at the same time or in a staggered manner over a series of years.
- Acceptable solutions need to be found for the internal negotiations within the EU-15 and equally acceptable solutions need to be found for the key negotiating problems between the EU and the candidate countries.

##### *i.) Political decisions and mutual confidence: the European Commission's strategy paper*

The key issue in bringing these negotiations to a close is the question of the will to take a clear political decision to move on to the end-game negotiation. Without such decisions on the Union side the negotiations will simply stall. Such decisions in the Union are usually taken today by the Heads of State and Government meeting in the European Council and it is therefore to the Presidency of the Union that one must look for progress. It is of course conceivable that the large countries in the Union form a major lobby for a particular policy and force it through irrespective of the Presidency (Monetary Union was a case in point).

In 2000 many considered that the French Presidency might force through the necessary decisions. The French Presidency however is ambivalent on enlargement, has other priorities and is restricted by the election date in 2002. The Swedish

Presidency, which follows in the beginning of 2001 is likely to be far more positive towards enlargement but it will need strong allies amongst the other Member States. The British Government is likely to support any moves to speed up enlargement though it has to fight against being considered less affected by the process and therefore to some extent disqualified from seriously influencing the debate. The other Nordic countries and the Netherlands are other potential allies. Once the collective decision to move decisively towards the core of the negotiation is taken, be it under the Swedish Presidency or another, the final phase of the negotiations can start.

*The European Commission's Strategy Paper*, which was published in November 2000, is a brave attempt to move the member states to take these political decisions. The Commission proposes:

- greater flexibility on the treatment of transition periods while guaranteeing the integrity of the internal market
- the possibility of 'setting aside' chapters (this is effectively the same as provisionally closing chapters) when only one or two difficult issues remain to be negotiated. The difficult issues will be treated later in the negotiations
- a 'road map' for the negotiations, which establishes a detailed timetable for the completion of the negotiations on all remaining chapters. This timetable is divided into three semesters, ending in the summer of 2002
- an acceleration of negotiations with the Helsinki Group of candidates to allow them to catch up with the Luxembourg Group, wherever this is possible.

This is the first real attempt to guide the negotiations towards a conclusion in the not too distant future. The Commission's proposals, even if the timetable slips, would lead to a conclusion of the negotiations and the signing of accession treaties with the leading group of candidates during the Danish Presidency at the end of 2002 – this would perhaps be appropriate as Denmark started the accession process at the Copenhagen European Council ten years previously in June 1993.

The member states have already welcomed this strategy paper but there have been some detailed criticisms too. This leaves open the final reaction of the member states to these proposals.

The European Union finds it difficult to behave strategically on complex issues. In this case the lack of decisiveness amongst the member states is partially linked to the difficulties of enlargement perceived by the EU Member States and to the resulting domestic difficulties, but also to the profound lack of trust in which the negotiations are being conducted. As already mentioned, the majority of the EU Member States clearly do not trust the applicant countries to implement the *acquis communautaire* even when they have given clear commitments to do so.

The source of this lack of trust lies partly in the basic lack of understanding in the EU-15 of the situation in countries in transition and in the institutional problems in the candidate countries.

The transition process from the planned economy to the market, which all the candidates have experienced, is extremely complex and characterised in some cases by trial and error. The transition was marked by the need for a complete reregulation of the economy, where again errors were made and had to be corrected. In such a situation of flux some of the announced policies, initiated in the context of European integration had to be modified and this sometimes caused consternation in the EU-15 member states, where such problems are rarer.

Politically too the countries have undergone a period of instability, while political parties were being created and the normal routine of democratic multi-party politics established. This has led to frequent changes of party alliances and of governments. This has also meant that there have been sudden changes in the personnel dealing with European integration. Such frequent changes are of course destabilising for relationships between governments and officials on each side.

These transition problems have led to a feeling in the EU-15 member states that the candidate country governments cannot be trusted to implement the *acquis communautaire*. Because this feeling exists, the EU is trying to impose the whole *acquis* on the candidate countries in a totally inflexible and anti-economic way. To insist that the environmental *acquis* should be implemented at accession or shortly after accession is absurd from an economic point of view. The pressure from the EU-15 forces the candidates to make promises that they cannot deliver on and this reinforces the feeling in the EU that they cannot be trusted. There is apparently no chance at this stage of tackling the difficult problems of adapting to the *acquis* in a more rational and efficient way.

The transition from the planned economy to the market has proceeded rapidly and successfully in most of the candidate countries. Today many of the problems, which coloured the views of the EU member states, have been solved. The EU, moving rather slowly on complex issues, finds it difficult to cope with such rapid changes, hence the enormous pressure to develop ever more intrusive monitoring exercises. And hence the lack of trust between the parties, which is clearly displayed in the Common Positions of the EU.

The institutional problems in the candidate countries are important and vital for the proper implementation of economic regulation, including the *acquis communautaire*. The creation of new institutions and the adaptation of existing institutions are difficult tasks and institutions take many years to obtain real credibility. The problems here lie less in the central and regional governments, where of course, as in EU countries, everything is not perfect, but in the regulatory bodies operating in the economy and in the legal system on which the correct implementation of economic regulation finally depends.

But here too the candidates have made a lot of progress, as the reports of the European Commission show. Many of these institutions and processes will need several more years to establish fully their credibility. But accession cannot wait until everything works more perfectly than in the EU itself. There will be one or two years during which the *acquis* will not be implemented perfectly (as in previous enlargements and in the current member states), but this is a small cost compared to that of delaying the enlargement itself.

ii.) *The level of certainty about enlargement must be raised*

The main reason that the candidate countries have been so insistent on the need for a date from the Union for the first enlargement is that this would raise the degree of certainty about enlargement taking place at all. Although most politicians would admit that there is a broad commitment to enlargement resulting from the intensity of relations over the last decade and from the statements made at successive European Councils, there is in fact no binding commitment. Uncertainty is increased by the absence of enthusiasm from the voters in the Union, where the degree of knowledge about the state of the enlargement process is very low.

As the public discussion in the Union appears to move enlargement towards the second rather than the first half of the decade, the overall commitment of the Union to enlargement weakens. The delay is usually explained either by the lack of preparedness of the candidates or by the need for more time to reform the Union.

At least in the leading reform countries in central and eastern Europe, the first argument is difficult to justify. In some respects reforms in these countries have progressed beyond those in the member states of the EU. Whereas pension, health and tax reforms have all been carried out in Hungary and Poland, Germany and France are still struggling with these questions. It is true that the whole *acquis communautaire* has not been transposed or implemented in these countries, but the Commission progress reports point to very good progress being made.<sup>26</sup> Even for the majority of candidate countries, reform is so far advanced that all the essential tests for membership will be met in the next two or three years, as the Commission reports clearly state. There is of course strong differentiation between the candidate countries and the weaker countries are considerably behind Hungary and Poland in both reform and legal harmonisation.

The second is clearly an important reason. Within the Union the debates about the future of the Union as a whole and of the Monetary Union (especially after the Danish referendum result) are intensifying with a good deal of concern amongst politicians and the citizens. The question of the future shape of integration and cooperation on the European Continent is being debated. But the pace of reform in the Union is perceived as being extremely slow (for instance reform of the CAP), so that these major questions may take decades to resolve. In this situation, the commitment to at least early enlargement appears rather weak.

A higher level of certainty about enlargement is however necessary for several crucial reasons. Business both in the candidate countries and in the rest of the world needs to be able to base investment, production and marketing plans on the reasonable expectation that these countries will within a given time-scale join the Union and be within the internal market of the Union. A higher level of certainty about the process would lead to larger flows of foreign direct investment and to higher domestic investment.

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<sup>26</sup> European Commission, November 2000, Progress Reports on the candidate countries. Brussels

A higher degree of certainty would also make policy-making in the candidate countries considerably easier. Today the foreign and economic policies of these countries are based on the supposition that they will soon enter the Union. Strip this assumption away and policy would have to change radically. This is true of foreign policy, where the countries would follow a far more independent policy if EU accession was not anticipated (for instance in relations with the Ukraine or Russia), of economic policy, where many decisions on the timing of reforms would have been different and certainly of agricultural policy.

In the negotiation process, a higher degree of certainty about the outcome is necessary to persuade the candidate countries to concentrate all efforts on accession preparations and to begin to consider areas where they can be more flexible in the negotiations. Most negotiating governments already recognise that they may need to withdraw certain requests for transition periods or other measures, but they do not wish to make this offer before they are sure that the enlargement process is entering the end-game phase, with a high degree of certainty about the outcome.

*iii.) The Union's decision on how the enlargement will take place*

The European Union has been relatively impartial in its approach to the candidate countries as to how the enlargement of the Union will take place. The official statements underline that the candidate countries which perform best on the basis of the Copenhagen criteria will be the ones which enter the Union first. The Union opened negotiations with the Luxembourg group before opening them with the Helsinki group, but it appears that the Helsinki group of candidates are being helped to catch up in negotiating terms with the first group.

Rather soon however the Union will have to decide how it is going to proceed in concrete terms for quite practical reasons. The following criteria are among those liable to be crucial in this decision:

- the enlargement will have major disruption costs for the institutions of the Union and for Union policy. This fact will mean that if there are to be two or more enlargements, several years (certainly 5 years at a minimum) will separate the enlargements. The prospect held out by the Union of each accession taking place when candidates are ready has never been a realistic option. The EU could not manage one accession each year!
- if the first enlargement does not include all applicant countries, a clear and relatively binding commitment must be given to those countries which have to wait.
- the date of accession to the Union really will depend largely on the political and economic health of each candidate (Copenhagen criteria) and its preparation for accession. The candidates themselves have indicated dates when they expect to be ready for accession. These range from end-2001 for Hungary to end-2006 for Romania and Bulgaria.
- but preparedness is a necessary but not sufficient condition. The Union will take other political factors into account such as the relation between enlargement and its relations with Russia and the USA, the impact on stability in south-east Europe and the relations with the Mediterranean countries. It will also consider the

problems associated with the differential accession of countries bound by historical, ethnic or other ties (Hungary, Slovakia and Romania or the Czech and Slovak Republics)

- the number of countries in the first enlargement and its timing will also depend on the capacity of the Union itself to reform. Slow progress with reform within the EU will tend to limit the size of the first enlargement. But setting a date for enlargement will also have an impact on the scale and timing of reform within the Union.

If the principle of countries joining when they are ready is eliminated, there are two main scenarios to be discussed:

- an early small first enlargement followed by one or two later enlargements in the second half of the decade;
- one larger enlargement later in 2004-2006 followed by another perhaps five years later.

A third possibility of a collective enlargement after 2007 (in the Union's next multi-annual financing period) has a small probability as it would lead to massive protest from many of the candidate countries and a loss of international prestige for the Union.

The accession of countries in South-Eastern Europe must also be considered as likely by the end of the decade and perhaps in certain cases (Croatia for instance) earlier. In all cases it is assumed that enlargement to Turkey would be a separate and much later event.

Whatever the procedure chosen (see below), the European Union will probably have to make its intentions known in 2001 in order for there to be an orderly preparation of the enlargement. It is possible that the decision will be made in two separate steps, the first announcing the date for the first accession and the second specifying which countries will be considered.

#### *iv.) The negotiations between the member states of the European Union*

As Nikolaidis points out, one of the problems of this negotiation is that the Member States themselves have not worked out the system of side payments resulting from the economic effects of enlargement on the different member states.

The political economy of enlargement is driven by two factors:

- the real economic gains (or losses), which will affect the fifteen member states as a result of enlargement
- the changes in the Union's budgetary redistribution mechanisms (essentially through the structural funds and the Common Agricultural Policy)

There are a considerable number of serious studies on the economic costs and benefits of enlargement. These have been done for the European Union, for individual

member states and for candidate countries.<sup>27</sup> In general the studies come to the conclusion that enlargement will bring net economic gains to the Union as a whole but that these gains will be spread unevenly. Clearly those countries closest to central Europe will gain the most. This includes Germany, Austria, the Nordic Countries and the Netherlands. Least obviously likely to gain will be Spain, Portugal and Ireland. In other words several of the present net contributors to the Union budget will gain most in terms of economic dynamics from enlargement, while the net beneficiaries will gain least.

In budgetary terms, the net gains and losses will be more evenly spread over the net contributors and the net beneficiaries. The Berlin financial framework adjusts the expenditure side of the Union budget while maintaining strict limits on the revenue side. The net contributors to the budget would like this restriction on the size of the overall budget to remain after 2007 as well. The candidate countries being in general poorer and more agricultural than the existing member states will receive large transfers from Brussels, perhaps reaching eventually 5% of their GDP (in the case that direct income subsidies will be paid in some form to their farmers). With a strict control on the size of the budget, this means that all the existing member states will be small net losers from enlargement in static budgetary terms, while all being winners in economic terms. However those which will suffer most (in a static, budgetary sense) will be those which today receive large transfers under the agricultural and structural funds – in other words the net beneficiaries from the Union budget.

In the logic of the Union, this will give rise to a negotiation between the EU-15 members, which will transfer some of the economic gains from enlargement to the member states, which are losing some of their transfers from Brussels.<sup>28</sup> This negotiation will be extremely difficult because the net contributors to the Union budget are determined that their net contributions should not increase due to enlargement. The net beneficiaries regard their transfers from Brussels as a right and part of their accession deal, independent of the purpose of the transfers or the conditions under which the transfers are given.

Others matters will also have to be negotiated first between the existing members of the Union. The reform of the CAP which will affect France's net contribution to the Union will be particularly difficult. But the key problem is likely to be that between net contributors and net beneficiaries where positions have tended to harden since the start of monetary union.

These internal problems clearly have an impact on the negotiations with the candidate countries. The overall size of the Union budget and the level of the side payments are obviously matters, which will affect the negotiating positions of both parties. However both negotiations within the Union and those with the candidate countries

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<sup>27</sup> see for instance: R. Baldwin, J. François, R. Portes (1997), The costs and benefits of eastern enlargement: the impact on the EU and central Europe, in: Economic Policy, April 1997, CEPR, London

Breuss . (June 1999), Costs and benefits of EU Enlargement in Model Simulations. IEF Working Paper Nr. 33, Vienna

Keuschnigg , Keuschnigg , Kohler . (September 1999), Eastern enlargement to the EU: economic costs and benefits for the present member states. European Commission, study XIX/B1/9801.

<sup>28</sup> this is a logic which will only be understood by those few people who have had to live too close to the EU to maintain rationality

can run in parallel; indeed they must run in parallel if the enlargement process is to be concluded in the short-term.

v.) *the negotiations between the EU and the candidate countries*

The negotiations between the Member States of the Union and the candidate countries are characterised by asymmetry in the power of the two parties involved. The Union will use its dominant position to force the candidate countries to accept as much of the *acquis* as is possible. This is quite natural because change is a cost for the Union and both sides in the negotiations are trying to minimise costs.

The prize of accession is such that the candidate countries will be prepared to give in on many positions in order to win early membership. Some candidate countries may well propose to withdraw most of their demands for transition periods in order to be accepted earlier or earlier than other countries. The danger is that the final outcome may not be welfare maximising for the enlarged Union.

It would be more sensible if the candidate countries and the Union could move away somewhat from what Helen Wallace has called the ‘conventional practitioners’ narrative’ of enlargement to a more economically relevant approach.<sup>29</sup> To insist on an approach which considers the candidate country’s capacity to implement each of the regulations contained in the *acquis communautaire* successively and where transition periods or temporary derogations to individual legal acts are the only form of flexibility is certainly not the most sensible way to proceed.

Eventually the new member states will implement the whole *acquis* in the way the current member states do now. This may however be some way off. Between now and then, it might be more sensible to negotiate global transitional arrangements for whole policy areas, where the emphasis is on meeting measurable objectives rather than on strictly implementing directives. This has been discussed in relation to the environment area above, but it could even be imagined to a limited degree in the internal market area. The key is to decide what is absolutely necessary for the functioning of the internal market and what is relatively unimportant. The latter can be achieved after accession on agreed performance criteria.

Unfortunately it is the ‘conventional practitioner’s narrative’ which is being used for the current enlargement and it is unlikely that there will be any major divergence from this. Nevertheless certain elements of alternative systems are built into the proposal contained in the next section.

In the conventional route, the way to the ‘end-game’ is by finishing off negotiations in all the non-end-game areas as quickly as possible to clear the field for the final negotiation. Negotiation of the difficult areas listed under 7.ii and 7.iii above can be completed for the leading candidate countries during the coming six months, hopefully without any of the problems in these chapters spilling over into the general end-game negotiation. This would leave only the most difficult chapters to be negotiated. Preliminary negotiations can already be started in these latter areas, so

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<sup>29</sup> H. Wallace, July 2000, Can a reformed European Union bear the weight of enlargement?, Talk delivered to the ECSA-Canada Conference, Quebec City.



that the whole negotiation with these countries can be finished at the end of 2001 or in the first half of 2002.

Such a perspective requires considerable resources, especially human resources, to be available on both sides. These resources are required for the negotiations themselves but also in order to keep interest groups and the general public abreast of the progress in the end-game negotiations. At present these resources are not being made available to the Commission and the Member States and it is doubtful if they are in the candidate countries. A considerable reallocation of resources is therefore necessary.

Some pooling of resources could be achieved on the candidate country side if there was real cooperation between them. Many of the problems they face are common ones (e.g. direct income payments in agriculture or labour mobility) and cooperation would allow them to share information. Cooperation would also help them in certain areas to adopt common positions in negotiations with the Union and to obtain more satisfactory solutions.

There has indeed been more cooperation between the Luxembourg group of countries in the accession negotiations than there was in the accession agreement negotiations of 1991.<sup>30</sup> Some of the cooperation has been extremely specific and very useful, such as the expert-level consultation on problems in the pharmaceutical industry resulting from patent legislation and intellectual property rights.<sup>31</sup> The meetings of chief negotiators have also been valuable in the exchange of information. However, as throughout the nineteen-nineties, real cooperation has been bedevilled by the conviction of certain countries that cooperation with the others may hold back their own entry to the Union. This is also preventing real cooperation between the Luxembourg group and the Helsinki group.

This is of course in contrast to the absolute coordination of positions which the EU-15 member states achieve before each negotiation. The bilateral nature of the negotiations between the EU on the one side and individual candidate countries on the other certainly works to the advantage of the Union. But with differential preparations for accession and the perceived advantage of reaching accession first, any hope of better coordination amongst candidate countries should be abandoned. It could only become a powerful weapon if the Union was to clearly announce that enlargement was being delayed beyond 2005.

The detail of possible negotiation outcomes are dealt with the final chapter of this paper.

## **E. A proposal to conclude the negotiations**

The negotiated settlement for accession must be based on the implementation of the essential parts of the internal market *acquis* and of the market-economy *acquis*

<sup>30</sup> A. Mayhew, (1998) *Recreating Europe*, Cambridge University Press. see chapter 1

<sup>31</sup> a complete list of all candidate country meetings held is to be found in a book produced by the Chief Negotiator of Poland, *Negocjacje członkowskie, Polska na drodze do unii europejskiej*, Warsaw, July 2000 (English version in preparation)

together with a flexible and preferably innovative attitude to process *acquis* and an appropriate financial package.

The main problem in reaching such an agreement will be the difficulty in defining and then monitoring the essential *acquis* under the pressure of the numerous interest groups involved.

There have been numerous attempts to define the essential *acquis* and to test the candidate countries' performance, some from political and some from academic sources.<sup>32</sup> The problem is however that each part of the *acquis* is defended by an interest group within the Union, while less strong but still important interests are behind the transitional arrangements asked for by the candidate countries.<sup>33</sup> In order to achieve a breakthrough, it may be necessary to deviate from a socially and economically optimum solution. The hope is that the defence of political and economic rents can be kept in check by the powerful need for the Union to complete the enlargement process successfully in the eyes of the rest of the world.

#### 10. The details of the proposal

This proposal has three elements:

- how to reach the final stage of the negotiations
- what solutions could be acceptable for the most difficult areas of negotiation
- how to deal with the differences between the candidate countries.

##### *i.) Reaching the final stage of negotiation*

This is a matter of the EU-15 taking difficult political decisions, as outlined above. Once these decisions are taken, it will be necessary for the Union to outline how it will proceed. The most sensible procedure will probably be to follow the wide enlargement in 2004-2005 scenario also outlined above.

This scenario could be realised through the following steps:

- The reforms agreed at the Nice European Council at the end of the Inter-Governmental Conference will have to be declared a success, because the Union and the French Presidency cannot afford a failure. They will indeed be a success for several of the less integrationist member states. The Union will then be faced with the need to proceed with enlargement, because enlargement has been made conditional on success at Nice. The Nice Presidency Conclusions can be relied on to provide a basis on which the following Presidency can build
- In the first half of 2001, during the Swedish Presidency, negotiations with the Luxembourg group will be accelerated while efforts will be made to help the Helsinki group catch up. The European Council will then announce that the conclusion of negotiations on all major problems with the countries to join the

<sup>32</sup> see for instance the paper from the British Government referred to in footnote 5 above or the Dutch paper by Pelkmans et al. mentioned in footnote 20

<sup>33</sup> an interesting illustration of this is the resolution submitted to the Plenary Session of the European Parliament in October 2000. See European Parliament, Sept. 19<sup>th</sup> 2000, Report on the enlargement of the European Union, Doc. A5-0250/2000,

Union on 1.1.2004 or 1.1.2005 will be scheduled for the middle of 2002, with the signing of accession treaties by the end of 2002. The treaties will be put to ratification and this process will be completed in time for accession on the date announced.

- The essential element is that the degree of certainty about enlargement will be raised so far that both sides will be able to make concessions from their current negotiating positions.
- The selection of candidates for the first enlargement will be made at the European Council in Sweden in June 2001. This will be subject to special supplementary progress reports on the candidates submitted by the Commission to the European Council
- This timetable will not suit Romania and Bulgaria which have chosen later dates to be ready for accession. The European Council will also give objectives to be met for these countries and others which may not be in the first enlargement in respect to the date of their accession and will announce a supplementary financial programme together with a guarantee of free access to EU agricultural markets.
- This process will be flanked by negotiations with Russia on the deepening of Russian-EU relations and with Turkey with respect to its application for EU membership.

*ii.) Solutions to the main negotiating problems*

Emphasis will be laid here on the common elements in the negotiations across all the candidate countries but it should not be forgotten that the negotiations are being held individually with each candidate country and the solutions to negotiating problems will vary from country to country. An example might be the question of land ownership by foreigners which poses a problem for the Czech Republic, Hungary and Poland but not for Estonia. The result of the negotiations might be that an agreement is made with the first three countries on a transition period in this respect while no such agreement is necessary with Estonia. The price for the first three might be however that a transition period is imposed for the free movement of persons, while no such measure is imposed on Estonia (which as a very small country is not a perceived danger in respect to labour migration).

Agriculture

The problems in the agriculture chapter are undoubtedly going to be very difficult to solve. They are also affected more by frequent changes of policy on the Union side. No one really knows what the Common Agricultural Policy will look like when the first enlargement takes place. Almost certainly the level of overall subsidy of agriculture will have declined in the face of opposition to subsidy from the rest of the world in the WTO. This may well toughen the stance of the EU-15 in the negotiations, as member states will have domestic problems with their own farmers.

The objective of the negotiation should be to reach an agreement which accelerates the restructuring of agriculture in both the candidate countries and the EU-15, while strengthening employment growth in rural areas and providing a social net for those leaving agriculture or related sectors. This restructuring should also take place in a way, which is compatible with the objectives of environmental policy.

The basis for the negotiations on the side of the candidate countries should be their overall objectives of domestic rural and agricultural policy. Though these objectives cannot be separated from the WTO negotiations and the EU accession negotiations, a lack of clear national objectives will make the accession negotiations more complicated. The policy objectives of a country like Hungary, which has a large but relatively efficient agricultural industry and Poland which has a relatively large but less productive farm sector will be different and these differences will be mirrored in the respective negotiating positions.

For rural areas in the European Union, the only recipe can be further moves to reducing price subsidies compensated by efficient and controlled elements of income subsidies, payments for environmental services and support for rural development. Without a further reduction in prices, the risks of an accumulation of stocks in the enlarged Community must be considerable. The big question which will affect the financial outcome is whether the direct income payments will be degressive and if so how rapidly will they decline. It is clear that such a policy change will involve a significant degree of structural change in farming and will have important effects in truly rural areas.

#### *Direct income subsidies*

Direct income subsidies as practised at present in the EU-15 are inefficient, wasteful and distorting but better than high price subsidies. They should however be replaced by payments which are linked to services provided, better able to be controlled and more compatible with the current WTO rules and easier to defend in the coming trade rounds. However it seems today unlikely that a rational solution to the question of farm subsidy will be found prior to the conclusion of the accession negotiations.

The Union's negotiating position on direct income subsidies for farmers in the new member states (see section 7.iv above) is clearly not acceptable for both the governments of those countries and for those in the Union, which consider competition and state aid policy to be important. The tough negotiating stand of the Union has however led to a demand from most of the candidate countries for their farmers to be treated in the same way as those in the EU-15. Yet it is not obvious that such payments will serve the objective of encouraging the restructuring of agriculture. However such is the strength of feeling that the EU-15 position is totally unacceptable, that it is difficult to see how governments in the region can move from their demands for equal treatment.

The problem with equal treatment is that the financial requirement for enlargement from the Union budget in 2006 could be somewhat higher than that assumed at Berlin and there would certainly be an increase in the financing period after 2007 (see section on finance and budget below).<sup>34</sup> These additional amounts could be found however within the overall budgetary own resources limits. They could even be found within the ring-fenced enlargement expenditure box of the Berlin financial framework.

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<sup>34</sup> it should be noted however that in the Berlin financial perspective, the new member states were allocated a slightly higher amount of assistance for rural development than if they had been treated on the same basis as the EU-15 member states

One solution to the problem of avoiding that increased subsidy in the new member states does not slow down the transition, would be to phase in direct income subsidies over a five year period. This phasing in would be accompanied by a post-accession investment programme for rural areas and financial assistance to the new member states to provide transitional assistance to those leaving farming. This assistance could be made on the same basis as the regional fund. Following on from experience with SAPARD, such assistance could be managed by the new member states.<sup>35</sup> This would ensure financial assistance flowing into rural infra-structure and rural development, while avoiding any modernisation disincentive coming from subsidy.

The danger for the new member states is that by accession, the level of subsidy to agriculture in the EU may have fallen considerably and the finance that they have hoped for to modernise their agriculture and to develop rural areas will be much reduced. This is another argument to devote resources, which are received after accession to investment rather than direct income subsidies which will flow largely into consumption.

*Base years for quotas and other base-linked allowances*

Here there is a straightforward negotiating problem resulting from the lack of stability in agriculture in central Europe during the last ten years and the system of central planning in the previous decade. The EU-15 does not want to accept the high levels of production as the base year for quotas and other base-linked allowances because these were production levels under centralised planning. The candidate countries do not want to accept the dates in the second half of the nineteen-nineties because agriculture is still recovering from the shock of transition. It is also working with highly protected markets in the EU and eastern markets which have been destroyed by the dumping of EU surpluses and the sharp decline in the Russian and Ukrainian economies.

Both of these positions are understandable but a negotiated settlement must be agreed on. Ideally the solution for milk and sugar would be to abolish the quota systems before enlargement, as they distort production and lead to the creation of unjustified quota rents. However just as with direct income subsidies it seems unlikely that the quota systems and other base linkages will have disappeared before accession. A negotiation on the basis of the two currently held positions seems necessary. It may well be that there is no single year's output which is suitable as a basis for quota, in which case an agreement on a synthetic year at the national level could be proposed and a distribution of quota done by the national authorities, as indeed asked for by the Slovene government. It is however most unlikely that a synthetic year would be accepted by all parties. Perhaps the best solution would be then to discuss a solution based on a real base year but with a positive or negative adjustment to take account of the 'disequilibrium' position in agriculture. The candidates could accept the base year proposals of the Union if an agreement on the adjustment parameter could be reached.

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<sup>35</sup> SAPARD is a pre-accession rural development and agriculture fund, provided by the EU to the 12 negotiating candidate countries, with a financial volume of EURO 500 million annually

### *Veterinary and other quality standards*

The situation with respect to veterinary standards and controls, food safety and quality standards is very different from candidate to candidate. In general all the candidates need to invest heavily in these areas. The more fractured the structure of farming (for instance in Poland), the more difficult meeting the required standards.

Technically these problems can be solved through considerable investment and the operation of Community procedures on farms and in the food industry. The EU's SAPARD Programme and the national budgets are already heavily involved in supplying part-financing of this adjustment. The question is how long this will take and what should be done if the process of improvement is not completed before the date of accession.

The adaptation to EU norms is normally more easily achieved in the meat sector than in the milk and dairy sectors. One of the main problems in the latter areas is the need for small farmers to invest heavily in new equipment. In countries with a small farm structure such as Poland the adjustment to EU standards is likely to go along with the restructuring of farming, as the smaller farms will not be able to afford the required investment.

If the upgrading of milk and dairy production has not been completed by accession, it will be necessary to distinguish between products produced to EU standards and those not meeting these requirements. Proposals have been put forward for ensuring that the latter products can be sold only on domestic markets of the new member states. However such is the political significance of these questions that it seems likely that the solution will consist of a massive investment effort together with a thorough network of quality controls to ensure that only EU-quality milk enters the market, and the conversion of remaining quantities into other products.

### Environment policy

Solutions to the negotiating problems in the area of the environment should be easier to find than in agriculture. This is for the simple reason that improving the quality of the environment is a joint objective of both sides in the negotiations; the candidate countries are not against introducing stricter environmental norms, it is simply that this has to go along with responsible financial planning.

The key question is whether it is better to negotiate on a directive-by-directive basis or to consider negotiations based on quality improvements. In the end the situation will be the same and all the candidates will implement the *acquis* in full after the expiry of the last transition period.

If the negotiations continue to proceed directive by directive (and there is no sign that another approach will be tried), the accession treaties will become very complex documents indeed. Many transition periods will have to be granted, as the Union will not be prepared to finance faster transition from the Union budget; probably a good thing given the problems of managing macro-economic stability. These transition periods will cover a variety of time scales, all of which will have to be monitored.

A flexible environmental adjustment package for each candidate country would be prepared as follows:

- improved environmental quality standards would be agreed by the parties on the basis of a proposal by the environmental authorities of the candidate country, with the agreement of the Commission. The programme of adjustment would be divided into five year periods until the implementation of all the *acquis* has been completed.
- these flexible programmes would aim at achieving the required standards in the most economically efficient way
- joint monitoring would be undertaken by the two parties and a report for the candidate country government and the Council of Ministers in Brussels would be prepared at five yearly intervals.
- where a new member state is considered to be falling behind in implementation, that country can be brought before the Court

The advantages of such a programme would be:

- greater flexibility would allow the environmental and financial concerns to be considered together and appropriate solutions found for each country individually
- under changed conditions the objectives of the transition programmes could be adjusted after accession with the consent of the Commission
- environmental standards could be reached in economically efficient ways which will not be possible under the directive-by-directive method of negotiation.

The environmental transition programmes would be drawn up rather like the Community support framework under the structural funds. It would have measurable objectives and would be based on financial inputs from the national budget, the Union and other domestic and international sources.

There will be scepticism on the Union side that such a solution can work and implementation be policed. But policing a large number of heterogeneous transition periods and temporary derogations will be equally complex.

There will also be dismay on the part of some enterprises in the EU-15 area, which will consider such an arrangement as a programmed competitive disadvantage. However the competitive advantages of enterprises in western Europe are considerable in terms of infra-structure, the cost of capital and financial intermediation as well as in marketing and other areas. Relatively limited and transitional competitive advantage in the environmental area is most unlikely to outweigh the enormous advantages which west European enterprises have. But of course even in an accession treaty where there is agreement on transition periods directive by directive, there will be 'competitive distortions' for some time after accession. In very exceptional cases there may be real problems of competition in frontier areas, where transitional measures may be necessary on the EU-15 side of the frontier.

The greatest problem is likely to be opinion amongst environmental lobby groups inside and outside Parliaments. The European Parliament report on enlargement, voted in the plenary session in early October 2000 shows relatively little

understanding for the economic and financial problems of accelerated implementation of Union environmental law.

### The Free Movement of Labour

The candidate countries will have to accept a transition period for the free movement of labour, even though this is a problem, on which opinion is changing rapidly. The important point will be to agree a transition period, which can be reviewed early after accession.

Attitudes to labour movement are likely to change significantly in the first half of the decade as the dramatic shortage of labour becomes apparent. Already thousands of workers from central and eastern Europe are working the EU and are a necessary part of the labour force. In Germany, employers have tried to stop the forced return of Kosovan refugees, because they have become reliable and, in some cases, indispensable parts of the work-force. The problem may turn out to be that labour from the new member states is unwilling to move to the old member states, as with the rapid development of the economies in central Europe, demand for labour rises there too.

The first best solution would be to negotiate the free movement of labour from the point of accession. Indeed the Union could negotiate free movement with some of the smaller candidate countries, such as Estonia or Slovenia. However in the face of resistance to free movement for the larger candidate countries, the next best solution in the negotiations would be for the parties to agree a transition period of 5 or 6 years, with a review clause, which allows the situation to be reconsidered every two years. In this way, it would be possible for the Union to relax controls on labour migration as soon as the popular feeling against the free movement of labour had subsided. Such a relaxation could almost certainly be undertaken after the first two years of membership.

If accession is to take place early, it will probably be impossible in the short time available to overcome opposition from the Neue Bundesländer in Germany and from Austria. Unemployment in the eastern part of Germany is unlikely to decline in any significant way in the period 2000-2002 and the key building and construction industry, where Polish workers are frequently employed, is unlikely to emerge from recession soon.

### The free movement of capital - land purchase by foreigners

Unfortunately a linkage has been established between the question of labour mobility and the purchase of land by foreigners in the candidate countries. The reason that this linkage has been made is that both are fundamental freedoms in the Treaty and that both requests for transition periods are highly politicised. But the linkage is most unfortunate in that the problems involved are very different and the impact of a trade off on the candidate countries would be very negative. The land ownership question is



economically far less significant than the free movement of labour in the twenty-first century.

Again there are countries where land purchase is not a negotiating problem -Estonia and Lithuania for instance. Politically however it will be difficult to avoid a transition period for land purchase by foreigners at least in the accession treaties with the Czech Republic, Hungary and Poland; the combination of strong feelings deriving from recent history and misuse of the matter by some politicians will ensure that, except in extreme circumstances, candidate country governments will have to hold out for some transitional arrangements.

The resistance of the Union to such a bargaining position will be aimed more at reinforcing its negotiating position in other areas than real interest in obtaining immediate access to land in the candidate countries for its citizens. The EU-15 have no real incentive to help their citizens make capital gains nor have their citizens in any number manifested an interest in buying land in central Europe. The one exception is Germany, where strong groups in society may push for immediate access to land. Even this is however not certain.

The solution might be analagous to that proposed for the free movement of workers, in which a transitional period of perhaps 8 to 10 years is agreed with a review clause after 5 years.. At the same time the candidate countries could introduce legislation similar to that which exists in some Member States, which effectively restricts access to agricultural land and forests to local farmers in the context of the restructuring of agriculture but without any stipulations on nationality. In order not to discourage foreign investment in agriculture, the candidate countries would ensure that the land-leasing system allowed long-term leases to be available on a firm legal basis.

With such a solution, there would be a disincentive to investment for capital gains purposes, while a period would be given during which structural change could be accelerated in agriculture. It is likely that the restrictions could be removed at the first review.

### Justice and home affairs

The conclusion of this chapter of the negotiations will be threatened on the one hand by the refusal of the Union Member States to believe that the candidate countries are capable of enforcing adequate controls at external frontiers of the Union, and on the other perhaps by the difficulty which some of the candidates will have in seeing a new division in Europe established on their eastern frontiers.

The Czech Republic has apparently been more prepared than the other candidate countries to align itself to the 'exclusive' justice and home affairs approach of the Union. But the Czech Republic is less directly affected than either Poland or Hungary, because in the scenario of an enlargement including Slovakia and Poland, the Czech Republic will not have an external frontier of the Union. In the end, the candidate countries may agree to the whole EU policy package, even though they know that it will create more problems than it solves; early accession and the chance

to have a say in the making of EU policy in the future is more important than resistance to a common visa list today!<sup>36</sup>

The conclusion of this chapter would be facilitated by the development of a more active EU policy of involvement with Russia and the Ukraine, which would make the adoption of the justice and home affairs policy instruments by the candidate countries easier. This would amount to some extent to a communitarisation of the good neighbour policy followed by most of the candidate countries since the beginning of the nineteen-nineties. It should be possible to have a somewhat different regime at the external border for neighbouring countries than for other third countries.

The question of the credibility of the measures taken by candidate countries to implement adequate controls at the frontier in the eyes of the member states of the EU will be extremely delicate. It might be necessary to consider the possibility of leaving internal frontiers for the control of persons in place for a short and definitely limited transition period in order to win over neighbouring EU member states to early enlargement.

It should also not be forgotten that implementing all the controls required by the Schengen system involves significant financial inputs. A solution to the problems of this chapter would therefore include the further provision of know-how and investment finance.

#### Finance and budget

The most sensible solution to the budgetary and financial questions of enlargement would be the wholesale reform of agricultural policy, the structural funds and the way in which own resources are calculated.<sup>37</sup> However it seems unlikely that reform of this significance can be achieved in time for the first enlargement. Reform after enlargement will however be that much more difficult, as the new member states may well not have an interest in thorough reform.

The solution to the negotiating problem on the financial package in the accession treaties, short of wholesale reform, will almost certainly involve both an adjustment of the financial framework 2000-2006 agreed at Berlin and a longer term perspective going beyond 2007.

The key elements of the settlement will be:

- a successful outcome to the negotiations between the member states on the longer-term distribution of the financial burden between the existing member states
- an agreement to adjust the Berlin financial perspective to align it with the accession treaties and other necessary adjustments (following an agreement in WTO on agricultural subsidy for instance) but no reopening of the Berlin settlement

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<sup>36</sup> The recent discussions between Russia and the European Union on new pipelines supplying Russian gas and oil to the Union without any consultation of the countries through which the pipeline will run, is just another proof that rapid accession for the candidate countries is the most important objective.

<sup>37</sup> see Pelkmans, Gros and Ferrer op. cit. for an interesting discussion of such reform

- an acknowledgement by the Union that the proposal not to pay direct income subsidies to farmers in the candidate countries cannot be defended
- an appropriate settlement of the request by the candidate countries to have a transition period for their contributions to the Union budget.

The important question in the definition of future regions which will receive structural funds support will be whether the criterion of 75% of the per capita GDP of the Community required for Objective 1 status will be calculated on the basis of the enlarged Community's GDP or of that of the EU-15. Using the average GDP of the enlarged Community would lead to many regions in the current Cohesion Countries no longer being eligible for assistance. The result of the discussions within the EU-15 may well be to use the EU-15 average GDP per capita in the first financing period after the enlargement. This would lead to a considerable increase in the demands on own resources.

The structural funds will not pose a problem during the period of the current financial framework. The funds for the EU-15 decline somewhat over the period of the financial framework as regions which no longer receive assistance under the current rules are progressively 'graduated out' of the structural funds. The assistance to the main beneficiaries, especially Spain, remains guaranteed however. Even if there is an enlargement in 2004 to eight of the ten central European candidate countries (Romania and Bulgaria have announced that they will be ready for membership only in 2007) and assuming that real GDP growth and any revaluation of the currencies in these countries amounts to 6% per year between 1999 and 2006, the amount inscribed in the Berlin financial framework for the structural funds payments to the new member states amounts to roughly 3% of the new member states GDP in 2006. Experience suggests that the absorption capacity of countries joining the EU is unlikely to develop any faster.

The problems arise in the following financial period after 2006. Assuming that all the candidate countries except Turkey are full members of the Union before 2010 and that they all can absorb 4% of their GDP in structural funds, that they grow between 1999 and 2010 at a real rate of 4% per annum and there is a real revaluation of their currencies against the EURO of 2% per year, the total receipts from the structural funds could be of the order of EURO 27 billion in 2010 at 1999 prices. If the existing member states negotiate to retain their structural funds allocations (including cohesion funds) constant even in nominal terms at the 1999 level of around EURO 30 billion, this would lead to structural fund receipts at 1999 constant prices of EURO 27 billion in 2010. The total structural funds bill would then rise to 0.55% of GDP in 2010 against the current level of 0.46%.

It is indeed extremely likely that the 'Cohesion Countries' will succeed in negotiating something like the latter arrangement.

The additional expenditure required in the Common Agricultural Policy, if access to direct income subsidies (or an equivalent volume of finance) is agreed, is, according to the European Commission, likely to be of the order of EURO 5-6 billion per year for the first eight countries (excluding Romania and Bulgaria) in 2006 (constant 1999 prices and current policies). With Romania and Bulgaria in the Union this could rise by a further EURO 2 billion by 2010. On the assumption that this expenditure will

be phased in and that the first eight countries join in 2004, it might be assumed that the additional expenditure in 2006 could be of the order of EURO 2-3 billion. By 2010 the full additional EURO 8 billions would be required annually.

Further reform of the Common Agricultural policy before 2010 is almost certain and is indeed very likely before 2007. However the negotiations with the candidate countries are likely to be concluded before such reform takes place. If no agreement can be reached on reopening the Berlin financial framework, the accommodation of the additional payments for direct income subsidies or their equivalent could be agreed on the basis of using the sum of the resources contained in the financial framework for the years 2002-2006 but spreading them over the period 2004-2006. This would leave just over EURO 6 billion to cover direct income subsidies in the period 2004-2006. This would be an unsatisfactory way of dealing with the question but stranger compromises have been made in the past. In the absence of reform of the CAP the annual expenditure on agriculture in the 10 new member states of central Europe would be of the order of EURO 13-14 billion.

**Table 4: Illustrative projections for CAP and structural fund allocations 2006 and 2010 (1999 prices, EURO billions)**

	1999 (1)	2006(2)	2006		2010(2)	2010 (2)	
	GDP	GDP	Structural funds (3)	CAP (4)	GDP	Structural funds (5)	CAP (6)
EU-15	7965	9149	29.170	37.290	9903	26.900	40.360
CC-8	297	447	12.080	6.500	564	-	
CC10	340	511	-	-	645	27.000	13.500
EU-23	8262	9596	41.250	43.790	10467	-	-
EU-25	8305	9660	-		10548	53.900	53.860

(1) GDP in current prices and exchange rates: source: EUROSTAT, Statistics in Focus, 27/2000

(2) GDP in prices of 1999; EU-15 real growth=2%/annum; candidate countries' real growth 4% per annum; real exchange rate against Euro rises by 2% per annum

(3) Berlin Financial Framework 2000-2006 including Cohesion Fund

(4) Berlin Financial Framework + EURO 3 billion for direct income subsidy or equivalent

(5) assuming constant nominal structural fund payments to the EU-15 at 1999 level and at 4% of of GDP for the CC-10

(6) assuming direct income subsidies or equivalent paid to CC-10 farmers

**Table 5: Financial framework EU-15 in EUR millions and at 1999 prices**

<b>COMMITMENT APPROPRIATIONS</b>	2000	2001	2002	2003	2004	2005	2006
1. AGRICULTURE	40920	42800	43900	43770	42760	41930	41660
CAP	36620	38480	39570	39430	38410	37570	37290
Rural development	4300	4320	4330	4340	4350	4360	4370
2. STRUCTURAL OPS.	32045	31455	30865	30285	29595	29595	29170
Structural funds	29430	28840	28250	27670	27080	27080	26660
Cohesion fund	2615	2615	2615	2615	2515	2515	2510
3 OTHER POLICIES	15940	16100	16070	16040	16260	16480	16710
4. PRE-ACCESSION	3120	3120	3120	3120	3120	3120	3120
Agriculture (SAPARD)	520	520	520	520	520	520	520
ISPA (1)	1040	1040	1040	1040	1040	1040	1040
Phare	1560	1560	1560	1560	1560	1560	1560
<b>TOTAL COMMITMENT APPROPRIATIONS</b>	<b>92025</b>	<b>93475</b>	<b>93955</b>	<b>93215</b>	<b>91735</b>	<b>91125</b>	<b>90660</b>
TOTAL PAYMENT APPR	89600	91110	94220	94880	91910	90160	89620
Payments as % of GNP	1.13%	1.12%	1.13%	1.11%	1.05%	1.00%	0.97%
AVAILABLE for ACCESSION			4140	6710	8890	11440	14220
Agriculture			1600	2030	2450	2930	3400
Other expenditure			2540	4680	6440	8510	10820
CEILING ON PAYMENTS	89600	91110	98360	101590	100800	101600	103840
Ceiling on payments as %GNP	1.13%	1.12%	1.18%	1.19%	1.15%	1.13%	1.13%
Margin for unforeseen expenditure	0.14%	0.15%	0.09%	0.08%	0.12%	0.14%	0.14%
<b>FINANCIAL FRAMEWORK FOR EU-21</b>							
ENLARGEMENT (Commitments)			6450	9030	11610	14200	16780
Agriculture			1600	2030	2450	2930	3400
Structural operations			3750	5830	7920	10000	12080
TOTAL PAYMENTS APPROPR.	89600	91110	98360	101590	100800	101600	103840
of which enlargement			4140	6710	8890	11440	14220
PAYMENTS APPR. AS % GNP	1.13%	1.12%	1.14%	1.15%	1.11%	1.09%	1.09%

Source: EU; Inter-institutional Agreement. OJ: C172/1, 18.6.1999

Some correction in the budgetary scenario outlined in table 4 above will be necessary if there is an agreement on a reduction in the candidate country contributions to the EU budget for the first few years after accession. It is extremely likely that such an agreement will be reached, considering that similar arrangements have been made in previous enlargements. This would probably imply a reduction in the budgetary contributions of the new member states of around EURO 3 billion in the first year of membership. This figure would gradually decline to zero over 5 years, though when Romania and Bulgaria join they will enjoy the same transition.

Under these very restrictive assumptions, the Union could enlarge to all the candidate countries, apart from Turkey, in the period up to 2010 while:

- maintaining the overall Berlin financial framework up to 2006, though this will require some internal flexibility
- maintaining expenditure within the current maximum level of own resources (1.27% of GDP) up to the end of the first decade of this century.

Further reform of the CAP, the elimination of the Cohesion Fund and the strict observance of the Objective 1 requirements after enlargement would clearly lead to lower levels of budgetary expenditure in the medium-term, if other areas of expenditure remain the same.

Such a solution to budgetary questions will not be easy to reach. The candidates will be disappointed that there is a transition period to the full payment of direct income subsidies and perhaps even more disappointed that EU expenditure is unlikely to increase dramatically after enlargement. The net contributors will not be in favour of any flexibility being shown in the Berlin financial framework and the new major net contributors such as France will be unhappy with the trend of financing. The net beneficiaries in the EU-15 will resent the fall in their real level of receipts from the Union; Spain will also see its net receipts from the Union gradually fall as its per capita income catches up that of the richer countries in the Union.

Enlargement will not founder on the budgetary question, but it could be delayed as negotiations within the EU-15 become very difficult. The net contributors do not have an incentive to raise the question of the internal distribution of the burden within the EU-15 early for fear of the cohesion countries blocking the negotiations, the net beneficiaries perhaps feel that the later the financial negotiations take place, the more power they will have to obtain a settlement. Only the candidate countries are keen to push ahead, because they know that these questions can delay accession. A solution will be found, perhaps like the one proposed here, but of course much will depend on the general economic and financial conditions prevailing in the European Union when the negotiations take place. Continued recovery in the key economies would clearly facilitate a solution to the budgetary negotiations.

### The Question of Internal Frontier Controls

The abolition of controls at the frontier is the symbol that accession to the Union is achieved. The new member states will be very keen to see frontier controls

disappear. However one way of creating the climate in the EU-15 for early accession might indeed be to keep the frontier controls for persons between the new member states and the EU-15 (and between themselves) for a short transition period.

Frontier controls exist:

- to verify that persons entering and leaving a country have the right to do so
  - to contribute therefore to the elimination of cross-border criminal activities
  - to prevent the entry into the country of persons with no right of entry
- to verify that goods entering the country conform to the standards required by the domestic law of the country
- to verify that goods passing the frontier comply with the trading regime of the country in respect of third countries

Although it has frequently been shown that frontier controls perform some of these tasks poorly, citizens generally consider that frontier controls do provide them with some protection against negative influences from third countries. The EU's Schengen arrangement and the completion of the internal market have allowed it generally to abolish these controls, although in exceptional circumstances they can be reimposed temporarily. However the proposal above for the conclusion of the accession negotiations leaves certain areas of concern for the EU-15 member states which may lead them to request the maintenance of frontier controls for a transitional period:

- the problem of mutual confidence which has complicated this enlargement in a way not experienced before; the concerns of justice and home affairs policy
- the ability of the new member states to control their external frontiers where such exist (all countries except the Czech Republic in the hypothesis of a first wide enlargement)
- the question of the free movement of workers if the Union requests a transition period

Frontier controls would not be necessary for the control of goods and services within the internal market. Legal certainty that the controls would be removed after the short transition period would also be necessary.

The acceptance by the candidate countries of such a temporary regime might accelerate enlargement and also might allow the Union to be more flexible in some areas of the accession treaties than it otherwise would be.

*iii) Which countries will accede and when?*

Perhaps the most difficult problem for the European Union is to decide how and when enlargement will take place. Article 49 of the EU Treaty and the Copenhagen criteria give the overall conditions for membership but on detail the Union has said only that applicants will be judged on their own merits and will join when they are ready. It has in the past persistently refused to give a date for the first accession, preferring to avoid such hard decisions. In any case it not only depends on the objective readiness of the candidate countries to join but also on the political interests of the current EU



member states, as well as on the state of the European Union itself. A dynamic economy, a Monetary Union which is working well and progress in other areas of Union business would be a very positive background to enlargement.

This position will be harder to defend after a successful outcome at the Nice European Council. If the Union shows the political will to go ahead with enlargement, it cannot avoid saying which countries are going to be allowed to join and when. It is very convenient that Bulgaria and Romania have indicated that they will be ready to join the Union only in 2007, which leaves the eight other central European candidates together with Cyprus and Malta to be dealt with prior to that date.

There will be a clear temptation to undertake one major enlargement to these ten countries in 2004-2005. This is only marginally wider than the 'Luxembourg Six' (population 63.2 million); Slovakia, Lithuania, Latvia and Malta having a population of only 11.8 million. It is, in any case, objectively rather difficult to distinguish between the individual members of this larger group on the basis of the important criteria, such as the quality of economic policy and of economic and political reform. This is the conclusion of the European Commission in its annual 'Progress Reports' published in November 2000. In some ways the two Baltic republics are somewhat behind the other countries economically, but they are making good progress and there is only a minimal risk to stability in the Union emanating from these two small countries. The three larger states, the Czech Republic, Hungary and Poland are difficult to separate on objective grounds, all having completed most of the 'transition' reforms. The information on the adoption of the *acquis communautaire* and its implementation is incomplete, but it seems that progress in the three larger countries is adequate according to the Commission.

A wide enlargement would also create the least political difficulty for the Union. Romania and Bulgaria have ruled themselves out before 2007, but they would be promised accession subject to certain conditions before 2010 and would receive increased financial assistance. Including all three Baltic countries in a wide central European enlargement will probably be easier for Russia to accept than a small enlargement featuring Estonia, especially if it is combined with a serious attempt on the part of the Union to engage constructively with Russia. The inclusion of Slovenia serves as a reminder of the Union's engagement in south-eastern Europe. Above all in the accession of the three 'large' countries in central Europe, the Czech Republic, Hungary and Poland, with their close historical and political links to western Europe, this accession would mark a very new chapter in the history of the continent.

Such a wide enlargement would require considerable preparation on the EU-15 side. The institutional solutions adopted at the Nice European Council will be seriously tested. It may well be that some member states will demand another Inter-Governmental Conference to push reforms further before the first enlargement. To be truly successful, such an enlargement would imply further reform of the Common Agricultural Policy and additional national reforms in economic policy and other policy areas. The members of the Monetary Union will probably try to develop stronger cooperation within the group, possibly using the closer cooperation procedures agreed at Nice, in order to isolate themselves to some extent from the impact of the enlargement.

The alternative would be a narrow early enlargement which could come as early as 2003, including just two or three of the candidate countries. This would include Hungary and Slovenia. This scenario might be plausible if the Nice European Council delivers only minimal reforms, the weakness of the EURO leads to interest rate rises, there is a slowdown in economic growth and in reform at the national level and a slowing of the rate of reduction in unemployment in France and Germany. The peculiar treatment of Austria and the loss of the Danish referendum on monetary union will have added to the weakness of the Union in early 2001, and in turn reduced the chances of major reform on the EU side. In these circumstances a mini-enlargement might be tempting.

This would however be a sign of political weakness on the side of the Union and its inability to cope with the needs of Polish accession. The Union would claim that it was delivering on its promises, and it would explain its refusal to admit Poland in terms of the lack of Polish preparation. The very positive tone of the Commission's Progress Report on Poland in November 2000 would, however, make this explanation look rather suspect.

This scenario has many disadvantages. It would imply an enlargement in perhaps three waves (excluding Turkey). For management and technical reasons as mentioned earlier, it is very difficult to imagine a second enlargement taking place sooner than 5 years after the first, thus not before 2008. This would risk considerable instability in Poland and the other excluded countries, as governments struggle to maintain support for EU accession amongst the voters.

It also seems unlikely that there would be sufficient interest in a mini-enlargement from Germany, which will gain from enlargement mainly through the stabilisation of its relationships with Poland and the Czech Republic, its immediate neighbours. Only if the accession preparation in Poland and the Czech Republic deteriorates significantly is it likely that Germany would agree to a smaller enlargement.

Today therefore the most likely strategy of the Union, and the subject of an announcement at a European Council in 2001, would contain the following elements:

- a first wide enlargement to be completed by 2004 or 2005;
- with ten new countries: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia;
- accession negotiations to be concluded by the end of 2002
- Bulgaria and Romania as potential members of the Union in with perhaps additional assistance beyond the limits of the enhanced pre-accession strategy; and
- the most advanced countries in south-eastern Europe with a chance of accession before the end of the decade.

## **F. Conclusion**

The enlargement of the European Union is a vital further step in the direction of the completion of the new post-Cold War political and economic arrangements on the European Continent. Over ten years after the overthrow of Communist regimes and

eight years since the European Union declared at Copenhagen that the central European associated countries could become members of the Union, their accession is still some years away.

This paper has attempted to analyse the reasons for the slow enlargement of the Union and to propose solutions to the main problems. Some of the problems have to be tackled by the candidate countries, but many arise from the slow progress of domestic and Community reform in the current Union.

The Union does not dispose of an infinite 'window of opportunity' for enlargement. The unpredictability of the world today is such that one of any number of accidents could destabilise the Continent with the result that the process of reunification of west and east is brought to an early end. It is important therefore to finish the negotiations with the candidate countries as expeditiously as possible. The proposal contained in this paper is one way in which this could be achieved.

## ANNEX 1

### Structures, institutions and procedures of the accession negotiations

#### *i. Structures and institutions*

The structures, institutions and procedures of the current negotiations essentially are the same as used in previous enlargements. This underlines the 'classic' nature of this enlargement.

An Inter-Governmental Conference (IGC) on accession negotiations has been established for each candidate country. This emphasises that in the Union, enlargement negotiations are essentially inter-governmental on the one hand and on the other that they are always bilateral between the candidate country and the EU Member States. The only part of the process which has been multi-lateral is the early screening of legislation between the Commission and all the candidate countries of the first or second group.

The formal negotiating sessions take part in the IGC with Ministers from the Member States and the candidate country. The more significant negotiating sessions are those at the 'Deputies' level, between the Permanent Representatives of the EU Member States and the Chief Negotiators or other high officials of the candidate countries.

The real work-horses of the process are, however, the working groups of officials in the Council of Ministers in Brussels and the Negotiating Teams in the candidate countries. It is here that the work to prepare the Position Papers (negotiating positions) of the candidate countries and the Common Positions of the EU is done. In the Council of Ministers it is the Enlargement Working Group, consisting usually of officials from the Permanent Representations, which coordinates most of the work and which reports to the Member State Permanent Representatives in COREPER.

In the accession negotiations, the European Commission does not fulfil its treaty role, but simply assists the member states in their work. In practice this distinction is not greatly relevant. It prepares documents and negotiating positions for the Council. The Draft Common Positions are prepared by the Commission as responses to the Position Papers of the candidate countries. These always form the basis of the Common Positions of the Member States although they can diverge considerably from the Commission proposals. The Commission also prepares technical papers on the implications of negotiating positions. The Commission undertakes above all the crucial unofficial negotiations with the candidate countries and provides advice on the implementation of the *acquis communautaire*. As such the Commission is traditionally the ally of the candidate country, negotiating with the Member States on their behalf, albeit up to clear limits imposed by Community practice and institutional loyalty.

The European Parliament, which will eventually have to give its assent by simple majority to the accession treaties, is at this stage of the negotiations limited, by time constraints and its own prioritisation of the issues which come before it, to giving

opinions on specific elements of the negotiations. An example of this is the recent draft report of the Parliament's Environment Committee suggesting that negotiation periods in the environment chapter of the negotiations should not exceed five years except in very exceptional cases which must be discussed with the European Parliament!<sup>38</sup> The European Parliament is bound to play a more significant role in the enlargement than it did in previous ones.

There are of course structures in all the Member States to deal with enlargement. These develop the national positions and feed into the negotiations between Member States in the Council Working Groups and the COREPER in Brussels. National Parliaments are also deeply involved in determining Member State positions often preparing influential reports on specific aspects of the negotiations. In the United Kingdom, Parliamentary Committees of both Houses of Parliament have been active.<sup>39</sup>

In the candidate countries, the institutions and structures involved in the negotiation of accession vary quite widely depending on different traditions and in some cases on the personalities involved. All the countries have Chief Negotiators, who attend the Deputies' meetings in Brussels. Here however the similarity ends. Most Chief Negotiators are in their national capitals, but one is at the same time that country's ambassador to the Union in Brussels. In some countries they report directly to the Prime Minister, in others they are within the Ministry of Foreign Affairs, reporting to the Foreign Minister.

Chief negotiators rely usually on negotiating teams from the line ministries to construct the first draft of Position Papers. Their influence on the final draft of the Papers varies considerably from Capital to Capital and on the character and position of the individuals concerned. The coordinating role of the Chief Negotiator is however essential, especially as the negotiations enter their final phase and it is necessary to look at the horizontal balance of the Accession Treaty.

Within each line ministry, EU units work to produce the analysis necessary for constructing the Position Paper. Arbitration first at the Ministerial level, in the Negotiating Team and finally at the level of the Government (Council of Ministers, Cabinet etc), leads to the final decision on the negotiating position, which is despatched to the Member States through the Presidency of the Union in Brussels.

One of the key problems of the candidate countries is the shortage of human resources applied to the European integration process. This is particularly the case in the smaller candidate countries. Four of the candidate countries in central and eastern Europe have total populations of less than 3 million. The administrations of the candidate countries are sometimes rather small and those working directly on European integration tend to be young and extremely talented but with limited experience. Poor remuneration is also an important reason that the young and talented often leave for the rapidly expanding private sector. Combined with the unfinished

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<sup>38</sup> Draft report on 'Environmental Aspects of the Enlargement Negotiations' of the Committee on the Environment, Public Health and Consumer Policy, European Parliament, June 2000

<sup>39</sup> Third Report of House of Commons Foreign Affairs Committee on European Union Enlargement, March 4<sup>th</sup>. 1999, London

transformation of the administration, the lack of human resources poses a significant constraint on all candidate countries.

On both sides lobbying goes on at all levels. A most important difference between this enlargement and the previous one is the quantity and sophistication of the lobby groups on the side of the candidate countries. Whereas in the EFTA states, lobby groups were as well established as in the EU, this is not the case in central Europe, where lobbying is a more recently developed activity and where there is still a resistance to corporatist structures of representation.

This difference is important for two reasons. Firstly, it makes the governments of the candidate countries less able to represent national interests (it also to some extent protects them from supporting 'wrong' causes supported by powerful lobby groups). Secondly it deprives the negotiators of important information coming from businesses or trades unions or other institutions and organisations. The negotiators on the candidate country side are therefore likely to have a lower level of information to work with and less support from such lobbying groups.

This is a description of the institutions of the classic method of enlargement. If the classic method is to be short-circuited for political or other reasons or if a major political initiative is to be started on either the EU or the candidate-country side, the European Council is certain to be involved in a very significant way.

## *ii. Procedures*

The classic procedures of enlargement are being followed. The negotiations are divided for convenience into chapters, each representing one policy area and its *acquis*. There are 31 chapters to the current negotiation.

After the screening of the *acquis communautaire* by the Commission with the candidate countries, the IGC is created and decides which chapters should be tackled first. The positions of the candidate countries are then drawn up and sent as 'Position Papers' to Brussels.

The Commission studies each Position Paper and draws up a Draft Common Position of the EU as a reply to the Position Paper of the candidate. This is no mean task. With 12 negotiating countries and 29 active negotiating chapters, even the first round of the exchange of positions leads to the production of over 300 papers to be sent to the Member States in Brussels for approval.

The Member States meeting in the Council and working on the basis of the Draft Common Position decide on a Common Position of the Union, which is sent to the candidate country. At this point the chapter can be 'opened' and negotiations can begin.

Frequently the EU reply to the Position Paper of a candidate is a long series of further questions to which the candidate is asked to reply. This may lead to new Position Papers and new Common Positions of the Union.

When agreement is reached on the chapter, it can be provisionally closed, although the Union always reserves the right to return to provisionally closed chapters. As chapters are closed, the core of the negotiation becomes visible in the relatively few chapters, which remain open.

As the differences are narrowed through the elimination of some requests for transition periods and the provisional granting of others, attention is drawn to the final negotiations, which will no longer respect the neat division into chapters, but which will require deals to be made across chapters.

With the conclusion of the negotiations, accession treaties will be signed by the EU-Member States bilaterally with each candidate. The treaties will be put to the European Parliament for approval and to Member State Parliaments and Candidate Parliaments for ratification. The ratification process may take up to two years to complete, after signature of the accession treaties.

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