WRR

SCIENTIFIC COUNCIL FOR GOVERNMENT POLICY

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59

TOWARDS A PAN-EUROPEAN UNION

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CONTENTS

SUMMARY

Enlargement: unique opportunity and complex challenge

Ten Central and East European countries, as well as Malta, Cyprus and Turkey, have applied to join the European Union (EU). Enlargement involving a number of these countries is expected to take place within a few years. This report concentrates on the eastward enlargement, which provides a historic opportunity to reverse the division of the European continent. Important values and interests are at stake. By including the candidate member states in its own integration arrangements, the EU will be enlarging the zone of safety and stability in Europe. Enlargement by states that share the values of liberal democracy will also contribute to the further development of a political and economic order throughout Europe.

In addition much is at stake for the EU as 'a union of values and action', as the essence of the Union has been typified in this report. There are widespread fears that the eastward enlargement will result in the 'erosion' of basic achievements such as the internal market and – as a result of the large number of highly diverse countries – could reduce the ability to take decisions. In order to preserve such assets and effectiveness, the Union has set the bar high for the accession of the candidates: as in the case of the earlier enlargement rounds, they will be allowed to accede only if they have fully taken over and are able to implement the achievements of the Union (the *acquis communautaire*). In view of their initial situation following the collapse of communism and the major dynamism in the various policy fields of the Union this therefore means that they need to undergo an extremely radical process of adjustment in a short space of time before qualifying for membership.

Subject of the report: accession and preservation of achievements

This report concentrates on the question as to how the process of accession can be organised so that the achievements of the Union will remain preserved after accession. The report also examines the opportunities and risks that enlargement will pose in important policy areas of the Union, namely the internal market and monetary union, the Common Agricultural Policy, environmental policy, cohesion policy and co-operation in the field of justice and home affairs. The WRR will be returning in a separate report to the problem of ensuring that the post-accession decision-making process will enable the Union to meet new internal and external challenges effectively.

EU accession criteria and transformation: support and tension

After having set out the framework for analysis in Chapter 2 the Council in Chapter 3 examines the transformation that the candidate member states will need to undergo. That process of transformation relates to numerous interacting dimensions, namely civil society, democracy, the rule of law, governance and the economy. Partly in response to the requirements laid down by the Union, major

progress has been recorded in each of these areas by most of the candidate member states and the transformation processes have been substantially strengthened. There remain, however, significant areas of vulnerability, which are determined less and less by the legacy of the communist past and more and more by the gap in economic development. In the interest of further transformation and strengthening the many new achievements, it is therefore vitally important that the candidates continue to close the economic gap. Although major structural changes have for example taken place with regard to the rule of law and the system of public administration, further improvement in legal and administrative capacity depends in substantial measure on a sustained growth in prosperity that is capable of generating the resources for investments in physical and human capital.

If therefore the transformation turns out to be supported and stimulated in a general sense by the entry criteria in question, the report also indicates that there is a tension between the two in certain areas. In some cases the Union imposes requirements on the applicants demanding such large investments as to obstruct their possibilities for catch-up growth. Chapter 4, which contains an analysis of the opportunities and risks of the enlargement in the major policy fields of the Union, provides a number of examples of this. The Union for example confronts the applicant member states with huge investment requirements in certain areas of the internal market, environmental policy and co-operation in the field of justice and home affairs. This creates a real risk that the efforts the Central and East European countries must make in order to satisfy the entry criteria will be at the expense of public investment in their physical and knowledge infrastructure, the strengthening of their market institutions and supporting regional and sector-specific adjustment processes. All these investments are highly important for their ability to continue closing the gap.

Need to set priorities on accession: core acquis

The timely absorption of the candidate member states in the Union is a significant precondition for the confirmation of the transformation processes in those states and the consolidation of all that has been achieved to date. The WRR considers that where the accession dynamic and the transformation dynamic are at variance with one another, priority should be given to the latter. This is in the interests of the countries concerned but also in the interest of the Union, since catch-up growth generates precisely those resources that are required in order to satisfy the entire acquis and for the latter to be adequately implemented and enforced.

This forms the conclusion of Chapter 5, which examines the European Union's current accession approach and explores alternatives. The tension noted above is currently being dealt with by granting the candidate member states transitional periods. A characteristic of this approach is its reactive nature: transitional periods are only opened up for discussion if the candidate member state so requests. The point of departure is not therefore formed by the ultimate aim of achieving results that do justice to the short-term and long-term interaction between taking over the acquis and catch-up growth.

The WRR favours a strategic and development-oriented approach towards accession that does justice to the interests of both the candidate member states and the Union. The prime concern must be for the candidate member states ultimately to take over and implement the entire acquis. But in order to prevent the protracted postponement of accession the WRR would propose that in relation to clearly problematical elements of accession a distinction be drawn between a *core acquis*, to be applied immediately after accession, and a *residual acquis*, consisting of elements for which an introductory process must be laid down in detail and by treaty upon accession. In this way the new member states will be able to benefit from the mutually reinforcing dynamic between the Union's requirements and the transformation processes, while the prospects for the effective implementation of the entire acquis in the medium term are enhanced. As noted, the Union also benefits from this approach as the risks posed by the enlargement for the essence of the union of values and action are then limited.

Proposal for a core acquis in certain policy areas

The approach proposed by the WRR has been worked out in broad terms in Chapter 7 for the internal market, the environment and co-operation in the field of justice and home affairs. It is important for the Union to formulate the core acquis proactively and to communicate this to the candidate member states. In this regard it needs to be made clear that accession will be based on a rigid, non-concessionary core acquis test. Furthermore, this would be an absolute minimum applying equally to all candidate member states, which did not therefore absolve them of the duty to take over as much as possible of the residual acquis after accession. Temporisation would be possible only in relation to aspects that were evidently impeding their growth process.

The Council considers that the proposed approach would be of particular relevance for the *internal market*, in that full compliance with the acquis would imply the acceptance of correspondingly burdensome policy commitments that can involve disproportional costs. The Council considers that it is possible to apply a differentiation to the current internal market acquis along the proposed lines; in Chapter 7 it outlines the starting points for and contours of a possible core acquis. In order to accede to the Union it is vital for the candidate member states to have an adequate administrative and judicial capacity for the implementation and enforcement of the core acquis. The adequate existence of such capacity therefore forms part of the test. The idea of setting a core acquis also makes it possible for a candidate member state to concentrate its scarce resources in this area. The core acquis that has been formulated for the internal market also assures a healthy foundation for *monetary union*. The Council considers that the application of this core acquis test for the internal market and the strict application of the nominal convergence criteria of Maastricht do not provide any grounds to fear that enlargement of the monetary union would pose risks. Additional conditions are not therefore required. Unduly rapid liberalisation of capital movements in the candidate member states is, however, undesirable. The new member states should be given the opportunity in the context of ERM-2 to implement a more

gradual liberalisation of short-term capital movements in order to reduce the risks of one-off speculation against their currency.

Adapting to the requirements of Community *environmental policy* is a particularly difficult challenge for the candidate member states, as the legacy of communism in this area is a very negative one. It has, accordingly, been precisely in this area that numerous requests for transitional periods have been submitted. Given their background and level of economic development, the acceding countries cannot be expected to comply upon accession with an acquis reflecting the ambitions of the much more prosperous West. The distinction between a core acquis and a residual acquis is therefore also a highly practical one in this area in order to prevent long delays in accession. In the Council's opinion at least those measures affecting the operation of the internal market should form part of the core acquis as well as those relating to transfrontier environmental effects with a significant bearing on the environmental quality within the Union. The burdensome investment directives for water, air and waste should at any event form part of the residual acquis. These have a limited effect on the functioning of the internal market but present the candidate member states with extremely high costs. A strict time-path should however be laid down in the accession treaty for the implementation of these aspects.

The formulation of a core acquis is particularly appropriate in relation to *co-operation in the field of justice and home affairs*. In the interests of the internal security of the entire Union, the candidate member states are being required to introduce exceptionally expensive measures; they are for example the owner of the Union's new outer borders. The proposals of the WRR correspond with the two-step procedure applying to full participation in the Schengen process. As regards the union of values, the content of the core acquis for JHA cooperation is formed by a basic level of the rule of law. As regards the union of action, at issue are those measures that directly affect the internal market and security of the EU citizen, including the administrative and legal capacity adequately to implement those measures. This at any event includes police and judicial cooperation (and the necessary measures to that end, such as adequate data protection). It is however vitally important for that element of the residual acquis for JHA not involving excessive costs for the candidate member states to be taken over before accession (e.g. in the field of asylum policy). Deadlines and implementation pathways must be laid down for the takeover of the residual acquis.

With respect to this core acquis test the European Commission could, in the view of the WRR, play a stronger directive role in the field of JHA.

Proposals for other policy areas

In Chapter 7 the *Common Agricultural Policy* is also evaluated in terms of the enlargement perspective. The restructuring of agriculture is vitally important for the economic development of the candidate member states. The WRR considers that enlargement increases the urgency of further reforms of the agricultural

acquis. Application of the present CAP to the new member states would have highly negative and delaying effects for the restructuring of agriculture and the economy in a general sense, which is so badly required in those countries. For this reason the Council urges that a start be made before accession on a new CAP reform process aimed at the further liberalisation of aid policy and further reduction of agricultural trade protection at the outer borders. This would enable the agricultural sector in the candidate member states to be integrated into the internal market without lengthy transitional periods and undue economic disruption to their economies. In the Council's view agricultural policy calls for an active European policy aimed at food safety, environmental protection and animal welfare. Rural development policy for deprived regions should be conducted not via the CAP but via the cohesion policy. Other rural policy is primarily a task for national and regional governments.

The *cohesion policy* makes an important contribution to the preconditions for genuine conversion by promoting the more effective input of factors of production within the internal market. The funds in question are highly important for the new member states, which face major challenges of economic restructuring and environmental investment. The WRR considers that the basic point of departure should be that all financial flows from the Community budget stem from carefully considered and justified policy needs. This therefore also applies to cohesion policy. The Community efforts aimed at reducing developmental arrears and increasing the growth potential should be focused where they are most badly needed, namely in the relatively poor member states and their regions. Regions in comparatively wealthy countries should therefore no longer qualify for Community structural funds.

Strengthening of the Union as a decentralised administrative and legal community

The Council considers that the above recommendations provide solutions that do justice to both the further transformation in the candidate member states and to the preservation of important achievements in the Union, and which thus facilitate rapid accession. Nevertheless it is also clear that the necessary improvement in the quality of the administrative and legal system in the candidate member states will, despite the substantial progress that has been made, be a process taking many years. Postponement of accession by a few years will not inherently solve this problem. This presents the Union with the question as to how it can contribute to this further improvement – a question that has also become all the more cogent in the present Union as the intensity of cooperation has increased. This topic is examined in Chapter 6.

In principle the Union has a decentralised structure for the implementation and enforcement of policy: the responsible bodies are the organs of the member states. This arrangement should be retained as it contributes markedly to the internalisation of Union policy by the member states. There are no available solutions in this area capable of generating major results in the short term, although

there are possibilities for improvements in the longer term. In an enlarged Union the Council considers it inevitable that the quality of the implementation by the national authorities be assured by new forms of (public) accountability complying with European yardsticks. This will enable the process of administrative convergence between the member states to be encouraged without detracting from the devolved responsibilities. According to the WRR, preserving the quality of the European legal system will require radical changes. The most important of these concerns the proposal for each member state to appoint a European judge. This linkage function between European law and the national legal systems, the diversity of which will increase substantially as the result of accession, can strengthen the carryover of European law into national law.

PREFACE

This report has been prepared by an internal project group of the WRR chaired by Dr. M. Scheltema, chairman of the Council. In addition the following individuals formed part of the project group at the time the report was completed: Dr. J.L.M. Pelkmans en Dr. C.J.M. Schuyt (members of the Council),staff members Dr. W. Asbeek Brusse, M. Sie Dhian Ho en I.J. Schoonenboom (project-coördinator) and, as temporary staff members, I.C.J. Henzen, B.R. Limonard and J.B. de Raadt. G. Berends also participated in the activities of the project group during a major part of the preparations.

The analyses in this report have been based partly on the results of a number of preliminary studies, which have been published in the Council's series of Working Documents:

- Eric Philippart and Monika Sie Dhian Ho (2000) *The Pros and Cons of 'Closer Cooperation' within the EU; Argumentation and Recommendations*, WRR Working Documents W 104, The Hague.
- A.J.G. Verheijen (2000) *Administrative Capacity Development ;A Race against Time?*, WRR Working Documents W 107, The Hague.
- Richard H. Jones (2000) *Educating for an Open Society; Higher Education Reform in Central and eastern Europe as a catalyst for the Emergence of a Democratic Market Economy*, WRR Working Documents W 108, The Hague.
- Jacques Pelkmans, Daniel Gros, and Jorge Núñez Ferrer (2000) *Long-run Economic Aspects of the European Union's Eastern Enlargement*, WRR Working Documents W 109, The Hague.
- D.M. Curtin en R.H. van Ooik (2000) *Revamping the European Union's Enforcement Systems with a View to Eastern Enlargement*, WRR Working documents W 110, The Hague.
- Erhard Blankenburg et al. (2000) *Legal Culture in Five Central European Countries*, WRR Working Documents W 111, The Hague.
- Jörg Monar (2000) *Enlargement-related Diversity in EU Justice and Home Affairs: Challenges, Dimensions and Management Instruments*, WRR Working Documents W 112, The Hague.
- Eric Philippart en Monika Sie Dhian Ho (2001) *Pedalling against the Wind; Strategies to Strengthen the EU's Capacity to Act in the Context of Enlargement*, WRR Working Documents W 115, The Hague .

In preparing the report many persons have been consulted. The Council is endebted to them for their information, suggestion and comments. Of course only the Council itself is responsible for the contents of the report.

PART 1 OBJECTIVE AND FRAMEWORK

1 INTRODUCTION

1.1 BACKGROUND AND MOTIVATION

Towards a pan-European Union

Ten Central and East European countries, as well as Malta, Cyprus and Turkey, have applied for membership of the European Union (EU). With the exception of Turkey, negotiations have got under way with all these countries. The eastward expansion is contributing towards the change of the political architecture of the European continent.

In the 1990s the EU[1] entered into relations with the ten Central and East European countries as well as the seven countries of the European Free Trade Association (EFTA). This took the form of association agreements, respectively the Europe Agreements and the European Economic Area (EEA), since accession to the EU was inopportune at that time. Major integration projects were under way: the completion of the internal market and establishment of the European Union (including the European Monetary Union (EMU), the Common Foreign and Security Policy (CFSP) and cooperation in the field of Justice and Home Affairs (JHA)). Although differing in terms of background and contents, these associations have at least one feature in common: the associated countries did not get a vote in EU decision-making.

This European framework has been making preparation in recent years for a pan-European Union. Three of the EFTA countries (Austria, Finland and Sweden) have since joined the EU (1995). In addition the Copenhagen European Summit of June 1993 decided that the associated countries in Central and East Europe that so desire, shall become members of the European Union as soon as they are able to assume the obligations of membership (see text-box 1.1).

The values and interests at stake

To begin with, the proposed enlargement with Central and Eastern Europe involves fundamental values and major interests. In response to the dramatic changes at the end of the 1980s, EU policy-makers accepted the special responsibility towards the countries of Central and Eastern Europe in order to take advantage of this 'historic opportunity' and reverse the division of the European continent. The EU is expanding in order to absorb countries that share the values of liberal democracy, thus contributing to the development of a political and economic order for Europe as a whole.

Apart from these intangible motives there are also major interests, relating in the first place to security. As the war in the Balkans made clear and the current tensions in Macedonia are once again demonstrating, the security of Europe is indivisible. By including the candidate countries within its own integration frameworks, the EU is enlarging the zone of safety, stability and democracy in Europe.

In addition the EU has internal security interests in the enlargement. Through the instrument of EC/EU policy, the eastward enlargement will enable the current member states to get a grip on the wide range of cross-border problems which – partly as a result of the fall of the Berlin Wall and the intensification of mutual relations – have become increasingly topical. In particular these concern problems such as organised crime, drug trafficking and illegal immigration, but they also concern issues that were demanding attention before 1989, such as cross-border environmental pollution and nuclear safety.

Finally, economic interests are an important motive force behind the enlargement. The further extension of the internal market and – in due course – monetary union will offer stable and free access to new growth markets guaranteed by Community regulations, with the ability to improve efficiency and productivity and so provide a further impetus for economic growth within the EU. Such growth impulses can also strengthen the international economic position of the Union.

At the same time much is at stake in terms of the achievements and dynamic of the Union. Not without reason did the EU seek to postpone the point of accession by entering into association agreements. There are widespread fears that the eastern enlargement will result in the 'erosion' of core achievements such as the internal market – as a result of inadequate implementation and enforcement – and to a reduction in the decision-making capacity of the Union as a result of the large number of highly diverse member states. This fear is based on a number of specific characteristics of the enlargement into Central and Eastern Europe. Apart from the qualitatively different geographical/geopolitical dimension of the coming enlargement and the fact that far more countries will be involved, the initial situation in Central and Eastern Europe is less favourable and the hurdle for accession is higher than was the case in previous enlargement rounds.

Although the parallel with the southern enlargement is an obvious one it also has limitations. While Greece, Spain and Portugal formerly had authoritarian regimes, these had less of an all-embracing grip over society than in the generally totalitarian regimes of Central and Eastern Europe. In addition the Mediterranean countries had many more elements of a market economy and there was a certain degree of political diversity and a rudimentary rule of law. The initial economic situation in Central and Eastern Europe, however, was a good deal less favourable. Not only was the region more economically backward, but there was a virtual lack of any institutional structure for a market economy. The legacies of the totalitarian regime also cut deeper with respect to democracy and the rule of law. Furthermore, the transformation had, and has, to take place simultaneously in all these dimensions. As noted earlier, the threshold for accession has also been raised: the achievements of the internal market and EMU and the incorporation of the Schengen regime in the EU Treaties present the candidate countries with much more radical accession requirements than applied to the Mediterranean countries.

Will the classical strategies suffice?

This specific background gives rise to the doubts as to whether the classical strategies of the Union will suffice in this case as well. At issue here is both the strategy towards the accession of new member states and the preservation of the accomplishments of the Union. The classical accession strategy is based upon the fact that a candidate member states must fully adopt the accomplishments (or *acquis*) of the Union before accession. The negotiations seek to minimise the number and length of transition periods. Permanent exemptions are taboo; the point of departure is that the same rights and obligations must ultimately apply to each member state. Problems with the adoption of the acquis are as far as possible resolved prior to accession, with the result that candidate countries not infrequently have to wait for membership for some time (on average six years). A fundamental review of the institutional structure is avoided; incremental adjustments must prepare the new member states for absorbtion into the European institutions. The same approach applies to existing European policy. If it is difficult to fit in new candidate countries (e.g. because of their differing economic structure), the preference of the EU is to create new compensatory policy instruments and side-payments, in combination with transition periods and technical adjustments, instead of fundamentally reforming the existing policy. The EU assists the necessary adjustment processes in the candidate countries by making expertise and financial aid available.

The classical strategy to preserve the accomplishments rests heavily on the implementation and enforcement of the acquis by the member states of the Union. In this decentralised system it is the member states themselves that must designate the correct authorities to implement the acquis and provide the necessary staff, equipment and funding. It is also primarily the member states themselves who must enforce the acquis in practice and penalise any violations. The role of the EU is generally confined to the imposition of requirements and formulation of preconditions for law enforcement. It ensures that the member states make adequate efforts, with the European Commission resorting where necessary to the supervisory mechanism in order to enforce compliance among the member states.

The European Union has quite clearly recognised the special nature of this enlargement. The accession requirements were, for example, spelt out for the first time by the Copenhagen European Summit, after which these were also set out in more detail in respect of the internal market in the White Paper on the preparation of the associated countries of Central and Eastern Europe for the integration in the internal market of the Union (see text box 1.1). In addition the Luxembourg European Council 'strengthened' the classical accession strategy in response to the proposals of the European Commission in 'Agenda 2000'. As a result of this candidate countries received intensive individual assistance in the adoption of the acquis under the National Programmes for the Adoption of the Acquis (NPAAs). The European Commission issues regular reports on the progress being made by the individual candidate countries with respect to the accession criteria and accession aid has more than doubled.

With a view to the retention of the acquis after accession, the Union is also paying more attention than ever to the administrative and legal capacity of the candidate countries who implement and enforce the acquis. The Madrid European Summit (December 1995) for example emphasised that the candidate countries had to adjust their administrative structures in order to ensure the effective implementation of Union policy after accession. Since then considerable attention has been paid to the build-up of the legal and administrative capacity in the reports about the progress of the candidate countries as well as in the aid to the Central and East European countries.

This 'strengthening' of the accession strategy and the particular emphasis on implementation capacities do not, however, in any way detract from the fundamental principles of the aforementioned classical strategies for accession and the preservation of achievements. It is possible that these strategies will also suffice for the proposed enlargement. Given the specific background of the candidate countries from Central and Eastern Europe, however, the WRR considers it advisable not to take it for granted.

Text-box 1.1 The Eastern enlargement: chronology of events

1989	Introduction of PHARE aid programme for Poland and Hungary	Establishment of PHARE to support the reform process in Poland and Hungary. In 1996 PHARE was extended to 13 partner countries in the region. PHARE is now the most important framework for the financial and technical aid of the EU to the CEE countries, aimed largely at institution-building.
1991	Signing of the first Europe Agreements	The Europe Agreements provide a legal framework for the bilateral relations between the EC and the associated countries.
1993 (dec.)	European Summit of Copenhagen	Declaration that associated CEE that so desire can join the Union as soon as they have satisfied the membership conditions. Formulation of accession criteria. Membership requires the candidate country to have reached the point at which it: 1 has stable institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities; 2 has a functioning market economy; 3 has the capacity to cope with the competitive pressure and market forces within the Union; 4 is able to assume the obligations of membership, meaning also ability to adhere to aims of political union and monetary union.
1994 (Dec.)	European Council of Essen	Charting of accession strategy
1995 (Jun.)	European Council of Cannes	Adoption of White Paper on the preparation of the associated countries for integration in the internal market. The White Paper introduces an adoption timetable for the internal market acquis.

1995 (Dec.)	European Council of Madrid	Surveys and emphasises the necessary adjustment of the administrative structures in Central and Eastern Europe and a stable economic and monetary climate.
1997 (Jun.)	Treaty of Amsterdam	- Protocol no. 7 concerns the partial postponement of the institutional reforms with a view to enlargement after a following intergovernmental conference. - Introduction of articles 6(1) and 49(1) obliges all existing and candidate member states to observe the principles of freedom, democracy, the rule of law, human rights and the fundamental freedoms.
1997 (Jul.)	Agenda 2000	The Commission: - Recommends the start/opening of accession negotiations with the five most advanced CEE countries, plus Cyprus; - Makes recommendations for the strengthening of the pre-accession strategy. To this end it proposes a system of partnerships for accession with the various candidate countries; - Will report annually to the Council on the progress made by the candidate countries (regular reports).
1997 (Dec.)	European Council of Luxembourg	Adoption of Agenda 2000 recommendations concerning the strengthening of the pre-accession strategy. Decision to open accession negotiations with Hungary, Poland, Estonia, Slovenia and the Czech Republic (the 'Luxembourg group').
1998 (Mar.)	Start of negotiations with the 'Luxembourg group'	
1999 (Dec.)	European Council of Helsinki	Decision to open accession negotiations with Malta, Slovakia, Latvia, Lithuania, Bulgaria and Romania ('Helsinki group').
2000 (Feb.)	Start of negotiations with the 'Helsinki group'	
2000 (Dec.)	Treaty of Nice	- Reform of institutions to facilitate Union enlargement; - Commitment that candidate countries may participate in the elections to the European Parliament in 2004.

1.2 OBJECTIVES, KEY QUESTIONS, LIMITATIONS AND STARTING POINTS

Objectives

The aim of the WRR project on the enlargement of the European Union into Central and Eastern Europe is to provide building blocks for the policy of the Dutch government in the EU context with respect to:

1 the process of accession to the European Union by the candidate countries from Central and Eastern Europe (the accession problem);
2 the preservation of the achievements of the Union following the accession by the candidate countries (the implementation and enforcement problems after accession).
3 decision-making after accession guaranteeing that the Union can effectively meet the internal and external challenges after accession (the decision-making problem after accession).

These aspects will form the subjects of two advisory reports in succession. Since the negotiations with the candidate countries are now reaching a decisive stage, the WRR examines the first two of these project objectives in this report. A separate report will be dedicated to the third goal. Although separated in time, the reports form a logical extension of one another and the second report will be building on the analysis in this initial report.

Central questions

This report therefore centres on the accession, implementation and enforcement strategy for safeguarding the achievements of the Union. Diversity between, and characteristics of, candidates and existing member states becomes problematic when it threatens these achievements. The enlargement problem is examined on the basis of the following research questions:

1 What opportunities does the enlargement of the European Union offer?
2 What problematic diversity is to be anticipated *before and upon* accession?
3 What problematic diversity is to be expected *after* accession with respect to the implementation and enforcement of the acquis?
4 What solutions (accession, implementation and enforcement strategies) are conceivable and how should they be assessed?

These questions will be answered for the following policy areas of the European Union:

- the internal market;
- monetary union;
- the Common Agricultural Policy;
- environmental policy;
- cohesion policy;
- cooperation in the field of justice and home affairs.

These policy areas are highly important for the EU as achievements that are at stake and/or policy areas where the enlargement process is expected to be problematic.

Limitations

The WRR has imposed a number of limitations on this project. In the first place the analysis is confined to the ten candidate countries in Central and Eastern Europe. The reason for this limitation concerns the shared history and legacies in these countries and the parallel multi-dimensional transformation processes they are undergoing. The history and circumstances of Turkey, Malta and Cyprus are different. A second limitation concerns the focus on accession and the implementation and enforcement of the acquis. The problem with respect to decision-making after accession as well as the 'post-Nice' problems (i.e. the division of powers between the EU and the member states, the status of the Charter of Fundamental Rights, the simplification of the treaties and the role of the national parliaments in the European architecture, etc.) are not discussed in this report. Thirdly this study is concerned with the main elements of the policy, in a medium-term perspective. It is emphatically not the intention to sit in the seat of the negotiators.

Starting point

An initial starting point concerns the way in which the WRR has interpreted 'the Dutch interest'. The Dutch interest in peace and security in Europe, the international rule of law and stable markets means that the strengthening of the Community structures and the internal market are as such Dutch interests. If the functioning of the internal market and integration are fundamental long-term interests of the Netherlands, the national interest will only be damaged if short-term interests prevail over the search for common solutions. Seen in this light the discussion about the primacy of 'the Dutch interest' is demagogic rather than substantive in nature (Donner 1995: 41). Secondly, the WRR is assuming that the first accessions will not take place before 2004.

1.3 ELABORATION OF THE RESEARCH QUESTIONS AND ARRANGEMENT OF THE REPORT

This report is divided into three parts:

1 objective and framework;
2 identification of opportunities and threats; and
3 assessment of solutions and conclusions.

This threefold division is outlined in terms of the WRR's vision on the essence of the European Union.

Part I: Objective and framework

The ability to conceptualise problematic diversity requires a vision towards the essence of the Union. In this regard the WRR considers it important to indicate which forms of diversity are problematic for the adoption, implementation and enforcement of the acquis upon accession. Clearly, not all the diversity which the Central and East European countries will be introducing will be problematic for the EU. On the contrary: diversity between member states enhances the cultural richness of the EU, and experience with the various political and administrative

solutions within the member states increases the capacity for learning and adjustment within the Union. In other words it has never been the intention of the EC/EU to eradicate diversity. Diversity manifests itself in a large number of fields. Although all the member states are functioning democracies, there are marked differences between them, as well as in political culture. The same applies to the way in which national minorities are dealt with and to the legal and administrative systems.

For this reason the WRR presents its vision in this first part of the report on the essence of the Union. The latter is defined as a union of values and action. From this vision towards the EU it may be deduced which characteristics and/or positions of the candidate countries will be problematic in the accession process and after accession. This conceptualisation of problematic diversity forms the 'lens' through which the opportunities and threats for the EU are identified in part II of this report. Secondly a number of criteria are derived from this vision, on the basis of which the solutions for the identified threats may be assessed. These criteria form the point of reference for the assessment of accession, implementation and enforcement strategies in part III.

Part II: Identification of opportunities and threats

In the conceptualisation of problematic diversity the WRR is assuming that it is not just the diversity with respect to the formal acquis of the Union that is problematic but also specific features of the civil society, the political system, the legal system, the administrative system and the economy of a member state, as these affect the capacity and political/administrative and legal culture of that state for implementing and enforcing the acquis. The dynamic in these five dimensions of social life deserve special attention in the case of the Central and East European countries since they are undergoing radical transformation in all these fields. The pre-war history, the experience under communism, the paths down which they struck after 1989 and external factors all have a bearing on these transformation processes. In addition these processes are closely interrelated.

The transformation processes and the process of accession to the EU are often mutually reinforcing. This applies for example to the political and economic accession criteria laid down by the EU and the transformation in the candidate countries to a democratic and functioning market economy. In certain cases, however, the two processes impose requirements on the Central and East European societies that are at variance with each other. Thus the scarce public resources in the candidate countries are required both for investments in the interests of catch-up economic growth and for investments to adopt and implement the acquis. The transformation dynamics in the candidate countries from Central and Eastern Europe and the opportunities and threats arising as a result in relation to the EU enlargement are discussed in this report.

The report goes on to describe the adjustment processes in the candidate countries (i.e. in respect of the adoption and implementation of the acquis) for the

various policy areas of the EU. In doing so the WRR also examines the situation and dynamic in the existing Union. The outline of the dynamic in the various policy fields also reveals that the acquis itself is neither uncontroversial nor static. In various policy areas, such as the Common Agricultural Policy, debate is taking place about the division of competences between the Community and national or sub-national level. As will be seen, enlargement sometimes accentuates the necessity for a review of the acquis.

The second part of the report identifies the opportunities and problems surrounding enlargement. First of all chapter 3 examines how the transformation in the candidate countries is developing with a view to accession to the European Union. Five dimensions of the transformation and the interaction between them are discussed: the strengthening of civil society, the process of democratisation and the economic, legal and administrative transformation. The opportunities and threats posed by the transformation processes for the enlargement of the EU are examined. Chapter 4 provides an analysis of the enlargement problem in a number of leading policy areas, namely the internal market, monetary union, the Common Agricultural Policy, cohesion policy and cooperation in the field of justice and home affairs. The dynamic of the present Union is identified in various policy fields, as well as the alignments to the relevant accession conditions that are required in the Central and East European countries.

Part III: Assessment of solutions and conclusions

In order to assess the various solutions, the WRR returns to its vision of the Union set out in part I. For the purposes of this evaluation various criteria are derived from the vision of the Union as a Union of values and action. Where the Union has been characterised as a functional association for the achievement of common goals of the member states (i.e. a union of action), the first main criterion is clear: functionality (i.e. problem-solving capacity). To begin with an assessment is made of the functionality of the various solutions for the accession problem and for the question as to how the achievements can be preserved after accession.

The question as to whether solutions are functional is not of course the whole story. Functional adjustments have consequences for the parameters of the political system of the EU. These 'systemic consequences' touch on crucial aspects of the union of values and action and must therefore be evaluated for their desirability. In addition solutions have 'systemic consequences' for peace, welfare and stability in Europe as a whole. Solutions that are functional for accession and/or preservation of the acquis are only acceptable if they also comply with these important 'systemic criteria'.

If the consequences of the various solutions are evaluated on the basis of the functional and 'systemic criteria' that have been distinguished, delicate trade-offs clearly need to be made. The advantages and disadvantages of the various solutions are first weighed in a general sense for the accession problem and the

problem of the preservation of achievements. Given the major differences in the nature of the policy fields of the EU, these trade-offs may vary from one policy area to another. Apart from the chapters in which the solutions are assessed in a general sense, solutions for the various policy areas of the EU are therefore also specifically evaluated.

Part III, in which solutions are evaluated, therefore starts with two chapters in which the strategies for accession and for implementation and enforcement are evaluated on the basis of the criteria discussed in chapter 2. Building on that evaluation, the WRR assesses accession, implementation and enforcement strategies for the individual policy areas in chapter 7 and develops proposals for the realisation of the possibilities that emerged in chapter 4 for coping with the identified problems. By way of supplement to the policy areas discussed in chapter 4, chapter 7 also examines the financial consequences of the WRR proposals for the EU budget. Finally, chapter 8 links up again with the objectives and research questions of the report. A number of conclusions are also formulated and recommendations made for the accession, implementation and enforcement strategies in a general sense as well as more specifically in individual policy fields.

NOTES

1 The European Union has existed since the coming into force of the Maastricht Treaty (November 1993) and, among other things, includes the European Economic Community (EEC), rechristened by the Maastricht Treaty as the European Community (EC). For the sake of convenience this report also uses the term European Union when referring to developments before 1993 and when referring to policies which, strictly speaking, are EC policies.

2 THE ESSENCE OF THE EUROPEAN UNION: VISION AND EVALUATION CRITERIA

2.1 INTRODUCTION

This chapter sets out the WRR's vision towards the essence of the European Union. Such a perspective is, in the first place, required in order to develop a vision on 'problematic diversity'. Studies of European history emphasise diversity as one of the most enduring features of Europe (cf. Guizot 1828; Davies 1997). The pronounced diversity among the member states, deriving as it does from separate cultural, linguistic, religious, economic and political development, is also regarded and cherished by many as a characteristic of the political system of the European Union. If the EU continues to expand, an ever greater part of Europe's diversity will be brought within the boundaries of its political system. Diversity among the member states feeds the cultural wealth of the EU, while experience with different political and administrative solutions in the various member states increases the capacity for learning and adjustment within the Union. These are important advantages, but at what point does diversity among the member states become problematic for the functioning of the EU? Answering this question requires a vision concerning the essence of the EU.

Secondly, a vision towards the essence of the EU is important in order to develop criteria for evaluating possible solutions with regard to the problem of accession, implementation and enforcement. As regards the accession strategy, political and administrative practice still appears to abide by the principles of the classical accession strategy as described in Chapter 1 (cf. Europese Commission 2000b). At the same time, however, unconventional strategies have been put forward in academic and think-tank circles, such as partial membership and a core acquis test (cf. SER 1999; Pelkmans et al. 2000). As far as the implementation and enforcement strategies are concerned, the classical strategies continue to hold sway for the time being, although far more resources are being deployed in order to strengthen the administrative and legal capacity of the candidate countries. By way of supplement far-reaching proposals have also been made in this area, such as the use of agencies for policy delivery in certain areas (Verheijen 2000).

Clearly, weighing up the advantages and disadvantages of these additions and amendments to the classical strategies poses dilemmas. What criteria should the Union take as the basis for these strategy choices, while also taking into consideration Dutch interests and points of departure? The answer to this question also depends heavily on the normative view taken of the EU.

This chapter therefore provides the framework for the analyses and evaluations in this report. Section 2.2 sets out the WRR's vision towards the essence of the EU. On the basis of that perspective, section 2.3 examines where the diversity

between the member states becomes problematic for accession and the post-accession preservation of the *acquis communautaire*. This vision on problematic diversity establishes the guidelines for the conceptual chapters in part II of this report (i.e. opportunities and threats arising from the transformation processes in the candidate member states and opportunities and threats in the major policy areas of the EU). Section 2.4 proceeds to derive the criteria from the vision towards the EU for evaluating the accession, implementation and enforcement strategies. These criteria provide the measuring points for the evaluations in part III of this report. For this chapter use is also made of the study carried out for the WRR by Philippart and Sie Dhian Ho (2001).

2.2 THE ESSENCE OF THE EUROPEAN UNION

What does 'European' entail and what is the essence of the 'Union' as an association? This section first examines geographical and historico-cultural approaches towards 'Europe' (2.2.1), after which the WRR defends the position that the 'Union' is in essence a community of values and action (2.2.2). From this there arises the rights and obligations approach towards the enlargement problem. This approach is however restricted by the capacity of the Union to absorb new member states and the willingness on the part of the present member states to accept further enlargement (2.2.3).

2.2.1 GEOGRAPHICAL AND HISTORICO-CULTURAL APPROACHES TOWARDS THE CONCEPT OF 'EUROPE'

According to Article 98 of the Treaty of Paris setting up the European Coal and Steel Community (1951), any 'European State' may submit a request to accede to the Treaty. Article 237 of the Treaty of Rome concerning the establishment of the European Communities (1957) also reserved this right for any 'European State'. But what does 'Europe' embrace?

Geographical approaches

Efforts to approach the concept of Europe geographically – i.e. on the basis of geographical features – have given rise to such differing results over the years that the epithet 'tidal Europe' is in order (Parker in Davies 1997: 9). The impression of a Europe in which the boundaries are subject to ebb and flow relates in particular to the eastern border. In classical times and the Middle Ages Europe was generally described as extending to the River Don. In the early 18th century the border shifted eastwards, on the grounds that the Urals were a more 'natural' border. The resultant conclusion that Russia forms part of Europe was subsequently criticised by analytical geographers employing other environmental criteria again. The lack of consensus concerning the geographical borders is undeniably related to the fact that geography remains a matter of social construction and, moreover, is not infrequently invoked in the interest of the authors in question. Thus the repositioning of Europe's eastern border from the Don to the Urals was intimately bound up with the emergence of the Russian empire and the efforts of Peter the

Great and Catherine II to gain acceptance for the idea of Russia as part of Europe (Neumann 1997: 147-8). In the same way De Gaulle's support for this definition – at a time when it was widely regarded as superseded – was closely related to his political preference of involving Russia in a region of which the United States would not form part.

Historico-cultural approaches

Exegeses of Europe on the basis of historico-cultural criteria provide no less elastic borders. Generally speaking the shared experience of Christianity and the common culture to which this has given rise played a prominent role in drawing cultural boundaries. Various authors add divergent combinations of building blocks from European cultural identity to this, such as the Renaissance, the Reformation, the Enlightenment and the French Revolution (cf. Hoggart and Johnson 1987). Countries that have not shared this series of experiences do not qualify for the hallmark 'European'.

Here too subjectivity results in a variety of lists and the contours of Europe depend on the country in which these are drawn up and the individual staking out the markers. Thus the post-communist governments proved unduly optimistic in assuming that their cultural definition of Europe (to which they considered to belong and to which in the words of Vaclav Havel they 'wished to return') was shared by West Europeans (W. Wallace 2000: 479). A further complication to a cultural approach towards the accession problem is that European culture is certainly not monolithic; there are major differences between the various regions. Quests for the European roots run into such pronounced diversity in terms of national/subnational cultures and heterogeneity of response to common experiences that many regard the diversity itself as a basic characteristic of Europe. Alberto Moravia has for example compared the European cultural identity with "a reversible fabric, one side variegated … the other a single colour rich and deep" (Davies 1997: 10).

Europe's borders cannot therefore be definitively determined on the basis of geographical or historico-cultural considerations. At the same time it cannot be denied that the Union functions by the grace of member states that consider themselves to be part of the European family and in which the welfare of all is an important consideration for each individual member state. The shared European identity – however 'thin' and mythical this may be given the pronounced diversity within the EU – contributes to what Weber termed *Gemeinsamkeitsglaube* and also feeds mutual confidence and solidarity. The geographical dimension is also important in preventing the Union from coming apart at the seams. In the context of globalisation and a proliferation of multilateral and inter-regional organisations, the EU fulfils a specific, regional function which no other organisation fulfils or is capable of serving.

The European identity is not however a static factor. The comment by Benedikt Anderson (1991) that all communities larger than primordial villages are

imagined communities as the inhabitants do not know one another personally certainly also applies to Europe. If the borders of the European community are 'imagined borders', they can also change as a result of political, economic and security circumstances and in response to active political leadership. The way in which the mutual borders are perceived can also change gradually in response to growing interaction between EU member states and surrounding countries through trade and investment, professional exchanges and tourism.

In view of the above it is not surprising that the EC and later the EU should so far have refrained from coming up with an official geographical and/or historico-cultural definition of the concept of the 'European State'. In a report concerning the enlargement of the Union the European Commission argues that the term Europe refers to geographical, historical and cultural elements all of which contribute towards the European identity. Quite correctly it does however reject a static definition, as evidenced by the comment that the common European experience of proximity, ideas, values and historical interaction cannot be condensed into a simple formula and that each new generation must redefine this anew (Europese Commission 1992: 11). In doing so the Commission also accepts a certain geographical flexibility of the Union: its contours will only become clear after many years and it is neither possible nor opportune to finalise the borders at the present time.

2.2.2 THE 'UNION' AS A UNION OF VALUES AND ACTION

A firmer foothold than geographical and cultural criteria is provided by the fundamental principles, objectives and tasks of the Union. The European Communities were established in order to promote economic cooperation and integration, with the underlying political goal of safeguarding peace, freedom and prosperity in Europe, especially by tying the Federal Republic into a permanent cooperative arrangement in Western Europe. Seen in this light the Union is a community of values and action (Philippart and Sie Dhian Ho 2001). What do the two concepts entail and do they imply specific institutional characteristics?

The union of values

The European Communities are based on shared, institutionally enshrined liberal-democratic values of peace, freedom and prosperity and have introduced the rule of law into the relations between European states. To begin with, however, the Treaties contained few explicit references to fundamental values. Apart from the freedom of movement of people, the principle of non-discrimination and the principle of equal pay for men and women, fundamental rights were not spelled out in the Treaties. The Community Treaties were based in particular on integration through concrete steps, under which democratic principles and fundamental rights received little attention.

Over the years, however, the EU has increasingly evolved as an explicit union of values. To begin with this took place by means of a substantial body of jurispru-

dence handed down by the European Court of Justice in response to complaints by individuals that their fundamental rights had been infringed as a result of internal market legislation. The Court has, for example, declared that fundamental rights form an integral part of the general principles of Community law and are therefore protected by the Court. In protecting these rights the Court has indicated that it seeks inspiration in the constitutional traditions of the member states and the international treaties for the protection of human rights that have been signed by the member states. Among these treaties special importance is assigned to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Court has also recently referred to judgments by the European Court of Human Rights in Strasbourg (Barents 1999: 65-66; Macía 2000: 185-205).

Other European institutions have also contributed to the development of the union of values. Against the background of the imminent accession of Greece, Spain and Portugal, the European Parliament, the Council and the Commission adopted a Community declaration on fundamental rights in 1977. A year later the Copenhagen Summit of heads of state and government agreed a Declaration on Democracy. From this it followed that the democratic system of government was regarded as a political prerequisite for membership of the EC. The European Parliament has regularly urged that the fundamental rights within the EU be constitutionalised. The Draft Treaty Establishing the European Union drawn up by the European Parliament in 1984 provided for a sanctions mechanism for member states in which there was a 'serious and continuing' violation of democratic principles and the rule of law (Barents 1999: 64).

An echo of this may be found in the Preamble of the Single European Act of 1986. This refers to the resolve of the member states to cooperate in order to promote democracy on the basis of the fundamental rights as recognised in the constitutions and laws of the member states, in the ECHR and the European Social Charter, especially freedom, equality and social justice. The Treaty of Amsterdam also underlines the jurisprudence of the Court by expressing in the Preamble the attachment of the member states to 'the principles of liberty, democracy and respect for the human rights and fundamental freedoms and of the rule of law.' In a separate Treaty article F (2), EU it was laid down that the Union will respect the fundamental rights as guaranteed by the ECHR and as these follow from the constitutional traditions of the member states and the general principles of Community law. In addition the Maastricht Treaty introduced the concept of European citizenship with a view to strengthening the protection of the rights and interests of the subjects of the member states. In the Treaty of Amsterdam, article F from the Maastricht Treaty has been replaced by article 6 (2) EU, supplemented by article 6 (1) EU, which is of great importance for the Union as Union of values. This article states: 'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.'

The union of action

Apart from a union of values, the EU is above all a union of action for achieving concrete goals. This differs for example from the Council of Europe, of which any European country can be a member provided that it meets certain political criteria. For membership of the Council of Europe it is necessary and also sufficient to meet those criteria. The member states of the Council Europe need not take part in the development of policy. They are permitted but not obliged to ratify the conventions and recommendations adopted by the Council of Europe over the years. Central and East European countries (including Russia in 1996) accordingly became members of the Council without protracted technical negotiations and without undue delay. The proposals by Monnet and Schuman differed from the structure of the Council of Europe in the sense that their unique structures and methods were aimed at achieving goals that were regarded as a common interest and which could best be realised jointly (De Schoutheete 2000: 5).

The first four goals of the Union, which are defined in article 2 EU, more or less correspond with the three elements of the European Union: the European Community, the common foreign and security policy (CFSP) and the cooperation in the field of justice and home affairs (JHA) (see text-box 2.1). The fifth objective is highly important for the relationship between the elements of the Union and their further development, in that the Maastricht Treaty brought together the communautairian EC with the intergovernmental CFSP and JHA under the umbrella of the Union Treaty. The fact that clear preference is expressed for the community method is evident from this fifth objective to maintain in full and build on the *acquis communautaire* and to establish to what extent the policies and forms of cooperation introduced by the Maastricht Treaty (i.e. CFSP and JHA) may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the EC (Kapteyn and VerLoren van Themaat 1998: 49).

Apart from the objectives of the Union laid down in Article 2 EU the objectives of the EC, CFSP and JHA are separately elaborated in Article 2 EC, Article 11 EU and Article 29 EU.

Text-box 2.1 Objectives of the Union

The objectives of the Union are defined in article 2 EU. Article 2 states:
The Union shall set itself the following objectives:

1 to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;
2 to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17;

3 to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;
4 to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and prevention and combating of crime;
5 to maintain in full the acquis communautaire and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and timetable set out therein while respecting the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community.

Federal characteristics of the union of values and action

If we describe the EU as a union of values and action, does this also mean a certain, essential institutional structure for the EU? So far the institutional structure of the EU has been continually evolving. In the famous words of the Schuman declaration: Europe will not be made all at once or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity. Since the Spaak Report, which served as the starting point for the negotiations concerning the Euratom and EEC Treaties, the approach has been that the nature and working methods of and the division of competences between the institutions must be brought into line with the material tasks that are effectively to be implemented (Kapteyn and VerLoren van Themaat 1998: 111). Instead of conceiving a single democratic institutional structure for an integrated Europe on the basis of political and constitutional considerations, the institutions have therefore consistently been geared to the tasks – to begin with mainly economic in nature – which it had been agreed to perform jointly (Siedentop 2000: 33). In other words integration has always been a means to an end and not an end in itself.

An initial consequence of this pragmatic approach is that the institutional structure of the EU has always been in unstable equilibrium and that the capacity to act has proved dependent on iterative institutional reforms. The second consequence of this method of integration by way of concrete steps is that the institutions must primarily derive their democratic legitimacy from their effective contribution towards the common welfare within the Union. They provide a guarantee for 'government for the people' (i.e. *output* legitimacy). The *input* legitimacy ('government by the people'), which presupposes that political choices express the will of the people, is poorly developed in the Union (Scharpf 1999), although it was decided to entrench the rule of law element firmly within the EC structure from the outset. The European Court of Justice has used this as the basis for a development that has resulted in the European legal community in which the legal protection of the individual citizen is also reasonably assured.

Even the introduction of the 'Union' concept did not result in any 'essential' elaboration of the institutional structure. While the member states confirmed at

the Paris summit in October 1972 that they intended to transform their mutual relations into a European Union, even after the ultimate establishment of the European Union in Maastricht (1992) the Treaty concerning the European Union (TEU) failed to work out the institutional arrangements for the Union. The latter was, however, given the task of organising the relations between the member states as well as those between the peoples of those countries. From this it is evident that the Union is not infringing the national identity of the member states. Indeed, the Union is required to respect the national identities of its member states (Art. 6 (3) EU). At the urging of the British, the prospect of an evolution along federal lines as pressed for by the Germans in the Union Treaty was replaced by a reference to an 'ever closer union' – a vaguer reference to political integration as already contained in the Preamble to the EEC Treaty (Kapteyn and VerLoren van Themaat 1998: 48). This phraseology, 'an ever closer union', emphasises the aforementioned dynamic of the Union: an ever closer union as a labour of Sisyphus, in which the Union is condemned to permanent institutional reform. Comparisons with a bicycle are often made in this regard: 'unstable, unless in motion' (cf. Bieber, Jacqué and Weiler 1985: 8).

Even so it is clear that the institutional structure of the EU has much in common with a federal system. By this is expressly meant not a federal state (such as the United States), the specific institutional structure of which many people have in mind when discussing federalism in the European context. The European Union is not a state; it has not monopolised the means of violence, powers to raise taxes and freedom of speech within its territorial jurisdiction – let alone that the Union should be regarded as having sovereignty over that territory. As noted above, the Union is in fact required to keep the national identity of the member states intact. The latter are and remain the 'masters of the constitutive treaties' of the Union.

In the same way that the modern western nation-state is just one institutional structure for the exercise of political authority, the federal state is just one manifestation of the federal principle. The methods of federalism are therefore not only applicable to states. In the words of Judge Pescatore of the European Court of Justice, federalism is a political and legal philosophy that can be exercised in any political context provided that two requirements are met: the drive for unity, combined with a genuine respect for the autonomy and legitimate interests of the individual entities (Cappelletti, Seccombe and Weiler 1986: 13-4). The federal principle therefore refers to contractual obligations concerning the sharing of power – and these may be concluded between individuals, groups or states (Elazar in Cappelletti et al. 1986: 13). Federalism within the European Union therefore means a division and sharing of powers among the different levels of governments: that of the Union, the member states and regional/local government.

The current debate as to whether or not the EU should evolve in a federal direction therefore bypasses the fact that the EU is already in many respects a federal system (Börzel and Risse 2000). This is evident from the following characteristics:

- the EU has an institutional structure with at least two levels of governments, each subject to its own law and each with its own direct effect on the population;
- the EU Treaties allocate jurisdictions and resources to these two principal levels of government;
- there are provisions for 'shared government' in areas where the jurisdiction of the EU and the member states overlap;
- Community law enjoys direct effect and supremacy over national law;
- European legislation is increasingly made by means of majority voting;
- at the same time the composition and procedures of the European institutions are not exclusively based on principles of majoritarian representation but also guarantee the representation of minority views;
- the European Court of Justice serves as an umpire, to adjudicate conflicts between the European institutions and the member states;
- the EU has a directly elected Parliament (since 1979).

The WRR considers that these elements of the federal system are also crucial for the adequate functioning of both the union of values and action. The identification of similarities with a federal system furthermore means that in its permanent process of reform the Union is able to make use of instruments out of the federal toolbox, while at the same time taking account of the differences between the Union and a federal state noted above.

To sum up, a vision of the Union as an association of values and action with federal features provided the basis for analysing the enlargement problem. A warning is however in order. Many associate federalism with a unitary and centralised state. This is not justified: the European Union is not a state and European federalism is in fact characterised by a large measure of decentralisation. The member states play a crucial role in policy preparation, decision-making, implementation and enforcement. In the WRR's view, this pronounced reliance on the member states for the functioning of the European union of values and action has important implications for the enlargement issue. These are discussed in the next section.

2.2.3 A RIGHTS AND OBLIGATIONS APPROACH

A vision of the Union as a community of values and action implies a rights-and-obligations approach towards the enlargement problem (Philippart and Sie Dhian Ho 2001). Under this approach the essence of the EU lies in the fact that the member states commit themselves to fundamental principles, norms, rules and procedures that determine the fundamental basis and functioning of the union of values and action. Under this vision, the willingness and capacity to adopt and implement this regime are the key prerequisites for accession.

This approach has a number of advantages. An approach in which the geographical and cultural identity of Europe is not set in stone and which places the

emphasis on the EU as a union of values and action provides insight into the question as to why the Union should wish to expand at all. The enlargement dynamism of the Union may be explained in terms of a change in vision towards the borders of 'Europe' and the countries with which objectives such as peace, stability, prosperity and welfare can best be achieved. Such an approach also does justice to and provides guarantees for the marked cultural diversity among the member states. Within divergent national political, administrative and legal systems, the member states can be required to accept and respect certain principles, norms, rules and procedures and also to contribute to the effective operation of the political system which the EU is.

The Union has recognised these advantages, for which reason it has given the rights-and-obligations approach a prominent place in dealing with the accession issue. Primacy has therefore been given to the fundamental principles of the Union. Article 49 EU indicates the conditions which the country must satisfy in order to submit an application for membership. In doing so this article fulfils the same function for the Union as the previously cited (but since deleted) Article 237 had for the EEC. With a view to enlargement, the Treaty of Amsterdam added a new requirement in Article 49 EU. The Union's standpoint now is that each European state which respects the principles set out in Article 6(1) may apply to become a member of the Union. Article 6(1) EU already cited in section 2.2.2 lays down the requirements that may be regarded as so fundamental that they also serve as a prerequisite for an application to accede: 'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states.' Satisfying the political criteria of the union of values is therefore a first and necessary condition for accession.

As far as the accession criteria are concerned, the EU has consistently acted as a club with rules that must be accepted by new members. The starting point of the 'classical method' with respect to enlargement is that candidate member states must in principle adopt all the achievements or acquis of the Union. That acquis includes the content, principles and political objectives of the Treaties, the legislation that has been adopted in order to implement the Treaties, the jurisprudence of the EU courts, declarations and resolutions adopted within the context of the Union and agreements between member states as well as international agreements arising from the activities of the Community (European Commission 1992: 12).

The acquis therefore embraces the achievements of the union of values and action. At the Copenhagen Summit (December 1993) the European Council further laid down that membership required the member state in question to have:

- stable institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities;
- a functioning market economy and the capacity to withstand competitive pressures and market forces within the union; and

- the capacity to take on the obligations of membership, including the objectives of political, economic and monetary union (Bull. C 1993/6: 12).

To these a fourth condition was added at the Madrid Summit (December 1995): the candidate member state must adapt its administrative structure so as to guarantee the effective implementation of the acquis.
The appraisal of the candidate member states in terms of these conditions must guarantee that they do not endanger the EU as a union of values and action and further that they do not expose their economies to undue pressure by acceding to the Union.

Limitation of the rights-and-obligations approach

The rights-and-obligations approach towards the accession issue, in combination with the willingness of the large number of applicant countries to conform with the regime of the Union, creates the prospect of major territorial adjustments for the Union in the future. This mobility will, however, rightly limited by two important factors on the part of the Union. First, enlargement is conditioned by the capacity of the EU to adjust itself to larger and more diverse membership.
In connection with the need for its own institutional reform, the Union initially wished to keep its options open as regards the eastward enlargement. During the Copenhagen Summit the European Council declared that a separate criterion for accession would be whether the Union had the capacity to absorb new member states while maintaining the momentum of European integration.

A second limitation is formed by the political willingness of the present member states to expand the Union further. Accession involves a demanding decision-making procedure. Once the accession negotiations have been completed, the Council will have to approve the accession Treaty unanimously, which will then be followed by a ratification procedure in all the member states (and in the acceding country) in accordance with the various constitutional regulations. This renders the capacity to expand dependent on the concurrence of the population of the member states – a concurrence that will depend in part on the geographical and cultural notions of Europe described above. In the words of E.P. Wellenstein there need therefore be only one 'mauvais coucheur' for the entire process to come to grief. There have already been a number of divergent signals to suggest that such concurrence is not necessarily available. Spain and Greece, for example, which are sticking to their acquired rights, have rejected a proposal to shift structural funds to the poorer countries in Central and Eastern Europe. Net contributors to the Union such as the Netherlands and Germany have refused to increase the Union budget in order to cover the costs of accession. And then there is resistance towards the image fed by populist politicians that workers from Central and Eastern Europe will migrate en masse to the present member states.
The rejection of the Nice Treaty in the Irish referendum (June 2001) has once again demonstrated just how demanding the ratification procedure is. The conclusion would appear to be that the Union can expand just so far as the West European voter and taxpayer is prepared to authorise (W. Wallace 2000: 486-7).

Summary

From this vision of the Union as essentially a union of values and action, it logically follows that a country can form part of the Union if it complies with the principles, norms, rules and decision-making procedures of that union of values and action. This regime implies certain rights and obligations. European countries complying with those rights and obligations can in principle join the Union. This rights-and-obligations approach is however limited by the capacity of the Union to reform itself into an ever more extensive union and by the political willingness of the current member states of the Union to absorb new member states.

2.3 PROBLEMATIC DIVERSITY FOR THE UNION OF VALUES AND ACTION

The Union was typified above as an institutional structure with federal characteristics based on fundamental values (the union of values) which is pragmatically organised towards achieving common goals (the union of action). In terms of this vision towards the essence of the Union, it follows that existing and prospective member states must comply with certain obligations. The WRR's vision towards problematic adversity is set out below on the basis of these two propositions.

With respect to the relationship between diversity and the EU, the WRR considers that it is important to bear in mind that European integration and harmonisation are not absolute values and objectives in themselves and are no more than instruments. This means that – in the words of Cappelletti et al. – 'the beauty of diversity' is respected as long as this does not become problematic for the functioning of the EU as a union of values and action (Cappelletti et al. 1986: viii-xi). On the basis of the vision of the EU as a union of values and action, however, the WRR considers that (divergent) characteristics and/or standpoints of member states can be problematic for the functioning of the Union if they:

1 are at variance with the fundamental principles of the Treaties (i.e. the EU as a union of values); and/or
2 obstruct the adequate participation by the member states in the policy cycle of the Union and the realisation of the Treaty objectives (i.e. the EU as a union of action).

Problematic features and standpoints for the union of values

The values on which the union of values is based are being endorsed by the EU ever more explicitly (see section 2.2.2). Similarly the instruments for imposing sanctions on this problematic diversity are actively under development. Since the Treaty of Amsterdam, consequences can for example be attached to the violation of fundamental rights by a member state of the Union. This may even extend to suspension of the voting rights of that member state in the Council (see Article 7 EU). This trend towards the more explicit definition of the union of values is still fully under way. At the Cologne Summit (June 1999) the heads of state and heads of government declared that it was necessary to draw up a charter of fundamental rights in order to clarify the major importance of those rights to the citizens of

the Union. During the European Council in Nice (December 2000) this charter of fundamental rights was welcomed by the Council, the European Parliament and the Commission jointly. Where the charter will ultimately stand in relation to the European Treaties is a question that will be addressed in the 'post-Nice' discussion.

Problematic diversity for the union of action

It was argued in section 2.2.2 that the endorsement of the fundamental values of the EU by a member state was a necessary but not sufficient condition for that state's functioning within the Union. The proposition was defended that the EU is primarily an institutional structure for the achievement of common goals. On account of the Union's decentralised nature – the member states play an important role at each stage of the policy cycle – the Union's effectiveness is highly susceptible to the actions of the member states. The characteristics and/or standpoints of member states can therefore form a problem in so far as these prevent the member states from taking part in the Union's policy-cycle and realising the Treaty goals.

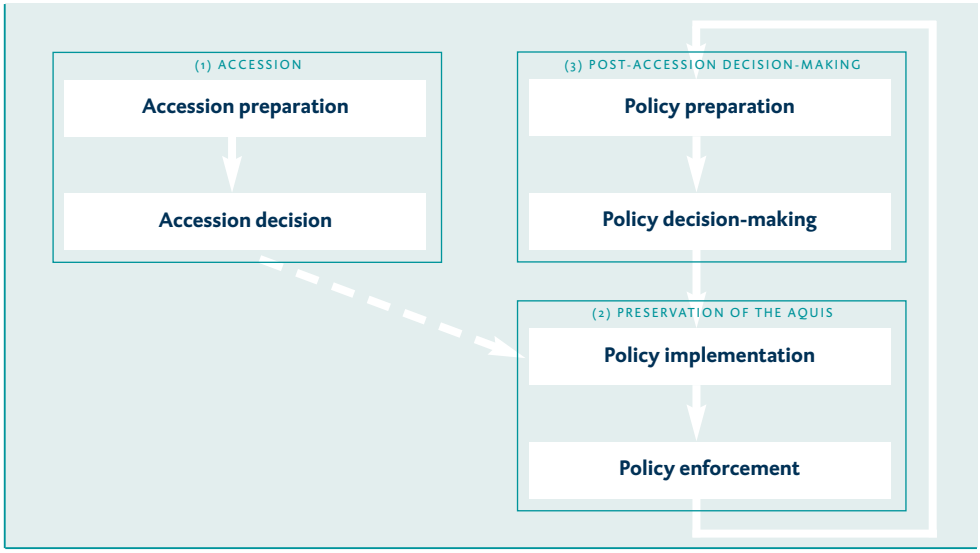
It is of course a simplification to refer to 'the' policy-cycle of the EU, since the Union encompasses various entities each with their own policy-cycles. These subsystems largely correspond with the three 'pillars ' of the Union, although various subsystems also arise within those pillars, such as the Economic and Monetary Union within the European Communities (Curtin and Dekker 1999). The policy-cycle may moreover concern the process of an intergovernmental conference aimed at reviewing the Treaties or adopting the Union's budget. Abstracting from the various procedures and the involvement of the institutions in the various subsystems, the WRR nevertheless considers that it is useful to draw a distinction between the analytical phases of policy preparation, policy-formulation, implementation and enforcement, as it then becomes possible to determine more precisely where the characteristics of and/or diversity between the member states can produce problems for the EU union of the action and its various subsystems.

The (divergent) characteristics of existing and candidate member states can have implications for all stages of the EU's policy-cycle. The figure below diagrammatically sets out the three problem areas in respect of which the WRR would put forward building blocks:

1 accession;
2 the preservation of the acquis communautaire; and
3 post-accession decision-making (subject of the second report by the WRR).

Problem areas 2 and 3 together form the policy-cycle of the EU. The first problem area sets out the parallel accession process.

Figure 2.1 **The (divergent) characteristics of existing and candidate member states have implications for all stages of the policy-cycle**



Source: Philippart and Sie Dhian Ho (2001).

Accession

Problematic diversity arises firstly in the context of accession (i.e. the accession preparations and decision), the first key question addressed by this report (see also figure 2.1). The combination of the level of ambition and the decentralised nature of the Union implies that a series of qualities of the acceding member states is crucial for the functioning of the EU political system. The requirement that candidate member states commit themselves to the Union's regime concerns the adoption of the acquis but also the ability of the political/administrative and legal culture to implement these rules. The accession criteria are therefore 'culturally loaded', albeit in a specific sense. The cultural context (in the sense of values, attitudes and deeply-rooted behavioural patterns) is of relevance in so far as it affects the proper operation of the Union's regime in practice (Amato and Batt 1999: 35). Thus access to justice for individual parties and the enforcement of European law depend on the culture and capacity of the national legal system. Furthermore the rule of law can collide in day-to-day practice with informal rules and deeply entrenched patterns of corruption. Environmental regulations which can only be enforced with the cooperation of the population of the member states become dead letters in a passive civil society. Finally, rules safeguarding the democratic rights of citizens lose their relevance in a society in which citizenship is defined exclusively, so that large minority groups are de facto denied that status.

Candidate member states must therefore be in a position not just to take over the rules of the Union but also to put them into practice. This imposes specific requirements on the capacity and culture of the candidate member states in the

field of politics, administration, law, the economy and civil society. The Central and East European candidate member states are undergoing radical transformations in all of these five arenas of social life (Linz and Stepan 1996), while they must at the same time take steps to prepare for EU membership. In many cases these processes of transformation and preparation for EU membership are mutually reinforcing. The aforementioned political and economic accession criteria of Copenhagen support the democratisation and the development of a functioning market economy. In some cases, however, these processes imply conflicting requirements for the candidate member states. Public funds used in applicant member states in order to adopt and implement expensive EU directives for the purposes of accession cannot, for example, be used for economic catch-up growth. On account of the importance of these five dimensions of social life for EU membership, the WRR provides a more detailed examination in chapter 3 of the transformation processes and communist legacies in these arenas and the opportunities and threats which these pose for the enlargement process of the EU.

During the accession phase, problematic diversity covers more than just the diversity of aspirants that serves to impede their ability to function effectively as a member state. It is also possible for certain (social-economic) characteristics of applicant member states to harm the interests of current member states in a case of accession. For this reason an incumbent member state may object to accession (see section 2.2.3 concerning the ratification procedure). In Chapter 4, which deals with the adjustments that the candidate member states must make in order align with EU policy in important areas (as well as with the remaining problematic diversity), the WRR will therefore also examine possible resistance towards accession among the present member states.

Preservation of the acquis

If the accession treaty is ratified, the new member states enter into the policy-cycle of the EU. They will then participate in the preservation of the acquis (i.e. its implementation and enforcement), as well as its development and reform (i.e. policy preparation and decision-making).

An increase in the diversity within the Union can represent a challenge for the preservation of the acquis communautaire, the second central question addressed by this report (see also figure 2.1). Since the European system depends heavily on the implementation and enforcement of policy by the member states, problematic diversity between the member states can result in the erosion of the acquis. Differences in administrative culture and capacity can lead to differences in implementation and, in some cases, even to non-compliance with obligations. Differences in national legal capacities and attitudes can adversely affect the proper enforcement of obligations by member states; access to justice for instance depends on knowledge of European law. Prejudicial questions can for example be used as a method of exercising legal supervision over the compliance with Community law by the member states if national courts accept the utility and duty of posing such questions. Furthermore, prejudicial decisions, once they have been

received by the referring court of a member state, must be observed by both the court and the government of the member state (Weiler 1982: 301-2).

Post-accession decision-making

Finally, diversity between the member states affects the stages of policy preparation and decision-making. This can complicate the development of a new acquis and/or the reform of existing acquis. This problem forms the subject of the second WRR report on the enlargement into Central and Eastern Europe (see also Figure 2.1). The process of policy preparation and decision-making in the EU can be handicapped because member states differ in the effectiveness of their interministerial and intraministerial coordination and cooperation in reaching common standpoints and developing a coherent negotiating strategy. Diversity among the member states may also result in disputes concerning the content of decisions, e.g. those on reform of the acquis. Thus differences in socio-economic development can generate problems for the reform of the Common Agricultural Policy. Diversity can also result in a stalemate over the development of a new acquis.

Stages of the policy-cycle closely interrelated

As evident from the pillars in figure 2.1, the various stages of the policy-cycle are closely interrelated. Problems that are not adequately tackled in one stage will in all probability raise their heads in the next stage. Problematic diversity that has not been properly tackled during the accession-preparation stage (e.g. insufficient and/or inadequate assistance in building up administrative capacity in the candidate member states) will have consequences for the accession decision (i.e. the candidate is not yet in a position to meet all the requirements of EU membership). Problems that are not recognised in the accession treaty (e.g. inadequate transitional periods or even accession by a candidate before the latter was in fact ready) will rebound with a vengeance in the implementation and enforcement stage (in the form of non-observance and 'erosion' of the existing acquis). The WRR will be taking this dependence into consideration when assessing the possible solutions in part III of this report.

The challenge

In the interests of both the effectiveness and the legitimacy of the Union the crucial challenge is to preserve the achievements and strength of the Union in the immediate post-accession years. A possible reduction in the effectiveness of the Union as a result of problematic diversity between the member states would in due course erode the legitimacy of the Union. Where political systems generally derive their legitimacy from both an institutional structure that represents the 'vox populi' ('*input* legitimacy') and from a system that realises welfare for the people ('*output* legitimacy'), the Union continues to rest relatively heavily on the latter (see section 2.2.2). If the Union subsequently fails to perform as a government for the people, there remains only an institutional structure, in which government by the people is poorly safeguarded.

Against the background of these major challenges, which are related to a growing diversity, it is highly important 'to keep the bicycle moving' and to ensure that the Union adapts itself in its preparations for accession. In this regard something of a headwind has sprung up since the ratification process of the Maastricht Treaty. The permissive consensus concerning European integration has been punctured, as evidenced by the politicisation of European issues by parliaments and civil society (benefiting from the greater transparency) as well as by the advent of anti-European parties. The member states are fighting out socio-economic differences, political conflicts and financial disputes ever more openly. Ideological differences are also coming to the fore more clearly as integration extends to policy fields that are regarded as forming part of the member states' core sovereignty.

Over the years various (reform) strategies have been applied in the interests of accession and so as to prevent the erosion of the acquis. While the potential of these strategies has not yet been exhausted, the limits are coming into sight. The analyses in Chapters 5 and 6 outline and evaluate various reform proposals. These generally concern painful choices. Finally, the chapter discusses the criteria on which the WRR's evaluations are based.

2.4 CRITERIA FOR THE ASSESSMENT OF POSSIBLE SOLUTIONS

The vision of the Union as an association of values and action leads not only to the description of problematic diversity but also to a series of criteria on the basis of which various potential solutions can be assessed (for an overview see Table 2.1).

Criteria concerning the problem-solving capacity

Where the Union is characterised as a functional association that is designed to achieve common goals for the member states, the first criterion for assessing the reform of accession and integration strategies is a self-evident one, namely the *problem-solving capacity*. To begin with this concerns the question as to whether the strategy in question is functional for the solution of the problem (accession, implementation and/or enforcement). The criterion of problem-solving capacity also refers to the question as to whether the proposed reform is feasible in the light of such factors as the available financial resources of the Union, the path-dependence and the retention of the necessary public support in the various member states. Proposals to provide member states with greater assistance must for example be financially feasible. Proposals for far-reaching centralisation that are at variance with the existing dynamic of subsidiarity and proportionality will have limited feasibility, while strategies under which the burdens are shared out unevenly among the member states can run into a rapid loss of public support, thereby threatening the tenability of that solution. Finally this criterion refers to the question as to whether the overall package of solutions is consistent/coherent and attainable. As regards consistency and coherence the interdependence between the phases of the policy-cycle needs once again to be borne in mind.

An adjustment that is functional and feasible in terms of tackling the problem in policy-formation may for example be diametrically opposed to the proposed reform of the enforcement problem. In addition the overall complex of in themselves consistent and coherent partial solutions can run into limits. If increasing the level of aid is put forward as the only solution at each policy stage, the total package will become financially unaffordable. Similarly if certain countries are penalised in each stage by the proposed reform strategy, the overall package will become politically inconceivable.

Systemic criteria

The question as to whether strategies have a large problem-solving capacity forms just one part of the equation. Potential solutions also have 'constitutional' consequences, i.e. implications for the parameters of the political system of the EU (hereinafter also referred to as 'systemic consequences'). Thus proposals for permanent exclusion of candidate member states from elements of the acquis in order to facilitate their accession will have consequences for such matters as unity of the law, the integrity of the acquis and the solidarity between member states. Proposals to deploy agencies on a large-scale have implications for the allocation of powers, institutional structure and democratic legitimacy of the EU. These systemic consequences touch on crucial aspects of the union of values (such as protection of the minority) and the union of action (such as supranationality and the capacity for adjustment).

A second category of systemic criteria concerns the consequences of a strategy for peace, welfare and stability in Europe as a whole. These systemic consequences too need to be assessed in terms of their desirability. Solutions that are functional for accession and/or preservation of the acquis are only acceptable if they also satisfy these two groups of systemic criteria. Table 2.1 briefly summarises the three groups of criteria for the evaluation of accession, implementation and enforcement strategies (for a justification of these criteria see Philippart and Sie Dhian Ho 2001).

The consequences of the various solutions are assessed in the light of these functional and systemic criteria in part III. It will be clear that this sometimes involves delicate trade-offs. Major differences in the nature of the subsystems of the EU (e.g. monetary policy versus cooperation in the field of justice and home affairs) mean that these trade-offs can vary from one policy area to another. At the same time it is clear that it is neither possible nor meaningful consistently to take all the criteria into account in the evaluation of a proposed solution. For this reason particular attention will be paid to the most opportune criteria for the subject in question. Thus the systemic criterion 'unity of law' is of critical importance for the internal market but of less relevance for certain aspects of environmental policy. Apart from chapters 5 and 6, which deal with overall institutional evaluation, more specific evaluations of the various policy areas are presented in Chapter 7.

Table 2.1 Criteria for assessing approaches towards problematic diversity

	Problem-solving capacity criteria
Functionality	To what extent does the approach contribute to solving the problem in question (respectively that of accession and implementation/enforcement)?
Feasibility	What is the feasibility (financial and political) of the approach from the viewpoint of the incumbent and candidate member states? Is the proposed package of measures feasible?
Consistency/ coherence	Is the proposed package of measures consistent/coherent?
	'Systemic' criteria concerning the consequences for the EU as 'an ever closer union of values and action'
Unity	Does the approach preserve and/or strengthen the single institutional framework of the EU and the unity of the legal system?
Supranationality	Does the approach preserve and/or strengthen the centrality of the community method in the EU?
Legitimacy	Does the approach preserve and/or enhance the democratic legitimacy of the EU?
Transparancy and comprehensibility	Does the approach preserve and/or enhance the transparency and 'comprehensibility' of the structures and actions of the EU?
Cohesion and solidarity	Does the approach preserve and/or strengthen the cohesion and solidarity between the member states of the EU?
Protection of the minority	Does the approach guarantee the protection of the member states or the population in a minority position?
Open-ended nature	Does the approach enable the Union to extend its scope and deepen its integration if internal or external challenges require so?
Capacity for adjustment	Does the approach preserve and/or strengthen the capacity for adjustment of the EU?
Subsidiarity and proportionality	Is the approach consistent with the principle that the Community only acts in so far as the objectives of the proposed action cannot be adequately realised by the member states and, on account of the scale or the consequences of the proposed action, could consequently be better realised by the Community?
	'Systemic' criteria concerning the consequences for peace, prosperity and stability in Europe
Non-divisiveness	Is the approach disrupting links or introducing new divisions among European countries?
Fair treatment	Is the approach imply the 'honest' treatment of the various candidate member states?
Open door	Is the proposed approach keeping open the EU membership's option?
Synergy	Does the approach support the completion of the transformation processes in the candidate member states? Does the approach preserve/strengthen the possibilities for catch-up growth in the candidate member states?

PART II IDENTIFICATION OF OPPORTUNITIES AND THREATS

3 THE TRANSFORMATION PROCESS IN CENTRAL AND EASTERN EUROPE: DYNAMICS, OPPORTUNITIES AND THREATS

3.1 INTRODUCTION: THE FIVE DIMENSIONS OF THE TRANSFORMATION

This chapter focuses on the dynamics of the transformation in Central and Eastern Europe and the resultant threats and opportunities of the eastward enlargement of the EU. The transformation is analysed as a development process in two stages: transition and consolidation. The transition stage covers the conversion from the communist to the post-communist system during which the formal institutions and procedures of a democracy under the rule of law and the market economy are established. The consolidation stage concerns the much more protracted and complex process in which these formal institutions and rules of the new system take root and are as it were 'internalised' in the behaviour and action of citizens and social institutions (Linz and Stepan 1996). At the same time it should be emphasised straight away that this is an analytical distinction. In social practice these processes are not necessarily sequential; nor is there any clear-cut or irreversible development towards a stationary situation, as each social system is continually subject to change.[1]

It is clear that, partially in response to the prospect of accession to the Union, the transformation is on a scale and of a depth that is without parallel. Chapter 2 sets out the accession criteria of the European Union in the field of democracy, the economy, law and governance. The bar has been set high for the candidate countries – higher than for earlier aspirant member states. The criteria are formally aimed at governments, but in fact extend beyond the latter's sphere of responsibility, in that reference is made to '*stable* institutions that guarantee democracy, the rule of law, human rights and respect for and the protection of minorities.' The criterion of stability means in fact that the new institutions are accepted and that the rules of democracy and the rule of law have become common currency. The institutions are then evaluated for the degree of institutionalisation, i.e. the extent to which there are constellations of lasting behavioural patterns. In fact this amounts to a requirement that a civil society has come into being as a seedbed for democracy, the rule of law and the economy.

This chapter therefore first of all provides a general outline of the development of civil society in Central and Eastern Europe, although without systematically examining all the candidate countries (section 3.2). The development dynamic is then described in broad terms on the basis of the dimensions applied by the European Union to accession: democracy (section 3.3), law (section 3.4), governance (section 3.5) and the economy (section 3.6). For each of these areas the report examines the interest the EU has in further development; the progress that the candidate countries have made in the transition process and – where relevant –

the consolidation stage; and to what conclusions these lead concerning the threats and opportunities for these societies and for the eastward enlargement of the EU.

The task faced by the societies in question is greater than that faced by previous candidate countries. At the same time the Union is more closely involved with the process of change than ever before, in terms of both criteria and assistance and supervision of the progress. The Regular Reports of the European Commission are also designed to draw the attention of the governments concerned to shortcomings and necessary further steps. Although use will be made of this work in the following sections, the emphasis will be primarily on the underlying social dynamic. This may enable other factors to be identified than those covered by the monitoring of the Commission – namely ensuring that the *acquis communautaire* is taken over and implemented as well as possible – that are relevant for the enlargement and functioning within the EU context.

Although the development of civil society, democracy, the rule of law, governance and the economy each merit separate attention it will be clear that these cannot be viewed in isolation from another. The deepening of any one of these dimensions as it were presupposes further progress in the others. It is, however, difficult to capture this complex of interactive factors in theoretical form. In part this is because the theory-building concerning countries that underwent significant political and economic change at an earlier point provides only a limited frame of reference, in that in none of these countries was the change so socially all-embracing as in the Central and East European region.

It is, however, worth examining these possible interrelationships, if only to guard against superficial optimism or pessimism. If each of the dimensions is regarded in isolation, it is easy for positive phenomena to be taken as indications of further progression in the right direction. An appreciation of the extent to which the democratic system or the economy may or may not be supported by other domains can qualify such a judgement. The same applies mutatis mutandis to negative phenomena observed in any one of the domains. This topic is therefore taken up again in the final section (3.7) of this chapter. In doing so the WRR does not have the pretension of making predictions but seeks to provide a more comprehensive evaluation of the observed dynamics and the resultant threats and opportunities than is possible on the basis of the individual dimensions.

A warning is also in order here that generalising statements about the region quickly fail to do justice to the unique nature of the individual countries. The pre-war history, the experience under communism, the path taken after 1989 and the external influences exerted along that path differ widely from one country to another. Legacies from the past, path-dependencies and external factors have meant that each country has followed a unique course. Although this does not rule out comparable developments it needs consistently to be borne in mind that there is no compelling logic to assume that this dynamic is working itself out

in the same way in all places. An effort is therefore made in each of the sections of this chapter to throw light on the possible influence of those factors.

3.2 CIVIL SOCIETY

3.2.1 EU INTEREST

The European Union has an evident interest in the challenge of 'reinventing civil society' (Tökés 2000). A pluralist whole of autonomous links forms an important seedbed for the further development of democracy and the rule of law. Democracy presupposes not just the free articulation of and a debate about ideas and interests but also a political culture of negotiation and compromise. The importance of plurality is based on the recognition of conflicting interests and attitudes and is an essential feature of a democratic society. Although there were also trade unions, media and so on in the communist era, these were maintained and controlled by the party-state. The reciprocal relations between the state and society inherent to the rule of law call for collectivities outside the direct political arena to ensure that governments respect citizens' rights and freedoms. In a society lacking such buffers between the citizen and the government, the citizen is comparatively powerless to resist any tendencies on the part of the government to overstep its limits. The ability to act collectively is therefore an important precondition for the consolidation of democracy and the rule of law.

The collective promotion of interests is also important in order to smoothen the roughest edges of the transition to a market economy. With respect to terms of employment, conditions of production and product quality, collective associations can help prevent misunderstandings. In its efforts to bring the citizen closer to Europe, the Union has therefore attached major value since the Maastricht Treaty to cooperation between national and local governments and private organisations. An active civil society is also highly important for the EU.

The process of social transformation in which Central and Eastern Europe has found itself since the revolution is taking a totally different course from that in the Western world. In many respects the causalities are reversed. However complicated the developments in Western Europe may be sequentially, they did broadly run first of all from the formation of states and state authority to the development of a market economy, which then produced a civil society, which in turn created the conditions for political democracy. In Central and Eastern Europe the time-frame is highly condensed and a different sequence applies. Here, a formal political democracy and the rule of law are being established first, under which conditions a market economy is being 'installed' and a civil society must gradually come into being. These countries are not being granted the time for the organic growth-path, in which the democratic institutions, the market economy and social freedoms and institutions gradually evolve in an historical interaction with emergent social movements and groupings. Political parties are not arising out of constellations of interests that have crystallised out but are

there first and must then embed themselves socially. Evolved practices and social relations are not therefore being confirmed in the law and regulations but the newly formed rules are regarded as constitutive for the practices to be developed.

3.2.2 LEGACIES

The task of bringing about a civil society must be realised in a situation in which the legacies of the past continue to exert their influence – legacies which moreover are often at variance with the newly prescribed rules and norms. There was no question in the communist era of a civil society in the sense of a varied complex of autonomous associations (with the limited exception of Poland and Hungary). There were plenty of associations, but voluntary ones were the rare exception. The ideal image of the communist society was that of a *Supergemeinschaft* (Musil 1992), in which there was no place for conflicts between the party, state, economy and society. Under this ideal image coordination from the centre swept all before it; the *Supergemeinschaft* permeated all spheres of society up to and including – in principle – the private sphere. Formal or *de facto* participation in the many associations between the cradle grave was compulsory.

It is therefore hardly remarkable that of the rights and freedoms they acquired after the collapse of communism, many people availed themselves most notably of that of non-participation. The apathy towards all sorts of social participation noted shortly after the brief euphoria of the revolution therefore comes as little surprise. Vecernik (1997: 5-8) describes the disastrous impact of communism on personal responsibility, work motivation and the investment in personal capabilities, and also how all associational links were undermined. With the desire to destroy the attributes of the 'bourgeois society' the moral basis of human behaviour was undermined at the same time. The satisfaction of economic needs was central in the Marxist hierarchy of values and needs. The result was a highly individualistic and materialistic culture. A lack of moral scruples and rent-seeking were normal phenomena.

The culture produced by communism therefore formed a legacy that bears little correspondence with the foundations on which a market economy and democracy under the rule of law are based. The suppression of individual initiative and opinion formation, high level of mutual suspicion and mistrust of the government and public affairs combined with particularism are wholly comprehensible reactions on the part of people seeking, at least in part, to conform with the prevailing expectations and who, being largely dependent on themselves or their families, seek to make the best of things in order to survive. Two or more generations, Musil writes (1992:9), were obliged to live in a vague, all-embracing irrational system that produced patterns of values which in many respects turned the principles on which liberal institutions such as democracy, the rule of law and the market economy are based on their head.

The outline of the communist legacy provided above indicates that the starting position was not favourable. This portrayal is however a generalisation. Autonomous voluntary associations were not suppressed with equal intensity everywhere: in this regard Poland and Hungary were less repressive. Various forms of opposition also manifested themselves in other countries during the communist era which, although often rapidly being suppressed, indicated that the fell-clearing of civil society was never total. Furthermore, the experience of the pre-communist days also forms part of the collective memory and can be drawn on at a later stage. Putnam's well-known study *Making Democracy Work* (1993) on regional reform in Italy illustrates how these historically evolved socio-cultural foundations can be drawn on.

In doing so Putnam draws a distinction between a strong and a weak civil society. A strong civil society is typified by exchange relations on the basis of 'generalised reciprocity' (i.e. based on the confidence that a service will result in a counter-service in the future), a tight and diversified network of all kinds of autonomous special interest organisations and a lively public debate. A weak civil society, by contrast, is typified by suspicion, as reflected in 'specific reciprocity' (i.e. a service must immediately be matched by a counter-service), patterns of cooperation that are largely confined to the family circle, systems of patronage and clientelism and an aversion to openness and public debate. Putnam was able to trace back the roots of the socio-cultural patterns, which proved decisive for the success of the recent forms, a full thousand years in Italy's past. If cultural dispositions are able to leave their traces on such time-scales it appears unlikely that half a century will be sufficient to expunge them entirely.

According to Ekiert (1999) such legacies do, despite the sharp historical discontinuity that the collapse of communism implied, have demonstrable consequences for the initial reaction to that collapse. These were subsequently determined by the nature of the developments afterwards. Institutional choices made immediately after the revolution proved highly important, but were not independent of the experience during communism. Countries with a history of opposition – even if suppressed – and in some cases reforms under communism turned out to be more successful in their political and economic transformation than countries without such legacies (Ekiert 1999). Vari (1998) describes how greatly such manifestations of civil society in turn depend on the socio-cultural setting which preceded the communist era.

3.2.3 MATTER OF THE LONG HAUL

Immediately after the revolution Dahrendorf was already pointing out that it would take generations before a civil society had been built up in Central and Eastern Europe. Whereas a new constitution takes six months and the creation of a social market economy six years, he suggested a figure of 60 years for the creation of a civil society in which these first two transformations would take social and normative root (Dahrendorf 1990). Although these figures should of course

not be taken literally, it may be asked whether three generations is not an unduly pessimistic expectation. Communism has undoubtedly contributed towards a climate in which there is a civil society that was designated as 'weak' by Putnam. But the question is how rapidly countries can evolve into a 'strong' civil society. Apart from the fact that certain countries can also draw on their own history to this end, there is an extremely strong international component. This is not just manifested in the framework for accession, with the resultant assistance of and criteria laid down by the European Union. The Central and East European region is also being rapidly included in a multiplicity of international networks of both a professional nature and NGOs. The combined effectiveness of these networks should not be underestimated; the extent and intensity of the efforts with which the region 'is being drawn in' are without precedent.

In principle, however, the development of a civil society is an endogenous matter. For its consolidation in the longer term the contribution of higher education is essential, as it is here that the elites are formed which will help shape the culture in all sorts of forums, such as the political system, government, education, the press, industry and NGOs. Jones (2000) has explored the changes in Central and Eastern Europe in a study carried out for this report. Although the system of higher education suffers from a chronic shortage of money, Jones indicates that enormous changes have taken place in the ten years of transformation. In areas of particular importance for the development of a civil society, such as social and political sciences, history, philosophy, journalism, economics, common law and business management, the curricula have been modernised. Universities have, moreover, been freed of the shackles of government influence. Jones felt able to conclude that the direction taken by the restructuring is no longer a matter of debate, even in very poor countries such as Bulgaria and Romania.

These positive developments do not imply an absence of substantive controversy. This already becomes clear if one realises what it means when a country is faced with the challenge of redefining its history after its previous history has been falsified. In many respects this involves a rediscovery and awareness of less heroic episodes as well. Where the West already had so much difficulty with this, facing up to these realities is a much more painful process again in Central and Eastern Europe. Nor is this process by any means completed. This 'return of history' (WRR 1995) is not a neutral process vis-à-vis the present day situation and relationships. Jones (2000) describes the extent to which this gives rise to nationalist tendencies in a quest for 'new' unifying national traditions. Sometimes, in multi-ethnic countries, there is also an observable tendency for the positive role in the history of the dominant ethnic grouping to be over-illuminated or for a particular grouping's failures to be regarded as the result of machinations on the part of others.

As long as countries have not achieved a reconciliation with their past, efforts will, according to Jones, be made in the course of reconstructing a country's self-image to present the nation as a 'historical martyr' of conspiracies among internal and external foes. Xenophobic and anti-Semitic attitudes find a social resonance

in this process. The re-evaluation and demythologising of the national past is exceptionally important for the further development of civil society, so that the latter does not take on unduly negative guises. This can only be achieved by conducting an in-depth and sustained debate, while the role of scrupulous scientific research is vital. Jones sees promising initiatives in the region, based on a multi-cultural instead of mono-cultural perspective; at least there is the beginning of debate. At the same time he considers that it will take decades before the confrontation with the problematic deeper cultural layers and dark episodes from the past have resulted in a reconciliation with that past (Jones 2000: 56-60). As the experience in the West also indicates, this also requires a certain lapse of time, as well as change of generation. As noted, this grappling with the past in terms of the current self-image is also reflected in the manifestations of civil society; it can also express itself politically. It should however immediately be added that civil society is pluralist in nature throughout Central and Eastern Europe and therefore also has self-correcting mechanisms.

That such xenophobic utterances would be made was however not yet foreseeable in the final years of communism, when dissident movements began to emerge in various countries. These movements, also designated as ethical civil society (Linz and Stepan 1996: 272), placed a strong emphasis on values such as human rights, nationalism, dignity, truth and openness in order to justify a free space for voluntary associations. They did not however display any explicit political aspirations; the experience in Hungary in 1956 and Czechoslovakia in 1968 had amply demonstrated that revolution from the bottom-up or top-down stood no chance of success. The strongly normative, utopian connotations of this civil society were exploited in the 1970s and especially 1980s in order to claim a refuge from the communist system for (intellectual) integrity. This ethical civil society did not manage to last long after the fall of communism. The movements formed an important recruitment base for the new political elite and fairly rapidly came to an end or concentrated once again on the promotion of special interests, as was the case with the Polish trade union movement.

The development of civil society after the revolution does not follow a linear course from the foundation laid by the dissident movements. The fact that the pre-political function rapidly came to an end is also related to the role that the new political parties saw as being reserved for them. Some of the new leaders stemming from the dissident movements claimed that the social movements had played their historical role and were no longer needed: citizens would be more than able to make their voice heard in a parliamentary multi-party system and activism was therefore no longer needed or even undesirable (Vari 1998: 4). During the current phase political parties are sometimes apt to usurp the social space and to ignore signals from social movements (Freedom House 1998). The differentiation between political parties and social movements that evolved gradually in the West has not yet arisen to the same extent in Central and Eastern Europe. If the political system may be regarded in the West as the intermediary between civil society and the state system, in Central and Eastern Europe there is

more of a diffuse conglomerate. Here all sorts of organisations are competing in the political market that are concerned with very limited interests and which do not have many views on public issues. This may be because in the current economic situation, the political system is indeed the shortest path to the scarce means of influence. If more means become available this could lead to greater differentiation. It is however also conceivable that we are dealing here with a more structural characteristic, one that is inherent in countries that previously had authoritarian forms of government. This situation is comparable with Greece, that is also characterised by a poorly developed civil society, strong administrative centralisation and a paternalistic state that has little authority and which secures loyalty by means of particularistic distribution mechanisms (Paraskevopoulos 1998: 163-173).

Under the constitutional reforms the rights and freedoms were codified that are essential for the development of civil society, such as freedom of speech, association and assembly. Many new voluntary associations subsequently came into being. Legislation has also been introduced in all the Central and East European countries formalising the status of these associations. The way in which they are developing in terms of numbers and status – and this also applies to freedom of the press – is being monitored by various bodies, such as Freedom House (see for example Freedom House 2000). More important than the precise numbers, however (these organisations often come and go), is the function that these associations fulfil. Whereas initially this function consisted primarily of strengthening democracy and democratic culture, the present civil society is dominated by associations involved in activities in the areas of culture, sport and recreation. In addition there is a smaller category which seek to plug gaps that have arisen with the decline in prosperity and lower standard of public facilities. Many of these organisations are accordingly concerned with services and the promotion of interests in the field of education, community work, social assistance and – to a limited extent – health care. Trade unions, women's movements and human rights and environmental organisations are ubiquitous. Of these by their nature more politically-oriented movements the trade union movement and, to a lesser extent, the environmental movement are easily the most sizeable. Governments most easily find a path to the trade union movement, now greatly diversified in relation to the communist era and occupying a critical position in the context of social and economic policy. Thus the trade union movement exerts a very substantial influence on policy in Hungary and is proactively engaged.

The extent to which the smaller movements are active naturally varies from one country to another. Romania for example has a lively human rights movement, while in Bulgaria the women's movement is active. Taken as a whole, however, the position and influence of groups concerned with the political agenda have declined sharply. Matters differ when it comes to freedom of the press. The media fulfil an important political role and the new freedom has resulted in a diversified press, as regards both the written and the audiovisual media. Precisely on account of the political function, the limits to freedom of speech and the unrestricted

gathering of news is the subject of significant controversy in various countries, such as Romania, Bulgaria and Slovakia (Freedom House 2000).

According to Vari the strong concentration on services may be understood in terms of both the pre-communist traditions in Central and Eastern Europe and the current situation. In most of the countries concerned the current manifestations of civil society are not new but draw on a long-standing cultural tradition of the organised mutual provision of services by religious and secular associations. The emphasis does however differ from country to country. In Hungary for example numerous organisations were active in the political and cultural field. The current economic situation and declining level of public services are forcing the population as it were to restore old structures of assistance. The relatively strong role of the environmental movement may in part be traced back to the late communist era, in which this movement was permitted and often also bound up with the dissident movements.

This is not to deny the fact that this movement has found life more difficult over the years, as indeed have other movements concerned with the advocacy of certain causes. Although the legal status of civil society organisations is no longer problematic anywhere, public support for environmental goals has declined. This also applies to the receptiveness of government institutions. Following an initial period in which governmental authorities were highly appreciative of greater public participation by the population they now appear to be becoming more guarded again. In the environmental field, for example, there is a universal resistance among governments to provide environmentally-relevant information, despite the existing statutory regulations (Vari 1998).

3.2.4 CONCLUSION: THREATS AND OPPORTUNITIES

Taken as a whole the position of civil society remains weak. Nor is it possible to speak of a position that is continually growing in strength and of greater influence. Although a large number of new voluntary associations have been formed, many of these would not survive without continuing financial support from the West. This weak financial position also holds back the necessary professionalisation. The ambivalent relationship to the political system and government – with a number of interesting exceptions such as Bulgaria and Slovakia – contributes to the dominance of the social function of such organisations. But even though these generally concern matters that are close to home, such as sport and recreation, their importance should not be underestimated. According to measurements made by the *New Democracies Barometer* the populations have inherited a low level of social capital, as manifested in a considerable degree of scepticism towards political institutions of all kinds (Raiser 1997: 23-24). It is notable and also a hopeful sign that this scepticism is less marked in countries with stronger economies.

Against this background it is difficult to expect that public affairs will once again be high on the agenda of the individual citizen within a few years time. It is however exceptionally important for patterns of cooperation to evolve out of the highly atomised societies left behind by communism. The participation in associations concerned with directly relevant matters such as education and sport can act as a springboard for the broadening of horizons, in terms of both the field of interest and the basis of confidence. This can gradually have the result that the pre-political function of civil society is strengthened.

Since the constitutional changes in the candidate countries, civil society is no longer playing an important role as a seedbed for and guardian of democracy, the rule of law and the social market economy. The further strengthening of civil society now requires time. A large proportion of the population has such difficulty keeping their heads above water that this must be their first concern. At the same time it must be recognised that civil society has obtained a structure that will in due course facilitate greater public involvement, however much the latter may be dominated now by formal political institutions. In practice all important movements in the West do have their counterparts in Central and East European countries, however rudimentary these may be. Continuing support from the West does, however, remain indispensable for their survival. It is also evident that all sorts of associations need to be included in the Western network. Furthermore it is important to acknowledge that the painful process of confrontation with the past might well have led to movements that wished to imperil the so recently acquired democracy and rule of law. Matters did not, however, reach the point of a genuine threat to democracy. Nor has the economic deterioration which the transition has meant for many people had such an effect.

It may be that the populations in Central and Eastern Europe are not easily mobilised in response to their experiences under communism. This however also justifies confidence in the extent to which the constitutional changes have so far managed to establish themselves. The fact that no extreme situations have arisen means that the constitutional rules of the game for the dealings between state and society are broadly accepted. Within that framework there are of course numerous issues on which the last word has yet to be spoken, for example the scope of freedom of speech or the right to information. Nor are these issues that have been definitively resolved in the existing member states. The existence of norms in these areas is, however, primarily an endogenous learning process; the growth of the culture of openness and widespread acceptance of freedom of speech depend in particular on internal correction mechanisms. The structure for these has been laid down, as will be seen in the next sections.

3.3 DEMOCRACY

3.3.1 EU INTEREST

At the Copenhagen summit in 1993 the existence of democracy was taken as a criterion for accession. A country must have stable institutions that guarantee democracy, the rule of law, human rights and respect for and the protection of minorities. Since the ratification of the Amsterdam Treaty these political criteria have been reflected in Article 49 and Article 6(1) of the Treaty concerning European Union. Article 49 EU, on the accession of new member states, has been amended in the sense that any European state respecting the principles of Article 6(1) EU can apply for membership of the EU. Article 6(1) EU states:

> The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental principles, and the rule of law, principles which are common to the Member States.

As stated in the previous paragraph, the requirement of stable institutions guaranteeing democracy requires more than the mere existence of the institutions laid down by the constitution. The requirement in fact concerns the social embedding or – in a sociological sense – institutionalisation of democratic values. In the words of Linz and Stepan (1996), the behaviour, attitudes and functioning of citizens, political actors and institutions should be so firmly subject to the pattern of democratic norms that it has become 'the only game in town'. It can then be expected that there will be a sufficient guarantee against any relapse into quasi-democracies or resurgence of authoritarian or totalitarian regimes.

Apart from the value that may be attached to democratic principles in themselves, an effectively functioning democracy in the member states is vital on account of the decentralised structure of the Union. The national parliaments still provide the most important forums within which the positions taken by a government in Brussels and the decisions with which that government returns from Brussels are accounted for democratically. Where the national states are largely responsible for the implementation and enforcement of decisions taken in the Union context, national democratic control over such implementation and enforcement – in addition to that of the European Parliament, which has far fewer powers than the national parliament – is an essential element of the current European architecture.

It also needs to be borne in mind that it is not possible to talk of a single West European democratic model when it comes to constitutional arrangements and practical functioning. The relationship between the *trias politica* and the way in which the formal democracy is tied up with the promotion of public interests differ widely in the various member states. The arrangements in those states derive from factors of historical and cultural origin. Since these also differ widely in the candidate countries, it is not possible for the emergent democracies in those countries to be lumped together.

The Union's prime responsibility is therefore that of assuring itself that the candidate countries satisfy a number of basic democratic requirements. Even so, the European Commission examines a large number of characteristics in its annual progress reports on the individual candidate countries. The Commission does not just check the existence during the transitional stage of the institutions of importance for democracy but also whether those institutions are functioning effectively or have been consolidated. The reports examine the extent to which social, cultural and economic rights are guaranteed, whether the influence of the elected parliamentary system is respected, whether the opposition is involved in decision-making, whether freedom of the press is respected and whether there are free and fair elections.

The progress that the candidate countries have made in these two stages of democratic transformation are outlined below on the basis of such parameters. A number of conclusions are also drawn about the prospects for the development of democracy in these countries. To begin with, however, the influence of historical legacies and path-dependencies on the processes of democratisation in the various countries is examined.

3.3.2 LEGACIES

Following the collapse of communism the countries of Central and Eastern Europe were left virtually empty-handed. As regards the reconstruction it was a situation of 'all causation, almost no intention' (Elster et al. 1998). The elite in the countries concerned were unprepared for the implosion. In most of the countries a democratic system had to be built almost from the ground-up. Except where there were forms of an 'ethical' civil society (see section 3.2), there was no question of any democratic political culture under communism.

Since nearly all the political pluralism that previously existed in these countries was eliminated under the communist regimes, the candidate countries share a totalitarian legacy. The leadership generally governed charismatically and unpredictably, so that both the elite and the citizens were exceptionally vulnerable (Linz and Stepan 1996: 40). Although certain countries in Central and Eastern Europe displayed more authoritarian (Poland) or sultanic[2] (Romania) characteristics or had already evolved into a post-totalitarian regime before 1989 (Hungary, Bulgaria), this shared totalitarian legacy means that a more limited number of potential transitional paths was open to these countries after the revolution than in the case of the former authoritarian regimes in Southern Europe that were admitted to the EU at an earlier point. The CEECs also face different consolidation tasks.

The post-communist society is branded by Leninist legacies of materialism, individualism, intolerance and political and social passivity and hostility towards both competition and compromise (Ekiert 1999). The strong focus on material questions has been accentuated by the slump in income that many people have suffered.

Against this background the prevalence of corruption needs come as no surprise. In part this is related to the institutional transformation in which the countries concerned find themselves: old institutions are no longer functioning and the new ones have not yet become a normalised element of social interaction. The extent to which this anomic situation is exploited for personal benefit by means of corruption is however also related to the normalcy which this had achieved under communism. The networks guilty of 'major' corruption often consist of individuals who held leading positions during the communist era and who have contacts reaching into the higher echelons of the government machinery.

Apathy and aversion together with the clear felling of civil society discussed in the previous section are making it difficult for the democratic representation of interests and a normal spectrum of democratic parties to get off the ground. Forty-five years of the party-state have resulted in a marked suspicion towards the authorities and public affairs, and have also given the notion of political parties something of a bad name. Furthermore this legacy involves a widespread aversion to the negotiation of and formation of compromises concerning interests as part of the political process – a political culture that is in fact a vital part of a democracy. This starting point does not make it easy to get used to new democratic mechanisms and procedures. The attitudes that arose at the time call for a 'healing process' from the communist heritage, which can take generations (Ekiert 1999).

The legacies are of course not the same for all countries. In Romania – one of the laggards in the modernisation and democratisation process – the sultanic regime of Ceacescu with its highly centralised power structure caused such dislocation in the political arena and in society that the country was exceptionally poorly placed. The fact that every form of opposition had been suppressed under the communist system is largely responsible for the fact that the process of regular party formation proved so difficult after the revolution. This lack of democratic experience among citizens and politicians led to instability and violence until well into the 1990s. Such excesses are now a thing of the past. The country now has a diversified party system, but the relationships between the three branches of government have by no means crystallised out (Linz and Stepan 1996). In Poland, by contrast, various parties with divergent and alternative political platforms had already been formed before the transition got under way. As in the case of Hungary, Poland already had before the revolution a heterogeneous complex of interest constellations that were gradually crystallising out in the form of trade unions and intellectual associations. These were later to give rise to political parties.

More generally, previous experience with democracy – even if the system went awry – increases the prospects for democratisation. Even the memory of democratic institutions and procedures can be helpful in setting up and maintaining the new political and social order. The brief period of democracy during the inter-war years in the Baltic States proved, for example, to be an experience on which those countries could draw institutionally and morally after the revolution (Plakans, in

Dawisha and Parrot 1997). In particular Estonia and Latvia drew on the constitutional and institutional structure of the period 1918-1934 after gaining independence in 1991. The relatively successful transformation in Hungary, Poland, the Czech Republic and Slovenia may partly be explained in terms of their particular historical experience. Even under communism, these countries already had a measure of pluralism and economic freedom and comparatively close ties with the West (Ekiert 1999). The skills and knowledge gained by the relevant actors at that time have had a positive effect on the post-communist transition phase.

3.3.3 TRANSITION

As already noted in section 3.1, the procedural characteristics of democracy are laid down in the constitution during the first phase of democratic transformation. The transition becomes formalised once these have been accepted. In this regard Kaldor and Vejvoda (1997) refer to formal democracy, as distinct from substantive democracy, which relates to the more protracted process whereby democratic norms are consolidated in behaviour and action. Formal democracy is subject to a number of minimum procedural requirements. These are largely based on the well-known criteria laid down by Robert Dahl (1971) for the definition of democracy: inclusive of citizenship, rule of law, the separation of powers, elected representatives, free and fair elections, freedom of speech, freedom of association and civil control over the security services (i.e. the army and police).

In the majority of the Central and East European countries the political transition phase was characterised by instability, political fragmentation and major constitutional and institutional conflicts. The urgency of the changes and reforms and the lack of consensus about the form these should take and how they should be implemented created uncertainty and power vacuums (Ekiert 1999). As a result of marked conflicts concerning the relationship between the state and church and civil control over the army and especially the new constitution, the political situation in Poland in the early 1990s was chaotic. Elsewhere too, e.g. in Romania, Estonia and Latvia, the elite that had newly come to power stumbled over the constitutional and institutional arrangements and intense political battles were waged between the highly fragmented political groupings. The dismantling of state socialism formed a process full of dilemmas, difficulties and potential threats.

Apart from the communist legacies this process of negotiation is also affected by way in which the change in regime took place and the outcome of the first free elections. The violent revolution in Romania, continuation in office of large elements of the former communist elite (also after the first free election) and the lack of round table talks with the opposition were responsible for the sustained unrest and instability in this country in the early 1990s. The former communist party, initially re-christened the National Liberation Front and later the Social Democratic Party, became a nationalist movement led by ex-communist apparatchiks who took a highly critical view of Western economic and political models. The lack of reforms during this period is explained by Tismaneanu by ‘ (…)

the absence of a decisive break with the bureaucratic-centralistic and strongly statist traditions inherited from Leninism' (Tismaneanu 1997, in Ágh 1998: 259).

Given also the lack of any spirit of constitutionalism, it was difficult to achieve consensus concerning the constitution in all Central and East European countries. Conflicts about the formulation of political and civil rights, the scope of citizenship, the separation of powers and the civil/military relations led to uncertainty and delay during the formal democratisation process. The Polish constitution for example was adopted only after a highly complex and time-consuming process in which the relationship between the legislature and the executive was the particular subject of discussion. Apart from Hungary and the former Czech Republic all CEECs ultimately opted for a system with a dual executive: a directly elected president with substantial powers and a prime minister who enjoys the confidence of a directly elected parliament. Some authors, including Linz and Stepan, consider that this choice has been inimical to further democratic consolidation: whereas political conflict generally takes the form in parliamentary systems of a struggle between parties over policies, in semi-presidential systems there is the threat of a constitutional conflict between the elements of the political system, which can undermine the legitimacy of the democratic system. Once again Poland may serve as an illustration. In the initial years after 1989 the Polish president, Lech Walesa, adopted a highly anti-parliamentary stance, thereby threatening the separation of powers (Linz and Stepan 1996).

Despite the political and social unrest with which the practical arrangements for the new democracies were associated, the various political elites have by now largely implemented the necessary statutory and institutional reforms. The *Nations-in-Transition* reports by Freedom House indicate that most countries broadly satisfy the procedural criteria (Freedom House 2000). All candidate countries now have a democratically ratified post-communist constitution and have acceded to the most important international treaties concerning human rights. The handover of power is universally based on free elections. According to the Regular Reports of the European Commission the parliamentary process is based on stable institutions and the opposition is involved in the decision-making. The legislative, executive and judicial powers are separated in most countries, while in all countries political freedoms and individual rights are guaranteed under the constitution and there is a formal rule of law. This is examined separately in section 3.4. In Romania the formal separation of powers remains incomplete. This applies not only to the judiciary but also to the legislature: the government has the ability to cut across the legislative powers of parliament under 'emergency' legislation. Except for Romania and Slovakia, where there remain stubborn remnants of the secret services, the civil control over the security services is largely guaranteed in Central and Eastern Europe, thus satisfying the final criterion for formal democracy specified by Dahl.

Concerns are however justified about Dahl's criterion of 'inclusive citizenship'. The naturalisation of the substantial Russian minority in Latvia and Estonia, for

example, remains sluggish. Their inability to take out citizenship means that many people of Russian origin are unable to participate in national elections and that they are excluded from certain forms of education. Partly in response to recommendations by the European Commission and other international organisations, the Latvian government did however take a number of decisions recently to speed up the naturalisation procedure. In addition a high proportion of the population endorsed liberalisation of the citizenship legislation in a referendum. In its most recent report on Estonia the European Commission, by contrast, has once again expressed criticism of amendments to the language law in that country, as these impose even further limitations on the participation in political and economic life by non-Estonian-speaking minorities (European Commission 2000j).

3.3.4 CONSOLIDATION

The constitutional underpinning of the procedural characteristics of democracy is a necessary but not yet sufficient condition for a stable, consolidated democracy. As argued by Puhle et al., consolidation involves achieving a situation in which there is 'substantial attitudinal support for and behavioural compliance with the new democratic institutions and the rules of the game which they establish' (Gunther, Diamandouros and Puhle 1995: 7). The question as to which democratic norms have become the normal rules of the game is however much more difficult to answer than that of the procedural characteristics. At best, indirect indications can be provided. Furthermore a period of no more than a decade for the internalisation of democratic values and norms is very brief by historical standards.

In the previous section it was suggested that numerous groups clustered around the centre of power following the revolution. Furthermore there was little differentiation between the function of interest articulation in civil society and the weighing of interests by political parties. Over the years such differentiation could however grow. In the early stages there was indeed an excessive degree of political fragmentation in the Central and East European countries. This has by no means disappeared; in Poland, Bulgaria, Romania and the Czech Republic, there remain numerous political splinters advocating highly specialised interests. At the same time a certain 'normalisation' has been discernible in recent years, brought about in particular because electoral thresholds of 3-4 percent of the electorate have been introduced. This led to a reduction in the number of political parties in virtually all countries (Kaldor and Vejvoda 1997). In a number of Central and East European countries, however, the political arena remains populated by a range of smaller and larger political parties and rainbow coalitions are consistently required in order to form a majority. Although alliances of parties such as the Bulgarian 'Union of Democratic Forces' and Slovakian 'Democratic Coalition' have managed to amalgamate like-minded forces to some extent, there remain over 200 official active political parties in both countries (Freedom House 2000). In Hungary and Slovenia the fragmentation has been sharply reduced and the

number of significant parties has fallen to no more than ten. Since this has also involved alliance formation, this has created room to shift the task of interest articulation to civil society (Ágh 1998).

The reduction of the initially extreme fragmentation can therefore work in favour of the formation of politically relevant party groupings with competing political platforms and can therefore increase the predictability of the political process. Other practices, however, can act as a constraint. Particularly in the democratic laggards of Romania, Bulgaria and Slovakia, the manipulation of the political system in order to retain power is not yet a thing of the past and the constitution is not always observed in the spirit. Immediately before the parliamentary elections in 1998 the Slovakian electoral law was for example amended requiring all the partners in a potential coalition to have at least five percent of the votes. This legislative amendment – which came in for severe criticism from the opposition and international organisations such as the OSCE – was successfully pushed through by the governing HZDS (Movement for a Democratic Slovakia) in order to thwart the prospects of an SDSS (Slovakian Democratic Coalition) success in the polls. Similarly in Bulgaria, Prime Minister Ivan Kostov managed to gag a number of rivals for the prime ministership by dropping ten ministers from his cabinet at the end of 1999. In addition Greskovits (1998) refers to the lack of transparency as an important indication of the fragility of the democracies. Important negotiations and agreements at elite level are often conducted behind closed doors, thereby depriving citizens and interest groups from the ability to exercise influence. A lack of legitimacy – enhanced by a high level of apathy among citizens with respect to public affairs and a feeling of impotence at their ability to influence political and economic developments – is evident in many of the candidate countries. With the exception of the development of a tripartite social dialogue along Western lines in Hungary and Poland, civil society is, as noted previously, poorly developed and there are few institutionalised channels of consultation between citizens and the government.

An independent and critical press is an extremely important precondition for the effective functioning of democracy. Since 1989 the media landscape in all CEECs has seen an increase in pluralism and independence. As regards the latter there are however differences. Depending on the legislation and residual close links between state and industry, the public communication channels can still be controlled by the political system. In contrast to what has been laid down in the constitution, the governing majority in Bulgaria for example has the ability to exercise direct control over the national media (Freedom House 2000) on account of the lack of clear legislation. In a number of other countries as well – Slovakia, Estonia, the Czech Republic and Romania – the state is able to exercise influence over the public media through its direct and indirect say in the appointment of boards and as a result of the editorial loyalty to the governing party. As against this, the private independent media in all CEECs are acquiring an ever greater market share. Their reporting is generally neutral, with attention to both the governing parties and the opposition and so form an independent public forum.

A difficult and common problem concerns the assignment of rights to minorities. Due to the problematic relationship between stateness, nationalism and democracy this is generally a laborious process (Linz and Stepan 1996). Democracy presupposes the existence of a sovereign state. In a number of post-communist countries the legitimacy of the existing state borders is however contested as these do not coincide with those of the 'nation'. This can generate tensions between the majority and certain minorities.

In this regard a distinction needs to be drawn between triangular and dyadic relations between majorities and minorities and guest and home countries. In the case of triangular patterns a national minority forms a substantial proportion of the population in a different country; it is more or less territorially concentrated but does not have any recognised territorial autonomy. This applies to the Russians in Estonia and Latvia, the Hungarians in Romania and Slovakia, the Germans in Poland, the Turks in Bulgaria, the Slovaks in the Czech Republic and the Poles in Lithuania. Apart from conflicts between the majority and minority there is also the threat of conflicts between the 'guest country' and the 'parent country' of the minority. The triangular relations often concern group relationships between a majority and a minority of the former oppressors, therefore accentuating the problematic character of the relationship. Thus the recent claim by the Hungarian government to special rights for Hungarian minorities abroad has caused considerable commotion in the surrounding countries. Similarly the exclusive citizenship legislation in Estonia and Latvia discussed earlier accentuates the fragile nature of the democracy. It is clear that where such stateness grapples with problems and the legitimacy of the state is at issue the consolidation of the democracy is seriously obstructed. Nevertheless there are success stories of Turks in Bulgaria, Poles in Lithuania and Germans in Poland and the Czech Republic. Despite the rhetoric directed against them by ex-communists and nationalists, these minorities have been able to go a long way towards organising themselves and are integrated in the political and social arenas (Hagendoorn et al. 1995). In Romania and Slovakia, where Hungarians now form part of the governing coalition, such a development has however got under way more recently.

Apart from the widespread triangular patterns there are also problematic dyadic relations. This arises where there is a majority and a small, dispersed diaspora minority without a mother country or strong ties with the mother country. Not infrequently these minorities are turned into the scapegoat in adverse and uncertain times. This 'counter-parasite nationalism' is for example deeply embedded towards the Romanies in Hungary, the Czech Republic, Bulgaria, Slovakia and Romania. Although the problem is recognised by the governments in the countries concerned – particularly in response to pressure by international organisations – the Romanies remain second-class citizens. The measures taken are generally insufficient for tackling the problem properly. Attitudes towards minorities such as the Romanies are not readily changed. Exclusion remains a problem that is hard to shift. Particularly in Slovakia and Romania the Romany population is systematically disadvantaged and, in certain cases, is the victim of

targeted physical violence by members of the public and the police. The official recognition of the Romany as a minority where previously they had been regarded as a 'social category' has to some extent formally improved the situation and has also made it possible to implement policies specifically tailored to them. Prejudice and discrimination in all sectors of society do however mean that the implementation and working out leaves something to be desired.

Although improvements are therefore to be observed, the still weak democratic features lead Greskovits (1998) to refer to 'poor democracies' – although he immediately adds the qualification of 'crisis-proof', as it must also be conceded that the democracies that have been set up have managed to remain intact even though there have been many threats to which they might have succumbed. As will be shown in section 3.6, the initial years after the revolution were associated with a sharp decline in prosperity and the financial crisis around 1997 also left deep marks in various countries. The dissatisfaction about the policies being conducted was almost always expressed through democratic channels during these difficult times, albeit often by means of protest voices. Greskovits argues that the absence of mass protests in the form of strikes and riots in response to the far-reaching economic reforms was due in particular to the demobilising effect of the structural, cultural and institutional legacies of communism. The absence of extreme income differentials, lack of a living tradition of political violence and the relatively close links between the government and trade unions provide 'democratic reformist governments with longer grace periods and longer time horizons in which to implement difficult reforms' (Greskovits 1998:179).

The crisis-proof nature of the still youthful democracies may also be adduced from the fact that support for radical, undemocratic political movements has on balance remained limited. Despite the substantial electoral volatility, these movements never managed to pose a genuine threat to democracy, whereas it is perfectly conceivable that they might have done so. In response to the suppression of nationalist sentiment for years on end and bolstered by economic decline, extreme nationalist parties might for example have been able to capture significant elements of the electorate. Such movements manifested themselves in particular in countries with significant minorities, where they sometimes won over ten percent of the votes (Ágh 1998). Particularly in Romania, Bulgaria, Slovenia and Slovakia nationalist political parties scored major successes until the mid 1990s. Slovakia for example was governed between 1994 and 1998 by a coalition under the populist and nationalist Meciar that included the Slovakian National Party. The manipulation of the privatisation programme in favour of government supporters, the introduction of linguistic legislation under which Slovakian became the sole official language and the growing role of the Slovakian Secret Police in the political process (involving the intimidation of political opponents) occasioned a slump in the process of democratisation. In most cases, however, the influence of extreme parties in the process of government remained marginal and these parties did not see any opportunity to dislocate the democracy. The signs are that such movements are losing their attractiveness as the uncertainty

brought about by change declines. Growing experience with the functioning of a democracy under the rule of law and the growing prospects of membership of the European Union will have contributed to this process.

Equally it is not inconceivable that a certain nostalgia for the communist era could have translated itself into political support for communism. Although many ex-communists continue to form part of the political elite in political parties now designated as social-democratic, communism itself has been unable to make a real breakthrough in unamended form in any of the countries of Central and Eastern Europe.

Figures supplied by the European Commission (1998c) indicate that the working of democracy is increasingly valued in Poland, Hungary, Estonia, the Czech Republic and Slovenia; in the other five candidate countries the level of satisfaction is substantially lower. It is notable that in comparison with other economic and democratically relatively advanced countries such as Poland, the Czech Republic and Slovenia, the support for the democratic regime in Hungary is lower than that among the other frontrunners while the nostalgia for communism is more pronounced. Ekiert explains this by the relatively good initial situation in Hungary in terms of prosperity and pragmatic leadership before the transformation and the radical spending cuts that had to be made in response to the economic slump in the mid 1990s.

3.3.5 CONCLUSION: OPPORTUNITIES AND THREATS

Hungary, Poland, the Czech Republic and Slovenia have a clear lead in the field of democratic development. The fact there is little dispute about or manipulation of democratic institutions in these countries, the greater degree of transparency and democratic legitimacy and the more evolved state of the party system and interest aggregation provides grounds for optimism concerning future developments. In these countries the authority of parliament is respected by the executive and the opposition is consulted – through parliamentary committees – more frequently (European Parliament 2000). The more solid anchoring of democracy combined with the less problematic economic situation has generated a stronger legitimisation of the new political and economic order (Ekiert 1999).

Bulgaria and especially Romania have made the least progress. They score lower in such areas as political transparency, stability and predictability, the protection of minorities, independence of the media and interest aggregation. Social dissatisfaction, lack of governmental legitimacy and the periodic upsurge of nationalist and communist sentiment indicate that the legacies from the past continue to play a significant role in these candidate countries and that democracy is not yet firmly enshrined as a *Leitmotif*. Given their unfavourable starting position in comparison with the other countries, this gap is understandable.

Although most of the countries have completed the transition phase and there are indications of a certain 'normalisation', further consolidation will take a considerable time. The attributes of a democratic political system in which interests are able to find their way by means of aggregation via political parties and where there exists genuine channels for civil society to exert influence are still very much in a process of gestation. Partly on account of public apathy towards politics, the political debate still frequently takes place behind closed doors and without any citizenship component to speak of (Greskovits 1998). At the same time there turns out to be a well developed resilience to crises of a potentially disruptive nature. If the developments assume a less threatening complexion – of which there is every prospect – there appears little reason to assume that the formal democracy will not develop into a substantial one.

3.4 RULE OF LAW

3.4.1 EU INTEREST

The European Union is a legal community which imposes demands on the rule of law in its member states from two viewpoints. In the first place there are demands in terms of the Union as a community of values. The principles of freedom, democracy, respect for human rights and fundamental freedoms and of the rule of law, which the member states have in common, were elevated in Amsterdam (1997) to fundamental principles of the Union, with even the possibility of suspending member states in the event of serious and persistent violations of these principles (arts. 6 and 7 TEU). Since Amsterdam the EU Treaty has also required countries wishing to accede to the Union to observe these principles (art. 49 TEU). Much earlier again, in 1993, the Copenhagen European Council formulated the accession condition that candidates were required to develop stable institutions guaranteeing the principles of democracy, the rule of law, human rights and respect for and the protection of minorities.

Secondly, demands are imposed on the rule of law from the viewpoint of the Union as a community of action. Member states enter into the commitment to implement and enforce the *acquis*. The decentralised structure of the Union implies that European law must be implemented at state level. Apart from legislators capable of incorporating community legislation into national law and a bureaucracy capable of implementing those rules (see section 3.5), this also calls for an adequate system of law enforcement providing a guarantee for the correct application of Community law. Apart from the rights and obligations arising from the Treaties, this European law also includes the thousands of decisions by the European institutions and the existing jurisprudence of the European Court of Justice, including that on direct effect, the priority of European law over national law and state liability in the event of the violation of community law.

In their mutual disputes and disputes with the government before a *national* court, European citizens can appeal to existing European legislation. Just like

their colleagues in the current member states, this means that the judges in the new member states become 'first aid' *juges a droit communautaire* at the point of accession (Curtin & van Ooik 2000: 81). The underlying assumption behind this arrangement of the European legal system is that the member states each have an effective legal system. If this is not the case, there is a risk that the legal unity, legal equality and legal certainty so important for the functioning of the European Union will come under pressure. The proper functioning of the rule of law is an important consideration with respect to eastward enlargement. The EU has however never formulated concrete parameters in terms of which developments in the rule of law can be measured in the candidate countries.

This section examines the developments in the rule of law in more detail. This is done on the basis of the establishment of the formal institutions concerned with the rule of law during the transitional phase. It is also examined to what extent there has been a consolidation of the new legal system, in the sense that the legal institutions of a democracy under rule of law also operate in an everyday legal sense. To begin with, however, the influence of legacies from the past on the development of law in Central and Eastern Europe will be examined.

3.4.2 LEGACIES

The starting point from which the Central and East European countries had to build up a functioning legal system in the early 1990s was particularly unfavourable. Under communism a system of law had prevailed for decades that did not correspond with the requirements for a modern country under the rule of law. The independence of the judiciary, the access to the courts, the guarantee of constitutional political rights and possibilities for appeal against government action failed to measure up.

The communist regimes followed an ideology that minimised the role of legal institutions. The planned economy regulated loss and conflicts by renegotiation, arbitration and political decisions and left the 'correction' of the failing system of central economic planning to the black barter economy. Few economic and labour disputes were consequently submitted to the civil courts. The judges had little difficulty with family affairs such as divorce since the social and financial consequences were largely absorbed by the broad participation of women in the labour process and the widespread childcare and social security arrangements. Criminal judges were required to provide the political repression with a degree of legitimacy. Partly on account of the tight social control and partly also because minor forms of crime were treated as social rather than as legal problems, criminal lawyers were not confronted to any great extent by regular crime. There was no question of any judicial supervision over the actions of the government, the party bureaucracies and the trade unions. The idea of formal legal procedures in respect of administrative and social affairs was not consistent with the official ideology and with the ideological self-image of the communist bureaucracies.

All in all the legal system under communism was of subordinate importance. There were few judges and even fewer attorneys; legal studies were discouraged and the majority of legal graduates were employed as legal experts within the trading enterprises and the bureaucracy.

A typical phenomenon under communism was the *prokuratora*, the public prosecutions department, which had an extensive machinery at its disposal. It was concerned not just with criminal investigation but also with monitoring the 'legality' of virtually all aspects of public life, including the state enterprises. It implemented laws and instructions, could act in civil pleadings and was responsible for supervising political obedience. In political affairs it could count on the support of the secret service in its investigations and could refer cases to the criminal courts where it deemed necessary. It therefore comes as little surprise that the *prokuratora* system was widely perceived as synonymous with the apparatus of repression. All communist countries with the exception of Slovenia (forming part of Yugoslavia) had a *prokuratora* with far reaching powers along Soviet Union lines (Blankenburg 2000: 35).

As in the case of all the state institutions, the legitimacy of the legal system under communism was notably low. Violations of the law and arbitrary actions by the authorities were daily occurrences. In response the legal subjects consistently sought gaps in the law and ways of evading regulations. This state of affairs gave rise to a cynical attitude towards the law (Lippert & Schneider 1995: 372). The lack of confidence in the legal system and the government as a whole created a culture in which citizens strongly mistrusted the legal system and did not automatically regard legal proceedings as a means of asserting their rights. Following the fall of communism in 1989, one of the biggest challenges faced by the new regimes in Central and Eastern Europe was therefore that of promoting the willingness of the citizenry to accept the law and the institution of the state.

3.4.3 TRANSITION

The study carried out by Blankenburg for this report indicates that the communist era did not leave behind the same traces in all countries. Poland and Hungary, for example, had a lengthy period before the revolution in which they were able to prepare for the build-up of institutions under the rule of law, while Czechoslovakia and the Baltic States found themselves confronted with some suddenness with an entirely new constellation. Six of the ten candidate countries even had to complete a process of state formation after the fall of communism. The pre-second world war constitutions and legal institutions were frequently drawn on in establishing a new legal order and putting legal institutions in place.

In the meantime all of the countries investigated have introduced a post-communist constitution that satisfactorily regulates the separation of powers (including an independent judiciary), assures the rule of law and respects important fundamental rights such as freedom of expression and assembly and the right to

privacy. The necessary statutory adjustments have also been made in the field of civil and criminal law. Matters such as property law, competition law, law of contract and bankruptcies, which set the framework for a free market economy, have been the object of new regulations. Certain political and economic offences have been deleted from the Criminal Code, while new forms of crime, such as money laundering, corruption and computer hacking, are gradually being introduced. The death penalty has been abolished in all the countries concerned.

Procedural law has also been radically changed. The *prokuratora* system was of course dismantled straight after the revolution. This was in fact already *de facto* the case in certain countries before then. The task of the public prosecutions department is confined to criminal investigation and the representation of the state in criminal cases. Important constitutional rights have been included in criminal procedural law. Premises may for example only be searched if duly authorised by a judge or procurator and laws have been drawn up concerning the maximum length of pre-trial detention. The rules vary considerably however from one country to another.[3] All the countries concerned have now joined the Council of Europe and have ratified the European Convention on the Protection of Human Rights (ECHR). This makes it possible for the citizens of all Central and East European countries to appeal to the European Court of Human Rights in Strasbourg.

A system of legal protection against the government has been introduced in all countries. Apart from a formal system of administrative law jurisprudence (first of all by a higher administrative body and subsequently by a legal body) most of the countries have also appointed an Ombudsman to whom a wide range of complaints against public bodies can be fairly readily submitted. Generally speaking complaints which are also the subject of legal proceedings are excluded from consideration by the Ombudsman. In Poland however this has not prevented the Ombudsman agency from being highly active.

The mechanisms at the disposal of the public to make the government more responsive and accountable are however limited. One factor has been that the introduction of administrative law was accompanied at the same time by a major transformation of the government bureaucracy (see section 3.5). In addition the legal protection of journalists is not what it might be in most of the countries investigated. Although all the constitutions respect freedom of expression, nearly all the Central and East European countries have legislation making libel, defamation and the dissemination of inaccurate information a criminal offence. This legislation is primarily used by senior political figures as an instrument to deter journalists from publishing suspicions of corruption and the abuse of power. A number of journalists have for example being sentenced in the Baltic States and Bulgaria and Romania for libel or defamation. Journalists are also frequently intimated in the latter two countries and the risk of arrest serves as a deterrent.

As already described in the section on democratisation, the assignment of rights to the various minorities has not always proved straightforward. All the constitu-

tions prohibit discrimination on the basis of race, ethnicity or language and assign minority rights, such as the right to education in one's own language and the development of a separate culture. Nevertheless the legal position of certain ethnic minorities remains a source of concern in a number of candidate countries. A high proportion of the population in Estonia and Latvia for example lack citizenship rights (see section 3.3.4). This is because after the revolution and upon the newly-won independence of these countries, citizenship was initially only granted to those who had been living in Estonia and Latvia before 1940 and to their descendants. This meant that a large number of inhabitants – especially the many Russians who had immigrated during communism – were excluded from citizenship. Among things non-possession of citizenship means that it is forbidden to exercise a number of professions and that legal protection is more limited. There are however special passports for non-citizens in Estonia and Latvia, with which they can cross the border with Russia and return again without problems. At the particular urging of the OSCE High Commissioner for Minorities, the criteria for citizenship have been relaxed. For many people in the population, however, the barriers towards obtaining citizenship remain substantial.

On the basis of the above it is fair to say that the countries of Central and Eastern Europe have broadly put in place the formal structures of the rules of law. This does not however answer the question of the extent to which there is genuine rule of law in a consolidated democracy. This requires the legal institutions to operate in accordance with the intentions in practice as well.

3.4.4 CONSOLIDATION: THE ADMINISTRATION OF JUSTICE

In response to the repressive past all the countries of Central and Eastern Europe have established Constitutional Courts. In most cases these have two principal powers. In the first place they are, at the request of political office-bearers and parliamentary groupings, able to declare laws as being at variance with the Constitution. Secondly, they can at the request of ordinary judges hand down a binding interpretation in respect of a dispute. The constitutional courts were extremely active during the transitional period in reviewing the large stream of new transitional legislation. (The Hungarian Court even blocked or amended 40 percent of the legislative proposals during the initial years.) Partly on account of this role, they were able in various countries to moderate all sorts of political controversies concerning the transition to a new economic system, such as the privatisation of state enterprises and the restitution of property.

Although Poland and Slovenia had already appointed a Constitutional Court before the revolution and the Czechs had a similar tribunal in the 1920s, the post-communist constitutionalism is an entirely new element in the European legal culture of Central and Eastern Europe (Blankenburg 2000: 47). With the exception of the Constitutional Court of Estonia, all the courts in the region – in some cases after something of a struggle – are now organised independently of the mainstream legal system and therefore not subject to legal supervision by the

supreme courts or courts of appeal. On account of the active and independent stance they have taken they have acquired considerable authority as guardians of higher legal principles and generally enjoy greater support among the general public than do the ordinary courts.

The method of legal interpretation by the Constitutional Courts differs markedly from the traditional strictly positivist application of the law by the ordinary courts in Central and Eastern Europe, where judges see their professionalism as lying in the strict application of the law in legalistic terms. This means that written law must be applied first before constitutional principles can be applied. The strict application of written law of this kind frustrates political change as it is a time-consuming process to amend the full range of legislation. By contrast the Constitutional Courts play an important role in renewing the legal system, precisely because they do test existing laws against higher legal principles. In the Czech Republic ordinary judges have however refused on a number of occasions to accept the interpretation of the law by the Constitutional Court as that interpretation did not remain within the precise formulation of written law. Evidently the ordinary judges, who had managed to retain their identity as professionals during the communist era, regard the constitutional supremacy as a renewed attempt at political manipulation (Blankenburg 2000: 20).

This dispute about the supremacy of the legal interpretation does not just lead to a lack of legal certainty. The legal positivist tradition also makes it more difficult to integrate European law into the national legal system as the European Treaties and the jurisprudence of the European Court of Justice are based on a totally different approach towards the significance of general legal principles and presuppose a greater jurisprudential task on the part of the courts.

The independence of the judiciary is safeguarded in all Central and East European countries not just in the constitution but also in practice (Freedom House 2000). Judges are appointed everywhere for life, although an initial trial period of four years applies in Slovakia. In addition most countries in Central and Eastern Europe have a Judicial Council, consisting primarily of judges. The latter may be supplemented by members of parliament, individuals appointed by the president and *ex officio* sometimes also the Minister of Justice. In a number of countries the Judicial Council appoints the actual judges, in others it only nominates them while in other countries again it manages the entire judicial organisation, including the budget. Theoretically this organisational control by the Judicial Council provides a good safeguard against political influence. According to Blankenburg (2000: 29), however, Judicial Councils are also used for more mundane interests of the judiciary. Freedom House notes that in Slovakia, Poland and Romania there is still undue political influence over the appointment of judges. In Lithuania the political system even seeks to influence legal rulings in proceedings against the state.

A major source of concern with respect to all CEECs is the excessive duration of legal cases and the huge backlog in the handling of cases to which this leads.

These backlogs arise from a number of factors. In the first place there are still too few judges across the board. All the countries examined had numerous vacancies. Although legal studies have become reasonably popular since the revolution, many lawyers opt not to work in the judiciary. A job in the private sector is often more attractive and generally pays better. Although most countries in Central and Eastern Europe have recently decided to improve judges' pay the results are not yet discernible. Nor will this problem be resolved in the short term. In the second place many judges are uncertain about the application of the law. The recent reforms of civil and criminal law and the introduction of administrative law have left many judges with a large backlog of knowledge. Approximately half the current judges in Central and Eastern Europe were trained during the communist era. The lack of further training means that too few judges have specialised in areas such as administrative law, commercial law and economic offences. There is also a severe shortage of lawyers who have specialised in EC law. Furthermore, EC law does not form part of the legal training curriculum in many countries. Where it is (e.g. the Czech Republic) this knowledge is confined to a very small proportion of judges (4 percent in that country). This means that not just the effectiveness but also the quality of the administration of justice varies considerably. Certainly in lower courts this remains poor. Thirdly, the courts lack modern equipment and information technology. Although investments are being made here and there in information technology and some registers are being computerised, the budgets for judicial administration remain low. The length of legal proceedings could be shortened if judges had better administrative support.

Apart from the length of the proceedings it is also a matter of concern that even after a lengthy judicial process and a favourable ruling by the court, there is no certainty in many Central and East European countries that the judgment will in fact be *implemented*. Judgments are generally implemented effectively in respect of criminal cases but often leave something to be desired in civil cases. According to research conducted by Freedom House (2000) implementation is extremely slow in Bulgaria and problematic in Poland, Lithuania, Latvia, the Czech Republic, Hungary and Romania. Policy-makers in many countries only realised at a late stage that the efficacy of bailiffs capable of executing titles for debt enforcement is a vital element for the effective functioning of the court system (Blankenburg 2000: 31). Partly as a result there is a shortage of bailiffs. The lack of standard procedures also means that they work slowly. This also leaves bailiffs open to bribery. In addition the recently privatised bailiffs in Poland face the accusation that they only handle large cases and that it is very difficult for small creditors to enforce their claims.

The heavy overburdening of the legal system and the cost of legal proceedings provide many citizens with grounds for avoiding legal process. In addition there is a lack of any 'rights culture'. Partly on account of the experience under communism, citizens are inclined to distrust the law and the judicial machinery, together with all state institutions, and to resolve disputes outside formal legal channels. They also have little knowledge of their own legal position. Not only is the

law evolving very rapidly at present but understandably enough the legal system provided by the state is confined for financial reasons to strictly essential (i.e. criminal) cases. Legal assistance is therefore chiefly provided by NGOs and sometimes universities, trade unions and consumer organisations. Such assistance is however not sufficient to overcome the barriers towards access to the legal system.

A phenomenon that contributes heavily towards the generally negative perception of the judicial system is the prevalence of corruption. Despite the numerous anti-corruption programmes, legislation and ratification of international anti-corruption agreements, corruption remains a serious problem in Central and Eastern Europe. Although there are no specific figures, numerous studies and opinion surveys indicate corruption to be widespread in virtually all countries of Central and Eastern Europe. Exceptions are Slovenia and Estonia, where corruption is by no means absent but is less entrenched. According to most people corruption is particularly prevalent in the bureaucracy, political system, healthcare, customs system, education and the judiciary (although the Constitutional Courts have a better reputation in terms of reliability). In particular bribes are paid in order to speed up bureaucratic procedures, obtain a favourable ruling or win a contract. In some countries there is a climate in which corruption can flourish due to the lack of accountability structures, transparency, control and supervision. The numerous anti-corruption plans indicate that the problem is acknowledged but the inadequate implementation also exposes the lack of resources.

Although the fundamental rights are formally respected this is not always evident in practice. This is illustrated by the many legal proceedings instituted at the European Court for Human Rights. The rules concerning the maximum length of pre-trial detention are for example by no means always observed. As a result of the enormous delays in criminal proceedings, suspects sometimes have to wait years for their case to be resolved. In addition the prisons in most CEECs are overcrowded and the prison conditions below internationally accepted standards. The available budgets indicate that this problem will not be resolved in the short term. Another concern is the use of violence by the police in arresting or interviewing suspects. Freedom House refers to the use of violence by the police in all Central and East European countries with the exception of Slovenia. Furthermore police violence in Central and Eastern Europe is disproportionately directed towards minorities, especially Romanies. In addition the police are barely capable of protecting Romanies effectively against violence by rightwing extremists.

3.4.5 CONCLUSION: THREATS AND OPPORTUNITIES

All the countries of Central and Eastern European are in a transitional phase towards the genuine rule of law. The constitutional foundations for this process have been laid and the accession to the Council of Europe has meant that this principle has become internationally enshrined. A number of conditions have also been fulfilled with respect to the practical functioning of the legal system that meet the requirements of the rule of law.

No rapid legal transformation is however to be expected. The totally different meaning attached to the law in recent times has opened up a big deficit in the legal field. In particular, the lack of lawyers with modern training and a properly equipped education system mean that there will continue to be problems in this area for some time to come. The fact that the law still receives insufficient support from civil society is a serious obstacle towards rapid transformation.
The effective operation of the law does not just depend on the introduction of the structures of the rule of law but also on widespread public acceptance of the values and norms on which the rule of law is based. A culture must arise in which citizens can rely on the honest dispensation of justice. The effective development of political and democratic institutions can certainly contribute towards this, while the embedding in the EU as well as the membership of the Council of Europe will provide a further stimulus. Needless to say it is important for this process of transformation to remain sufficiently on the agenda to prevent discontinuities.

This is particularly important since the Union has relied since its inception on the quality of the law in the member states. The application of European law depends to a much greater extent than is normal in a federal system on domestic law and the national institutions. This means that entitlements under European law can in general only be realised by introducing national legislation and instituting procedures before national judges. It is unlikely that the legal institutions in the countries of Central and Eastern Europe will be able to transform themselves within the near future into organisations capable of carrying out this task satisfactorily. It may take decades before there are sufficient properly trained lawyers for the administration of justice to achieve the desired level. The prospects of accession have however supported a dynamic in the desired direction and the close interaction with legal institutions in the Union will be able to enhance that dynamic after accession.

A specific source of concern in the development of European law is the fact that the legal tradition in the Central and East European countries is substantially more legalistic in nature than that in the current member states. Although the enforcement deficit is also an ever-increasing problem in the current member states, the countries joining in the future will be even more inclined to make do with the translation into national law of the obligations arising under European law and to tread lightly when it comes to implementation and enforcement. If in addition those concerned find that they have insufficient possibilities for resisting such a situation, the question arises as to what extent the national legal system will be able to provide guarantees upon accession that the obligations under European law will in fact be enforced in practice.

3.5 ADMINISTRATIVE CAPACITY

3.5.1 EU INTEREST

Although the administrative capacity of candidate countries was an important point of consideration in previous accession rounds it was never taken as a criterion for accession. Similarly no reference was made to this aspect in the initial formulation of the accession criteria in Copenhagen in 1993. Two years later, during the European Council of Madrid in 1995, administrative capacity was however added to the list of accession conditions. The adjustment of the administrative structures was deemed necessary in order to guarantee the effective implementation of the acquis. In June 2000 the European Council in Feira once again emphasised that a strengthening of the administrative capacity constituted a vital element in the required reforms in the countries of Central and Eastern Europe. Since then this has evolved into an important criterion that is subject to close monitoring. A good deal of assistance is also directed towards institution-will building, so that the legislation and regulations of the Union can be implemented.

An important characteristic of the European Union is its devolved implementation structure. The majority of the rules must be converted into national legislation and must be applied, enforced and where appropriate evaluated by *national* agencies. The strength of the Union as a community of action therefore depends heavily on the national administrative capacity. Particularly in the case of the internal market most of the rules have been drawn up as directives. Although the distinction between regulations and directives is not always totally clear, the practical details of implementation and enforcement in this area of policy have to a large extent placed in the hands of the national governments. Mutual confidence in one another's administrative institutions is vital for the functioning of the internal market. The lack of adequate administrative capacity would create an implementation deficit that adversely affected the internal market (Nicolaides 2000; SIGMA 1998b).[4] Furthermore the importance of the administrative capacity has increased greatly in recent years with the deepening of the internal market. The many policy areas that came to development in the Union in the wake of or in parallel with the completion of the internal market were also a factor. This is by no means always a matter of regulations and directives: a significant volume of 'soft' law has also evolved within the Union, the practical effectiveness of which depends even more than do say directives on mutual confidence in one another's institutional capacity.

Participation in the policy-preparing and decision-making forums of the Union also imposes demands on national administrative capacity. The increased frequency of the European summits and IGCs impose heavy demands on national policy bodies. Here, the rule of consistency comes into play: members states are expected to observe a certain consistency in the stances they adopt where the working groups (comitology), Coreper I and II and the Council of Ministers are involved in the decision-making process. Positions taken in these bodies at an

earlier point are generally regarded as an obligation. In addition the positions taken are also required to represent the actual views of the national governments, and civil servants are expected to possess the necessary skills to form coalitions, build networks and negotiate.

The run-up to accession naturally also imposes demands on the administrative capacity. Candidate countries must not just comply with the accession criteria but must also be able to complete the accession negotiations successfully. To this end all candidates receive pre-accession support. The EU supports the transition process and the adoption of the acquis via three programmes: Phare, ISPA and Sapard. In order to absorb and channel these money flows, the acceding states need an effective absorption capacity. This will become even more important after accession when the new member states qualify for the structure and cohesion funds. This requires absorption capacity not just at national but also at regional and local level.

It is therefore evident that the national administrative capacity is important for both the preparation for membership and membership itself. The Commission therefore closely monitors the performance of the candidate countries. Particular emphasis is placed on assessing the capacity to implement the many sectoral rules of the acquis, or what is known as the *vertical* administrative capacity. In addition candidate countries are required to have a modern system of public administration in the broad sense of the word, or what is known as *horizontal* administrative capacity. At issue therefore is the existence of a professionalised and *accountable* civil service that is not dominated by party political ties, an institutional infrastructure for effective policy preparation and policy co-ordination and the existence of structures concerned with the accession process and EU affairs in general (see Nunberg 2000).

Views differ on the relative importance of these two aspects of administrative capacity. Certainly to begin with the Commission's primary concern was with vertical administrative capacity. According to Nicolaides (2000) that emphasis is fully justified. Countries that attach priority to their sectoral administrative capacity are consequently obliged to modernise their public administration in the broad sense as well. The SIGMA programme[5] of the Organization for Economic Cooperation and Development (OECD), which is funded by the EU Phare programme, by contrast assumes that given the accession criteria, the candidate countries should in fact first have an effective horizontal administrative capacity. If reforms take place primarily along sectoral lines, SIGMA foresees dangers of the fragmentation of administration, institutional proliferation and uncontrollable pressure on the national budget (SIGMA 1998b: 12). The Commission has now recognised the importance of this and attention to the horizontal administrative capacity has increased greatly in recent years.

Nevertheless there is still no agreement within the EU on the minimum criteria for the horizontal administrative capacity which the candidate countries should

satisfy (Nunberg 2000). Both the report of the conference organised under the Dutch EU presidency in 1997 ('Rotterdam Conference on Governance and European Integration') and the collected papers on the *Preparing Public Administrations for the European Administrative Space* conference (SIGMA 1998a) refer optimistically to a *European Administrative Space*. This 'space' does not however rest on accepted standards. There are, instead, gradually evolving norms as a result of the ever closer cooperation between civil servants from the member states. Benchmarking, peer review and cooperation are important for a certain convergence of administrative systems. They do not however provide the Commission with any legal grounds to prescribe a form of administration for existing or prospective member states. The acquis itself only lays down requirements with respect to sectoral administrative capacity.

As a result of the lack of such a legal basis for the horizontal administrative capacity, the candidate countries could interpret such prescriptions as unacceptable interference in national sovereignty. The current member states would also reject any role by the Commission in determining benchmarks for good governance that also applied to them (Nicolaides 2001). The European Commission consequently bases its prescriptions and desires for the horizontal administrative capacity of member states (such as the modernisation of civil service legislation and administrative restructuring) on requirements derived from the acquis: the effective implementation of the acquis in the various policy areas does not just depend on the existence of a public service with the necessary powers, human resources and knowledge to carry out the task in question; at least as important is that the public service is able to function within an effective system of co-ordination and delegation forming part of a government organisation that is able to exercise its responsibilities in an independent and incorruptible manner and to render public account.

The horizontal administrative qualities of the prospective member states are examined in this section. As in the previous section attention is first devoted to the impact of historical legacies before examining the progress made during the administrative transition process. In contrast to earlier sections, however, no analytical distinction is drawn between transition and consolidation, as these two phases overlap too much at administrative level. This outline draws not only on the Regular Reports of the Commission but also on the work of SIGMA and the World Bank. It also draws on a separate study on this subject compiled at the request of the WRR (Verheijen 2000). Attention is paid to the progress of the candidate countries with respect to the necessary vertical administrative facilities elsewhere in this report, especially in chapter 4 concerning the opportunities for and threats to enlargement for important areas of EU policy.

3.5.2 LEGACIES

The starting point for building up modern administrative systems in the candidate countries was so unfavourable that Verheijen refers to the need to 'develop' a totally new government organisation instead of full reform. Governments did not form a bridge between the administration and society under communism but were regarded as an instrument of suppression. An important legacy of the communist era is accordingly a deep-seated suspicion among the public of the central government. The intertwining of party and state resulted in a highly politicised civil service with a privileged status. Despite the reforms that have taken place – albeit not universally – the underlying culture is not readily changed. The government organisation itself was very hierarchical, with particular emphasis on co-ordination of the top. There was no question of devolution; the regional and local branches of government were solely a matter of deconcentration. There were no systems of political and public accountability. Verheijen also notes that the legalistic tradition, which has a long history in Central and Eastern Europe, was if anything strengthened by communism; legitimacy was primarily sought through legislation.

3.5.3 TRANSFORMATION

The modernisation of public administration therefore presents the candidate countries with a major challenge. Contrary to Verheijen's argument that a totally new system is in fact required, it has in practice been a matter of gradual reform, which moreover displays major discontinuities and is governed by short-term considerations. Furthermore little priority was and is attached in most countries to administrative reform. Many tasks have to be faced and the subject is also of little interest electorally. There is therefore no question of an administrative Big Bang. As a derivative of the legalistic orientation, legislation tends to be used as the most important instrument of change. With the exception of Hungary, which made an early start in this area, new civil service laws were not introduced in most of the countries until the second half of the previous decade; in Slovenia, Slovakia and the Czech Republic such legislation has even still to be adopted.

This does not however provide a basis for consistent implementation. The frequent changes of government in Central and Eastern Europe often mean that new governments withdraw or change the legislation of their predecessors precisely in this area. This differs from the situation in the economic field, where changes of a political nature have little effect on the types of economic policies pursued. It costs the countries concerned a great deal of difficulty to screen off the public service from party political influence by means of consistently pursued policies. Changes in government are therefore often associated with wholesale changes in civil servants. In a more general sense, the legalism means that little attention is paid to the implementation of adopted legislation. Verheijen for example notes that the establishment of the necessary education and training facilities – an investment which by its nature takes a long time before the fruits can be plucked –

still leaves a great deal to be desired in most of the countries. One factor is of course also that such laws cost little but the relevant support facilities a great deal more. The latter tend therefore to draw the short end of the straw in the many claims on the meagre government budget.

The reorganisation of public administration is also a difficult and protracted process. According to SIGMA the system of public administration remains characterised by top-heavy coordination, lack of room for conflict resolution at lower level, the duplication of functions and a lack of clear internal and external accountability structures. It has not been until recent years that consideration has been given to legislation aimed at delimiting the powers of the various institutions. Efforts are being made at the same time to reduce the pressure at top level in the bureaucracies, both within departments and in respect of interdepartmental coordination. The change in culture and practices is however a laborious one and will take a great deal of time. The Commission's Regular Reports praise Hungary and Bulgaria, but warn all other countries to take this area more seriously (European Commission 2000I).

Verheijen displays reasonable optimism concerning the facilities being put in place for internal and external financial control. The strong control exerted by the Commission and the interest that the candidate countries have in European financial support provide an important stimulus. Accusations of corruptions are also taken very seriously in the candidate countries. Verheijen does however consider there to be a real risk that anti-corruption measures could result in a tightening of the hierarchical structure and hence obstruct the strengthening of the powers and responsibilities at lower level – a strengthening that is also desirable for greater flexibility.

It is particularly important for the candidate countries that the mechanisms of public accountability be strengthened. As noted, the legacy of suspicion remains clearly discernible, while there also remains a gap between citizens and the government, especially the state (Verheijen 1999). The legitimacy of government policy is consequently highly limited *a priori*. Csaba writes for example about Hungary – a country which may after all be regarded as one of the frontrunners among the candidate countries – that there is a widespread perception in that country among the public of legal fetishism among the government. Partly as a result, prohibitions and injunctions laid down by the government tend to be ignored on massive scale in practice (Csaba 1997: 19).

Seen in this light the establishment of a low-threshold facility such as the ombudsman in Hungary, Poland, Lithuania, Romania and Slovenia is exceptionally important. The study carried out by Blankenburg on behalf of the WRR also indicated that this was a facility that enjoyed a high level of public confidence on account of its independence. The ability to contest malpractice by government institutions will not of course immediately eliminate public suspicion but can indirectly contribute towards doing so. The citizen learns that government policy

need not just be passively experienced but that the public also has rights *vis-à-vis* the government. For its part the government learns that its discretionary freedom is not unlimited and that reactions by the public need to be taken seriously. In consequence the government can gradually assume more of the nature of a public service. In due course this will be to the benefit of the credibility of the government and also the effectiveness of government policy. The same applies in principle to administrative law facilities – an unknown phenomenon in communist times (Blankenburg 2000: 43). Although a place has been set aside for such facilities under the constitution in most of the candidate countries, implementation in the form of *specialist* administrative law agencies has come to little in most countries due to lack of funds.

Against the background of the highly centralised regimes in the communist era, devolution was taken up rapidly after 1989, and in Poland even earlier. This was prompted not just by the fact that devolution can increase the effectiveness and efficiency of government policy; the democratic content of government policy is also enlarged by placing it closer to the citizen. With decentralisation programmes the new governments bore witness to their firm resolve to take leave of the old regime and hoped to gain popular support. The administrative reclassification did not always result in more layers of government; in the Czech Republic there are at present fewer such tiers than under communism (Karatnycky 2000). The number of municipalities has, however, increased sharply; in Hungary, for example, no fewer than 1949 new municipalities have been formed (Nyiri 2000).

Nevertheless there has also been marked resistance in this area. Generally speaking it has been more a matter of deconcentration in practice and the scope for local input has therefore been limited. In some cases tasks and powers have been transferred but not the relevant financial resources. Decentralisation is therefore more by way of the exportation of problems by the central tier of government. Even in countries such as Hungary and Poland, it proves difficult to bring about genuine power-sharing when the structure of government used to be so centralised, thus creating major problems for the coordination between the various tiers of government. Whereas there has been a sharp increase in local responsibilities (e.g. primary education, healthcare, social services, minority rights and the local infrastructure), the financial resources have if anything shrunk while the possibilities for raising local taxes are generally limited (Knip 1999). This even applies in Hungary, which most readily complies with Western standards in terms of horizontal administrative capacity, including administrative decentralisation (Nyiri 2000). Where this means that the citizen can on balance expect less of government, the initial gain in legitimacy – as manifested in greater confidence in local rather than the national government – can switch into a loss.

The desire to accede to the European Union has obliged the candidate countries to pay particular attention to the creation of the necessary organisational facilities. Here too considerable progress has been made (European Commission 2000i; Nunberg 2000). Units have been formed in all the countries concerned at

political and senior official level which – based on the relevant legislation – are particularly concerned with policy preparation on EU issues. Given the centralised nature of public administration noted earlier, these units are subject to intense pressure. The generally extremely strong position of line ministries implies that there are few interdepartmental gateways capable of functioning as a filter in the policy preparation process. This also means that decisions taken at senior level on matters requiring interdepartmental coordination often percolate through into the system with difficulty only. Although most governmental departments have units concerned with European affairs, these are according to Verheijen often poorly integrated into day-to-day policy practice. The procedures for law approximation under the accession process are often well developed within the government structure but external coordination – including that with parliament – is often problematic.

3.5.4 CONCLUSION: THREATS AND OPPORTUNITIES

The development of a modern governmental machinery in terms of both staffing and organisation is a drawn-out process in Central and Eastern Europe. Verheijen (2000) considers it will take a generation. Putnam (1993) has cited institutions as of vital for development. These are however capable of only gradual change, in which respect the underlying informal norms and culture lend themselves less readily to change than do the formal rules. This applies especially to public administration. Partly on account of the lack of prioritisation and resources the organisation is not capable of rapid change. And even where the relevant legislation is in place, implementation is not yet guaranteed. The civil service remains to some extent a hangover from the old regime. The recruitment of young, highly trained civil servants is a lengthy process in itself, but is further held back by the lack of training facilities. In addition a great deal of the available talent – both young and old – is lured away by the much more favourable terms of employment in the private sector (Mayhew 1998; SIGMA 1998b). There also remains a high susceptibility to corruption among the generally poorly paid civil servants. In such circumstances improvement can be no more than gradual and the expectation that this will take a generation appears by no means misplaced.

At the same time it needs to be acknowledged that the candidate countries face a huge agenda of change. When viewed against the initial situation, what has been achieved in the space of a decade deserves considerable admiration. It is understandable that the scarce resources and capacity for change are deployed where the need is felt to be the most acute. At administrative level this undeniably concerns accession. It is not without reason that the organisational facilities introduced for this purpose are the best developed. The fact that the knock-on effect throughout the system of public administration and the various tiers of government leaves something to be desired is hardly surprising given the specific characteristics of the system of public administration. This is in fact a problem that afflicts many of the current 15 member states. Here too the incorporation of European policy is problematic, but the intensity of the problem is substantially

greater in the candidate countries, which already face a major catch-up exercise in a general administrative sense.

3.6 ECONOMY

3.6.1 EU INTEREST

The countries of Central and Eastern Europe have undergone a radical process of economic transition and reorientation towards the international economy in the ten years since the signature of the initial Europe agreements. Although certainly not the only motive force, the Europe Agreements and the prospects of full accession to the European Union were certainly a significant driver of the development process. The preferential access to the EU markets in the early 1990s, for example, made a substantial contribution towards the recovery from the transitional recession. At a later stage of the recovery the Europe Agreements also stimulated trade liberalisation within the region itself. In addition a greater inflow of direct foreign investment from the EU was set in train. This is providing a stimulus for exports, the technological upgrading of production, the growth of a new private sector and the restructuring and privatisation of state enterprises (World Bank 2000: 4).

The specific economic requirements laid down by the Copenhagen criteria underscore the importance of this transitional process, both for the candidate countries and for the EU itself. These dictate that new member states may only accede if they have:

1 a functioning market economy;
2 the capacity to cope with the competitive pressure and the market forces within the Union;
3 the ability to take on all the obligations of membership and to endorse the objectives of a political, economic and monetary union.[6]

The first of these conditions indicates that the transitional process and the process of preparation for accession overlap to some extent: the customary interpretation holds that the economic transition will have been completed once the centrally planned economy has been transformed into a market economy. The second condition has led to some debate in the past since, from an economic viewpoint, a market economy functions by definition by means of the competition mechanism. Furthermore it is not so much *countries* as individual *firms* that have competitiveness. In order to clarify and tighten this competition criterion the European Commission therefore emphasised in its Agenda 2000 proposals of 1997 that it would be specifically looking in its annual Regular Reports at:

- the existence of sufficient macro-economic stability so that economic decisions can be taken in a stable and predictable economic climate;
- the availability of '… a sufficient quantity of human and physical capital at reasonable cost, including the infrastructure (energy supply, telecommunications and transport, etc.) education and research and the future developments in this field';

- the impact of trade policy, competition policy and aid measures, etc., on competitiveness, the degree of trade integration (expressed in terms of volume and type of goods) prior to accession and also the percentage of small firms (European Commission 1997).

These additions underlie the importance for the Union of a stable and sufficiently flexible economic structure in the candidate members states. In doing so the EU wished to prevent the accession from confronting businesses with excessive adjustment shocks which, particularly at regional level, could result in economic collapse and mass unemployment. The latter would then detract from the advantages of enlargement for the current EU member states. It could confront the Union with asymmetric shocks and lead to the augmentation of regional and social deprivation, delays to economic catch-up growth and tensions within the internal market if the new member states were for example to resort to temporary aid measures.

This section outlines the present state of the economic transition in the candidate countries on the basis of the following criteria, which are those most commonly found in the economic literature: macro-economic stabilisation, price and (internal and external) market liberalisation, the restructuring and privatisation of state enterprises and redefinition of the role of government. The details on these aspects have largely been drawn from recent EBRD reports, the IMF's *World Economic Outlook 2000* and the World Bank publication *Progress towards the Unification of Europe* of September 2000. In addition use has been made of the annual Regular Reports of the European Commission with respect to the economic Copenhagen criteria. Among other things these throw light on free market forces (such as free price formation and trade, free access to and withdrawal from markets, resulting in balanced supply and demand ratios), macro-economic stability, the economic/legal infrastructure and the degree of social consensus.

The second part of this section examines the construction of institutions and social capital. Although the economic literature does not generally refer to economic consolidation, the degree of institutional deepening and the existence of social capital may be regarded as an indication of this, as they show whether the formal economic institutions are also becoming embedded in daily economic life and the norms and behaviour of economic actors. At the same time it should be emphasised that the competition and convergence *dynamic* is vitally important in the economic field: much more so indeed than in other dimensions of social life. The prospects for the candidate countries to achieve economic catch-up growth in the long term are therefore also examined. As in the other sections of this chapter, however, a brief outline is first provided of the possible influence of the legacies from the past on the economic development prospects of the region.

3.6.2 LEGACIES

The centrally planned economies were characterised by an extremely strong institutionalisation of economic life, based on hierarchically controlled predetermined quantitative input-output targets. These left little if any room for flexibility, but precisely on this account did guarantee a high measure of predictability. Equally as characteristic of the Central and Eastern European countries under communism was however that the rigidity of the formal planned economy provided the foundation for a parallel, secondary economy. Although the latter did have a high degree of flexibility it was also highly uncertain and subject to high transaction costs. Economic transactions were illegally performed, while mutual obligations had to be enforced by personal, informal means instead of being supported by the normal legal channels of the state (Neuber 1995). A substantial black market circuit developed in certain sectors in this way that was dominated by closed entrepreneur networks who handled their own 'law enforcement'. They sought ever greater control over the economic system and managed increasingly to undermine the role of the state.

The pace and scale at which and especially the way in which state enterprises were privatised in the initial transition years led to substantial differences in the economic development process. The Czech Republic and Latvia opted in favour of distributing rights to the purchase of shares in the state enterprises (i.e. vouchers) evenly among the population, whereas in Estonia and Hungary the shares were sold direct to strategic investors. Poland, Romania and Slovenia decided in favour of selling the shares to the employees and managers within the enterprises themselves. The Czech method of relatively rapid mass privatisation directed from above by means of the voucher system was initially lauded as one of the most successful methods. It encouraged private savings, the restructuring of former state enterprises and the development of a capital market and resulted in the formation of a new group of stakeholders with a direct interest in radical economic reforms (World Bank, World Development Report 1996*:* 56). The banks, however, bought up the share vouchers on a mass scale through their investment funds, thus resulting in a marked concentration of ownership and the development of close links between financial institutions and industry.

The communist legacy of an inadequately developed civil society, a flourishing shadow economy, a weakly developed legal system and an inefficient, arbitrary style of government together form a burden that the Central and East European countries are likely to bear for some time. This burden is also heavier in certain countries on account of the way in which privatisation took place following the revolutions in the early 1990s. According to EBRD research conducted in 1999, businesses in the region on average spend some 3.3 percent of their annual earnings on bribes. In the Czech Republic over 26 percent of firms said that they regularly paid bribes, in Hungary 31 percent and in Poland nearly 33 percent. In the case of new – generally small – firms the average amount is however significantly higher than that for large state enterprises or privatised large companies.

Among the latter group – large state enterprises and privatised companies – there is no demonstrable difference between the levels of bribery. The scale and seriousness of the problem does however vary from country to country. In Poland, Hungary and the Czech Republic the payment of bribes is fairly customary for services (e.g. obtaining licences or the processing of customs documents) while corruption in countries such as Slovakia, Bulgaria, Romania, Lithuania and Latvia is also more widely distributed and deeply entrenched at higher levels of government and therefore a bigger obstacle towards foreign investment.

3.6.3 TRANSITION

The process of economic transition has been coupled in all the countries of Central and Eastern Europe with a collapse of industrial production and a severe, in some cases protracted economic recession. The slump in GDP in relation to 1989 even exceeded 10 percent in certain countries. The low point of the economic transition recession was already achieved in Poland in 1990, when GDP fell by nearly 12 percent. The economies in the Czech Republic, Hungary, Slovenia and Slovakia bottomed out a year later. The fall was biggest in Latvia and Lithuania which, at the depths of the recession, saw falls in GDP of nearly 40 percent and 21 percent respectively. With the exception of Estonia and Lithuania, 1994 was a turning point for most of the candidate countries, when they began to record positive growth figures again for the first time.

The macro-economic developments therefore diverged considerably. Generally speaking countries that have consistently implemented structural reforms have also done better in macro-economic terms, irrespective of their initial situation (EBRD 1998; IMF 2000). Their rates of inflation are lower, they have smaller budget deficits and production has recovered more rapidly. The most recent figures on real GDP (up to and including 1999) indicate that Poland and Slovenia have recovered the most rapidly. Together with Hungary and Slovakia they are now the only four countries whose GDP has risen above the pre-transition level. In the Baltic States, which embarked on the transition process in 1992, the recovery of real GDP has taken place comparatively slowly. The recovery is even slower in Romania and Bulgaria. The Romanian GDP index achieved a level of 90 in 1996 but in 1999 had slumped to 75. After a peak in the recovery to nearly 80 percent of the former GDP, the level in Bulgaria slipped to as low as 70.5 percent in 1999. The slower recovery and the macro-economic instability in both countries since the mid 1990s may in particular be attributed to inconsistencies in the reform policies pursued. Bulgaria has however picked up the reform process over the past two years. The Czech Republic also went through a slump – albeit less pronounced – in 1997 from which it has not yet fully recovered.

Table 3.1 Leading macro-economic trends and indicators of the economic structure (1999)

Country	Population in millions	GDP in per capita purchasing power parity (% EU average)	GDP growth	Inflation	Budget (annual) surplus/ deficit (in % GDP)	FDI inflow (net) as % of GDP	Unemployment (in %)	Share of agriculture in added value	Share of agriculture in employment
Bulgaria	8.1	22	2.4	2.6	0.2	6.1	16.0	15.4	24.4
Czech Republic	10.3	59	-0.2	2.0	-1.6	9.1	9.4	5.0	5.8
Estonia	1.4	36	-1.1	4.6	-4.6	4.6	12.3	6.3	9.9
Hungary	10.0	51	4.5	10.0	-3.7	2.9	7.0	n.a.	7.9
Latvia	2.4	27	0.1	2.4	3.9	5.8	14.4	7.4	18.3
Lithuania	3.7	29	-4.1	0.8	n.a.	4.5	14.1	12.7	21.9
Poland	38.7	37	4.2	7.2	-2.7	4.3	13.0	5.9	20.5
Romania	22.3	27	-3.2	45.8	n.a.	2.4	11.5	20.1	39.0
Slovakia	5.4	49	3.5	10.6	-0.6	3.7	19.2	6.0	18.6
Slovenia	2.0	71	4.9	6.1	-0.6	0.2	7.4	4.4	10.1

Source: European Commission (2000j).
n.a. = not available

Table 3.2 EBRD indicators of the progress of the economic transition in the CEE countries, 1999 *

Country	Private sector share in GDP	Large-scale privatisation	Small-scale privatisation	Management and restructuring of enterprises	Price liberalisation	Trade and exchange rate system	Competition policy	Bank reforms and interest rate liberalisation	Share market and non-bank financial institutions
Bulgaria	70	4-	4-	2+	3	4+	2+	3	2
Czech Republic	80	4	4+	3+	3	4+	3	3+	3
Estonia	75	4	4+	3	3	4+	3-	4-	3
Hungary	80	4	4+	3+	3+	4+	3	4	4-
Latvia	65	3	4+	3-	3	4+	2+	3	2+
Lithuania	70	3	4+	3-	3	4	3-	3	3
Poland	70	3+	4+	3	3+	4+	3	3+	4-
Romania	60	3	4-	2	3	4	2+	3-	2
Slovakia	75	4	4+	3	3	4+	3	3	2+
Slovenia	55	3	4+	3-	3+	4+	3-	3+	3-

Source: EBRD (Transition Report 2000).

* The scores run from 1 (lowest) to 4 (substantial progress in the transition process) and 4+, which the ebrd uses as an indication that the level of a modern economy has been reached. The basic elements of these scores are: privatisation, market structures, financial institutions and legislation to support contracts and investments. Each of the broad categories consists of specific report figures for the degree of demonopolisation and small-scale privatisation, restructuring of enterprises, price liberalisation, the foreign trade and currency system, competition policy, reforms in the banking system and liberalisation of the money, share and securities markets and non-bank financial institutions and scale and effectiveness of the investment legislation and rules.

Most Central and East European countries have managed to liberalise the domestic prices of goods and services. Price controls remain in place in only a limited number of sectors such as utilities, transport and housing (Biessen et al. 1999). In response to the Europe agreements and the accession prospects, the trade in foreign goods and services and capital movements have also largely been liberalised. The consequence is that the European Union has evolved in a short space of time

into the leading economic partner of the region. With over 73 percent of total exports Hungary is the most heavily intertwined with the EU, followed closely by Poland with over 68 percent. On account of its strong trade relations with Russia Lithuania is the least interwoven with EU trade (World Bank 2000). The liberalisation of capital movements has also meant a sharp increase in EU investment in the region. Of the ten Central and East European candidates, Poland, Hungary and the Czech Republic are easily the biggest recipients of foreign investment in the region.

Large-scale and, in particular, small-scale privatisation has also been on a large-scale since 1994, although the pace and scale differ markedly from one country to another (see table 3.2). In Hungary and the Czech Republic the share of the private sector in GDP is now around 80 percent, while in Romania and Slovenia the share has remained stuck at 60 percent and 55 percent respectively. The privatisation and restructuring of large state enterprises and the reform of the financial sector have been greatly accelerated in most of the candidate countries in recent years under pressure from the pre-accession strategy. The private sector now accounts for between 50 percent and 80 percent of GDP in the Central and East European countries. At micro-level, however, there is generally a lack of efficient corporate management systems, hard credit restrictions and independence vis-à-vis governments. The 'old' privatised enterprises are growing relatively slowly as they are more frequently held back by crippling management structures within the company and by the claims and demands of all sorts of government agencies. As noted by the EBRD in its *Transition Report* of 1999

> The impact of privatisation on the quality of governance depends strongly on the extent of state capture. Firms in transition economies continue to interact with the state in a complex web of costs and benefits that differs across countries and types of firms. Enterprises spend considerable resources in lobbying state officials, paying bribes and adjusting to state interference. In return, they receive benefits in the form of state subsidies, soft finance, tax advantages and the tolerance of arrears. A key challenge remains the 'depoliticisation' of firms through further market reforms and measures to constrain state capture by private interests. (EBRD 1999)

Partly on account of the inadequate management in certain enterprises, the soft financing terms and the continued existence of state aid in certain industries, the large privatised enterprises continue to act as a brake on productivity growth in a number of traditional sectors, such as steel. The example of Poland also shows that it is no more of a solution to postpone the privatisation and restructuring of large state enterprises if capital, know-how and labour are consequently bound up in the long term in relatively unproductive sectors. This is generally at the expense of the development possibilities of rapidly growing private firms and hence of the pace of economic growth. Privatised companies that have been taken over by foreign investors have in general been radically restructured and have undergone the most rapid growth in productivity. This is partly because they have been able to benefit to a greater extent from the transfer of knowledge and technology. The new, private small and medium-sized enterprises are, as noted,

also growing fairly rapidly. In the case of these firms, the obstacles to growth are not the state capture and weak management but the sometimes inadequate competition supervision, corruption, high taxes and far-reaching regulations. These factors will be examined in more detail below when the institutional infrastructure is discussed.

3.6.4 INSTITUTIONAL DEEPENING AND SOCIAL CAPITAL

Ten years of economic reform underline the fact that the elementary institutional reforms of the transitional phase need to be taken further in order to guarantee the persistence of the recovery. The transition period is characterised by a high level of flexibility and uncertainty. Old, inflexible but predictable institutions of the formal planning system have largely been dismantled, while new, stabilising market institutions are still in their infancy. Institutional 'deepening' in the longer term means that new, formal rules and institutions of the market economy and democratic system will function more effectively and that the social actors will gear their behaviour and standards increasingly to that system. At the same time these formal and informal institutions must also be not just stable but also sufficiently flexible in the longer term to facilitate ongoing economic development (Neuber 1995).

Empirical research into the impact of institutions in the transition countries indicates that the legal framework is one of the most important factors in determining the scale of investment and pace of economic growth. Countries with a relatively high quality and reasonable observance of legislation and regulations receive a comparatively high level of foreign direct investment. The EBRD annually conducts research into the effectiveness of the legal environment (in the sense of the application of economic legislation and regulations). This research is based on the opinions of local lawyers. On this basis the bank places Hungary, Poland and Slovenia at the top of the list as the best performing CEECs. The legal machinery in Slovakia, Latvia and Lithuania is regarded as considerably less effective (see also section 4.2).

Corruption and crime are high on the political agenda in the countries of Central and Eastern Europe themselves and in the EU. They generally serve as the touchstone for the capacity of governments and social forces to create a predictable and stable political and economic climate in which growth is possible in the long term. Although there is also corruption within the current EU member states, its existence in the candidate countries raises a number of fundamental questions concerning the state of the economic and political transitions and the administrative capacity of those countries. Is it a slowly fading legacy of communism, in which the shadow economy provided a means of survival and suspicion of government was at an all-time high? Is it an inevitable but temporary side-effect of the transition? Or is it a signal that the old elite have recaptured their control over the political system, government bureaucracy and economic resources by means of the privatisation process? Empirical research indicates that a substantial

proportion of the corruption in these countries may be traced back to discretionary government intervention in and regulation of the economy, such as certain forms of trade barriers, subsidies, licences and price control. Low civil service salaries are generally also a source of 'minor corruption' at lower policy levels, while natural government monopolies and public tendering provide classical examples of situations in which large-scale corruption is commonplace at higher levels of government (Mauro 1997).

In general it may be said that inadequate institutions, a poorly developed civil society and undue economic intervention by an inefficient government lacking public confidence are all factors that greatly enhance the risk of excessive corruption. It is however precisely these circumstances that will be favourably affected by the ongoing progress of economic transition, the preparations for accession to the EU and also the post-accession situation and which will enlarge the possibilities for tackling corruption. With the further reduction during the transitional phase of all kinds of protectionism, the strengthening of competition supervision, the establishment of a competitive and transparent financial system and the strengthening of the democratic, legal and administrative capacity in the run-up to EU participation, the possibilities for corrupt behaviour will decline and supervision over such behaviour will increase. There are also indications that the process of market integration and economic growth itself can exert a positive influence on transparency and the reduction of corruption (Broadman and Recanati 2001).

3.6.5 CONCLUSION: OPPORTUNITIES AND THREATS

In the most recent Regular Report of November 2000, Estonia, Hungary and Poland are rated as functioning market economies that will be able to meet the second Copenhagen criterion – the ability to withstand competitive pressure within the Union – if they continue down their present path of reform. According to the Commission the same applies to the Czech Republic and Slovenia, provided they implement their structural reform programmes and make supplementary adjustments. Although Latvia, Lithuania and Slovakia are functioning market economies, they are not expected to be able to comply with the second criterion before the medium term and after a sustained structural reform drive. Bulgaria and to an even greater extent Romania bring up the rear of the countries that still need to make major changes if they are to be classed as functioning market economies. In the meantime the figures show that all ten Central and East European candidate countries recorded positive real economic growth for the first time in 2000, with an average of over 4 percent. If the two stragglers of Romania and Bulgaria are omitted the growth is between 4.5 percent and 5 percent. Although this is a snapshot in time, the expectations for 2001 are at roughly the same level. This provides at least some grounds for hope of further growth boosts, if not net catch-up growth on the EU.

For the Central and East European countries, the ultimate economic goal of the transition to a market economy and the preparation for participation in the

internal market of the European Union is to improve the standard of living of the population. The factors analysed above such as macro-economic stability, a stable political and social climate, properly functioning markets and a reasonably effective legal infrastructure and government machinery are among the necessary conditions for a sustained high growth trend. Other preconditions for growth also need to be in place however: a reasonable physical and knowledge infrastructure, a good climate for innovation and technology absorption and a sufficient degree of economic openness. Only then will (sectoral) economic adjustment processes be able to take place smoothly and will it be possible to continue benefiting from the stimulus provided by trade and foreign investment for the technological upgrading of production. The prospects of EU accession and in particular membership itself provide good opportunities for developing such growth impulses in practice.

To start with the factor of trade and investment: the exports and imports of the CEECs have risen more rapidly than intra-EU trade in recent years. The region has since evolved into the EU's second biggest import partner after the United States. Trade and investment have not just meant that the EU member states and the Central and Eastern Europe regions have become increasingly interwoven in recent years; this has also been coupled with the upgrading of the production and trading package of the frontrunner candidate countries. Research by Kaminski (2000) indicates that the reorientation and expansion of the trade with the EU in the early years of the transition was primarily stimulated by industrial products with a low added value produced by unskilled labour. The share of such products in Bulgarian exports rose from 16 percent to 31 percent, in the case of Hungary from 19 percent to 27 percent and in Poland from 17 percent to 30 percent. Since 1993, however, this share has fallen in favour of capital and knowledge-intensive export products. During the period 1993-1997 the share of these higher grade export products rose from 37 percent to 50 percent. Exports from the Central and East European region are therefore climbing slowly but surely up the 'ladder' of export products with a higher added value. This is an indication of a process of economic catch-up growth. As against this, however, the export package of these countries within these product categories is heavily weighted towards lower quality segments (Ulff-Møller Nielsen 2000).

At the same time the shift towards technologically more advanced and knowledge-intensive production and the associated increase in investor demand for skilled staff have exposed weaknesses in the education and training systems in the candidate countries. To some extent these weaknesses may be traced to the specific education tradition of the communist system and to the post-communist transition process (Jones 2000). EBRD research indicates that although these countries have relatively well trained employees, especially in the technical disciplines, the knowledge and skills tend to be dated. In addition employees can lack the flexibility to adjust their knowledge and skills to new technological or organisational circumstances. The radical government cuts in education spending have also affected this situation and help explain why new entrants in the labour

process by no means always possess the qualifications being sought by the more innovative firms in the most dynamic sectors of the economy (EBRD 2000: 114). This means that there is still substantial room for productivity increases in the long term, but that increased investment efforts are needed in education and training.

3.7 CONCLUSION: OPPORTUNITIES AND THREATS FOR MULTI-DIMENSIONAL TRANSFORMATION

3.7.1 INTRODUCTION

The dimensions of the transformation of relevance for accession to the European Union have been individually discussed in the sections above. Particularly when it comes to consolidating the institutional changes brought about in each of these dimensions in the initial years, the extent to which the various dimensions also support one another assumes importance. In the 'ideal' situation all factors may be regarded as mutually reinforcing and as forming the necessary conditions for one another. In this way Linz and Stepan (1996) characterise a democracy as genuinely consolidated when this rests on:

1 a foundation of a lively and diversified *civil society* which articulates the interests and values for the political system and monitors the functioning of the state and the economy;
2 the rule of law, under which the constitutional structure is monitored, a hierarchy of norms is established that legitimates political action and keeps it within bounds and the exercise of individual rights is facilitated;
3 an executive that adequately implements and enforces the democratically introduced legislation;
4 an economy that generates the resources required in order to exercise the functions of state and that provides the material basis for a pluralist, autonomous civil society.

By way of analogy, the 'ideal' relationships between a developed market economy and the other dimensions may also be discussed in these terms. The effective rule of law is a necessary precondition for a market economy as it provides the economic actors with the essential institutions and rules in respect of property laws, competition, contracts and bankruptcy, etc. Equally, an effective, stable democracy is important as this creates a climate conducive to investment and trade and leads to the physical and social infrastructure required for investment and trade. Good administrative capacity guarantees implementation of the economic and legal regulations that are vital for the market. By means of the collective promotion of interests a civil society can remove the sharp edges of the market in respect of conditions of employment, production conditions and product quality. In the same way the dependencies can be indicated in respect of each of the other dimensions. This final section seeks to provide a more rounded evaluation of these mutual interaction processes and opportunities and threats for this multi-dimensional transformation.

3.7.2 MULTIDIMENSIONAL TRANSFORMATION

In most portrayals of a consolidated constitutional democracy and a market economy, each dimension of social life is consistently supported by all the others. These are however ideal-types which even Western countries do not satisfy. The preceding sections in this chapter had indicated that the situation in Central and Eastern Europe is even further removed from this ideal-type in many respects. At the same time it was noted that most of the countries have completed the transitional stage with respect to the development of the economy, democracy and rule of law, at least as far as the basic structure is concerned. Constitutions have been adopted, the separation of powers has been introduced, parliaments have been formed, the planned economy has by and large been replaced by a market economy and the long-term process of institutionalisation is underway. The further deepening of and familiarisation with the new structures, institutions and rules are taking place in all these areas. As in the case of the economy, it is less easy to draw a distinction between the transitional phase and the next stage of consolidation when it comes to the horizontal administrative capacity, which is much more of a gradual process. By their nature, points of radical systemic changes are much less clearly demonstrable.

As previously noted in section 3.1, caution is definitely in order when it comes to thinking in terms of stages as this suggests a sequential process and hence also a certain degree of irreversibility. In the case of the present frontrunners, a positive and self-reinforcing dynamic is certainly conceivable. Tighter regulation of the financial system and improvement of the legal capacity and efficiency of the government machinery are for example urgent tasks for the candidate countries. If market players can count both *de jure* and *de facto* on the protection of their private property, they will be prepared to undertake high-risk innovations and investments. High quality formal institutions, proper implementation of the regulations and the combating of corruption can provide an additional spur in consolidating informal norms and social capital (i.e. trust) in civil society. As a result of this dynamic the reputation and legitimacy of the government can in turn increase, the official economy can grow and become more efficient, the virtually exclusive orientation of social actors on individual profit in the short term can decline in favour of democratically legitimated long-term objectives (innovations, education and social facilities, etc.), competitiveness and prosperity can increase, and civil society, democracy and the government can all gain in strength. If the future gains in attractiveness, the political inclination to romanticise the past – both in terms of communism and in terms of 'We, the Nation' will decline and anti-democratic forces will have less chance.

The flywheel can however also operate in the reverse direction. The possibility cannot be excluded that new institutions will be unable to take root in countries where the legal system remains weak and the government is incapable of increasing its own capacity. This can then give rise to persistent stagnation. In the worst-case scenario it can even lead to a negative spiral of growing unemployment,

growth of the shadow economy, corruption and crime, deterioration of the business climate, a lack of foreign investment, mass unemployment, declining government revenue and loss of basic public services and a further decline in the effectiveness and reputation of the state. Such a situation in which the prospects for the future are gloomy provides a favourable seedbed for political radicalisation and the polarisation of ethnic or religious relations. Ultimately such a process can result in the collapse of civil democracy.

3.7.3 OPPORTUNITIES AND THREATS: MODERATE OPTIMISM

The possibility that the developments in the countries of Central and Eastern Europe will stagnate and go into reverse cannot be excluded. The gap that remains to be bridged between those countries and the European Union is also a big one. All this could readily give rise to discouragement and pessimism. Expectations can however also be based on the performance to date, in which case the picture for most of the countries looks different. This will be argued in this section.

Following the implosion of communism it was widely expected that the economic transition would be coupled with extremely high social costs with, as a result, protracted political conflicts and instability under which the tender democracies would rapidly succumb. Dahrendorf (1990) anticipated that the countries concerned would go through 'a valley of tears', and in 1992 Jowitt wrote that more than by democrats and capitalism, the Central and East European institutional identity will be determined by demagogues, priests and colonels.

Against the background of the Leninist legacy of economic backwardness, apathy and intolerance, and political and economic institutions that have little to do with democracy and market economics, these expectations initially appeared not unjustified. Following the revolution there was also marked uncertainty, with unstable governments, sharp political polarisation, emerging nationalism and ethnicism, thereby also raising territorial issues (Ekiert 1999). None of the countries concerned has been spared such phenomena (Shafir 1999), and – as described in the preceding sections – they are in evidence to the present day. This is reflected in political formations, fierce historical debate and particularistic tendencies in the functioning of the rule of law.

Seen in this light, the performance to date has been notable. All the countries were indeed confronted by severe economic recessions, a sharp decline in industrial production and a collapse of GDP. As seen in section 3.6, however, a reversal took place in all countries as early as 1994 which, with the exception of the Czech Republic, Bulgaria and Romania, has been sustained to the present day. This is exceptionally quick. The social costs were indeed very high but have not translated themselves into a political radicalisation on a scale that threatened the constitutional achievements. Given the legacies and major uncertainty inherent in the political and economic transitions, the political stability over the past decade has been notably great. Even where extreme nationalism, violent ethnic conflicts, a

revival of communism or civil commotion have taken place, this has been unable to derail democracy in the present applicant member states. Such dissatisfaction as there was ultimately manifested itself within democratic channels. It did however lead to extremely frequent changes of government – although it is notable that nowhere did these changes endanger the continuation of economic liberalisation. Encouraged by international institutions such as the EU and the World Bank, new governments continued down the path of their predecessors, albeit with a varying degree of resolution (Greskovits 1998).

The fact that protests were channelled along democratic paths can be interpreted in various ways. Apathy may have been a factor. It may also be that the democratic institutions or the achievement of goals and conflict resolution began to take root and that certain individuals in authority played a major role. At any event there was an evident lack of alternatives having widespread public appeal, even though such alternatives were offered by leftwing or rightwing extremism (between which Shafir (1999) notes striking parallels). Extreme nationalist movements certainly exerted a pull. The events in the former Yugoslavia however demonstrated the negative side of this nationalist card, while heavy pressure by the European Union and the Organization for Safety And Cooperation in Europe (OSCE) helped avert the threat of conflict. And, despite a certain nostalgia, a relapse into communism also was no longer an option given the earlier experiences. For most of the elite, the 'return to Europe' was therefore the only attractive prospect. The general public will also have perceived the initial decline in prosperity as a necessary step towards improvement in due course. The prospects of accession to the Union and the associated aid will on balance not just have acted as a lever in bringing about systemic changes but will also have helped ensure that the pull of alternatives remained limited.

The fact that, as seen in section 3.3, democracy is not yet working to best effect does not therefore eliminate the fact that it has so far proved capable of withstanding all kinds of crises. These have included those during the first five years after the revolution as well as the recession around 1997. Ethnic minority issues, as manifested in conflicts concerning nationality legislation, language issues, education and administrative reclassification have not so far been exploited to the point of bringing the system into danger. As noted in section 3.3, Greskovits refers in this connection to crisis-proof, poor democracies (Greskovits 1998: 177-189). At the same time it should be acknowledged that the newly formed democracies have not yet been tested across the board. A great deal of legislative work is for example directly taken from the European Union (i.e. the adoption of the acquis). The widely shared desire for accession also explains why changes in government exert so little impact on economic policy. Greskovits, it may be noted, expects that the real test will not take place until economic development has reached the point that claims to the fruits of such progress stand a greater chance of success than at present. The austerity that has been maintained for so long could then result in mobilisation and greater pressure being exerted on the political systems by civil society. In these circumstances it is not inconceivable that it

will be more difficult to achieve consensus and that the dissatisfaction on the part of those who feel they have been short-changed will be manifested not just in the excessive demands they make within the mainstream organisation but also on the streets.

Ekiert also regards it as possible that the self-reinforcing positive dynamic now evident in a number of candidate countries could go into reverse. Further depoliticisation of the economy and consolidation of democracy will demand a good deal more time and a significant loss of power in certain quarters. At the same time he notes that democracy has put down the deepest roots in those countries which are performing best economically. Countries in which political power is well distributed institutionally are more inclined to have effective economic policies, which in turn strengthens democracy. Even frequent changes in government have failed to check this process. Precisely where there is competition within the political system (i.e. in parliamentary rather than presidential systems), resulting in more frequent changes in power, policy innovation serving to further the economy is more likely. Given a positive interaction between the economy and democracy of this kind, therefore, the latter would in fact become more crisis-proof. In addition success begets further success. The frontrunners are countries in which the elite are broadly orienting themselves more towards the West and consequently attracting high levels of aid, while their relatively successful transformation also attracts considerable foreign investment (Ekiert 1999: 14-15). This self-reinforcing mechanism also goes further, in that investments force governments to increase their efficiency, to implement European directives and to strengthen the legal system.

A highly plausible case made out that the countries of Central and Eastern Europe have been able to evade the pitfalls and snares during the ten-year transformation process because, looking back, the Union rapidly opened up the prospect of accession and has since been closely involved with those countries. Equally plausibly it may be argued that accession limits the risk of a reversal and provides a favourable precondition for consolidating the still vulnerable accomplishments. For its part the Union will need to allow for the fact that the CEECs still need a great deal of time before the new institutions will have become so entrenched as to provide normal points of reference for behaviour. In itself – and given also the slump in prosperity that the transformation meant for many people – continuing economic growth is an important prerequisite for strengthening the legitimacy of democracy under the rule of law. Where the future looks optimistic the pull of undemocratic alternatives is reduced. The direct fruits of economic growth can lead to a reduction in unemployment, the strengthening of a social safety net, the better equipping of civil society and the investment in physical and human capital required for a more effective and efficient legal and governmental system. Sustained growth also attacks at least one of the causes of the widespread corruption, namely the relative poverty. Corruption undermines the legitimacy of the government.

Opportunities for sustained growth are in fact present. As early as 1997 the EBRD summarised long-term prospects for the Central and East European countries as follows:

> (…) it is possible to identify two reasons for optimism and one for pessimism. The potential for large productivity gains from structural change and enterprise restructuring and the potential contributions to growth from the highly skilled workforces in the region are two reasons for optimism. (…) In addition, the skilled population of transition countries can play a valuable role in adapting technologies from advanced market economies. It is the combination of high levels of skills and significant technological deficits in transition economies that creates a strong potential for growth. Well-functioning markets will drive the actions and investments which can realise this potential.
>
> The main reason for pessimism is the weakness in the region, at present, of the institutions, policies and practices which are needed to underpin a market economy. There are a number of important steps which many governments must take to improve the business climate and, in particular, to strengthen the institutions which support investment and innovation. The more advanced countries have made significant progress in this regard, and it is possible that looking back in 20 years' time some of the world's 'tiger' economies will have been found in the region. However, this growth process should not be seen in any way as inevitable or automatic. (EBRD 1997: vii)

Despite the institutional progress that most of the candidate countries have undeniably made in various sectors, this observation remains valid five years on. Poland and Hungary head the field in many respects, while Latvia, Lithuania and, in particular Bulgaria and Romania, are the least reformed. Countries that introduced radical economic changes shortly after the revolution are reaping the benefits on a sustained basis. Not just more favourable legacies, in the sense of experience with elements of a market economy, but also initial policy decisions therefore remain important. Via path-dependence newly formed institutions develop their own internal and external dynamic and the past loses its power.

A large-scale institutional dynamic of this kind is also based on constitutional changes. In the countries investigated by Blankenburg (2000), the newly formed Constitutional Courts rapidly built up a reputation for independence, consequently playing a highly important role in the development of a system of checks and balances – a vital factor in the constitutional structure. Improving the quality of the legal system in a general sense, however, takes more time. Section 3.4 indicated just how recalcitrant everyday practice can be. The large backlog of knowledge, out of date infrastructure, chronic underpayment and corruption mean that improvement is at best gradual. An inefficient and inexpert legal system is scarcely conducive to the development of a society regulated by law. A constitutional state that is weak in practice also obstructs the development of the formal economy. This applies equally to an ineffective and inefficient government apparatus susceptible to corruption. The unclear distribution of power and its fragmentation over numerous agencies militate against the business climate. In practice, therefore, it is often necessary to go down all sorts of particularistic paths. Section 3.5 indicated just how difficult it can be to bring about changes in the

system of public administration. Not only are systemic changes in this area less under discussion than changes in the economy but they also enjoy less priority. And where they are implemented they take a long time to filter through. Ways of acting cannot be changed on demand.

Since the ability of the government apparatus to change from within is limited, external factors are of particular relevance. These are undeniably present. Administrative law – lacking under communism – is under development, as is the more accessible institute of the ombudsman. In the checks and balances that are also important for the improved functioning of the government the press plays an important watchdog role. The acquired freedom of the press has taken root throughout Central and Eastern Europe and meant that cases of corruption by public office-bearers are frequently exposed. The often extremely limited interpretation of the law on government information and legal limitations on journalistic freedom do however constitute significant hindrances. A culture of accountability is by no means commonly established in the candidate countries.

All in all it may be concluded that there are grounds for moderate optimism. Most of the countries have struck down a path that is taking them ever further away from the deeply unfavourable communist legacy. Given the multidimensionality, the progress that has been made is spectacular by historical standards. The challenge remains however formidable and periods of regression or stagnation cannot be ruled out. It is clear that economic development, which is so vital for the future, depends heavily on a strengthening of the administrative and legal capacity, factors which by their nature do not lend themselves to spectacular improvement in the short term. All these factors are of course also important for the democratic functioning and development of a strong civil society. The legislature will be able to establish itself more effectively once it gains in relevance, i.e. as the executive gains in effectiveness. A government that is open to constructive criticism in society will gain in legitimacy and effectiveness.

Needless to say all this is primarily of relevance for the countries concerned themselves. For the Union, which has committed itself to enlargement with these countries, the interest lies in ensuring that enlargement takes place at such point that the Union's own acquis is not placed in the balance. At the same time the current EU member states need to be aware that despite the initially gloomy expectations many people had, the positive developments in Central and Eastern Europe are in part related to the hope of accession to the Union. This means that failure to honour such accession in good time can exert a negative influence. Equally it may be assumed that accession itself will contribute to the further embedding of civil society, democracy, the rule of law and a social market economy as the countries in question will then become subject to the implementation and enforcement mechanisms of the Union. The latter does however need to remain conscious that the institutions in question are so fragile that these countries will need to draw for a considerable time on the assistance and resourcefulness of the EU.

NOTES

1 The distinction between transition and consolidation is one that is commonly drawn in the recent political science and sociological literature. The economic literature also employs the term transition but does not refer to consolidation. Economic terms for the latter process are institutional deepening, institutionalisation and the building up of social capital or trust. The discussion of the economic dimension in section 3.6 draws on this economic terminology.

2 By way of analogy with Max Weber (1978), Linz and Stepan refer to sultanism if 'traditional domination develops an administration and a military force which are purely personal instruments of the master …' (1996:51).

3 The maximum permitted duration of free-trial detention in Estonia is 12 months, in Slovenia two years and in Slovakia three years (Freedom House 2000).

4 Nicolaides (2000:9) considers that 'administrative capacity' is a necessary but not a sufficient condition for implementation. In his view sufficient personnel and resources do not guarantee the enforcement of rules, whereas 'intelligent procedures', which need not cost money or manpower, can do so.

5 SIGMA stands for Support for Improvement in Governance and Management in Central and Eastern European Countries. It was set up in order to support administrative reforms.

6 Commission of the European Communities, Agenda 2000: for a stronger and larger Union, Brussels, 15 July 1997, COM (97) 2000 def.

4 EU POLICY: OPPORTUNITIES AND THREATS OF ENLARGEMENT

4.1 INTRODUCTION

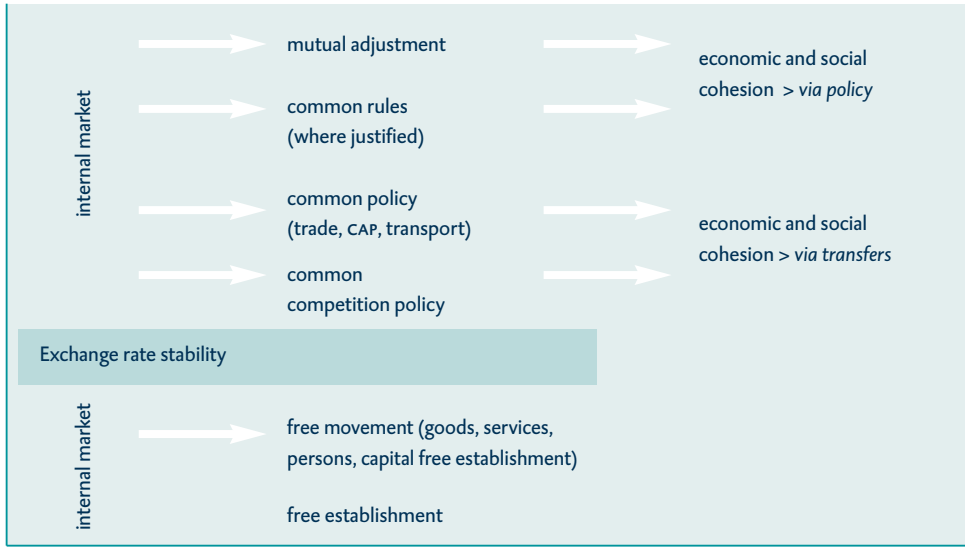
The candidate countries are confronted by a Union which has by now achieved a great deal in many policy fields. In other words, the acquis that these countries are required to adopt has assumed an enormous scale. This too turns the coming accession round into a major challenge: never before has a candidate state been required to take over as many previously agreed achievements as is now the case.

This chapter examines what this undertaking means for the prospective member states in selected areas of EU policy. The aim is to provide an insight into the accession problems in those areas of policy where major elements of the EU acquis are at issue and/or where problems surrounding the enlargement are suspected. These areas are in turn:

- the internal market (section 4.2)
- monetary union (section 4.3)
- the Common Agricultural Policy (section 4.4)
- environmental policy (section 4.5)
- cohesion policy (section 4.6)
- cooperation in the field of justice and home affairs (section 4.7).

A brief comment is in order with respect to the terminology employed in relation to the first two policy areas, namely the internal market and monetary union. Although consistent reference has been made since the signature of the Maastricht treaty to EMU, both the definition of the economic union and the functional relationship between the 'E' and 'M' of EMU has not for political reasons been spelt out in more detail. Two divergent concepts of economic union may be distinguished since the commencement of the third stage of monetary unification in 1999. For the countries not taking part in the euro the economic union in fact functions as an internal market for goods, services, persons and capital, which is directed by considerations of economic efficiency and has sufficient common flanking policies for the market to function effectively. The functional relationship with monetary union therefore consists only of the necessity to maintain sufficient exchange rate stability and to coordinate macro-economic policy with the euro participants so as to ensure free movement in the internal market (figure 4.1).

Figure 4.1 Basic concept of the economic union



For the euro participants, however, the economic union must also have macro-economic stability and sufficient (structural) capacity for adjustment to absorb asymmetric shocks in connection with the monetary union. Apart from an effectively operating internal market this also requires the coordination of government spending so that price stability within the monetary union is not endangered. In this second concept of economic union, which is the one employed by the WRR in this report (see figure 4.2), the 'E' and 'M' of EMU are therefore indissolubly bound up with one another.[1]

Figure 4.2 Economic union as the foundation for monetary union

Monetary union	Fixed exchange rates / Euro Price stability Europian Central Bank Accesion criteria Policy obligations / Growth and Stability Pact
EMU	Criteria in respect of budget deficits and national debts
Economic union	*as figure 4.1,* with sufficient adjustment capacity, member state level (structural change/ mobility) social partners / flexibility (possible) stabilisers (member state / EU-level)
Reform of regulations at level of EU and member states	

Source: Pelkmans et al. (2000: 19).

After a brief introduction, each of the sections below starts with a survey of the objectives and the dynamic in the policy area in question, from which the content emerges of the acquis that the candidate countries are required to adopt. Policy adjustments in the acceding countries are then examined. These countries have already done much in order to prepare for accession, both in order to take over the formal acquis and to gear themselves to membership in a general sense. By confronting the policy processes within the Union with developments in the candidate countries, a picture is built up of the problems that remain to be resolved. These relate in part to the specific situation in the acceding countries and in part to the content and dynamic of EU policy. As will be evident from this analysis, the enlargement raises the question for the Union in certain areas as to whether it is acceptable for policies to be continued with in their present form.

Although the selection of policy areas is problem-oriented, the enlargement issue would be distorted if attention were to be devoted solely to the problems of accession. As concluded in the earlier chapters, enlargement offers significant opportunities for security policy stabilisation, economic development and the strengthening of democracy in the Central and East European region. It is also in the interests of the Union to realise these opportunities. This chapter therefore not only identifies the policy problems that accession will bring but also examines the opportunities that enlargement will present in the selected EU policy areas. The threats and opportunities identified in the policy areas examined are brought together in a summary table together with brief comments in the conclusion to this chapter (section 4.8). This table may also be used for quick reference purposes. It provides an orientation towards the principal policy-specific opportunities and threats discussed in the sections below.

This chapter does not examine solutions to the identified problems and the means of exploiting the opportunities of accession more effectively. For this it is necessary first of all to examine the potential solution strategies for the accession, implementation and enforcement problems in a general sense. This forms the subject matter of chapters 5 and 6. Against the background of the opportunities and problems looming up in the central policy areas as a result of accession, these chapters discuss the possible strategies and how these may be assessed in terms of the criteria set out in chapter 2. Chapter 7 goes on to examine which specific solutions and policy recommendations arise from these strategies according to the WRR in each of the selected policy fields.

4.2 THE INTERNAL MARKET

4.2.1 INTRODUCTION

The ten candidate countries from Central and Eastern Europe have a collective GDP amounting to a little over 5 percent of that of the EU and not quite 6 percent of that of Euroland. In monetary terms too their importance is fairly limited, namely less than 7 percent of the total money supply of the euro participants (see table 4.1). At first sight these quantitative indicators do not provide any grounds for assuming that economic and monetary union could be subject to major economic shocks as a result of the enlargement process. But how do matters stand in a qualitative sense? The other side of the coin could be that the economic, social and administrative diversity of these countries could disrupt or gradually erode the stability in the Union. Put differently, the diversity could pose problems for the Union as a community of action. Warnings have for example been expressed in various quarters that the coming enlargement round could substantially increase the risk of 'erosion' of the internal market, asymmetric economic shocks within the Eurozone, social and regional differentials and hence also political tensions within Europe (SER 1999; European Parliament 1999c).

As against these risks of enlargement there are however also significant opportunities. In the run-up to accession the countries of Central and Eastern Europe are already benefiting from the enormous increase in foreign direct investment and the technological transfers to the region. Once they have joined they may be expected to derive extra benefit again as investors will interpret the actual embedding of economic and political institutions and structures of these countries into those of the EU as an additional quality guarantee for the prevailing business climate (IMF 2000). The current member states will also be able to benefit from the enlargement in the long term. The expansion of the internal market and the prospect of a larger monetary union could help strengthen economic and monetary stability and promote the mobility of goods, services and capital. This development potential opens up the path to greater competition, more efficient allocation (both static and dynamic) of factors of production, greater consumer choice and greater prosperity.

This chapter examines potential accession-related problems for the internal market in more detail. Section 4.2.1 outlines the objectives and policy dynamics of the internal market.[2] On the basis of these principles it is assessed to what extent the accession will run into diversity that could prove problematic for the Union as a community of values and actions. Section 4.2.2 then proceeds to describe the progress and problems of the candidate countries in taking over and implementing the present acquis.

Table 4.1 Indicators of the relative size of the candidate countries, 1998

	GDP (in % of EU)	GDP in existing currencies (as % of Euroland GDP)	GDP by purchasing power (as % of Euroland GDP)	Money supply (as % of Euroland total)			Deposits (% of Euroland total)	
				M0	M1	M2	Sight deposits	Forward, savings and foreign currency deposits
Czech Republic	0.6	0.9	2.1	1.75	0.82	1.13	0.69	1.38
Estonia	0.1	0.1	0.2	0.12	0.06	0.04	0.05	0.03
Hungary	0.6	0.7	1.7	1.24	0.55	0.90	0.08	0.83
Poland	1.8	2.4	4.7	3.11	1.35	1.90	0.96	2.36
Slovenia	1.4	0.3	0.5	0.21	0.11	0.27	0.09	0.39
Luxembourg group	4.5	4.4	9.2	6.4	3	4	2	5
Bulgaria	0.1	0.2	0.6	0.38	0.11	0.11	0.05	0.11
Latvia	0.1	0.1	0.2	0.22	0.07	0.05	0.04	0.03
Lithuania	0.1	0.2	0.4	0.25	0.09	0.06	0.06	0.04
Romania	0.4	0.6	2.1	0.38	0.16	0.31	0.09	0.25
Slovakia	0.3	0.3	0.8	0.57	0.27	0.40	0.22	0.50
Helsinki group	1.0	1.4	4.1	1.8	0.7	0.9	0.4	0.9

Source: ECB (Monthly Bulletin February 2000).

4.2.2 DYNAMIC

The economic integration of the Community has gone into higher gear since the mid 1980s. Two projects were instrumental in this regard: the Single European Act and the Maastricht Treaty. The signature of the Single European Act in 1986 overcame the long-standing impasse towards the further realisation of the common market that had arisen when the proposal to abolish market barriers and at the same time to harmonise the national regulations and develop community policy had run into political problems. The new Act explicitly defined the internal market as an area without internal borders, in which the free movement of goods, services, persons and capital needed to be guaranteed. Furthermore, the end of 1992 was laid down as the final date by which this object should be realised. This '1992 programme' comprised some 280 legislative proposals for tackling physical, technical and tax-based market barriers. A number of other proposals were added at a later stage. The most important of these concerned the liberalisation of network industries, such as gas and electricity, post and telecommunications, aviation, rail transport and radio and television.

Secondly a number of fundamental changes were introduced in the method of regulation. In the case of the 'old' approach of general approximation (article 94), the requirement for the Council to adopt directives on the basis of unanimity was replaced by a provision allowing for qualified majority voting (article 95). In addition the 'new approach' was introduced as the dominant approximation strategy, in which reference is made to minimum standards supporting fairly general health and safety objectives and free movement. Furthermore the mutual acceptance rule was explicitly presented as a new strategy for the completion of the internal market.[3]

At the same time Community policy was extended to the fields of economic and social cohesion and health and safety at work, while already existing policies (on the environment, research and development and monetary policy in relation to the European Monetary System) were formally laid down. Furthermore, with the aid of institutional innovations (such as qualified majority voting in the Council, the cooperation procedure with the European Parliament and the use of deadlines for stages in the legislative process) the EC ultimately managed to adopt some 95 percent of all the provisions from the 1992 White Paper on time (Hix 1999: 215).

The European Commission rightly regards the internal market as the economic cornerstone of monetary union (see section 4.3). Together with the member states it has therefore announced action to deepen that market, e.g. in the fields of competition policy, financial services, tax coordination, patents, energy, telecommunications, electronic commerce and transport. At the European Summit in Amsterdam in June 1997 the 'SLIM' programme was adopted with a view to simplifying the internal market legislation and reducing bureaucratic obstacles. The Commission has since published an 'Internal Market Scoreboard', in which the transposition and implementation deficit and infringements of the internal market rules are reported for each member state. With the support of the European Parliament and Council of Ministers, a 'strategy for the European Internal Market' was moreover adopted in October 1999. This is designed to provide the framework for the policy during the period 2000-2004. Four strategic objectives were distinguished:

1 regulations must be made more efficient;
2 crucial market distortions must be tackled;
3 obstacles to market integration must be eliminated;
4 the internal market must be deployed for the welfare of all citizens.

Notably, the set of instruments employed marks a shift in emphasis from fully harmonised or uniform legal rules to more specific, non-legal approximation rules aimed at macro-economic and micro-economic reforms.[4] Among other things this includes systems for the joint setting of standards and evaluation (benchmarking), the exchange of policy instruments (best practices) and evaluation (peer group pressure) (SER 2000: 14).

4.2.3 ADJUSTMENTS TO THE ACQUIS BY THE CENTRAL AND EAST EUROPEAN COUNTRIES: IDENTIFICATION OF PROBLEMS

For the new member states the participation in the internal market provides an environment in which factors of production can be utilised more effectively and catch-up growth can be accelerated. The exploitation of these development opportunities does however presuppose that the internal market acquis is correctly applied. In addition the member states must properly observe the minimum norms, standards and other provisions in the field of product criteria, liability and safety and the candidate countries must introduce an adequate system of transport and telecommunications. These countries must furthermore display

the capacity and willingness to adjust to the greater market dynamic. In the short term, in the run-up to accession, this poses a number of dilemmas. In the first place it may be expected that the full-scale and immediate adoption, application and enforcement of the internal market acquis is such a complicated undertaking that this will initially exceed the administrative and legal capacity of the candidate countries in certain areas. In itself this is hardly surprising. Earlier candidate countries such as Sweden and Finland, with extensive market-economy, legal and administrative experience, also ran into capacity problems. For the Central and East European countries, however, this also represents a disproportionately large financial burden. Secondly, the adoption of the acquis can be at variance with the economic and democratic transformation and initial catch-up growth (Pelkmans et al. 2000: 32-33; Senior Nello 1998: 21).

This problem has also not left the European Commission untouched. More than in preceding years it is seeking to gear the pre-accession strategy more effectively to the specific background and circumstances of the transition process in the individual applicant states. Furthermore it is now drawing a distinction in the actual negotiation proceedings between elements of the individual accession process that are vital for both the transition and accession and elements that could constitute a major burden for the development of a fully-fledged functioning market economy (Pelkmans et al. 2000: 33). This learning process is reflected in the recent Phare programmes, the National Plans of Action (NPOAs), the screening procedures and the detailed annual progress reports on the extent to which the Central and East European countries have complied with the Copenhagen criteria. As already noted in section 3.6, the European Commission acknowledges that there is in practice an overlap between the various economic Copenhagen criteria; a functioning market economy is by definition one that must be competitive in the medium term. Understandably the Commission's prime concern is to warn countries of the economic and social adjustment costs associated with the artificial propping up of non-competitive enterprises and the curb this will place on catch-up growth.

This does not however eliminate the fact that formally, the European Commission and the member states will of course abide by the inviolability of *all* the Copenhagen criteria and the indivisibility of the total internal market acquis. The extent to which the CEECs have specific problems with the adoption, implementation and enforcement of that acquis is therefore examined first below.

The Commission's progress reports indicate that Poland and Hungary are furthest down the road towards the adoption of the internal market acquis and that the process in Slovakia, Bulgaria and Lithuania has run into temporary problems. Nevertheless all the countries with the exception of Romania and possibly also Bulgaria will be able to adopt some 80 percent of the acquis in the White Paper for the internal market in two years time. In addition these countries are engaged in the adoption of the remaining elements of the acquis that do not form part of the White Paper. This reflects the pressure exerted by the regular reports, the

negotiations and the business community on the candidate countries, particularly since any regression can be interpreted as a negative signal concerning political stability and the investment climate (Pelkmans et al. 2000:31).

At the same time the Commission's reports are exposing 'gaps' in the adoption of the acquis that pose problems for the functioning of the internal market. These concern state aid, phytosanitary, veterinary and food safety measures (see text-box 4.1), intellectual property rights, the energy sector, environmental strategy, product standards and (executive) agencies involved with the internal market. Even if these gaps are closed in good time, there can be no question of the full adoption of the acquis when the accession decision is taken. In the first place certain elements, including the CAP and customs duties, lend themselves to adoption at the point of actual accession only. Secondly temporary transition provisions and derogations will apply for specific elements of the acquis beyond the accession date. The regular reports on the candidates that have been in negotiation the longest (Hungary, Poland, the Czech Republic, Estonia and Slovenia) still provide little insight however into the nature of these provisions since the process of adoption and implementation will remain in full force for the coming years. This process continues to run in parallel with permanent consultations and bilateral negotiations between the acceding countries and the Commission. Furthermore the provisional Community positions of the 15 EU member states with respect to a large number of internal market dossiers will be presented at the negotiating table in the course of 2001.[5]

Text-box 4.1 The internal market acquis in the phytosanitary/veterinary food safety area

Differences in regulation and the underlying implementation and control aspects can constitute major obstacles to the free movement of goods. An important illustration is provided by the free movement of agricultural products. Free movement in the internal market (when enlarged) will only be possible if the acquis in the phytosanitary, veterinary and food safety area has been incorporated into the national legislation of the candidate countries and their capacity to implement that legislation on the basis of hard and soft infrastructure and reliable controls and traceability is regarded as credible. These areas refer to risks requiring far-reaching harmonisation and where mutual recognition (along the lines of the Cassis de Dijon case) is not possible. On account of these risks remaining differences in national legislation, implementation and controls will result in controls at the borders as long as this problematic diversity has not been eliminated.

It is difficult to form a good picture of the progress in this field. In addition a great deal of expertise is required in order to arrive at a balanced judgement on these highly technical directives. Nevertheless it needs to be borne in mind that it is not yet clear at this stage whether the border controls with the EU-15 and hence also between the candidate countries themselves will disappear immediately upon accession of for example the first eight candidate countries in 2004 (i.e. minus Bulgaria and Romania). This is not just related to keeping out 'dangers' from these candidate countries themselves; even if these borders with the EU were to be abolished, the present member states would need to have confidence in practice that the controls at the new outer borders of the Union were reliable.

With respect to the phytosanitary acquis (i.e. controls on harmful organisms and plant diseases) adequate implementation may still be attainable as this does not require major investment by the private sector. Matters differ however in respect of the veterinary and food safety acquis, for which very substantial investment will be needed. Experts are concerned about the situation in slaughterhouses (including numerous very small ones) and meat-processing plants. A great deal of attention also still needs to be paid to traceability (i.e. an identification and registration system meeting EU standards) and notification systems. Matters have been made more difficult by both the BSE crisis (via the rules concerning the use of animal waste and animal feedstuffs) and the recent proposals concerning EU food safety, which have plunged the veterinary and food safety acquis into a state of flux. This moving target creates an extra problem for the candidate countries.

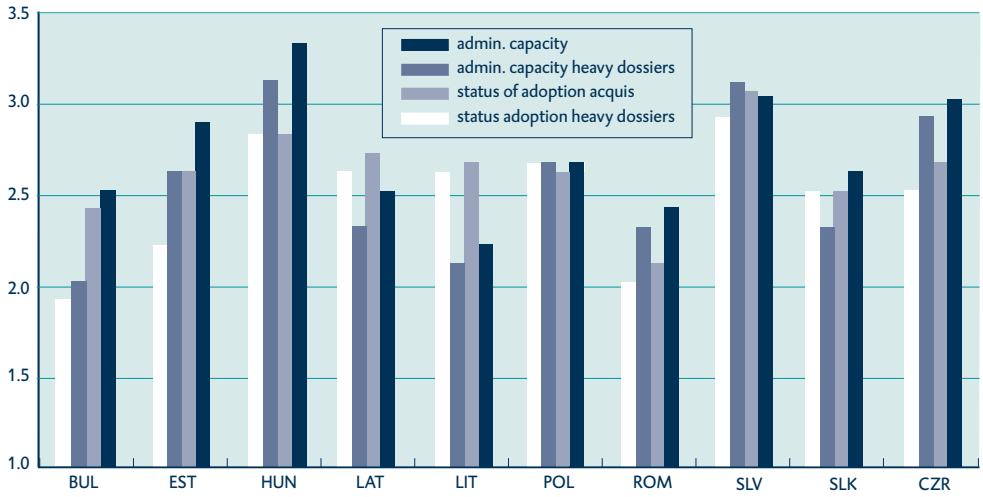
The restructuring of agriculture in the CEECs (to be anticipated if only on the grounds of the small-scale and highly local and regional orientation of sales) will complicate the adjustment process because the required investments will not be forthcoming if the prospects are indifferent. The new and undoubtedly much larger-scale trade flows of agricultural goods will need to be properly monitored and controlled. This will require far-reaching cooperation between implementing agencies in the EU-15 and the new member states.

On the basis of the European Commission's regular reports of November 2000 the WRR has conducted an analysis of the progress made towards adopting the acquis. This focused on:

- the progress towards adopting the acquis during the period 1999-2000;
- the state of the total acquis adoption in mid 2000;
- the available administrative capacity in 29 areas of the acquis.

The performance in the individual areas of the *acquis communautaire* was scored on a four-point scale. In total 10 x 29 x 3 = 870 scores were therefore obtained, the most important of which are shown in Annex 1. The analysis in terms of individual policy areas means that the results relate only to the vertical capacity of the candidate countries. Horizontal aspects – as discussed in section 3.5 – have been left out of account. Figure 4.3 shows in condensed manner the most important results of this analysis for the ten Central and East European candidate countries. This is however a snapshot in time that does not show the annual progress.

Figure 4.3 Acquis adoption and administrative capacity in the ten candidate countries



If we look at the averages for the whole acquis, it may be said that none of the countries scores poorly on the adoption criterion. Only Romania has a low level of legislation adoption. Most countries score less well for the (unweighted) heavy policy dossiers, but here too the results are not really poor. Given the fact that the CEECs will presumably not be acceding before 2004, there are sufficient possibilities for bringing the adoption of *the acquis communautaire* up to a high level (e.g. up to or above 3.5 out of the maximum score of 4). In relation to the administrative capacity the scores for the whole acquis vary markedly, but nowhere is a score of less than 2.28 recorded. The scores of the CEECs also differ markedly for the heavy policy dossiers. On average the results are less good than for the entire acquis, but still better than minimal. This indicates that the administrative capacity is in a development phase.

A characteristic feature of the heavier policy dossiers is that the actual implementation and observance of the relevant acquis requires a large-scale and highly complex institutional effort on the part of the candidates. Although the major significance of these chapters for the internal market would suggest increasing their weight in the scores of the candidate countries, this has not been done since the assignment of a weighting factor is ultimately fairly arbitrary in nature. At the same time, even the unweighted average scores clearly indicate that the CEECs have greater difficulty with the heavy dossiers of the acquis. In other words, there is a certain amount of window-dressing: high scores in the more straightforward policy areas compensate for the implementation shortfall on the heavier dossiers. The picture with respect to the heavier dossiers does however become more favourable as soon as the significantly lower scores of Romania and Bulgaria are left out of the count.

Broadly speaking these score results do not provide grounds for pessimism. As will be shown elsewhere in this report, the concerns over the adoption and

implementation of the acquis focus on a limited number of dossiers. Sometimes there is a lack in these specialist areas of specific expertise or the capacity to adjust to technical standards, or the general, horizontal administrative capacity may be inadequate. At the same time it needs to be borne in mind that the European Commission has so far published only four regular reports (the first of these appeared in mid 1997 upon the presentation of the Agenda 2000) and that a great deal has already been achieved in a short space of time. Since the interval between the last report of 2000 and the presumable accession date will be at least several years, and the candidate countries will in the meantime have built up ever greater experience with the adoption and implementation of the acquis, there is still sufficient time to improve the scores for the heavier dossiers.

Among the heavier policy dossiers is certainly the acquis of the financial sector. Healthy financial institutions are essential for the micro-economic restructuring, economic growth, entrepreneurship, the savings and investment ratios and also the macro-economic policy and reliability of the financial system in the CEECs. Although it would be going too far to examine this specialised subject matter in detail in this general report on EU enlargement, separate attention has nevertheless been devoted below to the position in the year 2000 in the financial sector of the candidate states, as the current status can only be assessed very partially and inadequately from the accumulated scores in Annex 1 on the basis of the European Commission progress reports. In the Annex financial services form part of (the acquis of) chapter 2 (i.e. the free movement of services); in other words the score is excessively aggregated. With respect to financial capital, chapter 4 of the acquis (the free movement of capital) has not been explicitly included in the Annex, although it has been scored. That score is however primarily concerned with the quality of the information requirements for stock exchanges (to protect investors), effective supervision and the absence of conflicts of interest, etc.

A reasonable – if not very detailed – impression is provided by two scores carried out by the EBRD in its annual reporting of transition indicators and legal indicators. As in the case of Annex 1, these scores range from one to four, although the EBRD has also introduced a 4+ score; the latter is comparable with what might be regarded as the norm in OECD countries (EBRD 2000: 6). These EBRD scores are shown in table 4.2. The general picture to emerge is that the candidate countries are well on the way. Several years ago the picture was a good deal more concerning. The CEECs have since then clearly devoted considerable attention to the reforms in this field, partly on account of the obligation to adopt the acquis and to improve the administrative capacity, but partly also because bank failures and/or crises in securities trading confronted them starkly with the costs of inadequate regulation and supervision.

Table 4.2 Quality of financial markets and institutions in Central and Eastern Europe (various indicators)

	EBRD Transition indicators 2000		EBRD Legal indicators survey 2000		
	Bank & interest rates[1]	Securities markets, etc.[2]	General	Scope[3]	Functioning[4]
Bulgaria	3	2	3-	3	2+
Czech Republic	3+	3	3+	4	3-
Estonia	4-	3	3+	4	3-
Hungary	4	4-	4	4	4
Latvia	3	2+	3	3	3
Lithuania	3	3	4-	4	4-
Poland	3+	4-	4	4	4
Romania	3-	2	3+	4	3
Slovakia	3	2+	3	3	3-
Slovenia	3+	3-	4	4	4

Source: EBRD (2000: ch. 2 and annex 2.2).

1) Banking reform & interest rate liberalisation; a score of 4 indicates (1) bank regulation close to BIS norms; (2) effective inter-bank competition; (3) effective (prudential) supervision; (4) a substantial volume of long-term loans to private companies; (5) substantial financial deepening.
2) Securities markets and non-bank financial institutions; a score of 4 indicates (1) securities regulation approximates IOSCO standards; (2) initial liquidity and capitalisation in markets; (3) effective (non-banking) financial enterprises; (4) effective regulation of (3).
3) Substantial regulation of the financial markets, regarded (by specialist lawyers) as meeting the minimum international standards; omissions for example with respect to controls over money-laundering practices or solvency ratios for banks or shareholder registration.
4) Substantial (and proven) capacity to observe/enforce rules and bank failures; measures to combat dubious broking, etc.

The transition indicators form the end-scores of detailed reporting on the verification process. The legal indicator survey is approved by a network of specialist lawyers in this field in CEE countries who cooperate with the EBRD

In the case of bank services no score is in fact lower than 3-. In the case of the securities markets the average score is a little lower. In the opinion of practising lawyers (see right-hand column) the scope of the regulation is steadily becoming less of a problem; seven out of the ten candidate countries achieve a score of four. Although the functioning scores less well, only in one case is the score still below 3-. It does however need to be borne in mind that the scores in the two left-hand columns are lower because the economic importance of the markets has been taken into account (e.g. on the basis of the size of the financial services to private enterprises and the volume of liquidity). All CEECs (with the possible exception of Hungary) therefore still need to make significant improvements and to achieve financial deepening.

Never before has the European Commission prepared the candidates for EU membership in such a protracted, intensive and innovative way for fully-fledged

functioning in the internal market. Even so, the fear of problematic diversity has not been universally eliminated. The Economic and Social Committee of the EC for example expressed its concern at the end of 1999 that more than any other, this enlargement confronted the internal market with exceptionally complex problems. It warned that:

> Revolutionary ways will have to be found to determine how best to organise and manage the single market in view of the eventual doubling of the number of participating States, with many small countries, broad linguistic and cultural diversity, and wide discrepancies in development... It will be imperative to ensure that enlargement does not damage the cohesion of the internal market... Ill-prepared enlargement would weaken single market cohesion. (quoted in: Pelkmans et al. 2000: 24).

The Netherlands Social and Economic Council (SER) expressed itself in comparable terms in 1999. The Council pointed to the risk of structural damage, 'erosion' or dilution of the application of internal market provisions if the new member states proved incapable of applying and enforcing the internal market rules on account of inadequate knowledge and experience, corruption and weak administrative and legal capacities (SER 1999). Other observers also point to the risk that a number of Central and East European governments may be tempted to relax the reins of monetary policy unduly once their country has been admitted to the Union (European Parliament 1999c).

Generally speaking such warnings can be traced back to two different scenarios. The first assumes that the existing internal market is far from perfect and hence permanently vulnerable. Under this scenario, the accession of the CEECs, which will remain poorly developed in an institutional and legal sense, will aggravate the existing imperfections in the free movement of goods, services, employees and capital, as well as competition. The second scenario is based on the notion that the current internal market is comparatively robust at the present time but, as a result of the enlargement, will find its effectiveness severely restricted. In this case it is the problems in the field of the implementation and enforcement of the acquis regulations as well as the overburdening of (legal) adjustment mechanisms at EU level that unleash a cumulative process of infringement of the rules by an ever-growing number of market players and governments.

Both scenarios have a value as a conceptual framework. The former correctly focuses the attention on the existing imperfections in the current internal market and the implementation and enforcement mechanisms. Not all the present 15 member states, for example, have succeeded in giving practical shape to the completion of the internal market by converting EU legislation and regulations into national law in all fields on time. Failure to observe European legislation – the bulk of which concerns the internal market – is already a recurrent phenomenon. In 1998 alone, the Commission issued 675 formal reasoned opinions concerning Treaty infringements (art. 227, EC) and 123 complaints of infringements were referred to the European Court. This is however no more than a fraction of the

total number of infringements of 2,134 observed in that year. The same figures – which tell us little about the seriousness and economic effects of the specific instances of non-compliance – indicate that the present internal market of 15 members states too can only remain credible and effective thanks to constant vigilance and supervision of compliance. To date the Commission has been reasonably successful in doing so, partly with the aid of a wide range of formal legal instruments (such as the right of complaint and the national and European infringement procedures), via mutual recognition and by informal kinds of cooperation between the member states themselves and with the Commission. For the future, however, it is important whether the European Commission and the European Court of Justice can continue properly to fulfil their role as guardian of the Treaty in a Union of 20 or 25 member states.

The second scenario draws attention to the Commission's discretionary room for interpretation of the membership tests. The exacting screening procedures, pre-accession support and efforts of the candidate countries provide no reason to assume at this stage that the Commission is dealing carelessly with the achievements of the internal market. This is not however the full story. As indicated in section 3.6, the economic criteria of Copenhagen (which require the member states to be able to withstand the competitive pressure of the internal market and also to observe the obligations of membership) have been formulated sufficiently vaguely to leave room for differences in interpretation. It is therefore understandable that the market players concerned in the present Union fear that accession will be coupled with lengthy and complex transitional provisions, permanent derogations that distort their competition and the relaxation in practice of the accession criteria in the final stage of the negotiations.

Both scenarios have in common that they impute a flexible attitude to the Union when it comes to the interpretation of the accession criteria getting away from an all-or-nothing assessment; without such flexibility the acceding countries would formally comply with all the Copenhagen criteria, including all the internal market provisions. Taken together this therefore goes considerably beyond the provisions in the White Paper of 1995. In these circumstances there would be no question of an enhanced erosion risk. In other words, the EU appears in both scenarios to be presented with a credibility problem. The question is, however, how real this problem is. The official line of the European Commission and the member states is that the acquis is not open to negotiation. As Hans van den Broek, the former EU Commissioner, put it:

> (…) It is clear that the existing member states will want to preserve the benefits of EU integration and will resist diluting the general applicability of the acquis. This is why, now as well as during all the previous enlargements, the rule is that candidate countries sign up to the acquis communautaire. In that sense, 'accession negotiations' is a misnomer: the acquis is not negotiable. (Van den Broek 1999)

This line of argument is indeed difficult to refute. The acquis of an internal market that serves as a cornerstone of the EU and foundation of monetary union represents all the crucial rules, rights, procedures and norms of the market game. Negotiations concerning what does and does not form part of the internal market acquis, permanent derogations and protracted transitional periods would undermine the basic principles of fair competition and market stability (Biessen and Engering 1999). Nevertheless transitional periods and financial aid are inevitable in fields where the adoption and implementation of the internal market requires major adjustment costs, as in certain areas of the social acquis and, to a much greater extent again, in respect of the environmental acquis. Contrary to what is sometimes suggested, there are in fact only two elements of the social acquis that could present the countries of Central and Eastern Europe with sharp cost increases and impose a disproportionate load in the initial years: the principle of equal treatment of men and women and the provisions with respect to health and safety at work. Virtually all other provisions are non-binding political minimum norms or agreements that can be worked out as desired at national level.[6]

In addition it turns out in practice that the acquis also contains less substantive and sometimes unduly complex rules, the non-application (temporary or otherwise) of which would not detract from the credibility of the internal market (Pelkmans et al. 2000). By taking over such rules at an early stage, however, the new member states could be the victim of the regulation of European markets (House of Commons Foreign Affairs Select Committee 1999: point 75-76; IMF 2000: 162). This would then endanger the prospects for catch-up growth that is so crucial for these countries. Against this background it has therefore been urged that the candidate countries be offered partial membership or that they pass a core acquis test for the internal market. In chapter 5 of this report the WRR opts for the latter option while in chapter 8 it formulates a proposal for such a test.

A dilemma that is to some extent divorced from the discussion about market erosion but which could lead to distortions of the internal market concerns possible differentials in the timing of accession. Although the European Commission assesses the candidate countries individually on their progress in adopting the acquis, it is likely that countries which the EU member states regard as being ready for membership will accede on a group-basis at the same time (Ministerie van Buitenlandse Zaken 2000: 10). Some consider that the decision by the European Council in Helsinki to open negotiations with a second group of candidates as well indicates that the European Commission wishes to allow as big a group of countries as possible to accede in a single operation so as to prevent new dividing lines between the 'ins' and 'outs' of the internal market as far as possible. What are the possible consequences and risks of this for the functioning of the internal market? The answer to this question first requires a detailed consideration of the complex EU system of preferences and a preferential trading agreement between the CEECs themselves.

The Europe Agreements are modelled on earlier EC association agreements. Among other things they provide for the introduction over a period of ten years of a bilateral free trade zone for industrial products (with a number of exceptions for sensitive sectors such as steel, clothing and textiles) between the EU and the signing candidate countries. This would be a gradual process and initially asymmetrical.[7] All the member states signed such agreements in the first half of the 1990s, so that the trading relations of the EU with the region aroused the image of the EU as the dominant centre or hub surrounded by the spokes of the wheel. A characteristic feature of this construction was that trade between (for example) the EU and Poland was subject to fewer barriers than that between Poland and Romania. It also meant that investors in a new company who were able to choose between a location in the EU or a relatively cheap location in one of the CEECs sometimes nevertheless opted in favour of the Union as exports from that area would be subject to no or fewer trade barriers. Since then, however, the Europe Agreements have been supplemented on various occasions, while the trade liberalisation between the candidates themselves has also been taken further by bilateral and multilateral agreements. Thus the four original Visegrad countries set up the Central European Free Trade Zone (CEFTA), later expanded by Slovenia (1996), Romania (1997) and Bulgaria (1998).

Although on paper CEFTA was aimed at far-reaching trade liberalisation, the initial results were not uniformly favourable (Lavigne 2000: 49-50; Mayhew 1998: 89). The same applied to the Baltic Free Trade Zone (BFTA) of Estonia, Latvia and Lithuania set up in 1994. The diagonal cumulation of rules of origin (see text-box 4.2) between CEFTA and the EU countries did not work in practice because the systems for the recognition of origin between the CEFTA countries themselves varied (Mayhew 1998: 69). In addition the agreements still do not provide for a permanent structure for the enforcement of the regulations and tend to be thwarted by the sudden introduction of state aid and anti-dumping measures. Since the Essen Summit, however, pioneering steps have been taken to simplify and coordinate the diagonal cumulation of origin rules (see text-box 4.2). The hub-and-spoke system of trade relations is consequently largely a thing of the past. As a result of the pan-European Cumulation Agreement a system of diagonal cumulation of origin rules for the entire area of the associated countries (including Turkey), EFTA and the European Economic Area (EEA) has applied since 1 July 1997. Together with the revised Europe agreements for the full-scale abolition of import duties on industrial products, this is designed to usher in a single large European industrial free trade zone in early 2002.

The consequences of differentiated accession (e.g. two groups of countries in succession) for the trade of the later entrants are closely related to the development of the future pan-European trading system. Under the most probable enlargement scenario Romania and Bulgaria will not qualify for the initial accession round as their administrative and legal capacity will still be insufficiently developed for them to function properly within the Union. A maximum of eight out of the ten Central and East European countries would therefore accede in the first

round. If the pan-European industrial free trade zone planned for 2002 is already up and running during the initial accession round, the *industrial* exports of Bulgaria and Romania would not be adversely affected by their status as later entrants, as both countries would already form part of that pan-European free trade zone. If, however, the current practice of the cumulation of origin rules should still be in force during the first accession round, the growth in the number of EU countries from 15 to 23 would in fact mean a relative improvement in the market access for industrial products of the laggards. After the enlargement, Bulgarian and Romanian exporters of goods who did not previously benefit from the advantages of diagonal cumulation will have duty-free access to the markets in the new Central and East European member states as the wider Europe agreements will then apply to those exports.

Given unchanged policies, the two later entrants could find that their *agricultural* exports suffered under this scenario. In these circumstances agricultural products would fall outside both the Pan-European Cumulation Agreement and the proposed industrial free trade zone, while the bilateral preferential agreements for agricultural products among the CEECs themselves are generally less protectionist than the Europe agreements and the CAP. This would therefore mean a relative deterioration in their trading positions in agricultural products. In the first place Romanian and Bulgarian agricultural products will on average have poorer market access to the newly acceded CEECs because the EU protection levels are on average higher than those of the CEECs and because diagonal cumulation is no longer possible. Secondly their market access to the 'old' EU-15 will also deteriorate in relative terms since the new Central and East European member states will have free (and subsidised) access to the internal market and so be able partly to displace Bulgarian and Romanian agricultural exports from this market. So the result would be a classical shift in trade.

The more the agricultural exports of the temporary outsiders correspond in terms of composition with those of the acceding countries and the EU trade barriers to agricultural imports are higher at the point of accession, the greater the negative consequences for the later entrants could be. Just how problematic this could be is illustrated by a scenario in which the Czech Republic has but Slovakia has not been admitted to the EU. The present customs union between the two countries also covers agricultural products. If the Czech Republic were to accede without Slovakia, Slovakian farmers would overnight lose large parts of their market in the Czech Republic to their colleagues from the EU being subsidised under the CAP (Fidrmuc 1999). The EU will therefore be unable to avoid reviewing the trade agreements with the temporary outsiders, for whom the agricultural sector is vitally important.

Text-box 4.2 Cumulation of origin rules

Bilateral cumulation of origin rules means that in determining the origin of a product in country A, the products of origin from the Community used in the manufacture of that product need not have undergone far-reaching processing. In many cases such processing must however be more than inadequate or minimal processing.

Example

Industrial drilling machines are manufactured in the Community, using electric motors made in Romania. Materials originating from the United States and Taiwan are also incorporated in the machines. The end-product is exported to Romania.

Under the origin protocol to the agreement between the Community and Romania, this product is subject to the origin requirement that the value of the non-origin materials may amount to a maximum of 40 percent of the ex-factory price. Application of the bilateral cumulation means that in the calculation of this percentage the value of the electric motors (provided they are of Romanian origin in the sense of the agreement) do not have to be added to the value of the non-origin materials.

In the case of diagonal cumulation the bilateral cumulation between the Community and the relevant partner country is extended to other countries as well, each of which have in turn concluded a bilateral agreement with the Community. Such diagonal cumulation is subject to the condition that the countries concerned have also concluded mutual trade agreements based on the same rules of origin as those enshrined in the bilateral agreement with the Community. Diagonal cumulation means that goods already originating from one or more of the countries concerned need not undergo far-reaching processing in order obtain the origin of the participating country in which the last processing took place. Such processing must however always be more than inadequate or 'minimal' processing.

The countries of the EFTA, Central and Eastern Europe, EEA and Turkey come under this system of pan-European cumulation.

Source: Belastingdienst (1999).

In itself the pronounced income disparity between the candidate countries and the EU-15 may be regarded as problematic diversity. This differential has not however proved a problem for the functioning of the goods and services market. Broadly speaking a division of labour has developed between the Central and Eastern Europe region and Western Europe, with the large wage differentials generally being offset by the differing levels of productivity. Price competition will therefore lead to few if any major shifts in market shares. Only in those highly labour-intensive products or elements of the production process in which most EU-15 countries – and certainly the Netherlands – have a comparative disadvantage has there been a substantial shift in market share towards the candidate countries. This trend, which will continue for some time after enlargement, is in itself favourable as it will only further stimulate the process that has been set in train of specialisation in products with a high added value and/or end-products and services based on a relative surplus of production factors (such as highly qualified labour, technology, research and development, etc.). This process is in principle growth-enhancing. Given sufficient flexibility among the EU-15 taking such forms as retraining and the careful gearing of schooling to the changing demand for labour this can also promote employment.

Business relocations

This does not eliminate the fact that the mobility of companies or business units and employees can run into political and social sensitivities. Particularly in the first half of the 1990s, the potential relocation of firms was the subject of intense political debate. Since that time, however, it has been notably out of the spotlight. Two reasons may be advanced for this. In the first place the direct investment flows to the Central and Eastern Europe region since the fall of communism have not proved particularly sizeable, at least not in relation to total West European investment flows. This applies irrespective as to whether flow or stock variables are taken as the starting point. Secondly the number of business relocations has remained fairly limited during all this time. Presumably, therefore, what took place in the initial years was primarily an unfocused fear of loss of employment among trade unions in the relatively labour-intensive sectors rather than an expectation based on solid analysis.

For the present there are no indications that this situation will change after accession. In this era of globalisation the scale of business *relocations* is determined by the nature, speed and progress of the economic adjustment process. In the mid 1990s this process was already substantially advanced in the economy of the EU, partly in response to measures to reduce the protection and subsidies for ailing industries and to relocate and outsource elements of the production process (such as commission processing). In addition the opening up of markets in the Central and East European region only meant that an additional option was added to the existing opportunities for business relocation to South-East Asia, Latin America and a number of Mediterranean countries. As a result of this economic adjustment process within the EU itself and the available alternatives for business relocation outside the EU, the growing economic links with the Central and East European region have had comparatively little influence on the number of business relocations.

This is confirmed by empirical economic research into the determinants of direct investment in the CEECs. The main driver behind these investments is the desire to exploit the local market potential. This aim can however be achieved by means of greenfield investments or takeovers. Relocation of commercial plants with a view to exporting to the EU-15 or other host countries is therefore comparatively rare (see for example Abraham and Konings 1999). The vast majority of the EU investments in the candidate countries is therefore by way of a strategic reaction, in anticipation of enlargement, that is opening up new opportunities for West European industry. Only in a few isolated cases is this a defensive response or is a net export of production and employment involved.

Free movement of labour

In contrast to the mobility of firms, the political sensitivities towards the mobility of labour have not yet entirely disappeared. Some member states regard the much lower incomes in the CEECs as an element of problematic diversity. These differentials could form a significant driver for a large and sustained stream of employees

moving to the Union after enlargement. For this reason arguments are sometimes made for a transitional period under which the right to the free movement of employees would be withheld from the new member states for some time.

This case for a transitional period is based on the assumption that the immediate participation of the new member states in this specific element of the internal market acquis would in fact result in problematic disruption of the European labour market. This assumption is, however, largely based on misunderstandings. In the first place this analysis confuses differing types of labour migration, namely legal labour migration (on the basis of the right to free movement), cross-border labour and illegal labour migration. Secondly there are also all sorts of practical obstacles in the present internal market, so that there is in fact no question whatever of the free movement of persons or an EU-wide labour market. And finally it is by no means clear that the Eastern enlargement would act as a such a powerful driver of migration from the candidates to the present member states as is often assumed. These three aspects are briefly examined below.

Legal labour migration on the basis of the right to free movement is sometimes interpreted as the economic freedom to seek a job anywhere in the EU and to negotiate terms as a 'free' employee. This interpretation is incorrect. The EC Treaty (arts 39-42) has always been restrictive on this score. Put differently, the so-called free movement is rather unfree. The most important restriction is that a migrant from a different member state – i.e. after enlargement also migrants from Central and Eastern Europe – can only be contracted on the basis of the rules and (universally binding) collective labour agreements of the host country.[8] This *host country principle* has resulted throughout the Union in a strict system of (often temporary) licences and controls on labour migration. In the event of major differentials in pay and fringe benefits the host country principle has a protectionist effect, in that the trump card held by migrants from EU countries where wages are lower is their willingness to work for a wage below the levels normally accepted by local employees in the host country. The host country principle snatches that advantage away, thereby greatly reducing competition in the labour market between host country employees and EU migrants. In addition migrants often do not know the language and customs and have no local work experience. Migration from relatively low-wage EU countries is therefore residual in nature. Only a few are able to obtain work *legally* through family or migrant networks – channels by which lack of language proficiency and experience is offset. For the remainder labour migration only becomes interesting in the event of sustained sectoral or regional labour shortages.

On these grounds alone it may be concluded that there will be no question of any large-scale threat of an influx of economic migrants after enlargement. Although migration could be boosted by severe labour market shortages, the inflow would in those circumstances generally be regarded as economically beneficial as immigration can then help prevent or alleviate overheating or sectoral wage explosions. Seen in this light, labour migration is therefore more by way of an *opportunity* in the longer term with positive effects.

The situation differs when it comes to *illegal* labour migration. In the event of substantial wage differentials, both economic migrants and employers stand to benefit from evading the provisions of the host country principle. It is, accordingly, *illegal* labour migration that constitutes the major problem in relation to enlargement. It relates in particular to certain sectors in which it is comparatively easy to obtain work (such as the construction industry, agriculture and horticulture, cleaning services and in some cases the hospitality industry) and a limited number of regions in the EU. It can result in downward pressure on pay and fringe benefits and, if only on a limited scale, the replacement of local labour by migrants. Efforts to prevent or minimise this form of labour migration therefore run into the problem that the enforcement of labour legislation and registration in most countries is weak, while the present policy instruments also provide no more than limited opportunities to curb illegal inflow.

Particularly in the border countries of Germany and Austria, the problem of illegal labour migration has also undermined the support for assigning the right to free movement within the EU to the new member states. Both countries have argued strongly within the EU for a transitional period, despite the fact that such a measure is unable to resolve the major problem of illegal labour migration; both now and after accession, illegal migration centres primarily around wage costs *below* the levels laid down by law and collective labour agreements, unless there are manifest shortages in the local supply of labour.

From the above it is evident that the analytical basis for the fear of being 'flooded' by a wave of immigration from the new member states is at best weak. This picture is confirmed by the historical analogy with previous enlargement rounds, migration theory and the most recent empirical simulations. To start with the first point. The Greek accession of 1981 and the Iberian accession of 1986 did not result in an immigration wave. Greece, which was initially regarded as a potential source of 'welfare state tourism', provided only a very limited source of emigration to the other EU countries. This also applied to the post-1988 period after the transitional period had elapsed. Even the real economic *divergence* seen between Greece and the EU in the 1980s did not result in emigration on any scale. The Iberian enlargement concerned an area with nearly five times as many inhabitants as Greece. Upon the eve of accession the average level of income in Portugal was even below that in Greece, while per capita income was also relatively low in a number of Spanish regions. Nevertheless no outflow took place after the formal introduction of free movement in 1993.[9] If we examine the stock variables, intra-EU migration is in any case extremely limited. Of the (just) 1.7 percent of the active EU labour force in 1995 that had come from other EU countries, roughly half had left the four 'cohesion countries' of Ireland, Spain, Portugal and Greece (Kiehl & Werner 1998). These also include cross-border commuters.

Nor do the insights from migration theory point to any major inflow from the candidate countries to the present EU countries (see also text-box 4.3). The determinants of (intra-EU) labour migration may be broken down into factors operating

in the long term and those operating in the short and medium term. The first factor relates in particular to the impact of market integration (i.e. of goods, services, capital and technology) on the (relative) remuneration of labour. Even if labour migration (either legal or illegal) could be entirely prevented, the 'deep' market integration within the EU would still gradually lead to pay convergence.[10] This long-term process need not be fully completed for the migration incentives to disappear. As indicated by the experience with the cohesion countries, migration tends to fall fairly rapidly in the event of steady convergence, even given a major disparity in incomes to begin with. The EU structural funds can of course promote this market-driven convergence process.

Finally, the recent migrant simulations do not point to disquietingly large migration flows from the candidate countries (for a more detailed discussion see annex II). A comprehensive time-series analysis edited by Boeri and Bruckner (2000) arrives for example at a figure of 120,000 economic migrants a year to the current 15 member states if all ten Central and East European candidate countries were to accede from 2002 onwards. The total level of migrants would peak after around 30 years, when 1.1 percent of the population of the present 15 EU member states would come from the ten Central and East European countries. With the growth in income in the region, the flow would however gradually decline, falling to 60,000 employees after ten years. It is however already clear at this stage that the first accession round will not take place before 2004 and that Romania and Bulgaria (which together account for a third of the population in the region) will also not meet this date. If only for that reason the initial inflow could therefore be at least a third lower.

Text-box 4.3 Migration theory and the determinants of labour migration

The theory examines the micro-economic incentives and obstacles to (intra-EU) migration in the short and medium term. The conventional approach is based on push and pull factors. Even in modern, much more detailed analyses these factors retain their relevance. 'Push' factors include (relatively) low wages and limited opportunities for work in the country of origin; 'pull' factors include (relatively) high pay and a good chance of work in the host country. 'Push' is often strengthened by marked regional disparities in the country of origin (once prepared to leave the region a certain percentage turns out to be prepared to follow the additional income incentive for migration across the borders as compared with moving to domestic agglomerations). This point is important in Central and Eastern Europe as there are major disparities, especially in Poland and Romania. Effective regional policy in the candidate countries could in due course reduce this migration incentive.

The push/pull analysis, which at first sight appears so self-evident, turns out however to lack explanatory power. Sometimes this even applies within a particular country. Major differentials in income and/or employment sometimes do but more frequently do not, or only on a limited scale, lead to migration flows. In the first place this is because the relevant factor is not the difference in unemployment but the likelihood of obtaining work. If for example unemployment in the host country is 8 percent and that in the country of origin 18 percent, this need not afford an incentive for migration if it is difficult to obtain (legal) work given 8 percent unemployment. These incen-

tives only come into play in the event of sectoral or regional (e.g. in agglomerations) labour shortages or a tight labour market. Secondly, potential migrants encounter a virtually prohibitive shortage of information on work, housing, habits and language, etc., which hardly provides a migration incentive. This lack of information and consequent uncertainty can only be adequately reduced if there are family ties in the host country or networks of earlier migrants. Family reunifications and networks therefore turn out to be an important factor behind migrant flows.

More recently increasing attention has been paid to three types of inhibiting factors: the cost of migration, both tangible and intangible (in the sense of cultural and social); restrictions in the form of border controls, regulations and indirect obstacles such as the allocation of low-cost housing and recognition of qualifications, etc.; and the 'stay-put incentives'. All three have presumably been severely underestimated for some time. The host country principle discussed earlier is a formidable restriction, even though the appearances may suggest 'free' movement. There are stay-put incentives that in many cases render the push/pull approach irrelevant. Apart from aspects such as the fear of discrimination and risk-avoiding behaviour – which are often not put to one side until the prospects have become hopeless – there are three economic motives which can result in rejection of the migration option, given calculating behaviour. In the first place numerous employees have skills and experience that are tied to the country of origin and cannot be turned to effect elsewhere. Thus the current stock of migrants from Central and Eastern Europe (often originating from education, marriage, family reunification or special rights for 'ethnic' Germans) turns out to be relatively well educated and trained but to be holding down comparatively lowly functions in the EU (Boeri and Brückner (2000). In the second place people may wait calculatingly, weighing the local prospects for the future against the estimated risks of migration. If local prospects improve, even if only slowly, the 'option value' of waiting will be low and migration will be postponed. From this it follows that catch-up growth and macro-economic stability are not just important for Central and Eastern Europe but also greatly inhibit migration.

4.3 MONETARY UNION

4.3.1 INTRODUCTION

Most studies conclude that the enlargement of the monetary union by a further ten new member states will in due course offer both static and dynamic prosperity benefits that are comparable with the long-term advantages of the introduction of the euro. For the trade and investment with the region this will mean the disappearance of damaging exchange rate fluctuations as well as the transaction costs associated with the conversion of currencies (Kohler and Wes 1999).
The prospects of gaining credibility will probably be much greater if the larger Eurozone has solid monetary institutions and a predictable policy. This credibility can provide a further stimulus for deepening the capital market and the market for financial services and can in turn contribute to higher productivity growth, lower interest rates and structurally higher growth rates (Pelkmans 2001: ch. 17).

By contrast many regard the problems and risks of EMU enlargement as manifesting themselves primarily in the short and medium term in the run-up to euro participation. The body of economic research into these potential problems is

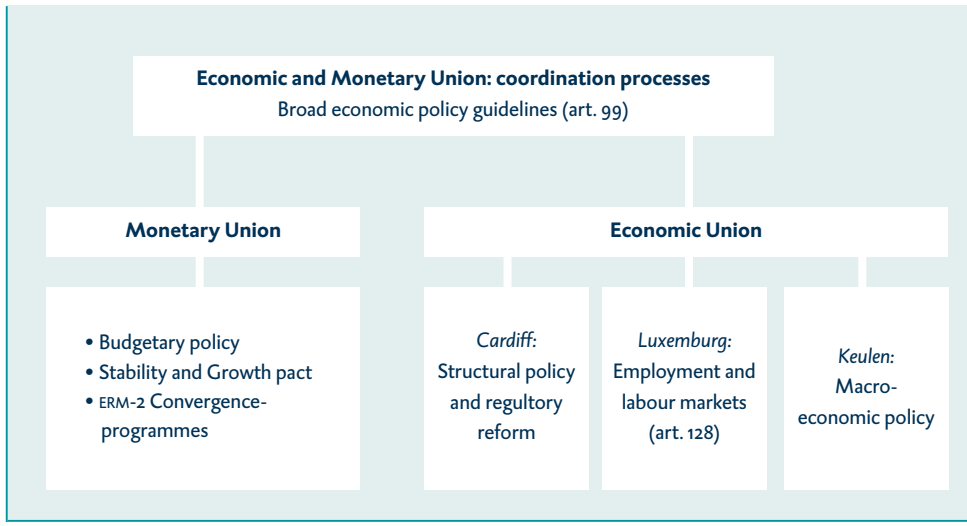
now very extensive and has provided grounds for detailed analyses into the optimal strategy for accession to the Eurozone.

Section 4.3.2 provides a brief outline of the existing dynamic of the monetary union policy field. It then goes on to identify the problematic diversity that will come to the fore with the adoption and implementation of the present acquis by the candidate countries (section 4.3.3).

4.3.2 DYNAMIC

The Maastricht treaty of 1991 ushered in a further broadening and deepening of economic integration and a reformulation of the economic objectives and basic principles of the Community. A number of these objectives and principles, such as the aim of sustained, non-inflationary growth, a high measure of convergence in economic performance and the basic principles of price stability, healthy public finances, monetary conditions and balance of payments equilibrium, relate directly to the nature and quality of the monetary union. To this end the Treaty outlined a provisional programme consisting of three stages and laid down a 'constitution' for monetary union to come into force in the final stage. According to these provisions the monetary policy (and hence important prerequisites for the exchange rate policy) of the EMU is centralised, the political independence of the European Central Bank in relation to the member states is guaranteed and the Bank is required to pursue policies giving priority to the goal of price stability over any other economic goal (Pelkmans 1997: 303-304).

Figure 4.4 Economic policy coordination



Text-box 4.4 The policy practice of the EMU

The policy practice of the EMU has developed consistently in the years since 'Maastricht' into a comprehensive institutional framework of monetary and socio-economic policy coordination of various separate annual policy cycles. Monetary policy is conducted by the *European System of Central Banks* (ESCBs), consisting of the *European Central Bank* (ECB) and the 15 *national central banks* (NCBs) of the member states. The monetary decisions are taken jointly by the ECB and the NCBs but are largely implemented at decentralised level by the NCBs. The *Governing Council*, consisting of the *Executive Board of the* ECB (the President, Vice President and the four other members) and the NCBs participating in the euro together form the highest monetary decision-making body, taking strategic decisions on such matters as interest rates. The members of the Governing Council each have one vote and generally take decisions by majority vote. The Executive Board has the task of conducting monetary policy in accordance with the guidelines and decisions of the Governing Council (Van den Berg, Van Dijk and Van der Werff 2000: 150-151). In practice, however, monetary and budgetary policy and the coordination thereof with socio-economic policy is a complex and demanding process that is bound to evolve considerably in the coming years: although the Treaty lays down a monetary constitution, the way in which monetary policy is arrived at in practice cannot be derived from a constitutional model. It is for example still unclear how the allocation of the respective tasks between the NCBs and the ECB will develop and also which mutual policy relationships will crystallise out between the ESCB, the European Council and the Commission. Only the most important formal procedures will therefore be outlined.

The *Ecofin Council* and, to a lesser extent, the *Social Council* occupy a key position, e.g. via the Stability and Growth Pact (for budget policy) and the Processes of Luxembourg, Cardiff and Cologne (see figure 4.4), respectively for employment and labour markets, structural policy and regulatory reform and the macro-economic dialogue with the social partners and others. Subject of course to the primary objective of price stability, the ESCB is required to support the general economic and social policy objectives of the Treaty. To this end the President of the ECB is always present if the broad economic policy guidelines are under discussion in the Ecofin Council. In addition he may attend Ecofin deliberations on the Stability and Growth Pact and on topics directly related to the ESCB. The ECB is also involved in the broad economic policy guidelines. The national central banks are also directly involved with the broad guidelines and the Stability and Growth Pact via their representation in the supporting Economic and Financial Committee of the Ecofin Council.

As was also seen in the previous section, the monetary union project has set in train an enormous deepening of the internal market. It has also resulted in divergent processes of European policy coordination, including the Stability and Growth Pact and the processes of Luxembourg, Cardiff and Cologne (see figure 4.4 and text-box 4.4). This also applies to the area of social policy. Since the 1980s the liberalisation and deregulation under the European Act has found a counterpart in the extension of EC powers to conditions of employment and coordination of employment policy. As was seen above, this process has prompted the expansion of a Social Dialogue between European employers and trade unions. The social agenda has however been updated for a number of reasons on account of the introduction of the euro. In the first place the elimination of exchange rates

as an adjustment mechanism automatically means that economic fluctuations in the Eurozone must be absorbed by other instruments, such as enhanced price, cost or wage flexibility and increased labour mobility between sectors and between regions. In the second place the further integration of European capital markets, the deepening of the internal market for services and the consequent merger wave have sparked off a radical restructuring of companies, industrial relations and corporate cultures (Ministerie van Sociale Zaken 2000).

Whether this dynamic will ultimately go further than undemanding forms of European approximation of conditions of employment policy is hard to predict. This would not appear particularly likely in the next few years. A number of member states of the Union have only recently reaped the benefits of the further flexibilisation of conditions of employment and social security with a view to increasing competitiveness, combating unemployment and reducing the budget and financing deficits. A number of other member states, including Germany, France, Italy and Greece, are still in the middle of this flexibilisation process. Furthermore most of the social partners and governments are agreed that pay determination must be geared to regional and national productivity differentials. For these reasons the emphasis in the coming years will, given sustained economic growth, probably remain on loose forms of policy coordination to promote the growth of employment. This is consistent with the EU goal of achieving a participation rate of 70 percent in 2010, as formulated at the Lisbon European Council in June 2000.

Parallel to the deepening of the internal market and the further coordination of socio-economic policy the agenda will also be directed in the coming years by a number of more specific monetary, political and institutional issues. The Maastricht Treaty represents a precarious compromise in which a number of sensitive decisions were deliberately postponed until further notice. There is still a lack for example of a more centralised transfrontier financial stability and supervision mechanism, a clear regulation of the lender of last resort function and a redistribution system for the exchange rate gains (known as seigniorage), even though these have only become more essential with the advent of monetary union (Bini Smaghi and Gros 2000). In addition the political question arises as to whether the ECB will have sufficient legitimacy and internal coordination in due course. This question is closely related to the extent of the ECB's independence. National states will in the future inevitably be confronted by monetary decisions by the ECB that have radical economic and social implications. At a time of economic downturn they could begin to exert pressure on the ECB to relax the strict policies aimed at high stability and budgetary discipline so as to boost economic growth and employment. Precisely because monetary policy is required to stimulate 'general economic policy in the Community' under the EC Treaty, conflicts of interest between the member states cannot be ruled out. These could then be translated into divisions within the Governing Council. It is for example conceivable that the central bank governors of countries with a high national debt will seek to reduce the pace of interest rate increases and to accelerate interest rate cuts

– thereby potentially undermining the credibility and stability of the euro (Wellink 1999).

Apart from promoting socio-economic policy coordination, monetary union is providing a further stimulus for debate on enhanced political cooperation. The key question generally raised is whether the EMU dynamic will give rise in due course to a political union or whether a monetary union can be viable without a political counterpart. Although this question is often asked it is hardly capable of satisfactory answer, if only because of the differing interpretations given to the blanket term of political union. Generally speaking these aspects of desirability, probability and possibility are intertwined. Some advocates, such as the German Foreign Minister Joschka Fischer last year, envisaged a federal political union that hands over not just certain important economic but also political decisions to supranational European institutions. Others see a Union evolving with gradually more policy coordination in the field of taxation, pensions, social security and immigration, while others again anticipate a Union with its own budget or a kind of EMU fund that can serve as a buffer mechanism to cope with asymmetric shocks.

The international dimension of the EMU and the euro is providing these debates with an additional push. A monetary union wishing to speak with a single voice to the outside world needs one clearly identified external spokesperson. The European Council has provisionally decided that the chairman of the Euro-12 Council in collaboration with the President of the ECB should act as external representatives of the Eurozone in international financial forums such as the IMF and the G8. For the time being, however, the national European governments have clung on to their national seats in addition to those of the Eurozone and appear unprepared to relinquish them in the short term (Tsoukalis 2000: 175). This sensitive issue will therefore appear on the agenda of the European Council again. In this report about the accession of the CEECs the WRR has not given consideration to this subject of the further institutional and political deepening of integration, but is likely to do so in the follow-up report on potential integration strategies for the post-enlargement period.

4.3.3 ADJUSTMENTS BY THE CENTRAL AND EAST EUROPEAN COUNTRIES TO THE ACQUIS: IDENTIFICATION OF PROBLEMS

Following the accession to the EU the CEECs will need to prepare themselves for participation in the monetary union. This means that they will need to declare their agreement with the objectives of EMU and to accept the obligations arising from 'derogation status' (see table 4.3). These include the existence of an independent central bank, a ban on the direct monetary financing of budget deficits by the central bank, a prohibition on privileged access by the government to financial institutions and the application of the provisions in the Stability and Growth Pact to countries with derogation status. These oblige the countries to draw up multi-year convergence programmes and, in due course, to take part in

the new exchange rate mechanism, ERM-2. Within this system the new member states must maintain a fixed but adjustable parity (central rate) for at least two years between the national currency and the euro within a band width of plus or minus 15 percent. This is a formal prerequisite for qualifying for the third and final stage of EMU.

With accession to the EU in prospect most of the candidate countries have already adopted some of the necessary legislation to bring their monetary system into line with the requirements of the EMU acquis and the Maastricht conditions. This applies in particular to safeguarding the independence of the Central Bank, excluding the possibility of privileged access by governments to central banks and strengthening the supervision of the financial sector. Several of these countries are in fact already in compliance with a number of convergence criteria and/or have anchored their exchange rate to the euro or taken the euro as the reference currency in a system of floating exchange rates.

Table 4.3 Criteria for accession to EMU

Adoption of the acquis communautaire	Maastricht convergence criteria
• At the point of accession to the EU the CEECs must adopt the acquis, unless they have negotiated transitional provisions. In the case of the EMU this applies especially to: • The obligation to regard the **exchange rate policy** as a common interest, including participation in ERM-2; • The obligation to regard **economic policy** as a common interest and to take part in the economic policy coordination and supervision mechanisms of the EU; • **Legislation relating to central banks:** national legislation may not counter the independence of the ESCB. All other EC treaty obligations must also be observed; • **Legislation relating to capital movements**: capital movements must be liberalised before accession; • The introduction of an adequate system of rules and supervisory mechanisms for a **healthy banking system and effective financial system**.	• **Government deficit**: must be no more than 3% of GDP on an annual basis in the reference year (1997); this criterion also remains important after the start of the EMU; countries not complying with this norm are 'fined'; • **National debt**: must be no more than 60% of GDP in the reference year (1997), or the ratio (*between the national debt and GDP*) must have declined substantially and consistently and have reached a level approaching the reference value; • **Exchange rate**: the country's currency must move within the normal fluctuation margins of the EMS without major tensions for a period of at least two years before the investigation. The member state may not have unilaterally devalued or revalued the central rate in relation to another member state; • **Long-term interest rate**: may not be more than two percentage points higher than that of no more than three member states that have performed best in the field of price stability. This criterion is a measure for the *sustainability* of the convergence; • **Price stability**: inflation measured over a period of one year before the investigation may not be more than 1.5 percentage points higher than that of a maximum of three member states in performing the best in the field of price stability. Source: Deutsche Bank Research (2000).

Source: Deutsche Bank Research (2000).

Table 4.4 EMU convergence criteria and the Central and East European candidates*

	Inflation in % per year			Long term interest	Government deficit			National debt			Exchange rate regime
	1999	2000	2001	rate	1999	2000	2001	1999	2000	2001	As at september 2000
value											
Bulgaria	0.3	8.3	4.9	5.0	-1.0	-1.5	-1.5	93.6	95.5	97.5	Currency board (euro)
Czech Rep.	2.1	4.1	3.1	7.1	-4.2	-4.0	-3.4	29.0	29.0	28.5	Managed float (euro reference)
Estonia	3.3	3.9	4.8	6.9	-4.7	-1.1	-0.9	11.0	11.1	11.8	Managed float (euro reference)
Hungary	10.0	9.6	5.8	8.4	-3.9	-3.0	-3.0	72.7	70.0	63.8	Fluctuating band (euro)
Latvia	2.4	3.4	4.1	11.1	-3.8	-1.9	-1.6	10.6	10.6	10.4	Fixed exchange rate
Lithuania	0.8	1.8	3.4	10.0	-8.6	-2.9	-2.5	28.6	26.4	26.7	Currency board (US dollar)
Poland	7.3	10.1	6.7	12.3	-3.7	-2.4	-2.2	43.0	43.9	43.7	Floating (euro reference)
Romania	44.8	44.2	22.9	45.0	-4.0	-3.5	-3.0	32.3	31.3	30.4	Floating (euro reference)
Slovakia	10.6	12.1	6.4	7.7	-4.1	-5.7	-5.8	26.5	28.5	29.0	Floating (euro reference)
Slovenia	6.1	8.7	6.8	n.b.	-0.7	-1.0	-1.0	24.3	25.0	25.5	Floating (euro reference)

*The figures for 2000 and 2001 are estimates.
Source: Deutsche Bank Research (2000).

Nevertheless many experts consider that the aim of nominal convergence during the run-up to or immediately after EU membership even poses risks for the CEECs. They note a number of complications. In the first place the further economic development of these countries would inevitably be coupled with major changes in the financial structure and the money supply – due for example to a broadening and deepening of the share market and an expansion of lending that will substantially complicate the selection and application of the correct nominal anchor for monetary policy. Secondly a stable and credible monetary and budgetary policy could be made more difficult by substantial and highly variable short-term capital flows. Above all, undue concentration on the simultaneous reduction of inflation, government deficits and stabilisation of the nominal exchange rate could be at the expense of catch-up growth (IMF 2000: 167), as the latter is coupled with higher trend-based inflation (the Balassa Samuelson effect), thus generating an appreciation of the real exchange rate. This effect is further strengthened if the national currency is linked to the currency of a region with lower inflation (such as the Eurozone), which will be coupled with a high level of capital inflow (Orlowski 2000; Andreff 2000; IMF 2000).

A number of economists therefore expect that the CEECs will drop their present, often stringent, fiscal and monetary policies with which they are seeking rapid qualification for ERM-2 once the inflation and debt norms of Maastricht have been attained. Relaxation of budgetary policy and the inflation targets will enable them to achieve more rapid economic and employment growth in the short-term, but in the medium term they will be weakening their nominal convergence performance. Only by conducting a much more stringent budgetary and monetary policy than before would they be able to restore sufficient credibility in the financial markets. In this way they would however be walking down a difficult stop-go

path in the direction of the euro, with relatively sharp fluctuations in income and employment (European Parliament 1999c; Andreff 2000: 132).

Some consider that in certain circumstances accession to the EMU could also be problematic for the stability of the Eurozone. Relatively pronounced nominal income differentials, sizeable agricultural sectors and still underdeveloped service sectors would point to substantial divergence from the Eurozone (see table 4.5). Partly because the new member states must still go through a lengthy process of catch-up growth and economic restructuring and will also be burdened in the coming years with substantial spending on the environment and the infrastructure, they are likely to be more frequently confronted by national, sectoral or region-specific shocks.

Table 4.5 Structural economic characteristics of the Central and East European countries

	Per capita GDP in ECU (% of per capita GDP of Euroland)	Per capita GDP at purchasing power parity (% of per capita GDP of Euroland)	Share of industry in GDP (%)	Share of agriculture (%)	Degree of openess (exports and imports as % of GDP)	Exports of Euroland (as % of total exports)
Czech Republic	24	60	32	4	61	59
Estonia	16	36	18	6	85	30
Hungary	21	48	25	5	46	68
Poland	18	36	24	4	26	59
Slovenia	44	68	28	3	57	62
Luxembourg group	25	50	26	5	55	55
Bulgaria	7	23	22	19	46	39
Latvia	12	27	21	4	54	28
Lithuania	13	31	21	9	53	28
Romania	8	27	32	16	30	58
Slowakia	17	46	27	4	69	53
Helsinki group	11	31	25	10	50	41

Source: ECB, Monthly Bulletin, February 2000

The present Eurozone could therefore be confronted more frequently than before by conflicting insights concerning the appropriate monetary policy. Some consider that such conflicts could already take place in the run up to EMU. If accession takes place for example in January 2004 and the treaty-based 'standard process' were to be followed, the first CEECs would not be able to accede until around the second half of 2007.[11] Baldwin et al. warn however that the reality could be different since the evaluation of the convergence process and the ultimate accession decision is a political decision by the Ecofin council, in which the new Central and East European member states would have full voting rights (and right of veto) from the outset. In practice this could mean that the rules for euro participation could be eased. The new EU member states could for example make their approval of the institutional reforms of the ECB that will be required if the ECB Board is not to have an

unworkably large number of members in the future dependent on a flexible interpretation by the other countries of their nominal convergence performance. EMU enlargement could then already take place towards the end of 2005, but would be at the expense of the credibility of the euro (Baldwin et al. 2000: viii; European Parliament 1999c; Cavelaars and Roovers 2000: 826).

The increase in the number of member states could even exacerbate the credibility problems. In the absence of reforms the ECB Board could in due course – once the CEECs have acceded to EMU – consist of up to 34 members (the six member of the ECB Governing Council and the maximum of 28 directors of the NCBs). In the most favourable case this would result in laborious, extremely slow decision-making tending to maintain the status quo. For this reason too a loss of effectiveness and credibility of the ECB would be inevitable (Baldwin et al. 2000: 26; Eichengreen and Ghironi 2001: 18-19).

Text-box 4.5 Institutional reform of the ECB

Varying proposals to safeguard effective decision-making after enlargement are in circulation. The possibility has for example been put forward of rotating voting rights by way of analogy to the system of the American Federal Reserve.12 The number of members of the Governing Council could for example be reduced to nine, although each member state would take part in the deliberations. It may also be decided to replace the current principle of 'one man one vote' in the ECB Council by a system of weighted voting related for example to the size of the national capital contribution to the ECB. Thirdly there is the option of the regional regrouping of central bank representatives by way of analogy to the reform of the German Bundesbank in 1992 when the number of Landeszentralbanken for the 16 German Länder was reduced to nine. The Benelux countries could for example share a single rotating membership on the ECB Council. It would also be possible to reduce the direct input of the national central banks in decision-making by transferring monetary policy solely to the ECB Executive Board. National input could then be provided through the Ecofin Council, which could lay down the overall monetary policy and, in particular, the inflation targets to be met by the Council. In order to strengthen the democratic control the supervisory role of the European Parliament could also be strengthened.

At the Nice European Summit the door to reform of the ECB Council was opened a crack when the government leaders included a clause in the Treaty which, while not permitting changes in the composition of the ECB Council, did invite a proposal to amend the ECB's decision-making procedures. This proposal does however have to be approved unanimously by the European Council and to be ratified by the member states (European Commission 2001b).

The Annual Report of De Nederlandsche Bank published in May 2001 suggests that even after the accession of the new member states to monetary union the enforcement of the status quo whereby all ECB Council members have a vote 'is not necessarily bad', particularly since the internal meeting procedures can always be modified. The Dutch Central Bank (DNB) appears, however, also to be open to systems of (partial) rotation, particularly if account were to be taken of 'economic weight and duration of involvement in the EU and the EMU project'. (De Nederlandsche Bank 2001a: 36-37)

In the light of these gloomy scenarios it is not surprising that the European Commission and the ECB and also the member states and national central banks are all taking a very cautious stance. They consider that the process of accession to EMU must above all not be too rapid and should at any event take place in two clearly distinguished stages of the standard process outlined above. The Dutch government endorses this position in the most recent government memorandum on EU enlargement, which states:

> A cautious approach towards accession to EMU is in the interests of both the new member states and the current members of the Eurozone. Although rapid participation (after two years) by the new member states in EMU would be technically feasible, it is questionable whether this would be desirable. Early EMU accession would deprive countries of the flexibility to stabilise the economy against country-specific shocks by means of the exchange rate instrument, although the utility of an independent exchange rate policy is the subject of discussion among economists. In addition efforts to comply very rapidly with the nominal convergence criteria could conflict with the necessary structural reforms; this could be at the expense of the growth prospects in the long term. The Treaty therefore lays down that a high measure of 'sustained convergence' is required for acceptance of the euro. (Ministerie van Buitenlandse Zaken 2000: 16)

If anything the leadership of the German Bundesbank is more cautious. On the eve of the EU Summit in Nice they argued last year for stricter conditions than the Maastricht criteria, out of concern that the CEECs would undermine the stability of the euro.[13] In chapter 7 the WRR will however conclude that all sorts of safeguards have been introduced in the current accession policy under which such risks have been kept manageable. These risks could shrink further if the proposals made in that chapter were to be implemented.

4.4 THE COMMON AGRICULTURAL POLICY

4.4.1 INTRODUCTION

The Common Agricultural Policy (CAP) of the EU has the reputation of being one of the biggest potential stumbling blocks to enlargement. As a result of this reputation the short-term and long-term advantages and opportunities of enlargement for agriculture often remain underexposed. Already now the Central and East European area is an important market for European and also Dutch agricultural products, especially at the top end of the market, and this demand is continuing to grow. The enlargement will increase the two-way market access for agricultural products, further strengthen the institutional and legal infrastructure and hence also facilitate the investments and technology transfer to the candidate countries. These countries moreover contain regions with the natural and economic potential to evolve into efficient, internationally competitive areas of production for agricultural raw materials and bulk goods (Hathaway and Hathaway 1997). In the long term complementarity could therefore arise between the densely populated regions in North-West Europe (including large parts of the Netherlands) which, as a result of high land prices and the logistical advantages,

are economically more suitable for the production of agricultural and horticultural products with a high added value, and the generally sparsely populated and agriculturally favourable regions in Central and Eastern Europe that are particularly (but not exclusively) suited to agricultural bulk production and organic farming (Josling and Tangermann 1997).

Such opportunities can however only be exploited if a number of obstacles on the part of the Union and the candidate countries are overcome in the short and medium term. As will be argued in section 7.4, further reforms of the CAP are not just desirable but, in the light of the coming enlargement, virtually inevitable. These will need to be more radical than the adjustments decided on by the Berlin European Summit.

The emphasis in this section is on the accession prospects. These are however indissolubly bound up with the recent dynamics within the sector and the policy and with the discussion about the implications of fundamental technological and social changes such as increases in scale, chain reversal and business concentration and the growing emphasis on food safety, environmental, nature conservation and landscape objectives. The question repeatedly arises in all these developments as to the direction in which the sector and policy could and must develop. Will the combination of successive food scandals and crises in the industry (BSE and the dioxin crisis, swine fever and foot and mouth disease), budgetary pressure exerted by the member states and the pressure by the WTO lead to a fundamental change in course or will the policy change only marginally after enlargement? Whatever solutions are chosen these will not only directly affect the economic and social development of the CEECs but will also affect the future effectiveness and legitimacy of the Union as a whole (European Commission 1998b). This will be shown by the analysis below.

4.4.2 DYNAMIC

Since the 1960s European agricultural has been predominantly subject to the complex market-regulation system of the Common Agricultural Policy (CAP). The comparatively general agricultural articles 38-46 in the original Treaty of Rome reflect an agreement in principle on five policy objectives, all of which remain formally in force (see table 4.6). The Treaty did not, however, comment on the setting of priorities, the interrelationships between these goals and the specific policy instruments.

Initially the policy stimulated a veritable economic and social transformation. Productivity rose at breakneck speed and the outflow of labour from the agricultural sector was around 3 percent a year.[14] Since the end of the 1970s, however, the policy has assumed all the characteristics of a defensive modernisation strategy aimed at protecting the farming population against the external pressures of the world market and the internal pressures of regional specialisation, industrialisation and technical change in a single European market (Rieger 2000: 182-184).

Two specific interpretations of the original article 39 (now article 33) have been instrumental in this process: the productivity objective was initially translated in particular into increasing the scale of production and the income objective into guaranteeing a reasonable level of income for *all* farmers, irrespective of the commercial viability of their farm in the longer term and their contribution towards the labour productivity in the sector. This was justified by the argument that the agricultural industry is an economic sector with unique (income) problems that require specific *sectoral* support measures.

Table 4.6 Common Agricultural Policy

Objectives:	Instruments:	Basic principles:
• Increasing productivity • Guaranteeing a reasonable standard of living • Stabilising markets • Safeguarding the food supply • Guaranteeing reasonable consumer prices	Market regulation via: • Variable levies • High tariffs and restrictive tariff quotas • Restitution payment • Direct grants and set-aside Structure policy via: • Agricultural structural fund	• Unity of the market for agricultural products • Community preference • Financial solidarity among member states

In this regard the European CAP is by no means unique (Field 1998); the same policy underpinning may be found outside Europe as well. Reference is in the first place made to the uncertain and highly variable conditions of supply, the low price elasticities of demand and the large number of agricultural suppliers. In the short term these circumstances can produce sharp price and income fluctuations. In addition the income elasticity of a good many agricultural products is low. Even if the growth in sectoral productivity is comparable with that in the industry and service sectors as a result of technological developments, the income elasticity means that the share of the agricultural sector in total added value will lag behind given sustained economic growth and prosperity. In the long term agriculture is accordingly characterised by a relative shrinkage of employment (Strijker 2000).

Secondly reference is made to the special politico-strategic importance of a guaranteed and stable supply of agricultural products for the food supply. In the 1950s and 1960s, an important argument of a social nature was also advanced; agriculture, it was argued, is a family-based activity tied to the land that is passed on from father to son and from generation to generation. This provides society in general and rural areas in Europe with a high measure of social stability (Hathaway and Hathaway 1997: ch. 10). In order to prevent this stability from being seriously disrupted by the economic transformation to an industrial or post-industrial society, temporary income support was therefore considered unavoidable.

The instrument selected at the time for these objectives remains largely in place and in fact remained more or less intact until the MacSharry reforms of the early

1990s. The CAP provides guaranteed prices for important agricultural products, extremely high import duties at the outer borders, a number of restrictive tariff quotas and export subsidies for the marketing of surpluses in the world market. No other sector has such exceptional market intervention, with the exception of sea-fishery, where scarcity and sustainability considerations justify government involvement. The guarantee prices are determined in annual negotiating rounds. Initially this took place at a level that also provided the marginal family businesses with a politically-based income guarantee (Kapteyn and VerLoren van Themaat 1995: 685). An explicit structural agricultural policy aimed at making economically less viable farms or regions more efficient and competitive or promoting labour mobility to other sectors, however, barely got off the ground (WRR 1992: 40).

The negative effects and tensions between the 'classical' CAP objectives and instruments have been known for decades and were once again inventorised several years ago by the Buckwell group of agricultural experts (Buckwell et al. 1997).[15] The system of guaranteed prices – aimed at maintaining reasonable incomes for producers – encourages extra production, thereby contributing towards long-term imbalances between demand and supply instead of market stabilisation. The resulting overproduction must be absorbed by means of additional subsidies and storage systems and hence at additional cost. These export subsidies depress the world market prices, disrupt the agricultural markets in developing countries and, together with the high import duties, lead to numerous trade disputes. The linkage of the support to the scale of production moreover has regressive income effects. In other words: the bigger the turnover of a farm the greater the subsidies it receives. On top of this some 80 percent of the support provided under the system ends up with 20 percent of the farmers, most of whom are large-scale producers of 'northern' products such as meat and dairy products. The complex indirect support payments via market regulation and export restitution render the system of expenditure opaque and susceptible to fraud. In the absence of an effective structural policy the price policy moreover means that more land than necessary is kept in production, the outflow of labour from the sector is slowed down and extra encouragement is provided for mechanisation and the use of variable input such as feedstuff crops, fertiliser, herbicide and pesticides. This results in a relatively high capital input per unit of labour and per hectare and extra vulnerability to price and income fluctuations.

The complex historical, economic and institutional explanation for the rigidity of the CAP have been analysed in detail elsewhere and require little further comment. Here we may just note the politicisation of agricultural policy and the potential consequences of this for enlargement. The immovability of the policy is explained by the marked influence of divergent agricultural lobbies and the lack of powerful counter-lobbies in Europe, by the fragmented nature of the decision-making mechanisms within the sector and the mythical reputation of the CAP as the oldest actual Community policy and as a 'cornerstone' of European integration (Mayhew 1998: 238; Hix 1999: 253).[16] New problems are in general consequently met by a new arsenal of rules and instruments, heaped on top of the existing

ones. This is inevitably coupled with an increase in CAP expenditure. No single active reform (neither the modest reforms of the 1980s nor the MacSharry reforms nor the measures adopted at the Berlin European Summit in 1999) have managed to stop the steady increase in EU agricultural spending. This process obtains extra weight from the institutionally enshrined role of the Ministers of Agriculture of the member states. The Council dominates the policy agenda of the sector and has a high measure of autonomy in relation to the Commission and the European Parliament. In practice, however, an agreement without the concurrence of France and Germany would be inconceivable. Domestic political shifts in these two countries can therefore also have a major bearing on the potential for reforming European agricultural policy (Field 1998; Grant 2000; Peterson and Bomberg 1999: 135).

As earlier experience illustrates, this political game has direct consequences for enlargement. Thus the accession of the United Kingdom, Denmark and Ireland in 1973 alleviated the problem of the surpluses in the short term since the UK was a net importer of agricultural products. The other side of the coin however was that the number of products to which the agricultural protection regime applied was extended. In addition exporters from third countries lost large parts of their markets and in the long term the overproduction and hence budgetary costs of the CAP simply kept rising. The enlargements of 1981 and 1986 brought southern products such as olive oil, wine and sunflower seeds under the Community market intervention policy, with a fresh rise in costs. The enlargement to take in Sweden, Finland and Austria in 1995 strengthened the attention to environmental measures in agricultural policy, but this too took place with the retention of the old policy objective and instruments (Field 1998).[17]

The consequence of these ad hoc adjustments is that after each enlargement the policy has become more heterogeneous, unbalanced, opaque and less communitaire (Buckwell et al. 1997: 44). This development is reflected by the inexorable increase in the number of divergent commodity regimes. Sugar and dairy products for example are still subject to classical price support (but with a system of production quotas), oil seeds are subject only to direct compensatory payments, while for cereals and beef both border protection and direct support are provided, but in different ratios. Expressed as producer subsidy equivalents (PSE) the level of support varies considerably, from roughly 60 percent for sugar (see text-box 4.6) and milk to 15 percent for eggs (Grant 2000; Rabinowicz et al).

Text-box 4.6 Sugar in the CAP

Current acquis

The vicissitudes of the sugar regime exemplify the power of established interests in the CAP. So far the sugar lobby has successfully resisted adjustments to a regime that has remained virtually unchanged since 1968. The regime rests on a complex system of production-limiting quotas, high guarantee prices and world-market-distorting export subsidies largely funded by direct producer levies. According to estimates by the European Court of Audit this system nevertheless indirectly costs the European consumer roughly 6.5 billion euros a year. The European Commission has not dared commit itself to proposals for a radical liberalisation of the support regime, partly because the member states with an interest would only be prepared to be 'bought off' by direct compensatory payments at very high cost; the EU price for sugar is around 100% above the world market price. If the European support price were to be reduced to 50% above the world market price, this would still cost the EU 2.25 billion euros in compensation payments.

Reforms before enlargement?

These temporary costs in the short term are however as nothing when compared with the financial commitments that the EU would enter into in the long term if the current protectionist sugar regime were to remain in place. In recent years the candidate countries have sharply increased sugar production in the expectation that they will be able to demand higher production quotas in the accession negotiations and to count on higher production subsidies after enlargement. The candidate countries will be providing the deeply entrenched interests of the sugar producers in the EU member states with a leg-up. What the Buckwell group of experts predicted to the Commission in 1997 is therefore already taking place. They already warned: '…why should Poland deprive itself of a subsidised sugar industry if all other Member States have one?' (Buckwell et al. 1997)

Under the Swedish Presidency an extension of five years to the price and production regime, albeit with certain minor adjustments, was agreed at the end of May 2001. The subsidies under the EAGGF for sugar storage are to be abolished, so that the EU will annually save 300 million euros. In addition it has been decided to re-examine the sugar regime during the Mid-Term Review of 2002. The indications are that a proposal will then be tabled for an annual linear reduction in the production quota in exchange for consent to Spain, Portugal and Southern Italy to continue supporting their national sugar refineries (Agence Europe, 24 May 2001). The lack of legitimacy, limited effectiveness and high social costs of the CAP within the EU itself as well as the political and economic damage caused by the policy in the rest of the world have been subject to increasingly frequent and fierce criticism since the early 1990s. The most fundamental criticism focuses on the original objectives of the policy, which have remained formally unchanged since the setting up of the European Community. One by one these objectives have lost their social relevance. The productivity per hectare, unit of labour and per animal in the agricultural sector has risen explosively in recent decades as a result of (partly autonomous) technological developments having nothing to do with the CAP itself (such as increasing automation, the advent of ICT, improvements in logistics, the development of precision agriculture and biotechnology) (Strijker 2000). This growth in productivity will be sustained in the coming

years. As noted previously, the attainment of this objective has in fact led to so many complications that the CAP is trying at the same time to rein in *production*. The area technically required for food production is therefore much smaller than the present agricultural area in the EU (WRR 1992: 23). The food security argument has consequently also faded into the background since the 1960s. At European scale the production capacity is large and stable enough to meet consumer demand even after liberalisation of the CAP.

Partly on account of the unparalleled growth in productivity, the share of agriculture in total employment has fallen heavily. Since the 1990s it has been around 5 percent for the EU as a whole and 3.6 percent for the Netherlands. The share of the sector in the total GDP of the EU has fallen to just under 6 percent.[18] The large rise in the number of part-time farmers no longer appears to point to the existence of a comprehensive and typical *sectoral* problem requiring sectoral intervention. In so far as there are negative income differentials these relate mainly to certain *households* and *regions*. Research conducted for example for the OECD and the Swedish government indicates that such shortfalls are generally attributable to a specific combination of social and economic factors, such as farm type, size and location in conjunction with the age and background of the farmer (Rabinowicz et al).

Apart from criticism of the outdated objectives considerable attention has been paid in recent years to the interventionist, ineffective and inefficient instruments employed by the CAP. Although a great many economic sectors have lost direct government protection, are required to compete nationally and internationally under their own strength and must at the same time abide by ever stricter social and political requirements with respect to the environment and welfare, there remain elements of agriculture that are disproportionately protected and/or which receive compensation for observing minimum standards accepted elsewhere as mandatory. There is also criticism of the fact that the bulk of the CAP measures and expenditure is not directed towards weaker households and regions. At issue therefore are incomes that are often well above the welfare level and that have come to represent a vested interest of permanent subsidisation in whatever form. Furthermore the direct income payments (in combination with production limitations) consolidate the culture of dependence in the agricultural sector that arose during an earlier stage under the market and price policy. What it comes down to is that farmers are unable to take their own production decisions as free entrepreneurs and to respond to market signals (EU-CAP.NET 1999). Ironically enough they are condemned to produce under circumstances comparable with those of the old communist planning system: a system of disrupted prices, organised trade and high subsidies (Mayhew 1998: 238).

This is also underlined by the Buckwell group, which noted on the basis of the example of direct income support and price support for hill farmers:

The crucial conclusion of this discussion is that subsidies (…), either through direct 'income' payments or through commodity price supports, are equally inefficient and unjustified. Unless the income payments are arranged on a household basis, and all household income and wealth are assessed, they have no right to their name, and in any case, a strong argument has to be advanced why the normal social benefits available to the rest of the population are inadequate for this occupational group. Providing subsidies (…) via milk, sheep and beef prices is an extremely blunt instrument as most of the benefits will accrue to the lower cost, larger producers in the plains thereby stimulating overproduction. (Buckwell et al. 1997)

The Buckwell committee rightly concluded that direct income support under the CAP could at most be justified where this was purely a temporary transitional measure intended to help farmers switch to new or supplementary economic activities. Nevertheless governments and farmers' organisations often regard the direct payments as a permanently acquired right that must be defended to the hilt (Buckwell et al. 1997). This attitude has certainly not gone unnoticed in the CEECs. Indeed, here too the farmers welcome the direct income support as an element of the acquis to which they will lay claim immediately after enlargement. That this support is unsuitable in the long term for improving the macro-economic outlook for the sector as a whole in no way detracts from this marked desire to preserve the support for the improvement of individual incomes.

Text-box 4.7 Principal elements of the WTO agreements

In 1994 the GATT/WTO agreement of the Uruguay Round was concluded. The principle agreements for agriculture concern:

- Market access: all (variable) import restrictions are to be converted into fixed tariffs. These tariffs will be cut over six years by 36 percent.
- Export support: expenditure on export subsidies must fall by 36 percent over six years and the volume of subsidised exports must also fall by 21 percent over the same period.
- Internal support: with the exception of permitted forms of support, the total support budget for the sector must fall by 20 percent over six years.
- Production limitations: of the agricultural land for the production of oil-bearing seeds 15 percent is to be set aside or used for other crops during the first year. Thereafter this will be 10 percent a year. The EC production of oil-bearing seeds is to be reduced from 13 to approximately 9 million tons. The US will in their turn be reducing the export of soy beans and other cereal substitutes.

Source: Ministerie van LNV (Ministry of Agriculture, Nature Management en Fisheries) (1996); European Commission representation in the Netherlands (q.v.).

Under pressure from consumer and environmental groups, the pressing budgetary problems given ever increasing surpluses and the major pressure from the United States and the Cairns group of agricultural exporting countries in the WTO[19] substantial reforms of the CAP were implemented in the early 1990s (see text-box 4.7). The prospect that the CAP would need to be extended to a region of over 100 million people and a sizeable agricultural labour force increased the call for far-reaching measures. At the end of 1995 the European Commission published an Agriculture Strategy Paper[20] in which a new legitimisation was

provided for the European support to the agricultural sector. It was also urged that reforms be continued in the direction of policies more directed towards the market, the consumer and rural areas (Council for Rural Areas 2000). The incentives for overproduction would need to decline as a result and the expenditure on support-buying and export subsidies would need to fall. This policy strategy was adopted after the Berlin Summit on Agenda 2000, albeit in weakened form. Among the essential features are:

- gradual intervention and guarantee price reduction by 15-20 percent;
- increase in the direct compensatory payments to compensate for major price falls;
- development of an integrated rural policy for the 'European Agriculture Model' (see text-box 4.8);
- compulsory environmental standards in agriculture;
- improvement in food quality;
- simplification and decentralisation of the financial administration;
- simplification and decentralisation of programming procedures.

Text-box 4.8 A European Agricultural Model?

The concept of a European Agricultural Model (EAM) has gradually become established in European agricultural circles. The ' Agricultural Strategy Paper' of 1995 speaks of the necessity of an 'integrated rural policy'.

In clarifications to the Agenda 2000 proposals the Commission draws attention to the poor image of the cap. It realises that an agricultural sector which pollutes, which harmes the environment and which contributes to the spread of veterinary diseases will, in the long run, be unviable.

The new, more decentralised EAM would be characterised by:

- an agricultural sector that gradually will be able to face world market competition without relying on excessive subsidies
- an agricultural sector that uses environmentally friendly methods to generate quality products that meet society's expectations
- a widely diverse agricultural sector with respect for tradition, which does not merely aim at stimulating production but also at preserving widely varying landscapes and vital and active rural communities that create and preserve employment opportunities
- a simplified and more transparent agricultural policy which clearly distinguishes between policy decisions requiring community level involvement and those requiring action by individual member states
- an agricultural policy whose budgetary expenditure is transparent and justified by its functional role in society.

In various places the Commission refers to the special features of the eam in comparison with the agricultural systems of 'our major competitors':

There are many differences between their model and ours. The objective of a more competitive position for European agriculture should (..) not be interpreted as a blind submission to the market, which is far from perfect. The European Agricultural Model aims at safeguarding and more in particular at stabilising farmers' incomes through market intervention and direct support.

Although 'high prices, protectionism and bureaucratic regulation of production' are expressly rejected, farmers' incomes need to be protected at the same time according to these proposals.

Among other things the specific measures for the integrated rural policy are summed up in Regulation (EC) No. 1257/1999 of the Council of 17 May 1999 concerning support for rural development under the European Agricultural Guidance and Guarantee Fund (EAGGF) and for the amendment and introduction of a number of regulations.
Among other things this creates the possibility of making direct payments to member states dependent on the observance of environmental regulations (known as cross-compliance). Community financial resources have also been released for targeted environmental measures in agriculture (e.g. for organic farming, the preservation of semi-natural habitats, the continuation of livestock farming on alpine meadows and the maintenance of wetlands). These are provided on the basis of co-financing by the member states.
The Raad voor het Landelijk Gebied (The Netherlands Council for Rural Areas) (2000) also came out positively about the European Agricultural Model recently. It has recommended that the Ministerie van LNV takes this model together with an integrated European rural policy as the starting point for agriculture and nature conservation policy at European and national level.

Sources: European Commission (1998a); SER (1998); Raad voor het Landelijk Gebied (2000b).

The political struggle concerning the future course of the CAP will be increasingly concentrated in the coming years on rural and cohesion issues in an enlarged Union. The already marked regional and sectoral development differentials and the share of the rural regions and populations in the EU will after all increase as a result of enlargement (see also section 4.6). Under the MacSharry reforms, the Cork conference in 1996 on the future of rural development and the Berlin European Summit on the Agenda 2000 proposals it was decided to transfer more funds from the price support (out of the Guarantee Fund) to the direct support from the Guidance Funds (of the EAGGF expenditure).[21] The aim of this is to promote living conditions in the rural areas by encouraging multifunctional agriculture. In this way rural policy should become a second 'pillar' for the CAP (SER 1996; Josling and Babinard 1999; Grant 2000). The European Council has emphasised in this regard that the multifunctional role of agriculture relates not just to food production but also to care of the landscape and protection of the environment. This would be the essence of the aforementioned European Agricultural Model (Schrader 2000).

Since the Berlin Summit rural policy has had three 'strategic' objectives (see table 4.7). The first objective concerns *support* for a viable and sustainable agricultural sector *fulfilling a key function within the rural community.* In the first place this formulation reveals the explicit assumption that viable and sustainable agriculture will in any case require ongoing support. From the instrument summed up this is primarily a matter of financial resources. In addition these formulations, in combination with the first basic principle, indicate that the agricultural sector, including *multifunctional* agriculture, is seen as playing a crucial role in rural areas. This sectoral approach is also reflected in the list of specific objectives in the new Rural Development Regulation (EC) No. 1257/1999; at least half of this relates directly to agriculture. Although the second and third strategic objectives refer to a wide range of goals, such as the socio-economic strengthening of rural

areas, the improvement of the environment and landscape and the preservation of the natural heritage, the instruments set out and the list of sub-objectives fail at this stage to provide any evidence of analytical coherence and clearly defined functions for Community policy. The concern is rather with a wide range of varying objectives and activities. The input of financial resources for the practical elaboration of the policy confirms the interpretation of a predominantly agricultural approach towards rural policy. The funding comes from the CAP budget, of which it accounts for around 10 percent.

Table 4.7 Rural policy since the Berlin Summit

Strategic objectives:	instruments:	Basic principles:
• Supporting a vital and sustainable agricultural and forestry sector that plays a key role within the rural community • Creating the territorial, economic and social conditions to counter the rural exodus on the basis of a sustainable approach • To maintain and improve the environment, landscape and natural heritage	• Investment support • Establishment support • Education support • Early retirement support • Direct support for environmental measures (cross-compliance) • Compensatory payments for problems areas*	• Multifunctionality • Multisectoral approach • Efficiency
Specific objectives of EU rural policy		
• Specific objectives of EU rural policy • Improvement of the structure of farm holdings and infrastructure for the processing and sale of agricultural products • Conversion and reorientation of agricultural production potential, introduction of new technologies and improvement of product quality • Stimulation of production of non-food crops • Sustainable forestry development • Diversification of activity in order to develop supplementary or alternative activities • Maintenance and strengthening of vital social structure in rural areas • Development of economic activity and maintenance and creation of employment • Improvement of conditions of employment and living conditions • Preservation and promotion of agricultural systems requiring few means of production • Preservation and promotion of agriculture that enhances the countryside, is sustainable and complies with the environmental requirements • Elimination of inequality between and promotion of equal opportunities for women and men		

* Problem areas have been defined as:
"mountain areas which are characterised by a considerable limitation of the possibilities for using the land and an increase in the costs of working; less-favoured areas in danger of abandonment of land use where the convervation of the countryside is necessary; Other areas affected by specific handicaps."

Source: European Commission (2000d).

Table 4.8 Rural areas and agriculture in the EU and the Netherlands

Rural regions in the EU

The share of employment in agriculture is generally no more than around 30% in most agricultural rural regions of the EU. There is a substantial growth of non-agricultural employment, especially in the services sector.

Employment per sector and growth of employment in a number of EU regions (%)

	Year	Agriculture	Industry	Services	Period	Employment growth
Frontrunner regions:						
Luxembourg (B)	1994	8	20	71	'80-'92	0.9
Lower Saxony (GER)	1992	10	44	46	'80-'93	0.9
Corinthia (GR)	1991	33	22	45	'81-'91	0.8
Albacete (SP)	1995	12	30	58	'80-'95	0.2
Alpes de H. Prov. (FR)	1996	6	21	73	'81-'92	0.5
Pesaro (IT)	1995	5	43	52	'82-'95	-0.5
Drenthe (NL)	1995	7	27	63	'80-'91	3.6
Osttirol (AUS)	1991	10	35	55	'81-'91	0.6
Keski Suomen L. (FIN)	1995	8	30	62	'80-'93	-1.2
Backward regions:						
Lüneburg (GER)	1990	7	32	61	'80-'90	0.2
Pthiotis (GR)	1991	34	20	46	'81-'91	-0.6
Zamora (SP)	1995	28	20	52	'80-'95	-2.2
Ardennes (FR)	1990	8	37	55	'81-'92	-0.6
Nièvre (FR)	1996	8	27	64	'81-'92	-0.6
Macerata (IT)	1995	10	39	51	'82-'95	-1.5
Groningen (NL)	1995	2	24	70	'80-'91	2.4
Liezen (AUS)	1991	10	34	56	'81-'91	-0.4
Mikkelin L. (FIN)	1995	16	26	58	'80-'93	-1.8

Source: Terluin & Post (2000).

Rural areas in the Netherlands

The importance of agriculture for employment in rural areas is also diminishing in the Netherlands. On average agriculture, including agricultural services, now accounts for 12 percent of total employment in rural areas and non-agricultural services has become the most important economic activity (over 60 percent of employment). Recreation and tourism account for about 4 percent, industry and trade for roughly 25 percent. The regional variations in the relative share of agriculture are small. In the vast majority of Dutch municipalities the share of employment in the entire agri-complex is less than 15 percent, while the share in primary agriculture is less than 10 percent. The current economic significance of land-based agriculture is limited. In rural areas the number of firms is rising more rapidly than in urban areas. Typical examples are financial services, IT firms, artists workshops, transport businesses, storage firms and distribution centres. With a share of some 60 percent of the total land area of the Netherlands, agriculture is however still of course of major importance.

Source: Raad voor het Landelijk Gebied (2000a).

All in all the conclusion is justified that even with a rural component, the renewed CAP still has little eye to the changing position of agriculture in society. The rising productivity and declining employment in the sector mean that the persistence of rural communities is much less directly tied than before to the ups and downs of agriculture and the social imperative of maintaining farmers' incomes. In the regions of the EU designated as primarily rural the share of agriculture in total employment averages around 15 percent and the share of the added value per employee around 10 percent (Strijker 2000: 41). Agriculture has therefore increasingly lost relevance as a factor for social and economic stability in large areas of rural Europe. What is also clear is that the development opportunities for rural areas do not by definition lie in agriculture (see table 4.8).
The sector itself has become increasingly differentiated and, partly in response to technological change and chain integration, has changed greatly in nature.
The stronger position of the food processing industry and chain stores has added new links in the chain from producer to consumer. The role of the government as guardian of secure food supplies has lost public support since the mounting up of European production surpluses, whereas support for active government intervention aimed at the preservation of public interests such as food quality and safety and landscape, environmental and nature interests has increased (WRR 1992; WRR 2000b; Ministerie van LNV 2000). Since the recent outbreak of foot and mouth disease in Europe the debate has gone into higher gear. The new social wishes and objectives are, however, barely reflected in current rural development policy. These are still predominantly secondary considerations that are at best promoted indirectly on the basis of the old objectives and with the less than optimal instruments of the traditional CAP (Schrader 2000).

4.4.3 ADJUSTMENTS BY THE CENTRAL AND EAST EUROPEAN COUNTRIES TO THE ACQUIS: IDENTIFICATION OF PROBLEMS

As already seen from the structural economic characteristics of the candidate countries (table 3.1), agriculture accounts for a significant share of employment. At around 25 percent the share is nearly five times as high as that in the Union. The share of food in total household expenditure is nearly 50 percent above the EU average. These figures underline the fact that agricultural issues will play a crucial role in the future development of the CEECs. Agricultural production has fallen heavily in the region since the early 1990s, partly on account of the relatively rapid increase in the prices of factors of production, a drop in demand, incomplete privatisation and structural problems. Furthermore subsidised exports have made it easy for the EU to displace Central and East European producers (Mayhew 1998: 244-245). As a result of all these factors the return in the agricultural sector has declined substantially.

The most important agricultural sectors in the region are arable farming, dairy farming and meat production. Easily the most important producers among the candidate countries are Poland and Romania. Polish agriculture primarily produces cereals, dairy products, potatoes, sugar beet, beef and pork and Romania

produces agricultural cereals, oil seeds, milk, vegetables and fruit. These countries are followed at a distance by Hungary (primarily a producer of poultry, oil seeds, milk, vegetables and fruit), Bulgaria (vegetables, fruit and wine) and the Baltic States (dairy products and potatoes) (Silvis, Van Rijswick and De Kleijn 2001).

The agricultural sector in the CEECs is grappling with a lack of structural reforms, limited productivity increases and problems with adopting the EU agricultural acquis. To start with the first aspect: the privatisation and land reforms have been completed in most of the candidate countries, at least on paper. In practice, however, much remains to be done before property rights have been definitively established and the land market can function more effectively (European Commission 2000i). The sale of state property to private investors is hampered by a lack of capital and credit. This problem is accentuated by the fact that the uncertainty concerning property rights prevents potential investors from using their land as collateral for loans. The result is that the necessary investments in the production, marketing and distribution stages of the food production chain for improving product quality have largely still to take place. Agricultural productivity is consequently rising no more than slowly. Foreign direct investment is too limited and also overly concentrated in the market segments with a high added value (such as beverages, tobacco and luxury foodstuffs) – to plug this gap (Moehler, Nunez Ferrer and Fernandez 1999: 30). In addition such investment is held back by a number of statutory restrictions on the purchase of land by foreigners.

The adoption of the agricultural acquis presents the CEECs with a challenge of unprecedented proportions, if only because this requires a great deal of annual and also permanent legislation. Apart from the far-reaching harmonisation of legislation, the full implementation of the acquis and abolition of the internal borders for the trade in agricultural products requires a proper system of sectoral market organisations, control and inspection at the borders and an effective administrative and legal infrastructure in order to comply with the veterinary and phytosanitary requirements[22](European Commission 1997a). Although countries such as Hungary, the Czech Republic, Slovenia and Poland have made further progress than the Baltic States, Romania and Bulgaria, the efforts will need to be stepped up substantially in all the countries (Pelkmans et al. 2000: 37). In Poland for example the slaughterhouses and dairy farms are still a long way short of complying with the EU standards on hygiene and public health. In addition there are doubts within the EU about the capacity to implement adequate external border and disease controls (European Commission 2000i).

Following the transformation shock and the associated price and trade liberalisation of the early 1990s, most of the countries reverted to protectionist measures. The nature and scale of these measure vary considerably from country to country. Hungary for example switched early on to a system of local price support for farmers for a number of products and to direct market intervention. In Romania and Bulgaria, by contrast, the old system of price controls of before the revolution was abolished in 1997, while Estonia has only had an agricultural policy for the

last few years (Mayhew 1998: 253-255). The total level of protection, expressed in PSE, remains below the EU level in the CEECs (with the exception of Slovenia; European Commission 1998b). As against this, growing protection in most of the Central and East European countries has narrowed the gap with the price levels of the EU in the last two years. According to some estimates the price differences for cereals, pork and poultry will even have disappeared by the time of accession. The differences remain substantial however for sugar, dairy products and beef, as the quality shortfall in these product categories is still very great.

The most recent progress reports of the European Commission of late 2000 underline the fact that the pace of alignment with the agricultural acquis varies greatly. Slovenia is given the highest marks by the Commission as it has gone furthest in implementing the acquis. Nevertheless a mere 40 percent of the land is in private hands and the border control with Croatia still leaves something to be desired. Hungary has also nearly completed the adoption of the acquis, but still needs to take a large body of measures in order to implement the EU regime for cereals and fruit and vegetables. Poland, the Czech Republic and Estonia have made limited progress. Poland still has a great deal to do to improve the legal and institutional infrastructure and the adoption of the EU system for the collection of agricultural data. Without this system Poland will be unable to implement EU support policy. In the Czech Republic the framework for this support policy is almost totally lacking and the veterinary and phytosanitary legislation and regulations are inadequate. Estonia and Slovenia are grappling in particular with overproduction, poor standards in the food industry and inadequate land reforms (European Commission 2000i).

The agricultural policy of the EU appears in no way capable of dealing with the large structural agricultural expenditure in the new member states: in particular, agriculture in the candidate countries is in need of structural improvement measures aimed at increasing the productivity and competitiveness of agricultural enterprises and rural regions and assisting the necessary outflow of surplus labour from the sector. Since the end of the 1980s, however, the structural policy of the CAP has been aimed in particular at the extensification of agriculture and limitation of production. This has led primarily to the production of crops for which there are no surpluses and to infrastructure improvements. As a result competitive, profitable farms are paid to produce less, large landowners receiving large area-based grants are less inclined to lease their land to farmers seeking to operate along more profitable lines and non-profitable farms are propped up with the aid of subsidies (Buckwell et al. 1997). As in certain southern regions of the EU, this would imply for a number of rural areas in the CEECs that the outflow of labour from the agricultural sector would be held back while in the longer term productivity gains will only increase the pressure on agricultural incomes in the less profitable farms. In many cases, this only makes the development of new economic and social perspectives more difficult as there is a good chance that precisely the best placed and most enterprising inhabitants will depart given the relative deterioration in their incomes, thereby undermining the support base for

social facilities (Strijker 2000). In brief, as the Buckwell report states:

> There is a deep-seated tension between trying to add agricultural restructuring, intensification and efficiency by encouraging people to leave farming, versus trying to preserve as many people in farming by supporting those in specially disadvantaged areas, by LFA [Less Favourable Area-WRR] payments and helping farm diversification and extensification. The priority has been gradually resolved in favour of the latter approach. However, the tension remains and will be re-emphasised by Eastern enlargement. (Buckwell et al. 1997: 46)

These conservationist tendencies of the current agricultural structure policy will be enhanced by application of the market and price instruments to the CEECs. The expansion of the full system of compensatory direct income payments to arable and pastoral farming in the CEECs will have a disruptive effect on the agricultural sector as these payments are extremely high in relation to the current income from agriculture. In the short term they will be able to improve the financial and economic position of farmers, but in the longer term they will push up land prices and hold back the necessary rationalisation of ownership structures in the industry (Rabinowicz et al.; Moehler, Nunez Ferrer and Fernandez 1999: iv).

In addition implementation of the system will encounter major social tensions and administrative problems. In regions where agricultural cooperatives are dominant, the question arises as to how the production quotas forming part of the price policy must be distributed over landowners, cooperative members, capital providers and employees who are not members of the cooperatives. A substantial proportion of arable farming is moreover handled by cooperative enterprises consisting of a large number of small, fragmented plots, whose owners do not till the land themselves. If these owners all register their small plots separately, they will, as 'small producers', be able to avoid the compulsory set-aside regulations and production could even be increased. The dairy quota will also be difficult to enforce since dairy production is spread over all sorts of small farms. Furthermore production collapsed to such an extent in the early 1990s that compulsory production restrictions understandably will run into major resistance (Buckwell et al. 1997). Not for nothing are the candidate countries demanding already now that the previously established production *potential* be taken as the basis for the dairy quotas. They also point to the fact that the introduction of a working dairy quota system is exceptionally expensive, whereas under the Berlin agreements it will probably be reformed or possibly even abolished in 2005.

Another risk is that marked income inequalities will arise between and within rural areas and villages where some farmers and agricultural workers do and other farmers, agricultural workers, tenants and non-agricultural inhabitants do not receive any income support (Buckwell et al. 1997). In certain countries farmers' incomes will suddenly far outstrip those of employees in manufacturing and most service sectors. In addition the EU prices for a number of products are still well above the current levels in the CEECs. The introduction of EU prices will confront large groups of consumers with a sharp increase in the cost of living,

particularly since food still accounts for a high proportion of the total household budget, especially in comparison with that of the current EU consumers. The new price policy will also have the effect of driving up costs in the rest of the economy, including the vulnerable food industry.

In part, the agricultural adjustments made by the candidate countries will depend on the direction of reform taken by the CAP and the ultimate timing of accession. Formally, the European Commission and the present member states are still adopting the stance that the new member states will not be able to lay any claim to direct income support. In order to defend this position the Commission argues that these payments were originally intended as compensation for the loss of income due to the price adjustments of the MacSharry reforms in 1992. It also notes the adverse effects of such payments on the agricultural structures in these countries. The real consideration, however, is budgetary in nature. Given the scale of the agricultural sector in the candidate countries, the EU would find itself facing hefty additional expenditure if it were required to grant direct income support to the CEECs.

Agriculture Commissioner Fischler, however, appears to be moving ever closer to the position of granting direct income support to the new member states, but to introduce this gradually during a period of five to seven years. According to reports this new standpoint is prompted by the consideration that no production controls can be imposed on the farmers in the CEECs if they are excluded from direct support. In these circumstances the production surpluses might rise sharply. In order to prevent this the Commission would, according to insiders, like to propose on behalf of the Council in the negotiations the provision of annually rising direct income support in order to have the possibility of binding the production in the CEECs to previously agreed ceilings (Grant 2000). Given an accession date of 2004, this would mean in theory that the full amount of support would not be phased in until 2009 or 2011. In the interim, for example towards the end of the financial framework programme for 2000-2006, the EU would still have the possibility to negotiate about further reductions in the direct compensatory payments.

In the most recent scenario study by Silvis, Van Rijswick and De Kleijn (LEI) of March 2001 the budgetary consequences of divergent accession scenarios have been worked out in broad terms. The study assumes a baseline under which all ten CEEC candidates plus Cyprus and Malta accede on 1 January 2004 upon full adoption of the CAP acquis, but without the allocation of direct compensatory payments (see table 4.9). Four scenarios are then plotted for differing income support regimes. In the first of these (full allocation of direct compensatory payments) the annual additional expenditure in relation to the baseline rises gradually from nearly 6.8 billion in 2004 to 7.5 billion from 2007 onwards (table 4.10). According to the second scenario (gradual full-scale phasing in of direct payments over five years) the extra spending is much lower, particularly in the initial years, but also achieves an annual level of 7.5 billion from 2009 onwards. Under the third

scenario (full integration of new member states upon accession, with degressive compensatory payments after 2007) the annual additional expenditure climbs in relation to the baseline from 6.7 billion in 2004 to 7.5 billion in 2007. Thereafter the additional spending for the candidate countries gradually declines however, with annual savings for the EU-15 rising from 2.8 billion in 2008 to 16 billion in 2015 (see table 4.10). In the fourth scenario (reform of the dairy and sugar regimes) the additional annual expenditure on the CEECs is easily the lowest, but as against this there are extra compensatory income supplements for the current member states, rising from 2 billion in 2004 to 2.8 billion in 2009 (Silvis, Van Rijswick and De Kleijn, 2001).

Table 4.9 **LEI scenarios for EU expenditure given accession of 12 candidate countries**

Baseline	For the period 2004-2010/15: implementation of Berlin decisions accession of the 12 candidates; direct application of the CAP without the direct compensatory payments.
Scenario 1	Like the baseline, but with full (100%) assignment of the direct compensatory payments to the candidates from the start of accession in 2004, according to the agreements also applying to the EU-15. This means full-scale payments for cereals and beef from 2004 onwards and dairy products from 2005 onwards.
Scenario 2	As for the baseline, but with the phasing in of compensatory payments for the candidates of 20% in the first year (2004), 40% in the second year, 60% in the third year, 80% in the fourth year, 100% in the fifth year, 100% in the sixth year and 100% in the seventh year (2010).
Scenario 3	As for the baseline, but with the allocation of compensatory payments to the candidates, and for the entire EU-27 from 2007 onwards an annual reduction of direct payments by 10% on the preceding year.
Scenario 4	As for the baseline, but with reform of the EU dairy and sugar policies from 2003 onwards and further reform from 2007 onwards, according to the same pattern as the first reform round (i.e. 15% price reduction in three steps, for which producers would be partly compensated by direct compensatory payments). N.B.: the latter would be paid only in the candidate countries.

Source: Silvis, van Rijswick, de Kleijn (2001).

Table 4.10 EU agricultural expenditure (millions of euros) given differing accession scenarios

		2004	2005	2006	2007	2008	2009	2010	2015
Baseline		3.689	4.500	5.476	6.417	7.262	7.286	7.313	7.542
Effects of scenarios in relation to the baseline									
1. 100% compensatory payments	CMS*	6.793	7.029	7.265	7.501	7.501	7.501	7.501	7.501
2. phasing in of compensatory payments	CMS	1.359	2.764	4.264	5.859	7.359	7.501	7.501	7.501
3. reduction of compensatory payments	CMS	6.793	7.029	7.265	7.501	6.751	6.075	5.468	3.229
	EU-15	0	0	0	0	-2.819	-5.356	-7.640	-16.056
4. Reform of sugar and dairy policy	CMS	517	751	750	984	1.217	1.450	1.450	1.441
	EU-15	2.094	2.024	1.005	952	1.909	2.866	2.866	2.866

* CMS = candidate member states

Source: Silvis, van Rijswick, de Kleijn (2001).

Table 4.11 Sensitivity of EU agricultural spending in the 12 candidate countries to a 1%-point higher average annual growth: positive difference (euro bn). In relation to baseline scenarios

	2004	2005	2006	2007	2008	2009	2010
Scenarios 1, 2 and 3	377	460	547	655	781	925	1.075
Scenario 4 (extra reforms for sugar and dairy products)	409	486	549	618	691	807	356

Source: Silvis, van Rijswick, de Kleijn (2001).

The scenario studies assume fixed annual growth rates for the consumption and production in the CEECs. This assumption is based on the consideration that the direct compensatory payments (based as they are on fixed reference years) will have a fairly limited effect on these growth rates. In reality, as the researchers also underline, it is perfectly conceivable that there will be a mutual interaction between the agricultural spending and the growth in production an consumption. It is also conceivable that in response to the improved prospects after accession, production, in particular, will grow a good deal more rapidly than assumed here. The experience with the CAP indicates that farmers will switch en masse to the production of crops for which income support is granted.[23] This could result in additional export surpluses, confronting the Union with substantially higher expenditure. Extra production growth of one percentage point a year would for example result in a rise in the additional spending from 377 million euros in 2004 to more than a billion euros in 2010 (see table 4.11).

The extension of the CAP system to the CEECs would also confront the EU with dilemmas within the WTO. Upon accession the CEECs would be required to bring

their own import duties, quotas, subsidised export values and quantities into line with those of the EU. The total scale of their agricultural support (known as the Aggregate Measure of Support, AMS) will need to be added to that of the current Union. Support measures assessed by the criteria of the 'green' or 'blue box' are not at present included in the AMS.[24] The WTO rules do not, however, permit an increase in the Union's AMS after enlargement. The LEI scenarios indicate that the EU itself still has sufficient room to do so without exceeding the maximum AMS ceiling permitted by the WTO. If however the blue box is abolished in the forthcoming WTO negotiations and the current acreage supplements and annual premiums were to be added to the AMS, the ceiling would be at risk of being breached (Silvis, Van Rijswick and De Kleijn 2001).

The uncertainty about the timing and range of new CAP reforms, about the consequences of the coming WTO round and about the duration and nature of any transitional periods makes it difficult to predict future developments after accession. The LEI scenarios underline the fact that the reforms of the CAP could result in a realignment of the interest coalitions within the EU. As the biggest producers, Poland and Romania will be the biggest players on the Central and East European side in the struggle for agricultural spending. In a scenario of full assignment of direct compensatory payments the expenditure on cereals account for roughly 60 percent of total budget spending around 2010. Those with the biggest interest in these payments on the EU side are Spain and France (Silvis, Van Rijswick and De Kleijn 2001). Together with Poland and Romania, these countries could in future hold back any reduction in the direct allowances since they would, as a block of potential 'losers', have a blocking minority in the Council of Ministers.[25] Furthermore, these two countries (together with Hungary) have well organised farmers' groups, so that the political influence of the agricultural lobby in the Union could rise again (Field 1998). There is therefore every likelihood that the disputes about further reforms within the EU itself and also in the WTO will flare up again after accession and will complicate the decision-making.

4.5 ENVIRONMENTAL POLICY

4.5.1 INTRODUCTION

The accession to the EU requires the candidate countries of Central and Eastern Europe to make formidable adjustments to their environmental acquis. In none of the former accession rounds was the difference between the level of environmental protection and the environmental situation between the EU countries and the candidate countries as large as it is now. The full adoption and implementation of the current environmental acquis is so problematic that this process can probably only be completed in the longer term. Against these problems, however, there are also opportunities in the environmental field. The enlargement for example provides the opportunity for the environmental situation in the most heavily polluted areas of Central and Eastern Europe to be radically improved. In addition enlargement will substantially increase the biodiversity in the Union because the

candidate countries still have extensive, unspoiled natural areas with plant and animal species that have long since become extinct in Western Europe. In addition there are certain economic advantages. Stricter environmental strategy in the region will reduce the room for unfair competition and the probability of an eastward flight of companies seeking to take advantage of the less stringent environmental requirements. It will also create new markets for sales of environmental technology. This section first examines the objectives and dynamics of the current environmental strategy (section 4.5.2). The problems attached to the adoption, implementation and enforcement of the environmental acquis by the candidate countries are then outlined (section 4.5.3). The emphasis in this section will be on the heavy investment guidelines of the environmental acquis, which are the most problematic. Finally, section 4.5.4 briefly examines the issue of nuclear safety. Although nuclear energy forms part of the energy chapter in the negotiations, the issue of nuclear safety is a major factor in the environmental chapter of the acquis.

4.5.2 DYNAMIC

European environmental strategy is a relatively recent part of Community policy. The subject of the environment is not referred to in the Treaty of Rome. The combination of ecological, political and economic factors has however resulted in a proliferation of initiatives in the environmental field since the early 1970s. The recognition of the transnational nature of environmental problems and the growing political unrest about environmental pollution are certainly important motivating forces. The predominant consideration was, however, less green in nature: European environmental legislation was deemed necessary in order to eliminate the distortion of competition between the member states due to divergent national environmental legislation (Peterson and Bomberg 1999: 175). European action on environmental issues was initially conducted by means of the Environment Action Programmes, resulting in a large number of (chiefly harmonisation) directives. This Community action was based not on specific environmental treaty articles but on provisions relating to the Common Market (articles 94 and 308 EC). This legal basis meant that environmental protection had to be directly related to the objective of the undisturbed functioning of the Common Market and that any decisions by the Council had to be unanimous.

The coming into force of the Single European Act formed a turning point in the development of European environmental policy. The Act added a special title concerning the environment (title XVI, since Amsterdam XIX) to the Treaty for the formation of the EC, including articles 174-176 EC. From that point on the Community measures in respect of environmental protection had a clear legal basis setting out the objectives and basic principles of European environmental policy. It was also laid down that the requirements in the field of environmental protection formed a vital element of the other policy areas of the Community. The environment title was further elaborated when the Maastricht Treaty came into force. The environmental objective was included under the general treaty

objectives of articles 2 and 3 EC. The concept of 'environmentally-friendly sustainable growth' was added to the tasks of the EC. The Treaty of Amsterdam has consolidated this principle of sustainable development in the preamble and the treaty objectives of the European Union. Table 4.12 summarises the aims, principles, treaty basis and instruments of the Union's environmental strategy.

Table 4.12 The European environmental policy

Objectives: (art. 174 EG)	• Preservation, protection and improvement of environmental quality • Protection of human health • Sparing/rational use of natural resources • Cooperation on international environmental problems
Principles:	• Principles precautionary principle • Preventive action • Tackling the problem at source • The polluter pays
Treaty basis:	• Treaty basis approximation of member states' legislation, Arts 94 & 95 EC, including 'opting up', and jurisprudence (e.g. concerning the question: can environmental policy come before free movement?) • Central EU environmental policy, Arts 174-176 EC support via integration of environment in other EU policy • International environmental conventions (approx. 40)
Instruments:	• Instruments ongoing command & control, concerns injunctions/prohibitions + licences • Economic instruments (incentive regulation), concerns fiscal instruments, environmental audits eco-label and certification, tradable emission rights, covenants • EU subsidies: ENVIREG (regions) Cohesion Fund (4 countries), LIFE, ISPA (Central Europe, regional including environment)

Most of the factual acquis in the environmental field has its origin in the nearly 200 directives and recommendations predating the European Act of 1986. These formed a reaction to the distortion of competition and trade barriers in the internal market to which the national environmental policies of the member states often gave rise. Space does not permit a description of the content of EU environmental strategy: the policy is too comprehensive, specialised and technical. Most of the directives are exceptionally detailed. They are spread over nine sub-areas: water pollution, air pollution, chemical substances, waste, industrial pollution, nuclear safety, noise nuisance, energy (although power stations come under industrial pollution) and flora and fauna. As well as this there is a varied package of horizontal measures (environmental impact assessment, ecolabels and access to environmental information, etc.).

Environmental strategy is a dynamic area of policy within the Union: objectives, principles, instruments, decision-making, implementation and enforcement are in a continuous state of flux. Thus there is a trend away from pure environmental policy towards an integral approach, or from sectoral environmental policy to

horizontal policy in which the environmental objectives are integrated in other policy sectors. In addition the policy is shifting from the control of environmental pollution to the prevention of environmental damage; sustainable development has become a core concept. A number of trends may also be discerned in the use of environmental instruments. In the first place an increasing body of framework legislation is replacing detailed harmonisation guidelines. Member states are therefore obtaining greater freedom to determine the policy frameworks themselves. Secondly there has been a shift from binding to non-binding regulation and from regulation to market-oriented instruments.

As far as the decision-making is concerned, the shift from unanimous to majority decision-making has been significant. Since the EU Treaty, decision-making in the environmental field has taken place by means of qualified majority voting, with the exception of provisions of a primarily fiscal nature and a number of measures relating to spatial planning, land-use and water energy supply, where unanimity is required. Extension of qualified majority voting to the fiscal area has been considered on a number of occasions, but at the Nice Summit of December 2000 it once again did not prove possible to abolish unanimity in this field. Another trend in the decision-making is the increase in the number of non-governmental participants in the process and the growing influence of the private sector.

Implementation of environmental policy has been left to the member states, under the supervision of the Commission.[26] In the early 1990s efforts were made to improve the supervision over the implementation and observance of European environment legislation. One example was the formation in 1993 of the European Environmental Agency, which is responsible for collecting and disseminating information in the environmental field. The agency has a purely advisory role, but plays an ever increasing role in the elaboration of new measures and evaluation of the effect of previously determined measures. In 1992 a network of national environmental agencies was set up known as IMPEL (Implementation and Enforcement of Environmental Law), which considers cases involving the implementation and enforcement of European environmental legislation. The number of infringement procedures instituted by the Commission against member states has been growing. Since the coming into force of the Maastricht Treaty the Court now also has sanctions at its disposal and non-compliance of European legislation can be punished by fines.[27]

A rise in living standards is of course generally coupled with an increase in environmental aspirations. The accession of the less prosperous southern member states and also the richer member states of Sweden, Finland and Austria has meant an increase in diversity in the environmental field within the EU. To help counter the problematic diversity among the southern member states, a new paragraph 5 was added under the Maastricht Treaty to article 175 EC, providing for dispensations of a temporary nature and/or financial aid from a new cohesion fund. Apart from the specially created instruments to help deal with an increase

in diversity, there is a large number of already existing strategies within European environmental policy to suppress, accommodate or reduce diversity. Most decisions are for example already accepted by qualified majority vote. In addition, contrary to what is commonly thought, there is already a striking degree of differentiation in European environmental strategy. Harmonisation in respect of the European environment is minimum harmonisation. Member states are permitted to maintain and/or introduce more far-reaching environment protection measures under articles 176 and 95 (4) and (5[28]) EC. The more far-reaching national measures of this kind must however be compatible with the Treaty and may not distort the operation of the internal market. There is little risk that stricter environment legislation in one country will lead to a weakened competitive position, in that the environmental factor forms only a very small part of the total and can be offset by other aspects in the entrepreneurial world. Increasing pressure is also being exerted by consumers on industry to take environmental considerations into account, which industry increasingly does on PR grounds. Apart from these possibilities afforded by the Treaty for differentiated environmental policies, most of the possibilities in practice stem from the harmonisation measures themselves. Most directives are highly flexible and take account of differences in socio-economic development, geographical location, population density and differences in the environmental situation in the member states. Within European environmental strategy there is in fact seldom any uniformity of control measures and levels of protection in the member states, and exceptions are sometimes permitted to the policy objectives (Bennet 1999:3).

4.5.3 ADJUSTMENTS BY THE CENTRAL AND EAST EUROPEAN COUNTRIES TO THE ACQUIS: IDENTIFICATION OF PROBLEMS

The accession of the CEECs to the EU poses both parties with an enormous challenge. The environmental acquis now consists of over 260 directives, regulations and decisions and over 40 international environmental conventions, all of which must be adopted before accession.[29] Although most of the CEECs took the first steps in the early 1990s to bring their environmental policies into line with that of the Union, the adoption of the environmental acquis is proceeding fairly slowly and the countries still have a long way to go to reach the EU level.

Central and East European environmental policy goes back roughly as far as communism. Under communism environmental policy and environmental cooperation were among the few areas that managed to position themselves outside the ideological conflicts. Although there were clear similarities between the West European and CEECs in the field of environmental protection, the differences in social control mechanisms and democratic content made for significant variations. Planning played a central role in environmental policy. The central planning agency was responsible for the coordination of all planning activities in relation to environmental policy. The implementation of the policy often left something to be desired and compliance with environmental legislation was generally very poor. Environmental policy offered various escape clauses, such as

'external circumstances', the 'general interest' and 'impossibilities' (Mol 1993: 93). High priority was assigned to economic growth and development, which was generally coupled with a high level of wastage and pollution. Most of the CEECs had heavily polluting industries since little if any money was released for modernisation and investment in cleaner technologies. On account of the centrally planned structure of the old regimes the policies were all imposed from above and regional and local authorities had no powers to determine certain environmental standards themselves, to issue licences or to levy fines.

The current administrative and institutional shortcomings with which CEECs are grappling are a direct consequence of the communist legacy. The environmental ministries are still in a weak position. In many cases they are also struggling with a shortage of qualified staff, thereby complicating the adoption and implementation of the acquis. In the EU-15 the implementation of and control over European environmental legislation is often a problem as the legislation is at a distance from regional or local officials. As a result of the central planning under communism this problem is many times greater again in the CEECs. Although the regional and local authorities have consistently been given greater responsibilities with the collapse of communism and subsequent administrative reforms, they still have great difficulty in dealing with that responsibility effectively. It will certainly take a number of years before they are in a position independently to implement and enforce the environmental measures.

It is therefore essential for the expertise and support for the legislation and implementation of environmental rules to be increased. In order to help ensure that the candidate countries have the necessary capacity to convert EU legislation into national laws and the ability to implement legislation, the EU provides aid. It does so by supervising the conversion process, exchanging experts and providing advice (see text-box 4.9).

Text-box 4.9 Technical EU assistance for Central and East European environmental strategy

Assistance towards the conversion of the acquis is provided through TAIEX (Technical Assistance Information Exchange Office). Under TAIEX, the environment-oriented support of the accession process is provided through the DISAE scheme (Development of Implementation Strategies for Approximation in Environment). Among other things the activities concern legal convergence, the development of accession-related environmental programmes, the introduction of harmonised mechanisms for monitoring and recording the results achieved, programmes to strengthen the institutions charged with implementation, technical assistance in setting up and implementing investment programmes and support for regional cooperation programmes in the environmental field (European Commission 1998d). The advice is largely provided through support for non-governmental organisations (NGOs) in Central and Eastern Europe. By means of training courses, workshops, advice and so on NGOs in Western Europe assist environment NGOs in Central and Eastern Europe in the pre-accession process. As far as the aid for implementing and enforcing the environmental acquis is concerned, special mechanisms are set up or the candidate countries are involved in European mechanisms. Apart from the informal EU network for the

implementation and enforcement of the environmental legislation (IMPEL),[30] the Commission has set up a parallel network for the candidate countries: AC-IMPEL. The most important task of this network, which corresponds closely with IMPEL and also works closely with it, is to help the candidate countries to discharge their obligations in the environmental legislation field, particularly in terms of implementation and enforcement. The candidate countries are also involved in the activities of the European Environmental Agency, particularly with a view to drawing up reports on the state of the European environment and the implementation of EU environmental legislation.

In a thicket of specific environmental problems, which often differ markedly from one candidate country to another, there are two aspects that may be regarded as an obstacle in virtually all ten countries. These are the below-cost energy prices and the 'heavy' investment directives in the water, waste and air pollution groups. These specific problems are discussed below.

Below-cost energy prices

Electricity and heating are supplied below cost virtually throughout Central and Eastern Europe. According to Eurostat prices in Poland for fuel and energy were for example half those in Germany.[31] After imports of oil and gas (including those from Russia) suddenly had to be settled in the early 1990s in hard currency and at world market prices, all the candidate countries suffered to a greater or lesser extent from negative terms of trade. This was to the benefit of the environment, since the high level of wastage became unaffordable and a number of energy-intensive firms went out of business. The sensitivity to further price increases for industrial inputs such as electricity, gas and oil (including heating oil) is great, particularly since cost-recovering prices are forcing numerous investments in low-energy machinery and processes. A favourable dividend from these price increases may therefore be expected only gradually.[32] The same problem essentially applies in the case of heating, but the background is a social one. Few people own their own homes in the candidate countries and the custom of charging very low rents with low heating costs in a largely regulated housing market is deep-rooted. The low rental income means that large-scale investments in new, low-energy heating installations are unlikely. Such investment is especially required in the case of district heating, which is inefficient and heavily polluting. The amount of heat squandered is also huge, while the introduction of incentives to combat waste is a highly sensitive social and political issue. In essence this comes down to a trade-off between social policy and environmental strategy.

Heavy investment directives

The adoption and implementation of the heavy investment directives for the water, air and waste sectors also pose a major problem for the ten candidate countries. The policies concerning the quality of surface and drinking water, the treatment of urban waste water, the quality of the atmosphere and the management of hazardous and other waste is still poor in the candidate countries. Enormous investments are required for the adoption and implementation of the directives relating to these sectors. It may be possible for the CEECs to adopt these direc-

tives before accession, but impossible for them to implement them in their entirety.

At issue are the following directives:

- water: the drinking water directives and the urban waste water treatment directives;
- waste: the incineration of hazardous waste substances directive, the municipal incineration of waste directive and the directive concerning the dumping of waste;
- industrial pollution: the IPPC (integrated pollution prevention and control) directive and the directives for large heating installations;
- air pollution: the framework directive concerning the quality of the atmosphere and various specific directives deriving from it (such as those on sulphur dioxide, lead content in the air and industrial power plants).

In a critical review of environmental studies conducted in 1997 by an EDC team of consultants (1997), it was estimated that the investments required in order to comply with the environmental acquis would amount at least to 108 billion euros and at most to 121 billion euros (see table 4.13). Including the necessary operational costs once the investments have been made, this would mean that candidate countries would need to spend some 3-5 percent of their GDP on the implementation of the environmental acquis, and that for a period of no less than 15-20

Tabel 4.13 Investment totals required for harmonisation of the Central and Eastern European countries (ECU billions)

	Water			Air	Waste		Total investments*		
	Supply	Waste water	Total		Min.	Max.	Total min.	Total max.	Total per capita
Poland	4.4	13.7	18.1	13.9	2.2	3.3	34.1	35.2	927
Hungary	3.5	3.1	6.6	2.7	2.1	4.4	11.5	13.7	1306
Czech Republic	2.2	1.1	3.3	6.4	8	3.8	10.4	13.4	1427***
Slovakia	1.0	0.9	1.9	1.9	0.3	1.60	4.1	5.4	760
Bulgaria	2.2	2.7	4.9	5.1	1.8	5.1	11.7	15.0	1668
Romania	3.8	6.3	10.1	9.1	1.0	2.7	20.2	22.0	943
Total Baltic States				8.45	0.45	0.85	8.90	9.30	1148
Estonia	0.13	1.38	1.50				1.50	1.50	NB**
Latvia	0.11	1.60	1.71				1.71	1.71	NB
Lithuania	0.11	2.27	2.38				2.38	2.38	NB
Slovenia	NB	NB	NB	0.69	1.15	1.15	1.84	1.84	NB
Total	17.5	33.1	50.5	48.2	9.7	22.7	**108.4**	**121.5**	NB
% of total	14	27	42	40		19		100	1140

* Total min. relates to the minimum estimate for the dumping of waste, total max. to the maximum estimate for waste management.

** Not available.

*** 70% of the total estimate for the Czech Republic and Slovakian Republic may be attributed to the Czech Republic and 30% to the Slovakian Republic.

Source: EDC Consultants (1997).

years. Even if it were possible to fund investments on this scale, long transitional periods would be required to ensure that all the directives had been fully implemented in all the regions.

The margins for these estimates are very wide. There are also indications to suggest that the estimated investment totals err on the high side. In the first place there are huge differences between the estimates in the EDC study and the studies on which the World Bank relies, for example for Poland. Although based on a rate of interest of 12 percent, the latter put the investment costs at half the figure. If instead a real rate of interest of 3 percent (over 15 years) were to be taken on the basis of funding by the International Financial Institutions (IFIs), this alone would mean a 60 percent cut in the capital costs. Secondly it makes a big difference as to whether the running costs of existing installations are taken into account in the calculations. With the rise in labour productivity and savings on energy and materials, it is quite possible for the maintenance and operating costs to be halved when old, high-maintenance plants are replaced. (This does not however apply to water plants, since the investments there are virtually all additional). Taken over 15 or 20 years the replacement need not even involve any additional cost.

This does not eliminate the fact that environmental investments of this kind cannot possibly be borne by the government budget without giving rise to substantial macro-economic (and also taxation policy) problems. In addition such drawn out and substantial investments would undermine the vital process of catch-up growth. The latter is a top priority in all the candidate countries and is also in the interest of the EU-15: in parallel to the process of catch-up growth there is also a solid long-term prospect for the improvement of prosperity and hence also to step up the environmental efforts. If however priority is given to forcing through huge investment programmes in the environmental sector that slow down the catch-up growth, new Mezzogiornos[33] could even arise.

Unconditional pressure by the current member states could also be regarded as unjustified. Although the present member states are wealthier and therefore also have higher environmental expectations, the implementation procedures in respect of some of these directives can be highly laborious. The present member states stretch out or ignore infringement proceedings and take advantage of the length that these take. By way of illustration, 3,050 cases of (possible) infringement of EC law were being investigated by the Commission by the end of 1999. Infringements of environmental acquis took the lead with 870 cases (28.5 percent), much higher than the 660 infringements being investigated in the much more wide-ranging field of the internal market.[34]

Horizontal directives

Apart from the heavy investment directives involving large-scale investments, there are also elements of the environmental acquis that can be incorporated into national legislation at much lower cost. This applies especially to the 'horizontal directives', such as those concerning the free access to environmental information,

the application of environmental directives (i.e. reporting by the member states to the Commission on the implementation of environmental directives) and the environmental impact assessment (EIA) directive. This exercise does however call for a substantial administrative input. The EIA directive is vitally important for the integration of the environment in other sectors, such as agriculture, transport, energy and regional policy. Precisely this 'external integration' of the environment is highly important in the light of accession. Further catch-up growth after accession would result in substantial consumption and production growth and hence in more industrialisation, growing consumption of energy, increasing volumes of waste and increasing private car use. Access to the EU also requires good connections. A large number of motorways are for example being constructed, some of which run straight through (protected) conservation areas. In addition the candidate countries generally also have a relatively clean agricultural sector. In certain regions, however, participation in the Common Agricultural Policy could result in more intensive and polluting agriculture.

In contrast to this gloomy picture there are also opportunities to limit the negative consequences of increasing economic growth by means of cleaner technologies and more efficient energy consumption. Since the fall of the Berlin Wall, Western firms have been investing increasingly in Central and Eastern Europe. In many cases the large international companies apply the same environmental standards worldwide, thereby making for cleaner and more efficient production processes in Central and Eastern Europe. These companies transfer their knowledge to the local environmental engineers, who will then use it in the future. In addition these multinationals have cleaned up a good deal of the existing pollution over the years. The CEEC region also provides a big market for investments in clean technologies. This is highly attractive for many Western firms, as it is a good deal cheaper to invest in cleaner production processes in candidate countries than in the West. This option is also particularly attractive for many Western countries that have signed the Kyoto Protocol on the reduction in CO_2 emissions, as they are permitted to achieve part of that reduction abroad.

Progress with the adoption of the acquis

Against the background of this major environmental challenge the question arises as to the progress the candidate countries have already made with the adoption of the acquis. Space does not permit the adoption of the hundreds of directives and conventions to be examined. By way of indicators of the efforts made by the candidate countries and the problems in the longer term in adopting the acquis, the nature and scale of the shortcomings identified in the European Commission's latest progress report of November 2000 are examined below. An overview is also provided of the nature and length of the transitional periods sought by the CEECs.

The Regular Reports of November 2000 are in the main fairly critical about the extent of acquis adoption and the speed at which this is taking place. Although attention is paid to more than just the acquis – brief reference is also made to

whether a strategic approach is being followed or whether a credible investment programme has been set up – the progress is primarily assessed in terms of concepts such as adoption and implementation in an administrative sense. For the environment as such, however, it is ultimately only of importance whether the pollution can be tackled and prevented in practice. This often proves not to be the case.

All the candidate countries have a great deal of ground to make up in the areas of water, air and waste discussed above. The measurement, collection and processing of environmental data, which require both investment and good management, are running into serious problems virtually everywhere. The integration of sustainable development in (other) sectoral policy is either not taking place at all or is no more than an intention on paper. Most of the candidate countries are not managing to adopt even half the acquis, let alone implement it. (The Czech Republic has for example adopted a quarter; Poland is described as 'limited' and Romania as 'very low'). Aspects such as institutional capacity and expertise are an almost universal problem, although there are some signs of improvement.

As far as the transitional periods are concerned, it is highly possible that the current information is incomplete. This is because many candidate countries pride themselves on their ability formally to adopt a wide range of the acquis but, when it comes to effective implementation, shelter behind optimistic intentions. Looking just at the Luxembourg group (without Cyprus), the requests that have been submitted are set out in table 4.14.

Table 4.14 Transitional periods for major environmental directives

Policy fields	Number of requests	Final dates
Horizontal	1	indeterminate
Flora/fauna	11	2004-2010
Water	24	(2006-2017 + indeterminate)
Industrial pollution	6	2010-2012 + indeterminate
Chemicals + GMO s	2*	indeterminate
Air	8**	2004-2009 + indeterminate
Waste	14	2005-2012 + indeterminate
(Total)	66	

* In no fewer than 22 cases the Commission has expressed doubts about the optimism of these five candidates to adopt/implement the acquis.

** Doubt expressed by the Commission in 11 cases.

Source: Position papers and Regular Reports; only the CEECs of the Luxembourg group.

For a number of reasons these 66 transitional periods may be regarded as an optimistic estimate. In the first place the candidate countries have a special interest in window-early anddressing in the environmental field. Except where it comes to extreme pollution there is little political support for this element of the acquis in

these countries. The time required has therefore almost certainly been underestimated. Secondly this group consists of just five countries, i.e. not all the countries that might qualify for accession around 2004. Thirdly the numerous specifically expressed doubts of the European Commission indicate that far more transitional periods must be allowed for.

4.5.4 NUCLEAR SAFETY

Nuclear safety plays an important role in the accession problem. The safety of nuclear energy applications is a major political issue in the candidate countries.[35] It also presents an additional difficulty for the accession process, the implications of which closely approximate the convergence in the environmental field.[36] The global strategy of the Commission is not just aimed at limiting the risks attached to the civil application of nuclear energy in those countries but also seeks to bring the general level of safety in energy generation and the quality of waste management up to a level comparable with that in the EU (European Commission 1998d). The attainment of a level of nuclear safety comparable with that in the EU is a strict condition for accession. As will be seen below, the *legal basis* of this accession requirement is however unclear, as nuclear safety does not officially form part of the EU acquis.[37]

Nevertheless special attention is devoted to this issue as part of the accession process; at political level it now has high priority. During the General Council in Helsinki in 1999 it was stated that 'a high degree of nuclear safety is sought in the context of the enlargement process'. In addition a separate declaration concerning nuclear safety and enlargement has been adopted.

The problem of nuclear safety in Central and Eastern Europe became a priority matter for the EU when it was decided at the Helsinki European Summit to admit a second group of countries to the accession negotiations. These included Bulgaria, Lithuania and Slovakia, each of which has nuclear reactors that cannot be brought up to a level of safety acceptable to the EU at reasonable cost. Agreements on accelerated closure were accordingly reached in relation to these reactors in the run-up to the Helsinki Summit.[38]

The basis for this decision was not technical in nature but relates to the earlier *political* decision by the G-7 meeting in Munich in 1992 to shut down the RBMK and first-generation DDER reactors.[39] The G-7 did not consider these reactors to be sufficiently safe. At the initiative of the G-7 the Nuclear Safety Account (NSA), a fund managed by the EBRD from which a total of 261 million euros in assistance has been provided to Bulgaria, Lithuania, Russia and the Ukraine, was set up in 1993. The donation agreements concluded with these countries under the Nuclear Safety Account lay down not just the donations of the donors but also the undertakings of the countries concerned in relation to the closure under certain conditions of the oldest generation of reactors from the Soviet era. In accordance with the 1993 and 1994 agreements, Bulgaria and Lithuania undertook to close intrin-

sically unsafe plants.[40] In the run-up to the Helsinki Summit the Slovakian government undertook in 1994 to close the two reactors in question in Bohunice at the point when the two new power plants under construction in Mochovce come on stream commercially (European Commission 1997).

The European Council also based its decision on the findings of a report by the West European Supervisors in the nuclear field (WENRA) concerning the safety condition of nuclear power plants in the candidate countries of the EU.[41]

Text-box 4.10 The WENRA report

The WENRA report, issued in 1999,[42] discusses nuclear safety country by country in two main respects: first of all the state of the formal supervisory framework and the supervisor, and secondly the nuclear safety condition of the nuclear power plants. On the basis of these aspects the nuclear power plants in CEE may be divided into three categories:

1 plants with a level of safety comparable to that in the EU;
2 plants at which improvements are still being made and which could in due course meet the desired level of safety;
3 plants with an inadequate level of safety and which could be brought up to standard only at unacceptable cost.

The WENRA report concludes that despite some substantial improvements, there remain power plants which cannot reasonably be expected to reach an adequate level of safety. This applies especially to Ignalina in Lithuania and Kozloduy in Bulgaria; Bohunice in Slovakia occupies an intermediate position.[43] The conclusions of the revised WENRA report of November 2000 concerning the nuclear safety of the nuclear power plants in the candidate countries and, in particular, in relation to the desirability of closure correspond almost entirely with the stance adopted by the G7 in 1992.[44]

Under the aegis of the Nuclear Affairs Advisory Group, the *Working Party on Nuclear Safety* (WPNS)[45] has been conducting technical evaluations on the ground in each candidate country since the end of January 2001. In doing so the WPNS has drawn on the WENRA report.[46] Although a high level of consensus is generally achieved among the EU-15, a number of observations by the WPNS nevertheless reveal that there is no EU acquis in the field of nuclear safety.[47]

Text-box 4.11 Evaluation of nuclear power plants in Central and Eastern Europe on the basis of international safety standards

At present there are 20 nuclear reactors of Soviet design in operation in Central and Eastern Europe: six in Bulgaria: four in Hungary, four in the Czech Republic, four in Slovakia and two in Lithuania. Most of these plants were built with the aid of Soviet technology and do not meet international safety standards. The solution does not however simply consist of closing these plants down. They do not all constitute the same risk and the costs of procuring alternative sources of energy would be exceptionally high. The EU is therefore examining what kinds of nuclear power

plants are in use in each candidate member state and to what extent the safety of these plants could be increased in order to comply with international safety standards. This entails the following:

- In countries in which nuclear power plants are in use that were designed in the West (Romania and Slovenia) detailed checks are being made to establish that these are being operated in compliance with specific safety standards. If necessary technical assistance can be provided;
- In countries where the safety of the nuclear power plants of Soviet design that are on stream or under construction can be increased in order to meet international safety standards, modernisation programmes must be fully implemented within a period of seven to ten years. (This applies to Dukovany and Temelin in the Czech Republic, Paks in Hungary, certain units in Bohunice and Mochovce in Slovakia and to Kozloduy in Bulgaria);
- Closure dates must be agreed for the units that are not capable of modification. (This applies to Bohunice in Slovakia, Ignalina in Lithuania and certain units in Kozlody, Bulgaria);
- In the meantime the most urgent improvements sought by international experts must be carried out.

Source: European Commission (1997).

Consequences of closure

The closure of nuclear reactors has major financial, economic and social consequences for these countries. In the first place the costs of dismantling are enormous (see the example of Ignalina in table 4. 15). Secondly these countries depend heavily on these power plants for their energy supply, while the electricity in question is also generated at relatively low cost. An alternative form of power generation will therefore have to be found. Thirdly the closure of the plants will result in a loss of jobs and export earnings. There is also incomprehension in Central and Eastern Europe and especially in the Baltic States concerning the requirement for the reactors to be closed, particularly since these countries regard it as a political necessity to remain as independent as possible of power supplies from Russia.

The closure of the Ignalina nuclear power station in Lithuania will have particularly radical consequences. The plant has the two most powerful RBMK reactors in the world.[48] In 1993 these reactors were generating 88 percent of total national electricity production; the current figure of around 70 percent remains one of the highest figures in the world. The Ignalina nuclear power plant can easily generate twice as much power as Lithuania needs. Ignalina is a regional power plant, which exports large quantities of electricity to the entire region.[49]

As already noted, Lithuania committed itself to the closure of Ignalina under the 1994 agreement. In 1999 the Lithuanian government promised that unit 1 (built in 1983) would be closed by 2005; a decision on the closure of unit 2 (built in 1987) will be taken by parliament in 2004. The Commission is interpreting this as a commitment to closure no later than 2009.[50] Since Lithuania does not have any natural sources of energy itself such as coal, gas or oil, the supply of electricity after the closure of unit 2 could become problematic. The major problem, however, is formed by the fact that the closing down and dismantling of the Ignalina nuclear power plant will face the Lithuanian government with enormous costs, thereby

holding back economic growth for many years. Although the estimates of these costs vary considerably (see table 4.15), it is clear that there is a major discrepancy between the costs to be borne by Lithuania and the contribution to be made by the EU.[51] The EU will be paying only a very small proportion of these costs.

Table 4.15 Costs of closing Ignalina

Total costs of dismantling: 1 Encapsulation and disposal of spent fissile material 2 Dismantling of reactors 3 Provisional/interim storage of spent fissile material	These costs vary in order of magnitude from **2.25 billion dollars** (including encapsulation and disposal of spent fissile material (1.6 billion); the dismantling of the reactors (0.25 billion) and the provisional/interim storage of the spent fissile material (0.22 billion) to 930 million Euros (550 million for the dismantling of unit 1; 350 million for the dismantling of unit 2 and 30 million for storage facilities for spent fissile material). The latter calculation does not include the costs of the disposal of spent fissile material.
Opportunity costs of closure: 1 Net value of lost production units 2 Local region costs 3 Real interest costs of 15 years dismantling	The premature closure of Ignalina would cost Lithuania 3.3 – 3.9 billion dollars at 1998 prices for the period 2005-2025, amounting to 50% of the GNP of Lithuania in 1996. 1 2.9-3.5 billion dollars 2 0.1 billion dollars 3 0.25 billion dollars The calculations are based on an average growth in GNP of 5-6% per annum until the year 2020. A real rate of interest of 3% and a production capacity of 14-46 TWh have also been assumed.
Alternative energy generation	[Costs unknown]

Sources: Grufman Reje (1998), European Commission (1999d).

4.6 COHESION POLICY

4.6.1 INTRODUCTION

With the fifth enlargement round of the EU a number of Central and East European countries will be acceding with a per capita income substantially below the average in the Union. As noted in chapter 2, income differentials are a potential source of problematic diversity, in that member states with a relatively low national income have less room for manoeuvre to comply with all the objectives of the Union requiring an enormous economic and financial effort. As seen in the preceding sections, this means in a general sense the efforts to enable participation in the EU policy cycle in the administrative and legal field. Other relevant policy objectives include those concerning the internal market, the environment and cooperation in respect of JHA, which at this stage involve a disproportionately heavy burden for the candidate countries.

As against the risks of an increase in problematic diversity following accession, however, there are the opportunities that the Union will provide to these

countries once they have acceded to achieve strong economic catch-up growth by participating in the internal market. As the example of Spain, Portugal and Greece shows, catch-up growth is a powerful tool for reducing problematic diversity and strengthening the Union as a community of action. The input of structural funds provides the EU with the opportunity to invest in the physical and knowledge infrastructure and the environmental sector of the CEECs. Apart from a direct – and desperately needed – improvement of the production potential and the conditions of production in these sectors, this also means an indirect improvement of the investment climate for European companies in the region. The current EU member states will then be able to benefit from the dynamic advantages of higher economic catch-up growth in the new member states. In addition the Union's cohesion policy exerts an unparalleled influence on the process of administrative and institutional reform in the CEECs. Unlike their predecessors the current candidate countries are now already being encouraged with the aid of pre-accession support to decentralise regional policy and to implement far-reaching administrative reforms. They also need to have in place extensive coordination, budgetary, control and evaluation procedures for the co-financing of the programmes, the management and supervision of the use of the funds and the *ex ante* and *ex post* evaluation of the programme cycle.

This section outlines in broad terms the tasks that the candidate countries face if they are to participate in cohesion policy and the consequences of accession for the functioning of that policy. To begin with the dynamics of cohesion policy, which have changed greatly in recent years, are outlined in section 4.6.2.

4.6.2 DYNAMIC

The process of growing cohesion or real convergence may be defined as a gradual reduction in income differentials between regions or countries. The cohesion policy of governments is generally motivated by considerations of economic efficiency, justice and equality. In the former case – efficiency considerations – the policy seeks to correct the market failures on the supply side of the economy (e.g. the lack of mobility of labour and capital, the existence of scale and agglomeration effects or interim adjustment costs) so as to improve the input of factors of production and increase prosperity. In the second case – justice and equality – the policy is generally concerned with the redistribution of financial and other resources on the demand side, with the aim of widening the potential for expenditure by backward regions, countries or groups. It is however also possible, and desirable on structural grounds, to conduct cohesion policies aimed primarily at the supply side. Such policies are concerned with improving the hard and soft infrastructure and other efficiency-enhancing measures.

During the first stage of European integration, Community cohesion policy played only a modest role. Although the preamble to the original Treaty of Rome referred to 'a continuous and balanced expansion' of the Common Market as the aim, the founders of the Community regarded the ongoing process of market

orientation as the principle motor behind cohesion.[52] In principle, therefore, a low level of productivity is not an obstacle but, rather, a precondition for countries or regions to realise catch-up growth, provided that the capacity of the market mechanism to restore balance is used to best effect. This theory implies that the policy should primarily concentrate on optimising market forces. In so far as transfrontier obstacles in the European market or the Community sectoral policy are concerned, the subsidiarity principle dictates that this is also a European policy responsibility (SER 1997: 15-16; Martin 1999: 11).

The stubborn persistence of *Mezzogiornos* in the Community and the growing regional and national development differential since the Southern enlargements provided a fresh impetus in the 1980s for empirical and policy-based research into cohesion processes. The main objectives of cohesion policy in the present day date from that time. In contrast to the Treaty of Rome, the present EU Treaty (article 2) explicitly refers to the aim of closer economic and social cohesion as one of the objectives of the Union, apart from the completion of the internal market and the establishment of monetary union. In the elaboration of this (articles 158-162) the development and pursuit of 'actions leading to the strengthening of its economic and social cohesion' are regarded as a condition for the 'harmonious development of the Community'. To this end the Community 'shall aim at reducing disparities between the level of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas'. Cohesion has therefore obtained a much more prominent place in the Community objectives and has primarily been placed on a *regional* footing. Apart from the original efficiency consideration the policy is also designed as an expression of 'financial solidarity' between the wealthy and poor member states (SER 1997: 36; Allen 2000). Regions in which per capita GDP is less than 75 percent of the EU average qualify for aid. At present the lion's share of the available aid in the EU goes to backward areas. In the principal recipient regions the cohesion policy even amounts to an income transfer of between three and five percent of total regional income.

Text-box 4.12 Development of Community cohesion policy

The Community initially had three institutions to support national policy: the European Investment Bank (EIB), the European Agricultural Guidance and Guarantee Fund (EAGGF) and the European Social Fund (ESF). The EIB provides loans at market rates for development projects in backward regions by drawing on the capital market and its equity capital. The ESF is used for the co-financing of training and retraining of young people and the unemployed. The EAGGF provides support for structural improvements in European agriculture. An initial step in the explicitly 'regional' orientation of the cohesion policy was provided by the establishment of the European Regional Development Fund (ERDF) in 1975. What should have become an instrument for the Commission in 1969 for tackling regional disparities in a future monetary union was used during the enlargement negotiations as a means of compensating the UK financially for its relatively low income from the overall CAP budget. The significance of the ERDF increased with the introduction of the integrated Mediterranean programmes and the integrated action programmes of the new

member states of Portugal and Spain. The second – according to many the most radical – change in cohesion policy was provided by the signature of the Single European Act in 1986. This established the basis for a strategic agreement between the southern member states of Greece, Spain and Portugal and the remaining member states. In exchange for the support provided by these new member states to the '1992' programme for the completion of the internal market, 'cohesion' was recognised as an explicit objective in the Treaty.

Apart from a doubling of the available financial resources, the acceptance of the First Delors Package (1988) meant greater concentration of regional economic policy on the original target group of less developed regions. Under this new financial programme the Commission demanded a more autonomous role in the implementation of the funds, so that explicit considerations of efficiency, need, transparency and coordination would be given greater weight than the 'just return principle' preoccupying the individual member states (i.e. the attempt by a member state to 'claw back' as much of its payments to the EU as possible or, in other words, to minimise the net payment to the EU). The three existing separate funds – ERDF, ESF and EAGGF – were brought together as 'Structural Funds' under a single appraisal system with a limited number of specific objectives and underlying principles.

The third step in the development process of cohesion policy was provided by the IGC of Maastricht on the establishment of monetary union and enlargement to the EFTA countries. A vital element of that agreement was formed by the commitment to establish a separate cohesion fund for financial contributions to the transport and environment sectors of Greece, Spain, Portugal and Ireland, in exchange for their support for the enlargement round and acceptance of a possibly painful economic adjustment process in order to meet the EMU criteria. At the Edinburgh Summit in 1992 the member states achieved a new agreement about the financial size and allocation of the funds. The total size of the structural and cohesion funds would rise considerably, ultimately to a possible 35 percent of the total EU budget. The wealthier candidate countries of Finland and Sweden, which had to contribute relatively heavily to the funds, managed to obtain a further modification of the allocation rules during the accession negotiations. An additional priority objective (number 6) was specially created for them: the promotion of the development and structural adjustment of regions with extremely low population density. These objectives have since been amalgamated into three objectives.

The cohesion policy conducted since the 1980s reflects a learning process on the part of national and European policy makers, in which model-based scientific policy evaluations play an important role. One of the first formal, model-based evaluations of the contribution made by the structural and cohesion funds was the HERMES model, in which a distinction – at that time still fairly rudimentary – was drawn between the temporary demand effects and the more lasting supply effects of the input of the funds. The later econometric simulation models (HERMIN, QUEST I and II and MEANS) made it possible for the Commission to improve its analytical substantiation for the relationships between the input of European and national investment funds and the competitive and convergence capacity of the member states (Bradley 2000).

The development of cohesion policy has displayed a notable capacity to adapt to the further deepening of integration and the ever-wider regional diversity within the Union resulting from the successive enlargement rounds (see text-box 4.12).

This is also reflected in the most recent decisions by the Berlin Summit on the new financial framework for the period 2000-2006. Partly with a view to the coming, fifth enlargement round and the need to concentrate resources, the number of cohesion policy objectives has been reduced from six to three, in part by collapsing old objectives (see table 4.6). Objective 1 is aimed at the economic development and structural adjustment of economically backward regions. The emphasis is on promoting effective investment in the infrastructure and on education and scientific research. Objective 2 is designed to initiate restructuring in regions grappling with major changes in industry, the services sector, fisheries and regions suffering from a substantial decline of the urban environment or rural areas. Finally objective 3 covers the stimulation of modernisation in education, training and the work environment. Regions can only come under one of these three objectives.

The aim of achieving higher catch-up growth by the more efficient use of factors of production has meant that the share of the total EU population coming under the cohesion policy objectives has been reduced from 50 percent to roughly 40 percent. Although this remains a very high figure, the fall reflects a modest success on the part of the Commission in applying the *concentration principle*. This dictates that aid should be concentrated on a limited part of the EU population and a limited number of priority objectives that reflect the main thrust of policy. The Commission also seeks to retain the principles of programming, partnership and additionality. The *programming principle* entails that an integral and coordinated approach towards structural problems should be pursued on the basis of multi-year programmes. The Commission lays down the broad strategic objectives of these programmes (e.g. improvement of the competitiveness and innovation capacity, and sustainable development) but leaves the implementation to the member states (Peterson and Bomberg 1999: 155). The *partnership principle* means that the implementation and supervision of the policy must be arrived at in consultation with the national, regional and local authorities concerned and the social and economic partners designated by the member states. According to the principle of *additionality* the aid distributed from the funds may not replace long-term spending already planned by governments, institutions or partners. The co-financing obligation on the part of the member states is an attempt to enforce this principle.

Table 4.16 Cohesion policy since the Berlin Summit

Objectives:	Instruments:	Basic principles:
General Promotion of economic and social cohesion by limiting the development differentials between regions and reducing the arrears of the least favoured regions. **Specific** 1 Development and structural adjustment of backward regions. 2 Support for socio-economic conversion in areas facing structural difficulties, other than those qualifying for aid on the basis of the new objective 1. 3 All activities for the development of human resources outside the regions that qualify for aid under objective 1.	• ERDF: for support to backward regions, regions where economic conversion is taking place and regions facing structural problems. • ESF: for the European employment strategy. • EAGGF Guidance Section: guidance for the development and structural adjustment of backward areas by improvements to the structure in the field of production, processing and sale of agricultural and forestry products, and for the development of rural areas. • FIFG: structural financing instrument for the fisheries sector. • Community programmes (see box 4). • Cohesion fund, strengthening economic and social cohesion by the balanced funding of projects, technically and financially autonomous project stages and groups of projects forming a coherent whole in the environment and trans-European networks of transport infrastructure.	• Additionality • Partnership • Programming • Concentration

Source: European Council of Berlin (1999); European Commission (2000a).

Table 4.17 Allocation of the funds by the structural funds, 2000-2006, by member state and objective

	New objective 1*	Traditional support for former areas under objective 1	New objective 2**	Traditional support for former areas under objective 2 and 5b	New objective 3***	Fishery-instrument	Total
	mln euro	mln euro	mln euro	mln euro	mln euro	mln euro	mln euro
Belgian	0	625	368	65	737	34	1829
Denmark	0	0	156	27	365	197	745
Germany	19229	729	2984	526	4581	107	28156
Greece	20961	0	0	0	0	0	20961
Spain	37744	352	2553	98	2140	200	43087
France	3254	551	5437	613	4540	225	14620
Ireland	1315	1773	0	0	0	0	3088
Italy	21935	187	2145	377	3744	96	28484
Luxembourg	0	0	34	6	38	0	78
Netherlands	0	123	676	119	1686	31	2635
Austria	261	0	578	102	528	4	1473
Portugal	16124	2905	0	0	0	0	19029
Finland	913	0	459	30	403	31	1836
Sweden	722	0	354	52	720	60	1908
United Kingdom	5085	1166	3989	706	4568	121	15635
Total	**127543**		**19733**		**24050**	**1106**	**183564**
Total of the SF-budget	69.7%		11.5%		12.3%	0.8%	
Reserve for overgangssteun	4.3%		1.4%		–		

* 22.2% of the EU population comes under this objective: a) regions with a per capita GDP of less than 75% of the EU average; b) most peripheral regions (the French overseas territories, the Azores, Madeira and the Canary Islands); c) the regions that formerly came under objective 6, in accordance with the Finland and Sweden Accession Agreements.

** a maximum of18% of the EU population comes under this objective. The indicative breakdown by type of zone is: 10% in industrial zones, 5% in rural zones, 2% in urban zones and 1% in zones dependent on fishery.

*** Horizontal objective of application outside objective 1. The financial distribution over the member states is based on the qualifying population, the employment situation and issues such as social exclusion, training/level of education and participation by women in the labour market.

The regions and areas qualifying for support came under objectives 1, 2 and 5b in 1994-1999 and those that no longer qualify for support under the new objectives 1 and 2 will receive conditional support in order to consolidate the progress achieved to date. The support in 2000 will be lower than in 1999 and will cease at the end of 2005.

Source: Europ News, 1 (2000) Regional Policy.

Tabel 4.18 Community programmes in 2000-2006

	Description and objective	Structural funds	millions of euro
INTERREG	Cross-border transnational and interregional cooperation to encourage the balanced development of the territory of the entire Community	ERDF	4.875
EQUAL	Transnational cooperation to encourage in novative ways of combating all forms of discrimination and inequality in relation to the labour market	ESF	2.847
LEADER	Rural development.	EOGFL-Guidance	2.020
URBAN	Economic and social renewal of cities and backward urban districts with a view to the promotion of sustainable development	EROF	700

Until recently it was always the case that adjustments to the cohesion policy could only be 'paid' for by successive increases in Community spending. In Berlin, however, the European heads of government decided to consolidate the EU budget and the share therein for cohesion policy. A total sum of 213 billion euros has now been set aside for the structural and cohesion funds combined in the period 2000-2006. Of this 195 billion will go to the structural funds programmes (including the four Community programmes) and 18 billion to the cohesion fund. As far as the second fund is concerned, the heads of government have agreed an indicative breakdown for the four recipient member states: with a share of 60-63.5 percent of the fund, Spain will remain easily the biggest recipient; Greece and Portugal will each receive 16-18 percent; and Ireland just 2-6 percent. In addition it has been decided to review in 2003 whether these countries still satisfy the 90 percent of average GDP criterion.

Empirical studies into the developments in the four EU cohesion countries since the 1960s indicate in the first place that although convergence has taken place at national level (calculated as catch-up growth of per capita GDP at purchasing

Table 4.19 Agenda 2000 Financial Perspectives decided upon in Berlin

	EURO MILLIONS (1999 PRICES)						
	2000	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**
Total	**32045**	**31455**	**30865**	**30285**	**29595**	**29595**	**29170**
Structural fund	29430	28840	28250	27670	27080	27080	26660
Cohesion fund	2615	2615	2615	2615	2515	2515	2510

Source: European Parliament (1999b).

power parity vis-à-vis the EU average), the experience has varied considerably from one country and period to another. Portugal managed to climb from around 40 percent of the EU average in 1960 to 76 percent now, but the catch-up process stagnated throughout the period 1973-1986. In Spain the catch-up process slowed during the years 1976-1985 and the early 1990s, so that an income level of around 80 percent of the EU average was not attained until 1997. The figure is now 83 percent. The exceptional Irish success story consists of a catch-up spurt that did not get under way until the early 1980s and ultimately gave rise to a per capita income that is in fact 14 percent above the EU average.[53] As against this is the relatively modest catch-up performance of the Greek economy. Greece rose from a per capita GDP of around 40 percent of the EU average in 1960 to 67 percent. Measured since 1988 Spain, Greece and Portugal together have risen from 68 percent to 79 percent of the EU average in 1999 (European Commission 2001e; Statistical annex).[54]

Figures for the post-1988 period indicate that the per capita income differentials between the 188 NUTS-2 regions[55] of the EU declined less than the national income differentials. Even now they remain substantial. Of the 10 percent of the regions with the highest per capita income in the EU the average income has risen from 55 percent above the regional EU average to over 60 percent (see table 4.20). These regions consist primarily of the capital cities of Northern Europe and the most prosperous areas of Southern Germany and Northern Italy. The regions which together account for the bottom decile of regional per capita income saw their average income increase from 55 percent to 61 percent of the EU average. This applies especially to areas in Greece, Portugal, Spain, Southern Italy and the French overseas territories. For the bottom quartile, however, the increase in income was less than 2 percent (from 66.6 percent to 68.3 percent of the EU average).

In a number of member states, regional income disparities therefore remain substantial and hard to eradicate. The most familiar examples are the backward growth in the Italian Mezzogiorno, a number of remote mountain areas in Greece, part of the remote north-eastern and extreme southern Spain and northern and north-eastern Portugal. Particularly within the poor cohesion countries,

Table 4.20 Richest and poorest regions of the EU-15, 1988-1998 (in per capita GDP of purchasing power parity, as % of the EU average)

Regions	1988	1998
10 % richest	155.3	160.9
10% poorest	55.1	61.9
Ratio	2.8	2.6
25 % richest	134.1	137.1
25 % poorest	66.6	68.3
Ratio	2.0	2.0

Source: European Commission (2000e:4).

the process of national income convergence appears to be coupled with regional income divergence (European Commission 2001d; European Commission 2001e: Dunford et al. 2001).

Recent research suggests as a possible explanation that the economic catch-up process in these countries is largely led in the initial stages by a limited number of larger agglomerations which grow more rapidly and suck in labour and capital from the surrounding regions on account of the economies of scale and positive spillover effects. The growth effects of this process therefore apply primarily *within* the region, since the spillover effects are primarily related to the specific local and regional knowledge of businesses and institutes that are dependent on social interaction via face-to-face contacts (Storper 1997; Martin 1999; European Commission 2001d; Pelkmans 2001). In the later stages of the catch-up process, however, regional convergence can also take place within countries, for example as a result of improvements to the national physical and knowledge infrastructure that contribute towards more intensive capital, knowledge and technology transfers. In addition economic growth by definition results in a reallocation of factors of production between sectors and, in particular, to a fall in the share of agriculture. In the longer term this process can also encourage income convergence between urban and rural areas. For policy-makers this would imply that they are confronted during these initial stages of economic catch-up growth by an exchange between national and regional convergence (de la Fuente 1996; Martin 1999; European Commission 2001d).

4.6.3 ADJUSTMENTS OF THE CENTRAL ANDEAST EUROPEAN COUNTRIES TO THE ACQUIS: IDENTIFICATION OF PROBLEMS

During the communist era, regions formed more or less arbitrarily created units in a predominantly dirigist and hierarchically ordered system of economic planning. These units had little if any historical or cultural cohesion and lacked autonomous powers. In many cases regional policy under this system of planning was little more than the outcome of national sectoral plans, in which political power considerations and an ideological preference for large-scale, specialised industries were dominant.[56] This high level of regional division of labour and specialisation led to a marked dependence on a single large state enterprise and a close correlation between regional and sectoral policy.

Since the revolutions in the early 1990s the planning regions have largely lost their political legitimacy and economic coherence. Confronted by new priorities and tight budgetary constraints, the new policy-makers were generally obliged to concentrate their policy ambitions on strengthening the national macro-economic structures in the medium term instead of on specific regional development goals (Bollen 1997: 8). In so far as regional structural policies were conducted these were generally confined to a small number of growth centres and strong economic sectors. Furthermore this policy was often *ad hoc* in nature, since the territorial administrative and legal reforms were sluggish, there was a general

lack of support personnel, expertise and statistical data and the effectiveness was undermined by poor coordination, interministerial rivalry and bickering (Hallet 1997: 6; European Parliament 1998: 10; European Commission 2000h).

During earlier enlargement rounds, the new member states were only required to make fairly simple adjustments to their national legislation and policies for the implementation of the structural funds. The fact that the underlying principles of partnership, programming and additionality have been tightened since the latest reforms means that the institutional requirements of the cohesion acquis have become substantially more exacting for the prospective member states. The first task for the CEECs is to create a competent body at national level that is capable of coordinating its interministerial policy and laying down a territorial organisation in accordance with the classification of regions into NUTS units. Among other things a coherent global intervention strategy needs to be developed at national level (together with the European Commission) so as to enable the structural funds to tackle regional development differentials effectively and transparently. On the one hand this strategy must take account of Community priorities in structural policy and, on the other, it must also be sensitive to the regional and local developmental situation. In addition there must be sufficient absorption capacity for the funds to be deployed effectively.

Secondly the candidate countries must develop the necessary legal and administrative framework to regulate the Community and national provision of assistance in the various sectoral and vertical tiers of government. They must for example have a municipalities act, municipal budgetary rules and sufficient personnel and financial resources at the various levels so that the latter can play a guiding role in drawing up, implementing and supervising the agreed programmes. This also requires that consultation and coordination structures be created with socio-economic partners at both central and decentralised level.

Thirdly budgetary, control and evaluation procedures need to be designed for the cofinancing of these programmes, the management and supervision of the use of the funds and the *ex ante* and *ex post* evaluation of the programme cycle. In the light of these substantial acquis obligations, bilateral and European attention and aid (e.g. via Phare, ISPA, SAPARD en SIGMA – Support for Improvement in Governance and Management) has been increasingly displaced in recent years towards strengthening the administrative capacity of the candidate countries with a view to the cohesion policy (see text-box 4.13).

Text-box 4.13 Pre-accession policy and strengthening of the decentralised administrative capacity

The pre-accession policy serves as a 'laboratory' for strengthening the decentralised administration and is regarded by the European Commission as an important touchstone of the capacity to manage the structural funds properly. A considerable number of minimum criteria and conditions for the decentralisation of administration to implementing agencies in the candidate member countries must also be met for the allocation of the funds in the preparatory stage of accession.

In the first place the Commission must evaluate which executive agencies in the partner countries are capable of administering the support on a decentralised basis:

- there should be a well-defined system for managing the funds with full internal rules of procedure, clear institutional and personal responsibilities;
- the principle of separation of powers must be respected so that there is no risk of conflict of interest in procurement and payments;
- adequate personnel must be available and assigned to the task. They must have suitable auditing skills and experience, language skills and be fully trained in implementing Community programmes.

Secondly, minimum conditions for the decentralisation of management to executive agencies in the candidate countries have been laid down. Decentralisation to candidate countries with retrospective control by the Commission can be considered in the event that an executive agency satisfies the following conditions:

- demonstration of effective internal controls including an independent audit function and an effective accounting and financial reporting system which meets internationally accepted audit standards;
- a recent financial and operational audit showing effective and timely management of Community assistance or national measures of similar nature;
- a reliable national financial control system over the implementing agency;
- procurement rules which are endorsed by the Commission as meeting requirements of Title IX of the Financial Regulation applicable to the general budget of the European Communities;
- Commitment by the National Authorising Officer to bear the full financial responsibility and liability for the funds..

Source: Regulation (EC) no. 1266/1999 of the Council of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) no. 3906/89 (Official Journal no L 161, 26/06/1999 p. 0068 – 0072).

According to the most recent Regular Reports of November 2000, Poland, the Czech Republic, Hungary and Slovenia have made particular progress in recent years with respect to the cohesion policy obligations. By contrast progress has been much more limited in Slovakia, Romania, Bulgaria and the Baltic States. Poland now has the leading regional policy structures and instruments for the implementation of the structural funds, including the legal and organisational framework. At the end of 1999 the government approved a provisional National Development Plan for the period 2000-2006. A rural development programme

was also approved by the European Commission in 2000 in the framework of SAPARD. The latter relates in particular to investments agricultural enterprises, improvements in the processing and marketing of agricultural and fishery products, the development and improvement of the rural infrastructure and the development and diversification of economic activities. Hungary too has set up the principal legal and administrative structures and a new Regional Development Department within the Ministry of Economic Affairs is coordinating overall regional policy. The Czech Republic has worked with success in recent years on strengthening the administrative capacity at central and decentralised level, while the main legal and administrative institutions have got off the ground in Slovenia. Needless to say these frontrunners in regional policy still face a number of stubborn capacity problems. Demarcation disputes can for example sometimes complicate interministerial coordination and the division of responsibilities between the various tiers of administration can remain ambiguous. The European Commission warned the Czech Republic for example that the sudden and large-scale change in staff at the Ministry of Regional Development immediately after the resignation of the responsible minister suggested that political considerations were prevailing over policy considerations (European Commission 2000i). Other recurrent shortcomings concern the sometimes poor regional statistics and social indicators and the lack of sufficiently qualified civil servants.

Table 4.21 Regional income in selected CEE regions

Region (NUTS-2), figures for 1998	Per capita GDP (at purchasing power parity) as % of average in EU-15
Y UZ HEN TSENTRA LEN (BULGARIA)	22
NORD-EST (ROMANIA)	22
SEVEROIZTOCHEN (BULGARIA)	22
SEVEREN TSENTRALEN (BULGARIA)	22
YUGOZAPADEN (BULGARIA)	22
SEVEROZAPADEN (BULGARIA)	23
YUGOIZTOCHEN (BULGARIA)	24
SOUTH (ROMANIA)	25
NORTH WEST (ROMANIA)	26
LUBELSKIE (POLAND)	26
:	
:	
MA Z OWIECKIE (POLAND)	53
SEVEROZáPAD (CZECH REPUBLIC)	53
JIHOV?CHOD (CZECH REPUBLIC)	53
NYUGAT-DUNáNTúL (HUNGARY)	54
OSTRAVSKO (CZECH REPUBLIC)	57
JIHOZÁPAD (CZECH REPUBLIC)	57
SLOV ENIJA (SLOVENIA)	69
KÖZÉP MAGYARORSZÁG (HUNGARY)	72
BRATISLAVSK? (SLOVAKIA)	99
PRAHA (CZECH REPUBLIC)	115

Source: Behrens (2001a).

Figure 4.5 Per capita GDP by region in the EU and the candidate countries (EU 27 = 100)

Even in the absence of precise forecasts of future growth rates and accession data, it is abundantly clear that enlargement will radically change the economic and social map of the Union. At present average per capita GDP (on the basis of purchasing power parity) in the CEECs is roughly 40 percent of the EU average. This figure conceals major differences, ranging from 22 percent in Bulgaria to 69 percent in Slovenia. The most recent Eurostat figures for regional incomes at NUTS-2 level date from 1998. These indicated that average income in the Bratislava and Prague regions were 115 percent and 99 percent respectively of the EU-15 average (see table 4.21).

Average per capita GDP for the total EU group will decline upon enlargement. The oft-quoted Second Cohesion Report of the European Commission of January 2001 even cites a fall of 18 percent. This calculation is however based on GDP figures from 1998 and applies to a highly hypothetical scenario in which all candidates would accede at the same time. In a more probable scenario, in which only the first five 'Luxembourg candidates' would accede around 2006 and would manage to achieve 2 percent catch-up growth, the fall would amount to just 7 percent (Pelkmans et al. 2000). Furthermore a number of other regions in, in particular, the Czech Republic, Slovenia and Hungary would no longer qualify towards that time for aid under objective 1 as they would then exceed the ceiling of 75 percent of average EU GDP. At the same time, most regions would only be able to approximate the EU average in the medium term, even given rapid catch-up growth.

With respect to social cohesion it is notable that although unemployment has been declining throughout the EU over the past three years, the unemployment differentials between the member states have barely narrowed. Interregionally the differences have in fact widened. Most of the regions that had high unemployment ten years ago (sometimes up to 25 percent) are now also among the biggest outperformers. On the basis of a regional classification at NUTS-2 level, the unemployment figures range from 2.1 percent to 28.7 percent (table 4.22). In the CEECs the most recent figures (for the second quarter of 1999) indicate an average unemployment rate of 10.4 percent of the total active population. The regional differences are comparable on paper with those in the present 15 member states, ranging from 3.2 percent to 23.7 percent. Of the 53 NUTS-2 regions there were three with a rate of unemployment of less than 5 percent and a further 22 with a rate of under 10 percent. As against this, however, the figures for Central and Eastern Europe flatter, because the hidden unemployment in these countries remains bigger than that in the present EU member states.

Table 4.22 Regional unemployment figures in the Central and East European countries, second quarter 1999 (%)

Lowest unemployment	Percent	Highest unemployment	Percent
Praha (Czech Republic)	3.2	Severen Tsentralen (Bulgaria)	17.7
Bucureşti (Romania)	3.4	Severozapaden (Bulgaria)	21.2
Nyugat-Dunántúl (Hungary)	4.4	Warmińsko-Mazurskie (Poland)	21.3
Közép-Magyarország (Hungary)	5.2	Východné Slovensko (Slowakia)	21.9
Sud-Vest (Romania)	5.4	Severoiztochen (Bulgaria)	23.2
Nord-Vest (Romania)	5.6	Yugoiztochen (Bulgaria)	23.7
Dél-Alföld (Hungary)	5.7	CEE *average*	10.4

Source: Behrens (2001b).

Nevertheless it will be not so much the nature as the scale and intensity of the development tasks in the Union that change radically after enlargement. Although there are enormous regional variations in economic and social development potential in the CEECs, most of the developmental issues are already to be found in the present EU, as illustrated by the objectives of the present structural fund (Hallet 1997). Research by the European Commission (1999c) indicates that the Central and East European countries face three major general challenges: the diversification of economies with a highly lopsided industrial or agricultural structure, the further development of establishment advantages in regions with good development prospects and the elimination of obstacles in growth centres. In general the large urban areas around Budapest, Warsaw and Prague and large elements of Slovenia are among the most prosperous regions. Together with the more westerly areas they also have a relatively good physical infrastructure and a well-trained workforce. As a result the services sector and foreign investment are growing much more rapidly in these areas than elsewhere. Areas with a lopsided, stagnating industrial and agricultural sector and poorly developed services sector may be found in the eastern parts of Poland, Romania and large parts of Bulgaria, Latvia and Lithuania, where per capita GDP is less than 30 percent of the EU average (European Commission 1999c).

The scale of the infrastructural and environmental challenges in the prospective member states is however new for the EU. The density of the road network is comparable with that in the EU; in Hungary and Poland it is even well above the average in such countries as Portugal, Spain and Greece. The quality, however, lags behind badly. The number of highways is for example very limited, while the road network focuses unduly on the major urban centres and is poorly developed around border crossings. The density of the rail network is higher than in the EU but here too substantial investment will be required in order to improve the standard of the system.

As noted, the investment required in the environmental field may be much larger again, particularly since the new member states (possibly after a transitional peri-

od) will be expected to implement the full environmental acquis. In addition, this will not just involve the modification of the present production processes but also the cleaning up of old, seriously polluted areas. The costs of doing so cannot possibly be borne by the CEECs without detriment to catch-up growth.

The development challenge in the Central and East European countries will continue to impose heavy demands on the EU budget long after accession, both via claims on the structural funds and via CAP spending. Under the financial arrangements agreed after considerable political horse-trading at the Berlin Summit, a special enlargement reserve was set aside for the period up to 2006 of 6.54 billion euros in 2002 (as the presumed accession date) rising to 16.8 billion euros in 2006. This will enable the member states to keep the total EU budget well below their self-imposed budgetary ceiling of 1.2 percent of EU GDP. In order to do so, however, the member states have also placed a number of reforms – notably that of the Common Agricultural Policy – and structural obligations on the back burner. The current budget is still based on the assumption that the CEECs will not qualify for direct compensatory payments, whereas it is already clear at this stage that the new agriculture ministers will be demanding equal rights in this field in the Council immediately after accession (Pelkmans et al. 2000: 141). This fact, in conjunction with the postponement of the milk quota reforms until after accession and the gradual increase in the financial transfers from the structural funds, means that given unchanged policies the EU will be heading for a budgetary conflict after the first enlargement round of for example five member states. In a study conducted on behalf of the WRR, Pelkmans et al. estimate on the basis of a simulation model that even if only a leading group of the five most developed CEECs were to accede during the period up to 2006, the current budget would be exceeded by some 10 billion euros.

The consequences of accession for the present Cohesion countries that are among the net recipients of the structural and cohesion funds conceal major political sensitivities. As a result of the enlargement average per capita income in the EU will fall. Working on the assumption of an average annual growth in income of 4 percent in the acceding countries, this could mean that all regions that currently have a per capita GDP of between 68 percent and 75 percent of the EU average (and which therefore still qualify for aid under objective 1 of the structural funds) would lose any claim on the structural funds. The financial and political consequences would be particularly marked in Spain, Greece and Portugal, which would demand (temporary) financial compensation. Since Spain has the largest number of potential 'loser' regions and could consequently find itself a net contributor to the budget, it has been leading the demands being made by the southern member states.

It was therefore primarily because Spain was threatening to block the decision-making that the Intergovernmental Conference of Nice decided at the last moment that the cohesion policy should not be determined by the Council by a qualified majority vote, after concurrence by the European Parliament, until

1 January 2007 onwards. The veto will however only lapse if the multi-year financial prospects have also been approved by this date. In practice therefore Spain will continue to have a veto over cohesion policy until 2013. In April 2001 Spain already warned the European Commission in a memorandum that the backward Spanish regions could in no circumstances be made the victim of the 'artificial' statistical convergence towards the EU average that will take place if the EU is enlarged to embrace even poorer regions (Agence Europe, 23 and 24 April 2001.) In brief, if Spain and the other cohesion countries are not properly compensated, there is a major risk of blockades in Community decision-making and reduced effectiveness both before and after the first enlargement round.

4.7 COOPERATION IN THE FIELD OF JUSTICE AND HOME AFFAIRS

4.7.1 INTRODUCTION

Cooperation in the field of justice and home affairs (JHA) is the most rapidly growing policy area of the EU. Significant political boosts to this end were provided by the far-reaching changes introduced by the Treaty of Amsterdam (e.g. the inclusion of the Schengen agreements in the European Union Treaties) and the strategic guidelines laid down by the European Councils of Vienna and Tampere. In the Treaty of Amsterdam the maintenance and development of an 'area of freedom, security and justice' (the AFSJ) was declared a separate objective of the Union. In this area the JHA cooperation is especially designed to guarantee the free movement of persons (i.e. therefore also including the abolition of checks on persons at the internal borders) by means of measures in relation to controls at the external borders, asylum, immigration and the prevention and combating of crime. The JHA cooperation does however have the potential to develop beyond these 'supplementary measures' to economic integration, namely into a kind of 'common internal security zone'.

The enlargement of the EU to include Central and Eastern Europe offers major opportunities. In the first place the internal security of the EU can be enhanced. An important motivation for the JHA cooperation has always been the fact that the EU member states are no longer capable of combating problems such as organised crime, terrorism, and drugs independently and so must pool their forces. The same applies with respect to the CEECs. The disappearance of the Iron Curtain has increased the freedom of movement of people from Central and Eastern Europe. This unfortunately also applies to illegal immigration and international crime reaching the European Union from and/or via these countries. In order to tackle the already existing pan-European human trafficking, money-laundering and other criminal practices, intensive cooperation with the CEECs is indispensable. Inclusion of these countries within the area of freedom, security and justice of the EU opens up major opportunities in this field. The candidate countries will be required to adopt the Schengen rules with respect to external border controls, meaning that all persons wishing to pass the external borders must be checked and that the borders in between crossing points must be effectively guarded.

Whereas border controls and surveillance left a lot to be desired until recently, the adoption of the EU/Schengen regime will mean that far fewer illegals from third countries are able to reach the borders between the candidate countries and the present EU member states. The same applies with respect to the adoption by the CEECs of the strict EU/Schengen visa regime. If candidate countries introduce that regime, fewer illegals from third countries who are now still able to travel visa-free to the candidate countries will be able to reach the border between the candidate and EU member countries. Documents (such as passports and visas) which at present can be forged comparatively easily in certain candidate countries will be secured with a view to accession. If the candidate countries adopt the acquis in respect of police and judicial cooperation and are included in the political and judicial networks of the EU, the tackling of illegal immigration and the fight against international crime will only become more effective.

There are major opportunities not just in respect of internal security. In due course enlargement will also have favourable consequences for asylum-seekers and refugees from third countries. If the candidate countries adopt the EU acquis in the field of asylum policy, the legal and social problems which asylum-seekers and refugees have until recently experienced in many countries will diminish. Thirdly the enlargement of the area of freedom, security and justice to Central and Eastern Europe will in due course generally be to the benefit to the rule of law in Europe and a functioning, independent judiciary.

The eastward enlargement will at the same time constitute a major challenge in the field of JHA. This applies both to the realisation of accession itself as to the preservation of achievements (i.e. implementation and enforcement of the acquis) in the field of JHA after accession. The fact that the JHA chapter is a troublesome element in accession arises from the marked sensitivity of this subject in both the EU and the candidate countries. This applies in the first place to JHA topics in general: matters affecting the internal security of citizens traditionally form part of the core responsibilities of the nation state. Since the 1970s the EU member states have gradually stepped up cooperation in this field as part of a gradual process and have worked on building up a crucial mutual confidence in recent decades. The candidate countries have not experienced this incremental process and are therefore required to share sovereignty in sensitive policy fields and to build up mutual confidence, both among themselves and with the EU member states, in a relatively short space of time.

In addition JHA topics are particularly sensitive in the enlargement context. There are worries among EU citizens about the quality of the controls on the new external borders and, related to this, about a possible increase in illegal immigration and international crime. At the same time there is disquiet in the candidate countries about the possible negative consequences of introducing 'hard' external borders and a restrictive European visa policy for: local and regional cross-border economic activity in Eastern regions; the relations between ethnic minorities on the eastern side of the new Schengen borders with their ethnic 'fatherland' with-

in the EU; and the political relations with adjoining non-EU member states that could possibly feel excluded.

The fact that enlargement constitutes a major challenge in the JHA field also arises from the fact that the candidate countries embarked comparatively late in the day on pre-accession preparations in this area. The third pillar of the Union, with its limited, intergovernmental acquis, was not an issue of any significance in the northern enlargement. The fact that the Schengen agreements were included in the EU Treaties under the Treaty of Amsterdam does however create an enormous additional hurdle for the candidate countries, which are required to adopt the new JHA acquis in its entirety. An additional complication for the candidates is that the member states only succeeded in spring 1998 in defining the content of the JHA acquis and did not determine precisely what the Schengen acquis embraced until May 1999.

The candidate countries have therefore not only started late in the piece on their preparations in this area of policy but also find themselves confronted by very rapid developments in this area. Since the Treaty of Amsterdam came into force (May 1999) the rapidly growing JHA acquis has been the fastest moving target for the candidate countries. While the candidates are still engaged in adopting the Schengen acquis, the EU is already developing new acquis on the basis of the new objectives and instruments introduced in Amsterdam.

Once the CEECs have acceded to the EU (and are fully participating in the Schengen system under a separate decision by the JHA Council to that end), the *implementation and enforcement* of the JHA acquis will also be a significant issue. The area of freedom, security and justice is highly vulnerable to any failures on the part of individual member states to implement the acquis in accordance with common standards. Confidence in one another's administrative and legal systems is a condition for the preservation of this integration project. The general observation that the EU is dependent on national administrative and legal systems applies all the more to the intergovernmental elements of the JHA acquis (i.e. the police and judicial cooperation in criminal cases). The possibilities for enforcement by the Court of Justice available under the first pillar are lacking in the third pillar of the Union. With respect to the EU-15 it has already been suggested that the third pillar of the Union suffers from an implementation deficit (From and Stava 1993: 53; Den Boer and Wallace 2000: 511). If the accession of the CEECs results in the undue importation of problematic diversity in the field of implementation and enforcement capacity, this could weaken the crucially important mutual confidence and give rise to protective measures by member states, which in turn could undermine the area of freedom, security and justice.

This section first of all examines the recent dynamic in the field of JHA, as well as the consequences of this for accession (section 4.7.2). The progress made by the candidate countries is then charted in relation to the adoption of EU legislation, their administrative and legal organisation and the implementation and enforce-

ment capacity in the various policy fields (section 4.7.3). The emphasis here is on external border controls, migration policy, asylum policy, police cooperation and judicial cooperation in criminal cases. Use has been made for this section of a separate study conducted for the WRR by Monar (2000).

4.7.2 DYNAMIC

With the introduction of the 'third pillar' of the Union, the Maastricht Treaty in fact formalised the network of intergovernmental cooperation between the Ministries of Justice, Home Affairs and related national services of the member states that had already been developed since the 1970s. Title VI of the Treaty of the European Union provided a place for 'cooperation in the field of justice and home affairs … with a view to achieving the objectives of the Union, especially the free movement of persons.' Issues in the area of JHA regarded as being of common interest were asylum policy, external border controls, immigration policy and policy towards third country nationals, combating drug addiction, combating international fraud, legal cooperation in civil and criminal cases, customs cooperation, police cooperation for certain purposes and the establishment of Europol.

Important motives for the aforementioned cooperation were the cross-border nature of certain problems such as terrorism, international crime and drug trafficking and use. In addition the introduction of the free movement of persons (one of the four freedoms of the internal market) had to be coupled with supplementary measures to strengthen the external borders and measures in respect of asylum and immigration policy, as the elimination of the borders between the member states could not be at the expense of the safety of the population and public order. The pull exerted by the Community combined with the growing resistance to immigrant labour in the 1980s provided a further impulse for JHA cooperation. As a result of the growing interdependence within the Community, as reflected in cross-border marriages, cross-border employment and pensions, etc., demarcation disputes also arose in relation to the civil law of the various member states together with a call for a 'European Judicial Space'. The fall of the Berlin Wall also played a role in the development of the JHA acquis due to the perceived threat of migrant flows from the Balkans and Eastern Europe and the increase in organised crime originating from the former USSR.

A number of member states have displayed hesitation about Community involvement in matters that traditionally go to the core of national sovereignty. The United Kingdom, Ireland and Denmark, for example, rejected certain aspects of the free movement of persons (namely the free movement of subjects of both countries). This led in the early 1980s to the conclusion that regulations for the free movement of persons could not be introduced for the time being between all member states. Member states that did wish to make progress towards abolishing the controls on their common borders have therefore sought such cooperation outside the Community frameworks, in the form of international agreements. In 1984 France and Germany signed a bilateral agreement to reduce border controls.

This intergovernmental cooperation was subsequently extended in cooperation with the Benelux countries in the Schengen Agreement (June 1985). It then took the Schengen member states five years to agree on an implementation agreement, with all the measures required to eliminate person checks at the internal borders.[57] In doing so an institutional structure was created that by-passed the framework of the EC, including an executive committee at ministerial level with certain regulatory powers. One reason the implementation agreement took so long to come about was that the Schengen states were fearful of mass immigration from Central and Eastern Europe and East Germany.

The member states that did not object towards the free movement of persons but were not in the Schengen group also sought to accede to Schengen (Italy, in particular, as a founding member state, reacted bitterly to its initial exclusion from this cooperation). The Schengen countries offered them the prospect of acceding, hoping that the Schengen cooperation would ultimately be incorporated within the EC. In the 1990s Italy (1990), Spain and Portugal (1991), Greece (1992), Austria (1995), Denmark, Sweden and Finland (1996) acceded to the Schengen agreements and cooperation agreements were concluded with Norway and Iceland. The Council has moreover approved participation by the United Kingdom in elements of the Schengen acquis in the field of police, drugs and judicial cooperation. The Schengen countries were however extremely reluctant about full participation in the cooperation by Italy, Greece, Portugal and Spain. In connection with the major sensitivity of issues relating to the internal safety of citizens, accession to Schengen takes the form of a two-stage process. After a country has signed up to Schengen cooperation there follows a period in which the implementation of the Schengen requirements for the new member states are periodically evaluated under the Schengen Evaluation Mechanism. Only once it has been clearly established that the Schengen acquis is being fully implemented are the internal borders opened. Thus Italy had to wait from 1990 to 1997 and Greece from 1992 to 1999 until they were declared 'Schengen mature'.

The Treaty of Amsterdam and the consequences for enlargement

The Treaty of Amsterdam (which came into force on 1 May 1999) has taken the JHA cooperation into a higher gear. Seldom in the history of European integration has an area of policy been subject to such radical change as a result of a single treaty amendment (Monar 2000). In Amsterdam it was decided:

1 partly to communitarise the JHA area;
2 to enshrine the area of freedom, security and justice as a separate objective of the Union in article 2 of the EU Treaty, linked to a series of new objectives, with a deadline of five years for the realisation of certain measures in respect of these goals;
3 to introduce new policy instruments; and
4 to incorporate the Schengen acquis in the Union treaties.

Re (1) The communitarisation of matters concerning asylum, immigration, external border controls and judicial cooperation in civil law matters is of major politi-

cal and legal importance. The political significance resides in the fact that the member states have for the first time been prepared to transfer elements of the domestically so sensitive JHA acquis to the EC Treaty (Title IV). Legally this step is also of major importance since all measures in these policy areas now become part of the EC acquis. This will not only be to the benefit of the coherence of the European legal order but also means that the well established instruments under the EC treaty can be applied (most of the instruments concerning asylum and immigration under Amsterdam are not legally binding). In various respects the communitarisation is however partial. Two important areas of policy – police and judicial cooperation in the field of criminal matters – remain within the intergovernmental context of the 'third pillar' (Title IV of the Treaty of the European Union). In addition a substantial price has been paid for the communitarisation of other policy areas. The United Kingdom and Ireland were granted a full opt-out from Title IV of the EC Treaty (although for a period of three months after a proposal has been made they are able to adopt and apply any measure proposed under Title IV EC ('opt-in'). Denmark was also granted a special position.[58]

Apart from the opt-out granted to these three member states concessions were also made with respect to the decision-making under the new Title IV EC that has retained intergovernmental characteristics. These features concern the decision-making methods, which must remain based on unanimity for a transitional period of five years (until 2004). Following this transitional period the Council must unanimously decide whether decisions can be taken by qualified majority on elements of Title IV EC (or for the entire Title IV EC). The second intergovernmental characteristic concerns the fact that for the duration of the transitional period the European Commission must share its right of initiative in the communitarised JHA elements with the member states – a highly unusual weakening of the role of the Commission in the context of the EC Treaty.

The various aspects of this partial communitarisation of the JHA acquis have various implications for the next enlargement. The first is that the Treaty of Amsterdam has created the political and legal context for the build-up of a substantial and coherent EC acquis in matters of asylum, immigration, external border controls and judicial cooperation in criminal matters. The more this acquis is developed in the next few years, the higher will be the hurdles for the applicant countries.

The second is that the accepted opt-outs clearly indicate that the EU has ceased to move ahead as a unitary actor in the areas of justice and home affairs. These have also illustrated that there are obvious possibilities to have special national positions protected through exemptions codified in the Treaties. Although no similar opt-outs are on offer to the applicant countries, the precedents with respect to the United Kingdom, Ireland and Denmark have undermined the credibility of the EU's insistence that the applicant countries must adopt the entire Union acquis.

Re (2) The Treaty of Amsterdam has placed all JHA articles in the EC and EU Treaties under a common rationale: 'the area of freedom, security and justice'.

The central treaty objective of this AFSJ therefore ranks at least formally at the same level as, for instance, the objectives of an Economic and Monetary Union and the Common Foreign and Security Policy and, under the provisions of the Treaty, must be brought into being within five years. Linked to the AFSJ as a central treaty objective are a host of new and detailed policy objectives which have been included under both new Title IV TEC and amended Title VI TEU. Of major importance is the fact that for the first time in the history of justice and home affairs a deadline has been set within which the measures with respect to these specific objectives must be completed. That deadline is five years after the coming into force of the Treaty of Amsterdam (2004). This means that the Community method of combining integration objectives with deadlines for their achievement used successfully in the case of the internal market has now also been applied to justice and home affairs.

For the enlargement this means that the EU integration in the justice and home affairs field has been placed firmly on the rails. The deadline of five years will probably result in a rapid growth of the acquis until 2004, i.e. before the first accessions take place. This will require extra efforts on the part of the candidate countries.

The Treaty of Amsterdam has also introduced more effective instruments with respect to the objectives in the JHA field. With respect to the communitarised element of the JHA acquis use can now be made of the established EC instruments of directives and regulations. For the two policy areas that have remained in the intergovernmental Treaty of the European Union new binding instruments have also been introduced resembling the directives and regulations in the EC Treaty (namely the framework decisions and the decisions). The reformed set of instruments means that the candidate countries will be required to adopt a JHA acquis before acceding that has been much more clearly defined and will be more frequently binding than was the case before the Treaty of Amsterdam.

The incorporation of the Schengen agreements in the Union treaties also has major consequences for enlargement. Although the Schengen system is mainly about measures to abolish the internal borders, the volume of Schengen measures in related policy areas has also become substantial (think of policy towards subjects of third countries, controls at the external borders, visa policy, judicial cooperation, police cooperation, measures to combat drug trafficking, control measures with respect to arms and munitions and the organisation and functioning of the Schengen Information System). Properly regarded the Schengen acquis forms the lion's share of the JHA acquis.

For enlargement this means, as already noted above, that the candidate countries were confronted fairly unexpectedly with a large volume of new acquis in the field of justice and home affairs. The candidates are no longer able to accede first to the EU and only subsequently to Schengen. Article 8 of the Schengen Protocol states that candidate countries must fully adopt the Schengen acquis. This is a

major additional hurdle for the Central and East European countries. Furthermore the precise definition of the new obligations only became available in 1999 as agreement had first to be reached among the EU member states concerning the definition of the Schengen acquis and a decision had to be taken in respect of each Schengen measure as to whether this should find its legal basis in the first or third pillar of the EU (i.e. Title IV EC or Title VI EU).

In addition the incorporation of Schengen in the EC/EU Treaties means that measures in these fields that will be taken by the EU member states after the Treaty of Amsterdam comes into force will also have to be adopted by the candidate countries. Given the availability of new instruments described above, it is likely that this acquis will evolve rapidly.

Since the Treaty of Amsterdam two significant boosts have been given to the development of the AFSJ by the Vienna Action Plan and the conclusions of the Tampere European Council. The action plan endorsed by the Vienna European Council (December 1998) fills in the concepts of 'freedom', 'security' and 'justice', sets priorities for the next five years and lays down a timetable for the measures that must be taken in order to achieve the AFSJ. The conclusions of the special European Council in Tampere (October 1999) – the first European Council in the history of the EU to be dedicated to justice and home affairs – focused on three priority areas:

1 the development of a common asylum and migration policy of the EU;
2 a European area of justice; and
3 fighting crime in the Union.

The high level of ambition set by the Amsterdam/Vienna/Tampere triad was prompted in part by the imminent enlargement. The extent to which these ambitions are converted into practice before the deadline of 2004 will determine the level of the ultimate accession norms for the candidate countries.

4.7.3 ADJUSTMENTS OF THE CENTRAL AND EAST EUROPEAN COUNTRIES TO THE JHA POLICY

The European Union is devoting considerable energy to monitoring the adjustments by the Central and East European countries to the JHA acquis. Not only are the passages devoted to JHA in the European Commission's annual progress reports becoming more and more detailed, but since 1999 the Council has also been conducting collective evaluations in parallel to the regular reports of the Commission, concentrating solely on the progress in the field of JHA in the CEECs.[59] Apart from the adoption of the acquis these collective evaluations also pay considerable attention to the application and effective implementation of that acquis by the candidate countries, as implementation is the key bottleneck in the JHA field. The volume of legislation to be adopted remains relatively limited at this stage. What it comes down to iswhether after accession everyone crossing the external border is in fact checked and whether effective border surveillance

between border crossings can be guaranteed; whether consulates are prepared for the multiple increase in the number of visas they will be required to issue; and whether the various law enforcement agencies will cooperate effectively in the fight against international crime and illegal immigration, etc.

An outline is provided below of the progress which the candidates from Central and Eastern Europe have made in the JHA field, examining in turn the security of the Union's external borders, migration policy (including visa policy and the fight against illegal immigration),[60] asylum policy, police cooperation and judicial cooperation in criminal matters.

Security of the external borders

The lifting of the Iron Curtain followed by the accession of Central and East European countries to the EU will radically change the European political map. Whereas during the Cold War the 'hard' border ran right through Europe, after the accession of the ten CEECs the EU borders will have shifted eastwards to reach Russia, White Russia, Ukraine, Moldavia, the Baltic and the Black Sea. The responsibility for monitoring the EU's external borders – formerly handled primarily by Germany and Austria – will consequently shift to new member states in Central and Eastern Europe. The recent incorporation of the Schengen agreement into the EU treaties means that a significant component of the EU acquis now concerns the external border controls. According to article 8 of the 'Protocol for the inclusion of the Schengen acquis in the framework of the European Union' the candidate countries must fully adopt that acquis. This will make the forthcoming accession the first time in history that candidates must align with the Schengen acquis at the point of accession to the EU. Previously countries acceded to the EU, and were then able to accede at a later stage to the then still intergovernmental Schengen agreement (e.g. Greece, Portugal, Spain, Austria, Finland and Sweden).

With respect to the external borders the need to adopt the Schengen acquis[61] means that the candidates must comply with the extremely strict Schengen norms and procedures for checks on persons at the external borders. This would involve a radical step for the candidate countries, since their eastern borders have been relatively open. The candidate countries accordingly fear that the accession requirements will have the effect of disrupting long-standing cross-border economic, social and political relations. Whereas the focal point of border control will be on the eastern borders after accession, the focus during the Cold War was on the western borders. Poland will for example become responsible for monitoring 1,143 kilometres of external borders with Russia (Kaliningrad), White Russia and Ukraine, and Romania for the security of 2,071 kilometres of external borders with Ukraine, Moldavia, the Federal Republic of Yugoslavia (FRY) and the Black Sea. At the time of the Warsaw Pact the borders between the Soviet Union and Poland were guarded not by Poles but by Soviet border troops. Polish border forces were primarily stationed on the western and southern borders and on the Baltic coast (House of Lords 2000, point 16).

A complicating factor in this radical process is the territorial evolution of the European Union: it is not clear which candidate countries will accede at what point, jointly or otherwise, or where the external borders of the EU will ultimately come to lie. This creates the prospect of the scenario under which the candidates will be required to invest heavily under the accession requirements in a control regime of borders that will only temporarily be the external borders of the EU. An example is Slovakia: if the Czech Republic, Hungary and Poland form part of an initial accession wave not including Slovakia, the new Central European EU member states will have to apply the Schengen rules to the (temporary) external border with Slovakia. This uncertainty also affects Hungary which borders three candidate countries: Slovenia, Romania and Slovakia (House of Lords 2000, points 11 and 17).

Against this background candidate countries are working on the adoption and implementation of the rules with respect to the crossing of the external borders. The *adoption of legislation* plays a less prominent role with regard to external border security than it does in other JHA fields. What is important is for the candidate countries to amend their legislation before accession so as to enable their former border guard and border police (generally military border troops and national servicemen) to be transformed into a professional, non-military organisation meeting the standards of the EU (generally designated as 'demilitarisation'). The relevant legislation is largely in place in Hungary, Poland, Estonia and Lithuania, although the demilitarisation process has not yet been completed. In the other candidate countries there is however a substantial deficit. The statutory basis is still inadequate and the powers of the border police are still too unlimited. In some countries the border controls are still performed by various organisations and there is no integrated border control system or a general border protection strategy. The external borders of Estonia, Latvia, Lithuania, Romania and Slovenia have not yet been fully demarcated. Most of the candidate countries should, however, be in a position to adopt the relevant legislation within a few years.

Problems with the adoption of the legislation pale into insignificance beside the deficits in *organisation/administrative capacity and implementation*. In most of the candidate member countries the external borders used to be guarded by armed troops. The border control system was based on regular patrols by troops, watchtowers and 'heavy units' in the background. None of these elements fits in with the Schengen external border protection regime. The latter is based on specifically organised and trained border police units under the full control of the Ministry of Home Affairs and operating as highly trained mobile units with advanced technical equipment and modern control techniques. Even those candidate countries that are well down the road of transformation to a professional border police face structural problems in organisation and implementation: a serious lack of professional personnel, an inadequate infrastructure on the eastern borders (poor accommodation and conditions of employment), lack of equipment (vehicles and vessels, night-vision equipment, technical surveillance of the green borders, radar surveillance of the sea borders, computerised central data

systems and on-line connections, etc.) and inadequate training and experience of personnel with modern control and detection techniques. The low civil service salaries only increase the difficulty of recruiting and maintaining qualified personnel, and also provide fruitful soil for corruption, given the daily temptations of the job. All this means that the border control is unable to comply with the Schengen standards. None of the border guard systems would be in a position to participate effectively in the Schengen Information System as they stand. In general there is a wide gap between the border protection strategies and the budgetary resources that have been set aside for the purpose and the aid funds received. As a result elements of the old military border control system remain in place.

The operational capacity and flexibility in the deployment of personnel is in many cases hampered by the lack of close cooperation between the units responsible for the protection of the various types of borders. Similarly the mutual confidence and cooperation between the various authorities (border guards, customs authorities and the police, etc.) – a significant element in the EU/Schengen acquis – is in many cases poor and suffers from the unclear demarcation of tasks. The acceding countries also continue to face problems of rivalry between military and civilian structures in protecting their external borders.

The cooperation with the border authorities of the eastern neighbouring countries is also a source of concern. There is, for example, no central authority for border control in the FRY. The likelihood is that the border control systems in the Russian, Ukrainian and Moldavian border control systems will deteriorate rather than improve. Pressure from illegal activities will also increase in these areas, while corruption among border authorities in neighbouring countries is a major problem. The cooperation with neighbouring countries moreover depends on political factors. Treating the border with Slovakia as an external border is for example a sensitive issue for the Czechs. The control of the Slovakian border is clearly inadequate and the same applies to the Hungarian/Romanian and Polish/Ukrainian border, which renders these borders susceptible to illegal immigration. The non-harmonised visa policy of a number of candidate countries (as a result of which citizens of neighbouring countries are able to travel without a visa) also has a direct influence on the security of the borders (see below).

Migration

The diversity of visa legislation is a sensitive issue in the eastern enlargement. One accession requirement is the *adoption of the EU visa regime*, including the EU list. Since the Schengen acquis has been incorporated in the EU Treaties, the even lengthier 'negative list' of Schengen has been another requirement. This list contains 133 countries and areas whose citizens are required to hold a visa in the Schengen countries (the EU list has 101 countries and areas). These 133 include eastern neighbouring countries of the candidate countries, the citizens of which formerly did not require a visa when visiting the candidate countries. On account of the aforementioned fear that cross-border economic and social relations will be disrupted and political tensions generated with neighbouring countries, there is

little enthusiasm among some of the candidate countries for adopting the visa regime. They have indicated that they wish to adjust their visa regimes only 'gradually'. On the EU side it is objected that if subjects from 'risk countries' have access to the candidate countries without a visa it will become very difficult to tackle illegal immigration, illegal employment and international crime. Although certain countries such as Estonia, Latvia, Slovenia and Slovakia have made substantial progress in adopting the EU legislation on visas, the adjustment in the other candidate countries is extremely slow. Subjects from countries on the negative lists of the EU are still able to enter Hungary, the Czech Republic, Poland, Bulgaria, Romania and Lithuania without visas. In many cases no timetable has been submitted for the anticipated alignment of the visa legislation with the EU acquis. A number of candidate countries are unlikely to adopt the visa regime in full until accession is imminent.

The *alignment of the legislation regarding admission and expulsion* with the EU acquis is running more smoothly, although there remains considerable diversity in various candidate member countries with respect to the acquis (e.g. excessively vague or divergent provisions in the field of family reunionification, the period of validity of visas and residence and work permits). In many cases draft legislation to overcome these gaps is under deliberation. A weak point is that many candidate countries do not have any readmission agreements[62] with some of their direct neighbouring countries and with countries of origin. This makes it more difficult to expel aliens who have been detained after crossing the border or who are being sent back from the European Union on the basis of the 'safe third country' principle[63] and readmission agreements between the EU member states and the candidate countries. In a number of the latter (Slovenia, Slovakia, Latvia and Lithuania) the legislation in the area of expulsion is not yet in line with the acquis. Aliens can be held in custody for a substantial time without legal action.

There are also imperfections in relation to the *fight against illegal immigration*. Adjustment to the EU acquis is moreover troublesome, since it consists to a large extent of soft law that is susceptible to varying interpretation. Sanctions against illegal residents and illegal employment are generally confined in the CEECs to fines that have little deterrent effect. A proportion of the illegal employees are furthermore meeting a clear demand for seasonal labour. This could have a legal basis if there were agreements on seasonal employment with neighbouring countries. All in all, however, the candidate countries have made substantial progress towards adopting the EU rules, although it appears unlikely that the process can be completed within a few years.

The real problems concern the *organisation/administrative capacity and implementation*. As a result of the Schengen 'negative list', candidate countries will have to issue far more visas at consulates and ensure adequate checks of these visas and visa duration. In doing so they will run into structural problems given the lack of information technology for processing visa applications and a lack of effective cooperation structures with the police and law enforcement agencies.

An on-line link between consulates and national databanks for the issuing and checking of visas is lacking almost everywhere – even in a country such as Estonia, where the foreign representation does have a computerised system for the processing of visa applications.

In addition there is a lack of the necessary experience and training at the consulates. The consulates of Estonia, which are already working on the basis of the accession conditions (with the exception of the on-line link) form an exception. Many candidates are postponing the adoption of the EU/Schengen visa regime for as long as they can and still often issue visas at the border. They will therefore be able to build up their capacity and experience at the consulates only from very shortly before accession onwards. As Monar notes, the smooth operation of the EU/Schengen visa regime is dependent on a balance between a tough application of the rules towards undesirable aliens and a more flexible attitude towards others such as families and students. It took the current member states a long time to arrive at anything like such a balance. It therefore seems unlikely that the applicant countries will be able to do so if they are planning to introduce the EU's visa policy acquis only shortly before or upon accession (Monar 2000: 45).

Implementation is also the clear bottleneck with respect to immigration control and the fight against illegal immigration. Because it is becoming increasingly difficult to enter the EU countries the more the Schengen regime is extended within the Union, more and more refugees and other immigrants are making use of the illegal services of trafficking in human beings. Paradoxically enough, therefore, the more restrictive EU regime of the last few years has led to a sharp increase in illegal immigration. On account of their geographical location a number of the applicants are crucial transit countries. Action against illegal immigration in the CEECs is clearly inadequate. The ambiguous division of competences and poor cooperation between administrative and security authorities at central and local level reduces the efficiency with which key legislation on immigration issues is implemented in policy. Specific agencies concerned with the sector-overarching problem of illegal immigration are rare. Here again there is a lack of the necessary information and communication technology for effective cooperation between law enforcement agencies. The inadequacies in the crucial coordination of information between the bodies concerned seriously obstructs the fight against organised networks. A strict and consistent application of legislation and established procedures is highly important in this regard. But even the candidates that have already made substantial progress in bringing their legislation into line with the EU acquis still have major difficulties with the effective implementation of the policy. Technical problems (e.g. a lack of detention centres for deportees, fingerprint equipment, adequate data collection and electronic data exchange, etc.) as well as politically and economically motivated concessions to neighbouring countries are the underlying causes.

The readmission policy focuses almost exclusively on the neighbouring countries. Only in exceptional cases is there cooperation with the foreign representa-

tions of the countries of origin. Expulsions towards remote countries of origin are in general not implemented in the candidate countries. Many refugees that have been sent back by the EU under the 'safe third country' principle are consequently not properly received or are conveyed to another safe area. They generally fall back into the illegal circuit, after which they try once again to enter the EU.

The candidate countries do not just act as transit countries for illegal immigration but have also increasingly become target countries. Of considerable importance in the fight against illegal immigration are measures against illegal employment, which is one of the primary 'pull' factors of illegal immigration. All of the applicant countries have some legislation against illegal employment in place, but in nearly all cases little is done in practice about the now widespread problem of illegal employment. A further problem is that documents such as the passports and visas of certain candidate countries are easily forged (this applies for example to the Czech Republic, Slovakia, Slovenia, Lithuania and Latvia).

The upgrading of enforcement practices and special measures such as increasing document security will all require considerable investment by the applicant countries, some of which do not currently treat these as a priority. If these steps are only taken very close to the date of accession, however, lack of experience and training will greatly reduce their effectiveness.

Asylum policy

European asylum policy is primarily based on the Geneva Convention of 1951 concerning the status of refugees and a series of non-binding instruments such as the 'London resolution' of 1992 concerning manifestly unfounded asylum applications and the 'safe third country' principle. Within the framework of the Schengen agreements the member states have signed the Dublin Convention, laying down which member state is responsible for the handling of an asylum application submitted in one of the member states of the Union (something not regulated under the Geneva Refugee Convention).

With respect to the *adoption of asylum acquis* some of the applicant countries have made very considerable progress. The legislation of Hungary, Slovenia, Estonia, Latvia and Lithuania, for example, is already almost fully aligned with the acquis. Points for consideration remain the independence of the appeal structures (e.g. the Czech Republic and Slovakia) and the fact that in some applicant countries decisions on the granting of refugee status are taken in the accelerated procedures by a body (e.g. the local police) that is not regarded under the acquis as a 'qualified' authority 'at the appropriate level'. In addition the *non refoulement* principle[64] (one of the central elements for the protection of refugees under the Geneva Convention, to which the EU is a party) has not in various cases been worked out in accordance with the Convention.

In so far as the asylum legislation continues to display gaps, these can probably be rectified by 2004. In this area too the concern is much more with the fact that

most of the candidate countries have not yet, or fully, introduced the institutional and structural reforms required in order to implement the EU acquis (e.g. Bulgaria).

Although a number of countries have been following the procedures in this field for a number of years, the candidate countries were in the past required to process only a small number of asylum applications. Partly as a result of the accession to the EU, however, the number of applications is expected to increase substantially. This already applies in certain applicant countries (e.g. in Hungary, due to the lifting of geographical restrictions). This concerns asylum-seekers coming directly from third countries and asylum-seekers sent back by the EU under the 'safe third country' principle and readmission agreements with the candidate countries. Given the overburdening and inexperience of the Central and East European asylum systems it is important for these asylum-seekers to be subjected to fair and scrupulous procedures. Some candidate countries are abusing the 'safe third country' principle (e.g. Estonia) and are trying to send on asylum-seekers wherever possible to 'third countries' such as Lithuania and Ukraine. *Refoulement* is a real danger in this regard. In other candidate countries the law continues to be poorly applied and there is a certain arbitrariness about decisions on asylum applications (Hungary, Slovenia, Bulgaria, Latvia and Lithuania).

Lack of staff is another structural problem. The lack of funding is reflected in the quality of reception centres, the equipment, the country documentation, the legal support for asylum-seekers and interpreter services. Lack of experience with non-European countries of origin and lack of training in the field of asylum law and European law is a general phenomenon. As a result of these structural problems the delays in the handling of asylum applications are likely to increase. Lack of modern technical equipment and means of data-communication could also seriously hamper effective implementation of the Dublin Convention.

Police cooperation

As regards the police, the applicant countries have made significant progress in aligning their legislation with the acquis. This process has been made easier by the general overhaul of police legislation and organisation all applicant countries went through after 1989. As regards the framework for police cooperation, the legislation in relation to data protection is still not in accordance with the Europol provisions in certain candidate countries. Nor have all these countries introduced the exchange of liaison officers. The general impression is, however, that the adoption of the acquis prior to accession will not be a major problem in the field of police cooperation.

The police forces underwent various reorganisations during the 1990s. These reforms have contributed to the modernisation and strengthening of the police machinery and have drawn a clear line between the present police forces and the police under the communist regimes. The police forces in all the candidate countries are, however, continuing to reverberate from this major shock, if only

because a high proportion of the police officers have been recruited since 1990. There is a structural shortage of experienced personnel since senior officers with a dubious past have left the system, while there is also a high turnover rate among senior staff. The police are experiencing difficulty in not losing qualified personnel to the private sector, where salaries, career prospects and conditions of employment are superior. The poor payment and conditions of employment are moreover conducive to corruption within the police force. This further reduces the lack of confidence with which the police are regarded in certain applicant countries, thereby in turn making recruitment more difficult.

Good education and training are vital given the large recruitment drive by the police and the emergence of new forms of crime. Although all the candidate countries have improved their education and training programmes, major efforts are required in the field of specialist training. Well trained and specialist staff are required in order to prevent and detect organised crime, especially financial crime, money-laundering, computer crime and corruption. International police cooperation is sometimes also hampered by the lack of foreign language skills. The lack of experienced personnel, equipment and training is a particular factor in the fight against organised crime.

Coordination, cooperation and the exchange of information between various police departments and between various law enforcement agencies within the candidate countries is also highly important for effective international police cooperation. Problems in this regard in various candidate countries have already been noted above.

Judicial cooperation in criminal matters

Effective judicial cooperation in the criminal field depends to a large extent on the compatibility of penal codes and codes of criminal procedure. The applicant countries have already completed some substantial reforms in these areas or are close to doing so, e.g. for the inclusion of new criminal offences and improved witness protection. There continues, however, to be considerable problematic diversity in a number of areas, such as the legislation in the field of extradition, mutual judicial assistance in criminal matters and money-laundering. Nor have some of the candidates ratified all the relevant international conventions (such as the Council of Europe convention on money-laundering, the Council of Europe conventions on combating corruption and the OECD Convention on measures to prevent the bribery of civil servants.) All in all the same applies to the legislation concerning judicial cooperation as to many other JHA topics: it is possible that the legislation will be brought into line with the acquis before accession, but the possibility that this process might not be completed until just before accession could give rise to implementation problems.

A functioning and independent judiciary is not just a condition for participation in the JHA acquis but, more generally, is also a condition for the effective functioning of a member state within the EU. This is why the Copenhagen political

criteria laid down conditions with respect to the judiciary in general and why chapter 3 of this Report examined the transformation of the judiciary in the CEECs. This section confines the attention to a discussion of problematic diversity with regard to participation in the JHA acquis.

The international judicial cooperation suffers from the overburdening of the legal system in the Central and East European countries. This overburdening is reflected in large-scale backlogs in the handling of pending cases, poor access to the courts, non-execution of judgements, deficiencies in the gathering of evidence, non-regular publication of jurisprudence and the poor quality of lower court judgements. At the root of this problem too is a lack of experienced staff (large numbers of senior judges left the system after 1989), resources (reflected in relatively low salaries and a lack of modern technical facilities), support (judges must also perform a wide range of administrative tasks) and education/training. Specifically in the case of international judicial cooperation this means numerous delays, lack of specialist knowledge and language skills among the generally youthful judges and shortcomings in the quality and speed of the procedures applied. Corruption continues to rear its head as a result of inadequate supervision and low salaries – thereby feeding public suspicion of the legal system. As applies to many elements of the JHA acquis, the lack of budgetary resources is growing in relative importance as a source of problematic diversity. The relevant importance of legacies, however substantial, by contrast, is declining.

4.8 CONCLUSION

It was seen in the preceding sections and also in chapter 3 that the enlargement of the EU to take in countries of Central and Eastern Europe will involve risks in certain areas of policy. In order to articulate the conceptual terminology of chapter 2: the candidate countries are adding diversity that could be problematic for the functioning of the EU as a union of values and action. That enlargement also, however, offers opportunities and benefits, for both the candidate countries and the present member states. An overview is provided in table 4.23 of the identified threats as well as the possible opportunities of enlargement in each policy area during the stage before and after accession.[65] This also brings to light a number of problems and opportunities of the enlargement that these policy fields have in common. The most important causes of these problems are examined first below, after which the most important opportunities are summarised in general terms. It is these common causes of the accession, implementation and enforcement problems which must be addressed by the solutions put forward in the third part of this Report if the anticipated opportunities are to be realised.

Legacies

It is evident that in each area of policy, the adoption of the EU acquis alone is an unparalleled challenge that consistently runs into administrative and legal problems in the applicant countries. This applies even more to the implementation

and enforcement of the acquis after accession. As emerged in chapter 3, these problems arise in the first place from the legacies of the past and the exceptionally radical process of social transformation that has taken place since the revolution of the early 1990s. The lack of an independent legal system and a modern system of public administration during the communist era meant that these had to be partly built up after 1990, at a time when the economic transformation crisis was already imposing severe financial limitations.

Economic backwardness

The enormous progress made towards the adoption and implementation of the acquis does however indicate that the importance of these problematic legacies is increasingly fading into the background, partly on account of the dynamic of the democratic and economic process of transformation. In other words, the capacity problem in all sorts of policy areas is gradually becoming related less and less to legacies and transformation problems and more and more to a second cause: namely the impact (financial and otherwise) of economic backwardness. This conclusion has direct implications for the possibilities and opportunities of both the candidate countries and the European Union to cope with problematic diversity.

Tension between catch-up growth and EU accession requirements

The third cause of the problems in the accession process is closely related to economic backwardness. In many areas, the preparations for accession are reinforcing the process of economic transition and development. There are, however, also elements of the acquis where the adoption, implementation and enforcement are at variance with the aim of catch-up growth. It was shown in the preceding chapters that the deepening of the internal market and monetary union, the dynamic of Community environment policy and the rapidly developing policy of cooperation in the justice and home affairs area have meant that the new applicant countries face a higher hurdle than ever before. The implementation of certain elements of the internal market acquis (such as the phytosanitary provisions) and, in particular, the implementation of the environmental acquis and the Schengen acquis, call for an unparalleled investment drive. This does however create a genuine risk that the efforts which the CEECs will need to make in order to comply with the accession requirements will be at the expense of their public investments on the physical and knowledge infrastructure, the strengthening of market institutions and support for the regional and sector-specific adjustment processes.

Resistance towards a new division

A fourth cause of the accession problems concerns the policy dilemma that the enlargement process could result in a new division within Europe. The candidate countries fear that hard borders will arise between Central and East European countries which the Union deems ready for membership and those that are considered not yet to measure up. Among other things this problem of the new borders between the ins and outs relates to the free movement of persons and the trade in agricultural products within the internal market, as well as to the external border controls within the JHA area. This implies that candidates must invest

heavily in the control regime of external borders which, after the passage of time, will be abolished once all the candidates from the region have acceded.

Opportunities

This identification of common problems does not detract from the fact that the enlargement into Central and Eastern Europe will ultimately be on the EU agenda, as it offers decisive benefits and opportunities. The historical opportunity for the Union to reverse the division of the European continent and to foster a more stable political and economic order throughout Europe have already been noted in chapter 1. Partly as a result of the end of the Cold War and the orientation of the CEECs towards the West, the Union's room for manoeuvre and also the importance of converting this stabilisation and development process into practice in a comparatively brief space of time are of an unparalleled scale. The fall of the Berlin Wall and the political and economic process of transformation are indissolubly bound up with transfrontier issues such as the collapse of states, the revival of the national minority problem, and the intensification of the trading, migration and investment relations between East and West. The enlargement into Central and Eastern Europe provides the current member states with much more opportunity than at present to help shape the development of a stable framework within which these transfrontier issues can be tackled: it is after all in the Union context that the member states determine a large part of the specific political, legal and economic principles, standards, rules and procedures that are so vital for their mutual interaction. In addition the Union context makes it possible to benefit in the future from the economies of scale and efficiency gains of a single, larger, Europe-wide internal market, monetary union and internal legal and administrative order.

Table 4.23 Overview of opportunities and threats in EU policy areas

POLICY AREA		Opportunities	Threats
INTERNAL MARKET	BEFORE ACCESSION	For EU: 1. Static and dynamic advantages of Europe agreements and accession prospects (new growth markets, productivity and efficiency gains). For CEE: 1. Ditto. 2. Pre-accession support. 3. Significant improvement of FDI climate.	1. Tension between catch-up growth and full adoption of IM acquis. 2. Inadequate administrative, legal and financial capacity. 3. EC room for manoeuvre and political compromises upon evaluation of accession creates fear of 'erosion'. 4. New market barriers between 'ins' and (temporary) 'outs'.
	AFTER ACCESSION	For EU: 1. Static and dynamic advantages of larger Internal Market. For CEE: 1. Ditto, giving rise to catch-up growth and convergence. 2. Deepening and broadening of social and economic policy coordination.	1. Maintenance of internal market acquis aggravates overburdening of Court. 2. Inadequate administrative, legal and financial capacity creates fear of gradual undermining of internal market acquis. 3. Fear of emergence of new Mezzogiornos, substantial migration from East to West and brain-drain.
MONETARY UNION	BEFORE ACCESSION	For CEE: 1. Gradual, unforced movement towards nominal convergence criteria as reference point to strengthen monetary and physical position. 2. 'Eurofication' provides anchor for monetary stability in extreme cases. 3. Fall in risk-premium on capital.	1. Focus on nominal convergence criteria at the expense of catch-up growth. 2. Standard ERM-2 pathway not always suitable. 3. Speculative attacks in run-up to euro participation. 4. Inadequate monetary policy experience.
	AFTER ACCESSION	1. All advantages of a larger monetary union, including the elimination of exchange rate fluctuations for trade and direct investment, the elimination of transaction costs associated with the conversion of currencies and of information costs and price discrimination, the savings related to the potentially lower foreign currency reserves that have to be held and the profits from seigniorage. 2. Strategic advantages of the euro: boost for further market integration and the financial services and capital markets and the advantages of increased credibility of the monetary institutions and of the quality of economic policy. 3. Strengthening the international role of the euro. 4. Strengthening external representation of the euro.	1. Fear of inadequate supervision of financial institutions. 2. Risk of undesirable relaxation of macro-economic and physical policy. 3. Increased risk of problematic asymmetric shocks. 4. Doubts about lack of adequate financial supervision. 5. Loss of effectiveness of ECB

Table 4.23 Continued (I)

POLICY AREA		Opportunities	Threats
CAP	BEFORE ACCESSION	For EU: (Modest) 1. Static and dynamic advantages of Europe Agreements and the accession prospects (access to new growth markets, productivity and efficiency gains). For CEE: Ditto, partly through technology transfer. Pre-accession support.	For EU: 1. Rising internal EU tensions. 2. Upon continuation of export subsidies: infringement of WTO agreements, resulting in trade disputes. For CEE: 1. Obligatory adoption of market-distorting, inefficient, opaque and expensive policies. 2. Weak agricultural structure (land markets, farm size, processing industry, marketing channels). 3. Inadequate administrative, legal and financial capacity. 4. Initially inadequate absorption capacity for pre-accession support.
	AFTER ACCESSION	For EU: 1. Static and dynamic advantages of larger internal market agricultural products. 2. Further intra-European specialisation (via reallocation of (extensive) bulk production to CEECs). 3. Sharper focus on market demand, consumer, environmental and animal welfare interests. For CEE: 1. ditto.	For EU: 1. Increase in rural areas suffering from underdevelopment. 2. Increase in production surpluses and agricultural expenditure. 3. Blocking of further CAP reforms. 4. Abuse of CAP resources under heading of rural policy. 5. Rising agricultural expenditure through direct compensatory payments. For CEE: 1. Loss of market share in certain segments. 2. Rising food and land prices. 3. Delayed outflow of labour from agriculture. 4. Intensification of regional and social differentials.
ENVIRONMENTAL STRATEGY	BEFORE ACCESSION	1. Very marked improvement in environmental performance. reduction in pollution (ceteris paribus). 2. Substantial input of biodiversity. 3. Gradual reduction of unfair competition by alignment of product rules/requirements. 4. Room for joint implementation facilitated by pre-accession expenditure on the environment. 5. Enlargement stimulates direct investment, in turn bringing global environmental standards applied by multinational enterprises. 6. Growth market for environmental technology/measuring equipment/consultancy.	1. Expensive environmental legacy from communist era (waste soil/river/lake pollution; highly polluting energy sources). 2. Underdeveloped and weak institutions, with limited powers, too few people and inadequate budgets. 3. Weak regional/local implementation, lack of expertise. 4. Heavy investment directives (water, air, waste) impose high funding demands and involve lengthy infrastructure construction. 5. Integral environmental strategy (e.g. transport, energy, agriculture, etc.) still in its infancy.

Table 4.23 Continued (II)

POLICY AREA		Opportunities	Threats
	AFTER ACCESSION	1. Higher priority for environment. 2. More effective capacity for administration and management. 3. Reduction in investment restrictions.	1. Modification of actual priorities after accession. 2. Bureaucratic resistance (e.g. Central versus Regional). 3. Corruption relating to infrastructural projects/procurements.
COHESION POLICY	BEFORE ACCESSION	For EU: 1. Pre-accession support via cohesion policy forces temporary decentralisation of institutions and policy by candidate countries. 2. Essential investments in the environmental, physical and knowledge infrastructure, at the same time facilitating foreign direct investment. For CEE: 1. Pre-accession support (Phare, ISPA, SAPARD) for structural improvements, retraining and infrastructural and environmental improvements. 2. Strengthening (decentralised) legal and administrative capacity. 3. Investments in institutional framework for programming, evaluation and (financial) control. 4. Strengthening local businesses by indirect increase in demand for local suppliers. 5. Strengthening public support for accession.	For EU: 1. Rising internal EU tensions concerning shift of cohesion resources and net budgetary positions. 2. Poor, non-functional programmes and corruption. For CEE: 1. Inadequate administrative and legal capacity. 2. Laborious interdepartmental and vertical coordination with regional and local governments. 3. Limited availability of statistics. 4. Initial unfamiliarity with absorption capacity.
	AFTER ACCESSION	1. Dynamic advantages of regions with catch-up growth. 2. Increased accessibility of peripheral regions. For CEE: 1. Higher catch-up growth by improved exploitation of existing economic growth potential and enlargement of physical and human capital. 2. Improved access to EIB loans. 3. Potential strengthening of the financial stability by easing of deficits on current account, particularly stimulation of local businesses. 4. Improvement of regional policy capacity strengthens local policy competition and attractiveness for FDI.	1. Emergency of new Mezzogiornos. 2. Crowding out of private investment. 3. New budgetary disputes concerning just return and burden-sharing. 4. Fragmentation of objectives, instruments and deployment of resources. 5. Initially limited absorption capacity and co-financing possibilities. 6. Creation of vested interests given sustained subsidies.

Table 4.23 Continued (III)

POLICY AREA		Opportunities	Threats
JHA	BEFORE ACCESSION	For EU: 1. Enhancement of internal EU security by accession preparations of CEECs, forms of association and pre-accession pacts in respect of JHA. For CEE: 1. Enhanced internal safety by accession preparations. 2. Asylum policy aligned with international and EU standards, with potential improvement of position of refugees in due course. 3. Promotion of rule of law and a functioning, independent judiciary as part of accession preparations.	For CEE: 1. Dislocation of transfrontier economic and ethnic relations and political tensions with neighbouring countries as result of introduction of 'hard' external borders and restrictive visa policy. 2. Heavy financial burden of investments in external border protection, which may be questioned particularly if borders look temporary. 3. Influx of illegal immigrants and asylum-seekers from third countries, capacity problems, lack of experience with large numbers of asylum-seekers. 4. Inadequate resources for investments in JHA organisations, structures and equipment.
	AFTER ACCESSION	For EU: 1. Expansion of area of freedom, security and justice. For CEE: 1. Participation in (parts of) area of freedom, security and justice.	For EU: 1. Inadequate organisation and large implementation deficits with respect to protection of external borders, migration (including measures to combat illegal immigration), asylum policy, police cooperation and judicial cooperation in the CEECs form a threat to the internal security within the Union if the controls on the borders with the candidate countries have to be abolished. For CEE: 1. Persistently high cost of buffer function for the EU with respect to protection of external borders, reception and processing of asylum advocations from refugees that are being sent back from the EU or being attracted by EU membership of the CEE country.

NOTES

1 In certain EU circles this commitment is however regarded as a more or less natural step up to a third concept in which the Union has not just efficiency and stability objectives but also substantial political solidarity and redistribution tasks, for example in the field of taxation and social security.

2 In this outline the WRR has placed the emphasis on the free movement of goods, capital and workers. The recent developments in the services, transport and network sectors, however important these may be for the further deepening of the internal market and monetary union, are only noted in passing in this report.

3 According to this rule member state A must admit goods or services from member state B to its territory if those goods or services have been lawfully produced and marketed according to the rules of member state B (the country of origin principle). Member state A may only obstruct free movement where there are compelling requirements, and then only if those requirements (i.e. objectives) are not equivalent (Kapteyn and Verloren van Themaat 1995: 349).

4 The EU has divergent forms of policy coordination that vary considerably according to the extent to which powers must be shared or transferred. Among the lighter forms of coordination are procedures such as the provision of information and joint orientation (e.g. via employment guidelines or the macro-economic dialogue). The heavier forms concern the coordination (e.g. under the Stability and Growth Pact) and approximation (e.g. via minimum standards) SER 2000: 20).

5 The Regular Reports of the European Commission of November 2000 refer to 170 requests for transitional periods outside the agricultural sector alone, and a further 340 requests for agriculture (continuing after the year 2006) (see: European Commission 2000i).

6 An example of this is the obligation under the Social Charter with respect to the minimum wage; the Charter only obliges a company to introduce a minimum wage: nothing is said about how high this should be.

7 For Lithuania and Latvia there was a transitional period of six years, while for Estonia the agreement came into immediate effect.

8 In terms of the other free movement: there is (virtually) no harmonisation in the sense of an EU-wide framework for contracts of employment and labour market regulation and also no neutral recognition.

9 When Spain, Portugal and Greece were even poorer (in both relative and absolute terms) and moreover did not have democratic regimes, the situation was different. According to Molle (1994), 19 percent of the Portuguese labour force, 9 percent of the Greek labour force and 4 percent of the Spanish labour force were working in the EG-9 in 1973. In addition there was a fairly tight labour market situation in the European Community at that time.

10 This conclusion is conditional. Poor economic policy or rigid wage policy (not taking account of labour productivity differentials) may for example be disruptive. Convergence and divergence may also take place within a country because of agglomeration formation. There is however no doubts about the converging effect of the market integration in the EU between 1986-1998.

11 The Treaty is based on a period of at least two years in which the new EU member states must participate in ERM-2. Evaluation of the convergence process is made by Ecofin after two years at the earliest. On the basis of a period of three months before the publication of the report and the final decision in favour of accession and a further half year before the actual switch to the euro, the accession could take 33 months after EU accession (Baldwin et al. 2000: vii; Deutsche Bank Research 2000). To date such a time-path has been consistently confirmed by the European Commission, the Ecofin Council, the ECB and the national central banks of the present member states.

12 The Federal Open Market Committee has five rotating seats for the total of 12 banks of the Federal Reserve Bank that act on behalf of the 50 American states. The president of the Federal Reserve Bank of New York has a permanent seat and the presidents of the banks of Chicago and Cleveland share a permanent seat (Eichengreen and Ghironi 2001: 22).

13 Director Welteke expressed this fear in a letter to the German Minister of Foreign Affairs, Joschka Fischer, and his finance colleague Hans Eichel. In particular he drew attention to the high inflation figures in these countries and to the possibility that they might 'dilute' the ECB's price policy after obtaining a seat on the ECB. (Trouw, Bundesbank waarschuwt voor uitbreiding aan vooravond EU-top. Oost-Europa bedreiging voor euro, 4 December 2000; 'Don't raise the price of Union admission, *European Voice,* 1 March 2001.)

14 This outflow has again been higher in recent years; between 1986 and 1996 the figure was 4.5 percent a year.

15 At the invitation of the European Commission, these experts led by Allan Buckwell drew up a proposal in 1997 for a *Common Agricultural and Rural Policy for Europe* (CARPE).

16 Since the introduction of direct income support divisions among farmers' groups in the EU have however widened. Indicative of this is the fact that the once so strong and unified French farming community has now split into three separate farmers' federations with widely differing views: the FNSEA (with the UDF/RPR as its political orientation) represents the big farms and the socialist *Confederation Paysanne* the small family farms. In addition there is the right-of-centre *Coordination Rurale*. LNV (2000a). Arable farming and the meat livestock sector in France have been the biggest 'winners' from the reforms.

17 The European Court of Audit has noted that many of these environmental measures have little or even a contrary effect. There is therefore no question of a genuinely integrated environmental and agricultural policy.

18 By way of comparison, in 1950 the share of employment in the EU amounted to 50 percent and in GDP to 12 percent.

19 These consist of Argentina, Brazil, Canada, Chile, Columbia, Philippines, Hungary, Indonesia, Malaysia, New Zealand, Thailand and Uruguay.

20 Known under the title: 'Study on alternative strategies for the development of relations in the field of agriculture between the EU and the associated countries with a view to future accession of these countries', 1995.

21 The EAGGF stands for the European Agricultural Guidance and Guarantee Fund. In total the Guidance Fund accounts for some 10 percent of the total agricultural budget (Schrader 2000).

22 See also text box 4.1.

23 According to a European agricultural adviser in Warsaw: 'If the Polish farmers receive f 800 (360) for a hectare of maize, Poland will be full of maize tomorrow.' ('Polen maakt zich op voor landbouwmiljarden Europese Unie', *Financieel Dagblad,* 6 February 2001).

24 The green box covers aid measures that do not have a direct bearing on production decisions and which are funded by governments out of public revenue (such as unlinked income support, rural development funds, etc.). The aid measures in the blue box must be production-neutral in effect and must impose conditions to limit production.

25 On the basis of an EU of 27 member states the blocking minority consists of 91 of the total of 345 votes in the Council. Spain, France, Romania and Poland would together hold 97 votes.

26 See art. 211EC.

27 See art. 228 EC.

28 Paragraph 5 refers to 'new scientific data' and 'a specific environmental problem'.

29 A complete overview of the environmental acquis may be found in a European Parliament textbook (1999e).

30 This network was set up in 1992 with the main aim of creating the necessary drive within the Union for further progress with regard to the more effective application of environmental legislation.

31 For 1998. Source: Kwartaalbericht Nederlandse Bank, Graph 2, p.6 (March 2001). In 1995 the figure was 30 percent of Germany.

32 This dividend is potentially also unbelievably large. The candidate countries currently consume approximately 5x as much energy per unit of GDP as the EU-15. If the ten were to double their GDP and at the same time attain the energy efficiency of the EU-15, the energy consumption in Central Europe would fall by 60 percent (!!).

33 The southern Italian region of Mezzogiorno has become synonymous in the academic literature on economic growth for a backward region which, despite substantial financial aid from the rich Northern Italy and the European Union, has remained a stubborn area of economic backwardness in Europe. The concept 'New Mezzogiorno' refers to the possibility that the Union could acquire a further number of such problem regions upon the enlargement into Central and Eastern Europe.

34 The stubborn nature of environmental infringements is evident among other things from the cases referred to the Court by the Commission, where the environment (with 70 cases) once again has the highest score (25 percent). As if this were not serious enough, the figures also show that in the case of rulings by the European Court that have not been implemented and for which fines have been imposed (by the Court) on the member states after the passage of time, the environment once again takes the lead with 14 fines out of a total of 31. 17th Annual Report on monitoring the application of Community Law (1999), Com (2000) 92, 23.6.2000, vol.2, annex 2, table 2.4.

35 Nuclear power plants are currently in use in seven out of the ten Central and East European countries: Slovakia, the Czech Republic, Hungary, Bulgaria, Lithuania, Slovenia and Romania. Poland, Estonia and Latvia do not have any nuclear power plants. On average the nuclear industry represents 30 percent of the electricity generation in the candidate countries, and in certain countries as much as 80 percent.

36 Although nuclear energy forms part of the 'energy' chapter in the negotiations, the issue of nuclear safety is a major factor in the environmental chapter.

38 The EU does not itself have common rules or minimum standards for nuclear safety; there is no Euratom directive laying down basic safety standards for the design, construction and operation of nuclear reactors in the EU. Possibly subject to a certain degree of coordination through the International Atomic Energy Agency (IAEA) in Vienna, the EU member states individually lay down their own nuclear safety standards.

39 Reactors 1 and 2 of the Kozloduy nuclear power plant in Bulgaria will be closed by 2003, while a decision will be taken in 2002 concerning a closure date for reactors 3 and 4 (the Commission is assuming closure no later than 2006). Reactor 1 of the Ignalina nuclear power plant in Lithuania will be closed by 2005, while a decision will be taken in 2004 concerning the closure date for reactor 2 (the Commission is assuming closure no later than 2009). Agreement has been reached with Slovakia that reactor 1 of Bohunice will be closed before 2006 and reactor 2 before 2008.

40 The RBMK-type reactors (the Chernobyl type; most of these power plants are located in the former Soviet Union) lack a complete and adequate reactor containment, a vital aspect of nuclear reactor safety. The first generation of VVERs (VVER 440/230) are the oldest Soviet reactors in use in CEE. These reactors will shortly reach the end of their useful life and modifications to extend their life are generally regarded as pointless (European Parliament 1999d).

41 On this point the available information is however unclear and contradictory and technical and political elements cut across one another; on the one hand the commitments in the donor agreements are interpreted as commitments to close down reactors; on the other as commitments to conduct an in-depth safety analysis and, on the basis of that analysis, to decide whether or not to grant a licence for the further operation of the reactors in question.

42 This network was set up in 1998 by nine supervisory nuclear authorities in Western Europe and Switzerland with the aims of:

1 development of a joint approach towards nuclear safety and regulations, especially within the EU;
2 providing the EU with an independent institution to investigate nuclear safety in the candidate countries;
3 evaluation and achievement of a joint approach towards nuclear safety issues.

43 A revised version of the report was published in 2000; the follow-up report will be published in June 2001.

44 The power plants in Bulgaria and Slovakia are of the VVER 440/230 type; the plant in Lithuania is a RBMK reactor.

45 WENRA does not however pronounce on the closure of reactors but solely indicates to what extent a level of safety comparable to that in Western Europe has been achieved or whether this can reasonably be achieved.

46 This group of experts was appointed within the EU with the task of formulating a European standpoint concerning the situation on nuclear safety in the acceding countries.

47 The input of the EU member states not represented in WENRA is largely confined in practice to Austria.

48 One of these observations: 'The lack of far-reaching European approximation concerning nuclear safety emerges from time to time, so that a difference of opinion between experts can continue for some time. Another significant example concerns the requirements for safety containment.'

49 Both can produce 1500 megawatts. The reactors are so large and powerful as they were essentially built in order to produce plutonium for the Soviet army.

50 White Russia (26.2 percent), The other Baltic States (Latvia: 13.6 percent) and the Kaliningrad region.

51 This is one of the difficulties of the agreement: the candidate countries decide when they will take the *decision* to close their power plants, while the EU decides *when the power plants should be closed.* There is therefore no hard commitment on the part of these countries concerning the date on which the reactors are to close. Extremely difficult negotiations must still be conducted in this area.

52 In 1999 Lithuania received ECU 10 million from the EU via Phare support; in subsequent years this amount will be 20 million a year (European Parliament 1999d; European Commission 2000c). The total amount of financial aid until the end of the financial perspectives (2000-2006) will amount to at least ECU 165 million for Lithuania (for Slovakia the aid will be at least ECU 150 million, and for Bulgaria ECU 200 million). The Commission is providing the bulk of this financial support through the EBRD-governed international subsidy funds (IDSF) set up for Ignalina, Bohunice and Kozloduy on 12 June 2000.

53 As standard (neo-classical) theory teaches, prosperous, highly productive areas will in due course face declining marginal returns on capital while backward low-productivity regions have every potential to increase returns. In due course the regional differences in prosperity will disappear as the result of international competition, trade and intra-industry specialisation, foreign direct investment and capital, knowledge and technology transfers. By contrast, economic geographical theories and neoclassical endogenous growth theories are once again focusing attention on sustained regional prosperity differentials and processes of economic *divergence*. Instead of standard assumptions of declining marginal returns, exogenously provided technology, the absence of transport and transaction costs and homogeneous (human) capital, these newer theories take as their starting point the possibility of increasing marginal capital returns, endogenous technology development, local knowledge spillover and the existence of transport and transaction costs. By placing economies of scale and agglomeration effects at the centre, these theories are therefore much better equipped to explain why divergent, complex processes of economic and spatial convergence and divergence can arise in reality. For an overview of these theories see: De la Fuente (2000).

54 The percentage would be lower if GDP were examined. (Apart from actual domestic production the latter also includes income from earlier investments abroad.) A substantial proportion of Irish GDP is for the account of foreign multinationals and leaves the country as profits.

55 In contrast to the structural funds, allocations from the cohesion fund are based on GDP.

56 NUTS stands for Nomenclature des Unités Territoriales Statistique (the classification used by the REGIO information bank of Eurostat). The NUTS-2 classification is (with a few exceptions) used as the basis for allocation of the structural funds.

57 Nevertheless the regional economic structures exhibit substantial differences.

58 These measures concern the crossing of the internal and external borders, visas, asylum applications, residence permits, police cooperation, judicial cooperation in criminal matters, extradition, transfer of criminal investigation, trade in drugs and arms and the Schengen Information System (SIS), a computerised system for the exchange of information on persons and objects.

59 The 'Protocol on the position of Denmark' gives Denmark an 'opt-out' for Title IV EC that largely corresponds with the British and Irish opt-outs. The Danish position is however more complicated as Denmark is a Schengen member state. Article 5 of the Protocol resolves this complication by affording Denmark the possibility of deciding within six months as to whether it will implement in Danish national law a Council decision building on the Schengen acquis. If Denmark so decides this decision will only create an obligation under international law between Denmark and the other EU member states.

60 See Joint Action 98/428/JHA, OJ L 191/8 of 7 June 1998.

61 Meant here is illegal immigration from third countries and not illegal employment of future EU citizens from Central and East European countries as discussed in section 4.2 on the free movement of employees in the internal market.

62 For the sake of convenience the term 'Schengen acquis' is still used in order to designate that element of the present EU acquis that has been incorporated in the EU treaties by the 'Protocol for the inclusion of the Schengen acquis in the framework of the European Union'.

63 Readmission agreements are agreements concerning the readmission of undesired aliens and persons who have reached a certain recipient country through a certain 'safe third country'. As a result of the proliferation of readmission agreements between West European countries and CEECs, a kind of buffer zone has been created around the European Union (Van der Meulen 1999, 22).

64 The 'safe third country' principle (also referred to as the 'third country of reception' principle) refers to the situation in which an asylum-seeker applies for asylum in a country which he has reached via another country, where the circumstances are such that it may also be designated as 'safe'. The reasoning is that the asylum-seeker should have applied for asylum in the first safe country through which he passed. On the basis of this principle the recipient country is authorised to return the asylum-seeker to the 'third country'. The application of this principle is an attempt to prevent asylum-shopping in various countries.

65 The non refoulement principle entails that none of the treaty states will expel or return a refugee in whatever manner to the borders of a territory where his life or freedom would be at risk.

66 In the event of monetary union the distinction concerns the phase before and after accession to the monetary union instead of the EU.

PART III ASSESSMENT OF SOLUTIONS AND CONCLUSIONS

5 EVALUATION OF ACCESSION-RELATED SOLUTIONS

5.1 INTRODUCTION

This chapter examines and evaluates a number of possible solutions for dealing with the accession problem. Such an evaluation is particularly important now that the accession negotiations are entering a crucial stage.[1] On the basis of the results of the screening process[2] undergone by or facing the candidate countries, some consider that the classical enlargement strategy as applied in the four earlier enlargement rounds of the EU needs no modification. This is possible but, given the problems noted in chapters 3 and 4, by no means certain. On account of that uncertainty policy-makers will need to consider various options and supplementary measures and to give due consideration to the resultant scenarios.

In chapter 2 it was argued that greater diversity will enrich the Union and that certainly not all the diversity of applicant countries vis-à-vis the present member states will be problematic for the EU. At this stage of accession, problematic diversity is confined to characteristics and standpoints of the applicants that could impede their adequate functioning as a member state of the Union. In addition it is possible that certain (e.g. socio-economic) characteristics of the candidates could harm the interests of an incumbent member state. On these grounds the latter could in certain circumstances object towards accession.

Four possible approaches (which can be mutually reinforcing) towards such problematic diversity may be distinguished: suppression, reduction, buying off and accommodation (Philippart and Sie Dhian Ho 2001). By suppressing diversity, characteristics of member states that depart from the acquis will be eliminated before accession. Diminishing diversity is concerned with reducing current or future problematic diversity by tackling it at source (e.g. economic backwardness and inadequate administrative capacity). Trading off diversity seeks to remove the problematic diversity from the agenda in exchange for unconditional transfers. Finally accommodation of diversity implies that the diversity is formally recognised in the form of special treatment.

A number of solutions falling into these various categories are discussed and evaluated in a general sense below. This draws on a study carried out for the WRR by Philippart and Sie Dhian Ho (2001). A more detailed evaluation focusing on the various policy areas of the EU is provided in chapter 7. The approaches and solutions towards the accession problem are summarised in table 5.1.

Table 5.1 Approaches to the accession problem

	Approaches to the accession problem
Suppressing diversity	**Approaches through which departures from the acquis are suppressed** Formulation of conditions • Criteria for submitting a request for membership of the Union (art. 49 TEU) • Criteria for starting accession negotiations • Criteria for becoming a member (Copenhagen and Madrid criteria) Promoting the adoption and implementation of the acquis before accession, without granting rights to the aspirant/candidate country • Aid programmes • Individual setting of priorities, planning and monitoring • Encouraging regional cooperation between aspirant/candidate countries • Probation periods • Determination of accession date (fixed date or target date) Promoting the adoption and implementation of the acquis before accession on the basis of reciprocal rights and obligations • Bilateral agreements and protocols establishing mutual rights and obligations • Multilateral agreements establishing mutual rights and obligations • Partial membership
Diminishing diversity	**Approaches in which present or future problematic diversity is reduced by tackling the source** 1 Convergence through market forces 2 Convergence through conditional financial transfers 3 Convergence through learning
Buying off diversity	**Approaches in which problematic diversity is removed from the agenda in exchange for unconditional financial transfers** 1 Side-payments
Accomodating diversity	**Approaches in which problematic diversity is recognised by formal special treatment** 1 Transition periods 2 Core acquis test 3 Regressive flexibility 4 Redefinition of level of intervention

Source: Philippart and Sie Dhian Ho (2001).

5.2 SUPPRESSION OF DIVERSITY: KEY PRINCIPLE

The *suppression* of diversity with respect to the acquis is at the heart of the classical enlargement strategy of the EC/EU. In principal the accession negotiations do not concern the content of the acquis but the question as to how and when the candidate country will apply the Union's rules. In contrast to international agreements, which are generally arrived at by means of mutual concessions by the parties concerning the nature of the new regime, the outcome of accession negotations to the EU is known from the start: new members will be admitted to the club if they are prepared to adopt the rules of that club.

This, take it or leave it, approach proved to be highly functional for the EC/EU in earlier negotiating rounds. Delaying tactics or lack of cooperation on the part of candidate countries generally cut little ice in such a negotiating context. This approach is also effective for countries wishing to accede rapidly, as it separates the accession negotiations off from the integration debates (e.g. about the question as to whether the agricultural and/or cohesion policy of the Union should be reformed or not) (Preston 1997: 9).

The effectiveness of this approach is enhanced by the axiomatic status it has for the EU and by the asymmetry between the negotiating parties. The take it or leave it approach is regarded by the European Commission and the great majority of the member states as a fundamental rule that is imperative for the preservation of the EC/EU model. Since this stance is one that is taken consistently, candidate countries are apt to realise that the 'non-negotiable' nature of the acquis is just that – non-negotiable. Candidate countries wishing to unpick this in any way find themselves confronted with a highly asymmetrical negotiating situation.[3] Not that there is much risk that the EU would exploit that asymmetrical balance of power in favour of an outcome that is heavily tilted towards it, as the EU has every interest in ensuring that the new member states can accept the outcome and will also observe it.

Apart from being effective, the elimination of diversity with respect to the acquis prior to accession is in theory also the cheapest option for the EU. This principle does not however always hold up in practice. The difficulty of determining and resolving implementation problems means that this approach tends to focus rapidly on the formal adoption of the acquis. In these circumstances the risk is that accession will take place even though part of the problematic diversity has been eliminated on paper only. The full scale of the problems does not become clear until after accession – by which time they have become EU problems. A member state has a much stronger negotiating position than a candidate. Since candidate countries are well aware of this they could be tempted to paint a rosy picture of the state of their preparations. This would enable them to accede more rapidly and also to use their seat in the Council to exert political pressure for the EU to fund part of the adjustment costs. Linkage politics can weigh heavily on decision-making in the Council. In this case the new member state makes its concurrence in the Council for a particular dossier dependent on the willingness of the EU to contribute (e.g. through structural funds) to adjustment costs on another dossier.

From a systemic perspective the suppression of diversity in relation to the acquis prior to accession *a priori* provides the best protection for the Union as an ever closer union of values and action. It keeps the unity of the institutional framework and the legal system of the Union intact, while its simplicity means that it is transparent and comprehensible. Although this approach is more or less neutral in relation to the other criteria referred to in table 2.1, it is potentially damaging for the solidarity and cohesion between the old and new member states.

Candidates that fail to receive significant pre-accession support from the EU can build up lasting resentments that manifest themselves at a later stage in unwillingness to display solidarity within the EU. If the acquis results in substantial, structural losses for a new member state, an unstable situation is moreover created. In the past, doubts about the fairness of the cost/benefit division have led to powerful and sometimes disruptive demands for renegotiation after member states had been admitted.

Seen from the systemic perspective of the promotion of peace, prosperity and stability in Europe as a whole, it is difficult to arrive at a balanced judgment. On the one hand the Union creates a very high threshold for membership by placing the emphasis on the suppression of problematic diversity before accession. This is at variance with the security and stability motivations for Europe as a whole, which stand benefit from the rapid accession of the Central and Eastern European countries to the EU. In addition this approach takes little account of the transformation processes and the catch-up growth with which the Central and Eastern European countries are faced: public resources that are used in order to make highly expensive investments for accession purposes, e.g. to implement the environmental acquis of the Union, cannot be used for the necessary investments in economic development.

On the other hand it is not certain that the security, stability and prosperity of Europe as a whole would benefit if rapid accession meant that the achievements of the Union were eroded and its effectiveness undermined.

Given these considerations it is highly important for the Union to develop and strengthen solutions based around this basic strategy for supporting the introduction of the most urgent and difficult adjustments in the candidate countries and so preventing setbacks after accession.

5.2.1 FORMULATION OF CONDITIONS

An initial way in which the basic strategy can be amplified in order to prevent the problems described above concerns spelling out criteria for completing various stages in the accession process (see table 5.1). The Union has now formulated explicit conditions with which an aspirant must comply in order to submit a request for membership, together with membership criteria. No explicit conditions have been laid down for opening membership negotiations.

Formulating criteria and, as a result, classifying the accession process into stages, is functional for at least three reasons. If they have been formulated precisely enough, criteria in the first place provide the aspirant member state with a handbook for the step-by-step elimination of problematic diversity. The Copenhagen criteria have been widely criticised as too vague to achieve this goal. In the case of the internal market the obligations of membership had been set out in more detail in the White Paper on the preparation of the associated countries of

Central and Eastern Europe for integration in the internal market of the Union.[4] For other elements of the acquis – for example the rapidly growing area of freedom, security and justice – no such stepwise plan has been spelt out.

A second advantage of formulating criteria is that this enables the EU to control the stream of accessions to some extent. Specified accession conditions provide a guarantee that this control process can be conducted in an objectified, non-discriminatory manner – an important systemic criterion for Europe as a whole. This does not eliminate the fact that the political pressure concerning the interpretation of the specified criteria can become intense.

A third functional advantage of laying down criteria for various stages in the accession process is that intermediate positive signals can be issued (by granting candidate country status/starting the negotiations) that will stimulate the adjustment process in the candidate countries.

5.2.2 PROMOTING ADOPTION AND IMPLEMENTATION OF THE ACQUIS WITHOUT ASSIGNING RIGHTS

The Union can deploy a range of carrots and sticks in order to encourage the adoption and implementation of the acquis without at the same time granting rights to the aspirant/candidate country. Examples include aid programmes, the individual setting of priorities, planning and monitoring, the encouragement of regional cooperation between aspirants/candidates, the incorporation of probation periods and determination of accession dates.

Aid programmes

In relation to the enlargement into Central and Eastern Europe it was recognised at an early stage that the candidates are not in a position fully to fund the necessary investments themselves. Substantial financing support is therefore provided under the Phare programme, the EC's most important source of aid since 1989.

Text-box 5.1 The Phare programme

Originally set up in order to support the transformation process, Phare has since the Luxembourg European Council (1997) been primarily concerned with suppressing (and diminishing, see section 5.2.2) diversity of a problematic nature for accession to the EU. Two of Phare's three main objectives are:

1 promoting the adoption and implementation of the acquis (and reducing the need for transition periods); and
2 strengthening the governance and institutions in the candidate countries so that they can function effectively within the Union.[5]

In order to achieve these goals roughly a third of the Phare aid – amounting to around one and a half billion euros a year – is devoted to the co-financing of institution-building and the development of human capital. This is done by means of training (via the Technical Assistance Information Exchange Office (TAIEX), which is responsible for short-term technical support by experts)

and by means of twinning (medium and/or long-term secondment of officials from ministries, regional bodies, public agencies and professional organisations in the EU member states to corresponding institutions in the candidate countries). A third of Phare is used for the co-financing of investments to equip the candidate countries in the physical sense for the implementation of the acquis. The final third of Phare is devoted to the development of the regional and sectoral mechanisms and institutions required in order to implement the European Structural Funds after accession.

Financial support can be highly functional, albeit subject to certain conditions. An important condition is in the first place that the organisation responsible for the allocation of the funds has the necessary political and administrative capacity to set up and implement coherent and well co-ordinated programmes. Secondly the level of the need and that of the funding need to be reasonably closely matched.

As a result of the decentralised nature of the EU, the aid scene is determined by the distribution of projects among interested member states and a proliferation of subcontracting arrangements. As a result, the transfer of expertise required for the implementation and enforcement of the acquis tends to be national rather than European. This need not be a problem if the approach taken by the various member states towards institution-building is regarded as more or less equivalent. If, however, there is a perceived diversity between national ministries, agencies and other professional bodies, the decentralised approach suffers from functional drawbacks.

Problems of coordination and coherence however pale in relation to the problem of inadequate funding. Although the EU decided at the Berlin European Council more than to double the financial resources for the pre-accession programmes as from 2000 to 3.1 billion euros on an annual basis, it is clearly not politically feasible to make sums available within the EU on a sufficient scale to meet the financing requirements of the candidate countries. This already applies in relation to the resources required for building up institutions and human capital, but applies to a much greater extent again for the financing of physical investments and infrastructure (e.g. for adoption of the expensive environmental acquis). In addition a significant increase in the aid flows could run into barriers. Since the necessary administrative structures were put in place only recently and – especially at regional level – need further reinforcement, the absorption capacity of the candidate countries is sometimes limited (European Commission 2009: 7). Undue dependence on European aid flows – for example in the environmental field – could moreover reduce the incentive for a change in culture and behaviour among public and private parties at national level.

Individual setting of priorities, planning and monitoring

Whereas the White Paper was a unilateral declaration by the Union to all associated countries, the Luxembourg European Council (1997) decided in favour of individual preparations for the candidate countries, creating the Accession

Partnerships for the purpose[6]. The European Commission annually publishes a report on the progress made by the candidate country with respect to the accession criteria, the obligations arising under the Europe agreements (see below), the adoption and implementation of the acquis and the priorities set in the Accession Partnership (i.e. monitoring). The Accession Partnership and the National Programme for the Adoption of the Acquis may be adjusted on the basis of the findings in that report.[7] Concern – especially among the Schengen countries – about the practical implementation capacity of the candidate countries in the field of justice and home affairs (JHA) has moreover induced the Council to set up a special mechanism (confidential in nature) to monitor the adoption, application and implementation by the candidate countries of the EU acquis in the field of justice and home affairs.[8]

Experience indicates that the individual setting of priorities, planning and monitoring bear fruit, particularly if combined with targeted aid under the Accession Partnerships. The accession criteria and the White Paper of 1995 clearly provided an inadequate frame of reference for proper accession preparation (see also Pelkmans et al. 2000: 77).

The collective evaluations in the JHA field remain less functional at this stage, as they do not make any recommendations about priorities or the method of adoption and implementation. There is little if any cross-fertilisation between the collective evaluation and pre-accession support. The confidentiality of the reports also limits the effectiveness of the evaluations as an instrument for suppressing problematic diversity.

The WRR recommends that this approach of well thought out strategies for the medium term with built-in incentives (including the provision of aid) and control elements be developed further, especially in the JHA field. The results should be annually screened, with feedback to the setting of priorities, planning and financing. If the transition period is granted for certain element of the acquis (see section 5.5.1) this should then be embedded in such a strategy, extending until the end of the transition period.

Encouragement of regional cooperation between aspirant/candidate countries

A supplementary method of familiarising aspirants and/or candidates with the acquis before accession consists of encouraging them to cooperate regionally and/or apply parts of the acquis among one another. The encouragement of regional cooperation by the EU in CEFTA[9] (Central European Free Trade Agreement) may be regarded in this light (Inotai 1995). Whereas CEFTA is primarily concerned with the rules for free trade, Monar discusses the proposal for candidate countries sharing common borders to start implementing the Schengen acquis among themselves before accession. A specific EU aid programme could be set up and a Schengen advisory group created for this purpose (Monar 2000: 56).

An important question in this connection is whether the cooperation among candidate countries themselves also has advantages for those countries (e.g. prosperity benefits or, in the case of the pre-Schengen regional cooperation, savings because the candidate countries are not required to guard all of their external borders). If this is not the case this solution will not be very feasible. If furthermore the candidate countries in question are not all at the same stage in their accession preparations, the frontrunners may be obliged to support the laggards. Given their lack of resources this is hardly conceivable. The conclusion that these forms of cooperation should be confined to candidates at the same level of preparation runs into the systemic drawback that the idea of 'accession waves' would be reintroduced and so further new divisions in Europe. In the WRR's view, these objections outweigh the possible benefits.

Probation periods

A far-reaching measure would be to impose a compulsory probation period on candidate countries. In his study for the WRR, Monar examines the possibility that candidate countries could be asked six to 12 months before the accession date to implement certain sensitive elements of the acquis. This 'probation period' would need to be supported by specific EU programmes to ensure the monitoring of progress, advice, training and assistance in the modification of the technical infrastructure. If essential 'probation period conditions' had not been fulfilled accession could be postponed and/or certain membership rights could be suspended after accession (Monar 2000: 57).

The WRR shares Monar's reservations concerning probation periods under which membership rights could be suspended. Candidates will protest against this additional imposition, which was not announced in the accession strategy (Monar 2000: 57). An important objection furthermore is that the suspension of the rights of new member states could be interpreted as discriminatory vis-à-vis the old member states. On account of this systemic consideration such a sanction could only be conceivable if it were also to be applied to the existing member states that do not satisfy the requirements (see chapter 6).

Determination of accession date

Various parties have urged that an accession date be laid down. Commitment to a date would be functional in order to maintain the pressure for the suppression of problematic diversity, both in the candidate countries and in the EU (which needs to prepare itself institutionally and in policy terms). Since a fixed date would involve excessive systemic risks for the EU (since the candidate countries might not be ready), it has been widely urged that a target date be said, on which those candidate countries that satisfy the accession criteria can join (cf. the deadline of 1 January 1999 for the start of stage III of EMU for the member states that satisfy the convergence criteria).

The WRR considers however that setting a target date would involve systemic risks that should not be disregarded. The EMU experience indicates not only that

a target date is functional for disciplining the convergence process but also that there is a risk that the criteria will not be rigidly applied. Where this concerned a step by the member states towards further deepening that may have been defensible, but when it concerns the accession of a member state and the preservation of the EU achievements, the EU should not allow a situation to arise in which the political pressure to admit candidate countries that were not yet ready for membership could increase greatly. A target date also involves risks from the viewpoint of the stability, security and prosperity of Europe: if the EU sticks strictly to the accession criteria, failure to meet the set target date could result in a setback in the applicant country in question.

Given these considerations the WRR considers it would be advisable for the Union to confine itself to naming a date on which it would itself be ready for the accession (as will be the case if the Nice Treaty is ratified). Apart from this the WRR sees the hope on the part of the member states that the first candidates could accede before the elections to the European Parliament in autumn 2004 as an additional incentive that minimises the aforementioned systemic risks for both the EU and the candidates. This hope was voiced in the conclusions of the Nice European Council and strengthened by the conclusions of Göteborg.

5.2.3 ENTRY INTO AN AGREEMENT ON THE BASIS OF MUTUAL RIGHTS AND OBLIGATIONS

A third approach towards promoting the suppression of problematic diversity is to enter into a mutually binding agreement with the candidate country or group of applicants. Traditionally this has taken the form of an association agreement (see text box 5.2). These may be either bilateral or multilateral in form. Apart from these two forms of association, partial membership is a third possibility for a mutually binding arrangement. These three variants are discussed below.

Text-box 5.2 Association agreements and the Europe agreements

Article 310 EEC allows the Community and the member states to enter into agreements with one or more states or international organisations creating an *association* based on mutual rights and obligations, common action and special procedures. Despite certain features in common the association agreements concluded to date vary widely. The loose formula of article 310 can always be tailored to the objectives pursued by the EC and the member states with the third country in question. Some association agreements were drawn up with a view to possible accession (e.g. that with Greece). Others were originally conceived as an alternative to accession (e.g. the multilateral EEA discussed below).

The Europe agreements concluded with the Central and East European countries in the early 1990s were not originally intended as part of an accession strategy. Based on fears that the EC would find itself diluted with the accession of so many Central and East European countries, a number of EC member states clearly favoured European integration on the pattern of concentric circles. As a result of this stance on the part of the EC the Europe agreements did not place particular stress on the obligation on the part of the associated countries to eliminate their diversity with

respect to the legal order of the Community. The prime goal was the gradual development of a free trade area for industrial products between the EC and the associated country, the provision of a framework for political dialogue between the parties and a basis for cooperation in the economic, financial, cultural and social fields as well as to prevent illegal activities.[10] The statement by the Copenhagen European Council that the associated Central and Eastern European countries that so wished could join the EU as soon as they had satisfied the obligations of membership meant a political reorientation of the association agreements. Up to that point the lack of any accession perspective meant that the reforms in the Central and East European countries had lacked direction (Gaudissart and Sinnaeve 1997: 42).

Bilateral agreements and participation in elements of the EC/EU prior to accession: learning by doing

In the early 1990s bilateral association agreements (the Europe Agreements; see text box 5.2) were concluded with the Central and East European countries. The association agreements, which may be regarded as setting the general framework for the relations between the EC and the candidate country, may be supplemented by protocols and treaties recognising the right of candidates to participate in specific elements of the EC/EU. The process of learning by doing can also contribute to the elimination of problematic diversity. The Luxembourg European Council for example decided to open up specific programmes[11], agencies, committees and working groups of the EU[12] to the candidate countries. These were laid down in protocols to the Europe Agreements. The submission of projects for the various programmes and their funding (partly supported by Phare) and the participation as observer on management committees and working groups of the programmes and with the agencies of the EC are aimed at familiarising the candidates with the various policy fields and working methods of the Union. The invitation to take part in these forums is however confined to sessions in which the application of the acquis is discussed and not to meetings in which the committees are required to arrive at an opinion on the implementation or management powers delegated to the Commission (known as comitology).

Reference should also be made to the protocols to the Europe Agreements on the equal assessment and acceptance of industrial products (known as PECAs[13]). These PECAs make it possible for certain sectors to be fully integrated into the internal market prior to accession if the candidates member countries have aligned their legislation for those sectors with that of the EC (see section 7.2 on the internal market). Similarly measures have been taken for the second pillar to involve the candidates in the policy prior to accession. Thus the political dialogue – forming part of the Europe Agreements – has been expanded in order to provide the candidate member states with the opportunity to associate themselves with declarations, diplomatic measures and joint actions decided upon by the Union as part of the common foreign and security policy (CFSP)[14]. Consultations are held between the EU-15 and the candidate countries on European Security and Defence Policy. In the event of an international crisis these are stepped up. Where the Council decides on an operation led by the EU the candidate countries are invited to contribute towards its implementation. The candidate countries

have also made national contributions towards the EU reaction force (Whitman 1999: 142; Limonard 2001). In respect of the third pillar Monar discusses the 1998 Pre-accession Pact on Organised Crime. The cooperation with the candidate countries under this agreement is aimed at the transfer of knowledge and implementation standards by the EU to the candidate countries (Monar 2000: 55).

On account of their vagueness concerning membership obligations the Europe Agreements have played only a limited role in suppressing problematic diversity (see Pelkmans et al. 2000: 76-80 for a detailed criticism of the Europe Agreements as the basis for binding obligations in preparation for membership). This function is now largely filled by the Accession Partnerships. The contribution made by the Europe Agreements and the attached protocols lies not so much in the obligations imposed on the candidates but in the rights granted to them. As a result of those rights, a gradual, structured phasing in of and participation by the candidates takes place in certain areas of the EC/EU prior to accession, thereby permitting a highly functional process of learning by doing. Seen from this systemic perspective such association is not problematic. The associated countries are only involved at implementation level and do not obtain any say in policy-making. The single institutional framework of the EU consequently remains intact. From the viewpoint of the candidate countries it is important that the association agreements do not provide an additional hurdle or are even arranged as an alternative to membership. With the commitment of Copenhagen the EU has clearly indicated that this is not (or no longer) the case for the Central and East European candidates.

The WRR recommends that gradual integration prior to accession be made possible in more areas, particularly for candidate countries as preparations are more advanced.

***Multinational agreements:* EEA**

The mutually binding multilateral implementation of the acquis prior to accession has an important precedent: the European Economic Area. This EEA has been suggested by observers as a possible intermediate step for the Central and East European countries on the path to membership. As noted in the discussion of the bilateral association agreements, the structured phasing in by means of the association formula can contribute greatly to the preparation of the candidates. A detailed evaluation of the advantages and disadvantages of the multilateral EEA formula as an alternative to the bilateral association agreements is provided by Philippart and Sie Dhian Ho (2001).

The WRR considers however that the EEA has a number of features that detract from its relevance for the accession of the CEE candidate countries. The EEA package is a demanding one and the candidate countries have a firm preference for membership. If the candidate countries are in a position to adopt and implement 80 percent of the acquis there is little reason for them to pause at the 'EEA stop' on the way to the 'terminal station of full membership'. Suggestions to follow the

EEA route therefore encounter suspicion among the candidate countries, who are wary about landing up in an 'ever closer waiting room'.[15]

Partial membership

The idea has been put forward by various parties concerned and observers since the early 1990s of partial membership of the Union for the Central and East European countries. CEE applicants would in that case be granted membership rights and obligations in certain areas (e.g. in the field of CFSP and JHA or on the basis of the Europe Agreements), whereas these would be withheld in other areas, at least during the transition period.

Partial membership can contribute towards the suppression of diversity, as the prospect of rapid accession to membership rights provides an additional incentive for the CEECs. This is however subject to the guarantee that the partial membership is a temporary solution on the path to full membership in the not too distant future. This necessary guarantee runs into the same problems however as the determination of accession dates (see above). Although partial membership may be functional for the adoption of the acquis it can be dysfunctional for its further development. If for example the Central and East European countries had already begun to participate in the JHA decision-making in the early 1990s, it is open to question whether the development of this policy area would have taken off to the extent that it has in recent years. The variants proposed over the years all rest on a problematic basis. Those proposals in which membership is confined to a single pillar disregard the dynamism and interconnectedness between the pillars (e.g. the enforcement of economic sanctions). Given the limitations of the Europe Agreements discussed above, the proposal made by the Dutch Social and Economic Council (SER) for the Europe Agreements to be taken as the starting point are no more functional as a basis for binding obligations in preparation for membership (see Pelkmans et al. 2000: 76-80 for a detailed criticism of the SER proposal). The problem-solving capacity of partial membership is further limited as the connotation of 'second-class membership' would give it little political feasibility in the candidate countries.

Seen from the systemic perspective of the Union, the necessary amendments to the Treaties and institutional complications that partial membership would entail are a substantial drawback. Although the SER claims that the limited duration would mean that partial membership would not result in second-class membership, this is in fact what partial membership intrinsically amounts to. This status would drive a wedge between the member states and the partial member states, to the detriment of intra-EU solidarity. The specific proposals under which partial membership would be confined to the CFSP or JHA would moreover strengthen the pillar structure within the Union, with highly damaging consequences for the Union as an ever closer association of values and action.

Seen from the systemic perspective of Europe as a whole, the combination of the stabilising effect of rapid membership and undemanding obligations for partial

member states would contribute towards stability, security and prosperity. In the early 1990s partial membership could have provided a solution to the 'time-inconsistency problem' described by Pelkmans et al. (2000). Ten years later the circumstances have however changed and the option of partial membership for the candidate countries from Central and Eastern Europe has been overtaken by events. The European continent has gradually stabilised and become pacified by means other than enlargement of the EU. NATO may also be enlarged in 2002. The assertion that the Union would be unable to make the CEECs wait for more than 15 years for accession has proved incorrect. On the basis of these considerations the WRR accordingly concludes that accession should take place without temporary partial membership. In combination with the functional drawbacks and the risks of partial membership for the project of an ever closer union of values and action, the WRR considers that partial membership is not an attractive solution to the accession problem.

5.2.4 CONCLUSION

The WRR considers that it is highly important on systemic grounds for the Union to persist with an approach that is primarily based on suppressing the diversity vis-à-vis the acquis before accession. This strategy plays a key role in the dynamic of the Union as an 'ever closer union of values and action'. By demanding full acceptance of the acquis, the Union is clearly indicating that although it may sometimes be necessary to mark time and the final goal is not clearly defined, the Union is heading 'forwards' only and cannot make sacrifices in terms of deepening in the interests of enlargement.

By clearly placing the emphasis on the suppression of problematic diversity prior to the accession, enlargement will however be long in coming, as will the security, stability and prosperity effect that such enlargement would have on the European continent. Furthermore this strategy takes little account in certain areas of the need to complete the transformation processes and to strengthen the preconditions for catch-up growth with which the CEECs are confronted.

It is on account of these fundamental concerns as well as the functional risk of a post-accession reversal in response to an overly tough approach that the approaches discussed below are relevant.

5.3 DIMINISHING OF DIVERSITY: STABLE AND SUSTAINABLE RESULTS

It was established in section 5.2 that a purely legal, acquis-oriented approach suffered from disadvantages. The adoption of rules does not guarantee their implementation if the problems are due to a lack of socio-economic development, financial resources and administrative and legal capacity. Although there is no acquis in respect of these causal factors (there is no EU standard for effective public administration or the level of socio-economic development) they are critically

important for the functioning of a member state within the EU. Some problems cannot therefore be (directly) resolved by the imposition of rules but demand an approach aimed at the gradual reduction of diversity by tackling the source of problematic diversity. Three processes can contribute towards this: convergence through market forces, financial transfers and learning processes.

5.3.1 CONVERGENCE BY MEANS OF MARKET FORCES

The declared intention of the EU to take in the Central and East European countries and the accession preparations discussed above (including the adoption of the acquis, the development of a free trade area and integration into elements of the internal market prior to accession) strengthen the process of convergence between the Central and East European and EU countries that is taking place by means of market forces. Pelkmans distinguishes four mechanisms by means of which market forces contribute towards cohesion (i.e. the reduction of economic and social differentials between rich and poor regions) (Pelkmans 1997: 256-7).[16] In the first place market integration facilitates the exploitation of comparative advantages and specialisation, bringing greater prosperity for all parties. An important problem here however concerns the adjustment costs. Until recently key sectors in various Central and East European countries enjoyed state ownership and/or a high level of national protection. Catch-up growth achieved by the activation of the available capacities can consequently result in bankruptcies and redundancies. This is particularly problematic in the CEECs given the relative inflexibility of the labour market. Unemployment in these regions is often characterised as a stagnant pool. It takes a long time for the labour displaced from the shrinking agricultural and industrial sectors to be absorbed by the services sector and private enterprises (cf. Brusis 2000).

Foreign investment acts as a second convergence mechanism by precipitating the reorganisations and product and process innovations that are required in many Central and East European regions. The inflow of foreign investment in the candidate countries in the run-up to accession is already producing beneficial effects. Foreign investment does however clearly favour the 'frontrunners' among the CEECS (the difference between Poland and Bulgaria and Romania in terms of foreign investment per head of population has in fact increased). Foreign firms invest primarily in CEE regions close to western markets and in market segments offering a high added value. The South-East European countries are not greatly in vogue. The patterns of convergence and divergence between Central and Eastern Europe further confirm the experience from previous accession grounds that a favourable investment climate is an important precondition for a substantial inflow of foreign investment. For the time being such investment is moreover being hampered by a number of legal restrictions on the purchase of land by foreigners.

A third mechanism contributing towards the reduction of diversity is competition pressure. Growing competition compels higher productivity and compliance with minimum quality standards. For previously protected Central and East

European regions this however means a hard adjustment process with uncertain results. The success of adjustment processes in Central and Eastern Europe will also depend on the extent to which the fourth mechanism described by Pelkmans operates: the reduction of market distortions by official policies (e.g. the Common Agricultural Policy) with damaging effects for peripheral Central and East European regions.

5.3.2 CONVERGENCE BY FINANCIAL TRANSFERS

Convergence can secondly be promoted by financial assistance. Funds have for example recently been deployed under the Phare programme in order to narrow the differences in economic development between candidate countries and EU member states; the Structural Funds for the EU member states perform the same function. In addition Phare funds are used for the general reform and strengthening of public administration in the candidate countries. Programmes are among other things concerned with the development of an adequate administrative culture, the reduction of corruption and the development of interministerial coordination. The fact that Phare funds are used to promote social and economic cohesion and to strengthen the system of public administration, rather than just on the suppression of diversity vis-à-vis the acquis, is appropriate in view of the diagnoses in the Commission's regular reports that these variables often underlie implementation problems. The implementation processes surrounding this aid also gradually prepare the candidate countries for the implementation of the EU's Structural Policy. There is however no consensus among economists as to how much the funds in fact contribute towards convergence. Furthermore, given the scale of its resources, Phare is unable to make more than a marginal contribution (the total budget for the candidates represents less than 10 percent of the per capita aid for the regions within the Union coming under objective 1 of the structural funds). For these limited resources to be effective the aid must be concentrated on a number of priorities. Apart from this the key to the effectiveness of public aid is provided by the policies in the recipient country and the coordination of those policies with the aid programmes (European Commission 2009g: 9-10).

5.3.3 CONVERGENCE THROUGH LEARNING PROCESSES

Sources of problematic diversity that are not covered by the rules of the acquis can also be tackled by a process of policy-learning. The exchange of professionals for example contributes to the convergence of the legal, administrative and political/social culture. In addition reference may be made to socio-economic policy coordination by means of the Joint Assessments cited by Pelkmans et al. In these the European Commission and the individual candidate countries lay down priorities for macro-economic policy as well as the policy efforts required in order to achieve these, while the results are periodically evaluated jointly (Pelkmans et al. 2000: 83-4). The Joint Assessments gradually familiarise candidate countries with the economic policy coordination among the EU member states in the framework of the Cardiff process. The cost/benefit ratio of this approach can be

significantly positive, since the costs are limited and the bureaucratic burden light. The emphasis on exchange and mutual learning also makes the mechanism suitable for more sensitive (e.g. cultural and institutional) diversity. The effectiveness of such solutions does however of course depend on the extent to which candidate countries are open and dedicated to institutional and policy change.

5.3.4 CONCLUSION

Diminishing diversity will not only contribute towards the adoption of the acquis but will also generate more stable and sustainable results, as the implementation problems are in principle tackled at root. The ambition is that the inclusion of the Central and Eastern European member states in the ever closer union of values and action should not be at the expense of their prosperity but should, rather, facilitate their catch-up growth. This will of course be to the benefit of the cohesion and solidarity within the enlarged Union. This approach also recognises the major importance of non-public parties for the integration of Central and Eastern Europe in the EU, namely private actors (i.e. convergence through market forces), professional practitioners and more generally civil society (i.e. convergence through learning processes). Their involvement also enhances the legitimacy of accession. What results will be obtained in what period is however uncertain. Given the scale of the socio-economic diversity (per capita GNP in the candidate countries is just a quarter to two-thirds of the EU average), diminishing such diversity is clearly a matter for the long haul. The available Phare funds pale into insignificance in this light. On the other hand the large-scale input of cohesion funds can in due course adversely affect the Union's capacity for adjustment. In contrast to the aid provided in order to reduce problematic diversity with respect to the acquis (which would in principle be halted after accession), it is highly likely that the financial transfers to reduce diversity will become permanent in nature. This expectation is based on the long-term character of the task of narrowing socio-economic and institutional differences and the fact that the countries of Central and Eastern Europe will, once in the EU, be in a strong position to lay continuing claim to such money flows.

5.4 BUYING OFF DIVERSITY: SHORT-TERM LUBRICANT BUT LONG-TERM BURDEN

In the context of the enlargement there are two possibilities whereby problematic diversity could be removed from the agenda in exchange for unconditional[xvii] financial transfers or commitments: buying off a candidate country or a current member state.

Formally, the trading off of the diversity of a candidate country is not an option in the context of accession. It is however conceivable that candidate countries could be induced to withdraw demands in exchange for the vague promise that issues will be negotiable once the candidate country has obtained a 'seat at the table'. In other words, the postponement of demands is traded off against membership.

In the accession negotiations some EU negotiators indeed emphasise that the accession process would be accelerated if candidate countries were to limit their requests for transition periods and exceptions. Following the statement by the Nice European Council that the first exceptions could take place in 2004, the frontrunners among the candidate countries (the Czech Republic, Hungary and Poland) have indeed proved willing to withdraw or scale down requests for transition periods in various areas (e.g. taxation, the environment and liberalisation of the energy sector). In addition it is possible that the accession of a particular candidate country is highly desired by the Union, while integration in a certain element of the acquis would have adverse effects for that country. The Union could then offer financial compensation in order to win that country over.

A second form of buying-off can arise if a member state that sees its interests being damaged by the accession of a candidate country has to be bought off in order to facilitate accession. Thus Spain threatened in 1994 (after the accession agreements had been ratified by nearly all the member states) to withhold ratification (and hence the starting signal for accession) unless the EU were to grant Spain a fisheries arrangement comparable with that for Norway. The crisis was resolved at a meeting of the Fisheries Council on 22 December at which the EU ministers promised to integrate Spain into the common fisheries policy six years earlier than had been agreed in Spain's own accession agreement. The possibility that the present member states might adopt a similar stance towards the accession of Central and East European countries cannot be excluded.

Whether the buying-off of diversity provides a solution to accession problems depends of course on the willingness of the 'blocking' current or prospective member state to drop its problematic diversity from the agenda in exchange for concessions or financial compensation. Among other things that willingness will depend on the level of the adjustment costs (i.e. domestic political costs) required to drop certain demands in relation to the compensation on offer. At the same time the other party must be prepared to come up with compensation. Clearly, all forms of buying off diversity suffer from the major drawback that they do not tackle the problem at source. Instead they encourage a form of free-riding, in which certain member states rely on receiving compensation.

In principle the WRR rejects such an approach towards the accession problems, for two reasons. In the first place such an approach makes calls on the Union's resources without tackling the underlying problem. Secondly it is damaging for the good relations and solidarity within the Union if a member state has to be repeatedly bought off.

5.5 ACCOMMODATION OF DIVERSITY

Since the suppression or buying-off of problematic diversity is not always possible or desirable and since an approach aimed at diminishing diversity can only achieve results after some time, methods are required for accommodating problematic diversity in respect of certain accession problems. Given the scale of the accession problem and the limitations of the other approaches, accommodation is likely to assume a greater role in the event of the eastward enlargement. Such accommodation can be provided by differentiating the rights and obligations of the current and prospective member states (transition periods, core acquis test and permanent exceptions) or redefining the level and/or method of intervention (renationalisation, optional harmonisation).

5.5.1 TRANSITION PERIODS

Temporary exceptions during transition periods have to date been the most important method for accommodating diversity. This involves allowing new member states to adapt gradually to the adoption of the acquis. It may also be that current member states are given extra time to adjust to the consequences of enlargement. Examples of the former are the lengthy transition periods being sought by the candidate countries for the 'heavy investment directives' for the environment (water quality, air pollution, industrial pollution and waste). The new member states may also be permitted optional harmonisation for a limited period. In these circumstances producers in the new member states are given a transitional period in which they can opt either to bring their product standards into line with the relevant EC legislation straight away or temporarily to adhere to existing local product requirements. Products from the CEECs that comply with the EC standards then have immediate free access to the internal market, while the movement of products in the reverse direction is also fully free. 'Free movement' would only not apply to local products from the new member state that did not yet comply with the EC standards (cf. Pelkmans et al. 2000: 86).

An example of the transition period to facilitate adjustment by a present member state is the demand by Germany for a seven-year transition period for the free movement of persons. During that period each member state would be permitted nationally to regulate access to its labour market. Differentiation in the legislation between member states is therefore permitted. These two different types of transition periods are examined in turn below.

The timeframe for accession can of course be substantially reduced if transition periods are granted to applicant and/or current member states. Compared with the strict application of the principle that accession can only take place after full adoption of the acquis, the gain in time is at most equal to the transition period granted (in the case of Spain for example transition periods of 15 years were agreed and Poland is now asking for transition periods of 18 years). Transition periods naturally only have merit when based on the inability of the applicant to

adopt the acquis in the short term, rather than because the country in question is unwilling to do so. In order to achieve the goals of the EU it may be functional to grant transition periods if this contributes to the ultimate implementation of the EU acquis and if this leads to no more than limited disruption for a limited period.

From the systemic perspective for the Union there are no cogent objections towards the limited use of transition periods, although the sectoral and reactive nature of this form of accommodation can have adverse effects. The granting of transition periods may be interpreted as an expression of solidarity with the newcomers. Transition periods preserve the 'multi-speed' nature of European integration and therefore minimise the fragmentation of the law (in contrast to permanent differentiation, see section 5.5.3). 'Multi-speed' integration does however place the single institutional structure of the Union under pressure. Since numerous and/or lengthy transition periods complicate the development or reform of the acquis they also to some extent undermine the EU's capacity for adjustment. A further problem of transition periods is that they are granted on a sectoral basis. This can result in a final package which, once the candidate has been admitted, functions poorly (on account of the fragmentation of legislation and/or the high cumulative costs of the ongoing screening and maintenance of border controls, etc.). Accommodation by means of transition periods is moreover highly reactive in nature. The EU only departs from the classical accession strategy if the candidate country submits a request. In granting transition periods it is however advisable not to rely too heavily on the assessments of the candidate countries themselves. As discussed in section 5.2.1, candidate countries have an interest in presenting their adoption and implementation capacity in a favourable light. Not without reason the Commission has in many cases expressed doubts about the optimism behind the transition periods being sought or the withdrawal of requests to that effect.

Transition periods sought by the current member states may be perceived as the protection of their self-interest. This can lead to a similar stance being taken by the new member states at some future point. Such resentment could however be prevented by the mutual exchange of accommodation (cf. informal deals between limitations on the purchase of land by foreigners in exchange for limitations on the free movement of workers).

From the viewpoint of Europe as a whole, transition periods have value. By lowering the threshold for membership it becomes possible for the countries from Central & East Europe to be firmly anchored to the EU at an earlier point, thereby contributing to regional stability. The prosperity effects can also be positive since the sequence of investments in the CEECs can be more effectively tailored to catch-up growth.

Given these considerations the WRR is of the opinion that transition periods can in certain circumstances be permitted, provided they are brief and limited in number. Such arrangements should be confined to those areas where disruption

of the internal market and in relation to other core objectives of the EU is no more than limited. For certain elements of the acquis – e.g. the environment – very lengthy transition periods are being sought. In the case of these difficult adjustments the Council considers that the accommodation of diversity needs to be well organised. Transition periods should be accompanied by a strategy laying down priorities, planning, incentives, funding and control elements. The progress made towards the adoption and implementation of the acquis should be regularly screened in a process comparable to that taking place under the National Programmes for the Adoption of the Acquis. Instead of granting a transition period of 15 to 20 years, consideration could be given to limiting this time to five to seven years, with the possibility of extension (possibly subject to a limit on the number of extensions). This would create a stronger adjustment momentum and the strategy could be adapted in line with economic and technological developments. Taking into consideration the disadvantages of a sectoral and reactive accession strategy, the WRR considers that transition periods can however better be granted in relation to a core acquis test rather than purely in response to requests by candidate countries.

5.5.2 THE CORE ACQUIS TEST

Given the need for accommodation in the eastward enlargement set out above and in view of the disadvantages of a reactive and sectoral approach in the form of transition periods, the WRR saw merit in exploring the possibilities for a core acquis test. A proposal for such test has been worked out on behalf of the WRR by Pelkmans et al. (2000) and Philippart en Sie Dhian Ho (2001). The application of a core acquis test would mean that in respect of those elements of the acquis where full adoption and implementation by the candidate countries clearly involves problems, the Union draws a distinction between

1 that element which is vital for the functioning of the Union as a community of values and action; and
2 that element which can be implemented according to a predetermined process without damaging consequences for the essence of the union of values and action.

The following points of departure are vital for a proper understanding of this concept (the concept of 'core acquis' has connotations for some people that are specifically not intended here):

1 Elimination of problematic diversity remains the point of departure

It remains the point of departure in all areas that any discrepancies from the acquis must be fully eliminated prior to accession. The core acquis test is formulated only for those policy areas where the problems are unmistakable (i.e. where the adoption of the EU acquis would have highly negative consequences for competitiveness, catch-up growth and completion of the transformation in Central and Eastern Europe). Only where it is already clear now on both sides of the negotiating table that adoption and implementation of the full of key is unrealis-

tic in the short term and that priorities therefore inevitably need to be set has the core acquis test been defined. It is therefore emphatically not the intention to provide a positive description of the entire core acquis on the basis of the famous 89,000 pages of acquis.

The reason for not formulating a core acquis test where there is no highly pressing need is in the first place fundamental in nature. On account of the functional and systemic considerations referred to in section 5.2, basic preference should be given to the elimination of discrepancies from the acquis prior to accession. The second concerns the negotiating process: determination of the core acquis implies that the room for concessions and transition periods that the EU evidently has is disclosed at an early point. This could increase the appetite of the candidate countries to secure transitional periods for elements in respect of which they originally had no such intention. This could therefore damage the adjustment momentum. The third argument is pragmatic in nature: the precise definition of a core for all chapters of the acquis would be such a time-consuming operation that it would seriously delay the accession process.

2 Passing the core acquis test is a prerequisite for accession

The candidate countries can only accede once they have fully met the obligations of the core acquis. Not for nothing is this referred to as a test. Priorities based on the core acquis would be formulated for the problematic policy areas in the National Programmes for the Adoption of the Acquis, after which the European Commission can pay special attention in its regular reports to the progress being made with the adoption and implementation of the core acquis. Prior to accession it is determined whether the adoption and implementation of the core acquis have been satisfied. The European Commission could include this test in its ultimate recommendation to the European Council. Failing this examination would mean postponement of accession.

3 Individual candidate countries will adopt more than the core acquis upon accession

The core acquis test is a necessary condition for accession. The acquis not forming part of this core must in principle be adopted as far as possible. In the case of the residual acquis, however, no priority would be given to elements involving disproportionate costs for the candidate country in question. What 'disproportionate costs' are will of course differ from one country to another. This implies that the core (the minimum) is the same for all candidate countries but that certain countries in a position to do so will be expected to take over more of the non-core acquis at the point of accession than others.

4 Temporary transition periods instead of permanent exemptions

The core acquis test still means that the entire acquis has to be adopted. The core acquis approach works with temporary exemptions (transition periods), not with permanent exemptions (these are discussed below). The Union and the candidate countries commit themselves to firm implementation processes and timetables

laid down in the accession agreement. The Commission would be required to continue screening the progress being made with these implementation programmes after the countries had joined the EU. This would then provide all the parties with a sufficient guarantee that the total acquis would ultimately be implemented, within agreed transition periods. These agreements could however be supplemented in individual policy fields with specific pacts and medium-term programmes with built-in incentives and sanctions.

5 The core acquis test leads to fully-fledged membership

The core acquis test specifically does not lead to partial membership. The latter has been rejected above as an accession strategy. After accession the new member state will be subject to all the rights and obligations applying to the other member states, unless additional criteria apply in a certain policy field, as in the case of accession to the euro and the abolition of controls on persons on the internal Schengen borders.

6 A proactive, integrated, strategic and development-led approach

The core acquis test therefore amounts in essence to a proactive, integrated, strategic and development-led accommodation of problematic diversity (in contrast to the reactive, sectoral, *ad hoc* approach under the transition periods).

The first characteristic – the proactive nature of the core acquis approach – offers major systemic advantages, as it obliges the EU to make an identification prior to accession in the most problematic policy areas of those elements of the acquis that are critical for the EU's ability to function adequately as the union of values and action. If applicants are subjected to the core acquis test, unpleasant surprises due to window-dressing by the candidate countries can be prevented. Such implementation deficits, the full scale of which would only emerge after accession, could have serious systemic consequences for the EU as a union of values and action. The EU should not therefore wait to find out the areas in which the candidate countries seek transition periods. Instead it should seek proactively to announce where transition periods will not be allowed (the core) and rigorously to test the implementation capacity of the candidates with regard to the core.

Secondly the core acquis implies a sector-overarching approach. Instead of granting transition periods within the context of sectoral negotiations, a core acquis is formulated for the problematic sectors on the basis of the influence that measures in those sectors have on the essence of the union of values and action. In granting transition periods the Commission is already to some extent pursuing a sector-overarching approach by taking the consequences for the internal market as the criterion for assessing requests for transition periods. An integrated approach is not just important on account of the marked interdependence between elements of the acquis but also provides a certain protection against sectoral lobbies, which have ready access to the sectoral ministries/directorates-general.

Thirdly the core acquis approach takes account of the short-term and long-term interaction between adoption of the acquis and catch-up growth (i.e. a strategic

and development-oriented approach). In chapters 3 and 4 it was discussed how a large element of the accession criteria strengthens the transformation and growth processes in Central and Eastern Europe but that in certain areas of policy there is also a short-term tension between full-scale adoption and implementation of the acquis and the possibilities for long-term catch up growth. That growth is, in turn, key for the effective adoption and implementation of the acquis in the medium term.

The core acquis test is a way of benefiting from the first dynamic, while the second dynamic is as far as possible prevented. The strategic and development-oriented granting of transition periods makes it possible for the candidate countries to accede as soon as they comply with the core acquis. On the one hand this makes best use of the mutually reinforcing effect of satisfying accession criteria and the completion of the transformation processes in the candidate countries. On the other hand this strategic approach means that no investments in elements of the acquis are required before accession that would seriously obstruct catch-up growth and/or transformation processes where those elements are not vital for the union of values and action. In other words, this strategic and development-oriented approach prevents permanent, structural problematic diversity by accommodating problematic diversity in those elements that are not vital for the functioning of the union of values and action.

5.3.3 CRITERIA FOR ESTABLISHING THE CORE

As noted previously, it is not the intention to define a core for the entire acquis but just for the evidently problematic sectors. In that case the criteria on the basis of which the core is determined are derived from the essence of the Union as a community of values and action. Where that concerns the union of values, the core is in fact formulated by the political criterion of Copenhagen. Few would contest that stable institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities all form part of the core acquis of the Union.

It is more awkward to determine what core acquis arises from the Union as a community of action. The WRR considers that the guiding criterion should be the effect that the element of the acquis in question has on the functioning of the internal market and the security of the European citizen in the broad sense. Measures with a negative effect on these two core achievements of the union of action should be adopted prior to accession. The system of public administration and the law in the candidate countries should also be of sufficient quality to guarantee the implementation and enforcement of the core acquis of the union of action (cf. Ministry of Foreign Affairs 2000: 11, where framework criteria for the negotiations on transition periods are formulated).

As argued above, transition periods are not granted for the entire residual acquis (i.e. the measures not forming part of the core). This is only the case for those

measures where the adoption and implementation costs and/or negative consequences thereof for the competitiveness of the Central and East European countries would be disproportionate. The less expensive residual acquis should be adopted and implemented before accession.

The core acquis test should therefore operate as a two-edged sword. For the Central and East European countries this implies:

1 that protracted postponement of accession is prevented and the risk eliminated that they will be deprived at length of the economic and stability benefits of integration in the Union;
2 that it is possible to benefit from the mutually reinforcing dynamic between the accession criteria and the transformation processes;
3 that they are granted dispensation from the non-essential elements of the acquis, thus preventing the crucial catch-up growth from being frustrated;
4 that the intended catch-up growth will in the medium term increase the prospects for the effective adoption and implementation of the acquis. Chapters 3 and 4 revealed just how much the build-up of the administrative and legal capacity depends on the available budgetary resources and therefore catch-up growth.

For the European Union it means:

1 limitation of the risks that enlargement poses for the core of the union of values and action if a proactive and sector-overarching core acquis test is applied without concessions prior to accession;
2 a commitment by the candidate countries to the full adoption and implementation of the acquis by means of firm implementation processes and timetables laid down in the accession agreement;
3 the credibility of that commitment, as there are better possibilities for realising the necessary catch-up growth.

5.5.4 PERMANENT EXEMPTIONS

An alternative to the accommodation of problematic diversity is for permanent exemptions to be granted for specific directives or entire elements of the acquis (also known as regressive flexibility). This solution variant therefore means full membership, with full participation in certain areas of policy (with all the rights and obligations that other member states also have) but only limited or no participation in other areas.[18]

Such an approach would be particularly functional where there are major, relatively constant differences between the characteristics of the member states. This argument has for example being used to urge that the Central and East European countries be permanently exempted from those elements of the environment where the situation in the present EU clearly differs from that in the CEECs (e.g. lower population density, thereby meaning that less strict water quality requirements applied) (Carius et al. 2000: 29). Negotiating delegations from the candidate countries have in fact picked this up quickly by referring not so much to

major differences in characteristics as to the alleged inability of the acquis to achieve certain goals (e.g. sustainable development). In fact the principle here is contested that the goals set out in the EU Treaties are in all cases best served by the full adoption of the acquis. Candidate countries sometimes note that they have stricter environmental legislation and in other cases that they have adopted the US approach, from which the Union could also learn.

Although it will be difficult in some cases to refuse permanent exemptions when the present member states already have such arrangements, the WRR considers that accommodation via this route should be excluded. Lengthy transition periods and/or a special position within directives will generally provide adequate room for special treatment. The possible functional advantages of permanent exemptions over this do not weigh up against the substantial systemic disadvantages of permanent fragmentation of the law and giving up the centripetal dynamic imparted by the principle that candidate countries must eventually implement all the acquis.

5.5.5 REDEFINITION OF INTERVENTION BEFORE ACCESSION

The most far-reaching form of accommodation would be offered by redefining the intervention before accession. This could involve the renationalisation of certain tasks formerly provided at EU level. A less far-reaching form would be that detailed regulations would be replaced by framework directives giving the national and regional authorities greater room. New European policy could also be introduced in order to accommodate problematic diversity in a particular candidate country (e.g. the introduction of 'objective 6' of the Structural Funds for the North Pole areas when the Scandinavian countries acceded).

Generally speaking, redefinition of the acquis prior to accession does little to resolve the accession issue. If internal EU political disputes concerning policy reforms are imposed on the accession process, this creates the risk that political compromises previously reached on sensitive dossiers could unravel again and that accession has to be postponed. Matters would however be different if the accession of new member states risked stranding a process of reform of the acquis that had been set in motion at an earlier point on substantive policy and legitimacy grounds. It would for example be possible for a small group of newcomers and incumbent member states to form a minority coalition after accession and continually to block the reforms being sought by a majority of the member states. In that case it is conceivable that not only the functionality of the policy in question would be further damaged but also that the long-term capacity for adjustment and legitimacy of the EU system would be seriously undermined. By working towards political compromise between the 'old' member states to take the decision about reform of the acquis before the date of accession these functional and systemic disadvantages could be countered and the effectiveness and legitimacy of the Union retained.

5.6 CONCLUSION

To date the European Union has made the acquis a central element in its accession strategy and has pressed for its full adoption by the candidate countries before accession. This approach proved highly functional in previous accession negotiations. On the one hand the negotiations are shielded from internal EU integration debates that could delay the accession, while on the other non-cooperative attitudes on the part of candidate countries cut little ice. Seen from a systemic perspective this approach *a priori* provides the best protection of the Union as an ever closer community of values and action. It preserves the unity of the institutional framework and law of the Union while its simplicity makes it transparent and understandable. A large part of the accession requirements support the transformation processes and economic catch-up growth in the candidate countries. The adoption of the acquis prior to accession can be promoted by the formulation of clear criteria, aid programmes, individual setting of priorities/planning/monitoring, a process of learning by doing by allowing candidate countries to participate in programmes already now, agencies, committees and working groups of the EU and part-integration of candidate countries into the structures and institutions of the EU through association arrangements.

Some of the accession requirements are however at variance with the requirements imposed on the candidate countries by transformation. The WRR considers that in this case priority should be given to the transformation dynamic. It is in the interests of the countries concerned but also in that of the Union, since catch-up growth generates the necessary resources to comply in due course with the full acquis and adequately to implement and enforce it. In addition insistence on full adoption of the acquis prior to accession could in these circumstances lead to resentment among the candidate countries and damage the solidarity between the member states in the enlarged Union.

To date these tensions have been resolved by the Union by the granting of transition periods. One problem associated with such periods, however, is that they are granted on a sectoral basis. This can result in a final package that works no more than moderately once an applicant has been admitted. Furthermore, the accommodation of diversity through transition periods is highly reactive in nature: consideration to such arrangements is only given if the candidate country submits an application. Given the disadvantages of the *ad hoc* granting of transition periods, the WRR would argue in favour of the formulation of a core acquis test for the most problematic elements of the acquis. For the CEECs this approach implies that there will be no protracted postponement of accession. The danger is also eliminated that they will be required to forgo the economic and stability benefits of integration in the Union until well into the future. The fact that candidate countries will be granted dispensation from all those elements of the acquis that are not immediately crucial upon accession prevents the potential for catch-up growth from being frustrated. Partly as a result the risk of the erosion of achievements is also reduced. For the European Union this strategy means that

the risks of the enlargement for the core of the union of values and action are limited by the application prior to accession of a non-concessionary proactive and sector-overarching test. Candidate countries are held to the full adoption and implementation of the acquis by means of fixed implementation processes and timetables incorporated in the accession agreement. The WRR rejects permanent exceptions for the candidate countries.

Generally speaking, redefinition of the acquis prior to accession does little for resolving the accession issue. The risk is that internal EU political disputes concerning policy reforms are imposed on the accession process, with the risk that accession will be postponed. Matters would however be different if the accession of new member states risked stranding a process of reform of the acquis that had been set in motion at an earlier point on substantive policy and legitimacy grounds. The functionality of the policy to achieve the goals of the Union as well as the long-term capacity for adjustment and legitimacy of the EU system would then be at risk.

A strategy to tackle problematic diversity at source is also important for the effective functioning of the enlarged Union. Convergence processes involving market forces, financial transfers and learning processes result over time in a structural reduction of implementation problems. This approach also acknowledges the major importance of non-public parties for the successful integration of Central and Eastern Europe in the EU, namely private actors (i.e. convergence through market forces), professional practitioners and more generally civil society (i.e. convergence through financial transfers and learning processes). Their involvement will also enhance the legitimacy of accession.

NOTES

1 The accession negotiations were opened on 31 March 1998 with Hungary, Poland, Estonia, Slovenia and the Czech Republic, and on 15 February 2000 with Malta, Slovakia, Latvia, Lithuania, Bulgaria and Romania.

2 The screening is performed by the European Commission and involves a survey of the EU acquis (subdivided into 31 chapters) in relation to the candidate country. The object of the screening is to identify those issues that could come up during the accession negotiations between the EU and the candidate country.

3 This asymmetrical negotiating situation is a result of the bilateral framework in which the negotiations are conducted (i.e. the EU versus a single candidate country) and the fact that in the past the Union has tended to conduct accession negotiations with no more than a couple of countries at once. The present situation, in which negotiations are being conducted with 12 countries at once, is therefore exceptional, although the weight (in terms of the economy and population size) of these countries is relatively small. The degree of asymmetry also varies according to the importance attached by the EU or the candidate country to accession (if that importance is less for the EU it can credibly threaten to withhold membership).

4 The White Paper (COM(95)163 final of three main 1995 and the associated Annex (COM(95) 163 final/2 of 10 May 1995) was published by the European Commission at the request of the Essen European Council (1994), as part of the pre-accession strategy launched in Essen, and was endorsed by the European Council of Cannes (1995).

5 The third goal of the Phare Hague is to promote economic and social cohesion. This aid is discussed in section 5.3.2 in relation to 'reducing diversity'.

6 Under the *Accession Partnership* – forming part of the 'strengthened pre-accession strategy' – medium and long-term priorities are identified for the candidate country in question with respect to the adoption of the acquis and a National Programme for the Adoption of the Acquis is drawn up, with a schedule for the realisation of the priorities, together with a specification of administrative and institutional requirements, funding needs and financing sources. All aid (including Phare) is also brought together under the umbrella of the Accession Partnership and focused on the priorities which the latter lays down.

7 For the text of the Accession Partnerships see http://europa.eu.int/comm/enlargement/report_10_99/ download_1999.htm. For the text of the European Commission regular reports see http://europa.eu.int/comm/enlargement/report_11_00/index.htm.

8 This is the 'Collective Evaluation', see Joint Action 98/428/JHA, OJ L 191/8 of 7 July 1998.

9 The participating countries in CEFTA – formed in December 1992 by the four Visegrád countries – are at present Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Romania and Bulgaria.

10 The association agreement is implemented by the Association Council (at ministerial level), supported by the Association Committee (and by the special committees or subcommittees set up by the Association Council). A parliamentary committee is also established under the association agreement, consisting of members of the European Parliament and the parliament of the associated state.

11 Community programmes relate to an integrated series of measures by the EC designed to promote cooperation between the member states in various specific fields (including research, education, professional training, youth, culture, audiovisual, environment, energy, healthcare, social policy, small and medium-sized enterprises and taxation) extending over a number of years. In principle they are explicitly set up for the member states and are paid for out of the EU budget.

12 See European Commission DG Enlargement, 'Participation of candidate countries in Community programmes, agencies and committees', Communication to the Council COM(99)710, 20 December 1999.

13 'PECA' stands for 'Protocol to the Europe Agreement on Conformity assessment and Acceptance of industrial products'.

14 In addition candidate countries are invited once every six months to participate in a meeting of the Committee for Political and Security Issues and in the working group meetings. They are also invited to appoint 'Shadow European Correspondents', who participate once every six months in a meeting of the European Correspondents (see 'Guidelines for the implementation of the 7 March General Affairs Council conclusions on enhanced political dialogue with the associated Central and Eastern European countries', Doc.10344/94).

15 The expression 'ever larger waiting room' has been taken from Peers (1995).

16 Pelkmans discusses how market forces can contribute towards the cohesion of the internal market (i.e. between member states). This section discusses the effects of market integration prior to accession on the reduction of adversity between the present and prospective member states.

17 It is the unconditional nature of the financial transfers that is characteristic for 'trading off diversity'. If financial transfers are made on condition that the recipient also do something about that problematic adversity, it then comes under the category of suppression or elimination of diversity with the aid of financial assistance (see above).

18 In this regard it is possible that the member state in question will be advised of the developments in the field in which it has been granted a permanent exception, or that it may be present as observer at the deliberations (cf. the rules for closer cooperation, see section 5.4) or may participate in the deliberations with a right to vote. The latter option is the most obvious given the permanent exemptions already in place.

6 EVALUATION OF POST-ACCESSION SOLUTIONS: IMPLEMENTATION AND ENFORCEMENT

6.1 INTRODUCTION: PRESERVATION OF ACHIEVEMENTS

Given the central role that the member states of the Union play in the implementation and preservation of the acquis, it is highly important for them to have the necessary administrative and legal capacity. Careful attention is therefore being paid upon the accession of Central and East European countries to the system of public administration and the effectiveness of the legal system. The key difference from former accession rounds is that the existence of such capacity cannot be assumed in advance. The administrative and legal capacity of a country has therefore been laid down as an explicit accession criterion.

In accordance with the first objective of this WRR report (see section 1.2) solutions concerning the process of accession by the Central and East European candidate countries were set out and evaluated in chapter 5. This chapter examines the solutions with respect to the implementation and enforcement problems. For the logic of this sequence reference is made to the policy cycle presented in section 2.3 (see figure 2.1).

The concern about the preservation of achievements arises from the observation in chapters 3 and 4 (part II) of this report that the capacity of the candidate countries to implement and enforce the acquis will not match that of the current member states for a considerable time to come after accession. Despite the substantial progress made by the Central and East European countries, the eastward enlargement of the European Union poses risks in this area. These risks are not the same in all policy areas and for all the acceding countries; it was seen in chapter 4 that there are substantial differences in this regard.

It was indicated in chapter 5 that the simple elimination of discrepancies in respect of the acquis was not a self-evident strategy for dealing with the problem of the administrative and legal capacity. Instead the causes of the problematic diversity in these areas need to be reduced to the point at which implementation and enforcement reach a standard acceptable within the Union. These causes are related to the process of transformation undergone by the Central and East European countries.

The process of administrative and legal reform depends in part on developments in other sectors of society and will be a matter for the long haul: it simply cannot be expected that the way in which the government functions in the acceding countries can in the space of a decade and a half be brought up to the standard of countries which by tradition, training and environment have such a superior starting position. Allowance also needs to be made for the fact that further development will be required in all sorts of fields at the point of accession.

As in the previous chapter, solutions in a general sense are the focus of this chapter. The solutions in respect of implementation are aimed at increasing both the sectoral administrative capacity and the horizontal (or general) administrative capacity of the CEECs (see section 6.2). There is considerable interrelationship between the two; the way in which the administration operates in one particular sector depends not just on the capacity of the specific element under consideration but also on the quality of the administrative apparatus of which it forms part, i.e. the system as a whole. The cooperation and coordination with other services, the way in which it is directed by legislation and the political system and the way in which society operates are determined in part by the position occupied in this context by the system of public administration. This does not eliminate the fact that there can be substantial differences in the administrative capacity in various sectors, as seen in chapter 4. This sectoral dimension is more central in chapter 7, which discusses solutions with respect to various policy fields. In relation to enforcement and especially the legal capacity, it is however less easy to draw a distinction between the sectoral and the horizontal.

The criteria laid down in chapter 2 (see table 2.2 and also table 5.1) provide the guidelines for evaluating the solutions. From the viewpoint of *functionality* the solutions discussed in this chapter should therefore not only contribute towards improved implementation and enforcement at sectoral level but should also strengthen the horizontal or general administrative and legal capacities of the CEECs. In addition solutions must always be financially and politically feasible.

With respect to the *systemic criteria* it should be noted that certain criteria are more relevant for the subject addressed by this chapter than others. Easily the most important criterion is that of the unity of the law and the legal system, in combination with the criteria of supranationality (i.e. the role of Commission as 'guardian of the Treaties', the European Court of Justice and the Court of First Instance and subsidiarity and proportionality. Another criterion of course consists of the transparency and comprehensibility of the EU system, not just because national implementation is interwoven with the *acquis communautaire* but also on account of the demands this makes on the transparency, openness and accountability of administrative bodies in both the old and the new member states.

Finally it is important that implementation and enforcement as a rule concern generic aspects of the Union. They generally concern tasks that must be performed by the existing administrative bodies and the judiciary of the member states. 'Special' treatment of new member states is possible to only a limited extent, but certainly not in a formal legal sense (except in the case of transition periods). In certain policy areas, which are discussed in more detail in chapter 7, this is however possible and desirable. In the case of the provision of aid (e.g. for institution-building) and the strengthened administrative cooperation between the Commission and member states in the area of implementation and enforcement, specific treatment of the new member states is possible when it comes to the preservation of achievements. It is conceivable, and may also be desirable, for transition periods to

be granted relating not to the acquis itself or to implementation in the strict sense (in national legislation), but exclusively to enforcement. Examples include the JHA dossier (cf. the lengthy transition periods for Schengen countries that had not yet fully completed and tested their enforcement potential, including the SIS[1]) as well as elements of environmental policy, where widely distributed expertise and often expensive measuring equipment are required for effective enforcement.

The chapter is arranged as follows. The solutions with respect to the implementation of the acquis are discussed and assessed in section 6.2. This section sets out the strengths and weaknesses of the present European implementation model. Various solutions for the adjustment or supplementation of the existing model are then discussed. Section 6.3 examines the solutions with respect to enforcement of the acquis.

As will be seen, it is often difficult to draw a line between solutions with respect to policy implementation and those with respect to policy enforcement. This is the result of the 'classic' decentralised system of regulation in the EU. Solutions with respect to policy implementation are generally concerned with the quality of implementation, whereas solutions concerning policy enforcement are solely concerned with the prevention or reversal of 'violations' of European law. Such violations may for example entail the failure to convert a directive into national policy in time, the incorrect implementation of a European measure by a member state or actions by a member state that are at variance with European rules.

6.2 EVALUATION OF SOLUTIONS WITH RESPECT TO IMPLEMENTATION

6.2.1 THE STRENGTHS AND VULNERABILITY OF THE 'CLASSIC' DECENTRALISED IMPLEMENTATION MODEL

It is a characteristic feature of the EU that the implementation of the acquis has been left almost entirely to the member states. The implementation of European decisions is handled by the organs of the member states, making use of all the instruments and procedures at their disposal for the implementation of national rules. Implementation of European policy is consequently a primary responsibility of the member states (with the exception of a few fields such as competition and external trade). A major advantage of decentralised implementation is that the incorporation of European policy in national policy achieves much more than if implementation were to be left in the hands of individual European executive agencies. The effect of doing so is to 'internalise' European law in national law. In terms of the evaluation criterion of subsidiarity this may be regarded as a major strength of the European implementation model. Thanks to this decentralised arrangement no huge European executive bureaucracy has arisen. The Commission and its agencies are primarily concerned with policy preparation, decision-making and supervision of the adoption and implementation of decisions taken at European level.

One consequence of this arrangement is however that the quality of the implementation of the acquis depends heavily on the way in which this is done by the various member states. For this reason the European Union requires the member states to have effective administrative bodies acting in accordance with the principles of a democracy under the rule of law.

This is not just a major challenge for the candidate countries; the quality of implementation is often also a point of debate in the present Union. The crises in the field of food safety have indicated just how dependent the Union is on the way in which national bureaucracies perform their tasks. In the Netherlands too it has become evident that the lawful granting of European subsidies has been performed in such a way that substantial repayments had to be made after European audits have been performed. There is, however, no reason for undue pessimism. The most recently published figures indicate that on average the current member states had converted 95.7% of the directives into national policy at the end of 1998. The performance did however range from a minimum of 93.62% (Italy) to a maximum of 98.21% (Denmark) (European Commission 1999b: 8). Caution is however in order when it comes to the interpretation of these figures. Azzi (2000: 54) indicates that although the difference between Denmark and Italy 'only' concerns 63 directives, even small delays can have major consequences for other member states in a highly integrated economic Union. It must also be borne in mind that directives vary greatly in content and nature. In the case of some directives it is sufficient for the rules to be amended, as in the case of the recognition of certain diplomas, while others require expensive investments, such as the construction of a water purification plant. Börzel (2001) even goes so far as to suggest that it is impossible to compare the implementation performances of the member states on the basis of the available data.

It is difficult to predict what the implementation performance of the new member states will be, but this undeniably involves risks. It was noted in chapter 3 and 4 of this report that the prospect of accession has provided a strong impetus for the necessary process of administrative reform. In his study for this report, Verheijen (2000), however, notes that the emphasis placed by the Union on sectoral administrative capacity neglects the importance of a good horizontal administrative infrastructure (see also section 3.5). The reform of the general administrative infrastructure of the CEECs is a matter for the long haul, but it is unlikely that countries will be denied accession on account of a lack of horizontal administrative capacity (Verheijen 2000: 49).

Confidence and a limited accountability structure

One of the essential principles underlying the functioning of the EU system is the mutual confidence that the member states have in one another's institutions. Member states must be able to rely on the fact that their colleague member states will implement the European rules properly. According to Verheijen (2000: 50) the forthcoming accession round could undermine this system of trust. Although it is possible for one member state to hold another to its obligations by instituting

proceedings in the ECJ, this course of action is primarily designed to cover instances of deliberate non-compliance or a clear difference of interpretation concerning the obligations. It is not an adequate means for redressing deficient administration capacity as such.

Apart from control by the courts, there is a much wider duty of accountability for administrative bodies in any national constitutionally-based system. It is not just a matter of whether the administration has remained within the limits of the law but also of the correctness of the choices made, the quality, the efficacy and the financial aspect of implementation. In most cases that obligation runs via political office-bearers to the parliament, as in the case of ministerial responsibility in the Netherlands. Such a form of accountability for the way in which the national authorities implement the policies adopted by the Union does not exist vis-à-vis the European level (except where it comes to non-compliance with obligations). For the remainder the national system is relied upon. For this reason national authorities have a duty of accountability within their own state in so far as the national state system has made provision for this.

In connection with accession there are two reasons for taking stock of this system. In the first place there is in a general sense a discongruence between the interest at stake in good implementation – the European interest – and the interest for which the body to which account is rendered has been set up – the national interest. The two interests need not coincide and may even conflict. As the number of member states increases, this discongruence can increase further. But also more fundamentally, it is incorrect to ask the one and the same body to promote two potentially conflicting interests. From this viewpoint, there is clearly also a need in the implementation of European policy for a form of accountability that does justice to this wider interest, which directly affects the other member states and the European institutions. In that sense there is a gap in the system of accountability; as far as the national implementation is concerned, there is no relationship of accountability between the member states and the European Parliament.

Secondly, there is also uncertainty within a number of member states themselves concerning the way in which policy implementation is supervised. Dissatisfaction with the existing direction and accountability processes has emerged in various places. It has also resulted in a reconsideration of these processes, sometimes leading to reorganisations. Examples include the corporatisation operations that have taken place in a number of countries and the greater importance attached nowadays to transparency in respect of the performance of executive agencies.

The situation in the acceding countries is substantially less satisfactory. There is much less of a tradition of rendering administrative account and the relevant resources and processes are often not fully developed. The inadequacy of the existing forms of accountability form an ongoing point of attention in the Commission's progress reports.

The gaps noted earlier in the way in which the authorities of the member states render account for the implementation of European policy have existed since the inception. They do however gain in cogency the more important the quality of implementation and the less it is possible to rely on the internal accountability processes in the member states. The interest that the citizens of the Union have in the quality of implementation has for example become visible in such fields as food safety and fighting crime, but is also evident in many other fields. In the efforts to bring the Union closer to the citizen, it is all the more important for policy implementation to be up to the mark; it is this which will gain public support. Greater concern about output legitimacy therefore also requires that this is not fully left to the internal processes within the member states. The accession of the CEECs renders acute a problem that was already becoming more serious. Provisions for the explicit public rendering of account do not of course provide a sufficient condition for the generation of adequate administrative capacity. They can however act as a lever for stepping up the efforts in that direction and so contributing towards greater trust by the citizen in the government and by member states in one another's institutions.

Survey of possible solutions

The nature of the problem does not lend itself to straightforward solutions. It is not possible for the administrative capacity to be strengthened overnight by introducing certain regulations or making funds available. On the contrary: this requires a sustained effort, for which there is no miracle cure. The analyses in chapter 3 set out the numerous interrelationships within which this process must take place. Nevertheless substantial progress has also been made along the accession path. Annex I illustrates that the situation is better in some countries than in others and that there was already an effective administrative capacity in several countries in certain sectors some years ago. The possible solutions set out below need to be evaluated against this background (see table 6.1).

Table 6.1 Approaches towards the implementation problem

	Approaches towards the implementation problem
Aid and knowledge transfer	• Aid programmes • Exchange • Education and training
Vertical and horizontal quality control	• Control by European institutions • Horizontal policy coordination in a European framework • Promotion of public accountability and quality control in the member states
Implementation at European level	• Implementation by European agencies • Implementation by the Commission
Differentiated implementation	• Core acquis test

6.2.2 AID AND KNOWLEDGE TRANSFER

Aid programmes

As noted in chapter 5, the EU is making unique efforts to promote the speed and quality of the implementation of the acquis in the Central and East European countries by means of aid programmes forming part of the accession process. Various programmes under Phare are aimed at strengthening both the sectoral and the horizontal administrative capacity in these countries. It is important that such programmes be continued after accession as well. The CEECs will need lengthy support in the training of civil servants, setting up an information technology infrastructure in public administration, the devolution of powers and strengthening local and regional administration and the further development of national (and possibly also regional) courts of audit, et cetera.

The importance of the absorption capacity of the aid-recipient states has already been noted in chapter 5. There is a need for the various programmes to be properly coordinated and so to strengthen the administrative structures of the CEECs as effectively as possible, for example by setting national priorities. The Commission can play a coordinating role in this, as it has years of experience in this field. The only obstacle to this instrument is that aid programmes are extremely costly. The question is whether the other member states will be politically prepared to invest heavily in the administrative capacities of the CEECs after accession.

Given the major importance of strengthening both the sectoral and the horizontal administrative capacity, targeted aid programmes will remain the most effective instruments for reducing the problematic diversity between the countries for some time after accession as well. The instrument is also more specific than the use of structure and cohesion funds in general. It should therefore have major priority and be accompanied by regular evaluations.

Exchange

A second instrument that is already in use and which could be continued and even strengthened after accession is the exchange of civil servants. National, regional or local civil servants could all benefit from placements within the system of public administration in a counterpart member state. A successful transformation of the system of public administration in Central and Eastern Europe implies a change in culture and behaviour that cannot be brought about by law. Learning processes can promote the convergence of administrative cultures. Although exchange projects do not generally cost as much as material investment, they do mean that a number of good and scarce civil servants are temporarily taken out of the national policy process in both the current and the new member states. This is however outweighed by the benefits of exchange. This instrument must be viewed as an investment in the administrative culture within the Union as such and need not therefore remain confined to mutual exchanges within present member states and the new member states in Central and Eastern Europe. Exchanges between the current member states themselves, the Central

and East European countries themselves or between member states and the Commission can contribute towards a more uniform administrative culture in the EU, which will in turn foster the implementation process.

Education and training

Particularly when it comes to more specific implementation tasks it is highly important for joint education and training to be provided for civil servants from the member states. Such activities are for the time being the most required for civil servants from the acceding countries, but more generally they also provide an effective method of improving the quality of implementation, promoting the cooperation between authorities in the various member states and strengthening mutual trust. The benefits from investments in such training will emerge mainly in the medium and long term.

6.2.3 VERTICAL AND HORIZONTAL QUALITY CONTROL

Control by European institutions

One of the means for improving the national implementation of European policy is stricter control by European institutions. In this regard the Court of Auditors already plays a role when it comes to the expenditure by member states incurred on behalf of the Union. In addition Commission departments also conduct audits of the administrative bodies of the member states. This solution does, however, provide only limited possibilities. Given an expansion of the Union into an organisation of over 25 member states, it appears unlikely that the European institutions will be capable of keeping a watch on the numerous administrative bodies in such a large number of member states. To be effective such measures would require a sizeable bureaucratic machinery. In addition, and apart from the discriminatory considerations, worries that implementation in the new member states will not be up to the mark for a long time can never be completely eliminated by setting conditions or organising specific inspection or control measures for those countries. Furthermore such measures may be perceived as something imposed from the outside, thereby increasing the likelihood that cooperation will at best be half-hearted.

Although effective control by the European institutions remains necessary as the final step, such controls cannot ensure correct implementation. A better course of action is to build on the developments described in section 6.2.1 in respect of accountability and quality control that are emerging in the individual member states in Europe. Control at European level could then be more by way of second-line control, based on the independent systems of public accountability and quality control in the member states itself. Encouraging this should therefore be a priority matter.

Horizontal policy coordination in the European framework

Partly as a result of the completion of the internal market and the growing cooperation in the justice and home affairs field, the need for cooperation and data

exchange has increased. The member states now pool their data and technical expertise in various fields in order to develop a joint approach. The Commission plays a role in this process by building up a network of experts. It has recently emerged that this coordinating approach, strengthened by benchmarking, is not developing as a transitional mechanism but as an entirely separate policy method (H. Wallace 2000: 33). A good example of this is provided by the field of employment, where the EU is only involved in the comparison of national, local or sectoral labour market policies. The aim is not so much to develop a joint framework as to exchange experiences and to promote the use of best practices (for example by peer review and peer pressure). Wallace regards this typical method as a possible alternative in future European policy making for the transfer of national powers to the European level. Although this instrument is frequently used in order to develop new policies, it can also help improve the national implementation of European tasks.

The new member states from Central and Eastern Europe stand to benefit considerably from participating in these 'clubs' of civil servants and experts. In this way a joint culture for implementation can arise and learning effects can be generated in a structure based on shared responsibility and lacking the voluntarism of aid and exchanges. Although a general practice, this will be additionally helpful for civil servants from the CEECs in developing effective methods of implementation. A great advantage of this instrument is that it promotes the effectiveness of devolved implementation while the national responsibilities remain in place.

In addition the widespread use of policy-comparisons and benchmarking can promote the essential mutual trust between the member states in the Union. Although the continual identification of implementation deficiencies in counterpart member states is not directly conducive to building up confidence in the functioning of one another's institutions, this instrument does mean that the member states become familiar with each other's implementation practices. It is also better for these deficiencies to be discussed than to disguise them. This facilitates decision-making on priority areas for improvement.

Promotion of public accountability and quality control in the member states

Apart from this strengthening of mutual policy coordination greater attention is required to external accountability. Whereas the former approach operates primarily by means of internal administrative mechanisms, the second uses external accountability as a stimulus for improving the performance of government agencies. As indicated in section 6.2.1, both approaches support the output legitimacy of European policy. It is becoming increasingly necessary to render public account for the quality of the implementation.

This means that apart from accountability through the normal line of political responsibility, greater efforts must be made systematically to evaluate and report on the performance of executive agencies. Now that many such bodies have been

privatised and ministerial responsibility therefore affords fewer opportunities, the instrument of public accountability by means of careful reporting, including the measurement of performance or provision of insight into the standard of administration, has become more customary.

In its report *Safeguarding the Public Interest* the WRR (2000b) urged that this approach be reinforced. This was a particularly appropriate approach for Europe, and enlargement accentuates its importance. In so far as not assigned to national authorities, the equivalent of political responsibility for implementation is not readily realised at European level. But if the authorities proceed systematically to render public account for their activities, this will provide insight for all concerned into the way in which implementation has taken place.

Given the major role that the national administrative bodies play in the implementation of European policy, it is highly important for Europe that the system of public accountability and quality control be promoted. This applies especially when it comes to the implementation of European policy. If the accountability also includes a requirement for the reporting to be evaluated by independent experts, both the European institutions and the other member states can see to what extent the European rules are being properly implemented. In this regard it would be appropriate for experts or colleagues from the other member states to be involved in the independent evaluation. Reciprocal visits can moreover contribute towards the mutual transfer of knowledge and the coordination of implementation processes, thereby promoting the uniformity of implementation in the various member states. This would mean that the Union would in particular seek to strengthen the processes of public reporting and accountability in the implementation of European policy. Requirements could be laid down in respect of such accountability in terms of both the yardsticks for the accountability and the way in which an independent evaluation is conducted.

Financial accountability will need to be part of this process. This is not however enough in itself, as the other aspects of good policy implementation must also be taken into consideration. The appropriate yardsticks will differ in respect of (for example) border control or food inspection. The need for account to be rendered properly and controllably is also an important means of reducing corruption. Making the working processes and the measures taken against corruption visible provides a good point of departure for tackling the problem.

It should however be noted that in the short term, public accountability means that problems tend to become visible rather than being resolved. In the longer term, on the other hand, they can have a flywheel effect serving to initiate and maintain a process of improvement. This certainly applies to the CEECs, where the need for administrative improvement – including that for the vital catch-up growth – is exceptionally great. Given the present administrative characteristics, resistance towards the introduction of a system of administrative accountability will be marked for the time being. As noted in chapter 3, the relationship between

the government and citizens in those countries tend still to be characterised by profound mistrust. In such a situation there will be little inclination for administrative openness if this further fuels suspicion. In order to break out of this vicious circle, there is only one conceivable way: administrators must be prepared to subject themselves publicly to control. Initiatives on the part of the European Union can act as a lever in this regard. In addition it should be noted that resistance to openness is by no means confined to Central and Eastern Europe: the public accountability and quality controls with respect to government agencies are also still in their infancy in the current member states. The fact that the challenge bears equally on both the present and the future member states may therefore be to the benefit of the initial receptiveness in Central and Eastern Europe. The present resistance means at the same time that the application of these practices is getting off the ground only slowly in the Union.

The need for public accountability can be more compelling in certain areas than in others. Initial steps have also been taken in this direction in certain areas. The implementation of the Schengen acquis is partly controlled by means of reciprocal evaluations or controls that do not end up as public reports. In the case of food safety the need for quality assurance has become increasingly cogent. By means of a gradual process the EU should develop a system leading to reliable public accountability of the implementation process by the bureaucracies in the member states; agencies could play a role in this regard (see also section 6.2.4). All this could serve to increase the trust of the citizens in Europe, as well as the confidence of the member states in one another. If this were to take place, the controls over implementation provided by the European institutions could be limited in nature and – as noted – consist in part of a system of second-line control.

6.2.4 IMPLEMENTATION AT EUROPEAN LEVEL

Implementation by European agencies[2]

A solution deserving consideration is the transfer of certain implementation tasks to European agencies in the event that member states are unable to handle the implementation of European rules. Tackling the deficient implementation of the acquis by transferring the entire implementation to agencies can however afford a solution in highly exceptional cases only.

The existing European agencies primarily play a role in the field of information gathering and exchange, advice and training. Here there is a certain independence in the exercise of their tasks. They constitute an ingenious form of European institutionalisation that does not in fact generally entail centralisation and that generally arose out of what is referred to in the Brussels circuit as 'comitology', i.e. the numerous management and advisory committees in which the member states work together with the Commission on implementation issues. To begin with agencies could become much more important when it comes to strengthening the cooperation and exchange of information between the national implementing agencies and setting up a common control or accountability system.

The possibilities afforded by an agency to exchange information, consolidate networks between implementing agencies of the member states and learn from each others methods are considerable. In this way they are able to promote and monitor the quality of the *national* implementation in sectors of importance to the Union. This could therefore be a useful instrument upon enlargement.

Allowing agencies to take over an implementation task in its entirety can however be a solution only in highly exceptional cases. Only in the few cases where implementation problems themselves exert a major impact on the functioning of the internal market and therefore constitute an obstacle to free movement does the subsidiarity test suggest that agencies should play a direct role in implementation. Examples include food safety, air traffic control and the agencies in the pipeline for the safety of aircraft and trains. Suggestions to this effect have been repeatedly made in network sectors such as telecommunications, but these solutions invariably find their way into the wastepaper basket on account of the Meroni doctrine of 1958 limiting the delegation of powers to agencies and hence their independence. This means that the Treaty would need to be amended for each new agency.

The importance of agencies and the uncertainty about the scope of the Meroni jurisprudence means that a conventional-law basis for agencies must be provided. This would enable independent agencies (e.g. subject to unanimity). In this way compromise arrangements, to which resort is now sometimes made, could be avoided and the merits of the right solution could to be decisive. This would also enable the accountability of the work of the agencies to be regulated – a subject that so far has received inadequate attention.

Temporary implementation by the Commission

As a solution to the overburdening of the Central and East European bureaucracies by their European implementation tasks, Verheijen (2000: 54) suggests that the Commission might temporarily take over implementation tasks. He refers in this regard to the 'Austrian approach' to dealing with capacity problems in the Austrian states. If Austrian states are unable to transpose directives into policy or to adopt administrative measures in time, the federal government can take over these responsibilities. As Verheijen himself notes, however, the problem-solving capacity of this instrument is limited. Implementation by the Commission would require an enormous bureaucratic organisation. In addition it is difficult to conceive that such a method could be applied in the relationship between the Commission and a single member state. Certainly in the CEECs, which only cast off the Moscow yoke in the past decade, such an intrusion could be regarded as a major infringement of national sovereignty.

6.2.5 DIFFERENTIATED IMPLEMENTATION

The core acquis test as a possible solution for the accession process was put forward in chapter 5 (see section 5.5.2). The essence of this instrument is that the acceding countries are permitted to adopt and implement certain elements of the acquis at a later stage, after accession. This has the advantage that the CEECs are able to postpone expensive investments required for the implementation of acquis not classed as forming part of the core, and so can deploy more scarce capacity for the implementation of acquis that does belong to the core. Furthermore the core acquis test enables the quality of implementation of the priority EU provisions to be monitored more tightly, with a resultant qualitative improvement in implementation at the point of accession.

The instrument of the core acquis test does however mean that certain elements of the acquis must be adopted and implemented in the post-accession period, when the Union no longer has the prospect of accession up its sleeve. As noted in chapter 5, the need is therefore for the Union to get the candidate countries to commit themselves to hard implementation programmes laid down in the accession agreement. This calls for a continuation of the screening procedures with respect to the remainder of the acquis. Seen in the longer term this approach contributes on balance towards the improved implementation of the entire acquis.

6.2.6 CONCLUSION

The likelihood that the administrative and legal capacity of the new member states from Central and Eastern Europe will remain inadequate for a considerable period after accession to bring the implementation of the acquis up to the standard of the present member states compels consideration of various solutions. A number of these have been outlined and evaluated. Particularly when it comes to general administrative and legal capacity, gradual possibilities for improvement must be allowed for. By their nature these aspects do not lend themselves to a rapid increase in quality.

It should be stated at the outset that the administrative capacity is closely related to the general developments in the acceding countries. Favourable economic development, the strengthening of democracy, civil society and the rule of law will all contribute towards strengthening the administrative capacity. It was indicated in chapter 5 that convergence can also be fostered by market forces.

To begin with the possibility was examined of continuing after accession with the existing aid and exchange programmes that contribute towards strengthening the system of public administration and the institutions in the CEECs. From a functional viewpoint these solutions may generally be regarded as effective and correspond the most closely with the needs of the CEECs.

Vertical and horizontal forms of quality control were then examined. It was established that control on the part of European institutions over the quality of information remains vital as the final link in the chain, but that this cannot be expected more generally to eliminate a structural deficit in administrative capacity. Seen from the viewpoint of the system of the Union, approaches concentrating on more horizontal instruments deserve preference. This is a matter of encouraging horizontal policy coordination between the member states, so that deficiencies in implementation can be avoided, and of strengthening public accountability and quality control by administrative bodies of the member states when these are charged with carrying out European tasks. The Commission should play a stimulating role in this process and facilitate the creation of networks of experts and officials. The relationship between the Commission and the member states consequently tends to become horizontal rather than vertical. This is consistent with the developments within the Union, in which member states are themselves introducing best practices and benchmarks and encouraging more effective implementation by means of scoreboarding, peer review and peer pressure. Precisely the new member states could achieve more effective forms of policy implementation by participating in these 'clubs'.

Against the background of the Union system, transfer of implementation responsibilities from the member states to European agencies is a desirable solution in highly limited cases only. It can also only be done where the subsidiarity principle permits. For the Commission to take over the implementation would be an undesirable solution, as this would seriously undermine the principles of the current model, based as it is on national implementation.

6.3 EVALUATION OF POSSIBLE SOLUTIONS WITH RESPECT TO ENFORCEMENT

6.3.1 LIMITS OF THE 'CLASSICAL' ENFORCEMENT MODEL

The current enforcement model of the EU grants enforcement powers to the Commission, the Court of Justice (ECJ), the Court of First Instance (CFI) and the national courts. The Commission can institute proceedings against a member state at ECJ level if the member state is acting at variance with European law. The national courts are open to citizens or market-players who consider that European legislation and regulations are not being correctly applied in their country.

Infringement procedures in the Court of Justice

As 'guardian of the Treaties', the Commission can take action against virtually any violation of a Treaty obligation by a member state (art. 211 TEC).[3] This 'infringement procedure' has been given more teeth of imposing a fine on the negligent member state where that state fails to comply with the ruling by the ECJ. The jurisprudence of the ECJ means that the liability of the member states now extends widely. A member state cannot for example argue that its Parliament was unwilling to adopt a legislative proposal in good time. A member state can

even be held liable if it undertakes insufficient action to prevent citizens from creating a situation that is at variance with EU law. This procedure may in principle be regarded as effective since the ECJ is prepared to rule against a member state and if necessary impose fines.

Matters do not, however, generally reach the point that a case is brought before the ECJ. If the Commission detects evidence of an infringement[4], it will advise the member state in question and invite it to set out its position on the matter. The Commission will then issue a reasoned opinion, setting out in detail the way in which the member state is infringing EU law and laying down a time limit within which matters must be put right (art. 226 TEC). Up to this point the infringement procedure remains within the administrative stage. Only if the member state in question fails to follow up the advice within the set period can the Commission institute proceedings in the ECJ.

With regard to enlargement it is questionable whether this procedure will remain adequate in an enlarged Union to deal with the violations of obligations. In the first place the number of procedures will increase substantially in an enlarged Union, even if the level of implementation in the new countries were to be the same as in the present member states. Assuming that the deepening of the Union or the less extensive experience of the new member states will give rise to additional proceedings, the workload of the already overburdened Court of Justice is only likely to increase still further.

The point of departure is that the infringement procedure must remain an effective means for holding member states to their obligations. In this context 'effective' means that the legal procedure to confirm that an infringement has taken place must not take too long. A case will generally only be referred to the ECJ after detailed consultation with the member state concerned; proceedings are not instituted out of the blue. If, however, no agreement is reached, it is important for the ECJ to hand down its ruling without undue delay. It would therefore be undesirable for reforms to be introduced in the sphere of capacity that could cause delays. Possible solutions with respect to infringements of EU law by member states are discussed in section 6.3.2 (administrative supervision of implementation) and section 6.3.3 (legal supervision of implementation).

Role of the national courts

Apart from infringement procedures where EC law is violated by member states, there are possibilities for private individuals (i.e. citizens or 'market players') to compel mutual observance of European rules via the national courts. Similarly governments that fail to discharge their obligations can be taken to court by private individuals. If for example levies are imposed or subsidies, licences or payments are refused at variance with European law, this can be reversed by appeal to the courts. In its jurisprudence the Court of Justice has moreover extended the scope for such claims to instances in which directives have not been implemented.

The shaping of the European legal system under which such resource to the courts is possible is one of the most important achievements of the EU. The point of departure here is that the national courts are obliged to apply the relevant European legal rules. They consequently play a major role in enforcing those rules.

In order to ensure that the law is uniformly interpreted and applied in all member states, the EU has a system of prejudicial proceedings, under which the national courts may or must submit issues of European law to the Court of Justice. This interaction between national courts and the ECJ has been critically important for the effective functioning of the Union. An ultimate appeal to the ECJ is the most important guarantee that European law will in fact be observed in the member states.

It goes virtually without saying that the effective functioning of the internal market and more generally the effective implementation of the acquis depend heavily on the uniform application of the European rules throughout the EU. If the rules concerning the quality of products, admission to the market or granting of subsidies are not implemented in the same way in all countries, not all the benefits of integration will be achieved and competition will be disrupted.

The possibility of instituting legal claims rests on the existence of a good quality system of national law, including an effective judiciary. This requires in the first place that national judges are familiar with European law and secondly that they apply such law uniformly. As was seen in chapter 3 and the studies by Blankenburg (2000) and Curtin (2000) carried out for this report, there will be limitations on both scores for a considerable period after the CEECs have acceded to the EU.

With respect to the first requirement it may be noted that substantial gaps in familiarity with European law have already opened up within the present Union as well. Complaints to this effect concerning Dutch judges have for example been made in the Netherlands and the Dutch Supreme Court (Hoge Raad) has made proposals for steps to be taken in this area. If this is even the case in a country which was, after all, involved in the formation of the European Communities, it must be assumed that the situation in the candidate countries will be substantially worse for some time to come.

With respect to the second requirement it should be noted (cf. chapter 3) that the administration of law in the CEECs generally lags severely behind the way in which the legal institutions in Western Europe operate. This is a recurrent source of concern in relation to virtually all the acceding countries in the Commission's regular reports. The training and pay in these crucial legal professions – including that of judge – are inadequate, the turnaround time of legal proceedings is far too long and the administration of justice is consequently of an inadequate standard. To this may be added the observation by Blankenburg that the way in which legislation is interpreted tends to be clearly more positive in Eastern Europe than in the West.

Interplay

A situation will therefore arise after accession in which the interplay between European law and national law becomes more complicated than that in the present Union. The rules and the jurisprudence must as far as possible lead to uniform results, whereas in practice they need to be applied in over 20 divergent legal systems. This means that in drawing up such rules and jurisprudence account should in fact be taken of the peculiarities of each of those systems. This challenge becomes more difficult the greater the number of legal systems. It also becomes more exacting the greater the divergence in the orientation of the respective legal systems.

Against this background it is not realistic to expect that the present European structure for achieving uniformity in the application of law will suffice. If matters are already difficult in a limited number of countries with a highly developed culture, the situation will become substantially more complex again with enlargement. If to this is added the fact that the participating legal systems will inject new problems in terms of substance and quality, the conclusion becomes unavoidable that a more radical review of the European legal system is required. The fact that the ECJ is already overburdened at the present time, so that the backlogs have become unacceptably long, provides an additional argument.

From this viewpoint the enlargement of the Union therefore presents two potential problems:

- the necessary unity of law can be threatened by the increase in the number of member states and because the traditions and, for the time being, the quality of the administration of justice in the acceding countries differ from those in the current member states;
- enlargement may be expected to add to the overburdening already evident among the European legal institutions.

There are various possible solutions for addressing these problems. These are set out in table 6.2 and discussed in turn in the remainder of this section.

Table 6.2 Approaches with respect to the enforcement problem

	Approaches to the enforcement problem
Administrative supervision of implementation (section 6.3.2)	• Ex ante testing of new legislation (as by the 98/34 Committee) • Vertical administrative supervision (package meetings)
Legal supervision of implementation (section 6.3.3)	• Two-tier European administration of justice • Introduction of the ECSC Treaty procedure
Enforcement by the national courts, in conjunction with the prejudicial procedure (section 6.3.4)	• Appointment of a European court in each member state • Promotion of a common frame of reference for the administration of justice
Procedure in the event of serious infringements of fundamental principles (section 6.3.5)	• Assignment of powers to the Court of Justice?

6.3.2 ADMINISTRATIVE SUPERVISION OF IMPLEMENTATION

Ex ante testing of new legislation

In numerous cases – we are dealing here with several thousand implementation problems a year – compliance with and enforcement of the obligations coming under the acquis can be resolved or even prevented by means of appropriate administrative cooperation. Chapter 4 discusses the 98/34 Committee, which examines some 700 cases a year of prospective new legislation in the member states (in the field of free movement of goods, including mutual recognition) before these laws, orders in council or decrees come into force.

This powerful *ex ante* approach has proved – and remains – exceptionally effective and has relieved the Commission (and the ECJ) of supervisory tasks in a way that should not be underestimated. It is worth considering whether and where similar committees for other elements of the acquis could be introduced.

Administrative supervision by the Commission

Administrative supervision of the individual member states is also performed by the Commission. This involves the discussion in 'package meetings' with a member state of compliance problems, in or often preceding the initial stages of infringement procedures. Following the large-scale addition to the acquis during EC-1992, package meetings were successfully used for some time in order to resolve implementation and compliance problems more rapidly and without legal intervention. Member states find it less easy to shelter behind specialist expertise in package meetings. Generally there will be substantial political pressure as the ministers and EC Commissioners will be explicitly involved in such meetings. This can result in a shift in priorities that is to the benefit of compliance.

There is every reason to continue with this system of administrative supervision among the present member states. This form of vertical supervision could also be an exceptionally useful method for the Central and East European newcomers to improve compliance with obligations in a wide range of respects for a certain period (e.g. the first five years after accession), without undue political rumpus or excessive infringement proceedings.

In a certain sense the vertical cooperation in relation to compliance forms a supplement to solutions discussed at an earlier point in relation to implementation, such as the establishment and deepening of networks of expert civil servants, the dissemination of neutral evaluations and the (selective) use of European agencies. A characteristic feature of all these approaches is that the emphasis is placed on output legitimacy: citizens, as well as market-players, have an express interest in the factual results that the acquis ultimately offers them.

6.3.3 LEGAL SUPERVISION OF IMPLEMENTATION

Two-tier European administration of justice

One practical method of alleviating the burden on the Court of Justice caused by infringement proceedings would be for the administration of justice to be handled by two bodies. The Court of First Instance would be given powers as a court of first resort, followed by the possibility of appeal to the Court of Justice. At the IGC in Nice it was decided to introduce a simplified procedure enabling resort to the CFI in combination with appeal to the ECJ. Once these Treaty amendments have been ratified further decisions will need to be taken in this area.

In most cases infringement proceedings do not involve complex or controversial legal issues and the member states generally concede the violation of their obligations fairly readily. Particularly in those cases where a member state stands accused of failure to convert directives, the only defence is often simply that it was too late. This reality will not change with the Eastern enlargement (Curtin and Van Ooik 2000: 120). In these kinds of cases where the member state in question is unlikely to stage a defence, there is no practical need for legal proceedings. The WRR therefore proposes a more radical reform.

Introduction of ECSC Treaty infringement procedure

A radical reform of this kind concerns the proposal by Curtin and Van Ooik (2000: 118) to base the infringement procedure on that provided for under the European Coal and Steel Community (ECSC) Treaty. Infringement is determined by the Commission itself, without the need for any legal ruling. A member state that is not in agreement with such a determination can initiate proceedings before the court within two months. If the member state does not do so, the infringement has been established definitively and it must comply with the Commission's decision.

This alternative has major advantages. Infringements may be broken down into various categories. There may for example be a clear difference of opinion between the Commission and the member state as to whether the latter is in breach. If the dispute is an important one which the parties wish to submit to the court, there is a good chance that both parties will wish to see the procedure right through to its conclusion. In these cases a two-tier legal system would only result in delays and would not resolve the capacity problem, as many proceedings would end up with the ECJ anyway. The lengthier procedure also provides an unwilling member state with the ability to stave off the actual duty of compliance.

There are however also cases in which the member state concerned barely puts up any defence. It recognises that it is in breach, often because it has failed to meet the deadline. Since there is not in fact any legal dispute, resort to the court is not required. A decision by the Commission establishing that the member state is in breach should therefore be enough in principle. It may be expected that in those cases where no real defence is currently presented before the court, no appeal would be made against the decision by the Commission. Where this did occur it would be with the sole intention of winning time. In so far as this is the intention, the procedure should therefore be kept as short as possible and not extend to two legal bodies.

Irrespective as to whether a new, lower legal body were to be created or if the infringement decision were to be placed in the hands of the Commission, it is likely that fewer cases would be referred to the ECJ. A member state lacking good arguments will abide by the initial decision; a member state that does have such arguments will often proceed to the ECJ. In both cases, however, the final decision will be arrived at more quickly under the second than the first alternative, in that the Commission must in any case determine a definitive standpoint before it can institute legal proceedings. Under the second alternative, this standpoint is at the same time the final decision, unless the member state appeals within two months.

The notion of allowing the Commission rather than the ECJ to decide in first instance whether a member state is in breach is consistent with recent developments, under which the Commission has been given the power in certain instances to determine infringement and impose fines.

6.3.4 ENFORCEMENT BY THE NATIONAL COURTS, IN COMBINATION WITH THE PREJUDICIAL PROCEDURE

In relation to the law enforcement by the national courts, it was noted in the introduction to this section that the enlargement can threaten the necessary unity of law and that the European legal institutions are likely to become even more overburdened. The following solutions could be considered for these problems.

Appointment of a European court in each member state

A legal tribunal could be set up in each member state with responsibility for answering prejudicial questions raised by the courts in that member state. This tribunal need not consist exclusively of judges from the member state in question, but should form part of the European judiciary. This would make it possible to appoint a judge from the ECJ or the CFI as president, while membership of the tribunal would be a good preparation for a career as a judge in the ECJ or the CFI. In the case of smaller member states consideration could be given to a combined legal tribunal for several countries.

The task of this tribunal should correspond with what was made possible by the Nice Treaty for the CFI with respect to the handling of prejudicial questions. The legal unit should be monitored in the same way as done at present by the ECJ. The parties would not therefore be able to appeal; only the advocate-general would have the power to refer a ruling to the ECJ within a short period of time.

An initial argument in favour of this solution is the danger that the number of prejudicial questions referred to the ECJ will increase substantially after accession. Even after five years, the judges in Central and Eastern Europe will not be so familiar with European law that they will be able immediately to recognise European legal issues referred to them, let alone issue a ruling with any confidence. These judges have a different legal frame of reference, have little if any training in European law and are not capable of following the ECJ's jurisprudence in the course of their ordinary activities. On account of their uncertainty concerning European law they are likely to invoke the instrument of the prejudicial question relatively quickly.

Decentralisation of jurisprudence to legal tribunals in each member state, instead of to the CFI, is subject to the objection that the jurisprudence handed down by those tribunals would diverge. A single court is of course better placed to ensure unity of interpretation. On the other hand, uniformity of legal application not only requires the handing down of unified jurisprudence by the highest court but also that this is observed by all other courts of justice. These must be familiar with the jurisprudence and be able to apply it in the judgements they hand down. Precisely on account of the diversity of legal systems, which will only become greater upon enlargement, the most important task consists of the translation of European jurisprudence to the national courts.

This can also be put differently. The appointment of single courts that have the last word in the interpretation of some or all of the law is generally a good and feasible way of achieving unity of law. This does however require all the judges to have the same background in terms of training and legal culture, so that they reason in terms of the same frame of reference and so automatically often arrive at the same interpretation. A single highest court can then adequately preserve unity by eliminating differences in legal interpretation. As a result of the enlargement, and also with the increase in the acquis of legal rules, it will however

become vitally important for every national judge to be sufficiently familiar with European law and the way in which it should be positioned and applied in his or her own legal system. The linkage between European and national law is a vital part of this process. This need can best be met by the establishment of a European court in each member state with responsibility for the 'translation' of European jurisprudence into national law. Since this would be a court dealing with European law while at the same time specifically functioning for a single member state, it would generally be able to answer the questions posed within the country concerned more readily than the ECJ or the CFI. For the same reason it would be easier for the national courts to follow the jurisprudence of their 'own' European court rather than that of the ECJ.

In addition it may be assumed that a prejudicial ruling could be handed down substantially more quickly under this arrangement than if the ECJ (or possibly the CFI) were to do so, even if not overburdened. The absence of any language problems would eliminate an additional delaying factor: a major problem at present, from the viewpoint of both cost and delay, is that the rulings of the ECJ and the CFI have to be available in all languages of the EU. This problem will increase exponentially upon enlargement. If a European court were to be appointed in each country, it would in principle be possible to make do with the language (or languages) of that country alone.

At the same time the existence of a European court in each member state would act as a point of crystallisation for the interaction between European and national law. The proximity in a geographical and legal sense would be much greater than in the case of a court in Luxembourg. A clearance centre would be provided for the incorporation of knowledge of the European legal system. Furthermore it would be considerably simpler and cheaper for the parties concerned to institute proceedings in their own country than in Luxembourg. There would also be fewer delays.

The question arises as to whether the appointment of an individual court in each member state might not lead to an undue proliferation of legal tribunals and hence be too expensive. This question loses some of its cogency if it is borne in mind that there is also a marked need within the Netherlands for building up expertise in European law on behalf of the judiciary. The Supreme Court of the Netherlands has called for a facility along these lines. Against this background it would appear more attractive for this expertise to be provided in the form of a court of justice.

Action is already required in order to reduce the burden of the European Court of Justice. This problem may be expected to become a good deal more acute upon enlargement and with the further deepening of the EU. The Treaty of Nice has made it possible for prejudicial procedures to be transferred from the ECJ to the CFI without any amendments to the EU Treaty. The advantage of this solution is that the CFI is better placed to ensure the unity of its rulings than a system in which each country has a European court.

The problem is however not so much that European law is differently interpreted by those familiar with it. It is precisely the divergent backgrounds and deficient knowledge of the national courts required to apply the law that results in inadequate unity of interpretation. In this regard a European court in each member state could play a key role. Furthermore virtually every legal system has a structure under which there is not just one judicial body beneath the Supreme Court, as would be the case with the CFI, but a number of legal bodies at the same level.

This solution would involve a substantial amendment to the existing structure of the European administration of justice, and could as such arouse resistance. It would however fit into the existing system, as it would preserve and facilitate the position of the national courts as the assessors of European legal disputes.

Promotion of a common frame of reference for the application of law

As noted, the unity of law can be effectively safeguarded by a Supreme Court if there is a sufficiently coherent legal culture. This exists to only a limited extent in the present Union and will be even weaker upon enlargement. The training, legal traditions, organisation of the national legal systems and the general frame of reference of lawyers differ considerably from country to country. With the greater need for unity with enlargement and the ongoing deepening of the Union, it is vital that more be invested in the greater approximation of the legal systems and improved mutual knowledge and understanding.

Since the borders between the member states have disappeared as obstacles to the internal market, differences in the application of law have become a more significant stumbling block to the effective functioning of the market. The cooperation in the field of Justice and Home Affairs (JHA) also means that greater attention needs to be paid to the way in which the law is exercised in the other countries of the Union. It is therefore hardly surprising that the legal diversity should be the object of special attention in the context of enlargement.

The major importance of sufficient unity in the application of law creates a conflict when it comes to the very marked orientation towards national law of legal training, legal research and the practice of law as at present. Since this obstacle has not as yet been properly recognised, the Union has developed few policies in this area. Since we are concerned here more with the application of the law than the determination of rules, it is not easy to achieve results.

In order to achieve a common frame of reference for the application of law, the following measures could be considered:

- The promotion of a more common frame of reference in terms of which lawyers exercise their profession. It is vital for everyone to be aware of the fact that their own, national legal system does not stand in isolation but is tied up with European law and, in this way with the legal systems of the other member states. This point should be addressed in the training in the member states, along with comparative law and knowledge of the main elements of a different legal system.

- Promoting exchanges between the member states in the field of education and research, the setting up of joint training programmes for judges in various countries and increasing the possibilities for lawyers to exercise their profession in other countries of the Union. This should also apply to the judiciary and the bar.
- A marked boost should be given to comparative law studies, not just in the field of European law but also in other legal fields. It would be necessary to promote training courses that provide admission to legal professions in various states without the need for duplicate training. It could be made a requirement for lawyers appointed to the EU that they are familiar with more than one legal system.
- Agreements on an improvement programme should be made upon the accession of countries whose legal capacity clearly displays deficiencies. Progress in this area should be the subject of regular evaluation.

6.3.5 PROCEDURE IN THE EVENT OF SERIOUS INFRINGEMENTS OF FUNDAMENTAL PRINCIPLES

Assignment of powers to the ECJ?

The issue of the Austrian coalition government including the FPÖ has drawn attention to a new type of conflict with which the Union can be confronted and that could challenge it as a union of values. Since democracy and the rule of law are of only recent origin in the candidate countries, the necessary institutions will, as outlined in chapter 3, not yet be sufficiently deeply rooted to prevent setbacks. This means that infringements of article 6 (1) EU could become more common. Paragraph 1 of that article states that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states.

The reaction of the 15 member states to the Austrian issue did not take place within the context of the Union. This drew attention to the importance of an effective dispute-identification and solving mechanism within the Union for such highly sensitive political issues. A basis for this was laid in article 7 EU of the Treaty of Amsterdam. Partly on the basis of the report by the 'Three Wise Men' on the Austrian issue (2000) this article was supplemented in the Treaty of Nice. This concerns a procedure whereby the Council on the basis of a recent proposal by one third of the member states, the European Parliament or the Commission can determine that a member state is clearly at risk of infringement of article 6. On this basis the Council can also submit proposals to the member state in question. Furthermore this procedure provides for the country in question to be heard and for the possibility of an investigation to be conducted before the proposals are submitted. The other provisions in this article relate to determining an infringement, sanctions and changes or termination of such infringement.

In the case of serious infringements of the fundamental principles, article 7 therefore provides a procedure whereby these breaches can be handled at the highest

political level. Given the seriousness of the subject-matter, political resolution of the dispute is the logical course of action, but it does entail the risk of intense conflicts. Legal resolution by the ECJ is expressly not provided for, although the ECJ does have powers in respect of ad hoc violations of human rights and fundamental freedoms, namely when it comes to the regulations of the Union itself or the legislation of a member state coming under the scope of European legislation and regulation. National legislation falling outside this field of application is also deemed by the ECJ to fall outside its jurisdiction (Curtin and Van Ooik 2000: 128-129).

Curtin and Van Ooik argue that further experience should first be gained with the chosen path before examining whether the court should be given a greater role in this area. This applies all the more now that a preliminary phase has been added to the existing procedure under the Treaty of Nice. This makes it possible for potential infringements to be identified at an early point, thereby enabling escalations to be avoided in dialogue with the member state in question. This undeniably increases the conflict-resolving capacity of the path selected. Nevertheless it may be desirable for an allegation that fundamental principles are being breached, for example in certain limited respects, to be assessed by a competent court. The present situation does provide for the engagement of independent persons reporting on the situation in the member states concerned but not for the possibility of court appraisal of the defence. The extent to which the ECJ might be assigned a role in such conflicts cannot be viewed in isolation from the relevant legal basis and hence from the legal status of the Charter of Fundamental Rights of the European Union announced in Nice. It is proposed that decisions be taken in this area in 2004. The WRR will be returning to this subject in its follow-up report.

6.4 CONCLUSIONS AND RECOMMENDATIONS

An important characteristic of the Union is its decentralised structure: the organs of the member states are responsible for the implementation and enforcement of Union policy. This characteristic greatly contributes towards the internalisation of Union policy by the member states and makes a significant contribution towards preserving the legitimacy of European policy. The WRR's proposals are aimed at retaining this essential characteristic.

In this chapter it was made clear that the necessary improvement in quality of the administrative and legal system will be a process taking many years. The postponement of accession by a few years will 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 also a question that has become more cogent in the present Union as the intensity of cooperation has increased.

The WRR notes that 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 Europe and the other member states have in the quality of implementation. They have no place in the existing (national) systems of accountability. Although the Union exercises supervision and infringement procedures may be instituted, 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, the WRR considers that 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 policy. Such accountability should also be subject to certain requirements. A qualitative improvement in implementation can also be promoted by giving agencies a role in strengthening the cooperation and mutual co-ordination of implementation.

The formation of a European legal system guaranteeing that the legal rules of the Union apply in all the member states is one of the most important achievements of the Union. European courts guard this system and ensure the necessary unity of law. The system demands a major input on the part of the national courts, which are generally responsible for the application of European law. Questions about the interpretation of European legal rules can or should be submitted to the European Court of Justice. The effective operation of the system therefore depends in part on the quality of the national dispensation of justice and the national courts.

The WRR considers that it is not realistic to expect that this structure will be capable of ensuring the necessary unity of law in an enlarged Union. The problem lies in the marked diversity of the legal systems, in which the unity of law can no longer be safeguarded by one or at most two supreme courts. A more radical review is required. As part of this review a European court should be set up in each member state to act as a link between the national courts and the European Court of Justice.

Enlargement will also make it necessary to streamline the procedures which 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. Targeted discussions at the highest level can prevent legal proceedings. On top of this, 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 contested by the member state – would increase the effectiveness of the procedure.

The acquis is implemented by the national authorities. The WRR considers that the *quality of that implementation* must be assured in an enlarged Union. This could be achieved by the introduction of (public) accountability complying with

European standards. Preserving the quality of the European legal system will require much more radical changes, the most important of which is the appointment of a European court in each member state.

NOTES

1 Schengen Information System.

2 The current debate about agencies is often confusing as the concept is surrounded by ambiguity. In the national context agencies occupy divergent positions. In the United States – with which a comparison is often drawn – the independent agencies are institutions with a broad and regulatory task, whereas in various European countries the thinking is more in terms of executive or supervisory powers. This also applies in the case of the Dutch concept of an independent administrative body; the Dutch concept of agency stands for a control structure and is not relevant for the Euorpean debate.

3 Such an 'infringement' may consist of the violation of treaty provisions, regulations or other decisions; the non-transposition of directives; incorrect legal implementation of directives; improper application of directives; or non-compliance with Court rulings (Börzel 2001: 2/3).

4 Either at its own initiative, by means of complaints lodged by citizens, by means of petitions and questions received from the European Parliament or on account of non-communication concerning the transpositions of directives by member states (Börzel 2001: 4/5).

7 EU POLICY: POSSIBLE SOLUTIONS BEFORE AND AFTER ACCESSION

7.1 INTRODUCTION

In Chapter 5 it was concluded that the European Union had four types of strategies to cope with the problems of diversity which go hand-in-hand with the accession process and the adoption by the entrants of the EU acquis. Chapter 5 assessed in general terms whether the strategies could ensure the Union was able to function successfully as a union of values and action. It concluded that the method of suppressing diversity already tried and tested in earlier rounds of EU accession remains a key principle for the next stage of enlargement. The Copenhagen criteria (which candidate countries must satisfy before joining the EU) and the adoption of the EU acquis are in fact powerful stimulants to the all-embracing transformation process in this region. They also help the applicants to adopt, implement and enforce the acquis.

Chapter 4 also showed that the traditional method was no longer effective on its own. A tension exists between (i) the short-term obligation for candidate countries to be able to adopt, implement and enforce the whole of the acquis and (ii) their ability over the long term to achieve catch-up growth via market convergence; this is particularly noticeable in policy areas such as the internal market, the environment, and cooperation in the field of justice and home affairs. Catch-up growth is however essential for resolving those problems (of diversity) caused by the applicants' economic backwardness. The WRR considers that policy instruments such as financial aid, policy-education and all kinds of peer group pressure, however useful as back-up strategies, are just not powerful enough in themselves to tackle the task of reducing diversity in the present round of EU accessions. This dilemma threatens to make it even harder to implement and enforce the acquis after the new round of accessions, or threatens even to postpone the accession-date itself to the distant future. The former would endanger the Union's future internal effectiveness; the second could make the chance of improving Europe's security and stability an even more distant prospect. Special measures designed to suppress and diminish problematic diversity should therefore also be accompanied by a clearly-defined strategy specifically aimed at tackling these problems.

By continuing to build on the previous list of potential risks and available solutions, the WRR in this chapter offers a number of possible solutions in each policy area; these are consistently listed in a separate table. These possible solutions encompass the period of preparation for accession to the EU, of implementation and of enforcement of the existing acquis. Together with the opportunities and threats analysed in chapter 4, these suggested solutions are consistently listed for each policy area in a single table.

The order in which the policy areas are reviewed is the same as in chapter 4, namely: the internal market (section 7.2), monetary union (section7.3), the Common Agricultural Policy (section 7.4), environmental policy (section 7.5) and cohesion policy (section 7.6). In view of the political sensitivity of this issue, section 7.7 will examine in greater detail the financial impact of the possible solutions as presented earlier in chapter 4 to the problems of the CAP, environment policy and cohesion policy. Finally, section 7.8 presents policy solutions regarding cooperation in the area of Justice and Home Affairs (JHA).

7.2 THE INTERNAL MARKET

7.2.1 INTRODUCTION

In order to preserve the achievements of the internal market and to make the best use of its growth prospects, a policy-strategy is needed that can cope with the potential risks and problems that accompany the enlargement process. In this section on the internal market, the WRR sets out its views over the most desirable ways for letting the process of enlarging the internal market run as smoothly as possible. Possible solutions to the following issues are discussed: the tension existing between achieving catch-up growth in the candidate countries and adoption, implementation and enforcement of the internal-market acquis (section 7.2.2); the problem of new borders caused by possible accession of candidate countries at different times (section 7.2.3); and the problem of the free movement of workers within the internal market (section 7.2.4).

7.2.2 CATCH-UP GROWTH AND THE INTERNAL-MARKET CORE ACQUIS

As stated earlier in chapter 4, there is a definite area of tension between catch-up growth and the adoption of the acquis, and also the amount of discretion allowed in negotiations when assessing the degree of competitiveness of applicants' market economies. This area of tension causes some EU-partners to doubt the internal market's robustness and credibility after the next round of enlargement.

Table 7.1 Internal market: accession-related opportunities, threats and policy solutions

		Internal market
BEFORE ACCESSION	Opportunities	For EU: 1. Static and dynamic advantages of Europe Agreements and the accession prospect (access to new growth markets, improved productivity and efficiency). For CEE: 1. ditto; 2. pre-accession support; 3. significant improvement to FDI climate.
	Threats	1. Tension between catch-up growth and full adoption of internal-market acquis; 2. Poor administrative, legal and financial capacity; 3. Leeway for Commission and political compromises when assessing accession leads to fears of 'erosion'; 4. New market obstacles are thrown up between 'ins' and (temporary) 'outs'.
	Solutions	1. Core acquis; 2. CEE participation on 98/34 committee; 3. Optional harmonisation 4. Install a regime of only minimal protection between EU and temporary 'outs'.
AFTER ACCESSION	Opportunities	For EU: 1. Static and dynamic advantages of larger internal market. For CEE: 1. Ditto, resulting in catch-up growth and convergence; 2. Deepening and widening coordination of social and economic policy.
	Threats	1. Enforcing the internal-market acquis places even heavier burdens on Court; 2. Poor administrative, legal and financial capacity leads to fears of gradual erosion of internal-market acquis; 3. Fears of creating new Mezzogiornos, large-scale migrations from East to West and brain-drain.
	Solutions	1. Continue screening for adoption of residual acquis; 2. Joint management and control of implementation and enforcement of acquis; 3. Greater use of structural funds 4. Possible temporary exemption from the principle of free movement of workers for some member states; 5. Development of a European migration policy together with a proactive labour-market policy within the present member states.

The WRR considers that a core acquis test for the internal market offers an acceptable solution to this dilemma both politically and economically. Applying this core acquis test as a basis for pre-accession negotiations could avoid lengthy postponement of the enlargement process. As stated in chapter 5, the issue here is not one of maintaining a permanent distinction between rights and obligations of candidates member states and those enjoyed by the present EU-15. The issue here is merely a temporary prioritising of short-term obligations under the terms of the internal-market acquis; these are laid down individually and emphatically before the date of accession with the candidate countries.

On the one hand, this is comparable to a transition period; at the end of this period the *entire* internal-market acquis would need to be adopted, and the ability to implement and enforce it would also need to be guaranteed. Other than a transi-

tion period, what is referred to here, however, is a more *systematic* choice of priorities based on considerations of a *strategic* nature.

The core acquis test must provide a stringent and transparent evaluation, clearly verifiable by all partners, of the applicants' ability and readiness to implement all those elements of the acquis essential for the smooth functioning of the internal market. The determining factor for this qualitative evaluation is the distinction between:

- the (economic) importance of the relevant policy areas for the functioning of the internal market, and
- the elements of the acquis that must be safely implemented some time after the date of accession in accordance with a pre-planned schedule.

With regard to all those elements which are not essential for the smooth functioning of the internal market or those that might seriously damage the Central and East European states' ability to compete during the period of accession, the negotiations do allow some leeway in the issue of the demand for immediate implementation. There is, however, one 'hard', i.e. non-negotiable, requirement, namely that the candidate countries and the Union commit themselves (via the accession Treaties) to timetables and schedules for implementing the residual internal-market acquis, i.e. the non-core acquis. The Commission should carry out a screening-process on this matter after accession, so that all EU-partners have a full guarantee that the full acquis will finally be implemented, and certainly within the agreed transition periods (Pelkmans et al. 2000: 82). With regard to those non-core elements that the candidate member state could reasonably safely adopt without any really serious consequences for its economy, the Union must of course insist that the applicant member state adopt these elements as well as those in the minimum acquis. [1]

The core acquis test for the internal market is based on the following general principles:

- Macro-economic stability and operation of markets at a level where the transition process can be regarded as completed. The institutional aspects of this transition must attain internationally accepted standards (of the EBRD), without necessarily complying fully with the provisions of the acquis; the determining factor here is a smoothly functioning economy;
- High scores for all those elements of the internal market essential to market integration;
- No priority for elements of the recent deepening of the EU-15's internal market, unless justified;
- No priority for elements involving disproportionate (sectoral or macro-economic) costs for the candidate countries, unless justified.

In Table 7.2 these principles are applied to the chapters of the acquis relevant to the internal market (also see Pelkmans et al. 2000).

For an operating market economy, high scores for all nine EBRD transition-indicators (also see section 4.2), implementation of the Europe Agreements competition rules and the Medium Term Economic Policy Priorities are essential. Hidden behind these latter strategies (item 1 of the core acquis) are the Joint Assessments, i.e. agreements between individual applicant countries and the European Commission (DG Ecofin) about a detailed and coherent system of economic policy priorities and short-term obligations. They include *inter alia* an 'active' scenario setting out which policy initiatives are required for achieving certain macro-economic goals (see table 7.3). From this it appears that the Central and East European countries place a high priority on achieving high catch-up growth, a rapid reduction in government deficits and reform of the pensions system. These strategies also shed light on any remaining transition problems and pro-

Table 7.2 Core acquis test for accession to the internal market

	Acquis component as condition of accession	Requirement/score	Commentary
1.	Medium-term economic strategy	Joint Assessments signed and objectives endorsed	Condition
2.	Market economy	High scores regarding 9 ebrd transition indicators*	Condition
3.	Competition policy	Implement Europe Agreements and run an independent competition authority for at least 3 years	Transparency regarding state aid is a bonus (NB: is also EBRD indicator)
4.	Customs law / facilitation	High score	Adequate and up-to-date administrative capacity
5.	VAT/customs duties	High score	Administrative capacity must form part of evaluation
6.	Veterinary and phytosanitary services	High score	Administrative capacity must form part of evaluation
7.	'Old approach' directives	High score for formal adoption, but optional harmonisation	Administrative capacity, e.g. 5 year long checks on food and drugs
8.	'New approach' directives	High score for formal adoption, but optional harmonisation	Crucial link with standards see under 12. (5 years for optional harmonisation)
9.	Environment and nuclear energy	High score stage I of White Paper 5-10-year strategic programme with specific targets for nuclear energy	Conclude Joint Assessments (as for economic policy, incl. financing
10.	Network industries	High score for telecoms and broadcasting sector Timetables for gas, electricity, railways and postal services	Gas and electricity prices must be market-oriented liberalisation has lower priority
11.	Public tenders for contracts	High score for formal adoption	These directives have little economic effect in practice; low priority; certainly effective against corruption; helps administrative reforms

Tabel 7.2 Continued

	Acquis component as condition of accession	Requirement/score	Commentary
12.	Standards agreement evaluation	CEN/CENELEC membership (80% adoption of European standards) or proof of immediate prospect ETSI membership; the basic infrastructure for conformity tests is in place	Essential for credibility of 'new approach'. For smaller CEE states Memoranda of Understanding or accord with EU-related institutions can serve as substitute
13.	Services (other than network and professional)	High score for highways, air and sea lanes and inland waterways where relevant High score for all financial services	(see 2; EBRD scores high if acquis adopted here)
14.	Professional services	Timetable for mutual recognition	Low priority, except accountants
15.	Copyright (intellectual/industrial/ commercial)	Accession to Munich Accord Credible checks on counterfeiting and imitation of trademarks; high score for formal adoption	
16.	Social acquis	Equal rights for men and women	Adopt basic elements of Social Charter, but details of acquis have low priority
17.	Regional policy	Administrative capacity for submitting projects and financial control	Little relevance for internal market acquis in strict sense; good use of Structural Funds supports other elements of internal market (see 6, 9, en 12.)
18.	Movements of capital	Timetable for full liberalisation, in framework of ERM-2 and EMU	Undue EU pressure could be counter-productive
19.	CAP, prices and incomes regime	Preparatory phase for most product markets	Monitor administrative capacity (particularly anti-fraud measures); no high priority until date of EU accession

*) This refers to: the private sector's share of GDP; large-scale privatisation; small-scale privatisation; restructuring of companies and administration; price liberalisation; trading and exchange-rates system; competition policy; bank reforms and interest liberalisation; stock markets and non-banking financial institutions. These are assessed in chapter 2 of the EBRD's Annual Transition Report published each year.

vide an analysis of the interrelationship between macro-economic and micro-economic objectives. The proposed reforms of the banking and insurance systems and pensions funds are, for instance, also essential for bringing about a satisfactory level of financial stability.

The quality of the applicants' financial systems is measured by the EBRD's transition indicators. The WRR considers that the importance of high scores in this part of the acquis cannot be overemphasised. A secure and stable financial sector with a powerful supervisory mechanism is essential for the effective and predictable transmission of monetary policy and for financing economic growth. Such a mechanism is also an essential buffer against banking crises and any potential

problems that might arise if a complete freeing of capital movements is accompanied by an increasing inflow of (mainly short-term) debt-creating capital (IMF 2000: 159). As the financial crises of 1998 in Asia and Russia have also shown, forced bank closures and government interventions in the financial sector can saddle governments with massive budgetary burdens. The candidate countries need to forearm themselves against such eventualities by adopting the international and EU standards and codes of conduct in the field of financial supervision (if they have not done so already), and to enforce them accordingly.

The fact that in 1998 the Central and East European candidates' financial sectors were spared serious financial disruption is mainly due to the fact that their banking and stock-market systems were relatively underdeveloped at that time. As the relationships under property law in these countries become clearer, the real estate market continues to develop, foreign direct investment increases, and the stock market widens and deepens, there will also be an increased danger of a dramatic expansion of domestic credit and highly-damaging waves of financial speculation (Nord 2000: 34; Pelkmans et al. 2000: 94-95). This is made even more likely by the wholesale freeing-up of movements of capital. The WRR has therefore not included the *full* liberalisation of movements of capital as a non-negotiable accession-requirement in the core acquis. Applicant countries must be allowed to make use of transition periods when adopting this part of the acquis. These periods must be adjusted in line with the schedule for eventual participation in ERM-2 and monetary union, which may differ for each of the countries taking part (see section 7.2).

The core acquis test also demands high scores for the administrative capacity of the customs and excise services, the indirect taxation services, the veterinary and plant-protection services, the European product directives (both the 'old' and 'new' approach versions) and the examination for conformity with the Community acquis (tests and certification). An efficient administrative apparatus in these areas and the complementary (accredited) private institutions are essential if free movement of goods inside the internal market is to be achieved. In the services sector high scores are required in the areas of liberalisation of transport, financial services, and telecommunications and broadcasting.

With regard to the internal market's 'flanking policy', the core acquis test consists of a number of different requirements. Caution is advised when imposing Western European social institutions and the social acquis on the candidate countries. The development of labour productivity should be the determining factor for wage-cost trends in these countries. As their technologies, institutions and infrastructures lag behind those of the present EU-15, the applicants' total factor-productivity is at present far lower than that of the current member states. If the new entrants are forced to adopt the entire social acquis too quickly and bear all the costs as well, they would then lose the comparative advantage inside the internal market that they so badly need for catch-up growth. As section 7.2.5 will show, this also has a direct bearing on labour migration. In addition to macro-economic

Table 7.3 Selected medium-term strategy indicators in candidate countries

	Czech Rep.	Hungary	Poland	Slovenia
Catch-up growth	5% (2003)	6% (2003)	6% (2002)	5% (2002)
Budget (deficit)	5.9% (2003)	< 3%(2002)	< 1% (2002)	Balanced
Social security	Minor issue	Some cuts in 1999	Reducing burden	Reforms ongoing
Taxation	Minor issue	Some reform in 1999	Reform, simplifications	Reforms ongoing
Price liberalisation	To be completed (energy 2002)	– -	– -	To be completed
Restructuring of companies	Priority	SMEs priority	Priority	High priority
Privatisation	Priority (banks)	High share achieved	Remaining uncompetitive industries	Difficult cases to be tackled, with aid
Utilities	EU model	Railways reform	EU model	Radical reforms for several years
Incomes/wages	Dutch model, social pact	Productivity rule	– -	Collective bargaining, Social Agreement
Labour market	– -	More flexibility/ mobility	More flexibility/ mobility	More flexibility/ mobility
Pensions system	Priority of reform	Reform 1998	Priority of reform	Priority of reform
Banking	Reforms under way since 1998	Ready for single passport upon accession	More competition enforcement standards	More competition and better supervision
Insurance	More competition	Consolidated supervision in 2000	More liberalisation, full EU compliance	Recapitalisation, better supervision, better EU compliance

Source: Joint Assessments, end 1998, 1999 or 2000.

stability, the highest possible levels of employment and catch-up growth are in fact important factors in the campaign to encourage potential migrant-workers in the applicant countries to stay in their home countries and to prevent a serious brain-drain to Western Europe.

The risk of reduced catch-up growth is not directly derived from the EU social acquis. The two 'hard' elements of the social acquis are equal pay (and pensions) for men and women, and safety in the workplace. The EU's highly-detailed and ambitious approach to safety at work is, however, relatively costly for the applicant countries. The EU-15's idea of a 'high' level of social protection, is at present generally still at 'too high' a level for successful adoption by the applicants, who at the same time would also be trying to achieve catch-up growth. For this reason, this element has also been omitted from the internal-market core acquis.

With regard to regional policy, which is also part of the internal market's flanking policy, high scores are mainly required for administrative ability, so that the Structural Funds can be effectively spent. The Common Agricultural Policy acquis and the application of the prices and incomes regulations do need to be

prepared in advance, but only need implementing at the time of accession itself. By that time the applicant countries need to have in place an efficient and fraud-proof administrative apparatus that can implement the CAP's complex rules and regulations, e.g. the ability to provide reliable statistics, store agricultural produce (surpluses) and run the CAP intervention scheme, etc.

As for environmental policy, the internal-market core acquis demands high scores for the measures cited in Stage I of the 1995 internal-market White Paper, which mainly deals with the free movement of goods. The Central and East European countries will have to implement most of the remaining environmental acquis and also bring their nuclear energy sectors into line with EU operating standards, and as this will require them to invest vast amounts of capital over the long term, a separate route must also be devised to cope with this task after their accession to the EU. In section 7.5 of this report the WRR has drafted a broad-based proposal for a separate environmental core acquis. One of the accession criteria in this environmental core acquis is also the creation of strategic ten-year environmental programmes – partly financed by the European Cohesion Funds – analogous to the strategic medium-term economic programmes.

The WRR recommends that after accession the EU should continue screening the acquis and also establishing and assessing economic policy priorities. A possible solution here might be a separate agreement or pact, to be concluded with the individual new member state to continue the Joint Assessments for five years on the basis of the medium-term strategies, and so to continue accurately and constructively to monitor economic growth in the CEECs. An agreement such as this, which would not only involve the European Commission but also the Ecofin Council in the procedure, offers a number of advantages. Firstly, it would provide the governments of the new member states with important support in their battle to achieve catch-up growth. By so doing they would increase the confidence of market players that monetary union can also in future remain safely grounded in a healthy economic union (see section 7.3). Secondly, it would prepare the Central and East European countries gradually for the task of coordinating their economic policies on the basis of broad guidelines (Article 99 Amsterdam Treaty), without placing any extra administrative and logistical burdens on them. Important elements of the five-year medium-term programmes do in fact overlap with the progress reports on structural reforms of goods and capital markets, produced annually by the present member states within the framework of the Cardiff process. At the end of these programmes, the Central and East European countries can then safely start taking part in the EU's existing, regular processes of socio-economic policy coordination.

7.2.3 THE 98/34 COMMITTEE, OPTIONAL HARMONISATION AND PECAS

As well as these formal strategic programmes, there are other possible ways – less formal and far-reaching – of helping the Central and East European countries correctly implement and enforce the internal-market acquis. The WRR considers for

example that those candidate countries that have finished their negotiations over the free movement of goods should be allowed during the run-up to accession to participate as observers in the activities of the 98/34 Committee on technical barriers. This Committee meets six to seven times a year to evaluate all national draft-legislation and technical decisions, etc., to see if they might in any way hinder the free movement of goods inside the internal market. It has a procedure which examines potential and actual trade barriers by using detailed opinions submitted by either the European Commission or the member states.[2] Although these activities largely take place away from the public eye, they form an important link in the continuing fight against the erosion of markets and against overburdening of the European Court (ECJ). They for example prevent any potential problems which may arise when implementing and enforcing legislation, and they ask national legislators to think in terms of mutual recognition and legal equivalence (of rules and regulations) when drafting national product rules and regulations.

At present the Committee devotes two to three meetings to assess draft legislation submitted voluntarily by the Central and East European countries. For quite some time now the European Commission and the member states have also offered financial and logistical support to help streamline and fine-tune the national notification procedures and normalisation agencies, so that a well-informed official responsible for matters of national coordination can finally be allowed to give advance notification to the 98/34 Committee and to take part in its proceedings. There could however be even fewer future breaches of the principle of the free movement of goods if the EU were already to involve each applicant country as much as possible in the Committee's regular activities at this stage of the proceedings.

Another supplementary measure which the WRR feels deserves further consideration is the temporary and selective reintroduction of optional harmonisation. During a five-year transition period, for example, producers in the new member states could choose this route to decide if they wished (i) immediately to harmonise their product standards in line with the terms of the relevant EU directive, or (ii) still retain for the time being their own national set of product standards. Products from Central and East European countries that satisfy EU standards would therefore have immediate access to the internal market, while traffic in goods in the other direction would be completely free as well. The only goods denied free access would be those local products from new member states that do not yet comply with the terms of the EU directives. The advantage of this method is that the Central and East European countries could attain high scores for adopting the 'old' and 'new' approach directives, their own consumers would immediately have more choice of products and there would be greater competition, while local producers would still have a number of years gradually to harmonise their production process with the terms of the EU directive (Pelkmans et al. 2000: 86).

The process of market integration in the Central and East European countries can, according to the WRR, also be assisted if entry to the internal market before accession were allowed for selected candidate country products that comply with all the requirements of the relevant acquis. This opening of markets was applied in the recently signed PECA agreement (Protocol to the Europe Agreement on European Conformity Assessment). Such a protocol applies the 'global approach' of mutual recognition of tests and certification to associated states. It was developed in 1997 to make it easier for the Central and East European countries in the run-up to their accession to implement the relevant acquis for industrial products. Signing the protocol means that the signatory is ready in specific product sectors to follow European rules and commercial practices in the area of marketing and product-safety regulations directives. It also means that more than 80 percent of the associated European CEN & CENELEC standards are now adopted.[3] The Czech Republic and Poland, both signatories to PECA, can meanwhile profit fully from their right to freedom of movement in advance inside the internal market. It is good to see that the European Commission is also encouraging the other applicants to sign PECAs, through a combination of priority in pre-accession, the granting of aid and (for the applicants) a more rapid adoption of European standards. In certain cases optional harmonisation could be the answer.

7.2.4 ACCESSION AT DIFFERENT DATES

As stated in section 4.2, it is obvious that EU enlargement will take place in at least two separate stages and with two separate 'waves' of entrants. In particular, this staged approach could adversely affect the agricultural sector of the (temporary) outsiders, as poorer countries, whose agriculture is now essential for their economic well-being, will find that their market access has deteriorated in relative terms. The WRR recommends tackling this problem by using a strategy of gradual but ultimately radical liberalisation of agriculture within the terms of the Europe Agreements (which still apply to these poorer economies). In July 2000, successful bilateral negotiations between the EU and the applicants were already a first step in this process. The results of the negotiations were added as a formal protocol to the Europe Agreements. Thus, for example, it was agreed with Hungary to abolish EU export subsidies for pork. In the run-up to accession the tariff-free import quota for Hungarian and EU exports of pork will be increased each year, until the mutual trade in pork is fully liberalised. This 'double zero' approach has been agreed on for a number of products. In addition, mutual trade in about 400 less sensitive agricultural products (that are not produced in Central and East European countries and are not subject to import tariffs in excess of 10%) will be liberalised the moment the applicants join the EU. Even so, the 'double zero' approach is now only still applied to products not covered by the CAP's internal price-support system. The differences between the EU's support policy and those of the Central and East European countries in a number of agricultural sectors are still so marked that the Commission sees any further liberalisation of trade as too disruptive for the CAP. It is expected that the EU and the candidate countries will have to hold at least two similar rounds of negotiations before they

can realign the agricultural regimes in such a way that serious trade-barriers can be removed and disruptions of production avoided. The WRR considers that the position of likely underperformers such as Bulgaria and Romania should, at the least, not suffer from far-reaching liberalisation in the agricultural sector.

7.2.5 FREE MOVEMENT OF WORKERS

Chapter 4 had already concluded that legal migration of workers after the EU's enlargement would not be a problem in much of the Union, the Netherlands included. In those EU states that share borders with the applicant countries (Finland, Germany, Austria, Greece and Italy), the free movement of workers – especially in Germany and Austria – has become a sensitive issue in the debate on EU enlargement. This is partly due to the relative or sometimes even absolute size of the applicant countries. Although, for example, the Estonians have only a short crossing over the Baltic and speak a language closely related to Finnish, migration of Estonians to Finland is not a sensitive issue because there are few potential workers – Estonia has about 1.3 million inhabitants – and the Finnish economy is enjoying an unprecedented boom. In Italy's case, only Slovenia is of any importance: a country of only 2 million inhabitants with the highest per capita income of all the applicant countries. Greece borders Bulgaria, which will not enter the EU for the time being. This might be a sensitive issue in Greece at a later date, although there is little demand for labour in Greece's northern border region.

In East Germany the situation is completely different. Even though East German incomes are starting to catch up with West German levels, the transition there can only be described as a partial success. Due to wage rises that have far outstripped regional productivity levels, East Germany has seen an enormous destruction of its capital. For years it has suffered around 20 percent unemployment with a present rate of 18 percent, with even higher figures at local levels. There is a lot of bitterness, which has created an explosive social climate. As well as structural unemployment, there is a widespread loss of human capital due to poor training and sub-standard skills. There is still also much resentment about the way privatisation was carried out. In this social climate the relatively large influx of illegal migrants has caused a lot of bad feeling, not least in Berlin. It would be an error of judgement to ascribe the social sensitivity towards the free movement of workers solely to the extreme-Right violence.

In Austria's case, there is a relatively small economy bordering on a number of applicant countries. The main sources of potential migrant labour are Slovakia and the Hungarian periphery. It cannot be denied that Austria's relatively isolated and conservative mountain regions have seen a rise in political resistance to illegal migration and cross-border working, despite Austria's low unemployment levels.

In Germany and Austria *cross-border working* is a practical alternative to immigration. Official commuters are, of course, also subject to the host-country prin-

ciple and in this case, by definition, have hardly any effect on keeping wages down. Whether German or Austrian employers choose to hire, for example, Polish or Slovak workers will be dictated by a combination of cost-reducing factors which – just as can happen with cross-border working in the EU-15 – together make a sufficiently attractive package for a potential employer. Typical factors are: temporary contracts (which also often imply lower wage-costs), the avoidance of trade unions, readiness to work long hours, and easy relocation. This is all very interesting, of course, if certain sectors are suffering local labour shortages. Nevertheless there are no reasons to assume that the use of legalised cross-border workers will replace local workers to any great extent. It can however inflame any existing sensitivities.

Transition periods

Meanwhile it is clear which position the Union will take on this matter vis-à-vis the candidate countries. Under the Swedish chairmanship it was decided on 14 May 2001 to head towards a transition period of a maximum of seven years; after the first two years this period will be revised on the basis of a factual report from the European Commission. The principle of free movement of workers will then have legal force after two years have elapsed, except in those individual member states who inform the European Commission of their wish to keep the transition period subject to their own national restrictive measures. After a total of five years has elapsed, the principle of freedom of movement will automatically come back into force, except if member states make an official appeal to the Commission that serious disruptions to the labour market are likely to occur. The appellants are then allowed a maximum of another two years in which to enforce their own national legislation (Ministry of Foreign Affairs 2001).[4]

Based on the prospect of a dynamic economic future, it seems reasonable to assume that these sensitivities will lessen in due course. The anticipated catch-up growth in Poland, the Czech Republic, Slovakia and Hungary in the next five years will then help reduce wage-differentials, while the prospect of further economic progress will also induce many people to stay at home instead of emigrating. As a result of present population growth Austria and Germany will have fewer school-leavers, so that all things remaining equal the labour market will continue to get tighter. It is also conceivable that the attraction of a flexible labour market and greater incentives for the unemployed to return to work may well lead in both countries to a fall in demand for migrant workers. It is therefore quite possible that around 2005 the introduction of free movement of labour from the new member states will even be very welcome indeed.

The WRR supports the Dutch government's position that the principle of free movement of labour needs to be immediately enforced, with only a limited and strictly-defined exemption clause for certain individual member states. Freedom of movement is, for that matter, a *right* enjoyed by all EU citizens. Now that it has emerged that socio-political sensitivities in Germany and Austria have led to pressure in favour of transition periods, the greatest efforts should be made to

move towards a system of free movement with exemption clauses covering the actual transition period. These clauses would only come into force when predetermined annual immigrant quotas are filled. In this way, the principle of freedom of movement still retains its legal force. The ceilings must be agreed by both parties and would in principle apply only to Germany and Austria. The gradual introduction and deepening of the EU's immigration policy on migrants from third-countries, asylum-seekers included, should as far as possible counter the appeal of illegal immigration from third-countries, in so far as this situation has arisen as a direct result of weak, inconsistent and uncoordinated application of existing legislation (see section 7.8). The principle of freedom of movement might otherwise suffer unnecessary damage in such a situation.

Labour market policy

It must also be pointed out that labour migration is also partly dependent on official policy. By strictly enforcing the host-country principle the demand for legal migrant workers will be mainly fed by labour shortages, and not – or hardly at all – by wage-cost differentials. Many EU countries have a relatively low labour force participation rate; many of those not actively employed are receiving benefits instead. There are few economic and administrative incentives to perform *legal employment* in most EU states, the Netherlands included. This phenomenon is due to the narrow gaps between the basic wage-structure and the relevant benefits, and the long-term nature of those benefits; favourable terms for early retirement; the 'poverty-trap'; and the rigidities of institutionalised rights for older workers whose productivity is falling. In addition, the administrative checks on and the short-term obligations of persons on benefit are not always powerful enough to get them back into full-time work, where this could reasonably be achieved. This in fact means the Netherlands still has a reasonably large reserve of (unemployed) workers at its disposal. However, there is a growing demand for labour throughout the Union as a whole, while there will be fewer workers in future as a direct result of the ageing population.

The WRR therefore supports an active labour market, as it and the SER have repeatedly proposed in the past, which applies equally to policy in the Netherlands and in other EU states (WRR 2000a; SER 2001). Working within the framework of the Luxembourg process for employment and labour-market policy, much can be done to improve the flexibility and intersectoral mobility of workers and also to promote the idea of adapting to the – as yet modest – predicted effects of free movement of labour. One should also recognise that over the longer term freedom of movement for workers can help alleviate local problems in the EU and in the Dutch labour markets that an active labour-market policy could not solve on its own. In this context the Netherlands should however urge a thorough study of the longer-term effects of free movement of labour, as there is a clear risk of an East-to-West brain-drain that could harm the prospects of catch-up growth for the applicant countries.

Education and training

Finally, the WRR stresses the need for *all* member states in the future – i.e. not just the CEECs – to pay greater attention to the internal market in the training of policy-makers, civil servants, judges and lawyers. Reports from official bodies (including the SER and the EU Economic and Social Committee) show that the principle of national treatment of EU citizens has still had hardly any impact on the administrative culture among the present member states as well (e.g. regulations regarding social security, taxation and the right of residence) (SER 2001; Economic and Social Committee 1999). This problem also occurs at regional and local level, where there is often insufficient knowledge of EU regulations. Thus a direct appeal often has to be made to the competent authority to secure the correct application of the rules regarding the mutual recognition of qualifications and the rights of residence of EU citizens. At present, the member states and the European Commission are making a modest investment in these kinds of education programmes. The WRR considers that the member states should step up these investments for the more efficient enforcement of the principle of free movement of labour inside the *whole* of the internal market.

7.3 MONETARY UNION

7.3.1 INTRODUCTION

At the point of accession the new Central and East European member states will in principle be required to adopt the entire EMU acquis, unless they have been granted a transition period. After joining the EU they then need to follow the path towards full participation in monetary union. Against this background a number of these countries are already preparing to meet the nominal convergence criteria laid down in Maastricht, in the hope they can also take part in monetary union not long after joining the EU. Chapter 4 showed that the current Eurozone countries regard this development with some anxiety. These concerns centre in particular on the potential risks created by a forced march towards nominal convergence with early participation in the single currency as its main objective and the consequences this would have for the credibility and stability of the euro. The WRR presents its own view below of this issue plus policy recommendations in these areas based on four interrelated themes: the relationship between the proposed internal-market core acquis and the accession to the single currency; the link between real, structural and nominal convergence; the road towards the euro; and the institutional reform of the ESCB.

Table 7.4 Monetary union: accession-related opportunities, threats and solutions

		Monetary union
BEFORE ACCESSION	Opportunities	For CEE: 1. Gradual, unforced move towards nominal convergence criteria as orientation point for strengthening monetary and fiscal position; 2. 'Eurofication' offers in extreme cases a sheet-anchor for monetary stability 3. Fall in risk premium on capital.
	Threats	1. Focus on nominal convergence criteria at the expense of catch-up growth; 2. Standard route via ERM-2 not always suitable 3. Speculative attacks in run-up to participation in euro; 4. Lack of experience in monetary policy.
	Solutions	1. Core acquis also serves as 'healthy basis' of euro; 2. (for currency boards) Transition to euro without detour via ERM-2; 3. Smooth transition with demand for liberalisation of capital.
AFTER ACCESSION	Opportunities	1. All advantages of a wider monetary union*; 2. Strengthened international role of euro 3. Improved external representation of euro.
	Threats	1. Fear of insufficient supervision on financial institutions; 2. Risk of unwanted easing of macro-economic and fiscal policy 3. Increased risk of problematic asymmetrical shocks; 4. Doubts about lack of satisfactory financial supervision; 5. Loss of decisiveness for ECB Governing Council.
	Solutions	1. Improved financial supervision; 2. Reorganise ECB.

* The best-known are the removal of floating exchange-rates for trade and direct investment, the elimination of commission charged on foreign-currency transactions and the elimination of information costs/charges and price-discrimination, the potential savings involved when savers have the opportunity to hold smaller reserves of foreign currency, and the profits derived from so-called seigniorage. The strategic advantages of the euro are less well-known and harder to quantify, but are expected to be much greater. The issue here is the euro's positive impact on the continuing integration of financial-services markets and capital markets, and the advantages of increased credibility of monetary institutions and the quality of economic policy (Pelkmans 2001).

7.3.2 THE INTERNAL-MARKET CORE ACQUIS: ESSENTIAL PRECONDITION FOR MONETARY UNION

In the WRR's model of economic union (see ch. 4) the internal market is (i) the EU element *par excellence* for encouraging long-term growth and catch-up growth, and (ii) the essential precondition for a smoothly functioning monetary union.[5] The internal-market core acquis test as formulated above has also been partly formulated with this in mind.

There are also a number of other necessary conditions for the smooth functioning of monetary union inside Euroland, namely:

- *all* member states need to have high-quality, modern basic institutions for implementing monetary policies, including specified EU minimum standards

for rules and protocols, interbank markets, and an efficient system of implementing monetary and exchange-rate policy (because national central banks in the Eurozone must be reliable and efficient executors of the centrally laid down policies);
- the *Euroland* member states must keep in place a number of fiscal limitations to monitor price stability: the no-bail-out clause, the excessive deficits procedure, and the obligations of the Stability and Growth Pact;
- *these* member states must also be sufficiently adaptable at micro-economic level to be able to absorb structural economic changes (e.g. changing patterns of competition, asymmetrical shocks) (Pelkmans et al. 2000: 91).

Partly with a view to future participation in the Eurozone, the core acquis test for participation in the internal market contains stringent requirements for the candidate countries; a country that 'passes' the test must by definition have attained high scores for all EBRD indicators. As was stated, these indicators measure the reforms in the area of large-scale and small-scale privatisation, the trade and monetary system, the management and restructuring of companies, price liberalisation, competition, reforms to banking and the stock market and the other non-banking financial institutions. This test also obliges these countries to follow a medium-term economic strategy during the post-accession period under EU supervision. This process commits the new member states to a continuing round of macro- and micro-economic reforms, including reforms to government expenditure, taxation, pensions, social security, and the banking and insurance system. The process is also enhanced by EU measures to ensure that the new member states contribute after joining the Union to macro-economic stability and real and nominal convergence by means of their economic policies and exchange-rate regimes (European Commission 2001a).

The WRR considers that the current member states have a wide range of instruments to ensure that monetary union will be firmly based after enlargement on a solid economic foundation: the proposed core acquis test before accession to the internal market (which also contains the medium-term strategy for every applicant member state) together with the EU's processes of coordination of economic policy and the Maastricht nominal convergence criteria. The EU and the new member states need to use these instruments in such a way that the idea of structural convergence is promoted where necessary, catch-up growth in the Central and East European states is encouraged and the euro's credibility and the Eurozone's internal and external stability continue to be assured. On these issues, the WRR shares the general policy vision as held by the European Commission, the ECB, the Nederlandsche Bank and other official institutions. However, the WRR does not support the idea of making participation by the Central and East European countries in the Eurozone subject to *additional* conditions relating to the level of real incomes convergence, the degree of structural convergence or the budgetary policy of these countries. The relevant considerations are briefly set out below.

7.3.3 REAL, STRUCTURAL AND NOMINAL CONVERGENCE

Real per capita income (measured at purchasing power parity) in all ten Central and East European countries is currently about 50 percent of the EU-15 level. This level is just below the average income levels of Portugal and Greece at the start of the 1990s, a little over eight years before their participation in the Eurozone. At first sight, it might therefore be assumed that the Central and East European states would still have enough time given sustained catch-up growth to bridge the economic gap. Furthermore, as with Greece and Portugal, it will probably mean years of EU membership and continuing structural and institutional development before the new members are ready to safely join the EMU. This argument has therefore used the real income level and degree of income convergence as a general indicator of structural convergence (Pelkmans et al. 2000: 99). In addition, the Governor of the Bundesbank has even argued in favour of some kind of income test, on which basis the EU would decide whether to admit the Central and East European states to membership of the EMU (Bakker and Roovers 2001: 5). This test must be applied *in addition* to the Maastricht test for nominal convergence.[6]

The WRR considers, however, that real *income* convergence is not a good yardstick for assessing the capacity of the candidate countries to take part successfully in monetary union. There is no theoretical basis for this; behind the disparities in incomes, there are no *systematic* differences in the economic structure that could in any way hinder their participation in the Eurozone (Bakker and Roovers 2001: 3; Deutsche Bank Research 2001). The current Eurozone partners also have considerable disparities in incomes. Furthermore. the current Eurozone has a widely varying range of sectoral economic structures (Pelkmans et al. 2000: 93). Membership of monetary unions, as the practice of the current Eurozone and the United States also shows, can be compatible with sharp disparities of incomes and widely-varying structures between different countries and regions (Deutsche Bank Research 2001). The main issue here is whether the participants are able to administer a coordinated policy to maintain stable prices and balanced budgets. Their power to do so should have the full confidence of the financial markets and should not be forced to the point of causing a needless reduction in catch-up growth. Both conditions were fulfilled, first by Portugal, and then finally by Greece as well. In addition, the future Eurozone countries, just like the current participants, must have enough economic adaptability and be sufficiently competitive to absorb any asymmetric shocks during the process of further structural convergence (see below).[7]

All these are conditions are items of policy both before and after EU accession within the framework of the above Medium-Term Strategy. After accession the condition of stability must also be guaranteed via the nominal convergence route and the medium-term obligations of the Stability and Growth Pact. As for the condition of adjustment, participation in the internal market is, as was argued above, crucial. Further liberalisation and integration within the internal market

can not only improve competitiveness, but can also increase the pressure to make institutional improvements (Eichengreen and Ghironi 2001: 11). At the same time, the Luxembourg, Cardiff and Cologne processes can also help foster their structural adjustment capacity.

Even so, most candidate countries will still have to carry out a number of essential structural adjustments en route to participation in the EMU.[8] The WRR has already concluded above in its recommendations on accession to the internal market that timely and thorough reform of the financial sector is essential for sound monetary policy within the EMU. The WRR therefore regards this task as a vital part of the core acquis test for joining the internal market. In a number of member states, the banking system, the financial supervision regime and the financial markets are still demonstrably weak and underdeveloped. As the Czech Republic's experiences in 1997 show, such a financial climate can severely damage economic growth. It can also lead to serious budget deficits for many years on end. Until the 1997 banking crises, the Czech Republic had the reputation of being an economic high-flyer among the CEECs. Initially, fighting inflation had been one of the Czech government 's main priorities, and it had to deal with a heavy inflow of capital. A combination of factors then led to a growing deficit on current account and growing fears in the financial markets of devaluation: non-rescheduling of debts, interlocking interests between banks and state enterprises where there is not enough independent supervision, sharp wage rises and a real revaluation of the currency with productivity failing to keep pace. All of this finally culminated in an open currency and banking crisis (DNB 2001b: 7). The next raft of rationalisation measures, improved management practices and independent supervision of the business sector forced the Czechs to take on large-scale debts.

Even those applicant countries with a healthy financial system and a sound monetary policy are likely to remain vulnerable for the time being to speculative movements of capital, certainly in view of the large amounts of capital flowing into their economies. Accession and further 'deepening' of financial markets in the new member states will probably be a big attraction to investors and currency speculators. The European Commission holds firm to its demand for a fully liberalised capital account, although it does not rule out the idea of transition periods. The WRR considers however somewhat more flexibility is required when dealing with this part of the acquis. For example, it could be suggested that depending on their macro-economic situation, some countries would, under EU supervision, gradually reach the point where limitations on short-term movements of capital could be completely abolished within the framework of ERM-2. In view of the wide band of twice 15 percent around the general rate, speculation has become less unbalanced, but even so sharp fluctuations in the exchange rate can still cause damage.

Another complication for the Central and East European countries is that catch-up growth will be accompanied by a period of trend-based higher inflation as a result of the Balassa-Samuelson effect. This is the phenomenon whereby a rela-

tively high rise in productivity in the (traded) goods sector will also push up prices and wages in the (often not traded) services sector. According to estimates made for the WRR, this can even push up inflation figure by some 3.5 to 4 percentage points, or to well above the inflation-rate disparity of 1.5 percent over the EU average that is allowed when entering the Eurozone (Pelkmans et al. 2000: 120). Other estimates of this effect are however considerably lower.[9] The effect will be temporarily enhanced in some Central and East European countries by gradual price liberalisation in sectors which are now still largely state-regulated, such as the rented housing, transport and energy sectors (DNB 2001b: 7).

This inflation-effect is an inherent part of the process of incomes convergence and the resulting rise in the general price level. This need not be a problem as long as the monetary authorities and the government ensure that inflation and the real appreciation of the exchange rate keep more or less in line with productivity rises in the traded goods sector. This after all implies that the competitiveness of the member state in question is not deteriorating.[10] The effect can however make it harder to choose the best strategy for nominal convergence. It is important to note here the distinction between the period leading up to participation in the euro (i.e. to 2007 at least) and the period of participation in the euro. The Balassa-Samuelson effect will wear off as catch-up growth takes hold and will be less of a problem (for those applicants) towards 2007. Once a country takes part in EMU, the question then arises of how far limited inflation-rate disparities should be regarded as abnormal; such disparities also occur in the United States and, as it now turns out, in the present Eurozone as well.

As section 4.3 showed, the candidate countries have differing structural economic characteristics and varying degrees of vulnerability to asymmetrical shocks. They therefore also employ different monetary strategies. According to the standard theory of Optimum Currency Zones, the applicants will derive greater benefit by surrendering their exchange-rate flexibility and will ultimately be better able to join a monetary union, the more able they are to absorb such asymmetrical shocks.[11] Empirical research over the last ten years has shown the difficulty of assessing the additional risk of asymmetrical shocks; furthermore, this does not lead to any identical conclusions (Pelkmans et al. 2000: 123-124; Bakker and Roovers 2001: 12-16). In the standard literature on the subject, this is assessed on the basis of indicators such as the similarity of trade structures of the member states, the intra-industry trade intensity, exports to the EU as a percentage of GNP, and how far the GNP growth rates, industrial production growth and unemployment rates have kept in step with one another over the last five to ten years.

The Central and East European states, however, face the complication of having made a rapid economic adjustment, and that springing from a radical period of transition. The last three indicators, in particular, cannot therefore be taken as a measure. The other indicators are perhaps more suitable, but the trading patterns also changed markedly during the 1990s and will continue to undergo considerable change.

The agreements with the two poorest member states of the Union, Portugal and Greece, could indicate that most of the eight Central and East European states, i.e. the first 'wave' of entrants, will still be more sensitive for the time being to asymmetrical shocks than the other Euroland members states. A number of studies have however concluded that Hungary, Slovenia and the Czech Republic have already successfully passed the optimal currency test (Bakker and Roovers 2001: 14-15). Poland has a trading pattern that increasingly resembles the EU model, while its economic cycle is increasingly influenced by the German cycle. The Polish economy, however, is (still) relatively closed and could remain vulnerable for the time being due to the very large share of agriculture in total employment and the lack of flexibility of its labour market relative to other EU applicants (Habib 2001: 22; Bakker and Roovers 2001: 14). The Baltic states also appear more sensitive to asymmetric shocks; but as a counterweight to this, their small economies and high degree of economic openness will give them a relatively good chance of profiting from participation in EMU (Pelkmans et al. 2000: 124-129; Eichengreen and Ghironi 2001: 12).

7.3.4 THE ROAD TO EMU

Given the divergent economic structure characteristics and variations in the existing exchange-rate arrangements within the CEECs, the road to EMU will necessarily differ from applicant to applicant. Each country will be forced to make complex decisions on the optimal exchange-rate regime and the best monetary strategy to be followed. Furthermore the route taken to EMU must comply with the requirements of the EMU acquis and ultimately with the nominal convergence criteria as well. At the November 2000 Ecofin Council it was made even clearer that once the applicants have joined the EU they will need to participate in the ERM-2 system for at least two years.[12] This strategy is mainly prompted by two considerations: due to the Balassa-Samuelson effect inflation will still be higher for some considerable time, and a minimum period of two years inside ERM-2 will allow them to establish a tenable accessionary exchange-rate via the market (DNB 2001b: 9; Coricelli 2001: 8).

In the run-up to accession to the euro the EU should, in the WRR's view, stick firmly to the nominal convergence criteria on the public debt and the budget deficits of the new entrants. This could further reduce the risk of negative 'spillover'[13] – however small this might be given the minor economic and monetary importance of these countries – and above all the perception of this risk by the financial markets. In the WRR's view, countries with serious deficits on current account and a trend-based higher inflation rate resulting from the Balassa-Samuelson effect would do well to start working towards EMU accession if they have made good progress in adjusting their prices to EU price levels. Although speculative attacks on currencies can never be ruled out entirely, particularly during the final stage of accession to EMU, the 15 percent bandwidth surrounding the central rate is expected to offer these countries the chance of neutralising the danger of one-sided capital speculation. As was suggested earlier, one-way-bet

speculation will not come about easily; in this situation speculation will retain its natural tendency towards maintaining an acceptable balance. Here as well, these ERM-2 members will with an eye to the advantages of accession to the EMU set great store by keeping their currencies inside the central rate bandwidth (Eichengreen and Ghironi 2000: 16).

7.3.5 INSTITUTIONAL REFORM OF THE ESCB

The WRR would emphasise the need to start reforming the ESCB's institutional structure before the first round of EU enlargement. The political sensitivity of such reform is beyond dispute. At the same time, there are enough possible solutions at hand to ensure the problem need not be insurmountable. In addition, the process of adjusting to the system can be gradual, tailored to the changing needs and growing numbers of member states (Eichengreen and Ghironi 2001: 22). However, the decisive factor must be safeguard the effectiveness and credibility of EMU, even after successive waves of new entrants. This requires the ECB to be able to take rapid decisions on interest-rate changes without having first to seek a consensus of the six ECB executive board members and an additional 17 to 28 directors of the national central banks.

The more EMU partners there are after the coming rounds of new entrants, the harder it will be to reach agreement on a new decision-making system. The next rounds of EU enlargement will also see more small member states with limited monetary resources. These are, by definition, the countries that set great store by the 'one country, one vote' system, and who are likely to lose the most influence when reforms are finally carried out. All these considerations therefore argue for an institutional reform programme to be implemented before the first round of enlargements. As Eichengreen and Ghironi correctly observe, the institutional history of the United States Federal Reserve System offers a warning in this respect: in the USA it took a crisis – the Great Depression of the 1930s – to make the smaller states give up their permanent seats on the Council (Eichengreen and Ghironi 2001: 24).

To sum up: the WRR first establishes the fact that the proposed core acquis test for entry into the internal market, together with the existing EU processes of coordination of economic policy and the Maastricht nominal convergence criteria, offer the current EU-15 a good range of policy instruments to safeguard the economic foundation on which the monetary union is based. In the run-up to the entry of the Central and East European states to the EU, the EU certainly also needs to use these instruments in order to speed up the reform of the financial sector in those countries that is so vital for their monetary policies. Secondly, the WRR would warn against the dangers of an over-hasty liberalisation of capital movements in the Central and East European states. The European Commission should where necessary offer the Central and East European countries the chance of carrying out a gradual liberalisation of short-term capital movements inside the framework of ERM-2. Thirdly, it would stress that given their trend-based

higher inflation rate, it is important for the Central and East European countries to make serious efforts to join the EMU if they have already made good progress in adjusting their prices to EU price levels. Finally, the WRR argues that a start be made on reforming the ESCB's institutions *before* the new member states join the EU.

7.4 THE COMMON AGRICULTURAL POLICY

7.4.1 INTRODUCTION

In chapter 4 is it was stated that the participation of the Central and East European countries in the current EU Common Agricultural Policy would give rise to serious problems both in the candidate countries and within the EU (see table 7.5). Contrary to what the wider public and political debate on this issue would suggest, these are not primarily financial but structural problems. If the current inefficient and imbalanced policy is applied to countries with poorly developed agricultural structures and potentially large production levels, this will seriously hinder the restructuring of the agricultural sector in the Central and East European countries that they so badly need. It could drive up land and food prices in these countries, thus making them less competitive in international markets and delaying any structural transformation of rural areas. This could widen the 'prosperity gap' between urban areas and peripheral rural regions within the new member states. The EU as a whole would also face a more rapid growth of surpluses in the most protected products, a further rise in agricultural expenditure and growing internal tensions between the member states and even greater pressure from the WTO to carry out reforms.

The CAP is therefore also a policy area par excellence where the traditional strategy of clinging resolutely to the existing yet highly controversial acquis by means of unilateral adjustments by the new entrants will jeopardise the whole EU in the post-accession policy period. With these considerations in mind, the WRR feels that reform of the CAP acquis *before* enlargement, combined with possible transition periods and financial aid, would be the best response to the increased diversity in this sector. An analysis of possible solutions follows below. In addition, the WRR will explain its own view of the relationship between the CAP and rural policy in Europe.

Table 7.5 CAP: accession-related opportunities, threats and solutions

		Common Agricultural Policy
BEFORE ACCESSION	Opportunities	For EU: (Modest) static and dynamic advantages of Europe accords and prospect of accession to EU (access to new growth markets, improvements in productivity and efficiency). For CEE: Ditto, partly via transfers of technology; pre-accession support.
	Threats	For CEE: 1. Compulsory adoption of ineffective policies lacking transparency and resulting in distortion of market; 2. Weak agricultural structure (land market, farm size, processing industry, sales channels); 3. Insufficient administrative, legal and financial capacity; 4. Initially still limited capacity for absorbing pre-accession aid. For EU: 1. Rising tensions within EU; 2. When enforcing export subsidies: breaches of WTO agreements, resulting in trade disputes.
	Solutions	1. Additional CAP reforms for enlargement (2002 onwards) and phasing-out of direct income support; 2. Enhanced and adapted pre-accession support; 3. Install regime offering only minimal protection between EU and temporary 'outs'.
AFTER ACCESSION	Opportunities	For EU: 1. Static and dynamic advantages of larger internal market for agricultural products; 2. Additional intra-European specialisation via reallocation of extensive bulk production to CEE countries; 3. Greater emphasis on market demand, consumer issues, environmental and animal welfare issues. For CEE: Ditto (see 3).
	Threats	1. More economically-backward rural areas; 2. More production surpluses and higher agricultural expenditure; 3. Blocks on further reforms to CAP; 4. Improper use of CAP resources under the heading of 'rural areas policy'; 5. Higher agricultural expenditure through direct income support regime. For CEE: 1. Loss of market share in some sectors; 2. Higher food and land prices; 3. Delayed outflow of labour from agricultural sector. 4. Increase in regional and social divisions.
	Solutions	1. Continue screening regarding adoption of residual acquis; 2. Joint administration and control of implementation and enforcement of acquis; 3. Partial changeover from direct income support to structural help; 3. Greater use of Structural Funds with easier co-financing criteria; 4. Aid for re-education and retraining via adapted programmes. 5. Separation of development instruments and objectives for following policy-areas: agriculture, nature, environment. landscape and rural areas.

7.4.2 TRANSITION PERIODS AND PARTIAL MEMBERSHIP

The complex challenge of the full integration of the Central and East European agricultural sector has been one factor in the calls for lengthy transition periods for agriculture, whether or not accompanied by a temporary partial membership without the CAP. In 1999 the Dutch Social and Economic Council (SER) had therefore proposed an internal market acquis that implied a temporary suspension of the internal market for agricultural products and the CAP policy. This would give those applicants who found it very hard to adopt, implement and enforce the acquis, e.g. Bulgaria and Romania, enough time and financial aid, mainly from private investments and the EU Structural Funds to let them to comply with the full range of product and process requirements and to make structural improvements to their agricultural sectors. Partial membership would also avoid an explosive surge in CAP expenditure, as the candidate countries would qualify for substantial amounts of financial aid from the Structural Funds, but not for the regular price and direct income support (SER 1999).

In the meantime it has however become clear that these advantages of partial membership without CAP do not weigh up against the disadvantages. As we already saw in section 4.2, the rules of the pan-European free-trade area for agricultural products would then have to be applied in order to prevent the temporary 'outs' from being badly affected by market displacement effects. To offer the temporary 'outs' free trade in non-agricultural products, a customs union for industrial products could be introduced. This would however cause serious problems, as the terms of the CAP's market and price regime would apply to the 15 to 20 full members of the EU but not to the other countries inside the agricultural free-trade zone. To prevent imports from pushing the prices of agricultural products below CAP minimum price levels and to combat fraud, import quotas should really be imposed against those countries with partial membership. Such quotas are not in accordance with the WTO's rules for free-trade areas. Only a temporary exemption from the WTO for say five years would then provide a solution. Every period of transition would also imply that border controls between the candidate countries and the EU would still have to be maintained.

The European Commission progress reports and the agriculture negotiations with the candidate countries show that transition periods in the agricultural sector will be inevitable.[14] While of the applicants have adjusted their laws and regulations to the terms of the CAP acquis, they are still struggling with considerable institutional deficits. This means they will be unable fully to implement and enforce the acquis for some time. The unprecedented task of creating an administrative infrastructure to implement CAP aid policy, monitoring phytosanitary and animal welfare rules and regulations and collating accurate statistical data requires greater use of trained personnel and financial resources. This indicates that after accession the applicants will still need to continue making institutional adjustments and structural improvements to their agricultural sectors and rural areas; these processes require, among other things, increased levels of financial aid under the EU's cohesion policy.

7.4.3 FINANCIAL AID BEFORE AND AFTER ACCESSION

The structural differences in agriculture in the old and the new member states and the current distortions in the CAP make it clear that the traditional instruments to suppress or accommodate diversity are ineffective on their own. According to the Agenda 2000 proposals the European Commission has also taken this view. Agenda 2000 has opted for an ambitious strategy for accession that combines suppression, reduction and accommodation of diversity in Central and East European agriculture with a modest and selective reform of the existing CAP acquis. The current EU pre-accession policy aims at speeding up the adjustments of the Central and East European states to the CAP acquis and alleviating their structural problems (see table 7.6). This policy is supported by programmes within the framework of Phare as well as the Special Accession Programme for Rural and Agricultural Development (SAPARD) and the Instrument for Structural Policy Assistance (ISPA).

Table 7.6 Agricultural objectives of Phare, ISPA and ISAPARD

Programme	Objectives
Phare	Enhancing administrative capacity for adoption and implementation of CAP acquis Investing in industry and infrastructure to meet EU standards
SAPARD	Investing in land registration, soil enrichment and land consolidation Improving education, marketing and processing Improving infrastructure for quality control, veterinary and phytosanitary control Diversifying the rural economy Establishing management services Establishing producer groups Renovating villages, investing in infrastructure and protecting cultural heritage in rural areas Financing technical aid
ISPA	Financing aid for the adoption of environmental acquis Financing the infrastructure

Source: European Commission (2000c).

Post-accession this support to candidate countries will mainly be given via the Structural Funds within the framework of the cohesion policy. Section 7.6 will provide more detailed recommendations on the desired course of this policy with a view to enlargement. The recommendations in this section confine themselves to the necessary reforms of the CAP and to rural policy.

7.4.4 TOWARDS A NEW CAP

In section 4.4 it was established that the Berlin agricultural reforms did not go far enough to cope with the fundamental agri-political problems of enlargement, the new social roles of the CAP and the budgetary dilemmas after 2006. In the short term, the 'budget-friendly' and pragmatic decision to exclude the Central and East European countries from the direct incomes payments will impose a heavy load on the accession negotiations. For some applicants this may even mean a (temporary) rejection of EU membership; the Central and East European governments can hardly be expected to successfully defend an accession that prevents their own farmers from getting the deficiency payments that much richer farmers in the current EU are still continuing to receive. In addition, 'new' producers (including, for example, young farmers just starting their careers) in the present EU would also not be excluded from acreage payments and livestock premiums, despite the fact that compensatory and temporary measures would need to be applied. If the current EU member states continue to oppose the entry of the applicants to the CAP, this will contribute to a hardening of attitudes on the applicants' part after their accession to the EU. This would increase the risk of a blocking of further CAP reforms, just at a time when there is even greater social pressure to create a new CAP than ever before. The CAP would pay for this limited short-term gain by losing its effectiveness and ability to adjust over the medium term. Furthermore, this solution could not in itself prevent increased production in the Central and East European countries from leading in the long term to bigger surpluses and increases in agricultural expenditure.

In the WRR's view, these considerations call for a new round of CAP reforms in 2002 as a starting point for converting the traditional CAP into a modern agricultural policy (see figure 7.1). This change of course should also include the rural policy from the CAP's 'second pillar'. For its position on the outlines of an alternative policy strategy, the WRR is continuing to build on the contents of its own 1992 report *Ground for Choices* and the analyses that form the basis of the CARPE report. As for the CARPE report's policy recommendations, the WRR's views do however differ in a number of respects (see annex III). The CARPE proposals provide for a common agricultural and rural policy consisting of four different programmes: market stabilisation, environment and landscape conservation, rural development and temporary adjustment aid. The WRR supports the proposals for a policy for the ad hoc stabilisation of European markets and also a temporary European programme for adjustment aid to reform the CAP. On the grounds of suitability, efficiency and democratic legitimacy the WRR does not however support the idea of bending the current CAP in the direction of a *common* rural policy, whose objectives, instruments and financing are either wholly or partially provided by the EU. On the other hand it does see a supervisory role for the EU, to monitor the enforcement of the internal market 'rules of the game'. A short description of these policy options is provided below.

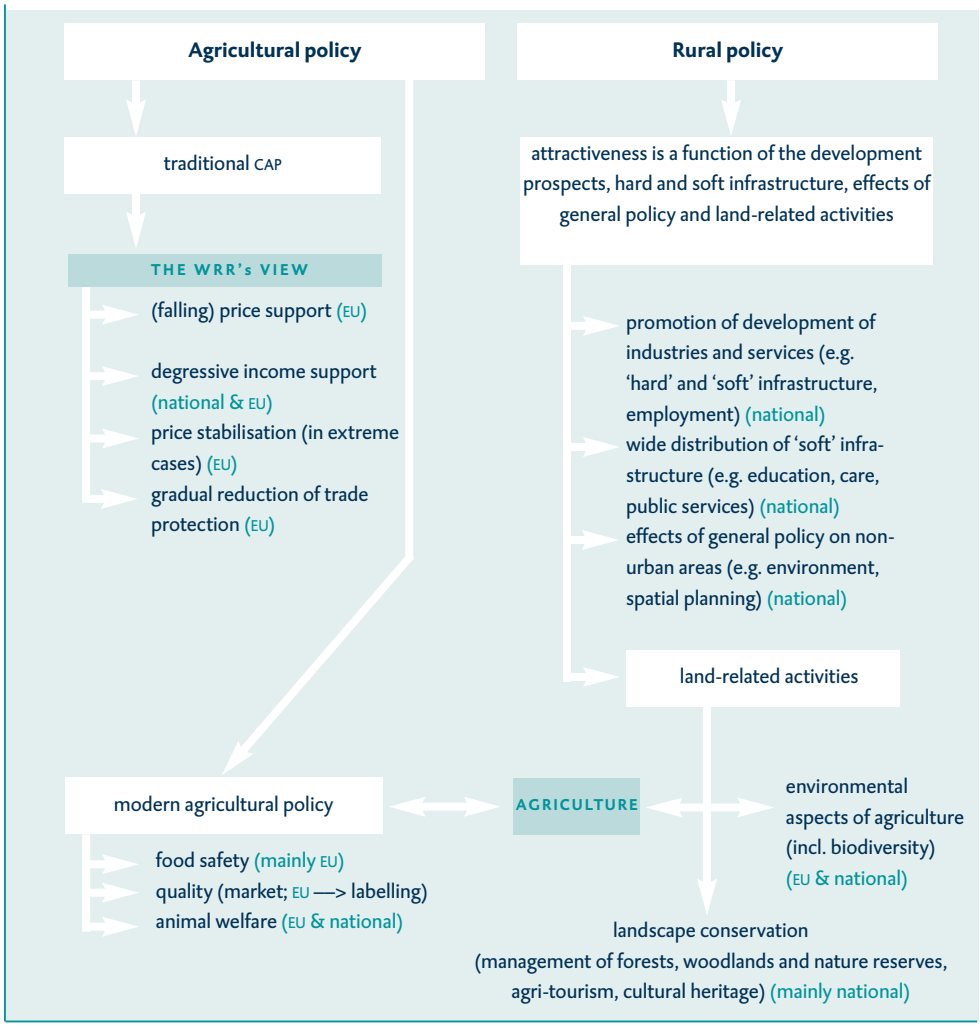
The first step on the road to a new CAP is the abolition of direct income support. Only after the present member states have pledged themselves to do this before enlargement can they make it clear to the negotiators and especially the farming population in the Central and East European states that the EU has finally broken with this practice of competition-distorting direct payments. They could send out a very clear signal by including this short-term obligation in the accession agreement that the EU concludes with each of applicants. The member states have decided in 2002 to draw up a provisional balance-sheet of the effect and financial implications of the principal market-regulation regimes. Meanwhile, they have also already begun listing the topics for discussion in the coming round of WTO negotiations. This provisional balance-sheet does offer therefore a good opportunity for further reforms.

In the WRR's view, the Dutch government should devote itself to seeing that the direct production aid and a gradual phasing-out of these payments are totally separated, e.g. over a five-year period. 'New' producers, i.e. those who produce goods after the market-reforms have come into force, would no longer qualify for such support. The member states might be able to partially compensate them for their fall in income with funds from their own, national resources, provided that this compensation was degressive and temporary, and was not linked to the production process. If the 'decoupled' direct income support had still not been abolished at the time of accession, the Central and East European countries would also receive these payments, but only as a temporary aid measure to help modernise their land-tenure system, improve their food-processing industries, storage facilities, and marketing schemes etc., and rural development programmes.

In addition to a speeded-up abolition of direct income support, further interim cuts are needed in the intervention prices for milk, sugar and cereals in the direction of world market prices. Export subsidies and ceilings on production can then be phased out. The milk quotas should if possible be abolished before accession, partly to avoid the CEECs from having to adopt a very costly and cumbersome technical and administrative system that disrupts production and which will in any case almost certainly have to disappear in the next few years. To compensate for these provisional price-cuts, the EU will need to increase direct income support. The principle must, however, be established that these payments are only temporary and degressive and will be progressively phased out according to a pre-set timetable.

Detailed arguments have been put forward at the beginning of this section and by the Buckwell group for the further liberalisation of the aid policy as a necessary step along the road to demand-led (quality) production. This will improve the lot of European consumers and reduce the damage to producers in developing countries. Limits on supply can then disappear, thus allowing the EU to fulfil its short-term WTO obligations. The agricultural sectors of the CEECs could also then be integrated, possibly after a short transition period and without any serious disruption, into the EU internal market. The remaining inconsistencies between the

Figure 7.1 Agricultural and rural policy: a functional approach



agricultural structure policy and market policy and those that would badly hit the Central and East European states would disappear as a result.

Reform in the direction of greater market conformity of course raises the question of the government's future role in this sector. Is there still any real reason for government intervention in agriculture?[15] Section 4.4 noted that the CAP's original objectives (especially to guarantee food-safety and ensure a reasonable standard of living for farmers) are no longer quite so relevant, and/or that a different set of policy instruments would be a more suitable, transparent and legitimate way of tackling the problem. Efforts to improve productivity do not justify the use of systematic aid measures in the main commodity markets. In addition, the policy of giving farmers a (temporary) income guarantee can no longer be defended in view of the large rise in the number of part-time farmers. In any case there never was a consciously planned social redistribution role for the CAP. As we saw

earlier, the CAP in fact has a *regressive* effect on incomes and the direct income support measures have nothing to do with the actual income of the individual farmer, whether this is earned from agriculture or from other activities. In so far as far as income measures are necessary, these logically form the province of national social and taxation policies, which treats individual citizens and occupational groups equally under the 'equality principle' (Buckwell 1997: 350). Furthermore, the food-safety argument (at least at European level) has been irrelevant for some decades now.

The last ten years have seen a shift in political priorities. Protection of food-safety and animal welfare, environmental protection, conservation and development of nature and landscape and the socio-economic development of rural areas all play an ever-greater role in the policy debate at national and European level (WRR 1992: 40). Partly due to the recent foot-and-mouth disease crisis, many people throughout the EU are deeply involved in these issues, at both national and EU level. This social change demands a strategic policy vision which is not defensive but developmental. In addition, it should be able to accommodate a diversified agricultural sector, as well as laying down strict preconditions for environmental health and animal welfare. However it should not put farmers in a 'straitjacket' by prescribing some particular method of farming, e.g. small-scale multi-functional, large-scale high-tech with high-yields or organic practices.[16] A future EU of 25 or more member states necessarily implies diversity in agriculture and rural affairs.

The WRR considers that a gradual move towards greater market forces in agriculture would be desirable, but this does not detract from the need for an active European and national government policy. Firstly, the EU and national policy is generally responsible for guaranteeing the existence of an effective, efficient and sustainable agricultural sector operating in accordance with European and national standards of food quality and safety and animal welfare (see fig. 7.1.). Secondly, a role of 'market master' has been set aside for the EU government with regard to market stabilisation. In some sub-sectors of agriculture, farm holdings can suffer exposure to uncertainty and risks that are barely controllable, can cause enormous social damage and can not always be managed by the private sector working on its own.[17] This could sometimes result in consumers facing sharp rises in food prices. These would provoke additional socio-economic tensions – particularly in the Central and East European countries, where consumers still spend a relatively high proportion of their total household budget on food (Buckwell et al. 1997). Furthermore, the bankruptcy of holdings that are essentially both profitable and competitive, which might happen as a result of sudden dramatic fluctuations, would in the longer term damage the economy and harm the landscape if this went hand in hand with the impoverishment of good agricultural land or caused irreparable damage to the environment or valuable cultural landscapes (WRR 1992).

The CARPE proposals explore the Community's options for market stabilisation (such as short-term market intervention using the EU's current range of policy

instruments and management of production stocks by a European agency). The advantages and disadvantages of these choices will need more detailed examination. Also mentioned is the option of moving from a Community system of market stabilisation to one of private/public risk management.

The WRR considers it desirable to choose a combination of stabilisation of Community markets via the existing European market organisations and under the supervision of the European Commission. These can guarantee the efficient functioning of the internal market. The WRR also thinks it essential that such stabilisation in fact be limited to *ad hoc* market intervention that complies with WTO rules and can be reconciled with wider Community policy objectives, including environmental and cohesion policy objectives. These latter two conditions should also apply to public and private policy instruments for risk-management in the agricultural sector. In addition to market stabilisation a modest, and by definition temporary, role is also set aside for a common adjustment policy that is designed to absorb the social effects caused by the transformation to a wholly new situation. The CAP's existing resources can establish an adjustment fund that offers farmers a degressive system of financial compensation to counter the effects of further policy reforms.

7.4.5 TOWARDS A NEW RURAL POLICY

The enlargement of the EU, the necessary CAP reforms and agriculture's new social role also call for a complete rethink of how land-use and land policy and the future development of the countryside. In sections 4.4 and 4.5 it was concluded that in the longer term the two crucial policy tasks facing an enlarged EU were to improve the structure of agriculture and to boost the rural economy in Central and Eastern Europe. The traditional model CAP has a poor track-record in both these fields. Since the 1980s the main emphasis has been on working off the huge production surpluses by special measures to curb production and a further weakening of measures to improve the structure of agriculture. Price and trade liberalisation was used to only a modest extent. However, the greatest challenge facing rural regions inside the Central and East European states is to develop healthy economic prospects *outside* agricultural sector, in industry and services. These countries derive direct benefit from a rural *development* policy aimed at educating and or retraining rural people. The term 'rural people' also includes, although not exclusively, the occupational group of farmers and agricultural workers. The EU Cohesion Policy's general Structural Funds are better equipped for this task than the structural measures of the present CAP, which are largely aimed at extensification and limiting production (Moehler, Núñez Ferrer and Fernández 1999).

The WRR supports both the need for a rural policy and the argument for government action aimed at protecting the interests of conserving and developing nature, environment and landscape (WRR 1992). Unlike when the national and the EU agricultural policies were first established, there is today an ever-growing

public appreciation for the diversity of cultural landscapes, nature and a healthy environment (in economic terms, a high marginal utility). In large parts of Europe and the Netherlands these have become a scarce collective goods. They represent a social interest that could come under serious pressure in the absence of government intervention.[18]

In chapter 4 the WRR however commented critically on the mainly general, less than precise interpretation of rural policy since the Berlin Summit. The 1999 countryside regulations are sectoral in approach and deal mainly with agriculture. In addition, the latest interpretations of the so-called 'European Agriculture Model' by some member states and special interest groups do not provide any careful analyses of the new priority objectives, principles and instruments for a rural policy. Without any clear debate on the matter, these measures have been dragged out of the old CAP, partly to defend and legitimise traditional *sectoral* achievements (Bryden 2000; Schrader 2000; Grant 2000; Van der Bijl 1999). They thus lack a strategic vision specifically designed to handle the rural *development* of a regionally increasingly diverse European Union of 27 member states and the wishes of the rural populations and visitors alike. In their quest for a wider range of CAP instruments, they still choose broad and generally formulated EU policy objectives and instruments to deal with environmental, landscape, and social matters, without explicitly indicating whether and how these can and should be fleshed out in a socially acceptable manner. Nor do they provide a basic analysis of the (partial) interpretation and financing of those objectives at *Community* policy level rather than at national or regional policy level.

The WRR supports a clear demarcation between the new CAP and the new rural-areas policy. As was suggested above, the future CAP and national agricultural policies will need to establish basic preconditions for controlling the quality and safety of food and animal welfare in the agricultural sector. The *rural policy* involves far more than policies relating to land-based activities such as conservation of the environment, landscape and nature. It includes all general policy elements relating to rural development: employment policy, 'hard' and 'soft' infrastructure, spatial planning, healthcare, public services and the environment etc. The largest part by far of this policy is almost by definition worked out at national and regional levels. Furthermore, only a small proportion of the rural policy has any direct bearing on land-based activities (see fig. 7.1). In other words, the (general) development of the 'countryside' refers to the regions and areas defined as rural or *non-urban* and has very little to do with topics such as landscape, cultural heritage, environment as biodiversity, environment and agriculture.

Each of these last activities needs a clear and separate assessment of the most suitable policy objectives and instruments, and the right level, e.g. community, national or regional, for best achieving these objectives. As was stated above, the European *agricultural sector* needs now and in the future a common policy that ensures enterprises comply with general European standards of environmental health, food-safety and product-quality (WRR 1992). The Community rural

development aid given under Objective 2 of the EU Cohesion Policy will also have to be continued (see section 7.6). This aid is given selectively on a co-financing basis to clearly defined and scheduled programmes in accordance with explicit financial and other preconditions. The specific issue here is to provide the new entrants with extra funds on top of their own national investments to help improve social and economic conditions in more deprived rural regions. Unlike the direct income support under the CAP, this aid is therefore not channelled automatically via Brussels to the member states where the relevant conditions apply.

For reasons of subsidiarity, the residual rural policy would still have to remain the responsibility of national and regional governments and should in principle be paid for out of their 'own' financial resources. This also applies to most of the nature and landscape conservation policy, the benefits of which are valued most by the local residents. For example: the Dutch unquestionably appreciate the sight of cattle grazing in their fields and meadows. However: can one legitimately ask the Hungarians or Portuguese indirectly to help decide on and pay for this typically Dutch rural landscape through the EU in Brussels? Those persons with local, regional and national interests at heart are the very people who must 'enjoy, decide and pay' when it comes to preservation of nature and the landscape (SER 1996: 95). Exceptions here are the landscapes and initiatives that transcend national borders and thus affect Europe as a whole, e.g. the Alps, the European stopping places for migratory birds or possible initiatives for the European Ecological Network (SER 1996: 95; WRR 1992: 120-124). This general assumption must also be clearly recognised in future – even at those tempting moments where the Netherlands, according to some sources, might threaten to 'run off' with some subsidies and even if after reforms were carried out more CAP funds were made 'available' for rural projects. The EU's role would be more that of supervisor than financier to prevent unfair competition in the internal market and to act as the guardian of Community cohesion.

7.5 ENVIRONMENTAL POLICY

7.5.1 INTRODUCTION

As explained in section 4.5, much of the EU's current environmental acquis is justified by potential or actual external environmental effects across the borders of member states. Firstly, this is external damage to the environment itself, such as air or water pollution, but sometimes also waste. This also of course includes damage to the global environment, such as global warming caused by emissions of CO_2, methane and other gases, and the problem of the ozone layer, which is caused by certain propellants. These can threaten the health and safety of European citizens as well as that of citizens of countries outside Europe. However, there are sometimes also negative external effects in an economic sense, such as unfair competition due to divergent sets of environmental criteria for goods and services (and their production) that can be sold throughout the internal market.

On accession to the EU, no efforts should be spared formally to adopt the environmental acquis and make a credible show of letting private and public agencies monitor its implementation.

Earlier in this report it was also established that environmental policy has a special role to play in the accession of the Central and East European countries to the EU. There are various reasons for this. Firstly, it is an extraordinarily costly exercise to remove the worst cases of environmental damage inherited from the communist past. Secondly, the seemingly self-evident principle of cost-recovery prices is not readily achieved in the case of energy, and then only as a gradual process. Sensitivities on this matter are understandable, as the candidate countries suffered a severe dislocation of their terms of trade ten or so years ago; all of a sudden they were forced to pay world-market prices and hard currency for fuel imports. This shock was partially absorbed by falling back on (still more) local energy sources, e.g. coal, lignite and tar oil. This often caused more rather than less pollution.

In addition, households in the still large public-housing sector were spared by implicit subsidies and 'soft' budget ceilings. This again resulted in a number of inefficient and often very dirty power-plants remaining in service rather than being replaced. At the moment of accession to the EU the candidate countries will need to charge prices that can recover most or all of the costs. Although this new situation will benefit the environment (due to falling demand and replacement of the dirtier power plants), it will certainly not help the applicants take drastic steps to implement the terms of the environmental acquis.

Thirdly, the fact is that the environmental acquis mirrors the preferences of relatively developed economies. It is well known that a nation's ambitions in environmental matters are a positive function of its level of economic development. It therefore follows that even without examining the special effects of transition, still greater efforts will be required from the candidate countries, all of which have a per capita income below or at most equivalent to that of Greece and Portugal.

Fourth, the implementation of a specific directive on water, air and waste will be highly costly. These costs are partly related to the relatively poor standards in these areas in the applicant states, even when compared with the 'cohesion-area' members on the eve of their accession in the 1980s. However, almost all these costs involve the 'heavy investments' directives which place extremely heavy burdens on the applicants' ability to finance these changes and to carry out infrastructural planning and regional/interregional cooperation.

During the negotiations this situation resulted in five of the ten EU applicants submitting applications for at least 66 transition periods. As was stated in chapter 4, these applications probably do not reflect the actual problems of adopting, implementing and enforcing the environmental acquis. It is in the applicants' own interests to engage in window-dressing; with the exception of tackling

extreme environmental pollution, there is limited political support in these countries for heavy environmental tasks. The European Commission is therefore allowing for the fact that far more transition periods are likely to be needed in practice.

The policy problem for the current EU member states and the European Commission is therefore mainly that the requests by the applicants for transition periods are often specific, and sometimes refer to a particular sector. These applications require an answer to the question of which specific parts of the environmental acquis can safely be postponed and for how long. A similar evaluation requires detailed cost-benefit analyses on numerous directives, where relevant also broken down by sector. Where these analyses are not available – and this will often be the case – the application of this approach is often due to pressure from specific lobbies in the business world, sensitivities in the candidate countries, and political compromises. So it is no figment of the imagination to say that the determination of transition periods for the environmental acquis will happen not so much as a result of factors such as a strategic cost-benefits analysis, competitiveness, environmental interests and the catch-up growth potential of the applicants, but mainly as result of sectoral interests that could unnecessarily hinder catch-up growth.

According to the WRR, recognition of the special nature of the environmental issues in this round of enlargement and the specific interests and sensitivities involved make it essential to search for realistic strategies based on general principles. These must avoid the risk that too great a fixation on the acquis will lead to a prolonged reduction in the new entrants' catch-up growth. In addition, similar solutions must ensure that the applicants avoid unjustified window-dressing and laxity in other areas of environmental policy. The latter also requires that strong and credible signals are sent out to the applicant countries.

Basing its argument on the above considerations, the WRR favours the use of an environmental core acquis. During the negotiations it had in fact become crystal-clear that adopting and implementing the full acquis was an unrealistic proposition in the short term. This fact makes prioritisation on the basis of general principles inevitable. Section 7.5.2 will show how a meaningful distinction can be drawn between those parts of the environmental acquis which must be regarded as part of the core acquis (and which should therefore be adopted immediately upon accession) and the other parts of the acquis, which must be adopted in due course. For this purpose, not all parts of the acquis that deal with specific sectors are listed here in separate core and non-core categories. This approach would require very detailed cost-benefit analyses going beyond the scope of this report. In the main, general priorities for an environmental core acquis and for a gradual adoption of the residual acquis after accession will be presented. As in chapter 4, a separate section will also deal with the problems of nuclear safety (section 7.5.3).

Table 7.7 Environmental policy: opportunities, threats and solutions

		Environmental policy
BEFORE ACCESSION	Opportunities	1. Very great improvement in environmental performance; reduced burden on environment (ceteris paribus); 2. Significant input of biodiversity; 3. Gradual reduction of unfair competition by enforcing uniform legislation/standards for products; 4. Leeway for joint implementation makes pre-accession environmental tasks easier; 5. EEnlargement of EU encourages direct investments, bringing global environmental standards applied by multinational companies; 6. Growth market for environmental technology, measuring equipment and know-how
	Threats	1. Costly environmental legacy from communist era (waste; pollution of soil, rivers and lakes; extremely dirty energy-sources); 2. Underdeveloped and weak institutions, with too limited powers, too few staff, and too small a budget; 3. Regional and local implementation weak, little expertise; 4. Heavy investment directives (water, air, waste) need massive finance and a long time to construct infrastructure; 5. Integrated environmental policy (e.g. transport, energy, agriculture, etc.) still in its infancy
	Solutions	1. Financial aid for one-off clean-up projects; 2. Financial aid to reduce cross-border environmental damage and risks; 3. Gradually phased-out use of lignite, tar oil, etc., together with planned regional development policy (ISPA); 4. Priority for improving and training regional environmental agencies; support for environmental advisory services, for e.g. 10 years; 5. 5-Year and 10-year protocols for close cooperation between applicants and the Commission re the heavy investments directives, with conditional financing and transition periods – no pure acquis-approach; 6. Gradual promotion of an integrated environmental policy, first the (correct) energy prices, then transport, then agriculture
AFTER ACCESSION	Opportunities	1. Higher priority to environment; 2. More effective administrative and management capacity; 3. Cut in investment restrictions
	Threats	1. Change in actual priorities post-accession; 2. Bureaucratic resistance (e.g. Centre v. Regions); 3. Corruption in infrastructural projects/acquisitions
	Solutions	1. Strict all-round supervision on compliance with EU law; 2. Carrot & stick approach within framework of cooperation protocols, with annual audits; 3. Revise financing and management methods, incl. functional approach of catchment areas; 4. Insist on whistle-blower's legislation to fight corruption and evasion of environmental standards

7.5.2 THE ENVIRONMENTAL CORE ACQUIS

Exactly the same rules apply to the environment acquis test as to the internal market core acquis test, i.e. the applicant member state has to adopt, implement and enforce the core on accession to the EU. In principle, the applicants should adopt as much of the non-core or residual acquis as they can but no priority is given to elements that entail disproportionate costs for the applicant member state. Each applicant of course has its own particular definition of 'disproportionate costs'. This implies that the core or minimum acquis is the same for all candidate countries, but that some countries (which are able to) are seen as capable of adopting more of the non-core acquis at the moment of accession than others.

The environmental policy core acquis test must as far as possible provide a verifiable qualitative evaluation of the applicants' ability and readiness to implement the most essential elements of the environmental acquis. The core acquis in any case incorporates the measures that:

- badly affect the functioning of the internal market;
- relate to cross-border environmental effects that seriously affect the quality of the environment within the EU.

As for the environmental acquis with hardly any or no bearing at all on the internal market, i.e. the non-core acquis, the EU needs to pursue a strategy that, based on principles of gradualness and purposeful support, results in an optimal timeframe for the effective application of the residual acquis, while having the minimum effect on high and lasting catch-up growth. In any case this strategy refers to three very costly elements of the acquis: heavily polluted areas, a number of 'heavy investment directives' and nuclear energy. This residual acquis also includes elements that only deal with the environment, such as most of the water directives, some waste directives, horizontal directives, and flora and fauna directives. The general principles that distinguish the core acquis from the residual acquis are examined in more detail below.

The environmental core acquis

The areas where the functioning of the internal market is *directly* affected in every case refer to the directives in Stage I of Chapter 8 of the 1995 White Paper (also see the internal market core acquis in section 7.2.2).[19] This concerns only a very small part of the full environmental acquis. The WRR considers it necessary that all these directives be seen as part of the environmental core acquis, and they should be adopted and effectively applied by the new entrants on accession to the EU. The reason for this approach is that failure to adopt and implement these directives in full will lead to the serious distortion of competition.

Table 7.8 can be seen as an initial attempt to categorise the effects of the environmental acquis on the internal market. In the absence of systematic, independent cost-benefit analyses one would obviously draw an initial distinction between an environmental acquis that primarily affects goods or services that move across the internal borders of the Union and one that primarily affects inputs of production processes and in that sense is indirect.

Table 7.8 Proposed environmental core acquis

Relationship to internal market	Breakdown of directives
Direct Phase I (highest priority, incl. condition for efficient operation of internal market)	*a) Product-related environmental standards:* 1. Radioactive pollution of foodstuffs 2. Protection against radiation (ionising radiation basic standards directive) 3. Chemicals (marketing, classification and labelling regulations) 4. Risk-management of existing materials 5. Export/import of hazardous chemical substances 6. Genetically Manipulated Organisms 7. Waste management (waste framework-directive incl. sub-directives, PCB and PCT directive, processed oil directive). 8. Noise emissions from building sites and installations. 9. Air pollution – lead content in petrol and sulphur content in certain fuels. 10. Air pollution – VOCs (Volatile Organic Compounds) 11. Ozone-layer-depleting materials (Montreal Treaty)
Indirect*	*b) Legislation on pollution from stationary sources* This legislation leads inter alia to interruptions to competition in cases where inputs during the production of goods and services and PPMs (process and production methods) remain cheaper through transition periods. *EU legislation on industrial plants:* - aquatic environment directive - air pollution of industrial plants directives and sub-directives re large-scale heating plants, municipal waste-incineration plants, hazardous waste-incineration plants, and IPPC directive. - Post-Seveso directive, serious industrial accidents (possibly to 'direct internal market').
	c) Additional air and water pollution legislation - Sulphur dioxide, nitrogen and lead content in air directives - Fishing and shellfish grounds directives - Urban wastewater treatment directive

* Under b) and possibly c) there may be some overlap with part d) of residual acquis (for this see the explanatory text).

Source: amended from the 1995 White Paper 1995 (footnote 2)

The directives that directly relate to the internal market all need to be adopted and implemented on accession. Where the relationship with the internal market is less direct is (the second block in table 7.8), more detailed examination is needed to see if they are to be regarded as part of the core acquis or not. Some of them could be separated from the core acquis on a selective basis. Thus, for reasons of protecting the environment and upholding employment conditions, one could separate from the core acquis certain EU standards relating to production processes that could force large-scale and costly conversions of existing plants. In such a case, the EU regulations should directly apply to new installations. In the case of existing installations, the standards would have to be raised step-by-step during a

Table 7.9 Residual environmental acquis (non-core element)

Relation to internal market	Breakdown of directives
No or hardly any relationship with internal market	*d) Heavy investments directives* (water, air, energy, waste)
	e) Selected water directives Drinking-water quality directive (water purification plants) Swimming-water directive
	f) Nature protection Bird directive Habitat directive CITES (trade in endangered animals)
	g) Horizontal measures EIS Access to environmental information Ecolabel (Possibly to 'indirect internal market')

transition period. This process could avoid both extremely high adjustment costs as well as excessive destruction of capital (SER 1998).

Depending on the sector, this indirect relationship with the free movement of goods and services need not mean that the absolute costs and indeed the share of the cost-price of end products or semi-manufactures are not at least as important as the cost differentials that flow from the acquis in the uppermost block. Some sectors in European industry are extremely concerned that their competitiveness will suffer serious damage if the new entrants are granted too much time gradually to implement some of the indirect measures. This is however an empirical question that must be assessed by independent experts. This expert advice will enable the EU to assess more closely specific requests for extending the deadlines for implementing directives with indirect effects. It is therefore possible that the European Commission will in fact still treat a limited number of these directives as forming part of the core acquis.

Some comments should be made with regard to these more detailed assessments. In the first place, each case must be examined on its own merits. The IPPC directive may serve as an example[20], which is mostly seen as being fairly costly (although apart from public benefits there will also be private benefits from efficiency gains). If the IPPC directive is to be regarded as part of the core acquis, this would then create a curious contradiction: if eight candidate countries (with the exception of Romania and Bulgaria) join in 2004, some of the present member states would have not yet implemented the IPPC directive as derogations are allowed until 2007, whereas the new entrants would have had to implement the directive quickly, incurring heavy costs in the process.

Secondly, it would not necessarily confer a competitive advantage if the strict environmental standards were not to be applied in Central and East Europe. Old polluting power-plants are inefficient in terms of the consumption and production of energy. This often nullifies any advantage. Furthermore, in the case of semi-manufactures and inputs the real issue is increasingly one of achieving high product-quality standards, which are mostly unattainable with the existing production methods in Central and Eastern Europe. The rule that new installations must satisfy the terms of the acquis can therefore also be interpreted as an extra incentive for the new members to carry out the inevitable renewal of capital that is essential for their market share.

A considerable body of empirical research leads one to conclude that the (negative) link between the competitiveness of trading partners (the applicant member states in this case) and strict environmental criteria is generally weak or hard to prove (Clinch 2000: 226 ff.; OECD 1996; Palmer, Oates and Portney 1995; Barker and Koehler 1998). Furthermore, an adverse effect on the business community in the current EU-15 will be even more unlikely, as the European Commission insists on behalf of the current EU-15 that the new entrants at least adopt and implement a substantial part of the environmental acquis dealing with the important cross-border effects (of environmental pollution).

Thirdly, the marked sensitivity of industry in the current EU-15 to environmental measures is sometimes blamed on a *combination* of problems, of which environmental criteria are only one. So the European steel industry is mainly concerned about the emission directives in the 'indirect' block, which is also partly a global problem. However, the sense of unease also extends to a painful legacy of the transition process (see section 3.6), i.e. the almost complete failure to restructure the steel industry in the most important applicant countries. This continuing postponement is based on understandable socio-political and regional reasons, but it does imply that the (stringent) EU code on state aid in the acquis is not applied. This aid might well take the form of payments arrears in indirect taxes and wage taxes, social security contributions, government contracts and debt repayments at state banks.

7.5.3 ADOPTING AND IMPLEMENTING THE RESIDUAL ENVIRONMENTAL ACQUIS

Table 7.9 shows that the residual acquis consists in any case of the heavy investment directives, the horizontal measures and the environmental protection directives.

Heavy investment directives

The costs of adopting and implementing these heavy investment directives for water, air and waste are enormous. Full adoption and implementation within a reasonable timeframe before accession would quite simply be impossible. This problem is certainly recognised at EU level, but there is still no idea as to the best solution. Four aspects of the problem need to be examined as an interrelated whole: those acquis aspects that have less to do with legislation but instead deal

with actual investments in purification plants, incinerators, environmental technology and expensive measuring equipment etc.; the *total investments,* which are huge when compared with the national income of the applicant countries, and the *financing* and efficient technical planning of the investments; and finally the possible *trade-off* with potential catch-up growth.

As for the acquis aspects, the entry of Spain and Portugal into the EU has once again underlined the fact that a legalistic approach to these directives is not only meaningless, but that it will also lead after the accession of the new members to severe pressure on the EU to contribute heavily to the new members' economies via co-financing schemes, such as the Cohesion Fund. The EU could of course decide to grant far more aid to help them implement these directives only after accession. There would however then be a risk that this decision would only be made under heavy political pressure and as part of a big package deal linked to completely different types of decrees. The WRR therefore suggests that the EU already starts looking now, well before the date of accession, for a possible solution in the form of a functional, well-considered medium-term strategy that provides both incentives and controls, i.e. the carrot-and-stick approach**.** Merely to insist on short transition periods (as the European Parliament was still doing in October 2000 with a demand for a five-year period) would appear both meaningless and unenforceable. The unconditional granting of long transition periods does however reduce the incentive for rapid introduction.

Some of the heavy investment directives are in no way related to the internal market, but mainly reflect EU preferences; another part of these directives has only a very marginal relationship to the internal market. The WRR considers that a pure acquis approach is undesirable in this case and, in accordance with the core acquis strategy, argues in favour of establishing 5- and 10-year bilateral protocols between the EU and the respective new entrants, as an integral part of the Accession Agreement. A joint approach would need to be formulated here, in which realistic planning timetables, the relevant net and gross costs, public tendering procedures, the financing (including returns and the matching of the EU contributions) and the sanctions in the event of sustained infringement would need to be looked at as an interrelated whole. By linking the rights and duties of the new member states, there would still be strong incentives after accession to implement the residual acquis in accordance with the agreed timetables, in addition to those short-term obligations that were formally agreed in the accession Treaty. Ten years after the ratification of the accession Treaty the full environmental acquis could then effectively operate within the new member states. It is vitally important that the European Commission supervises the strict implementation of the protocols. This has the advantage that a number of evaluation points are built in (e.g. an annual progress report) both before and after accession, upon which continuing action and aid from the EU would partly depend. By insisting that the Central and East European countries draw up clear plans for adopting and implementing the heavy investment directives, these countries are forced to help co-finance all kinds and all levels of investments (Hager 2000).

The distinction between public and private investments is particularly important in the case of these heavy investments directives. It is wrongly assumed unquestioningly that the investment costs for the water, energy and waste sectors directives put an enormous drain on government capital. This misunderstanding increases the demand for long transition periods. To meet the huge cost of converting and implementing the heavy investment directives, steps must be taken to see that the burden of investment is gradually shifted from the public to the private sector. In the case of waste management companies, privatisation should be considered as an option. For energy and water companies, corporatisation and a market-oriented style of management are crucial for their future success;

Table 7.10 Who invests where?

	EU directive	Public sector	PPP (public/private)	Private sector	Investment
AIR	Fuel quality directives	Monitoring systems		Oil refineries	Process technology Monitoring Systems
AIR	Air quality framework directive Large-scale heating plants directive	Energy facilities	Energy facilities	(Industry)	End-of-pipe and process technology
WATER	Drinking-water directive	Municipal supplies	Facilities		Monitoring systems Collection/Processing plants
WATER	Urban waste-water treatment directive		Ditto & separate private/public installations	Industry	Supply systems Waste-water treatment systems New processes: clean technologies
WATER	Sewage purification directive	Ditto	Factories/plants and subsystems		Sewage sludge transport systems Sewage sludge dewatering systems Sewage sludge incinerators Composting/processing plants
WATER	Discharge of hazardous materials in water directive			Industry	Waste-water treatment systems New processes (cleaner technologies)
WATER	Nitrate directive			Agriculture	Storage facilities for animal waste Waste-treatment systems

Table 7.10 Continued

	EU directive	Public sector	PPP (public/private)	Private sector	Investment
WASTE	Municipal waste incineration directive	Municipalities/ Regions Waste facilities	Incineration plants/ Collection plants		Air-quality control Waste collection/transport Incineration plants
	Hazardous waste incineration directive	Waste facilities, hospitals	Incineration plants/ Collection plants	Industry	Waste collection /transport Air-quality control Incineration plants for hazardous waste
	Waste-dumping directive	Municipalities, Waste facilities	All investments	Industry: waste collection/ transport	Municipal dumps Hazardous waste dumps Closure of old dumps
SOLUBLE SOURCES DIRECTIVE	Integrated Prevention and Control of Pollution	Government, Waste facilities		Industry	Monitor air/water/groundwater New processes (cleaner technologies) Anti-pollution systems
	Soluble resources directive	Government		Industry incl. SME	Air-quality control New processes (cleaner technologies) Anti-air-pollution systems

Source: CEPS (2000).

whether full privatisation will follow afterwards seems less essential. These privatisation and corporatisation programmes will also lead to cost-effective investment decisions. A sharing of management duties by private or independent companies and supervision by the government will also lead to improved performance. In most cases private financing will also be part of a 'mix' in which IFI financing plays a critical role. However, these IFI loans must not be too large: the ability of the governments in Central and Eastern Europe to finance budget deficits by issuing debt paper is limited by the EU's macro-economic accession criteria and the precise ceilings as agreed on in negotiations with the IMF, and which are expressed in percentages of GNP or annually-approved new debts.

Permanent high economic growth is an important motor driving the application of the acquis in these directives. It is true that, if one only looks at the costs, catch-up growth is accompanied by rising energy demands of regional industry. The catch-up growth will however be easily able to absorb these additional (private) costs. As far as public investments are involved, more inefficient

installations will also be replaced (with all their net cost advantages, see earlier), while the tax yields will also grow faster than incomes. Water, the most costly environmental sector, will only need a small level of additional investment while there is continuing growth.

Besides the privatisation or corporatisation of waterworks and gas and electricity companies, private investments by industry (including medium-sized and small businesses) and agricultural enterprises will also ease the government burden with respect to the environment. The private sector could for example provide the investments needed for the successful adoption of the industrial pollution directives and the various water-quality and waste-management directives (see table 7.10).

A shift to private investment and corporatisation does not of course solve everything. Most of the investments needed to implement the heavy investment directives are in fact the responsibility of the municipal authorities. This applies, for instance, to the directives on the quality of drinking-water, the treatment of urban wastewater, sewerage, the storage and incineration of waste, and some of electricity and district heating. This leads to a number of problems. The municipalities therefore not only own the water, waste and energy supplies, but also supervise the running of the economy. Furthermore, they often have limited resources and due to the many years of centralised administrative structures in Central and East Europe, they still lack the experience needed to carry out their new responsibilities effectively.

Horizontal directives

The residual acquis also includes directives that have no relationship with the internal market, but for which it would be undesirable from the environmental viewpoint if they were not to be applied until years after the actual date of accession. In the case of these directives, every effort should be made to keep the transition periods as short as possible. This refers firstly to a number of horizontal directives, such as the 'Public access to information on the environment' directive and the Environment Impact Assessment (EIA) directive. It is true the conversion of these directives into national legislation involves administrative efforts, but this does not always require a great financial effort. These directives are very important for making the public aware of the state of the environment. Good environmental impact assessment is vitally important for the integration of the environment in other sectors, such as agriculture and regional policy. These two sectors receive the lion's share of the EU budget. An efficient integration policy therefore means that this money can also benefit the environment (Bennett interview 2000). Furthermore it is important that the applicant member states adopt the flora and fauna directives to preserve biodiversity in these countries and avoid irreparable damage to the still largely unspoilt natural areas. In the WRR's opinion, as few as possible transition periods should be allowed for these directives. As mentioned in section 4.5, most of the applicants have asked for transition periods for the birds and habitat directives, the most important biodi-

versity directives. After major pressure from the EU, many of the applicants have however meanwhile abandoned their requests for transition periods.

7.5.4 INTEGRATED ENVIRONMENTAL POLICY

The integration of the environment in sectors such as energy, transport, agriculture and regional policy is essential for an efficient and effective environmental policy. Integrated environmental policy should therefore be (gradually) promoted. The WRR considers that it is vitally important for Central and East European countries to raise energy prices to ensure a sustainable energy policy. Although a favourable environmental dividend from these price rises will necessarily be gradual, considerations of competition under the Europe Agreements and later on in the internal market make it both necessary and desirable on environmental grounds for these price rises to have been completed by the time of entry into the EU. This will encourage the use of energy-saving technology and machinery and, even with existing techniques and materials, will lead to a further cut in energy consumption. Furthermore, reduced energy consumption also has the advantage that fewer investments are needed in the energy sector. At the same time, the price rises will generate more money for investment. Finally, higher energy prices bring macro-economic benefits; they provide higher tax takes and thus benefit the budgets of the Central and East European countries (i.e. the direct benefit principle). The applicant member states can thereby do a great deal to help themselves and the environment by charging cost-recovery prices. Against the socio-political sensitivities, there are many (economic) advantages: these are in line with the direct benefit principle, they reduce unfair competition, are better for the environment and fit in better with the environmental acquis.

It would also be appropriate gradually to forbid the use of ultra-dirty fuels (such as lignite and certain tar-oils) or to price them so as to include the full social costs of the external effects (which ensures they are abolished more quickly). This gradual phasing-out of ultra-dirty fuels should be accompanied by a targeted regional development policy. To do this, one could first of all use ISPA (Instrument for Structural Policies for Pre-accession Aid) and after accession the Cohesion Fund. These instruments should be used to promote not only a sustainable energy policy, but a sustainable transport policy as well.[21] The WRR also recommends in section 7.6 that the Cohesion Funds be decoupled from the original EMU objective and be transformed into a single new fund for investment in the environment and infrastructure. Finally, to encourage a durable agricultural sector, the SAPARD (agriculture and rural development measures) pre-accession instrument could first of all be used. After accession an application could be made for money from the structural funds, e.g. the EAGGF's guarantee sector (also see section 7.4).

7.5.5 OTHER ENVIRONMENTAL ASPECTS

In order to attract foreign investment it is very important to clean up the heavily polluted areas in Central and East Europe. Companies which wish to relocate there can not be held responsible for environmental damage caused in the past. The WRR considers that a clear distinction needs to be drawn here between areas urgently needing 'clean-up' projects and those which do not. In densely-populated areas with a high growth-potential or areas suitable for agriculture, it is important that the EU support one-off clean-up projects. This support must be provided via the pre-accession funds, the structural funds and (after accession) the Cohesion Fund and through co-financing by the IFI. In thinly-populated areas and where there is no acute danger this would be a matter for the regional and local authorities. The reason for financial aid lies mainly in the often extremely high costs of these environmental legacies, which hinder any further development.

As far as emissions relate to the greenhouse effect, the WRR emphasises the wide range of choice and the substantial environmental benefits offered by joint implementation in Central and East Europe. Although strictly speaking, it is a global rather than an EU issue jointly to implement measures to cut emissions via investments in the applicant countries, the obvious approach here is to make greater use of this instrument in these countries which will also improve the effectiveness of world climate policy.

7.5.6 NUCLEAR SAFETY

As section 4.5 has described, the EU has adopted the G-7's (political) viewpoint of 1992 to close down the 'first-generation' reactors in Central and Eastern Europe. Permission from the applicants in question to close these plants is a specific condition of entry to the EU. However, this is causing these countries (Lithuania, Bulgaria and Slovakia) serious problems and is meeting a lot of resistance, especially in the first two of these countries. As both Lithuania and Bulgaria have still not given any firm undertakings on closing some of these reactors, further negotiations are likely to be very difficult indeed.

In the WRR's view, the absence of a clear *legal basis* for the EU's demand for closing these reactors must have implications for the Union's stance on this issue. There is no acquis that deals specifically with nuclear safety. The individual member states set their own nuclear safety standards – possibly with some degree of coordination via the International Atomic Energy Agency (IAEA) in Vienna.[22] So the real question is whether the *analytical basis* used by the EU in demanding the closure of these plants is in fact the right one and whether all the reactors in the EU itself attain such high safety standards. In other words, is the Union not guilty of double standards here?

What mainly concerns the WRR is the *disproportionality* of the EU's demand for closure in the short term of the nuclear reactors concerned. In section 4.5 it was

seen that the EU has up until now made disproportionately heavy demands on these countries but in practice has made only very limited funds available for the task. As the EU sets high standards of safety (higher in fact than the IAEA standards), it should also bear in mind the consequences of doing so. In the light of the desired long-term programme of high-level catch-up growth for the CEECs, the EU must formulate a clearly-defined strategy. The costs of the closure programme should largely be paid by the EU, so that catch-up growth (certainly for Lithuania, which has by no means clawed its way back to 1989 income levels) is not unnecessarily held back.

7.6 COHESION POLICY

7.6.1 INTRODUCTION

The fifth round of EU enlargement will see the entry of a number of Central and East European countries with per capita incomes considerably below the EU average. These countries see themselves faced with very extensive development programmes, including the diversification of deprived regions with a lop-sided industrial or agricultural structure, the continuing development of advantages of specific regional location advantages, and the removal of obstacles in growth centres. In addition, they are struggling with very large environmental and infrastructural programmes which will demand enormous levels of investment in the decades ahead.

For the Central and East European countries, participation in the cohesion policy does not in any way mean that they simply receive and spend Community funds. Offset against the very modest financial aid from the pre-accession funds Phare, SAPARD and ISPA, they are faced with unprecedentedly difficult administrative, legal and financial policy initiatives, the main advantages of which will only start to emerge after accession. The pre-accession policy operates as a kind of laboratory for the enhancement of decentralised administration and makes the efficient functioning of administrative and legal institutions and the appropriate use and management of financial aid a precondition for the use of EU structural funds after accession. The principles of subsidiarity, additionality and programming require these countries to take on a large part of the investments in economic catch-up growth themselves. European financing is not a substitute for investment at national and regional level. These are only given as part of a coherent, more comprehensive 'own' development and investment strategy of the beneficiary member states, accompanied by the prolonged use of their own financial resources until after the end of the programming period.

This does not detract from the fact that enlargement is not infrequently portrayed in public opinion as a risky and prohibitively expensive undertaking that might even damage the foundations and legitimacy of the EU's cohesion policy. Some people think that the redistribution of resources and priorities for the purpose of enlargement could drive a wedge between the mutual financial solidarity

of the member states and undermine the long-term political effectiveness of the Union. The prospect that almost all the regions of the new member states still qualify for Community aid and that the current EU-15 will need to release financial resources for this purpose for some time has accordingly inflamed the political tensions over the budgetary implications of enlargement (see section 7.7 on the EU budget). It is also feared that the financial resources will end up in inefficient programmes supervised by weak legal and administrative regimes in the CEECs.

In this section possible solutions to this problem will be put forward based on general principles for granting cohesion aid that tie in with the original objectives of cohesion policy. The WRR has elaborated these possible solutions in concrete reform proposals which in principle enable the future EU members to be included after accession in EU cohesion policy and help them in their process of catch-up growth, without placing any extra financial claims on the EU budget.

7.6.2 GENERAL PRINCIPLES FOR GRANTING COHESION AID

In chapter 4 it was established that the European Union has a long tradition whereby the entry of new members is often accompanied by a battle over the allocation of financial aid and a readjustment of the criteria determining how the funds are allocated. Cohesion fund resources are quite often used as a short-term lubricant temporarily to offset the direct financial effects of the enlargement-related widening of economic and social diversity for the net recipients among the current EU-15. These resources do not however solve the causes of this diversity. In the long term these 'sweeteners' are moreover conducive to free riding, which again could adversely affect the good relations and solidarity between the member states.

The WRR therefore considers that the solution to the political redistribution issue thrown up by enlargement should primarily be found 'at source' by reforming the cohesion policy on the basis of a number of simple general basic principles. These principles tie in with the original cohesion policy objectives and principles as formulated in the EU Treaties (see section 4.4.). The first general principle is that the essence of the EU's cohesion policy is to help those member states which lag behind the average level of prosperity in the EU to improve their social and economic capacity to benefit from the internal market. On this basis only member states with a per capita income below the EU average should qualify for aid under the cohesion policy. Aid to regions of rich countries, which is still part of the EU budget, will therefore also need to be phased out within the next few years. For the rich EU members, the Netherlands included, this principle means they will have to be barred from receiving any future aid from the EU Structural Funds.

This premise is in keeping with a strict subsidiarity test. Rich countries with a proven ability to benefit from the European internal market do not, after all, need a Community policy or Community resources. Any future regional policy mea-

Table 7.11 Cohesion policy: opportunities, threats and solutions

		Cohesion policy
BEFORE ACCESSION	Opportunities	For EU: 1. Pre-accession support via cohesion policy forces applicant member states to carry out a timely decentralisation of institutions and policy; 2. Essential investments in environmental, physical, and knowledge-based infrastructure, which also facilitate foreign direct investment; ; For CEE: 1. Pre-accession support (Phare, ISPA, SAPARD) for structural improvements, aid for retraining and improvements to infrastructure and environment; 2. Improvements to (decentralised) legal and administrative capacity; 3. Investments in institutional framework for programming, assessment and (financial) control; 4. Improvements to local companies by increased indirect demand for local suppliers; 5. Improved social basis for accession;
	Threats	For EU: 1. Growing tensions inside EU over shift of cohesion-policy resources and net budgetary positions; 2. Poor, non-functional programmes and corruption; ; For CEE: 1. Insufficient administrative and legal capacity; 2. Difficulties in interdepartmental and vertical coordination with regional and local governments; 3. Limited availability of statistics; 4. Initial unfamiliarity with absorption capacity;
	Solutions	For EU: 1. Use of general basic principle that rich states (with incomes above the EU average) receive no support. 2. Enforcement of the full Agenda 2000 financial framework (until 2006), but reclassification of items; 3. Conversion of the Cohesion Funds (decouple from EMU target) into a single fund for investing in the environment and the infrastructure; 4. Improved pre-accession support; 5. Development of good central and regional executive agencies; 6. Unconditional redistribution of resources for 5 years via smaller contributions from CEE states to EU budget.
AFTER ACCESSION	Opportunities	For CEE: 1. Higher catch-up growth through better use of existing economic growth potential and build-up of physical and human capital; 2. Better access to EIB loans; 3. Potentially improved financial stability by relieving deficits on current account, mainly through encouraging local businesses; 4. Improved regional policy capacity strengthens local policy competition and attractiveness for FDI; For EU: 1. Dynamic advantages of regions with catch-up growth; 2. Improved access to outlying regions;
	Threats	1. Creation of new 'Mezzogiornos'; 2. Crowding out of private investment; 3. New budgetary conflicts over 'just return' and share of burdens; 4. Fragmentation of objectives, policy-instruments and resources; 5. Initially still limited absorption-capacity and few opportunities for co-financing; 6. Creation of vested interests from constant supply of subsidies;
	Solutions	1. Restructuring of the budget (new Own Resources decree) at IGC in 2004; 2. Post-2006: more use of Structural and Cohesion Funds for CEE to fit into new financial framework (2007-2013); 3. Co-financing requirements eased initially for CEE states; 4. Complementarity of public and private investment; 5. Prevention of inconsistencies between other national and community policies affecting EU Cohesion policy objectives ; 6. Independent research into ESF's rationale, effectiveness and efficiency.

sures could be paid for out of their own national budgets. This will also allow them to carry out a regional policy wholly suited to their own needs, objectives, allocation criteria and policy instruments. This also fits in with the principle of concentration, which requires EU resources to be used where they are most needed and most effective.[23] Finally, this principle also emphasizes that every package of aid from the Structural and Cohesion Funds is by definition temporary and can never be regarded as an acquired right. These should be seen more as extra back-up to enable the deprived regions to make better use of their own economic growth-potential and the opportunities for development as offered by the EU's internal market and to allow the poorer countries and their deprived regions the chance to achieve a faster rate of catch-up growth.

On the basis of this general principle, the 'cohesion countries' in principle qualify by virtue of their low average per capita income for regional aid. Which regions inside these countries should qualify for aid and how much aid they should receive is ultimately a political decision**.** In the WRR's view, the EU should abide by the current criterion for objective 1 of the cohesion policy, namely that aid is only given to those regions inside the cohesion countries with an average per capita GNP of less than 75 percent of the EU average. In addition there are certain preconditions determining the *extent* of aid granted to each country: the poorer the country, the more aid it will receive; the nearer its average income is to the EU average, the less aid it will receive. The EU therefore also needs to give direct aid to the poor member states to improve their (and their regions') absorption capacity, so that the relatively large amounts of aid sent to these most needy regions can at the same time be used as efficiently and appropriately as possible.

The second general principle is that greater emphasis should be placed on 'functional concentration'. There should be an end to the current tendency in EU cohesion policy whereby, for reasons of a 'juste retour ', the scope of some policy instruments is continually watered down, i.e. not just in terms of their geographical scope but also their substance.[24] At issue is a dysfunctional principle, that ignores the real objective of integration and is conducive to the fact that budget flows are no longer linked to well-considered, justified policy requirements. The European Commission has again stated its opposition to this in the recently published Second Cohesion Report – in which regard it deserves according to the WRR to be firmly supported.[25] Typical examples of watering down were the EFRO community transfers, which in the past were also used in the area of health care. Instead of this, the vast bulk of the resources should be spent inside the poorer regions as well in those places and in those sectors where the problems and the returns are biggest.

Finally, the third general principle should be that the use of cohesion policy funds must be more strictly assessed for consistency with the objectives and instruments of the recipient states' *national* policies and with wider EU policy. Experience indicates that the input of structural funds in deprived regions with deep-seated unemployment does little to help those regions achieve structural

catch-up growth and reduce unemployment, if at the same time the national or regional governments and the social partners keep in place retain all kinds of different obstacles that impede the flexibility of the labour market (Hurst, Thisse and Vanhoudt 2000: 13). In other words: the Commission and the member states must ensure that their limited cohesion funds do not lose effectiveness and efficiency as a result of conflicts of policy.

7.6.3 PROPOSED REFORMS

The general basic principles noted above lead to the following concrete proposals for adjusting the current range of policy instruments with a view to the next round of enlargement. Firstly, the Dutch government must try to achieve a restructuring of the EU budget before the next IGC in 2004. Although under normal circumstances (i.e. without greatly reduced growth or sharp falls in agricultural prices, etc.) the expenditure ceilings approved in Berlin could be maintained, within these ceilings the maximum amounts of financial aid should be reallocated in a way that respects the principle that rich countries (i.e. those whose regional per capita incomes exceed the EU average) abandon their claims for EU aid for their own regional development.

In the EU-15's present situation only Spain, Portugal and Greece would in these circumstances still receive temporary aid from the Structural and Cohesion Funds, until they achieve average EU income levels via catch-up growth. Thus the rich member states, whose per capita GNP exceeds the EU average, could no longer claim Community cohesion aid for their deprived regions, even if these regions had a per capita income of less than 75 percent of the EU average.

The Cohesion Fund for investing in infrastructure and improving the environment has a different structure, objectives and method of allocating funds from the Structural Funds. Its financial resources are subject to a fixed distribution code for each country and can only be used for the above two objectives in accordance with the terms of the Treaties; expenditure is specifically linked to the precondition that the recipient countries (with a per capita GNP of less than 90% of the EU average) must implement macro-economic convergence programmes with a view to joining the single currency. The logical effect of this substantive link with the EMU monetary project is that now the cohesion countries are all fully paid-up members of Euroland, the Cohesion Fund in its present form has lost its *raison d'être*.[26] This is also the reason why the European Commission in the Second Cohesion Report raises the future of the Cohesion Funds for the post-2006 period and suggests pooling all the EU infrastructural and environmental funds from the Structural and Cohesion Funds into a single reformed Cohesion Fund (European Commission 2001e). The WRR feels that if the Cohesion Fund continues to exist after 2006, the substantive link with monetary union – that was originally weakly constructed anyway – should at any rate be abandoned. The allocation of a similar 'new style' Cohesion Fund should then be linked to a set of strict, objective criteria that agree as far as possible with the proposed gen-

eral basic principles for the EU cohesion policy as cited above. These criteria should also be carefully drafted in such a way that they correspond with the Structural Funds allocation criteria.

7.7 THE EU BUDGET

7.7.1 INTRODUCTION

In the development of the European Community the budget has always been firmly in the public eye. One of the reasons for this public interest is that budgetary issues are inextricably bound up with debates on the role and powers of the EU institutions, the balance between Community and national policy levels and the future course of development of European integration. Another reason is that financial budget streams to the individual member states, other than, for example, the far more complex and less transparent mutual traffic in rules and information, also immediately attract the attention of the relative 'outsiders' in the EU's policy process. In practice it is quite easy to work out who the EU budget's 'winners' or net beneficiaries and 'losers' or net contributors are (Laffan and Shackleton 2000: 212). Partly as a result, the public debate on Europe still tends to end up arguing more about money, cost and net transfers and receipts without actually discovering how it all relates to the actual content of the policy itself.

With good reason it also happens time and again that, as soon as the problem of the EU budget appears on the EU agenda, this issue proves counterproductive. However much periodic debates on budgetary matters may be required in order to reach broad-based, sustainable political compromises, they often cause a considerable degree of damage in the process. These debates develop their own, highly politicised ('zero-sum' type) dynamic, which can not only adversely affect the climate of mutual cooperation between the member states, but can even contribute to dysfunctional policy. The fact that EU cooperation essentially involves policy and this policy is largely based not on money but on regulations soon recedes into the background.

In a policy recommendation on the enlargement to include the Central and East European countries, the WRR also needs to examine the issue of the Community budget. This subject is closely tied in with the modalities of EU accession and the EU's ability to function efficiently in the longer term. This section therefore sets out in broad outline (and without any detailed cost calculations) the financial consequences of the WRR's policy recommendations in the previous sections of this report for EU revenues and expenditure. Here a distinction will be made between:

- the period up to and including 2006.
  The financial perspectives have already been established for these years. The WRR's basic premise is that the agreed budget ceiling should be respected, including the annual sum of about three billion euros allocated to pre-accession aid up to and including 2006. It stresses the implications of the CAP and

cohesion policy measures as proposed in earlier sections of this report.
- the period 2007-2013.
  For this period the situation is that some or all of the Central and East European countries will be members of the EU and will therefore have a say in deciding the EU budget. However, it is already clear at this stage that the current EU-15 are planning to draft a number of crucial decisions on this later financial framework before these new members have actually joined the Union. The WRR will be presenting a number of essential policy principles in preparation for the coming debate on this new financial package.

As already noted by way of introduction, the public debate on the budget in the political arena and the media is often conducted in a biased and highly distorted way. The problems of the Community budget are magnified far beyond their actual significance for European integration. Before examining the concrete implications of the WRR's recommendations for the budget, this section therefore provides a short outline of the budget's actual role in the integration process. Here we shall also be discussing some frequent misconceptions about the EU budget and fundamental imbalances in the present budgetary system.

7.7.2 ROLE AND SIGNIFICANCE OF THE COMMUNITY BUDGET

The current EU budget and the Dutch contribution to it are in several respects a fairly marginal part of the process of European integration. The size and importance of the EU's resources can for example in no way be compared with those of the national budgets of the member states. As already noted above, the reality of European integration in fact lies in joint consultations on regulation and the liberalisation of joint or coordinated policy. Many areas of EU policy are accordingly not or only barely funded by the EU budget. Nor are they funded by national budgets, despite the fact that the policy is mainly implemented at decentralised level. The effect of this is that in those specific cases where EU policy – as an exception to the rule – does in fact cost EU money, this very soon accounts for a large share of the total EU budget. Thus in the case of the CAP and cohesion policy, the joint share accounts for about 85 percent of the EU budget. If the problems of cohesion were to disappear as a result of dramatic catch-up growth by the poorer member states, and the CAP finally had just minor price interventions and no more deficiency payments at EU level, the EU budget would shrink enormously as a result. The CAP would however still swallow up a large share of the remaining budget. Pronouncements that the CAP and the cohesion policy account for a 'large' share of the budget therefore have little meaning in themselves. In other words, there is certainly no clear link – and mostly no link at all – between the importance the member states attach to a policy objective and the size of the EU budget item in question (SER 1998: 44).

From this it also follows that the prospect of a larger or smaller EU budget is necessarily either a good thing or a bad thing. Nor should the assessment of the EU budget be separated from the desirability, the objective and the choice of policy

instruments. In other words: member states will always first have to ask themselves if there are substantive grounds that justify action being taken Community rather than national. They will then have to consider the best method and the most suitable instruments for implementing the policy. That assessment will also need to involve the use of financial instruments (whether or not linked to budgetary ceilings). The fact that these observations, however trivial they may seem to most policy-makers, tended to be lost to sight during the heat of the EU budget negotiations, was for example evident at the Berlin Summit where, particularly because of the short-term aim of reducing the EU budget, it was decided to continue with the existing and ineffective dairy policy. The previously announced reform of the sugar regime was again postponed at the same Summit. A decided contributory factor here was the fact that the existing sugar regime has hardly any effect at all on the EU budget. A reform however would do so, as the member states' 'own' levies in the sugar sector (which have no effect on the budget) and the very high import tariffs (which are part of the invisible costs of protection) would have to be replaced by a system of deficiency payments. In short, both a rise and a fall in the EU budget could both be desirable from the viewpoint of policy effectiveness.

Text-box 7.1 Basic principles of the EU budget

Financial perspectives

From 1988 onwards the Community budget is determined within the framework of medium-term financial perspectives, that are jointly approved by the Council, the European Parliament and the Commission. These prospects form the framework of Community expenditure over that period and are an indication of the maximum level and composition of likely Community expenditure. They are annually adjusted by the Commission to take account of prices and trends in the EU's GNP. It should however be noted that the financial perspectives do not correspond with a multi-year budget, as the annual budget procedure is still indispensable for establishing the actual level of expenditure and the distribution of the various items in the budget. Until now three interinstitutional accords have been concluded, in 1988, 1992 and 1999:

- financial perspectives 1988-1992 (Delors I package),
- financial perspectives 1993-1999 (Delors II package),
- financial perspectives 2000-2006.

The financial perspectives 2000-2006 are part of a new interinstitutional accord that is the main part of the Agenda 2000 financial package. This accord, which was concluded at the Berlin Summit Meeting conference in March 1999, must enable the EU to expand and strengthen its policy with due observance of a stringent financial framework.

Classification of expenditure and distribution of powers

The Commission submits a budget proposal to the Council which, together with the European Parliament, forms the budgetary authority. The nature of the expenditure (i.e. the distinction between compulsory and non-compulsory expenditure) determines the distribution of powers between these two institutions. This distinction between different types of expenditure is now totally outdated, but has still not been changed. 'Compulsory' expenditure refers to EU expenditure, of which the governing principles and the actual amounts are as defined by the Treaties,

derivative legislation, agreements, international treaties or private-law contracts. 'Non-compulsory' expenditure is expenditure where the budgetary authority is free to determine the credits itself. Only non-compulsory expenditure is ultimately decided by the European Parliament.
As agricultural expenditure is regarded as compulsory expenditure, 45 percent of the EU budget escapes the control of the EU Parliament; the interesting question arises here that if rural policy is financed at EU level, this must also all be counted as compulsory expenditure. If this not the case the EP would then have its foot in the door. Despite this classification of expenditure and the subsequent distribution of powers, it must be stressed that the EP has the ultimate power to decide or amend the entire budget.

Principles

The EU budget is based on various principles, including:

- the unity principle (all revenues and expenditure are incorporated in a single budget document);
- the annual periodicity principle (the budgetary activities are linked to a budget-year);
- the equilibrium principle (expenditure must not exceed revenues).

Composition of the budget

The EU does not itself have the right at present to levy taxes; the EU's so-called 'own resources' (customs duties, agricultural levies, taxes on sugar and glucose) are a mish-mash of regulations that have grown over the years which, in strictly formal terms, oblige the member states 'to levy taxes on behalf of the EU', as so defined, but in fact are regarded as contributions by these same member states. Besides the traditional own resources, the budget consists of VAT resources and GNP resources. The latest amendment to the decree relating to 'own resources' has made the system more balanced by bringing the member states' contributions more into line with their share of GNP. The importance of the VAT resources, whose yield has little to do with a country's actual economic strength, has declined. The proportion of the budget that is financed out of own resources is also getting smaller.

Expenditure

Expenditure is divided into six main categories:

- Common Agricultural Policy, with expenditure limited by the agriculture guideline;
- structural measures;
- other internal policies;
- external policy;
- administrative expenditure;
- reserves (monetary reserve, reserve for emergency aid and reserve for guarantees on loans).

The ceiling for own resources for the period 2000-2006 is set at 1.27 percent of the EU's GNP. The ceiling for agricultural expenditure is set in euros instead of percentages. It is based on the 1999 reference expenditure, plus indexation, and also less than proportionally (i.e. 0.74%) for the growth in EU GNP. In addition, the actual ceilings for agriculture expenditure as set until 2006 are considerably lower than this general agriculture ceiling.
The ceiling for cohesion expenditure is set at 4 percent of the recipient country's GNP and is of course limited by the ceilings in the financial perspectives until 2006 (see below).

Table 7.12 Financial framework for the period 2000-2006

million euros – 1999 prices – Appropriations for commitments	2000	2001	2002	2003	2004	2005	2006
1. Agriculture	**40920**	**42800**	**43900**	**43770**	**42760**	**41930**	**41660**
CAP-expenditure (without rural development)	36620	38480	39570	39430	38410	37570	37290
Rural development and accompanying measures	4300	4320	4330	4340	4350	4360	4370
2. Structural measures	**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. Internal policy	**5900**	**5950**	**6000**	**6050**	**6100**	**6150**	**6200**
4. External policy	**4550**	**4560**	**4570**	**4580**	**4590**	**4600**	**4610**
5. Administration	**4560**	**4600**	**4700**	**4800**	**4900**	**5000**	**5100**
6. Reserves	**900**	**900**	**650**	**400**	**400**	**400**	**400**
Monetary reserve	500	500	250	0	0	0	0
Emergency-aid reserve	200	200	200	200	200	200	200
Reserve for guarantees	200	200	200	200	200	200	200
7. Pre-accession support	**3.120**	**3.120**	**3.120**	**3.120**	**3.120**	**3.120**	**3.120**
Agriculture	520	520	520	520	520	520	520
Pre-accession instrument for structural policy (ISPA)*	1.040	1.040	1.040	1.040	1.040	1.040	1.040
PHARE (candidate countries)	1.560	1.560	1.560	1.560	1.560	1.560	1.560
8. Enlargement			**6.450**	**9.030**	**11.610**	**14.200**	**16.780**
Agriculture			1.600	2.030	2.450	2.930	3.400
Structural measures			3.750	5.830	7.920	10.000	12.080
Internal policy			730	760	790	820	850
Administration			370	410	450	450	450
Total appropriations for commitments	**91995**	**93385**	**100255**	**102035**	**103075**	**104995**	**107040**
Total appropriations for commitments	**89590**	**91070**	**98270**	**101450**	**100610**	**101350**	**103530**
of which: enlargement			**4.140**	**6.710**	**8.890**	**11.440**	**14.210**
Credits for payments as % af GNP	1.13%	1.12%	1.14%	1.15%	1.11%	1.09%	1.09%
Margin	0.14%	0.15%	0.13%	0.12%	0.16%	0.18%	0.18%
Ceiling for own resources	1.27%	1.27%	1.27%	1.27%	1.27%	1.27%	1.27%

* Financial allocation criteria for ISPA: 1. Total costs per project maximum 5 million euros; 2. Balanced between environmental and transport measures; 3. Possibility of linking financial and technical aid

measures to project implementation; 4. Community financing up to in principle 75 percent of total (government) expenditure by public of similar agencies.

Source: European Commission, European Council of Berlin, 24 and 25 March 1999. Conclusions of the Chairmanship, Volume III: Table B: Financial framework EU-21; European Commission, DG Regions, ISPA. Mandate programming and implementation. State of play, 27 November 2000.

Against the background of these considerations the WRR formulated some general principles earlier in this chapter which serve as the basis of its recommendations on cohesion policy and the Common Agricultural Policy. These may be summarised as follows:

1 within the framework of EU cohesion policy 'rich' EU member states should provide the financial resources for the 'poor' EU member states;
2 although the level of cohesion aid to poorer member states and their regions will always remain a political decision, the basic precondition should still apply, namely: the 'poorer' the member state, the more aid it receives; the nearer it gets to the average EU income, the less aid it gets;
3 a meaningful objective of cohesion policy would be to improve the member state's ability to absorb aid from the structural and the cohesion funds;
4 the budgetary surplus that is created by a further reform of the CAP (with degressive payments) need not be automatically channelled into a common rural policy. Based on the subsidiarity principle, the 'green tasks' of rural policy must largely be implemented at national level.

The budgetary effects of the WRR's proposals in the areas of the CAP and cohesion policy are examined below primarily on the basis of their possible impact on incomes and expenditure for the period up to and including 2006. This has the additional advantage that the Dutch contribution will only be debated if the Financial Perspectives were unexpectedly increased in the meantime.[27] For reasons of clarity a distinction will be drawn between proposals that increase expenditure and proposals that reduce expenditure, without reference to the actual sums involved; the concern here is with the qualitative changes. A framework for the post-2006 period follows next.

7.7.3 THE COMMUNITY BUDGET TO 2006

Proposals for raising expenditure

For the planned Mid-Term Review of 2002 the WRR has proposed additional price reforms for a range of products including cereals and beef; it has also proposed abolishing quotas in combination with radical price-reforms and liberalised tariffs in the dairy and sugar sectors. All these proposals will initially cost the EU money, as these will have be to offset with temporary compensatory payments. Based on an optimistic scenario in which this reform would start in 2003 and depending on how quickly the surcharges are abolished, as well as the starting date of the abolition programme (e.g. in 2004), the cost-saving effects of these

measures on the EU budget would only start to take effect some years later. In the period up to and including 2006 this effect will therefore increase expenditure instead. This applies all the more because the Central and East European countries on joining the EU (e.g. in 2005) will, like the current EU-15 members, also be eligible for the tapering compensatory payments. The new entrants will also be eligible from that point on for aid from the Structural and Cohesion Funds. These proposals therefore mean yet another burden for the Financial perspectives until 2006.

Proposals for reducing expenditure

Although the WRR proposals for agriculture do contain certain elements that temporarily increase expenditure, in one area there is clear evidence of a price-cutting effect, namely the extent to which compensatory payments are paid at national rather than EU level. If this should already happen in 2003 to some considerable degree and the EU payments are degressive after one year of payment, this item of the EU budget may well be reduced towards the year 2007, depending on the precise arrangements in practice.

The cohesion policy recommendation that the 'rich' in future would only pay to the 'poor' would in unchanged circumstances lead to a very sharp drop in total EFRD expenditure (a drop of 40% is a realistic figure). This could be further accentuated if the expenditure for the restructuring fund for objective 2 of the Cohesion Policy is largely shifted to the national level. Here as well, however, the impact on the budget partly depends on the actual timing at which such adjustments could come into effect.

Consequences for national budgets

The financial 'renationalisation' of certain items of expenditure within EU frameworks leads primarily to increased national expenditure, unless the member states themselves decide that this 'new' expenditure must not exceed the net payments they previously paid to the EU for these purposes (thus becoming net replacement expenditure). In the WRR's proposals these national efforts are therefore concerned with temporary, degressive compensatory payments, regional aid to 'own' regions for the richer countries and the (largest) share of the 'green', land-based rural projects. Secondly, the gross payments could fall up to and including 2006, as those particular WRR proposals that would increase expenditure would almost certainly not breach the budget ceilings that were agreed at Berlin (see below). On the other hand, the richer EU countries will also see a fall in income due to the 'loss' of regional (adjustment) aid. This fall will apply all the more to those member states for which the deficiency payments (in the agriculture and beef sectors) were already important during the Berlin negotiations. On this point the Netherlands can almost certainly expect to see a net *drop* in payments [28]. More important still is that the existing policy will be more effectively underpinned and will follow by the principle of subsidiarity.

Income side of the EU budget

The EU's revenues are more or less fixed until 2007. Changes could nevertheless take place on two scores. Firstly, in accordance with the WRR's proposals, the first group of new entrants would be expected to start contributing to EU revenues only gradually (in rising shares of 20%). Assuming they join in 2005, for example, their contributions would then only reach the 100% mark in 2010. The financial implications of this proposal are that there will hardly be any rise in the income side of the EU up to and including 2006. Secondly, the current EU-15 economies could grow faster than predicted at the Berlin conference, which would then produce higher VAT receipts and higher GNP-linked payments to the EU budget. At present, this is by no means inconceivable. On balance the effects of both these changes could mean that the EU ceiling on incomes might be somewhat higher than the income figures as predicted at Berlin.[29]

7.7.4 PROPOSALS FOR THE COMMUNITY BUDGET AFTER 2006

The proposals to make the *compensatory payments* 'degressive' after the first year of application could mean that the expenditure on this item would initially need to rise after 2006. In such a scenario the payments would in fact all remain at EU level. In contrast, the WRR recommends that these payments be partly determined and paid at national level. Even if the latter suggestion were not adopted or were postponed to a later date, it should be emphasized that degressivity will rapidly help reduce budgetary expenditure. For *the Cohesion and Structural Funds*, the application of the WRR's proposals for 'cleansing' ERDF expenditure of any financial flows from 'rich to rich' and of adjustment aid to regions in rich member states (and to make these national under certain conditions) would mean that the outlay on these two large items of expenditure would fall by as much as nearly half in the period up to and including 2006. As these transfers of funds are largely covered by the principle of 'just return', they will not have any serious impact on the net positions of the individual member states.[30] When financing the four 'green tasks' in what is now called 'rural policy', the expenditure from 2006 onwards must also come mainly out of the national budgets. As this is currently only about 10 percent of CAP expenditure, these proposals will have hardly any effect on the EU budget. In contrast to this, the new member states will gradually, but modestly, start contributing more to the income side of the EU budget. In view of their minor economic status, this will probably amount to about 5 to 6 billion euros around the year 2010 (including Romania and Bulgaria).

7.7.5 OVERVIEW AND CONCLUSION

In the previously submitted policy recommendations summarised in the table immediately below, the WRR has confined itself to analysing the desirability of rapid and fairly radical reforms and their budgetary implications. Above all, good policy starts with good policy options and subsidiarity. It is clear the proposals on the timing and degree of degressivity of compensatory payments, and the timing

and modalities of cohesion policy reforms, are particularly sensitive political issues. However the above also clearly shows that the EU budget could also shrink dramatically after accession depending on the method and timing of implementation. That realisation could remove many political dilemmas from the enlargement negotiations and a great deal of anxiety about the EU's long-term effectiveness.

Table 7.13 Impact of the WRR's reform proposals on the Community and national budgets (+ = rise; - = drop)*

	Impact until 2006	Impact after 2006
Impact on *Community expenditure*:		
• price reforms: cereals, beef	+ (via compensatory payments)	- (after 2007)
	- (market regul. expenditure)	-
• Abolition of quotas, price reforms and liberalisation of dairy and sugar tarifs	+ (via compensatory payments)	
	- (market regul. expenditure)	-
• Cohesion policy: 'the rich only pay for the poor'	- (ERDF drops sharply)	+ (for CEE)
Impact on *Community revenues*:		
• Phasing in of CEE-contributions to EU	(marginal)	+ (at 100 % in 2010)
Impact on *national expenditure*:**		
• Temporary compensatory payments	+	?
• Regional aid	+	+
• Rural aid	+	+
• Gross contributions to EU	- (EU-15)	+ (for CEE)
Impact on *national incomes*:		
• Gross revenues from EU	- (for richer member states)	+ (for CEE)

* potential effects depend on the date the reforms are implemented and on the modalities of these reforms.

** it is assumed that the compensatory payments, regional policy in rich EU states and rural aid will, as per the WRR's proposals, be largely financed at national level.

Based on the WRR's proposals, policy-makers at national and European level could devise various scenarios for both the period up to and including 2006 and the subsequent period. The WRR will consider whether it would be desirable to provide a more detailed contribution at a later stage in the form of such scenarios. In no way would such a contribution be allowed to detract from the priority of drawing up good policies and paying for them at the appropriate level.

The WRR proposals will in any case not lead to any overstepping of the (Berlin) Financial Perspectives, even if unfortunately there were to be no shift before 2007 towards a system of national payments (of compensatory payments, regional aid inside the rich EU countries, 'green tasks' and rural aid) before 2007.[31] In this period the government can therefore concentrate on the substantive merits of the policy: the WRR's enlargement modalities will not have any effect on the anticipated Dutch contribution to the EU budget.

7.8 COOPERATION IN THE FIELD OF JUSTICE AND HOME AFFAIRS (JHA)

7.8.1 INTRODUCTION

The Central and East European states' ability to properly implement the JHA acquis will greatly determine the ultimate success of their inclusion in the EU's Area of Freedom, Security and Justice (AFSJ). Tasks such as guarding and patrolling national borders, police and judicial cooperation are primarily the responsibility of effective organisations that operate under the rule of law. Here it is vitally important to build a climate of mutual trust and confidence between the official bodies in the current EU-15 and those in the new member states.

Chapters 3 and 4 showed that here the candidate countries must struggle with the legacy of their Communist past: the absence of an independent, reliable and efficient judiciary, and the lack of modern administrative, police and border-control systems that are trusted by their own citizens and the EU-15 alike. In their struggle to put these legacies behind them by attracting new personnel, establishing special education and training schemes and buying modern equipment, the applicants are now faced with financial barriers. Organisational deficits and implementation problems now have less and less to do with the communist legacy and transformation problems and more and more with the impact (financial and otherwise) of their economic backwardness. While the EU's accession criteria on JHA clearly enhance the processes of political, legal and administrative change, a degree of tension exists on certain issues between the short-term obligation to adopt and implement the JHA acquis and the challenge to achieve catch-up growth.
The guarding of external borders, in particular, demands costly investments. When evaluating possible solutions in JHA, the effects of those solutions on the candidate countries therefore also deserve consideration. This also applies to the systemic consequences for the prosperity, peace and security of Europe as a whole. Candidate countries and third countries are concerned that the adoption of the Schengen acquis by the new entrants will create new divisions in Europe.

Chapter 4 has described how accession to JHA is hampered by the rapid developments in this area since the Amsterdam Treaty and the relatively late start of the preparations for accession to the EU. With regard to the various parts of the JHA acquis, it is noted as part of the evaluation of the preparations for EU accession that although relatively few problems are to be expected with respect to the adoption of the JHA acquis, the applicants' implementation capacity will still be severely deficient in 2004. Awareness of the facts and a sense of realism are therefore highly important when evaluating possible solutions for cooperation in JHA matters.

Table 7.14 Cooperation in Justice and Home Affairs (JHA): opportunities, threats and solutions

		Justice and Home Affairs
BEFORE ACCESSION	Opportunities	*For EU:* 1. Improve internal security in EU via preparations of CEE states to join EU, forms of association and pre-accession agreements in the field of JHA For CEE: 1. Improve internal security via accession preparations; 2. Promote the rule of law and the role of a functioning, independent judiciary within framework of accession preparations; 3. Bring asylum policy into line with international and EU standards, which may in time lead to an improvement in the position of refugees;
	Threats	*For CEE:* 1. Introduction of 'hard' external borders and restrictive visa policy disrupts cross-border economic and social relations and increases political tensions with neighbouring states; 2. Heavy financial burden of investments in external border controls, particularly in cases where temporary borders seem less sensible; 3. Flood of illegal immigrants and asylum-seekers from third countries, problems of capacity, lack of experience in dealing with large numbers of asylum-seekers; 4. Insufficient resources to invest in JHA organisations, structures and equipment.
	Solutions	1. Formulate a JHA core acquis; 2. Streamline and step up aid and evaluate progress made on core acquis; 3. Participation of CEE states in specific JHA programmes; 4. Association of candidate countries with EU structures pre-accession; 5. Pre-accession pacts between CEE and EU, similar to the pre-accession pact on organised crime (1998); 5. Establish special training institutes in sensitive areas (European Police Academy, European education for border guards).
AFTER ACCESSION	Opportunities	*For EU:* 1. Enlargement of the area of freedom, security and justice. ; For CEE: 1. Participation in all or parts of the area of freedom, security and justice.
	Threats	*For EU:* 1. Poor organisation and serious shortages with regard to guarding of external borders, migration (incl. prevention of illegal immigration), asylum policy, cooperation between police and judicial authorities within the CEE states all threaten EU's internal security, if controls at borders of applicant countries are abolished. *For CEE:* 1. Continuing heavy responsibilities by acting as 'buffer' for the EU in guarding external borders, issuing visas and receiving and processing asylum applications from refugees who were sent back from EU or were attracted by EU-membership of the CEE state in question.
	Solutions	1. Identify core acquis and prioritise implementation tasks on the basis of same; 2. Maintain checks on persons at internal borders post-accession until new member states fully implement Schengen acquis (cf. Spain, Greece and Italy); 3. Continue monitoring for all member states; 4. Continue with specific JHA aid, exchanges and programmes; 5. Establish special training institutes for sensitive tasks and operations (European education for border patrols, European Police Academy); 6. Establish a European Border Guard to control EU's external borders; 7. Legalise seasonal labour, both in the EU-15 and the new member states to combat illegal immigration.

7.8.2 TOWARDS A CORE ACQUIS TEST FOR JHA

The incorporation of the Schengen acquis in the EU Treaty and the developments since the Amsterdam Treaty mean that this is the first round of EU enlargement in which JHA plays a vital role. The guarding of the EU's external borders and the fight against illegal immigration and organised crime are sensitive issues in this regard.

Until now the European Union in its accession strategy has insisted on full adoption and implementation of the JHA acquis before accession. Since the Amsterdam Treaty came into force the Schengen acquis has been an important part of this JHA acquis. Due to its large size, it is important to know whether the Schengen rules should also be adopted and implemented at the time of accession. Article 8 of the Protocol on the incorporation of the Schengen acquis within the framework of the European Union (the Schengen Protocol) states that candidate countries *must before accession fully accept* the Schengen acquis and any further measures taken by institutions inside the legal framework of this acquis. In contrast to the present member states (the United Kingdom, Ireland, and Denmark) no exceptions can therefore be made when applying the terms of the Schengen acquis. The EU once again reiterated its view on this matter in the conclusions of the Chairmanship of the European Council at Tampere in October 1999. Never before has a candidate country been required to adopt the Schengen acquis at the point of entering the EU: Greece, Portugal, Spain, Austria, Finland and Sweden were already EU members when they embarked on the Schengen accession process. As a result, the precise routine of the pre-accession strategy is still partially decided and not yet fully laid down.

Although suppressing diversity via-à-vis the acquis before accession is generally effective (among other things by preventing candidate countries from employing delaying tactics and striking up uncooperative attitudes), there are pressing reasons for modifying this strategy in the specific case of JHA. The first reason is the question of whether this EU attitude is still realistic (cf. Monar 2001: 20). Even for the frontrunners of the candidate countries it is evident they will not be able to implement the full JHA acquis, at least for the time being. The EU is aware of this from the Commission's periodic progress reports and the Council's collective evaluations. Nonetheless, the European Council made statements in Nice and Gothenburg on its hopes and aspirations that the first round of accessions can take place from 2004 onwards. In a political context such as this it is unlikely that any implementation deficits in the JHA field will block accession.

Secondly, the effectiveness of this strategy suffers from the limited credibility of the 'take-it-or-leave-it' principle in JHA. This credibility is undermined by the various opt-outs and special arrangements available to current member states. In Monar's words, the EU has '… clearly shown the current applicant countries that the EU has ceased to move ahead as a unitary actor in the areas of JHA' (Monar 2000: 12). Partly in connection with this, the current member states also have differing views on whether they can allow accommodating arrangements for inte-

grating the candidate countries into the Schengen acquis framework. Thus the more relaxed attitude of the UK on this issue has been duly noted by the candidate countries.

Thirdly, account must be taken of the tension between the demand for full adoption of the JHA acquis prior to accession and the demands placed on the applicants to achieve transformation and catch-up growth. For example, a truly effective border patrol force will place an enormous burden on their public resources, while these same resources are also sorely needed for completing the transformation processes and creating the preconditions for catch-up growth. By demanding that the applicants make short-term investments in costly JHA acquis, the EU paradoxically enough risks actually harming their long-term legal and administrative capacity to implement the JHA acquis, as this long-term ability depends on their ability to achieve economic catch-up growth.

Doubts also arise on systemic grounds as to whether full adoption of the JHA acquis should be pressed for in advance of accession. In principle, full adoption of the acquis offers the best protection to the EU as an ever-closer union of values and actions. Where the unity of the legal system and the transparency and readability of the JHA acquis already suffer seriously as a result of the proliferation of flexible arrangements for the current EU-15, this accession strategy at least means the situation will not get any worse. However, where implementing the JHA acquis demands very heavy levels of investments and the aid from the EU and the member states is insufficient for the task, this accession strategy can seriously undermine the solidarity between the old and the new member states.

In view of these considerations, the WRR argues in favour of a JHA core acquis test (for other arguments in favour of prioritisation see House of Lords 2000, Monar 2001, Den Boer 2001, and Den Boer and De Kerchove 2001). Given the residual problematic diversity in the JHA field, it would be preferable to formulate a core of acquis that is essential for the functioning of the AFSJ, and a residual acquis that can be implemented at a later date according to a pre-determined schedule without in any way damaging the essence of the union of values and action. A core acquis test is more realistic than the full adoption method discussed above, in view of the state of affairs in the candidate countries and the political context of the first anticipated round of accessions from 2004 onward. A core acquis test approach is also more credible in the light of the exemptions granted to current EU members. Furthermore, the EU could now issue more convincing threats that applicants would *not* be allowed to join the EU before complying with the terms of the core acquis test. The applicants would be able to concentrate their efforts in the case of a core acquis test more effectively on the priorities as defined by the EU, supported by more streamlined aid efforts by the EU and its member states. In addition, the applicants – to respect their transformation processes and their efforts to achieve catch-up growth – would be granted some respite with regard to the most costly investments, which are not essential to the EU as a union of values and actions.

An accommodating accession strategy such as the core acquis test appears difficult to reconcile with the idea of an internal security zone where, as Monar puts it, all elements are to a certain extent interlinked and a single weak link in the chain is quickly seen as a danger to the rest (Monar 2001: 20). JHA is however a perfect area for applying the core acquis concept, as there are extra guarantees to protect the security of the EU citizen against potential negative effects of an accommodating approach to accession. This extra guarantee is provided by the two-stage procedure for entry into the Schengen arrangements.

The first step of this procedure consists of the accession of the candidate countries to the EU, *whereby the present member states remain responsible for guarding the present external borders of the* Schengen area. Accession to the EU does not therefore mean that the new member states directly start participating in full in the Schengen cooperation. After EU accession, the progress of the new member states in implementing the Schengen acquis will be closely followed via the Schengen 'Collective Evaluation Mechanism'.

Full participation and cooperation in Schengen (including the abolition of controls on the internal borders between the current member states and the new entrants) requires a separate, unanimous decision by the Council. This is the second step. The Schengen members will only make this decision when the 'Working Party on Schengen Evaluation' has established that all the Schengen short-term obligations have been satisfied (Van de Rijt: 2001).

This two-stage procedure may to some extent be compared with the procedure for participation in the euro. On accession the candidate countries must confirm that they accept the objectives of EMU (cf. the short-term obligation to accept the Schengen rules). They must also accept the short-term obligations of a 'derogation status' (cf. the less precisely defined Schengen acquis measures that the applicant member state had to adopt and implement). For participation in the euro, they must however first satisfy the Maastricht criteria (cf. the requirement for full implementation of the Schengen acquis for permission to abolish internal borders). This process of convergence is evaluated (cf. the evaluation by the 'Working Party on Schengen Evaluation'). For final admission to the euro, a decision by the Ecofin Council is required (cf. the decision by the JHA Council).

This two-stage procedure was a heavy political and psychological setback for the candidate countries and is still a sensitive issue. Through the integration of the Schengen acquis into the framework of the European Union, the abolition of internal borders appeared to have become one of the privileges of EU membership, instead of a right belonging to membership of the Schengen regime (House of Lords 2000). However, the Working Party's prior evaluation of the implementation of the Schengen rules has always been the standard procedure for full participation in Schengen**.** In earlier rounds of accession to Schengen, negotiations were usually relatively short, after which the agreement was signed and ratified (the first step, now coinciding with accession to the EU). It was only then that the

real work of fully applying the terms of the Schengen acquis actually started, closely followed by the Schengen evaluation mechanism. The real test subsequently took place when this implementation was verified, after which the Council could then decide to abolish internal borders (the second step) (Van de Rijt 2000: 3). So it took seven years before Italy and Greece were declared 'Schengen-mature'. Such an interim phase therefore has little to do with 'second-class membership or citizenship' or 'continuing exclusion from the rights of the member states of the European Union'. Considerable political pressure is however to be expected from the new member states to minimise this interim phase.

Since for the first time in the EU's history accession to the Schengen area and accession to the EU are coinciding, there is still confusion as to which parts of the Schengen acquis must be adopted and implemented on accession to the EU, and which only need implementing when the internal Schengen borders are finally abolished. If the applicants are asked to implement the Schengen acquis in full before joining the EU, the two-stage procedure will in fact be ignored. If a comparison is made with participation in EMU, a similar train of events would lead to demands from the EU for compliance with the Maastricht criteria at the time of accession. If the criteria of the Schengen evaluation mechanism were to be strictly applied and the applicant member state really did have to comply with this demand at the time of accession, it could then be logically argued that the decision to abolish internal borders should also be taken right away. The situation is however different.

There are of course very good reasons for insisting upon a high level of absorption and implementation of the JHA acquis at the time of accession, since all these measures directly benefit the security of EU citizens. Furthermore, it takes a great deal of time to build up experience and a climate of mutual trust. Even so, the whole procedure still needs to be carried out on a sequential, basis, for reasons as stated above.

The WRR therefore suggests formulating a core acquis test for JHA. In doing so the EU would need proactively to establish priorities in the area of JHA. At present the Commission is preparing a paper on the distinction between the measures that must have been adopted and implemented on accession and those parts of the acquis that only need implementing when the internal borders are finally abolished. This paper will probably offer good starting points for the JHA core acquis (cf. Vitorino 2001: 5). The candidate countries would be able to incorporate these priorities in the Schengen Action Plan. They must draw this up for the Union together with a survey of the objectives, the necessary action and a planning-timetable for the adoption of all parts of the Schengen acquis.

Formulating a JHA core acquis can be a very difficult task as almost all the JHA acquis affects the security and/or freedom of people. If the criteria named in chapter 5 are applied when drawing up the terms of the core acquis, a situation could arise in which priority is given to the security of the EU citizen, at the

expense of the freedom and security of citizens from third countries (e.g. by giving a low priority to implementing the asylum acquis). Although not indefensible, this could be a very awkward matter. In order to prevent such a situation from occurring as far as possible, it should be strongly urged that the residual acquis be implemented prior to accession, in so far as this does not involve excessive expense for the applicant member state.

A second complication in determining the JHA core acquis is the high priority given by the candidate countries to full participation in Schengen at the earliest possible stage. Even if the EU decided that not all the costly border-patrol duties formed part of the core acquis, there would still be nothing to prevent the candidate countries from giving high priority to these investments.

In addition to these two complications, the thinking about JHA priorities among policy-makers and academics is much less advanced than in (say) the environmental policy field. The following proposal for a core acquis is therefore made with the necessary degree of caution.

Procedurally, the core acquis proposal would follow the two-stage plan of Schengen accession. In substantive terms however it is steered by the core acquis test criteria as formulated in chapter 5. Based on the maintenance of the internal border controls after accessionand the core acquis criteria as argued in chapter 5, a core acquis would look something like the following:

- as regards the 'union of values', the JHA core acquis would consist of a basic level of the rule of law;
- as regards the 'union of action', the JHA core acquis would consist of those measures that directly affect the internal market and the security of the EU citizen, including the administrative and legal capacity adequately to implement these measures. These include in any case police and judicial cooperation between the police and the judiciary (and the necessary measures to that end, such as adequate data protection, etc.).

On accession, the new entrants would still not be obliged to implement in full the Schengen acquis on external border controls and participation in the Schengen Information System (SIS). With respect to the external borders, lower priority should be given to borders between candidate countries. In the event that not all the applicant countries join the EU simultaneously, these borders will after all only be temporary. As long as the internal border controls are not abolished, fitting up and equipping airports and harbours according to Schengen rules is obviously not a priority either. In addition, transition periods might well be granted for areas dealing with asylum, visas and migration, where the high cost to the applicants of implementing these measures is an important factor in the equation.

Transition periods for implementing the residual acquis are laid down in the accession agreements. Schedules and deadlines must then be established for the implementation of this residual acquis. The continuous assessment by the Schengen Evaluation Group would need to monitor progress on that basis.

7.8.3 MUTUAL COMMITMENT AND CREATING A CLIMATE OF CONFIDENCE

It is clear that there is no magic formula that guarantees the ability of the new member states to implement the JHA acquis and to cooperate adequately in JHA affairs. It is however clear that this will not happen unless there is mutual commitment and confidence-building.

Against this background it is vital that the EU and the member states demonstrate their commitment to the enlargement of the AFSJ by means of aid. This aid – consisting at present of international and national Phare programmes, Twinning and bilateral aid – is relatively recent (especially since the Essen European Council). Two sets of findings on JHA aid are fairly generally shared (cf. inter alia Monar 2000, 2001; House of Lords 2000):

1 there is no overall strategy, and the coordination and the links with the evaluation process can be improved;
2 too little aid is provided in relation to the size of the task.

On the first point, the WRR considers that the formulation of the core acquis test could contribute to the overall strategy to streamline the provision of aid. Fragmentation of aid can be avoided by concentrating that aid effort on the core acquis. The Commission could play a directing role here. Having a core acquis would also leave it better placed to avoid any duplications of effort and 'blank spots' in coordinating EU and bilateral aid and fine-tuning aid to candidate countries and neighbouring third countries. There must also be an improvement in the link between the findings of the Council's Collective Evaluations and the prioritisation of aid – a link the Commission provides for the other chapters.

On the second point, it may be noted that the EU and the member states already provide substantial amounts of aid. However, the volume of aid is small when compared with the necessary investments. The WRR considers that more funds should be available for specific pre-accession aid in the JHA field. The implementation capacity of the candidate countries depends very largely on the procurement of costly modern equipment (computerisation of databases, electronic links between border checkpoints, consulates and central databases, equipment for guarding borders, etc.). As Monar rightly suggests, investments in the ability of the candidate countries to implement JHA measures are in fact investments in the security of citizens of the current member states. He adds that much of such aid will flow back to current EU members, as most of the modern equipment will have to be acquired from them (Monar 2001: 22).

As well as aid for suppressing diversity vis-à-vis the JHA acquis, it is highly important for the causes of problematic diversity to be tackled. Among other things, it is essential to invest in a long-term process of changing the administrative and legal cultures and practices. In this light, the WRR considers it is very important to let the applicants take part in the Community programmes and those established under Title VI of the Treaty of European Union.[32] According to

the WRR, every effort should also be made to promote the association of candidate countries with EU structures and institutions prior to accession. One such example would be involving them in the operations of specialist agencies such as CIREA (for asylum) and CIREFI (immigration). Involvement in Europol's activities is also most important. Such association helps the candidate countries to develop systems at an early stage for use in the fight against cross-border organised crime. For many such professional networks – particularly if they were to become more operational in nature – it is vitally important that confidentiality and data protection is guaranteed by the candidate countries. This underlines the basic principle noted above that, with conscientious implementation in mind, such measures and the proper training of personnel must form part of the JHA core acquis.

In his working paper for the WRR, Monar discusses the 1998 Pre-accession Pact on Organised Crime (Monar 2000: 55), which he describes as a unique multidisciplinary instrument for cooperating in the fight against organised crime. It is aimed at transferring both knowledge and EU standards of implementation to the candidate countries with a view to reducing problematic diversity and implementation problems after accession. Under the terms of the Pact the EU-15 and the candidate countries have reached agreement on a whole range of activities. With the assistance of Europol, a common annual strategy will for example be developed in order to identify the most significant common threats in relation to organised crime. In addition, information is exchanged, mutual practical support is offered for training and equipment, joint investigative activities and special operations are carried out and exchange schemes for fellow-professionals, etc. The applicant countries have also undertaken to consider further institutional changes in line with the EU acquis, and to make all necessary preparations for their accession to the Europol Convention at the time of accession. Monar considers that the Pre-accession Act has proved to be a useful instrument and could serve as a model for pre-accession pacts in other sensitive areas such as asylum or illegal immigration. The WRR supports this recommendation.

Chapter 4 has already shown the vital importance of educating and training police forces and border patrol units, particularly with regard to 'modern' forms of crime. With regard to the role of the police and border patrols, the WRR considers that a bigger role for the EU in these matters in the years ahead will be unavoidable. Key issues here are creating mutual trust, a sense of shared responsibility and a certain burden sharing. The heaviest burdens (guarding external borders, issuing visas at consulates, etc.) must not be loaded on to the weakest shoulders. These ideas could be converted on the one hand into 'low-key' instruments such as the institutionalisation of contacts, creation of personnel networks of fellow-professionals, bilateral training and exchange programmes. On the other hand, there is also a clear need for more far-reaching initiatives. Thus it was decided at Tampere to set up a European Police Academy to educate senior law-enforcement officials. This academy must start as a network of existing national education institutes and also be open to the authorities of the candidate countries.

In the WRR's view, the ambitious proposal of a European border guard – to control the external borders of the enlarged EU – could be realised along the same lines. If this idea still appeared unrealistic some years ago, support from the general public has meanwhile grown (cf. Amato and Batt 1999; European Parliament 1999a; SPD 2001; Jospin 2001). In view of the understandable sensitivities, it would seem advisable to opt for a 'bottom-up' or more horizontal approach. This can continue building on initiatives between member states such as shared patrols by German and Polish border guards, exchange programmes between border patrol forces and special training projects in the context of the European Police Academy.

Ultimately, the enlarged Union must strike a balance between freedom and security. The above recommendations are all primarily aimed at increasing the security of the EU citizen. This disproportionate concern with security is dictated by the disproportionate sensitivity of this topic in the enlargement debate. This however by-passes the fact that a higher level of security can be accompanied by a greater degree of freedom. It may for example be asked whether the fight against illegal immigration, and particularly trafficking in human beings, will benefit most from ever-tighter border controls, as borders are never watertight. People smugglers will generally find their way come what may. The price for their services only rises with the intensity of border controls (Amato and Batt 1999; House of Lords 2000). Where awareness is for example beginning to grow in some EU member states that there is a certain need for immigrant labour (already now but certainly over time), the legalisation of seasonal work, for example (both in the candidate countries and in the current EU-15), would be a logical step. Actually increasing freedom of movement for people, by taking the wind out of the sails of organised criminals, could also improve internal security.

More generally, the enlarged EU will need to give priority to developing a coherent, explicit immigration policy that does justice to the balance between freedom and security and maintaining good relations with the neighbours of an enlarged EU.

NOTES

1 The candidate countries will not necessarily make the core acquis the maximum focus of their first set of obligations upon accession. Firstly, they will be able to offer a good deal more than the core acquis obligations in certain areas. Secondly, the governments of these countries will sometimes urge the European Commission to remove any room for negotiation with regard to certain dossiers of the acquis as this would then enable interministerial conflicts or delaying tactics to be overcome that would otherwise only give the applicant Member State a poorer 'score' without any essential national interest being at stake.

2 This can ultimately result in harmonising EU regulations, but in the vast majority of cases it leads to recommendations to amend national legislative proposals and draft regulations (mostly by the explicit inclusion in the text of standard rules on the principle of mutual recognition). This therefore prevents any future barriers and any need for regulations at EU level.

3 See for example the proposal by the Commission on the PECA with the Czech Republic: COM (2000) 748, 28 November 2000.

4 Three EU member states, the Netherlands, Sweden and Denmark, have meanwhile indicated they will make no use of the transition period for free movement of labour from the future Central and East European member states (Agence Europe, 25.06.2001).

5 As already indicated in Chapter 4, all EU member states, and therefore soon the new entrants as well, are legally obliged to pass through the first and second stages of EMU (as laid down in the Maastricht Treaty). The basis of the internal market and certain specific conditions (such as the independence of the Central Bank) of the currency union therefore apply to all EU member states.

6 Deputy Governor Jürgen Stark of the Bundesbank put it as follows: '…over and above these minimum periods, the accession countries must go through a process of nominal and real convergence, without which entry into the monetary union would be neither in the interest of the current members of EMU nor in the interest of the accession countries themselves. Particularly real or structural convergence is a process that takes time and continues after accession to the EU' (Stark 2000).

7 As Pelkmans, Gros and Núñez Ferrer stress in their study, this method of preparation is even a standard part of the policy recommendations given to poor countries by global financial institutions such as the IMF and the World Bank.

8 The WRR assumes that 2006 will be the earliest possible date for EMU enlargement, i.e. two years after the earliest possible date for enlargement of the EU.

9 See the debate on Ireland and Spain in CEPR (2001: 16-18); ECB, Monthly Bulletin (October 1999).

10 As the IMF also emphasises: '… the point is that somewhat higher rates of inflation or nominal exchange rate movement among the applicants, compared with the more advanced economies, should be viewed as a normal and expected part of the convergence process' (IMF 2000: 167).

11 The last few years have seen increasing criticism of the relevance of this theory, not least because this takes no account of the growing importance of international flows of capital. For a brief survey of the literature see Bakker and Roovers 2001: 12-16 and also Habib 2001.

12 Free exchange rates, managed floating exchange rates without a mutually agreed central rate (thus, for example outside ERM-2), a fluctuating band and links to currencies apart from the euro are therefore no longer allowed; nor is a unilateral switch to the euro. Compatibility of the euro-based currency boards with ERM-2 is decided upon by the Council on a case-by-case basis.

13 That is the danger that member states with derogation status and a less strict budgetary policy would undermine the credibility or stability of the euro inside the Eurozone.

14 The candidate countries have submitted 510 requests for transition periods in respect of the agriculture acquis alone.

15 The Dutch government regards Dutch agriculture as 'a normal economic sector', which is however characterised by the production of goods with 'a strong public dimension': food and landscape. More specifically, the government is thinking here of its official responsibilities for the health of humans, animals and plants, the environment, nature and landscape, collective services and education and research (Ministerie van LNV 2000b: 3, 10).

16 It is still sometimes incorrectly assumed that large-scale economic activity by definition always leads to a uniform landscape and a large-scale ecological system. But this not necessarily the case. Studies have shown that farmers working very large tracts of land in extensive agriculture have more time and greater opportunities to perform supplementary (collective) work on helping care for the countryside.

17 At the same time ever more methods are being tested whereby agricultural entrepreneurs can carry out risk management themselves. Also see: European Commission (2001c).

18 See for a more detailed analysis: WRR (2000b) *Safeguarding the Public Interest*.

19 See European Commission, *Preparation of the Associated countries of Central and Eastern Europe for integration into the internal market of the Union*, White Paper, COM (95) 163 of 10 May 1995, Annex, pp. 214 – 257, in 11 parts.

20 IPPC = Integrated Prevention and Pollution Control.

21 Both the Cohesion Fund and ISPA are intended for investments in the environment (50%) and in transport (50%).

22 Given the cross-border nature of a potential nuclear disaster and the objective of the Euratom Treaty to create a Common Market for nuclear energy, the absence of any harmonisation of nuclear reactor safety measures seems – at the very least – most peculiar. The member states, particularly the 'nuclear states', have serious reservations about creating a European Nuclear Safety Inspectorate (European Parliament 1999d: 8).

23 As already stated in section 4.4, this starting point in the EU budget negotiations is subject time and again to dilution. It is true that in the last three years the total proportion of the EU population that is subject to cohesion policy support measures has fallen to about 40 percent, but this can hardly be seen as a credible implementation of the principle of concentration.

24 This principle, as already stated in section 4.5, comes down to the fact that member states try to claw back the maximum amount of their own payments to the EU; in other words, they try to minimise their net payments to the EU.

25 There it was argued: 'Past experience of reforming cohesion policy reveals an increasing tendency for discussion at Member state (Council) level to concentrate on the financial aspects. (...) arguably, a more logical order would be to begin with the content, – and, in particular, to identify priorities for future cohesion policies – before going to address issues relating to the delivery system and financial allocations.' (European Commission 2001e: Conclusions and recommendations, 1).

26 Geelhoed notes that this logical conclusion is not included in the Treaty of Maastricht (Kapteyn and VerLoren van Themaat 1995: 600).

27 The European Commission has already submitted a similar proposal on two occasions but to no avail. However, in the event of an enlargement in 2005 there could be a consensus in the Council in favour of an increase, when the Dutch contribution could also be discussed.

28 As both aspects drew the short straw when it came to revenues. The 'cap' (i.e. the net payments limiting mechanism) and the postponement of the milk reforms were designed to reduce the Dutch payments after the Berlin Summit accord. Neither of these two devices are based on sound policy considerations.

29 It will however take explicit political decisions to be able to spend these revenues. This creates a kind of 'Zalm norm'. A rise of 3/100 percentage points (i.e. 0.03%) in the EU's GNP could be approved by a qualified majority.

30 By way of illustration: Italy, that would be the hardest hit by these proposals, transfers 100 for these purposes to the Community and receives 120 back in return as aid. The 'real' net problem is therefore no more than 20.

31 It does in fact require transfers (of funds) between budgetary items and even perhaps between some of the eight chapters (see Financial Perspectives 2000-2006.) This can be briefly explained as follows:

1 enlargement will drive up the market-regulation expenditure, in the absence of reforms, to a level that exceeds the set ceiling. In the event of accession in 2005, however, this means that a transfer can be made of the funds reserved for that purpose in the previous three years – this is more than sufficient;
2 the sums of money made available for EU-financed rural policy are sufficient for the CEE-8;
3 the predicted income support for the CEE-8 is in the order of 5 billion euros. A large share of these expenses cannot be paid out of the agricultural account, not even after transfers of funds within the agricultural sector. But 'late' accession (compared with 2002, as assumed in the Financial perspectives) will create an enormous amount of financial leeway in implementing the structural measures. If for example one wished for reasons of too limited absorption capacity to stick to the gradually rising scale of payments from the first year of membership, then there would be a 'surplus' of 6250 euros in both 2005 and 2006, which could be partly transferred to agriculture in order to pay the compensatory payments. If in 2005 one wanted to make an immediate payment to the CEE-8 of the 10 billion euros reserved for the structural funds, even then

no less than twice 8,750 euros would still be available from unspent money in 2002 – 2004 (as the CEE-8 will not yet be EU members then). These funds can then be partially transferred;

4 the WRR does support reform proposals for both cereals and beef as well as milk and sugar. This leads to extra compensatory payments (and to slightly lower expenditure on market regulation, including export subsidies). For sugar and milk this sum is almost 2 billion euros around 2006 (see e.g. Silvis et al. 2001: 38) for the enlarged EU as a whole; this sum would need to be increased by means of the appropriate extra payments for cereals and beef (whose prices are far closer to world market price levels). This can be paid upon transfer in full of the 8,750 billion euros for 2005 and again for 2006. In this regard it should be borne in mind that these calculations do not take account of degressivity, the partial transfer of certain EU expenditure to the national level or reforms to the CAP or cohesion policy in 2002 or 2003. These last three proposals of the Council, although prompted by considerations of bringing about a more effective policy, will also be less of a drain on EU expenditure.

32 Examples of this are GROTIUS for the legal professions; OISIN for the law enforcement agencies; STOP for persons responsible for fighting the trafficking in human beings and the sexual exploitation of children; ODYSSEUS for the policy areas of asylum, immigration and external cross-border affairs; and FALCONE for persons responsible for the fight against organised crime.

8 CONCLUSIONS AND RECOMMENDATIONS

8.1 INTRODUCTION: THE IMPORTANCE OF ACCESSION

The proposed enlargement of the European Union into Central and Eastern Europe is one of the most crucial and complex challenges that Europe has faced since the early 1990s. Fundamental values, interests and achievements are at stake in the enlargement process. The Union has a historic opportunity to reverse the division of the European continent and to contribute towards a stable political and economic order throughout Europe resting on fundamental values and principles of democracy, the rule of law and respect for human rights and minorities. In response to the end of the Cold War and the orientation of the Central and East European countries to the West, the Union's room for manoeuvre to put this stabilisation and development process into practice in a comparatively brief space of time has been on an unprecedented scale.

The enlargement into Central and Eastern Europe will enable the present member states to obtain much tighter control over cross-border issues with which they are already confronted. It is in the Union context that the member states are able to determine a large part of the specialised political, legal and economic principles and procedures that are so vital for their interactions and relations. In addition the Union context makes it possible to benefit in the future from the benefits of scale of a single, larger, Europe-wide internal market, monetary union and internal legal and administrative order. As against this, the enlargement will require radical adjustments if the effectiveness and problem-solving capacity of the Union are to be safeguarded.

With a view to these complex and compelling challenges, the WRR has put forward a number of building blocks for Dutch government policy in relation to the enlargement of the EU. More specifically these concern:

1 the process of accession by the candidate countries from Central and Eastern Europe to the European Union (the accession problem);
2 the preservation of the achievements of the European Union after the accession of these candidate countries (the implementation and enforcement problem after accession).

To this end an answer has first of all been given to the question as to which opportunities and problems may be expected before, upon and after accession in a number of the Union's policy fields, namely the internal market, monetary union, the Common Agricultural Policy, environmental policy, cohesion policy and cooperation in the field of justice and home affairs. In addition various solution strategies have been explored and assessed for the accession process itself and for the implementation and enforcement problem in the post-accession stage. On the basis of a confrontation between these problems and the evaluated solution strategies, the WRR has formulated conclusions and recommendations. These are set out in broad terms below.

8.2 PROBLEMATIC DIVERSITY BEFORE, UPON AND AFTER ACCESSION

One of the most durable characteristics of the European Union is the marked diversity among the member states. Although the Union imposes uniform obligations on the member states, it also values 'the beauty of diversity'. Cultural, economic, political, religious and linguistic differences are regarded as enhancing the cultural wealth and political and administrative capacity for learning and adjustment within the Union. The fact that this philosophy of unity and diversity is not confined to wishful thinking finds its most meaningful expression in the decentralised implementation model so characteristic of the Union. The implementation of virtually all decisions taken in 'Brussels' is totally in the hands of the members states' own institutions, for which they are able to make use of the country's own national instruments, procedures and rules. European law is as it were 'internalised' in national law, precisely so that the special features of the political, administrative and legal structures can be retained.

At the same time the characteristic diversity of the Union must be based on collectiveness and unity so as to facilitate joint decision-making and action. The coming enlargement to take in the countries of Central and Eastern Europe therefore inevitably raises the question: what does this foundation look like and how much diversity between and within the member states can it in fact tolerate? In other words, what *problematic* diversity will the new member states add? The answer to this question will depend in part on the vision taken towards the essence of the Union. In Chapter 2 of this report the WRR outlined that essence as an institutional structure with federal characteristics based on fundamental values (the union of values) and pragmatically directed towards the realisation of common goals (the union of action). This vision gives rise to a rights and obligations approach towards the member states: countries can form part of the Union if they satisfy the principles, norms, rules and decision-making procedures of this union of values and action.

On the basis of this normative vision the WRR has developed its approach towards problematic diversity in Chapter 2. Characteristics and/or standpoints of member states add problematic diversity if they:

1 are at variance with the fundamental principles of the Treaty (i.e. the EU as a union of values); and/or
2 hinder the adequate participation by member states in the Union's policy cycle and the realisation of the Treaty goals (i.e. the EU as a union of action).

This conceptualisation provides the prospective from which the opportunities and threats have been identified. These specific characteristics of the civil society and the political, legal, administrative and economic systems of the candidate countries were examined in chapter 3, as these affect the capacity of these countries to implement and enforce the common achievements of the Union. It was noted that most of the countries had more or less completed the transition phase

with respect to the development of the economy, democracy and the rule of law. Over the past ten years they have evolved as stable societies in which democracy has become increasingly firmly embedded, a functioning market economy has been brought into being and a start has been made on the long-term process of institutional deepening and familiarisation with new structures, institutions and rules. Partly in response to the prospects of accession and the intensive involvement of the EU in these processes of change, much has been achieved in a comparatively short space of time. At the same time civil society is evolving only slowly in these countries and there are still severe deficiencies in the field of administration and law. These gaps are problematic for the implementation and enforcement of the acquis after accession.

In part these problems may be traced back to the legacies from the past and the radical consequences of the transformation crisis. The lack of an independent legal system and a modern administrative system during the communist era meant that these had in part to be established, and that at a time when the economic transformation crisis was already imposing major financial limitations. As against this, the candidate countries have made huge progress with the adoption and implementation of the acquis. This indicates that the weight of the problematic legacies is steadily declining, partly on account of the dynamic of the democratic and economic transformation process. In all sorts of policy fields the capacity problem has become steadily less related to legacies and transition problems, the main factor instead being the fall-out (financial and otherwise) of economic backwardness. This conclusion has direct implications for the possibilities and opportunities for both the candidate countries and the European Union to cope with problematic diversity; participation in the internal market of the Union provides those countries that have acceded with additional possibilities for catch-up economic growth through market convergence.

The process of accession to the Union acts in all sorts of social and policy fields as a flywheel for strengthening and deepening the transformation. If EU institutions and rules are adopted during the run-up to accession, this will for example encourage foreign direct investment that will boost the competitiveness of the private sector and the stability of the legal and administrative environment. That dynamic in turn makes it possible for the reputation and legitimacy of the government to increase, for the official economy to grow in size and for informal norms and social capital to gain strength. A number of policy fields were, however, also identified in Chapter 4 where a tension could arise between the requirements of full-scale adoption of the acquis upon accession and the efforts to reduce the development gap by means of catch-up growth. The deepening and broadening of European integration mean that the entrance requirements for candidate countries are now higher than ever before. The implementation of certain parts of the internal market acquis and the environment and Schengen acquis sometimes demands disproportionately heavy investments. In these policy fields there is a real risk that the efforts the Central and East European countries will need to make in order to comply with the accession criteria will be at the expense of their

(public) investments on the physical and knowledge infrastructure, the strengthening of market institutions and support for regional and sector-specific adjustment processes. According to the WRR, this calls for priorities to be set in the accession process.

8.3 PRIORITY-SETTING UPON ACCESSION: CORE ACQUIS FOR CERTAIN POLICY AREAS AND FIRM COMMITMENT ON THE ENTIRE ACQUIS

This enlargement round is also 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 placed in the balance by the accession. The by now classical strategy used by the EU in the accession negotiations with each applicant is quite correctly based on that principle. Problematic diversity among candidate countries with respect to aspects of the acquis are eliminated as far as possible before accession. The WRR concluded in Chapter 5 that this strategy of eliminating problematic diversity should be retained as far 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 however also have drawbacks. The emphasis placed by the Union during the accession negotiations on the unity of the acquis and the efforts the candidate countries must make can give rise to an undue emphasis on the *formal* side of adopting the acquis. Sufficient attention is not always paid to the much more difficult to estimate 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 in great detail 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 even further. 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 big a disadvantage is the fact that the full-scale elimination of problematic diversity sometimes takes too little account of the specific needs of the present candidate countries to complete the process of transformation and to utilise the opportunities for catch-up growth to best effect.

In the light of these considerations the WRR explored the possibilities in chapter 5 of accommodating diversity via the strategy of a core acquis. 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. Since candidate countries are granted a dispensation with regard to all those aspects of the acquis that are not immediately vital upon accession, the possibili-

ties for achieving catch-up growth are not frustrated. This 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 core of the union of values and action is limited by the non-concessional application of a pro-active and sector-overarching test prior to accession. Candidate countries are held to the full adoption and implementation of the acquis by means of fixed implementation programmes and timetables laid down in the accession agreement.

The WRR considers that – assuming always that the entire acquis will ultimately have to be adopted and implemented by the candidate countries – a distinction needs to be drawn in three policy areas between a core acquis, which needs to be applied immediately upon accession, and elements for which an introduction programme is laid down upon accession.

This accession strategy has been worked out in broad terms in this report for the internal market, the environment and cooperation in the field of justice and home affairs (see in turn sections 8.5, 8.8 and 8.10). This is a broad-brush approach that is designed to allow the EU member states and the Commission jointly to develop a pro-active, robust long-term strategy.

8.4 IMPLEMENTATION AND ENFORCEMENT AFTER ACCESSION: THE UNION AS A DECENTRALISED ADMINISTRATIVE AND LEGAL COMMUNITY

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 towards the internalisation of Union policy by the member states and makes a significant contribution towards preserving the legitimacy of European policy. The WRR's proposals are aimed at retaining this essential characteristic.

In chapter 6 it was made clear that the necessary improvement in quality of the administrative and legal system will be a process taking many years. The postponement of accession by a few years will 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 also a question that has become more cogent in the present Union as the cooperation has become closer.

The WRR notes that 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 Europe and the other member states have in the quality of implementation. 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, the WRR considers that 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 policy. Such accountability should also be subject to certain requirements. A qualitative improvement in implementation can also be promoted by giving 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 formation of agencies. The Council also considers that intensive efforts to strengthen the administrative capacity by means of exchange, training and other forms of aid provided by the Union are 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.

It is not realistic to expect that this structure will be capable of ensuring the necessary unity of law in an enlarged Union. The problem lies in the marked diversity of the legal systems, in which the unity of law can no longer be safeguarded by one or at most two supreme courts. A more radical review is required. As part of this review a European court should be set up in each member state to act as a link between the national courts and the European Court of Justice.

Enlargement will also make it necessary to streamline the procedures which 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. Targeted discussions at the highest level can prevent legal proceedings. On top of this, 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.

The WRR considers that the quality of that implementation must be assured in an enlarged Union on by the introduction of (public) accountability complying with European standards. Preserving the quality of the European legal system will require much more radical changes, the most important of which is the appoint-

ment of a European court in each member state. This will promote the incorporation of European law in national legal practice.

The general analysis of the possible problems and solutions with respect to the process of accession and the implementation and enforcement problems after accession are the 'lens' through which the WRR has made an assessment in chapter 7 of the opportunities, problems and solutions in the various policy fields (see also summary table with opportunities and threats at the end of section 4.8). The principal problems and the recommended strategies in each policy area are summarised in the following sections.

8.5 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, 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 evident already now that sticking 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.

According to the WRR, the proposal for a core acquis for the internal market presented in chapter 7 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 core at the test are summarised below.

A country that 'passes' the test will in the first place have macro-economic stability and a functioning market at a level at which the transition may be regarded as completed; it will as such have obtained high 'scores' for the nine 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 tendering and for the adoption, implementation and enforcement of the acquis in the field of financial service, telecommunications and highways, air and sea lanes and inland waterways (where relevant). Thirdly it will have an independent competition authority that has been operating effectively for at least three years, credible controls over the forging 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 stage I provisions for the environment and nuclear energy of the White Paper, the basic elements of the social acquis and cohesion policy. Fourthly the candidate country will have acceded to the Munich agreement on patent rights and will be a member of CEN/CENELEC and ETSI. And 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.

The WRR recommends that the Dutch government pushes in the short term at European level for a core acquis test for the internal market. This could induce the member states to arrive at a more systematic, sector-overarching and proactive test of the administrative and legal capacity of the candidate countries in all those elements of the acquis that are indispensable for the effective functioning of the internal market. 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. This would however be subject to the condition that they would upon accession adopt in full and implement those elements of the 'residual acquis' that did not act as a drag on their individual growth process and would commit themselves in the accession agreement to a credible timeframe for the full adoption of the residual acquis.

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 the Central East European countries. 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. It was seen in chapter 7 that the fear of a large labour migrant flows was unfounded. The free movement of labour is possible only under the host country 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. In those cases where employers would nevertheless make savings by taking on labour migrants while sticking 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 benefit of the host country. The negotiating proposal of the European Union for a transition period will therefore not address the essence of the problem posed by illegal migration.

The WRR supports the position of the Dutch government that the 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. As concluded in chapter 7, there are grounds only in the case of Germany and Austria for tempory bilateral regulations concerning border labour. In the long term it is more effective to influence the migration flows between member states by eliminating avoidable, policy-based push and pull migration factors than by keeping in place all sorts 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.

8.6 THE MONETARY UNION: ACCESSION WITHOUT EXTRA CONDITIONS

As EU enlargement draws closer so also is the point at which new member states will join the monetary union coming into sight. 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. Some experts, however, consider that 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, they argue, be at the expense of the necessary structural adjustments and catch-up growth in the candidate countries. This 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 consider that this risk could be avoided.

The WRR considers that real incomes convergence does not provide a good yardstick for assessing the extent to which the candidate countries have the ability to participate successfully in monetary union. The membership of 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 inflation and budgetary policies that the financial markets regard as credible and which at the same time do not necessarily frustrate catch-up growth. In the WRR's concept of 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 lays down requirements for the candidate countries that have been formulated partly with a view to 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 strict and reliable supervision.

If the present member states lay down this core acquis test for the internal market as an entry requirement and, in addition, strictly apply the nominal convergence criteria of Maastricht, the Dutch government would according to the WRR have no grounds to fear that the enlargement process would harm monetary union. The government would however need to warn at European level against the over-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 ERM-2. The government should also seek to ensure that the institutional reform process of the ESCB is commenced before the first EU enlargement round has been completed.

8.7 THE CAP: ENLARGEMENT INCREASES THE URGENCY OF ACQUIS REFORM

The WRR regards the CAP as one of the leading policy areas in which the classical strategy of unilaterally compelling the acceding countries to make adjustments is particularly problematic. The Union accordingly faces a substantial political dilemma which, according to some, could even result in further postponement of enlargement. If the present direct income support is applied in the CEE regions, many of which are already vulnerable, 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 place a brake on 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 bigger group of dependent farmers, who will regard this temporary support as a permanently acquired right that needs to be

defended to the hilt. 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 of the CAP. That 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.

In the light of this political dilemma the WRR calls for the initiation of a new reform process for the CAP before the first candidate countries accede. The WRR advises the Dutch government to garner political support among the member states during the planned Mid-Term Review of the CAP in 2002 in favour of a decision to decouple the direct income support from production, to phase out these payments more rapidly (if gradually) and to reduce intervention prices, so that export subsidies and production limitations can lapse in due course. The further liberalisation of aid policy and also 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 CEECs to be integrated into the internal market without major economic dislocation in the candidate countries and without lengthy transition periods. This is also highly important for the trade and investment climate in other European economic sectors that are troubled by such transitional measures within the internal market.

According to the WRR, 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 need 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.

8.8 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 the competition conditions and environmental interests in the Union and the potential for catch-up growth in the candidate countries.

Against the background of these accession dilemmas, the WRR would support a core acquis strategy for environmental policy. This *proactive* strategy could help prevent the catch-up growth in the candidate countries from declining sharply and over the longer term or accession from being postponed due to the unduly rigid application of the requirements of the environmental acquis (in relation to specific elements or otherwise).

The starting point for the strategy is that the candidate countries would undergo a core acquis test before accession in respect of environmental policy under which a verifiable qualitative evaluation can be made of their capacity to implement the priority elements of the environmental acquis. Those elements would in any case include measures that

- adversely affect 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 at the point of accession. Among these the WRR would at any event include the directives referred to in phase I of the White Paper of 1995, incomplete application of which would result in substantial 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.

The WRR has conducted an initial survey of 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. The main aim, however, is to induce the EU member states and the Commission jointly to develop a proactive, robust long-term strategy that is more than the sum of purely sectoral special interests; the proposal is emphatically not intended as a blueprint.

The WRR would at any event class the heavy investment directives for water, air and waste and a number of horizontal environmental measures as part of the 'residual acquis' of environmental policy that need not be implemented by all the individual member states immediately upon accession. Since the effects of these acquis elements on the internal market are limited and their adoption would present the candidate countries with extremely high costs in the short term, the possibility of gradual implementation over a longer term would be desirable. 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 far as possible need to implement those elements of the residual acquis not imposing a disproportionate (financial) burden. In a number of candidate countries this would for example apply to horizontal directives such as Environmental Impact Assessment and the flora and fauna directives.

8.9 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 cohesion policy, regional government 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.

Nevertheless there appears to be a loss of willingness among the richer member states to help fund cohesion policy. More and more, they are adopting a 'just return' approach. This in turn strengthens the current recipients of the structural and cohesion funds in the assumption that the coming enlargement to take in countries even more underdeveloped than themselves will be at the expense of the aid for their own backward regions.

In the opinion of the WRR all financial streams from the Community budget – including therefore financial transfers under cohesion policy – should be based on carefully considered and justified policy needs. The prospective enlargement of the Union by a number of less developed CEECs justifies a strengthening of the concentration principle for the input of 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 therefore no longer qualify for Community structural funds.

The WRR advises the Dutch government first of all to stick strictly to the current criterion for objective 1 of cohesion policy that aid should be confined to those regions within the cohesion countries with an average per capita GDP of less than 75 percent of the EU average. The Dutch government should press at European level for two basic principles on the basis of which the aid for each member state can be determined: 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.

Secondly the government should promote a much more decisive role for the functional concentration principle in the allocation of funds. An end should be put 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 WRR recommends that the formally still existing but superseded linkage between the cohesion fund and the objectives of monetary union be opened up to debate. The government should propose the setting up of a cohesion fund 'new-style' for environmental and infrastructure investments in the less developed member states.

8.10 THE EU BUDGET: FINANCIAL CONSEQUENCES OF THE WRR PROPOSALS

The financial consequences of the WRR recommendations in the field of cohesion policy and the Common Agricultural Policy have been worked out in more detail in section 7.7. This section examines the implications for income and expenditure for the period up to and including 2006 and the post-2006 period respectively. A split has also been made into expenditure-increasing and expenditure-reducing proposals, without however referring to the actual amounts of expenditure. The WRR proposals for further price reforms and tariff liberalisations from 2003 onwards will initially have the effect of increasing expenditure, as they will need to be compensated for by temporary income supplements. Depending on the degree of degressivity 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.

In its policy recommendations concerning the CAP and cohesion policy the WRR has placed substantive considerations of good policy at the forefront. It is aware that 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 in which the Dutch government will depend in part on the interplay of forces within the European Union. The WRR proposals also reveal, however, that there are possibilities within the pre-

sent political constellation of forces to achieve changes in policy in the desired direction.

8.11 JHA: CORE ACQUIS TEST, MUTUAL INVOLVEMENT IN CONFIDENCE-BUILDING

Since the Treaty of Amsterdam came into force and the incorporation of the Schengen acquis into the framework of the European Union the candidate countries have been faced by highly dynamic developments in the field of 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 effectively to implement 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 from their communist past under which there is 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 barriers. 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.

Against this background the WRR proposes formulating a core acquis test for JHA. 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-stage 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 of action is concerned, 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 adequately to implement those measures. These at any event include the police and judicial cooperation (and the measures required to 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 demanded upon accession. With respect to the external borders less priority should be assigned to borders between candidate countries; in the event that 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 been 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 highly important that the acquis not forming part of the core but also not involving 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 laid down 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 highly important that the Union and member states demonstrate their commitments towards the enlargement of the AJSF by means of aid.

The WRR considers that the Commission would be able to play a stronger directive role if armed with a core acquis test. Such direction would concern both the coordination of the aid and the linkage between the progress evaluations (by the Council and the Commission) and the setting of priorities for aid. In addition the WRR considers that more funds should be made available for specific preaccession aid in the JHA field.

Apart from the provision of aid it is highly important that investments are made in a long-term process to change the administrative and legal cultures and practices. The WRR sees a number of measures contributing 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 preaccession 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, the WRR considers that 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 the establishment of networks of professional practitioners, training and exchanges. On the other hand there is however also a clear need for far-reaching initiatives. By way of analogy with the initiatives for the European Police Academy, the WRR considers that 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, i.e. 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.

8.12 PROSPECTS

In this report the WRR has concentrated on the problematic diversity associated with the process of accession by the candidate countries from Central and Eastern Europe to the European Union and the issue as to how achievements can be preserved after accession by the adequate implementation and enforcement of the acquis. These issues are a central element in the current, decisive phase of the negotiation rounds with the candidate countries. The issue of how decision-making can be arranged after accession so as to guarantee that the Union will effectively meet new external and internal challenges is a subject that will be taken up by the WRR in a follow-up to this report.

ABBREVIATIONS

AC-IMPEL	Accession Countries Implementation and Enforcement of Environmental Law
AFSJ	Area of Freedom, Security and Justice
AMS	Aggregate Measure of Support
AMVB	Algemene Maatregel van Bestuur (implementing regulation from the Dutch government)
BFTA	Baltic Free Trade Area
CAO	Collectieve Arbeidsovereenkomst (Collective Labour Agreements in the Netherlands)
CAP	Common Agricultural Policy
CARPE	Common Agricultural and Rural Policy for Europe
CEECs	Central and East European Countries
CEFTA	Central European Free Trade Area
CEN	European Committee for Standardization
CENELEC	European Committee for Electrotechnical Standardization
CFSP	Common Foreign and Security Policy
CIREA	Centre for Information, Research and Exchange on Asylum
CIREFI	Centre for Information, Research and Exchange on the Crossing of Frontiers and Immigration
DISAE	Development of Implementation Strategies for Approximation in Environment
DNB	De Nederlandsche Bank (the Netherlands Central Bank)
EAGGF	European Agricultural Guidance and Guarantee Fund
EAM	European Agricultural Model
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECB	European Central Bank
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOFIN	Council of Economic and Financial ministers
ECSC	European Coal and Steel Community
ECU	European Currency Unit
EDC	Environment and Development Consultancy
EEA	European Economic Area
EFRD	European Fund for Regional Development
EFTA	European Free Trade Area
EIB	European Investment Bank
EMU	Economic and Monetary Union
ENVIREG	Programme for Regional Environment Measures
ERM-2	Exchange Rate Mechanism-2
ESCB	European System of Central Banks
ESF	European Social Fund
ETSI	European Telecommunications Standards Institute
EU	European Union

EUROPOL	European Police Agency
FALCONE	European Programme of exchanges, training and cooperation for persons responsible for action to combat organised crime
FNSEA	Fédération Nationale des Syndicats d'Éxploitants d'Agricoles
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
GROTIUS	Programme of incentives and exchanges for legal practitioners
HZDS	Movement for a Democratic Slovakia
IAEA	International Atomic Energy Agency
ICT	Information and Communications Technology
IFI	International Financial Institutions
IGC	Intergovernmental Conference
IMF	International Monetary Fund
IMPEL	Implementation and Enforcement of Environment Law
IPPC	Directive Directive concerning Integrated Pollution Prevention and Control
ISPA	Instrument for Structural Policy Assistance
JHA	Justice and Home Affairs
LEI	Landbouw Economisch Instituut (Agricultural Economics Research Institute in the Netherlands)
LFA	Less Favourable Area
LIFE	Financial Instrument for the Environment
LNV	Ministerie van Landbouw, Natuurbeheer en Visserij (Dutch Ministry for Agriculture, Nature Management and Fisheries)
MER	Milieu Effect Rapportage (Environmental Impact Report)
NCB	National Central Bank
NGO	Non Governmental Organisation
NPAA	National Programme for the Adoption of the Acquis
NSA	Nuclear Safety Account
NUTS	Nomenclature des Unités Territoriales Statistique
ODYSSEUS	Programme of training, exchanges and cooperation in the field of asylum, immigration and crossing of external borders
OECD	Organisation for Economic Cooperation and Development
OISON	Programme for the exchange and training of, and cooperation between, law enforcement authorities
OSCE	Organisation for Security and Cooperation in Europe
PAPEG	Pre-accession Pact Experts Group
PECA	Protocol to the Europe Agreement on European Conformity
PHARE	EU Assistance Programme for the Central and East European candidate countries
PSE	Producer Subsidy Equivalent
PWR	Pressurized Water Reactor
RBMK	Water cooled graphite reactor
RPR	Rassemblement pour la République
SAPARD	Special Accession Programme for Rural and Agricultural Development
SDSS	Social Democratic Party of Slovakia

SER	Sociaal Economische Raad (Social and Economic Council of the Netherlands)
SIGMA	Support for Improvement in Governance and Management
SIS	Schengen Information System
SLIM	Simplified Legislation for the Internal Market
STOP	Incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children
TAIEX	Technical Assistance Information Exchange Office
TEU	Treaty on European Union
UDF	Union pour la démocratie Française
USSR	Union of Socialist Soviet Republics
WENRA	Western European Nuclear Regulators Association
WPNS	Working Party on Nuclear Safety
WTO	World Trade Organisation

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ANNEX I ADOPTION OF THE ACQUIS

No	Chapter	BUL			CZECH REP			EST			HON			LAT		
		A	B	C	A	B	C	A	B	C	A	B	C	A	B	C
1	Free movement of goods	2	1	2	4	3	3	3	2	2	3	3	3	3	3	3
3	Free movement of services	3	2	2	2	2	3	3	3	3	2	3	4	3	3	2
6	Competition policy	2	2	2	3	3	3	2	3	3	2	3	3	3	3	3
7	Agriculture	4	2	2	3	2	3	3	1	2	2	2	3	1	1	2
9	Transport	3	2	3	2	2	2	2	3	3	2	3	3	3	3	3
10	Taxation	3	2	2	2	3	3	3	2	3	2	3	3	3	3	2
21	Regional/structural funds	1	1	2	2	3	3	2	2	2	4	3	3	2	2	2
22	Environment	3	2	2	2	2	3	3	3	3	2	2	3	3	3	2
24	jha	2	2	1	2	2	3	3	2	2	2	3	3	2	2	1
25	Customs Union	3	3	2	3	3	3	2	2	3	4	3	3	3	3	3
Average heavy dossiers *		2.60	1.90	2.00	2.50	2.50	2.90	2.50	2.20	2.60	2.50	2.80	3.10	2.80	2.60	2.30
Average light dossiers **		2.86	2.71	3.00	2.86	2.71	3.43	3.00	2.86	3.29	2.86	3.17	3.71	2.29	3.33	2.43
Average entire acquis		2.66	2.41	2.48	2.62	2.66	3.07	2.72	2.59	2.86	2.48	2.82	3.29	2.69	2.75	2.52

No	Chapter	LIT			POL			ROM			SLK			SLV		
		A	B	C	A	B	C	A	B	C	A	B	C	A	B	C
1	Free movement of goods	3	3	2	4	2	2	2	1	2	3	3	3	4	3	3
3	Free movement of services	3	2	2	2	3	4	3	1	2	3	2	2	3	3	3
6	Competition policy	3	3	2	4	3	3	3	3	3	3	3	3	4	3	3
7	Agriculture	2	2	2	2	2	3	2	1	2	2	2	2	3	2	3
9	Transport	2	3	3	2	3	2	4	3	3	2	2	2	2	3	3
10	Taxation	2	3	2	1	3	3	4	2	2	2	2	2	2	3	4
21	Regional/structural funds	2	2	2	4	3	3	2	3	2	3	4	3	4	3	3
22	Environment	3	2	2	2	2	3	2	1	2	2	2	2	4	3	3
24	JHA	3	3	2	3	3	2	3	2	2	3	3	2	4	3	3
25	Customs Union	3	3	2	2	3	2	3	3	3	2	3	3	3	3	3
Average heavy dossiers *		2.60	2.60	2.10	2.60	2.70	2.70	2.80	2.00	2.30	2.50	2.50	2.30	3.30	2.90	3.10
Average light dossiers **		2.29	2.57	2.29	2.29	2.86	2.71	2.29	2.14	2.14	2.57	2.71	3.29	3.00	3.29	3.29
Average entire acquis		2.64	2.69	2.28	2.41	2.66	2.68	2.43	2.07	2.38	2.39	2.48	2.62	2.86	3.03	3.03

Notes

A Degree of progress in adoption of the acquis in period 1999-2000;

B Date of adoption of the acquis;

C Available administrative capacity for implementation of the acquis.

The various candidate countries have been scored on the basis of the following criteria:

A *Degree of progress (Annual scores 1999/2000):*
- None or minimal
- Limited
- Progression
- Significant/substantial

B *State of takeover of the acquis (1999/2000)*
- None or minimal
- Limited
- Far-reaching, but with omissions (some significant)
- Acquis adopted

C *Administrative capacity (1999/2000)*
- Not or not functioning
- Major shortcomings in institutional structure and/or barely effective
- Institutional structure not complete and/or ineffectual in practice
- 'Finished': effective administrative capacity

* The 'heavy' policy dossiers of the *acquis communautaire* concern chapters 1, 3, 6, 7, 9, 10, 21, 22, 24 and 25 (see table) from the *Regular Reports* of the European Commission (2000).

** the 'light' policy dossiers of the *acquis communautaire* concern chapters 12, 14, 15, 16, 17, 18, 26 and 29 (Statistics, Energy, Industry policy, SMEs, Research and Science, Foreign Relations and Finance and Budget (from the *Regular Reports* of the European Commission (2000).

The figures in *italics* relate to scores in one or more policy areas where the criteria in question do not apply.

ANNEX II: MIGRATION FROM CENTRAL AND EASTERN EUROPE: SIMULATION STUDIES

The simulation study by Boeri and Bruckner is based on a time-series analysis of immigration into Germany between 1967 and 1998. The study does not however incorporate all the determinants of migration referred to in section 4.2.[1] This study arrives at the following main conclusions. If all ten Central and East European candidate countries were to join the Union in 2002, some 120,000 employees would emigrate in that year to the EU-15 (out of some 335,000 new residents). This migration flow falls over time, partly as a result of gradual income convergence and, after ten years, amounts to around 60,000 workers a year. In stock variables the peak is not reached until after 30 years, when 1.1 percent of the EU-15 population will consist of residents of Central and East European origin. Even subject to the constraints built into this model simulation, this order of magnitude can hardly be regarded as disquieting.[2] In addition these results may be regarded as unduly high for two reasons. In the first place the enlargement will presumably not take place before 2004. Since the candidates are doing all they can to promote macro-economic stability and catch-up growth, this will increase the incentives to stay, so that (*ceteris paribus*) the initial flow will be lower. Secondly it can be ruled out that Romania and Bulgaria (which together account for a third of the population of Central and Eastern Europe) could accede around 2004. Since the income disparity is greatest for precisely the workers in these countries, it may be assumed that their later accession will cut the initial inflow from 2004 onwards by at least a third.

Just like trade, migration has the (net) effect of increasing prosperity, also for the EU-15. What might be regarded as problematic diversity is the divergent *distribution* of the growth in prosperity. The aforementioned study provides support for the fear that workers in the relatively labour intensive industry and unskilled workers in certain services could be disadvantaged. For this group a 1 percent inflow in such an industry could have the effect of reducing pay by an estimated 0.25 percent in Austria and 0.6 percent in Germany. In the other EU countries the anticipated inflow is so small that the effects are even less pronounced. In this regard it must however be noted that:

1 the migration focuses consistently on flourishing industries (in connection with the probability of finding a job), so that at most the effect is one of somewhat lower pay increases;
2 the adjustment process through trade and direct investment (which, as noted in section 3.6, has been underway for some time) results in such a division of production processes that these wage effects are further weakened;
3 this always needs to be assessed in the light of the host country principle, which *rules out* pay-*reducing* effects via legal migration.

The study therefore makes it abundantly clear that this is a German and Austrian issue. Within these countries it is primarily the border regions that could be

affected. 77 percent of the migration simulation by Boeri and Bruckner would be directed to these two countries (65 percent to Germany), while the Netherlands might receive 2 percent, or several thousand workers a year in the initial years. The migration is however sectorally sensitive, in the sense that it will bear especially on such sectors as clothing, leather goods, assembly-oriented electrical appliances, construction and various services such as the hospitality industry. In so far as trade adjustments under the Europe agreements have not been completed despite the sharp increase in trade, this could also have the effect of depressing wages. The specialisation in the current 15 EU member states is almost entirely complementary to that in Central and Eastern Europe.[3] In addition the export surplus of the EU-15 is rising steadily as a result of major differences in added value, even in these migration-sensitive sectors. Although the trade share of Central and Eastern Europe is above average in border regions (compared with the EU-15), even here it does not generally exceed 5-10 percent.[4]

Bauer and Zimmermann (1999) have based their study not just on an extensive survey of the literature but also on a simulation model based on the migration from Greece, Spain and Portugal in 1985-1997. The conclusions from this study do not differ essentially from those of Boeri and Bruckner: the maximum potential inflow is put at some 2-3 percent of the population of the countries of origin (multiplied by roughly three tenths in order to find the percentage of the EU-15 population). Bauer and Zimmermann do however draw a distinction between migration without restrictions and migration in circumstances of free movement, where the simulated effect in the latter case is notably greater for Poland, Romania and Bulgaria and can also not be regarded as marginal in an absolute sense.[5] Evidently this relates in particular to the income disparity variable. This probably reflects the limitations of the very simple model with just two determinants of the rate of migration (relative unemployment and relative real per capita income). Nor is it clear how this pronounced difference can be based on the Mediterranean flows after 1985, since these increased very little if at all after the free movement came into effect.

The (maximum) results in relation to the pay and unemployment effects of Bauer and Zimmermann are only a fraction higher than those of Boeri and Brückner. The assumed inflow is 200,000 in the first year, or some 50 percent higher. Simulation of a labour market model also enables the authors to calculate an extreme and highly unlikely scenario: if in the first year an (enormous!) inflow of 1 percent of the EU labour force were to follow and all these migrants were unskilled, this would give rise to a net loss of EU GNP of 0.7 percent. The greater the number of skilled workers in the inflow, the smaller the loss. Even at low proportions of skilled workers the net effect switches to a benefit (capital-owners always gain from immigration). Given a limited inflow there is little if any displacement and the result is still a net benefit. It should be noted that this study too does not take account of the host country principle. Methodologically the simulation of the inflow is much too limited, since neither the costs of migration nor the incentives to stay have been included; nor have 'distance' and 'networks' been included as variables.[6]

NOTES

1 And 28 authors contributed to parts.

2 Taking German immigration as the basis may be misleading on account of the reunification and the influx at that time of 'original' Germans from various candidate countries, Russia and Ukraine. On the other hand some three quarters of the residents from candidate countries are already living in Germany (and Austria), thereby making the significance of the network variable particularly great. In addition the results of empirical analysis in immigration studies are generally heavily affected by the choice of the instrumental variables. In addition 'endogeneity' is a problem (i.e. regression appears to indicate that flourishing industries are 'due to' the migration). For a technical analysis see text Box 4, Boeri & Brückner, Part A, Analysis, ch. 6, p. 84 and Box 6, p. 116. The model does however have dynamic aspects and is based on (income) expectations.

3 See Brenton (1999) for a highly disaggregated analysis. Even for Portugal this is overwhelmingly the case. Portugal has not lost market share to the CEECs in these sensitive sectors.

4 More precisely: exports plus imports (with the CEEC region) amount to approximately 1 percent of the GNP for the EU-15 and 4 percent for Germany.

5 Poland 6 percent of the population; Romania 28 percent; Bulgaria 16 percent. The authors themselves warn against taking these results literally (page 52).

6 A further objection: 'With regard to the relative unemployment rates, the situation of the East European countries comes closer to the situation when the Southern European countries joined the EU. . .. Therefore, the simulation results. . ..are out-of-sample predictions which could suffer from a large error'. (p. 52)