# The Crucial Terms of EU Enlargement – Distinguishing the 'Core Acquis' from Less Urgent Requirements[1]

Jacques Pelkmans*

## A. Introduction

Ten countries in Central and Eastern Europe are currently on the road to accession to the European Union. The preparations in these candidate countries include a sound and expedient finalisation of the transition to a well-functioning market economy as well as the adoption and genuine implementation, if not credible enforcement, of the acquis of the Union. In the process, the countries should, indeed must, get back onto a sustainable path of economic growth. Citizens and businesses deserve a credible long-run prospect and 'catch-up growth' – considerably faster than growth in the EU-15 – ought to be a top priority. The track of pre-accession is, to a large extent, conducive to this very goal: high catch-up growth, under conditions of macroeconomic stability.

At this level of generality, the Central and Eastern European Countries (CEECs) are clearly aware of the potential of pre-accession and the manifold and 'deep' obligations this implies. However, pre-accession means much more. It should also be understood as a preparation to become a capable, respectable EU Member State which contributes actively to policy debate, to economic wealth-creation in the EU internal market and to the Union's resources, be they cultural, human, budgetary, political or other. CEECs tend to see the EU as an *anchor* for (political and monetary) stability, as a *magnet* (for a huge market with purchasing power; and for future cohesion and agricultural funds) and perhaps as a *hegemon*, hopefully a benign one. However, eyeing EU membership cannot but mean that CEECs themselves should develop a deep political and technical understanding of the

* Council Member of the WRR (Netherlands Scientific Council for Government Policy) in The Hague, as well as Norsk-Hydro/Jan Tinbergen Chair and Director of the Economic Studies Department of the College of Europe, Brugge.

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Union, and learn rapidly to develop widespread indigenous EU capabilities. Such knowledge and insight should not be left to small circles of specialised civil servants, a few consultants and some professors. It is essential for CEECs that they have an intense, rich and functional (not primarily political, because this is rarely more than rhetoric, and has little added value) EU debate in *domestic* circles, whether political parties, social partners, the media, business and other specific sectors and, not least, academia and policy thinkers. In addition, a wide spectrum of technical expertise is crucial as well. Every EU Member State is itself a crucial part of the Union. The EU is not in Brussels, it begins at home. And indeed, apart from decision-making and some analysis, it returns home again, via implementation, enforcement, as well as own initiatives, positioning, and so forth.

It is particularly here that CEECs have generated insufficient awareness, often too superficial or too politicised debates, and far too few incentives for wide and deep networks of EU specialists.

It is in this spirit that the author contributes an article, providing a critical review of the 'terms' of the ongoing EU enlargement, in the light of European public interest. European public interest ought to include the prospective (Central European) members, within the perspective of an enlarged Union in approximately 2005. The following forms a personalised summary of a major report published (in Dutch) in September 2001 by the WRR in The Hague (a think-tank, formally under the Dutch Prime Minister, but by statute fully independent).[2] The author was one of the principal authors of this report. The present article merely focuses on the policy recommendations of the report. It is hoped that these kinds of critical analyses will help to stimulate solid policy debate on the EU in CEECs, on the road to EU membership.

The article considers the following elements: reasons why the notion of a 'core-acquis' would improve the enlargement strategy; the application of the core acquis to the internal market, environment and justice-and-home-affairs; judicial and administrative capacity; accession to 'euroland'; the rapid reform of the Common Agricultural Policy (CAP); a reform of 'cohesion' approaches; and a note on the EU budgetary implications.

## B. The Core-Acquis: Why and What It Is

This enlargement round is based on the principle that the new Member States should accept the policies and rules introduced to date by the Union. These accomplishments may not be endangered by the accession of the first and later groups of

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[2] The full English translation was published as WRR Scientific Council for Government Policy (ed.), Towards a Pan-European Union, The Hague 2001; see also http://www.wrr.nl.

CEECs. The classical strategy used by the EU in the accession negotiations with each applicant is based on that principle, and quite correctly. Problematic diversities among candidate countries with respect to aspects of the acquis are eliminated as much as possible before accession. This strategy of eliminating problematic diversity should be retained as much as possible. This method affords the best guarantees of preserving the Union as a community of values and action, as the unity of the institutional framework is preserved and further deepening of integration remains possible. This strategy does have drawbacks, however. The emphasis placed by the Union during the accession negotiations on the unity of the acquis, and the efforts the candidate countries must make, give rise to an undue emphasis on the *formal* side of adopting the acquis. Sufficient attention is not always paid to the capacity of a Member State actually to implement and enforce the acquis after accession.

The Union is in fact devoting considerably more attention to this problem in the present pre-accession strategy than in previous enlargement rounds. It is screening the candidate countries carefully for their implementation capacity in respect of all sorts of elements of the acquis. The consequence of this approach is however that the negotiations are increasingly drawn out and that the moment of accession is postponed. The positive role exerted by the accession prospect on the development process in the countries of Central and Eastern Europe therefore loses some of its effectiveness. At least as great a disadvantage is the fact that the emphasis on the entire acquis takes too little account of the specific needs of the present candidate countries to complete the process of transition and to utilise the opportunities for catch-up growth.

It is here that the notion of a 'core acquis' can be useful. For the countries of Central and Eastern Europe, this approach implies that protracted postponement of accession is avoided and that the danger is eliminated of missing out on the economic stability benefits of integration in the Union for a considerable period of time. Since candidate countries would be granted a dispensation with regard to any aspect of the acquis that is not vital immediately upon accession, the possibilities for achieving catch-up growth are not frustrated. It also helps reduce the risk of the erosion of the acquis. For the European Union this strategy means that the risks of the enlargement for the hard core of values, regulation and policy action become negligible.

The present enlargement strategy does not achieve this. With far beyond 500 transition periods requested, and differing between candidates as well as over time, nobody has any clue anymore how distortive this will be to the internal market. Hence it is bound to erode the current, well-functioning internal market. The core acquis eliminates the fiction of adherence to the entire acquis before accession, because this principle has exhausted its utility by now. In the Regular Reports, easily 100 cases or more can be found where candidates do not ask for transition periods, even though they should (window dressing). The core acquis is formulated **only** with a view to the proper functioning of the internal market (or policy). Thus, it is identical for all candidates, and it is not negotiable. The remainder of the acquis is codified in transition periods, if indispensable to the relevant candidate country.

Note that the idea of a core acquis therefore balances two vital priorities, both of which are in the European public interest, namely, protecting its 'golden goose' asset (the proper functioning of the internal market) and avoiding negative impact on catch-up growth of candidates where possible.

## C. Implementation and Enforcement After Accession

An important characteristic of the Union is its decentralised structure in relation to the implementation and enforcement of Union policy: these are the responsibility of the Member States. This characteristic greatly contributes to the internalisation of Union policy by the Member States and makes a significant contribution towards preserving the legitimacy of European policy. This essential characteristic ought to be retained.

The necessary improvement in quality of the administrative and legal system will be a process that will take many years. Postponing accession by a few years would not inherently solve this problem. It does however present the Union with the question as to how it can contribute to a consistent improvement and monitoring of the level of implementation. This is a question that has also become more cogent in the present Union as cooperation has become closer.

There are gaps in the monitoring of the quality of implementation of Union policy. Accountability for the actions of national bodies takes place according to the procedures of the Member States concerned and in a *national* context. This does not do justice to the direct interest that the *EU and the other Member States* have in the quality of implementation. Yet, they have no place in the existing (national) systems of accountability. Although the Union exercises supervision and infringement procedures may be brought, these are reserved for more exceptional cases. New methods for monitoring the quality have now been devised in many Member States. These include forms of systematic and public accountability. While retaining the principle that implementation should be handled by the national authorities, a European dimension should be added to the monitoring of national implementation standards. The Union should strengthen the processes where public account is rendered for the implementation of European rules and policy. Such accountability should also be subject to certain requirements. A qualitative improvement in implementation can also be promoted by giving EU agencies a role in strengthening the cooperation and mutual coordination of implementation. The assignment of executive tasks to agencies would arise only in exceptional cases. It would however be advisable for a basis to be included in the Treaty for the establishment of agencies. Intensive efforts to strengthen the administrative capacity by means of exchange, training and other forms of aid provided by the Union are also indispensable.

The formation of a European legal system guaranteeing that the legal rules of the Union apply in all Member States is one of the most important achievements of the

Union. This system is monitored by European courts, which ensure the necessary unity of law. The system calls for a major input on the part of the national courts, which are generally responsible for the application of such law. Questions concerning the interpretation of European legal rules may or must be submitted to the European Court of Justice. The effective operation of the system therefore depends in part on *the quality of the national administration of justice and the national courts.*

Enlargement will also necessitate streamlining the procedures the Commission can institute against Member States that fail to comply with their obligations. Compliance problems should, wherever possible, be resolved by means of administrative cooperation between the Commission and Member States. Targeted discussions at the highest level can prevent legal proceedings. Moreover, the introduction of an infringement procedure along the lines of that provided for in the ECSC Treaty – namely, that the Commission's ruling is binding unless the Member State contests the ruling – would increase the effectiveness of the procedure.

## D. The Internal Market: Core Acquis With a View to Catch-up Growth

In the area of the internal market, the Union faces the dilemma that early enlargement could conflict with the accession requirements of the adoption, implementation and enforcement of the full acquis. On the one hand, the embedding of the candidate countries in the economic and institutional framework of the internal market offers the strategic prospect of accelerated catch-up growth and a strengthening of the legal and administrative capacity by means of market convergence. On the other hand, the path towards accession to the internal market involves numerous policy dossiers (e.g. the old and new approaches towards technical trade barriers, veterinary and sanitary rules and guarantees, financial and transport services, telecommunications and network industries), the implementation and enforcement of which will require substantial economic, administrative and legal efforts in the short term and sometimes involve disproportionate costs for these countries. It is now evident that adherence to this requirement will either lead to the postponement of accession or be coupled with a number of (sometimes lengthy) transition periods that distort the internal market.

The proposal for a core acquis for the internal market provides a solution to this problem. This is a qualitative test of the capacity and willingness of the candidates to implement and enforce those aspects of the acquis that are essential for the effective functioning of the internal market. This test provides the candidate countries with the prospects of accelerated catch-up growth in the Union context while at the same time preserving the credibility of the internal market. The decisive element in the test is the distinction between:

1. that element of the acquis which is crucial for the functioning of the internal market ('core acquis'); and

2. that element that can be implemented after accession without damage to the effective functioning of the internal market according to a predetermined programme under European Commission supervision (the 'residual acquis').

The principal requirements for and elements of this test are summarised below.

A country that 'passes' the test will first have macro-economic stability and a functioning market at a level at which the transition may be regarded as completed; it will have obtained high 'scores' for the nine European Bank for Reconstruction and Development (EBRD) indicators of economic transition. Secondly it will have obtained high scores for the formal adoption of the directives of the 'old' and 'new' approach and of public procurement and for the adoption, implementation and enforcement of the acquis in the field of financial services, telecommunications and highways, air- and sea-lanes and inland waterways (where relevant). Thirdly it will have an independent competition authority that will have been operating effectively for at least three years, credible controls over the forging of innovative goods and services and imitation of brands, a good administrative capacity in the acquis elements of customs law and customs facilitation, VAT and excise, veterinary and phytosanitary provisions, the Phase I provisions for the environment and nuclear energy of the White Paper, the basic elements of the social acquis (mainly, gender equality) and cohesion policy. Fourthly the candidate country will have acceded to the Munich agreement on patent rights and be a member of the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and the European Telecommunications Standards Institute (ETSI). Finally the candidate country will only 'pass' if it is willing and able after accession to pursue under, EU supervision, a medium-term strategy for ongoing macro-economic and micro-economic reforms in such fields as government spending, taxation, pensions, social security, the banking and insurance system and utilities.

This test is pro-active as seen from the EU perspective. Indeed it must be: only the EU itself can specify what the (demanding) minimum conditions are for the proper functioning of its key asset: the internal market. A passive attitude, by allowing candidates to request many hundreds of transition periods cannot 'protect' the internal market sufficiently. In addition, the internal market must also work properly in Central Europe. This non-concessionary test should give rise to a realistic picture of the implementation and enforcement capacity of the candidate countries with respect to the internal market acquis. Individual countries complying with the minimum criteria could accede to the EU. It would however be subject to the condition that they would upon accession adopt in full and implement those elements of the 'residual acquis' that are not expected to hinder their individual growth process and would commit themselves in the accession agreement to a credible timeframe for the full adoption of the residual acquis. Note as well that the core acquis would pre-empt all kinds of bilateral or special 'deals' at top or sectoral level; it neutralises much lobbyism and de-politicises a good deal of the end-stage of the negotiations.

The free movement of labour forms a special – politically sensitive – element of the internal market file for both the current Member States and the candidate countries. Some Member States are concerned about being deluged by labour migrants from the region after the accession of CEECs. For their part the candidate countries regard the discussions about transition periods that would temporally exclude them from the right to free movement as discriminatory. The fear of large labour migrant flows is unfounded. The free movement of labour is possible only under the *host-country control principle*. This means that legal employment in another Member State is permitted only on the basis of the rules and collective labour agreements of the host country. In so far as there is an economic incentive to recruit labour migrants from Member States with a lower level of prosperity on account of the lower pay, this advantage therefore lapses under the host-country principle. Hence, it is a protectionist principle, especially as regards the relatively poor EU countries. It explains (in part) why intra-EU labour migration has always remained modest. In those cases where employers would nevertheless produce savings by taking on labour migrants while adhering strictly to the collectively agreed wage-rates, these advantages would largely be nullified by the lack of fluency in the local language and lack of the locally required professional experience. If specific (sectoral) labour market shortages nevertheless make it attractive to recruit labour migrants, this would in fact be to the immediate benefit of the host country. The negotiating proposal of the EU for a transition period will therefore not address the essence of the problem, which is *illegal migration*.

Free movement of workers within the Union should come into force immediately, with just a limited, strictly codified exemption for a number of individual Member States. Free movement is after all a right for the citizens of all EU countries. There are political prudency grounds only in the case of Germany and Austria for temporary bilateral regulations concerning border labour. In the long term it is more effective to influence the migration flows between Member States by eliminating avoidable, push-and-pull migration factors than by keeping in place a variety of restrictions on the free movement of workers. EU Member States could for example pay greater attention to enhancing labour market flexibility. In addition, the new Member States should be allowed to bring the level of social protection into line with the social acquis *more gradually*. This would strengthen the possibilities for catch-up growth and reduce the push for emigration.

## E. The Monetary Union: Accession Without Extra Conditions

As EU enlargement draws closer, so does the point at which new Member States will join the monetary union. Once these countries have acceded to the Union they will be obliged to follow the nominal convergence path, based on the Maastricht Treaty

criteria, that ultimately leads to full participation in Euroland. With this goal in mind, most of the candidate countries have already pegged their own currencies to the euro or taken the euro as reference currency in a system of floating exchange rates. In addition, a number of these countries have already been orienting themselves towards the nominal convergence criteria for some time. However, the drive towards rapid participation in monetary union involves risks. The simultaneous reduction in inflation and government deficits in combination with stabilisation of the nominal exchange rate could be at the expense of the necessary structural adjustments and catch-up growth in the candidate countries. Less likely, although not implausible, stop-and-go policies could adversely affect the credibility and stability of the euro. By rendering the accession of the candidate countries to monetary union dependent on *additional* conditions in the field of real incomes or structural convergence, some believe that this risk could be avoided. It is important to recognize the risk, but reject any additional conditions.

Real income convergence does not provide an effective yardstick for assessing the extent to which the candidate countries have the ability to participate successfully in the monetary union. The membership in the monetary union is in principle compatible with sharp income differentials and structural differences between countries and regions. It is however essential that the new Member States be able to conduct coordinated, stability-oriented price and budgetary policies that the financial markets regard as credible and which at the same time do not frustrate catch-up growth needlessly.

In the EU economic union, the internal market acts as an essential stimulus for catch-up growth and as the foundation for a stable and effective monetary union. The proposed 'core acquis' test for the internal market therefore includes requirements for a successful enlargement of the eurozone. The candidate countries would for example be obliged to meet strict requirements even before accession to the EU (as laid down in EU regulations, e.g. with respect to home country control) in the field of financial services, including measures to guarantee the transparency of the capital markets and to ensure rigorous and reliable supervision. In one respect a warning about 'too-swift acquis' is even necessary: the overly rapid liberalisation of capital movements in the Central and East European countries. Where necessary, new Member States should be allowed to liberalise short-term capital movements more gradually in the context of the second phase of the Exchange Rate Mechanism (ERM-2). Finally, the institutional reform of the governance of the European Central Bank should be commenced before the first EU enlargement round has been completed.

## F. The CAP: Eenlargement Increases the Urgency of Reform

In the case of the CAP, the current acquis should not be imposed on the candidate countries, as it violates European public interest. It is very much in the narrow

interest of farmers and some related activities, and indeed overwhelmingly so for large, capital-intensive farms. However, the societal costs are very high, whether it involves consumers, tax payers, the environment or third countries. Moreover, the objectives are pursued very inefficiently and (at the very least) not very effectively. The CAP runs counter to the most fundamental interest that the candidate countries have for the next two decades or more: catch-up growth. Catch-up growth requires that resources do not remain in very low productivity activities such as subsistence farming. Today's CAP, if 'exported' to Central Europe, would make it far too attractive to farmers (for a while) to stay in low-growth agriculture, without long-run prospects. Even a radically reformed CAP would have this result to a certain extent, but sustainable, high catch-up growth would not be held back nearly as much.

The CAP must therefore be radically reformed, and rapidly, so that vested interests do not cement new redistributive coalitions that create little to no wealth nor much of a productivity jump. The Union accordingly faces a substantial political dilemma. If the present direct income support is applied in the CEE regions, many of which are already heavily dependent on agriculture but technologically and institutionally still poorly developed, this will drive up land and food prices in those areas and hold back the economic structural adjustments. This would also slow the economic process of transformation of large parts of the countryside and widen the gap in prosperity between urban regions and peripheral rural regions within the new Member States.

In addition, the payment of direct income support to farmers in Central and Eastern Europe would create a new but this time much larger group of dependent farmers who will regard this temporary support as a permanently acquired right that needs to be defended. That this support is unsuitable in the long term for improving the macro-economic prospects of the sector as a whole would in no way detract from their strong desire to retain such support in order to improve their personal income positions. At the same time it is clear that a decision based on these grounds to exclude the Central and Eastern European countries from direct income payments would be politically indigestible for the candidate countries and could result in the future blocking of further CAP reforms.

Finally, the EU also faces the dilemma that a further increase in the production of the most protected agricultural products could take place in the longer term given the continuation of present policies. This would be coupled with an enlargement of the mutual tensions between Member States concerning agricultural spending and additional political pressure in the WTO context for new reforms to the CAP. Such extra pressure will also generate increasing uncertainty among entrepreneurs in the present Member States concerning the future investment climate in the agricultural and food sector.

Hence, there is a strong case for a new reform process for the CAP before the first candidate countries accede. During the planned Mid-Term Review of the CAP in 2002, but after the French and German elections, three key reform decisions ought to be taken: to decouple the direct income support from production, to phase out these payments more rapidly and to reduce intervention prices, so that export subsidies and

production limitations can eventually lapse. The further liberalisation of agro-markets as well as the further reduction of agricultural trade protection at the Union's external borders form a necessary step on the path towards demand-oriented (quality) production and lower charges for European consumers and taxpayers, while also doing less damage to producers in developing countries. In these circumstances it would moreover be possible for the agricultural sector in the candidate countries to be integrated into the internal market without major economic dislocation in the candidate countries and without lengthy transition periods. Note that this CAP reform is *not* rationalised by budgetary costs to the EU-15, but primarily by the overriding importance of long-run development of the candidate countries.

The introduction of greater market forces in agriculture does not detract from the need for active European and national government policies. European policy is required for the supervision of food safety, certain quality aspects, environmental protection and animal welfare in the agricultural sector. A European role also needs to be reserved for rural development policy for backward regions (objective 2 of the cohesion policy). For the remainder, however, rural policy is primarily a matter for *national and regional* governments. There should therefore be no transfer of the present Community funds for the CAP to European rural policy, unless this can be justified on policy grounds.

## G. Environmental Policy: Core Acquis With a View to Catch-up Growth

The candidate countries from Central and Eastern Europe face a very special challenge in meeting the requirements of Community environmental policy. Under the Communist planning system, disproportionate attention was paid to heavy industry and the real cost of energy was disregarded. The accession process also confronts these countries with an environmental acquis reflecting the preferences and ambitions of the more prosperous Western countries. The implementation of that acquis will impose heavy demands in terms of funding, infrastructural planning and regional/interregional cooperation. This may be seen from the fact that the European Union has already received numerous applications for transition periods (generally relating to specific sectors). These applications require the Commission and the Member States to make (often technical and detailed) assessments as to which specific directives concerning the environmental acquis could be implemented for what periods without harming the internal market after accession. In so far as these analyses are not available, the assessment process will not infrequently be influenced by the pressure exerted by specific (sectoral) interests. Such pressure would get in the way of a more strategic deliberation based on such factors as undistorted competition and environmental interests in the Union and the potential for catch-up growth in the candidate countries.

Against the background of these accession dilemmas, a helpful approach consists of a core acquis strategy for environmental policy. This *proactive* strategy could help prevent the catch-up growth in the candidate countries from being reduced over the longer term or accession from being postponed due to the unduly rigid application of the requirements of the environmental acquis.

The starting point for the strategy is that the candidate countries undergo a core acquis test before accession in respect of environmental policy. A verifiable qualitative evaluation can be made of their capacity to implement the priorities of the environmental acquis. Those elements would in any case include measures that have an adverse impact on the operation of the internal market, and have cross-border environmental effects substantially affecting environmental quality within the Union.

All directives directly related to the internal market must have been adopted and implemented by the time the candidate country accedes. Among these one should in any event include the directives referred to in Phase I of the White Paper of 1995, incomplete application of which would result in substantially unfair competition. In the case of directives with a less direct relationship to the internal market, further specification based on independent research would need to indicate whether or not these should be classed as forming part of the core. The ultimate 'residual acquis' must of course be adopted and implemented by a date agreed in advance in the accession agreement.

A rough initial survey should permit a distinction between product-related environmental measures with a *direct* effect on the internal market and production-process-related or production-input-related measures with an *indirect* effect that could adversely affect the internal market.[3]

In any event, a group of the heavy investment directives for water, air and waste and a number of horizontal environmental measures should not be part of the 'core acquis' of environmental policy; in other words, it need not be implemented immediately upon accession. Since the effects of these directives on the internal market are negligible and their adoption would present the candidate countries with extremely high costs in the short term, gradual implementation over a longer term would be desirable. The fear that rapid adoption, here, would reduce catch-up growth is justified, and the EU ought to recognize this. Moreover, the EU should assist in funding the needed investment and thereby positively contribute to the eventual implementation. A strict timetable for adoption and implementation would however need to be agreed in the accession agreement for the implementation of these elements. The idea of a core acquis would of course also mean that Member States would as much as possible need to implement those elements of the residual acquis not imposing a disproportionate (financial) burden. This would, for example, apply to horizontal directives such as environmental impact assessment and flora and fauna directives.

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[3] An attempt is made in the WRR report to classify environmental directives and assign priorities for their adoption.

## H. Cohesion Within the Union: Rich Pay for Poor

The Community cohesion policy supports new Member States in their efforts to achieve real convergence by promoting the more effective input of factors of production within the internal market. Given the decentralised manner in which the investment programmes must be set up under the cohesion policy, regional governments and the horizontal and vertical coordination between government agencies are moreover strengthened. All these advantages mean that the policy serves the mutual interests of the current and prospective Member States. This should not be undermined by the petty politics of 'just return'.

The prospective enlargement of the Union by a number of less prosperous CEECs justifies a strengthening of the concentration principle for the contribution to the structural and cohesion funds. The Community's policy efforts aimed at closing the development gap and increasing the growth potential should be concentrated on where they are most badly needed, namely, relatively poor Member States and their regions. Regions within relatively rich countries should no longer qualify for Community structural funds.

Regional aid should be restricted to those regions (within old and new cohesion countries) with an average per capita GDP of less than 75 percent of the EU average. Two basic principles should govern cohesion strategy: the lower the prosperity, the greater the volume of aid, and the closer to the average income of the EU Member States, the less the aid.

As to concentration of funds, there should be an end should to the present trend of watering down the geographical and substantive area of application of certain policy instruments on the grounds of 'just return'. Finally the formally still existing but superseded connection between the cohesion fund and the objectives of monetary union should be dropped. A cohesion fund 'new-style' for environmental and infrastructure investments in the less-developed Member States ought to be designed by 2004.

## I. The EU Budget: Implications of the Proposals

The financial consequences of the recommendations in the field of cohesion policy and the CAP are of some political importance. Assuming further price reforms and tariff liberalisation from 2003 onwards, the initial effect will be to increase expenditure, due to temporary income compensations. Depending on the rate of degressivity of these payments (the author recommends a rapid decline to zero in 5 years, for example) they could however result in a structural *reduction* in the Community budget halfway through the new Financial Perspectives for the post-2006 period. The policy recommendations in the field of Community cohesion could amount to a sharp fall in European Fund for Regional Development spending in the

period up to 2006. The reason is that rich EU countries should take care of their own (relatively poor) regions, which cuts current regional expenditure considerably, and part of the activities (e.g. the Social Fund) can be 'renationalised'.

With respect to the CAP and cohesion policy, good policy has begun to supersede bad policy. The ultimate choices for the time-path and degree of degressivity of the reduction in compensatory payments, as well as the modalities of cohesion policy reforms, are matters for politically sensitive negotiation.

## J. Justice and Home Affairs – the Core Acquis Test and Mutual Involvement in Confidence-Building

Since the Treaty of Amsterdam came into force and the Schengen acquis was incorporated into the framework of the European Union, the candidate countries have been facing highly dynamic developments in the field of Justice and Home Affairs (JHA) cooperation. The extent to which the inclusion of the CEECs in the Area of Freedom, Security and Justice (AFSJ) will succeed will depend on the capacity of those countries to implement effectively the JHA acquis. Tasks such as border control and police and judicial cooperation depend primarily on effective organisations operating in accordance with the principles of the rule of law.

The candidate countries are grappling with the legacy of their communist past under which there was no independent, reliable and efficient judiciary or a modern administrative, police and border control apparatus enjoying the confidence of the domestic population and the current EU-15. In their efforts to overcome these legacies they are running into financial constraints. The protection of the external borders, in particular, requires heavy investment. In the evaluation of the accession preparations in the various areas of JHA it is noted that although relatively few problems are to be anticipated with regard to the *adoption* of the JHA acquis, the *implementation capacity* of the candidate countries will be severely deficient for some time to come. This fact needs to be firmly borne in mind in evaluating the accession strategy for JHA.

Hence, the case for a core acquis test for JHA as well. The JHA area lends itself exceptionally well to the application of such a test, in that the safety of the EU citizen would be provided with additional guarantees against possible negative effects of an accommodating accession approach. These additional guarantees are provided by the two-stage procedure for full participation in the Schengen acquis. Following accession, the present Member States will remain responsible, together with the new Member States for the protection of the internal borders until a separate, unanimous decision has been taken by the European Council to eliminate internal border controls.

The proposal is expressly based on a two-step procedure. A core acquis for JHA could take the following shape:

- as far as the union of values is concerned, the core for JHA is formed by a basic level of the rule of law;
- as far as the union is concerned with the capacity to act, the core of JHA is formed by those measures directly affecting the internal market and the safety of the EU citizen, including the administrative and legal capacity to adequately implement those measures. The latter include police and judicial cooperation (and the measures required to achieve that end, such as adequate data protection).

Full implementation of the Schengen acquis with respect to external border controls and participation in the Schengen Information System (SIS) should not be required upon accession. With respect to the external borders, less priority should be assigned to borders between candidate countries; if these countries do not all accede at the same time, the borders will be only temporary. As long as the internal border controls have not been abolished, priority should clearly be given to the organisation of airports and ports as required under the Schengen rules. In addition, transition periods are conceivable for asylum, visas and migration, in which the criterion of high implementation costs for the candidate Member State plays an important role. With respect to the JHA policy field it is very important that the acquis which does not form part of the core and which also does not involve excessive costs for the candidate countries be adopted prior to accession (e.g. in the field of asylum policy). Deadlines and implementation programmes should be set out for the adoption of the residual acquis. The ongoing evaluation conducted by the Schengen Evaluation Group should monitor progress on this basis.

Clearly there is no magic formula to guarantee the implementation capacity and adequate functioning of the new Member States in JHA cooperation. It is however also clear that this is not possible without mutual involvement and confidence building. Against this background it is very important that the Union and the existing Member States demonstrate their commitments towards the enlargement of the AJSF by means of aid.

Apart from providing aid it is important that investments are made in a long-term process to change the administrative and legal cultures and practices. A number of measures could contribute towards this: the opening up of JHA programmes to candidate countries, the association of candidate countries in the new structures and institutions for accession and the conclusion of pre-accession packets in sensitive policy fields, such as organised crime (since 1998), asylum and illegal immigration.

With respect to the training and functioning of the police and border guards, a greater role should be set aside for the European Union in the coming years. On the one hand, this could include low-key instruments such as establishing networks of professional practitioners, training and exchanges. On the other hand, there is also a clear need for far-reaching initiatives. By way of analogy with the initiatives for the European Police Academy, steps could be taken towards setting up a European border guard system. As in the case of the European Police Academy this process should be built from the bottom-up, that is, building on existing cooperation and exchanges between the Member States.

Ultimately the enlarged Union will need to strike a balance between security and freedom. The enlarged EU will need to give priority to the development of a coherent, explicit immigration policy that does justice to this balance and the good relations with the neighbouring countries of the enlarged EU.

## H. Conclusion

The accession or enlargement process cannot but include a large number of 'MUSTs' for the candidate countries. But it is crucial to appreciate that not all and everything is 'automatic' and 'pre-disposed'. What ultimately matters is a good strategy in the interest of the European public, and this calls for a critical look at the key terms of EU enlargement. The present paper shows that the enlarged EU, hence also the new Member States, will be far better off when the crucial terms of enlargement are thought through and adapted selectively. Thinking strategically about EU accession is one among many ways to fuel the EU debate in CEECs.