



## THE ROBERT SCHUMAN CENTRE

*Chairman*  
HORST GÜNTER KRENZLER

Preparing for the  
*Acquis Communautaire*

*Rapporteur*  
MICHELLE EVERSON

POLICY  
PAPER

98/6

EUROPEAN UNIVERSITY INSTITUTE

European University Institute



3 0001 0032 9250 7



WP 320  
EUR

## Policy Paper

98/6



### **The Policy Papers Series**

The Robert Schuman Centre's Policy Paper Series adds a further dimension to its existing publications which include the Jean Monnet Chair Papers and the Working Papers. This series aims to disseminate the views of a person or a group on a particular policy matter, specifically in the field of European integration.

The European University Institute and the Robert Schuman Centre are not responsible for the proposals and opinions expressed by the author(s).

The aim of the Robert Schuman Centre is to contribute to the public debate by offering views and opinions on general matters of general interest.





**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**

**ROBERT SCHUMAN CENTRE**

**Preparing for the *Acquis Communautaire***

**Report of the Working Group on the Eastward Enlargement of the  
European Union**

**Chairman:** Horst Günter KRENZLER

**Rapporteur:** Michelle EVERSON

**Policy Papers, RSC No. 98/6**

All rights reserved.  
No part of this paper may be reproduced in any form  
without permission of the authors.

© Horst Günter Krenzler and Michelle Everson  
Printed in Italy in October 1998  
European University Institute  
Badia Fiesolana  
I-50016 San Domenico di Fiesole (FI)  
Italy

**Preparing for the *Acquis Communautaire*\***

**Report of the Working Group on the Eastward Enlargement of the  
European Union**

30 April - 1 May 1998

**Chairman:** Horst Günter KRENZLER

**Rapporteur:** Michelle EVERSON

\* This report is based on three background papers written for and presented to the working group on eastern enlargement by Mahulena Hosoková, Horst Lohan and Ferenc Mádl. The report does not necessarily reflect the individual views of participants within the working group. Responsibility for the publication of this report lies with Horst Krenzler.

## List of Working Group Participants

Chairman: Dr jur. Horst Günter **Krenzler**, Generaldirektor für Auswärtige Beziehungen a.D.

Armin **von Bogdandy**, Professor of Law, Goethe University Frankfurt

Alexander **Brostl**, Professor of Law, University of Kosice

Günter **Burghardt**, Director General, DGIA, European Commission

Fraser **Cameron**, Advisor, DGIA, European Commission

Renaud **Dehousse**, Professor of Law, European University Institute

Michelle **Evrson**, Managing Editor *European Law Journal* (Rapporteur)

Mahulena **Hosková**, Senior Researcher, Max Planck Institute, Heidelberg

Ferenc **Mádl**, Professor of Law, Budapest University

Yves **Mény**, Director, Robert Schuman Centre, European University Institute

Uli **Rosenthal**, Professor of Public Administration, University of Leiden

Roma **Sadurska**, Attorney at Law, Uria & Mendez, Madrid

Jan **Zielonka**, Professor of Political Science, European University Institute



The continent-wide application of the model of peaceful and voluntary integration among free nations is a guarantee of stability...

...At the same time, the sheer number of applicants and the very large differences in economic and social development which they will bring with them, will present the Union with institutional and political challenges far greater than ever before.

*European Commission, Agenda 2000, 7*

## Introduction

The 1993 meeting of the European Council in Copenhagen without doubt marked a vital episode in an on-going dynamic of European integration. The sudden dissolution of the once seemingly immutable central and eastern-European political and economic block, had challenged a hitherto pragmatically fixed, if not theoretically unassailable, cornerstone of the integration process. That is, the necessary geographical limitation of the evolving values and substantive policies of the European Communities and Union; and with this, the definition of 'Europe' itself. Where once the European continent had presented an irrevocably divided ideological face, the democratisation movement and economic re-alignment within the countries of central and eastern Europe (CEECs), now furnished the Council with a radical opportunity: the reshaping and expansion of the integration project into an inclusionary and continent-stabilising, if not homogenising, programme. To this challenge the European Council duly responded. On the one hand, it greeted the CEECs application for prospective EU membership with favour. On the other hand, however, it also made such membership conditional upon the CEECs immediate adoption of certain fixed and 'core' EU democratic, constitutional and economic principles, as well as, and vitally so, their adoption of the *acquis communautaire* - or their creation of the legal and institutional machinery necessary for the effective adoption of the EU's evolving but common, objectives and policies, as well as its existing legislation and regulatory system.

Thus, in Copenhagen, the European Council stipulated that Membership [of the EU] requires that the candidate country:<sup>1</sup>

- has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities;

---

<sup>1</sup> European Council in Copenhagen, 21-23 June 1993, cf. Conclusions of the Presidency, SN 180/93, at p. 13.



- [has] a functioning market economy as well as the capacity to cope with competitive pressures and market forces within the Union, and
- [has] the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

Meanwhile, in its *Agenda 2000*, the Commission highlighted the Council's final point, and consequently underlined the central importance of the candidate states' ability to adhere to the *acquis*; at the same time, casting the problem of the preparation for its adoption in a largely technical and administratively-evolutionary light:

As emphasised by the Madrid European Council, the applicant countries' institutional and administrative capacity to implement the *acquis* is a key problem in the enlargement preparations. They must be helped to set up administrations capable of establishing and effectively implementing Community legislation.

From its relatively humble origins as a geographically-limited (and largely economic) entity established by European law, the European Communities and Union is now developing into a complex and continent-wide organisation guaranteeing stability on the basis of core constitutional and democratic principles, a functioning and common market economy, as well as a shared legal framework for the establishment and implementation of evolving and substantive European values and policies. Thus, the once divided continent of Europe is now also potentially to be characterised and defined as a stabilising and unitary *Rechtsgemeinschaft* or legal community: a joint economic and political enterprise which, though still evolving with regard to its substantive values and policies, is nonetheless shaped, structured and governed by a single (European) body of law.

Placed against this background, preparations in the CEECs for the adoption of the *acquis*, accordingly take on a vast significance in the on-going process of eastward EU enlargement. The securing of the human resources and the institutions within the CEECs which are needed to establish and implement the *acquis*, is not solely a vitally important matter of ensuring that existing European legal, regulatory and technical standards are observed within candidate countries: thus, for example, ensuring that the stability of the common market not be threatened by unilateral border closures in the face of divergent health and safety standards or even (illegal) governmental economic intervention. Rather, it is also a vital pre-condition for the continuing health and evolution of the European Union as a whole; the consolidated *acquis* being the most prescient and significant expression of the EU's (and potentially, the continent of Europe's) unifying and legitimating status as a *Rechtsgemeinschaft*.

The *acquis* is the unitary legal framework in which shared policies/values are established and through which they are implemented.

Accordingly, this report of the working group on EU enlargement dealing with the preparation for the *acquis communautaire*, casts its net widely. The programme which the European Commission has drawn up both administratively and institutionally to facilitate the CEECs adoption of the *acquis*, together with the technical and cultural difficulties which they have encountered during such endeavours, is the central focus and concern of this report. However, the analysis also attempts more broadly to define the concept of the *acquis communautaire* and so firmly to place it in its overall institutional/legal context (*infra* II). As a consequence, the report also highlights the various constitutional and political problems which have arisen during the preparation stage for the *acquis*' adoption by the CEECs, and which may similarly stand in the way of the development of 'the continent of Europe' as a legal community.

*Summa Sumarium*, and one year on from *Agenda 2000*, the overall assessment of the progress which has been made in the pre-accession preparatory stage is not encouraging. Not only has one applicant state (Slovakia) experienced far greater problems than expected in its attempts to satisfy the primary constitutional and democratic standards set at Copenhagen, but - as a preliminary Commission report demonstrates<sup>2</sup> - the CEECs, as a whole, have faced far greater difficulties in adapting to the institutional, administrative and cultural requirements related with the *acquis* than did earlier candidates for EU membership (*infra* III). In addition to the resulting and extensive mismatch between the expected and the achieved implementation of the *acquis*, preparatory problems would seem likewise to have been augmented by certain constitutional and political problems. First, in a decided echo of earlier constitutional re-alignments within existing Member States, various of the CEECs appear to be in need of a degree of constitutional reform in order to overcome normative barriers within their constitutions which preclude the unconditional acceptance of the supremacy of European law, and with it a consolidated *acquis* (*infra* IV). Secondly - and perhaps most sensitively - a political concern within the CEECs that the perceived 'club mentality' of the existing Member States may not pay due regard to the cultural and political peculiarities of these new and emerging nations, may also lead to conflict. Alternatively, the Union's interest in the adoption of a consolidated *acquis*, may

<sup>2</sup> Cf, the Commission's 1995 White Paper, 'Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union;' cf, also, the first report of this working group, Horst, Günter Krenzler, *The Implications of Enlargement in Stages*, Florence, EUI, RSC Policy Paper n° 97/2.



be met with corresponding pressure for derogations/opt-outs in the recent manner of the Maastricht and Amsterdam Treaties (*infra* V).

In conclusion (*infra* VI), however, an optimistic note may be sounded. Certainly, the programme drawn up in preparation for the adoption of the *acquis communautaire* may be beset by difficulties. Nonetheless, flexibly drawn Accession Agreements and politically-neutral assessment techniques, such as 'benchmarking' and 'screening,' reflect well upon the EU's long-standing commitment to rational decision-making and formal fairness. In fact they appear to act as a barrier to any politically-motivated attempts to manipulate, or even hamper, the on-going process of eastern enlargement.

## II. The *Acquis* Defined and in Context

The *acquis communautaire* is, at first instance, a legal concept. As such, there is an ever-present temptation to define and to characterise the *acquis* solely in very simple legal and administrative terms; or, as a formal body of legislative acts requiring administrative translation into a legal form which might be effectively implemented in each of the Member States of the EU. And certainly, the existing body of EU legislation (as well as, the guidelines of the ECJ) is indeed a vital part of the *acquis communautaire*. Candidate countries will accordingly face the uphill task of implementing 31 Chapters of the *acquis* comprising 80,000 pages of legislation. However, notwithstanding the importance of this existing body of settled laws, the *acquis* is also a far wider notion encompassing - in the Commission's own words - 'an impressive set of principles and obligations' (*Agenda 2000*: 44)<sup>3</sup> going far beyond the internal market and including areas, such as, agriculture, the environment, energy and transport. In addition to existing and settled policies which have been concretised as legal obligations to be enforced throughout the EU, the *acquis* thus also entails the long term principles - that is values and associated policy goals - which the EU is currently establishing but has not yet fully developed (notably, in the areas of CFSP, EMU and Justice and Home Affairs). Similarly, and vitally so, the *acquis* also includes the institutional arrangements and structures through which such goals might be identified, decided upon and pursued.

The Commission has recognised that due to the vast expansion of the *acquis* the CEECs will face far greater difficulties in adapting to it than did earlier candidates for EU membership. In addition, however, the task of the CEECs is much augmented:

<sup>3</sup> For the Commission's exact designation of the *acquis*, cf, similarly *Agenda 2000*, pp. 44-47.

- Firstly, although the primary body of internal market legislation is now largely settled and the Commission can now begin its screening process within the CEECs, other areas of the *acquis* - and not unimportant areas at that - have become 'moving targets.' Whole areas of the *acquis* such as finance, agriculture and the structural funds are now due for radical overhaul, determining that screening processes cannot begin until the *acquis* in these areas has been resettled; and
- Secondly, there is agreement that eastward enlargement itself will necessitate a wide-ranging overhaul of the institutional arrangements and structures of EU policy-making and pursuit, with the most difficult reforms taking place within the institutions of the Community. For example, more majority voting and the weighting of voting within the Council, the extension of the legislative powers of the EP and the change in working methods, etc.

In addition, however, the particular distinction between obligations and principles within the *acquis communautaire*, also provides a pointer to the two very separate issues which the EU, and in particular the Commission, must address, together with the tasks which it must undertake during its endeavours to prepare the CEECs for its adoption.

### 1. Obligations of the Acquis

The Commission has identified the clear and primary elements within the *acquis* which CEECs must now begin to transpose and implement in the pre-accession *acquis* phase:

- The obligations set out in the Europe Agreement, particularly those relating to the rights of establishment, national treatment, free circulation of goods, intellectual property and public procurement;
- ...measures set out in the White Paper, particularly key single market directives in areas such as taxation, public procurement and banking;
- ...other areas of the *acquis*. [Though] [i]n this area, the situation varies considerably among the applicant countries, significant and far-reaching adaptations will be needed in the fields of environment, energy, agriculture, industry, telecommunications, transport and justice and home affairs (*Agenda 2000:45*).

In this view, the *acquis* is a coherent body of settled legislative norms, largely though not exclusively concerned with the functioning of the single market, and long and firmly in force within the existing Member States of the EU. As a consequence, the implementation of this section of the *acquis* serves very particular goals and requires specific accession-oriented policies on the part of



the Community, as well as very particular legal and administrative structures to be established within aspirant states.

The comprehensive implementation of this portion of the *acquis* within the CEECs is a double-edged sword. On the one hand, vitally preserving the continent-wide homogeneity and thus credibility of existing Union policies, and especially that of the internal market. And on the other, again largely with regard to the single market, ensuring that CEECs will be in a position to compete fairly within a common European economic realm, and so, in the words of the Copenhagen summit, withstand 'competitive pressures and market forces.'

In the Commission's opinion, the CEECs ability to transpose and implement this *acquis*, accordingly largely translates into their capacity to impose:

...as swiftly as possible, ...*Community standards* on enterprises and large industrial plants. This is primarily the case in such areas as the environment, working conditions, transport, nuclear safety, energy, marketing of food products and the control of production processes, sound commercial practices and large industrial plants. (emphasis added)<sup>4</sup>

Where the competitive credulity of the internal market rests upon its uniformly applied regulatory framework, and where the measure of the CEECs full integration within the EU, is their ability to withstand free market pressure, all social, technical and ethical norms relating (even tangentially) to the regulation of the internal market must be comprehensively applied throughout Europe. This guiding (internal market) principle of existing and continued European integration demands that generous financial aid be endowed upon CEEC industrial and commercial enterprises for the purposes of economic restructuring (*Agenda 2000*: 84). However, it likewise presupposes a European effort to reinforce the institutional and administrative capacity of the applicant countries. Under the EU's multi-layered governance structure, Member States continue to carry the prime responsibility for the transposition and implementation of Community legislation and internal market standards. Accordingly, preparation for the *acquis* within the CEECs must extend far beyond the simple monitoring of its transposition into national law. Rather, it must also include, the establishment within each CEEC of an efficient and effective (both legal and institutional) national administrative system, designed to ensure that once transposed, standards will be uniformly implemented.

---

<sup>4</sup> *Agenda 2000*.



## 2. Principles of the *Acquis*

In addition to the *acquis*' status as the legal embodiment of existing and settled Union policies, it nonetheless also possesses a wider function as a legal framework encompassing existing political and constitutional EU values and potential policy-objectives, as well as the institutional means for the establishment of future EU policy-objectives and their implementation.

Variouly defined as,

...the whole body of EU rules, political principles and judicial decisions which new Member States must adhere to in their entirety and from the beginning when they become members of the Communities... (Gialdino 1995),

or,

...all the real and *potential* rights of the EU system and its institutional framework (emphasis added, *Uniting Europe* 9),

the *acquis* is thus a highly complex constitutional, political and legal matrix. More precisely, it may be characterised as a means whereby peaceful and voluntary co-operation among free nations is disciplined and formalised. European law, as guarantor of the *acquis*, thus first provides - via the various European treaties - a mode for the translation of the otherwise transient political commitments of sovereign European states into legally-binding supranational principles; and secondly furnishes - through both traditional formal legal interpretation and the treaty-based crystallisation of the institutional structures of supranational political decision-making - a structured dynamic to the integration process. In other words, the *acquis* is a (politically) neutral means whereby temporal political commitments are translated into fixed but evolving values of integration, which may themselves be further elaborated into substantive EU policies with the aid of the common institutions of supranational political decision-making. That is, institutions which are established, structured and overseen by European law.

In constituting the EU as a *Rechtsgemeinschaft*, this 'maximalist' version of the *acquis communautaire* thus becomes pivotal to the continuing health of the EU: first, stabilising and making international co-operation manageable through integration; and secondly, allowing for the continued evolution and implementation of the values and policies of the Communities and Union. Equally, however, it is the cause of great difficulties in the process of preparing the CEECs for the adoption of the *acquis*. The most prosaic of these difficulties is that of the 'moving target.' In a time of extraordinary flux within EU development, it is thus difficult to identify exactly which evolving principles within the *acquis*, the CEECs must adopt and to what extent, with the question of the status for the requirements for Schengen and European and Monetary

Union being uppermost in this respect (*infra* IV). At a deeper level, however, this reading of the *acquis* also requires great and vital adaptations in the constitutional, legal and political cultures of aspirant states.

### **3. The Transformation of Institutional, Legal and Political Cultures as a Necessary Step in the Effective Integration of the *Acquis***

*Constitutional cultures:* Perhaps the greatest change which will be required, is that of the adjustment of national constitutional and legal systems to accept and/or respect the supremacy of European law and the adjudicatory primacy of the European Court of Justice. The evolution of Europe as a stabilising legal community not only requires that the EU's *acquis* be given precedence above possibly divergent national legal provisions, but that it also evolve in a uniform manner throughout the continent, with the ECJ providing for its common and undisputed interpretation.

*Legal cultures:* Equally, however, adoption of the *acquis* must also include adaptation to the mode of legal reasoning which has evolved within the EU, as well as the institutional patterns of interaction - between national and European legal systems - which have marked its development. This will first require acknowledgement of the fact that, in its character of guardian of the treaties, the ECJ has more closely defined and thus given added evolutionary impetus to many of the commitments and principles laid down in EC treaties (eg, Article 119 EC on equal treatment for men and women). Secondly, lawyers within the CEECs need also to be trained in the principle European doctrines which secure the effectiveness of the *acquis*, such as direct effect. Similarly, institutional legal mechanisms which support national/supranational judicial dialogue and the evolution of a consolidated *acquis*, such as Article 177 EC, need be given a high profile within aspirant states and national judges encouraged to make use of them.

*Political cultures:* Finally, and perhaps most sensitively, however, preparation for the *acquis*, must also encompass preparedness to pursue national interests via Union institutional structures rather than through unilateral political action. In this regard, however, recent changes in the quality of the *acquis communautaire*, and more particularly, the notion of flexibility introduced by the Amsterdam Treaty, may call for a greater degree of sensitivity towards the particular concerns of applicant states. Up until recently, the *acquis* was fully common to all Member States and equally had about it an air of centralisation at the European level. However, both the Maastricht and Amsterdam treaties have introduced in various areas (notably EMU and Schengen) with regards to the substantive policies of the EU and the institutional structures within which they will be pursued, a degree of differentiation. This has been made possible by



means of the various opt-outs and derogations afforded to the Member States. This growing flexibility within the *acquis*, together with the additional option of closer co-operation which the Amsterdam Treaty has afforded, has accordingly begged the question of whether, given its increasing economic and political diversity, the Union must recast the notion of the *acquis*. In other words, one might ask whether the EU could explicitly develop a variegated *acquis*, founded upon principles of flexibility and co-operation (Ehlermann 1998), which would allow Member States to develop and involve themselves within EU policies at a pace suiting their particular economic and political conditions. In this regard, however, it should nonetheless be noted that by far the largest part of EC legislation relates to the internal market, and thus remains an unconditional *acquis* in the traditional sense. Only additional fields of co-operation fall or may fall within the category of flexibility and co-operation, and applicant states must naturally respect both aspects of the *acquis* in the same manner as current Member States.

### III. Tackling the Legal and Administrative Capacity of the CEECs

#### 1. 'Conditionality' and 'Depoliticisation' in the Process of Accession

Perhaps the most important thing to note about the process of the accession of the CEECs to the EU is not simply that it is marked by 'conditionality' - or its dependency upon the ability of the applicant states to fulfil EU obligations, and more particularly to observe the *acquis*. But rather, since such conditionality is not itself the subject of, but is instead the precondition for, continuing accession negotiations. Each negotiating stage in the pre-accession process is therefore fully dependent upon the CEECs proven ability to satisfy the various goals set by the Union. First (European Agreements), the basic democratic and free-market oriented principles and primary provision of the internal market *acquis* which form the core of the EU. Secondly (White Paper), more detailed provisions on the internal market. And thirdly (Accession Partnerships/AP), individually crafted aims for each CEEC, covering nearly all areas of EU policy-making, both within and 'beyond' (to the extent that in many areas economic reform must preface its adoption) the *acquis*. In addition, however, the APs have further extended the terms of conditionality, not only making future negotiations conditional upon the CEECs ability to adopt and implement each EU goal as it is stipulated, but likewise also making financial assistance under the PHARE programme dependent upon such progress.

*Figure 1: Conditions of the European Agreements*

- (a) Political dialogue
- (b) 10 year timetable for the liberalisation of trade in industrial goods, on an asymmetric basis and in two stages
- (c) Complex rules for trade in agricultural products
- (d) Titles on movement of workers, freedom of establishment, and supply of services (following EC Treaty Model)
- (e) Liberalisation of capital movements
- (f) Competition policy (following EC Treaty Model)
- (g) 'co-operation' on other economic issues, from energy to education to statistic (areas for technical assistance)

*Figure 2: Conditions of the Single Market White Paper*

- (a) free movement of capital
- (b) free movement and safety of industrial products
- (c) social policy and action
- (d) agriculture
- (e) transport
- (f) audio-visual
- (g) environment
- (h) telecomms
- (i) taxation
- (j) free movement of persons
- (k) public procurement
- (l) financial services



**Figure Three: Economic Conditions of the Accession Partnerships**

Czech Republic	<ul style="list-style-type: none"> <li>• implement policies to maintain internal and external balance</li> <li>• improve corporate governance by accelerating industrial and bank restructuring; implementing financial sector regulation; enforcing Securities and Exchange Commission supervision</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>• sustain high growth rates, reduce inflation, increase level of national savings</li> <li>• accelerate land reform</li> <li>• start pension reform</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• advance structural reforms, particularly of health care</li> </ul>
Poland	<ul style="list-style-type: none"> <li>• adopt viable steel sector restructuring</li> <li>• restructure coal sector</li> <li>• accelerate privatisation/restructuring of state enterprises</li> <li>• develop financial sector</li> <li>• improve bankruptcy proceedings</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>• act on market-driven restructuring in the enterprise, finance and banking sectors</li> <li>• prepare pension reform</li> </ul>
Bulgaria	<ul style="list-style-type: none"> <li>• privatise state enterprises and banks</li> <li>• restructure industry, financial sector and agriculture</li> <li>• encourage increased foreign direct investment</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>• accelerate market-based enterprise restructuring and complete privatisation</li> <li>• strengthen banking sector</li> <li>• modernise agriculture and establish a land and property register</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>• accelerate large-scale privatisation</li> <li>• restructure banking, energy and agri-food sectors</li> <li>• enforce financial discipline</li> </ul>
Romania	<ul style="list-style-type: none"> <li>• privatise two banks</li> <li>• transform <i>régies autonomes</i> into commercial enterprises</li> <li>• implement foreign investment regime</li> <li>• restructure/privatise a number of large state-owned industrial and agricultural companies</li> <li>• implement agreements with international financial institutions</li> </ul>
Slovakia	<ul style="list-style-type: none"> <li>• tackle internal and external imbalances and sustain microeconomic stability</li> <li>• progress on structural reforms</li> <li>• privatise and restructure enterprises, finance, banking and energy-intensive heavy industries</li> </ul>



Figure Four: Other Conditions set by the Accession Partnerships

Political Conditions	Elections, opposition party participation and minority languages (Slovakia) Integration of non-citizens and language training (Estonia and Latvia) Improving judicial system (all candidates)
Institutional and Administrative capacity	Improvements in many areas of policy-making and implementation, eg, banking supervision, internal financial control, competition policy (all candidates)
Specific Internal market measures	extra measures: liberalisation of capital movements (Poland and Slovenia); adoption of a competition law (Estonia); adoption of anti-trust laws (Slovenia)
Justice and Home affairs	Effective border management (all candidates)
Environment	Transposition of legislation and the drawing up of detailed approximation and implementation strategies

(Source: Grabbe 1998)

With the exception of the conditions contained within the European Agreements, signed and ratified between the EU and individual applicant states, the overall body of conditions laid down during the accession process, is not legally binding. APs and the White Paper cannot be challenged or enforced in any Court. Nonetheless, the tying of the 'carrots' of the accession process, further accession negotiations and generous aid under PHARE - to the 'sticks' of stalled negotiations and blocked aid, have endowed the various conditions set with a, if not quasi-legal, at least very formal quality. Accession negotiations have thus been vitally transformed from simple political bargaining into a rigidly structured and technical process. With highly technical pre-conditions prefacing each further stage in eastern enlargement, and negotiations themselves being characterised by the setting of further technical standards, the process of eastern enlargement is one of structured technical adaptation to existing EU goals.

This setting of pre-conditions is probably partly a result of the large degree of trepidation amongst existing Member States with regard to eastern enlargement. More specifically, pre-conditions reflect very valid concerns that economic, legal and political incompatibility amongst aspirant states would precipitate a fatal lack of confidence in the EU's existing policies and future aspirations, both undermining the credibility of the internal market and complicating the 'deepening' of political union. Equally, however, the depoliticisation of the accession process has two important consequences:

First, in this enlargement process, the *acquis* has become an issue long before, rather than upon accession. With so many of the conditions set for accession deriving directly from the *acquis* (see above), policies and values established within the EU's institutional framework are now to be applied in what in essence remain third party countries.

Secondly, however, the position of the Commission within the enlargement process has been strengthened. Certainly, the Council and the Member States have sought to establish a balancing role. For example, the Council of Ministers has established a working group to define the accession *acquis* in the highly sensitive area of Justice and Home Affairs (*Uniting Europe* 2). Meanwhile, the Member States also retain their overall right to judge whether accession criteria have been met (Grabbe 1998). Nonetheless, since the Commission assesses whether particular sections of the *acquis* are being transposed, and similarly reports through means of *avis* on the progress made in individual States, the influence of that institution is now considerable. As a consequence, the pre-accession period is strongly marked by the Commission's traditional pre-occupation with efficiency-oriented and technical considerations.

## 2. The Technical Problem of the Preparation for the *Acquis*

Seen in this efficiency-oriented light, the problem of preparation for the *acquis* may thus initially be cast in terms of:

- The exact goals pursued by the programme for the adoption of the *acquis*.
- The difficulties encountered during the programme.
- The means adopted to overcome such problems.
- An evaluation of the results achieved.

### a) *The Goals Pursued*

As noted, the Commission's pre-accession strategy (SPA) is concerned both with the transposition of Community legislative standards into the national laws of CEECs, and with the establishment of effective national administrative and legal structures, designed to ensure the implementation of such legislative standards. Thus, for example, Poland's AP does not merely detail (in addition to economic reform measures) the standards which must be established within a new national competition policy, but also demands that Poland create an administrative structure - or new monitoring capacities - to ensure that Community standards are effectively implemented. In itself a huge programme, SPA must also, however, be conducted with an eye to the overall structures of, and constraints faced by, the EU. On the one hand, the guiding principle that Community policies be implemented at a decentralised level. And, on the other hand, the simple fact that the Commission itself has very few human resources -



or technical and administrative experts - trained in Union policies and eastern European cultures alike - who might aid in the process of transposition and the establishment of effective administrative structures. Equally, a further efficiency consideration is the relatively limited financial package with which the Commission must work.

In short then, the SPA need ensure the uniform application of the *acquis* at a decentralised national level, maximising and applying the very few resources at its disposal to ensure as effective, speedy and efficient adoption of the *acquis* as possible.

*b) The Difficulties Faced*

The Commission's experience during this pre-accession period, has already demonstrated that whilst the financial costs of both transposing Community legislative standards into national law and creating the monitoring capacity to ensure their effective implementation, have proven to be one important barrier to the speedy and efficient adoption of the *acquis*, far greater difficulties have nonetheless arisen in the field of 'human resources.' The vast number of areas affected by the need to implement the *acquis*, as well as the very low starting level of knowledge among the correspondingly large number of officials, lawyers and civil servants involved about the character and demands of the *acquis*, are the major hurdles to its adoption. The professional capacity of officials and agents in governmental departments, agencies and organisations which are entrusted with the effective implementation of the rules and regulations in question, are the primary issues which must now be addressed.

The vital need to improve knowledge of the *acquis* amongst the small army of officials and lawyers engaged in its adoption, is one confirmed by commentators within the CEECs (Mádl 1998; Hosková 1988). However, such observers also point to deeper structural problems in relation to the human resources required for the *acquis*' implementation:

- The brain drain: or the simple fact that whilst governments have been forced to engage in expenditure control, have cut down on staff numbers, have eschewed extensive pay reviews and have thus failed to recruit highly qualified experts, the private sector is beginning to flourish, determining that the better qualified are leaving public service.
- Corruption: an apparent problem amongst government officials, as well as private actors, during a difficult period of transition.
- Lack of generalised knowledge about EU culture: *ie*, although specific technical assistance may be available, further aid is required at the university level to

ensure that civil servants, lawyers and private actors develop a sufficiently deep understanding of and respect for the Union's culture and linguistic diversity; with such assistance being required both in the research and teaching fields.

- Political influence; in contrast to most existing Member States of the EU, the CEEC's do not have an unbroken history of civil service independence. Rather, the post war period saw the development of a pattern of political interference within administration - a pattern which is proving hard to change, especially since pressure often derives from political institutions which are generally perceived of as being 'democratic' in nature (cf, the Hungarian Parliament's attempts to hamper the administration of competition policy).
- A lack of public knowledge about the EU's policies and the means chosen for their implementation
- A clear lack of knowledge among the judiciary about the goals and structures of the Union, as well as certain problems arising from the fact that many sitting Judges are tainted by their association with the pre-reform regimes. (Mádl 1998; Hosková 1998)

c) *The Measures Adopted*  
*Recent Commission Efforts*

The Commission has responded to the human resource difficulties so far identified, recently re-orienting its 'principle assistance instrument, the PHARE programme, ...to deliver "accession-driven" assistance' and making 'institution-building a priority.' (Lohan 1998). In practice, this entails a two pronged strategy.

First, it entails the organisation of a *transfer of knowledge*, with funding for:

- Institutes for research into and teaching on EU matters.
- Libraries of deposit, equipped with all European legislation and texts.
- Visits from the CEECs to Brussels and the Member States.

Secondly, it encompasses the development of a *twinning programme* which has been designed to overcome the problem of a lack of personnel within the Commission who possess the necessary technical and expert knowledge to aid the CEECs in their efforts to adapt to the *acquis*. This twinning strategy also imposes some form of administrative rationality upon the SPA, since it relies heavily upon the concept of 'tendering' by Member States who are willing and have the resources to engage in the tendering programme. Under the twinning programme, the Commission has accordingly entered into co-operation with the



Member States in an effort to provide *direct* assistance from Member State administrations to corresponding administrations in the applicant countries.

- Unlike earlier PHARE programmes, twinning places an added emphasis upon efficiency, not leaving the expected results of financial assistance unspecified, but instead introducing a new concept, or 'the obligation to achieve a clearly defined operational result in a particular field of the *acquis communautaire*' (Lohan 1998).
- To aid in the achievement of this obligation, twinning will similarly be related to a specific measure. For example, the creation of a VAT system, which will, in accordance with a detailed work-plan, be separated into a variety of tasks - enactment of the necessary regulations, establishment of new accountancy rules, re-organisation of fiscal and treasury services, re-organisation and computerisation of administrative services, training public officials, raising public awareness on compliance. Various 'twins' will be brought in to assist with each single task as it arises.
- Long-term secondees from the Member States will form the backbone of the twinning programme, while their work may also be supplemented by other components such as 'short-term expert advice.'
- Equally, the twinning programme will be implemented through efficiency oriented contracts and tendering.
- A technical contract will first be established between the applicant country and its tendering Member State partner. The contract will specify the result to be achieved, and contain a detailed work programme, time schedule and budget. The responsible individuals will be named and the obligations of both parties spelt out. Such obligations will also include difficult issues such as the design of training programmes.
- Secondly, a financing contract will be concluded between the Commission and the tendering Member State.
- PHARE will cover the costs of twinning, and will pay special attention to the need to provide adequate remuneration to long term secondees in order to avoid any problems of a lack of motivation on the part of individual experts within existing Member State administrations.
- In addition, however, twinning may also be complimented by a *networking* concept. That is, an effort to improve the training of CEEC officials by encouraging current Member States to establish on-going contacts between



themselves, and between themselves and the CEECs, to ensure the widest dissemination of information on the various training courses and programmes which national administrations operate and from which CEECs may benefit.

#### *Corresponding Efforts within the CEECs*

Clearly crucial to the success of SPA, are the concomitant efforts undertaken by aspirant national administrations to ensure the comprehensive adoption of the *acquis communautaire*. In March of this year, CEECs were themselves required to draw up detailed plans for the adoption of the *acquis*. In this regard, countries such as Hungary have already made great efforts to themselves draw up *acquis*-implementing programmes and have also attempted to compensate for one of the highlighted shortcomings in the Commission's past and proposed efforts to administer the PHARE programme: the lack of central co-ordination for policies of implementation (Grabbe 1998).

Thus, whereas twinning with its emphasis upon low level exchanges between civil servants, lawyers and government officials, pays little if any attention to a national horizontal and vertical co-ordination of implementation policies, the Hungarian strategy (mirrored in other countries) includes measures such as the establishment of a strategic working group for European Integration. This is a body made up of experts which, through its wide-ranging and numerous single-issue sub-committees, has created an impressive and integrating network of governmental, academic and private expertise on the implementation of the *acquis*. Through its numerous publications upon EU issues, this body has also raised public awareness with regard to EU membership, and so has ultimately increased the degree of public preparedness to apply pressure upon administration to adopt the *acquis* quickly and efficiently.

#### *d) An Assessment of Progress Made*

Though twinning is only now being fully implemented, and accordingly cannot yet be assessed for its efficacy, an examination of achievements made under earlier PHARE initiatives reveals that the process of the adoption of the *acquis* is much retarded. Thus, for example, although screening was a stipulation of the European Agreement, Poland has succeeded only in screening 30% of proposed governmental legislation for its compatibility with the *acquis*. Equally, while the institutions of competition policy are in place throughout the CEECs, few investigations and prosecutions are taking place - the number and quality of competition lawyers continuing to lag far behind that which is required. Similarly, one of the most successful applicants, Hungary, described in the EU's 1997 country report as having:

...greatly improved since 1989...[while further]....The tasks of the administrative units, and the control bodies are reasonably well defined. Over the last five to six years, organisations have been set up in accordance with the requirements of a market economy and have been given the necessary responsibilities and powers,

has nonetheless, by its own admission, only succeeded in transposing 70% of the pre-accession *acquis*. Meanwhile its administrative structures also remain plagued by problems of a lack of professionalism, corruption and a general dearth of expertise (Mádl 1998).

The Commission has itself characterised this malaise - which may even endanger the 2002 goal for accession - as a 'backlash.' Due to the lack of immediate accession prospects, a growing political and administrative weariness with the day-to-day task of the implementation of the *acquis* is developing. Twinning, it is hoped, will provide a suitable foil to this backlash. However, a few further mechanisms for easing the introduction of the *acquis*, might also be explored:

*From Bilateral to Multilateral Co-operation:* To date, accession negotiations, as well as, the drawing up of programmes for the adoption of the *acquis*, has been very much a bilateral process. This arrangement has undoubtedly served both the interests of the CEECs and the EU, allowing very specific national problems to be identified and particular aid measured to be tailored to the needs of each CEEC. However, a measure of multi-lateralism might now nevertheless prove advantageous. This would especially be the case in relation to the creation of expertise; the Commission's networking concept, developed within the context of the twinning programme, being extended to foster co-operation between aspirant CEECs and the pooling of their experiences, expertise and training opportunities to provide added resources.

*Judicial/Legal Activism:* Though only the EA's are legally-enforceable, and, as a consequence, the implementation of much of the pre-accession *acquis* remains outside the purview of lawyers and courts, a favourable basis for the future may be set by encouraging activism within the legal professions of the CEECs. Where lawyers and courts are convinced of the need to give priority to EU and Community policies, the legal system may be activated to side-step the stagnating consequences of political atrophy. In this regard, 'individual legal rights' might in the future also become an issue, with individuals using any rights endowed by EA's and future EU/CEEC agreements to pursue the correct implementation of their rights, and thus the *acquis*, through the courts.

*Public Activism:* Equally, taking note of positive Hungarian experience with mobilising public opinion, PHARE might be used as a means to increase press coverage of *acquis* adoption measures with the aim of raising public



consciousness within the CEECs on the enlargement process. This may encourage private actors to place pressure upon administration to speed up adoption.

### **3. Recent Efforts to Ease the Implementation of the Particular Areas of the *Acquis* (Schengen)**

In addition to Commission attempts to ease the implementation of the *acquis* within the CEECs, mention should also be made here of Member State' efforts to provide aid for the adoption of EU rules in specific areas such as Schengen. The Interior Ministers of the EU states which are party to the Schengen agreement have confirmed that CEEC applicants for EU membership will be required to adopt Schengen provisions. (Bulletin Quotidien Europe No 7308, at p. 11). In view of the danger that the CEECs might become 'hubs for illegal immigration,' all Schengen criteria developed in the time prior to accession will be an 'integral part of the *acquis communautaire*' (Bulletin Quotidien Europe No 7308, at p 12 and 11). A newly created standing committee established to oversee whether Schengen criteria are being observed in those states which are already members of Schengen, will also undertake the task of monitoring implementation within the CEECs; and at the same time will provide expert assistance to CEEC countries wishing to benefit from Schengen provisions. To this latter end, work has already begun. For example, the German presidency of Schengen recently arranged a conference on the work of border police (20-23 September 1998), in which border police officers from the 10 CEEC candidates participated.

### **4. Cultural Difficulties within the Technical Implementation of the *Acquis***

The technical presentation of the problem of preparing for the adoption of the *acquis communautaire*, though providing a sound basis for the evolution of effective implementation policies, may nonetheless be argued to disguise some deeper structural difficulties within the process of restructuring national administrations within the CEECs.

With particular respect to the internal market, the Union has long sought to minimise the centralisation of the implementation of EU and Community policies and the *acquis*. Thus, for example, while some centralised European administrative agencies have been established at Union level, their duties are nonetheless generally limited to the collection of information and the preparation of policies with regard to various areas of Union activity, such as the internal market and the environment. In part, a result of the limited resources available at the Community level and the concomitant need to rely upon the



resources of the Member States for the effective implementation of Community policies and the *acquis*, such a decentralised approach, however, also owes to certain legitimacy concerns: more particularly, the - in modern terms, subsidiarity-oriented - principle that since the authority of the Union continues to derive from the Member States, such constituent nations should retain their powers to determine the exact mode in which Union policies and the *acquis* will be implemented within the national territory. Equally, however, the retaining by the Member States of implementation powers, likewise serves to preserve national administrative cultures and traditions - or administrative structures - developed in, suitable for and responsive to the national cultures which they serve.

On this final score, the countries of CEE face a very particular problem. Within a very short period of time they have moved from Soviet dominated systems to aspirant applicants for EU membership. As a consequence, they have had very little opportunity to re-establish and consolidate their traditional legal and administrative structures. The EU and Commission, by contrast, have an overwhelming and immediate interest in the creation of structures suited to the efficient and effective implementation of the *acquis* and have made available as the logic of accession does no more than demand - various European and Member State experts to aid the CEECs with administrative re-construction. Such experts, as a matter of course, have either a European institutional view or an existing Member State view of administration structures. As a consequence, certain CEECs have registered, an albeit slight, conflict between administrative systems which they are attempting themselves to re-establish in line with national traditions and external advice, either offered with an eye to and motivated by supra-national technical-efficiency concerns, or imbued with 'foreign' administrative traditions (Mádl 1998).

In a certain sense, this is an inevitable and unavoidable conflict. After all, where administrative structures are absent or inadequate, the Commission has little choice but to depend upon imported traditions and rational and technical European administrative values. Yet, the high 'legitimizing' value placed by the Union upon the Member States' continuing cultural and traditional autonomy, would seem to indicate that such issues need be treated with sensitivity. The long period of accession and individually-tailored national programmes for the adoption of the *acquis* may help to ease such problems. Nonetheless, further measures fostering of independent CEEC administrative cultures and traditions may prove to be necessary.

#### IV. Constitutional Barriers to the Adoption of the *Acquis*

Moving beyond the pressing and immediate administrative and institutional problems associated with the adoption and implementation of the pre-accession *acquis*, deeper structural problems within the CEECs have also emerged which may similarly endanger the *acquis*' future operation as a guarantor of the EU's status as a *Rechtsgemeinschaft*. Primary amongst these, is that of the 'closed constitution.'

Though demanding that national law give primacy to it by virtue of its doctrines of supremacy and direct effect, European law - vital guarantor of the unifying nature of the Community's *acquis* - nonetheless stands in a somewhat sensitive relationship to the constitutional orders of Member States. This conflict extends far beyond simple formal legal disagreement and reflects instead upon European law's seemingly fundamental challenge to deep-seated and long-established notions of indissoluble state sovereignty, legitimated through representative and unitary, national democratic processes (Weiler 1995; Ladeur 1997). Most recently touched upon by the German Constitutional Court in its *Maastricht Judgment* (89 *BverfG*), this problem of national (constitutional) sovereignty vs the supremacy of European Law has recently, and more pertinently, also played a role in the Czech Constitutional Court's ambivalent Judgment upon Articles 63 and 64 of the Europe Agreement (Hosková 1998).

Summarising briefly, the underlying cause of friction between European law's claim to supremacy and the national constitutional law of the CEECs lies in the fact that various of the constitutional orders of the CEECs make no provision, along 'monist' lines, for the automatic recognition of the primacy over national law of international legal orders. Rather, in that the national Constitution determines that all legal, administrative and political authority exercised within the national territory must be derived from the national *demos*, international legal orders have no immediate effect within the Member State concerned. With regard to European law and the EU's *acquis*, this 'closed' constitutional form dictates that various legal mechanisms must be found to 'open up' the national legal order to European Law's claim to direct effect and supremacy. For example, Germany's use of Article 23 of the *Grundgesetz* to allow for a delegation of Federal powers to the EU is one such mechanism securing the supremacy of EC/U law and with this the coherence of the *acquis communautaire*. With regard to those CEECs with closed constitutions, similar legal mechanisms need therefore be evolved. Though Hungary has already engaged in a measure of constitutional reform to allow for the immediate recognition of the supremacy of European law, most CEEC constitutions retain their commitment to the 'sovereignty of the people' and/or the 'sovereignty of



the national law.' As a consequence, bedrock concerns have been raised about the status of European law within such territories - will it merely have the character of an administrative edict (Hosková 1998)?

In conclusion, and with particular regard to the EUs ever evolving legal order, further elements of the closed constitutional paradigm need also be considered. European Law's evolution of the doctrines of direct effect and supremacy and the unquestionable authority of European Law within the Member States - and with this its self-coronation as a quasi-constitutional power - has undoubtedly created the impetus for evolving and successful European integration. It thus has enabled European lawyers, and more particularly, the ECJ, to build upon treaty principles, established by sovereign nation states, both to develop such principles to suit evolving real-world market, political and social conditions, and to ensure that these broadened principles and values are respected within the Member States. Nonetheless national constitutional law's commitment to the tenet that the exercise of all power within a sovereign territory must derive from the democratically expressed will of the people similarly serves its purpose: ensuring the legitimacy of the exercise of power through its rooting in democratic processes. In this regard, friction between national and European legal orders takes on a deeper significance. In other words, where European law has evolved or is evolving new principles, values and policies for the Union, national law may demand that the 'democratic legitimacy' of such principles, values and objectives be proven. Hence, the German Constitutional Court's warning to the ECJ that too extensive an interpretation of Article 30 EC might not be acceptable to German Courts. The concept of national democratic sovereignty cannot simply be characterised as a doctrinal dinosaur belonging firmly to a long-past nationalistic age. Rather, it encompasses and entails the vital principle that the exercise of sovereign power must be democratically legitimated. In turn, the principles of the European Union and the supremacy of European law, also represent a convincing reality and normative goal. Legally-formalised and thus substantive international co-operation, is both a vital necessity with regard to modern economic and political relationships, and is also justified on its own terms, effectively conquering the exclusionary effects - notably, the economic and political alienation of non-nationals - effects of national modes of social organisation. Yet, such European supremacy need nonetheless be given some form of democratic legitimacy, extending beyond the present powers of the European Parliament, to ensure the acceptance of its slowly evolving values and doctrines by national legal orders.

Here, however, there are no ready answers. Europe is a novel enterprise. Its legal order is revolutionary, breaking the boundaries of both national and international law (Ipsen 1996). Democratisation has begun and has been intensified by the Amsterdam Treaty, but is necessarily of a novel character: for



example, the role and legislative competences of the European Parliament, voting rights for EU citizens and notions of social partnership under the Amsterdam Treaty. All national constitutional orders will need to show some respect for this novel form of democratisation. The German Constitutional Court has signalled its willingness to give greater recognition to EU law as European democratisation efforts continue. The constitutional courts of the CEECs must learn to do the same. Returning to the vital question of preparation for the implementation of the *acquis* within the CEECs, this accordingly determines that a far great effort must be made to educate lawyers and the legal profession within the CEECs in the intricacies of the supremacy question, to reinforce their loyalty to European law, and to encourage them to network with their Member State and European counterparts; and so to join within the endeavour to establish a democratically-legitimated European legal order which is recognised within the constitutional orders of all the Member States.

## V. Political Tensions and Preparation for the Implementation of the *Acquis*

What are the other deeper seated structural problems which may prove a barrier to the sustained adoption within the CEECs of the *acquis communautaire*? Which are the conditions which may prevent the complex legal, political and constitutional matrix which is an *acquis* encompassing both the existing and the potential values and policies of the European Union, from being firmly and irrevocably received into the political, legal and economic cultures of the CEECs? Perhaps the most sensitive of all factors which may hamper the redefinition of the continent of Europe as a unitary and stabilising legal community, is that of an increasing concern within the CEECs that an apparent 'club mentality' on the part of existing Member States, as well the Commission, may not pay due regard to the particular political, economic and cultural conditions prevailing within the CEECs. In its most extreme manifestation, this concern translates into the question of why entry is being made conditional upon the implementation of the *acquis* at all. More commonly, however, such concerns are more apparent in a limited degree of criticism of the fact the CEECs are being required to implement large tracts of the *acquis* as a precondition for enlargement negotiations, and a certain surprise at the extent of the *acquis* which it is expected that the CEECs will immediately transpose upon accession.

To recap, the accession process is characterised by two interrelated trends:

- The first, the large degree of trepidation on the part of Member States that the somewhat unsettled political and economic conditions which have inevitably



accompanied the CEECs transition from Soviet dominated and dependent states to autonomous, democratic and economically-liberal nations, would, within a EU context, fatally undermine certain of the core economic, monetary, political and social policies of the Union.

- The second, the consequential reliance placed upon 'benchmarking,' or the setting of successive standards which the CEECs must satisfy prior to accession, and the pivotal importance of the Commission as a 'screening' actor in the pre-accession period.

With regard to the adoption of the *acquis*, however, this has three notable consequences:

- Benchmarking determines that large section of the *acquis* must now be implemented in countries which nevertheless remain third party states.
- Equally, Member States fears about instability upon CEEC accession seem at the present to have led them to employ a wide concept of the *acquis* encompassing provisions with which certain existing Member States are not themselves required to comply. On the one hand, presumably with an eye to monetary stability, requiring CEECs to be prepared to adopt the second stage EMU *acquis*; and on the other, with a similar eye to the security of the EU's external borders, placing the Schengen *acquis*, and justice and home affairs, to the fore.
- Similarly, the Commission's primary place in the negotiation process, has lead it - fully in accordance with its role as the guardian of the policies of the EU - to assert that the *acquis* is non-negotiable.

Accordingly, within the CEECs the adoption of the *acquis* may appear to be plagued by questions of a lack of negotiating choice and even the existence of inequality or unfairness with regard to the exemptions, opt-outs and derogations afforded to existing Member States. First, third state polities are being required (if not legally, at least practically) to now adopt vast tracts of a very substantive *acquis*, affecting all areas of political, economic and cultural life, without yet having a say in its character or mode of creation. Equally, where certain current Member States have been afforded opt-out and derogations (from EU monetary and justice/home policies), will the CEECs also have the same possibility to derogate or opt-out from EMU and Schengen?

Against these understandable concerns, however, a Community interest in the maintenance of a consolidated *acquis* must be balanced. In its 'standard-based' version, the *acquis* thus represents a set of rules which have established,

regulated and guaranteed the functioning of a European internal market and have furthermore laid the basis for liberating rights, such as that of free movement of goods services and people, which in their scope and substance extend far beyond narrow economic interchange. Such consolidated rules, and national respect for them, is therefore not merely a vital means whereby the credibility of the market may be secured, but is also a vital bedrock for the further evolution of EU policies. Seen in this light complete adherence to the standard-based *acquis* is no more than a logical pre-condition for membership. Equally, the pre-accession implementation of the *acquis* is a logical requirement, given the CEECs young status as democracies and free market economies. The greater the efforts that are made now to secure their ability freely to compete within the internal market, the fewer the operating difficulties which will arise in the future. The pre-accession *acquis* is hence not a challenge to democratic processes within the CEECs. Rather, the CEECs have (democratically) chosen to become members of the largest market in the world, and as a consequence, must take steps to ensure that their membership neither endanger that market nor unsettle their own economic systems.

Admittedly convincing as this argument is, however, it might likewise be noted that its primary subject of application is the internal market. Though it seems to be beyond doubt that the CEECs need immediately comply with the core internal market *acquis*, and (possibly, with greater transition periods in its more technical areas) in its entirety, it might nonetheless be argued that concerns about the extent to which CEECs are being required to adopt the *acquis* in other areas, may be somewhat justified. More particularly, recent tensions in the once unitary character of the Union have arisen as various existing Member States - whether by virtue of economic difficulties or domestic political strains - have proven not to be in a position immediately to pursue the goals set by the evolving Union (EMU, social policy etc). In this regard, the institutional structures and law of the EU have nonetheless shown themselves to be both inventive and sensitive: allowing the bulk of the EU to proceed towards deeper union, while leaving the door open for lagging Member States to re-enter the policy-process if and when possible. Arguably, this is not a dilution of the *acquis*, and is rather its recasting in a variegated form which is structured by the Treaty of Amsterdam's dual principles of flexibility and co-operation (Ehlermann 1998). This variegated *acquis* thus allows the Union to manage both increasing depth in its policy-making and greater diversity in its membership. 'Flexibility' accordingly paying due regard to the various circumstances prevailing within the Member States and provisions on closer 'co-operation' vitally bridging the gap between various nations which are following the various EU policies at differing speeds.



On this score, the CEECs would seem to be clear candidates for EU flexibility and, in the more complex of EU policy areas, a variegated *acquis* would accordingly not be sign of Union weakness, but rather an indication of its maturity and ability legally to structure intensified integration within a highly diversified European continent.

## VI. Conclusion

As the issues raised at this meeting of the working group on eastward enlargement have confirmed, preparation for the *acquis* is an enormous task. First, it encompasses the vitally important matter of ensuring that existing Community legislative standards will be effectively implemented within the CEECs. And secondly, it includes the long term effort to ensure that an *acquis* which secures the EU's, and potentially the continent of Europe's status, as an evolving legal community, is firmly embedded within the legal, constitutional and political cultures of each CEEC. Only when these difficulties are overcome will the EU be able to adopt new members and to maintain the pace of integration.

On a concluding note, however, for all the constitutional and political queries which it may raise, the largely depoliticised strategy of requiring CEECs progressively to adopt the *acquis* as far as possible in a pre-accession period - and, in a process of benchmarking and screening, submitting the progress of individual CEECs to Commission assessment - similarly brings with it a major advantage. The criteria for membership of the EU have been concretised as objective requirements. The Commission has developed a detailed strategy to aid in the achievement of such criteria and is also operating a transparent programme for the assessment of whether they have been achieved. All reports are published and available. Accordingly, the pre-accession period is imbued with the formal fairness and rationality which has marked much of the European Community's and the EU's legal development. Under such circumstances, unwarranted political interference in the process of eastern enlargement has to date been prevented. The Member States have signalled their preparedness for enlargement. Such enlargement will proceed in line with the formal standards laid down and assessed by the Community institutions.

## Bibliography

### *Documents of the Working Group*

Hosoková, M (1998) "The Conditions for Direct application of the *Acquis* in the Candidate Countries".

Lohan, H (1998) "Preparing for the *Acquis*: Strengthening the Administrative Capacity in the Applicant Countries".

Mádl, F (1998) "Preparing for the *Acquis*: Administrative Capacity and Legal Culture in Central and Eastern Europe (Hungary)".

### *General Literature*

Ehlermann (1998) "Flexibility and Co-operation in the Treaty of Amsterdam", *European Law Journal* (forthcoming).

European Commission (1997) *Agenda 2000*, Supplementary Bulletin 5/97.

Gialdino, C (1995) "Some Reflections on the *Acquis communautaire*", *CMLR*, 32, 1089-1121.

Grabbe, H (1998) "A Partnership for Accession? The Nature, Scope and Implications of EU Conditionality on CEE Applicants for Membership", Ms, Robert Schumann Centre, Florence.

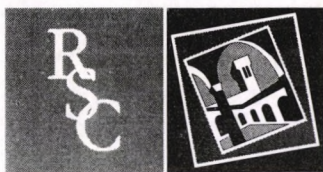
Ipsen, HP (1996) "Zehn Glossen zum Maastricht-Urteil," (1994) 29 *Europarecht* 1.

Ladeur, K-H. (1997a) 'Towards a Legal Theory of Supranationality: The Viability of the Network Concept', 3:1 *European Law Journal*, 33-54.

Weiler, J.H.H. (1995) 'Does Europe need a Constitution?' 3:1 *European Law Journal* 259.







# RSC PUBLICATIONS

RSC publications are published and distributed by the  
European University Institute, Florence

Copies can be obtained free of charge  
– depending on the availability of stocks – from:

Robert Schuman Centre  
European University Institute  
Convento bldg.  
Via dei Roccettini 9  
I-50016 San Domenico di Fiesole (FI)  
Italy

**Please use order form overleaf**



## RSC Publications

To Robert Schuman Centre  
European University Institute  
Convento  
Via dei Roccettini 9  
I-50016 San Domenico di Fiesole (FI) – Italy  
Telefax No.: +39-55-4685 -770  
E-mail: lafond@datacomm.iue.it

From Name .....

Address .....

.....

.....

.....

- Please send me a complete list of RSC Policy Papers
- Please send me a complete list of RSC Working Papers
- Please send me a complete list of RSC Jean Monnet Chair Papers

Please send me the following paper(s):

No, Author .....

Title: .....

No, Author .....

Title: .....

No, Author .....

Title: .....

No, Author .....

Title: .....

Date .....

Signature .....

## Policy Papers of the Robert Schuman Centre

**96/1** René FOCH

Pour une défense de l'Europe.  
La création d'une véritable  
Agence européenne de l'armement  
December 1996, 35 p.

**97/1** Philippe C. SCHMITTER/  
José I. TORREBLANCA  
Old 'Foundations' and New 'Rules'  
for an Enlarged European Union  
May 1997, 29 p.

**97/2** Horst Günter KRENZLER  
The EU and Central-East Europe:  
The Implications of Enlargement  
in Stages  
October 1997, 49 p.

**97/3** Fritz W. SCHARPF  
Combating Unemployment in  
Continental Europe: Policy Options  
under Internationalization  
November 1997, 32 p.

**97/4** Fritz W. SCHARPF  
Balancing Positive and Negative  
Integration: The Regulatory  
Options for Europe  
December 1997, 30 p.

**98/1** Marco BUTI, Lucio R. PENCH  
and Paolo SESTITO  
European Unemployment: Contending  
Theories and Institutional Complexities  
February 1998, 50 p.

**98/2** Horst Günter KRENZLER  
The Geostrategic and International  
Political Implications of EU  
Enlargement  
March 1998, 15 p.

**98/3** Claudio M. RADAELLI  
Governing European Regulation:  
The Challenges Ahead  
May 1988, 32p.

**98/4** Renaud DEHOUSSE  
Citizens' Rights and the Reform of  
Comitology Procedures. The Case for a  
Pluralist Approach  
July 1998, 24 p.

**98/5** Giuliano AMATO and Judy BATT  
Minority Rights and EU Enlargement to  
the East  
September 1998, 15 p.

**98/6** Horst Günter KRENZLER and  
Michelle EVERSON  
Preparing for the *Acquis*  
*Communautaire*  
October 1998, 29 p.















