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**EU ENLARGEMENT AND THE
ACQUIS COMMUNAUTAIRE:
THE CONSEQUENCES FOR
TRANSATLANTIC RELATIONS**
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CONTENTS

1. INTRODUCTION	1
2. THE ACCESSION NEGOTIATIONS AND THE <i>ACQUIS COMMUNAUTAIRE</i>	3
3. IMPLICATIONS FOR THE U.S. AND TRANSATLANTIC RELATIONS.....	15

EU ENLARGEMENT AND THE *ACQUIS COMMUNAUTAIRE*: THE CONSEQUENCES FOR TRANSATLANTIC RELATIONS

Michael J. Baun¹

1. INTRODUCTION

The European Union (EU) is currently engaged in negotiations with twelve countries² that are seeking membership. These “accession negotiations” with the candidate countries focus primarily on what is termed the *acquis communautaire* (hereafter simply the *acquis*). This is the totality of treaty obligations and legislation in various policy areas that the EU has accumulated over more than fifty years, stretching back to the beginnings of the European Coal and Steel Community in 1951. This body of rules, regulations, and decisions currently runs to some 80,000 pages, and is growing. For the purpose of the accession negotiations, the *acquis* has been organized into thirty-one chapters (see Annex I; although only the first twenty-nine are strictly speaking *acquis*- related), each of which is the focus of intensive screening and negotiations between the EU and each of the candidate countries.

The term negotiations is a bit of a misnomer, however, since a basic requirement of EU membership is that candidate countries accept and apply all of the *acquis* as it stands at the point of accession. Only certain “transitional arrangements” are permitted, but these must be limited in number and scope, of a limited duration, and accompanied by detailed plans with firm deadlines for fully implementing the *acquis*.³ Thus, not much real bargaining occurs in the accession negotiations: the final outcome is pre-determined – full and complete acceptance of the *acquis* – and whatever bargaining there is focuses on these limited transitional arrangements. This is the “classical method” of enlargement that the EU has utilized in all previous enlargements.⁴ Although one could argue that the current enlargement to include mostly poor and transitional post-communist countries is in many ways different from previous enlargements, and thus requires a novel and more differentiated approach, the EU has chosen to apply this accession model once again.⁵

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² Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and Slovenia. The Helsinki European Council of December 1999 also declared Turkey to be an official candidate for EU membership, but mainly due to its poor record on democracy and human rights Turkey has not yet been permitted to begin accession negotiations.

³ The Commission’s formal position on transitional arrangements was set down in its November 2000 “Enlargement Strategy Paper” (Commission 2000, 26-27), and is fully quoted in Annex II.

⁴ There have been four “official” enlargements: the UK, Ireland, and Denmark in 1973; Greece in 1981; Spain and Portugal in 1986; and Austria, Sweden, and Finland in 1995. An “unofficial” enlargement occurred in 1990 with the unification of Germany and the entry of the five *Länder* of the German Democratic Republic into the EU. On the “classical method” of enlargement, see Preston (1997).

⁵ Mainly out of fear of unraveling past, often painfully achieved compromises, as well as an unwillingness to give new Member States permanent competitive advantages.

However, despite the pre-determined final outcome of the accession negotiations, the transitional arrangements that are agreed between the EU and the candidate countries may not be insignificant. Their significance – meaning their impact on the *acquis* and the effective functioning of the EU – depends on the number and duration of such arrangements, and the chapters or policy areas in which they occur. For instance, transitional arrangements in the core internal market chapters could have more of a disruptive impact because they undermine the coherence and impede the effective functioning of the very foundation of the EU – its integrated single market. One also has to consider the effect of transitional arrangements granted to so many accession countries simultaneously. According to the current official EU road map for enlargement, up to ten new Member States will be admitted in the first half of 2004.⁶ Thus, transitional arrangements granted to new Member States in certain chapters could end up applying to countries that account for 40 percent of the EU's total membership (ten out of twenty-five Member States), thus giving them the potential to block certain Council decisions made by Qualified Majority Vote (QMV),⁷ although they would account for less than 10 percent of the EU's total GDP.⁸

Aside from the impact of transitional arrangements that are agreed in accession negotiations, the accession of so many countries (at once!) will affect the coherence and functioning of the EU in other ways. More Member States mean more actors in EU decision-making and a greater diversity of interests that are represented and must be accommodated. The process of decision-making will thus become more complex and difficult in an enlarged EU, regardless of the agreements on institutional reform that are reached at the upcoming (2004) Intergovernmental Conference (IGC).

In addition, the relatively poor and transitional nature of most new Member States will inevitably create difficulties for effectively implementing the *acquis* in these countries after accession. Low levels of economic development and high levels of unemployment, and the desire to achieve rapid catch-up with the current Member States, will undermine the enthusiasm of governments in the accession countries for faithfully applying the *acquis* in the many instances (e.g. environmental, labor, and state aids regulations) when it conflicts with the goals of economic growth. At the very least, it will often be politically difficult (domestically) for governments in the new Member States to fulfill their EU obligations. What this means, among

⁶ The so-called “big-bang” scenario that was endorsed by the EU at the December 2001 Laeken summit. Only Bulgaria and Romania among the negotiating countries are not included in this first wave group. For details, see Commission (2001b).

⁷ According to the “Declaration on the Enlargement of the European Union” attached to the *Treaty of Nice* (2001, 82), the ten candidate countries would have a total weighted vote amounting to 26 percent of the total votes in the Council for a Europe of 25 Member States, assuming the Nice weighting of Council votes, designed for an EU of 27, is applied in the Accession Treaty. This would likely be short of a “blocking minority,” depending on what QMV threshold is agreed upon in the Accession Treaty for an EU of 25 [The Nice Treaty (“Declaration on the QMV Threshold,” p. 85) specifies a maximum QMV threshold of 73.4 percent for an EU of twenty-seven; the threshold for an EU of 25 would likely be lower than this.] However, the Nice Treaty’s “Protocol on the Institutions” also specifies that as of January 1, 2005, to be approved certain types decisions (those not requiring a Commission proposal) will require the votes of two-thirds of the Member States (*Treaty of Nice* 2001, 51). The numbers assigned by the (not yet ratified) Nice Treaty to the candidate countries for representation in the European Parliament and weighted votes in the Council are subject to change and can be re-negotiated as part of the Accession Treaty.

⁸ In 2000, the ten candidate countries expected to join in the first wave of enlargement had a combined GDP of €749.3 billion (PPP), compared to an EU GDP of approximately €8.6 trillion, or just under 9 percent of total EU GDP. Source: Commission (2001b, 66) for candidate countries’ GDP, and EUROSTAT for EU GDP.

other things, is that the Commission's workload will be substantially increased in an enlarged EU. As the primary agency responsible for monitoring and enforcing compliance with EU rules and standards in the Member States, the Commission will become increasingly absorbed with this task in an enlarged Europe. This could have significant consequences for the Commission's role in other areas – as the primary motor or driving force of integration, for instance, or as an external actor – diminishing the time and resources that it has for these activities.

Because it affects the nature of the EU as both a “community of values and action” (WRR 2001), but probably mostly the latter, enlargement necessarily has important implications for transatlantic relations, and thus consequences for U.S. policy towards the EU. Beyond the potential trade diverting effects of enlargement, the impact of enlargement on the effectiveness and functioning of the *acquis* could affect the ability of American corporations, investors, and other economic actors to conduct business in the EU. It could also affect the external stance of the EU on a broad array of issues of interest to the United States, particularly in the trade and economic arenas. More generally, to the extent that enlargement affects the internal cohesion and functioning of the EU, and its decision-making effectiveness and coherence, it could also have a large impact on the EU's capacity to be an effective external actor and reliable partner of the United States.

The consequences of EU enlargement for the *acquis* and for transatlantic relations is the focus of this paper. In the next section, the state of accession negotiations between the EU and the twelve candidate countries is examined, with a focus on the transitional arrangements that have been agreed (or are being considered) in key chapters of the *acquis*: those concerning the internal market, the environment, agriculture, structural and cohesion policy, and Justice and Home Affairs (JHA). Not all chapters are covered, including some important ones. The most notable absences are Economic and Monetary Union (EMU) – because most of the new Member States will probably not join the Euro-zone until quite some time after accession – and external relations and Common Foreign and Security Policy (CFSP) – because these issues will be addressed by a separate paper of this study group project.⁹ Section three addresses the consequences of the accession negotiations, and enlargement more generally, for the *acquis* and for U.S.-EU relations.

2. THE ACCESSION NEGOTIATIONS AND THE *ACQUIS COMMUNAUTAIRE*

Before beginning with a description and analysis of the progress of accession negotiations thus far, a brief primer on how the negotiations are structured and conducted, as well as some historical background, is in order.¹⁰ The accession negotiations formally take place between the individual candidate countries and the EU Member States, represented as the EU Council. The Commission also plays a very important role in these negotiations, providing strategy or issue papers, drafting common positions on specific chapters, serving as interlocutor of the candidate

⁹ This paper is part of a study group on “The Changing Face of Europe: EU Enlargement and Transatlantic Relations,” sponsored by the AICGS. The study group's final report, including its composite papers, is due to be published in January 2003.

¹⁰ For an excellent summary of the accession negotiation process, see Avery and Cameron (1998). For a discussion of the enlargement process and accession negotiations up through early 2000, see Baun (2000).

countries, and facilitating compromises between the Council and candidate countries and between the Member States in achieving common positions.

Negotiation sessions take place on a regular basis at both deputy (permanent representatives for the Member States, and Ambassadors or chief negotiators for the candidate countries) and (less frequently) at ministerial levels. Before the negotiations for each chapter can begin, the candidate countries must first submit a “position paper” on the chapter. This contains a report on the progress made in transposing the relevant *acquis* into national legislation and applying it, as well as any requests for transitional arrangements or, more rarely, permanent derogations or exemptions from EU rules (in practice, these are granted only in very exceptional circumstances¹¹). Once its position paper is submitted, the negotiations on a chapter can be formally “opened” for a particular candidate country. Final negotiations cannot begin, however, until the EU approves its own “common negotiating position” on the chapter. This is based on a Draft Common Position (DCP) presented by the Commission, which then must be approved unanimously by the Council. In these common negotiating positions, the EU can propose its own transitional arrangements, delaying full implementation of the *acquis* in particular chapters, for reasons of economic interest or the political sensitivity of certain issues within the EU.

Once basic agreement on the chapter, including any transitional arrangements, is achieved, the chapter is declared “provisionally closed.” The term “provisional” is key here, for the EU has made clear that no deal on any specific chapter is finally closed until all chapters are closed and the accession negotiations have been concluded with the signing of an Accession Treaty between the Member States and the candidate country. Even after a chapter has been provisionally closed, it can be re-opened upon request of either the EU – in the event, for instance, of new changes or additions to the *acquis* – or the candidate country. As for the transitional arrangements agreed upon in the negotiations for specific chapters, it has already been mentioned, but deserves repeating, that the EU insists these must be limited in number and scope, of a limited duration, and accompanied by detailed plans with firm deadlines for fully implementing the *acquis*.

Once the negotiations for all chapters have been concluded and the draft Accession Treaty agreed, the Commission must give its final opinion, the Council its approval (by unanimous consent), and the European Parliament its “assent” (by an absolute majority vote) before the treaty can be formally signed by the candidate states and each of the Member States. It must then be ratified by each of the fifteen Member States (usually a legislative procedure) and each of the candidate countries that have signed it (probably involving a popular referendum) before it can take effect and the new Member States are formally admitted on a specified accession date. The EU has announced that there will be a single Accession Treaty for all of the candidate states joining in the next wave, but that it will be written in such a way that the failure of any one of them to ratify it will not prevent the treaty from coming into effect for the others that do ratify it. The Accession Treaty must be ratified by each of the current Member States for it to come into effect, however.

The current accession negotiations were formally launched in March 1998 with the so-called “Luxembourg group” of the six most advanced applicant countries, deemed by the EU to be best prepared for membership: Cyprus, the Czech Republic, Estonia, Hungary, Poland, and Slovenia. Actual negotiations did not begin until November 1998, however. The remaining six candidates

¹¹As an example, due to its unusual status as a small Mediterranean island state, in negotiations on the free movement of capital (chapter 4) Malta was granted a special arrangement for the purchase of secondary residences, restricting the purchase of such property for all EU nationals that have not been resident on the island for at least five years.

– Bulgaria, Latvia, Lithuania, Malta, Slovakia, and Romania – were admitted to the negotiations by a decision of the Helsinki European Council in December 1999 – hence they are referred to as the “Helsinki group” – and actually began negotiations in February 2000.¹² The Nice summit of December 2000 agreed in principle that enlargement could occur as early as 2004, once the Nice Treaty on institutional reform (2001) had been finally ratified and the Accession Treaty approved by the Member States and the candidate states that had concluded negotiations. The Gothenburg summit of June 2001 approved a “road map” for concluding the accession negotiations under the Belgian (July-December 2001), Spanish (January-June 2002), and Danish (July-December 2002) EU presidencies, and the Laeken summit of December 2001 approved the scenario of a “big bang” enlargement that could see the entry of up to ten new Member States in the first half of 2004, in time for them to participate in the next European Parliament elections scheduled for June of that year.

The most recent negotiating round was held on April 19 and 22, 2002, at which a number of additional chapters were provisionally closed for several candidate countries. An updated table detailing the current “state of play” in the negotiations in terms of the chapters opened and provisionally closed for each of the twelve candidate countries is maintained by the Commission’s Directorate-General (DG) for Enlargement, and can be viewed at <<http://europa.eu.int/comm/enlargement/negotiations/chapters/index.htm>>. The chart in Annex III provides a graphic comparison of the number of chapters closed for each country. The next scheduled negotiating rounds under the Spanish EU presidency are on May 31, at the deputy level, and on June 10 or 11 at the foreign ministers level.

The Accession Negotiations: Key Chapters and Transitional Arrangements

The remainder of this section examines the progress of accession negotiations to date (the time of writing, April 22, 2002) on key chapters of the *acquis*, with a focus on the transitional arrangements that have been either agreed to or proposed in each chapter. These key chapters include: 1) the main chapters concerning the internal market, and the chapters on 2) the environment, 3) agriculture, 4) structural and cohesion policy, and 5) JHA, including the so-called Schengen *acquis*. These chapters were selected for examination because of their importance for the EU and its effective functioning. The internal market is the bedrock foundation of the EU. Environmental policy is important for its impact on the functioning of the internal market, as well as the costs it imposes on the candidate countries/new Member States as they seek to meet high EU standards. The Common Agricultural Policy (CAP) and structural and cohesion policy together account for nearly 80 percent of the EU’s total budget, and negotiations on these chapters thus have major implications for the EU’s financial situation. Finally, the chapter on JHA, and especially the Schengen *acquis*, affects the internal free movement of persons so necessary for the effective functioning of the single market, while also dealing with highly-sensitive issues of internal security (crime, immigration, drug-smuggling, terrorism) that are of tremendous concern to EU popular opinion as it contemplates enlargement.

For reasons of space and time not all of the twenty-nine *acquis*-related chapters can be considered, and some important ones have been left out. As previously mentioned, these include the chapters on EMU – because most of the new Member States will probably not join the Eurozone until quite some time after accession – and external relations and CFSP – because these issues will be addressed separately in another paper of this study group project.

¹² On the politics of these EU decisions, see Baun (2000).

For each of the selected chapters, a brief summary will be given of the state of accession negotiations and the major transitional arrangements that have been agreed or are under consideration. A more complete and detailed listing of the transitional arrangements for these chapters can be found in Annex IV. In the conclusion of this section, an assessment is made of the impact of these transitional arrangements on the cohesiveness and functioning of the *acquis*.

The Internal Market

The internal market is the essential bedrock foundation of the EU and the cornerstone of EMU. If it was necessary to divide the *acquis* into “core” and “residual” components, as indeed some have suggested (cf. WRR 2001), with the objective of determining which elements of the *acquis* are absolutely essential to preserving the achievements of the EU and the effective functioning of the *acquis*, the internal market chapters would constitute the bulk of this core. This understanding was behind the Commission’s May 1995 “White Paper,” which identified the main internal market legislation that the candidate countries would have to adopt and implement if they wanted to join the EU and provided a road map for doing so (Commission 1995).

The core chapters of the internal market *acquis* are the “four freedom” chapters: free movement of goods (chapter no. 1), persons (2), services (3), capital (4). Other key internal market chapters include: company law (5), competition policy (6), transport (9), taxation (10), energy (14), telecommunications (19), environment (22) and social policy (13) – in so far as they affect the internal market, and consumer and health protection (23). Additional chapters could be mentioned. Altogether, probably more than two-thirds of the twenty-nine *acquis*-related chapters affect in some way, either directly or indirectly, the operation of the internal market. In Annex IV, the progress of accession negotiations on the above-mentioned internal market chapters is summarized, following a brief description of the main content of the *acquis* in each chapter.

The transitional arrangements that have thus far been agreed to in the negotiations on these chapters are fairly limited, when one takes into consideration the sheer size and scope of the combined *acquis* in this area. Nonetheless, some notable transitional arrangements stand out. These include:

1) The transitional arrangement on the free movement of labor (chapter 2) that was proposed (imposed) by the EU, to the great consternation of the candidate countries, especially those bordering the current EU. These restrictions on the movement of labor from new Member States into the EU, lasting possibly up to seven years, were necessary because of popular and political concerns in Germany and Austria, the two countries that form most of the current eastern border of the EU, that enlargement will generate a dramatic upsurge of inward labor migration from the new Member States, including an influx of day-laborers in the border areas. The restrictions are not as bad as may appear at first glance, however, because they allow individual Member States to make their own decisions, with the possibility that some may not apply any restrictions at all from the date of accession. Indeed, several Member States (including Ireland and Denmark) have already indicated that they will impose no restrictions. Among countries that do, the arrangement allows for the possibility of relaxing or dropping these at various times within the maximum seven-year transitional period.

2) The transitional arrangements agreed on the free movement of capital (chapter 4). In this case, the EU responded to fears in the candidate states that relatively cheap real estate, especially farmland, forest land, and land for secondary residences, would be bought up by wealthier foreigners, or that the purchase of land for speculative purposes by foreign investors would drive

up land costs beyond the reach of most citizens of the new Member States.¹³ This issue is an especially sensitive political one in Poland and the Czech Republic, where some fear that wealthier Germans and Austrians, including the descendants of families that were expelled from former German territory, will return to buy up their old property, or, more extremely, that Germany will now attempt to accomplish economically the permanent occupation and domination that it was unable to achieve militarily under Hitler. As a consequence, the EU has agreed to transitional restrictions of five to seven years after accession on the purchase of real estate by EU nationals for most candidate countries. For Poland, however, the EU has accepted a twelve-year ban with exceptions for EU nationals already leasing land in specific parts of the country.

3) Although specific transitional arrangements have not yet been agreed on competition (chapter 6), there are potentially tough negotiations ahead in this chapter on the subject of certain types of fiscal aid that have been granted by some candidate countries to attract foreign investment (i.e., “Special Economic Zones”). Neither these, nor state aid to declining sectors such as steel, are compatible with EU rules. Regarding the former, candidate country governments claim that they will be in legal violation of agreements made with foreign investors if they are forced to rescind fiscal incentives, and the result of doing so could be a loss of highly needed investment. The EU has promised to consider the issue of investment in Special Economic Zones on a case-by-case (firm-by-firm) basis.¹⁴ The latter issue is very politically sensitive in some candidate countries because of the impact on core labor constituencies in high unemployment conditions.

4) The transitional agreement limiting access to the EU road transport market for truckers from the new Member States for up to six years that has been proposed in negotiations on transport (chapter 9). This arrangement was proposed by the EU due to both social (the loss of market share for EU operators due to lower-priced competition) and environmental concerns. The *cabotage restrictions* will apply to all candidate countries except Slovenia (where cabotage price levels are already similar to those of EU operators) and the island countries of Malta and Cyprus, for whom it is not an issue.

5) The transitional arrangements allowing reduced levels of Value Added Tax (VAT) rates for certain services (i.e., construction, restaurants and catering, heating) for a limited period after accession and temporarily lower excise taxes on sensitive products such as cigarettes and small-volume distilled spirits that have been agreed to in negotiations on taxation (chapter 10). The cigarette excise tax issue was particularly difficult to resolve, with the EU attempting to strike a balance between its concern over the illegal smuggling of cut-rate cigarettes and the interests of the candidate countries in avoiding a (surely politically unpopular) sudden increase in the price of such a widely consumed good.

6) The numerous transitional arrangements agreed in negotiations on social policy and employment (chapter 13), which mostly concern delays in the implementation of workplace health and safety Directives. These transitional periods are generally of a very short duration, however, with most expiring by the end of 2004 or 2005.

¹³ Land prices in Poland, for instance, are estimated to be up to thirty times cheaper than elsewhere in the EU (BBC News Online, March 20, 2002).

¹⁴ See the comments of Enlargement Commissioner Günter Verheugen’s spokesman, Jean-Christophe Filori, cited in Wylot (2002).

7) The transitional arrangements granted most candidate countries in negotiations on energy (chapter 14), which give them a longer period of time (up to 2009) to build up their emergency oil stocks to the required EU level.

Environment

The environmental *acquis*, covered in chapter 22, is rapidly expanding and evolving. It presents a real problem area for accession negotiations for several reasons. To begin with, it will take many years and considerable investment before the candidate countries, burdened with the environmental legacy of communism, are able to fully adhere to EU standards in such areas as air and water quality, waste management, industrial pollution control, and nature protection.¹⁵ At the same time, trying to apply EU standards too quickly could limit the economic growth that is so necessary for these countries to improve their economic situation, generate employment, and catch up to EU levels of development. Without such a convergence, the single market will not be able to function efficiently, and political problems and fissures within the EU could emerge. Nevertheless, adherence to the environmental *acquis* is also necessary for an effectively functioning single market and to prevent the accumulation by the candidate countries of unfair competitive advantages vis-à-vis their more developed EU partners.

Faced with this dilemma, the EU has had to pursue a more differentiated strategy in accession negotiations on the environment chapter. At the outset of negotiations, the EU emphasized that transitional arrangements would not be granted on: the transposition of EU law (as opposed to its implementation); framework legislation (e.g., on air, waste, and water quality, as well as impact assessment and access to information); nature protection; aspects of the environmental *acquis* that are essential to the internal market (e.g., all product-related legislation); and new installations. However, transitional arrangements would be considered “where substantial adaptation of infrastructure is required which needs to be spread over time,” due to the need for large-scale investments. Such requests for transitional measures would “need to be justified by detailed implementation plans ensuring that compliance with the *acquis* will be reached over time.” These plans allowed candidate countries to define intermediate targets that are legally binding” (Commission 2002a, 58-59).

Under these “rules of the game,” the EU has provisionally closed negotiations on the environment chapter with most of the candidate countries, agreeing to a number of transitional arrangements. These deal mostly with delayed implementation of Directives on waste management, water quality, and industrial pollution control, many of short-term duration (2004-2006), but extending in some cases as far as 2015. The number and duration of the transitional arrangements granted in this chapter indicate that full application of the environmental *acquis* and compliance with EU standards in this area will be a major headache for both the new Member States and the EU (especially the Commission) for a long time to come.

Agriculture

Agriculture is the largest and probably the most difficult of the negotiation chapters. However, with the exception of the field of veterinary and phytosanitary legislation, which consists mostly of Directives, the *acquis* in this chapter consists mostly of Regulations. This means that most agricultural policy legislation will be directly applicable at the date of accession

¹⁵ Estimates range as high as €121 billion for the ten Central and Eastern European (CEE) candidate countries combined, amounting to an expenditure of 3-5 percent of their GDP for a period of fifteen to twenty years (WRR 2001, 164-65).

and does not call for transposition on the part of the candidate countries. Nevertheless, in their negotiating positions the candidate countries have requested a considerable number of transitional arrangements for the application of EU legislation in this chapter. At the end of 2000 these stood at over 340, more than two-thirds of all requests for transitional measures made by the candidate countries for all chapters combined (Commission 2000, 26).

The main focus of attention in this chapter is the CAP, which utilizes both internal (price supports with production quotas, direct payments, structural development assistance) and external measures (tariffs and import quotas, export subsidies) to protect and subsidize EU agriculture. CAP is the EU's most expensive policy sector, absorbing more than 40 percent of the total budget.

The negotiations on this chapter have already been formally opened with most of the candidate countries, even though the EU has yet to approve its common negotiating positions on the CAP. Negotiations to this point have centered largely on veterinary and phytosanitary standards. Final negotiations on the agriculture chapter await the approval of common negotiating positions by the Council, due by the end of the Spanish Presidency in June 2002. This will be based upon the DCPs for this chapter that were submitted by the Commission in mid-April.

As a basis for its DCPs, the Commission submitted an "issues paper" on "Enlargement and Agriculture: Successfully Integrating the New Member States into the CAP" at the end of January 2002. This paper stated that: "In general, the EU positions [on the CAP] should make clear both within the EU and to the candidate countries that in a longer term perspective there will be no two-tier agricultural policy in the EU but one Common Agricultural Policy for all Member States" (Commission 2002b, 4).

The Commission paper contained suggestions for the introduction of direct payments to farmers in the new Member States (not foreseen in the March 1999 European Council agreement on "Agenda 2000," the EU's budgetary perspective for 2000-2006). These would begin at 25 percent of the level for current Member States in 2004 (the prospective first year of membership) and then be gradually increased in percentage steps to ensure that the new Member States reached in 2013 the same level of support received by all Member States. The Commission paper also proposed production quotas for new Member States in areas such as milk and sugar, and other supply management instruments (ceilings and base areas) for products such as beef and arable crops. It also proposed measures for rural development, primarily through spending under European Agricultural Guarantee and Guidance Fund (EAGGF) "Guidance" section. Altogether, the Commission proposals for direct payments, market organization measures, and rural development aid for the new Member States amount to a total of €9.577 billion for the three-year period 2004-2006 (the remaining years of the budgetary framework agreed in Berlin). The DCPs that were submitted by the Commission in April (for each of the ten first wave countries, but not Malta) have not been released to the public, but it is known that they do not depart substantially from the initial proposals contained in the issues paper (Agence Europe 2002a, 13).

These proposals have been heavily criticized by both the candidate countries, who seek equal treatment from the date of membership and complain about the methods used by the Commission in calculating production quotas, and the Member States. The latter include net contributors to the EU budget and reform-minded Member States such as Germany, the Netherlands, Sweden, the UK, and, Austria, who complain that direct payments were not called for in the March 1999 Berlin agreement and promising them to the candidate countries beyond 2006 (as suggested by the Commission) could prejudice discussions of CAP reform due to begin later this year. They

also argue that the proposed amount of spending on agriculture for the new Member States is simply too much. Others, such as France, also agree that the proposals are too expensive while they support the continued use of direct payments in EU agricultural policy.

Although the EU is due to approve its common negotiating positions on the CAP by the end of June, final agreement on this chapter is closely linked to agreement on the structural and cohesion policy chapter, which also has major financial implications, and the overall financial framework for enlargement (chapter 29, Finance and Budgetary Provisions). Final negotiations on these chapters will not commence until after the federal elections in Germany in September, to avoid this becoming a campaign issue in the EU's largest net contributor country.

Structural and Cohesion Policy

After the CAP, structural and cohesion policy is the second largest EU policy sector in terms of spending (roughly 35 percent of the total EU budget). It concerns mainly the Structural Funds, which consist of the European Social Fund (ESF), the EAGGF "Guidance" section, the European Regional Development Fund (ERDF), and the European Fisheries Fund. There are also a number of "Community Initiative" programs managed by the Commission, the most notable of which is INTERREG, the Commission's program to promote cross-border development cooperation between regions of the Member States and between regions of the Member States and neighboring non-member countries.

The Structural Funds (more than 90 percent of all structural operations spending) is assistance given to regions of the Member States. It is guided by the key principles of "concentration" (on three "Objectives," by far the largest of which is aid to economically lagging regions, defined as having a per capita income of less than 75 percent of the EU average), "programming" (multi-annual and integrated, multi-sectoral), "partnership" (the full involvement of sub-national governmental actors, the social partners, and appropriate NGOs in all phases of Structural Funds administration) and "additionality" (Structural Funds assistance must not replace planned national structural development assistance, but be in addition to it). The Cohesion Fund is money given to Member States with a per capita income less than 90 percent of the EU average, for investment in environmental and transport infrastructure improvements. Since creation of the Cohesion Fund in 1992, all assistance has gone to the "poor four" Member States: Spain, Portugal, Greece, and Ireland.

The Structural Funds are governed by a framework Regulation setting down general provisions (Council Regulation (EC) 1260/1999) and a series of implementing Regulations and Decisions. Thus, similar to the situation with the CAP, much of the legislation in this chapter is directly applicable upon accession and does not require transposition into national legislation. The accession process has instead focused on the ability of the candidate countries to effectively and properly administer the Structural Funds. These administrative requirements are detailed in Annex IV.

As with the CAP, the focus of accession negotiations on this chapter will be money: How much will the new Member States receive under the EU's structural and cohesion policy, and how will it be given? In late January 2002, the Commission presented its "Common Financial Framework for the Accession Negotiations," which provides the basis for concluding the negotiations on this chapter. The Commission's proposal called for total spending on structural and cohesion aid to the new Member States of €25.567 billion for the 2004-2006 period. According to the Commission, this would amount to €137 per capita of structural aid for the new Member States (2.5 percent of the total GDP of the new Member States) compared to €231 per

capita for the existing four “cohesion countries” of the EU (Spain, Portugal, Greece, and Ireland), or 1.6 percent of their total GDP. According to the Commission proposal, for reasons of limited absorptive capacity – mainly insufficient administrative capacity – spending on structural actions in the new Member States for the 2004-2006 period would be weighted toward the Cohesion Fund, with this accounting for one-third of total structural assistance to the new Member States, compared with only 18 percent for the four current cohesion countries. (Commission 2002c, 5-6 and Annex).

The Commission’s proposals for structural and cohesion spending in the new Member States have not aroused anywhere near the animosity generated by the agricultural proposals among the candidate countries, or the same extent of opposition among the Member States. Nonetheless, the financial aspects and impact of this chapter tie it to the negotiations on the CAP and the financial and budgetary provisions of enlargement, and a final settlement on these chapters will be necessarily closely linked. The Council’s approval of common negotiating positions on this chapter is not due until June 2002, and final negotiations on the chapter will not take place until after the German elections in September. However, to create the appearance of progress, the EU has decided to separate out the technical from the financial aspects of the chapter, and to offer the possibility of provisional closure of the non-financial parts before June. Thus, in mid-April the Commission submitted its DCPs on this chapter for four candidate countries (Lithuania, Estonia, Cyprus, and the Czech Republic), and promised to forward its DCPs for the remaining six first-wave countries by the end of the month (Agence Europe 2002b, 9).

Justice and Home Affairs/Schengen

The *acquis* in this chapter is relatively new and rapidly expanding, much of it being shifted from the intergovernmental Pillar Three of the EU to its supranational Pillar One under provisions of the 1999 Amsterdam Treaty. The chapter deals with cooperation on immigration, visa, and asylum policies, as well as police and judicial cooperation. It also deals with issues of internal security such as illegal immigration, drug trafficking, money laundering, and transborder organized crime. Thus, negotiations on this chapter concern some of the most sensitive topics for European public opinion regarding enlargement.

Perhaps the most prominent component of the EU’s JHA policies is the Schengen *acquis* (named after the original 1985 “Schengen Agreement” between Germany, France, and the Benelux countries), which results in the lifting of internal EU border controls. However, the EU has made it clear that “accession will not immediately lead to the lifting of border controls between the old and new Member States; as with previous enlargements, this will be the subject of a separate Council unanimous decision, some time after accession, and after a careful examination of the legal and practical readiness of the new Member States.” In the case of Spain, for instance, the transitional period before full application of the Schengen *acquis* lasted nine years. In preparation for admission to the Schengen area, each candidate country must develop and submit a “Schengen Implementation Action Plan.” This plan must “demonstrate full awareness of the ramifications of the Schengen *acquis*, and present a credible schedule for the introduction of its provisions.” The EU requires that most of the Schengen rules be applied ahead of accession (Commission 2002a, 64).

Because of the nature of the JHA/Schengen *acquis*, and its political sensitivity, the EU has ruled out any transitional arrangements in this chapter (other than the period between accession and joining the Schengen area). Thus, negotiations for this chapter have focused on finding ways to build confidence among the Member States in the candidate countries’ capacity to implement

the *acquis*. This is done primarily through strengthening their administrative capacity, which should be up to EU standards by the date of accession, and by ensuring the existence of independent, reliable, and efficient judiciary and police organizations.

The Consequences of Enlargement for the *Acquis*

The consequences of the accession negotiations and enlargement for the *acquis* can be considered from two perspectives: 1) the coherence of the *acquis*, and 2) its effectiveness.

The coherence of the *acquis* concerns primarily its uniformity of legal application within the EU and among the Member States. Since the beginning of serious discussion of eastern enlargement in the early 1990s, and actually well before then, there has been much talk of the emergence of a more differentiated or multi-tiered EU (or one of multiple speeds defined in terms of progress towards greater integration). Such concepts were actually favored by Member States that feared either a more centralized and federalist EU (i.e., the UK) or its dilution into a simple free trade area (i.e., some of the founding Member States). The models advanced by each camp were quite different, however, reflecting divergent ultimate goals and objectives. While the UK government of Prime Minister John Major favored a “Europe of multiple clubs” or an “a la carte Europe,” allowing Member States to pick and choose what aspects of cooperation they wanted to be a part of without there being any consistent core group of countries, France, Germany, and other Member States favored the possibility of creating just such a core, allowing it to move ahead of with further integration while leaving behind Member States that were either economically unable or politically unwilling to follow. Indeed, multiple-speed elements of the EU have emerged (EMU; Schengen; the opt-outs on social policy granted the UK at Maastricht in 1991, and on defense and other issues to Denmark at Edinburgh in 1992), and new mechanisms for “enhanced cooperation” among smaller groups of Member States were approved as part of the Nice Treaty agreement in December 2000. Through it all, however, the Commission and its supporters have battled to preserve as much uniformity as possible in the *acquis*, and to date it must be said that, on the whole, a multiple speed or multi-tiered EU has not emerged.

Nor does it appear that enlargement will lead to this, at least judging by the outcome of the accession negotiations to date. Certainly, transitional arrangements have been granted in many chapters, but these are fairly few in view of the immensity of the *acquis*. They are also of a generally short duration (one to three years). Some notable exceptions are the longer (medium-term) transitional periods granted candidate countries on the sale of agricultural land to foreigners (five to seven years, but twelve for Poland), and the possibility of up to a seven-year transitional period for the free movement of labor from the new Member States into the EU. A number of medium-longer term transitional periods have been agreed in the problematic environmental chapter. It will also be a number of years, at least until 2007 and the beginning of the next multi-annual budgetary period (or possibly until 2014, since Spain ensured at Nice that voting on structural and cohesion policy for the 2007-2013 financial perspective will be on a unanimity basis), before the EU’s structural and cohesion policy is applied on the same terms to both the new and current Member States. And, of course, the new Member States will not be fully incorporated into the Schengen area until some time after accession. In addition to the imposed restrictions on the free movement of labor, however, the greatest cries of unfair treatment by the candidate countries have come over agriculture and the Commission’s proposals for the CAP. Although the Commission explicitly states in its January 2002 issues paper that, “in a longer term perspective there will be no two-tier agricultural policy in the EU but one Common

Agricultural Policy for all Member States,” the candidate countries claim that the Commission’s proposals, if implemented, would result in a permanent second-class status for them.

Such claims are probably exaggerated, as a bargaining tactic and for reasons of domestic political consumption (but also reflecting, no doubt, considerable frustration on the part of the candidate countries over what is for them an excruciatingly slow and occasionally humiliating accession process). In fact, if one looks at the larger picture it is remarkable to what extent the EU (read the Commission) has stuck its original plan of applying the “classical method” of enlargement, based on the uniform (as realistically possible) adherence of the new Member States to the entire *acquis*. This has been at the cost of a more rapid enlargement, which could have occurred using a more differentiated model or by granting applicant countries some type of special status or “virtual” membership. As things stand in the accession negotiations right now, however, and assuming that the EU sticks to its announced plan of conducting a “big bang” enlargement of up to ten new Member States in the 2004-2005 period, it appears that the fundamental coherence and uniformity of the *acquis* will be preserved.

This is only on the surface, however, for when it comes to the second perspective for viewing the *acquis* after enlargement, its effectiveness, some potential problems emerge. These are the problems of actually applying and enforcing EU rules and standards on a consistent and effective basis in the new Member States. As the EU itself has repeatedly emphasized in its discussions with the candidate countries, there is a world of difference between simply accepting the *acquis* and transposing it into national legislation (relatively easy or painless), and effectively applying and enforcing it (much more difficult, costly, and politically painful).

There are two main reasons why doing so will be problematic for the new Member States. First is the lack of political will to fully apply and enforce EU rules, especially when these conflict with other important goals of public policy in the new Member States, such as promoting economic growth and employment. Here there is a real potential conflict between the goals of faithfully applying the *acquis* (from the EU’s perspective necessary for preserving its uniformity and coherence) and achieving the high rates of growth necessary for rapid catch-up with the current Member States (from the EU’s perspective also necessary to ensure smooth functioning of the integrated single market). Diligently pursuing the former goal may undermine chances of achieving the latter.¹⁶ In the new Member States, short-term political pressures and electoral calculations may tip the balance in favor of pursuing growth and employment.

The second reason why effective implementation of the *acquis* will be problematic in the new Member States is the lack of sufficient administrative capacity, including adequate institutional structures, resources, and experience. Also lacking in some cases are adequate and efficiently (independently) functioning legal and judicial systems. This is not news to the EU. Indeed, the Commission has pounded on this theme in all of its Regular Reports on the progress of individual candidate countries that have been issued annually since 1998, and the European Council has stressed this issue in its recent summit conclusions.¹⁷ This theme was also emphasized in the Commission’s November 2001 enlargement “Strategy Paper,” which

¹⁶ This dilemma is highlighted in WRR (2001).

¹⁷ The Commission’s Regular Reports are available online at <<http://www.europa.eu.int/comm/enlargement/overview.htm>>. In the “Presidency Conclusions” of the December 2001 Laeken summit, the European Council declared: “The candidate countries must continue their efforts energetically, in particular to bring their administrative and judicial capabilities up to the required level (European Council 2001, 3).

contained the proposal for an “Action Plan” for assessing, monitoring, and upgrading the administrative and judicial capacity of the candidate countries in the run-up to accession. To assist the upgrading of administrative capacity in these countries, the EU has made available additional funds under its PHARE¹⁸ program (a “supplementary institution building facility”), to augment the shift of pre-accession aid towards the goal of institution building that had already occurred in recent years (Commission 2001b, 22-25).

In its 2001 “Strategy Paper,” the Commission identified several key areas of the *acquis* in which the lack of sufficient administrative and judicial capacity posed special challenges. These were: 1) the smooth functioning of the internal market, including the existence of competent regulatory authorities in such areas as competition policy, energy, telecommunications, and transport; 2) the application of environmental standards, and standards for workplace health and safety and transport; 3) the protection of EU citizens through the stricter enforcement of border controls, consumer protection laws, and food safety standards; and 4) the proper management of EU funds to ensure against fraud, corruption, and misuse, including in the administration of structural and cohesion policy. Of great significance, the Commission indicated in its paper that the task of improving administrative and judicial capacity in the new Member States was one that would continue after the date of accession and well beyond (Commission 2001b, 23-25).

What all this means is two things. First, the *acquis*, especially the vital internal market, may not function effectively and efficiently after enlargement, but will be hindered by numerous deviations from EU rules and “implementation gaps,” and by the failure of governments in the new Member States to adequately enforce EU standards. This is nothing particularly new. Indeed the problem of implementation gaps and non-compliance is already prevalent in the current EU. However, enlargement, both by virtue of the sheer number of new Member States it will add, and the enhanced challenge of “problematic diversity”¹⁹ introduced through the addition of mainly poor and transitional countries, will increase this problem exponentially.

This brings us to the second point. In the EU, the primary body charged with acting as “guardian” of the EU treaties and the *acquis* is the Commission, which is responsible for monitoring and enforcing compliance with EU rules, if necessary by initiating infringement proceedings against the offending Member State. These proceedings could end up before the European Court of Justice (ECJ) and result in the imposition of fines and penalties. In an enlarged EU, the workload for the Commission in this regard will be much greater.²⁰ This would be so in any case, but doubly or triply so given the nature and condition of the countries that are joining. As will be discussed in the next section, this increased preoccupation of the Commission with its internal monitoring and enforcement duties could have significant implications for the Commission’s other key roles, including its external role, and hence for U.S.-EU relations. The Commission’s main partner in enforcing compliance with EU law, the ECJ, will also face a greatly increased workload as a result of enlargement. Currently the Court has some 900 cases pending, and the number of new cases before the ECJ has grown by more than a third over the past decade (Dombey 2002, 17). It doesn’t take much imagination to grasp the idea that, in an enlarged EU this caseload will grow tremendously. Thus, institutional overload and breakdown,

¹⁸ Poland, Hungary: Aid for Economic Reconstruction

¹⁹ The concept of “problematic diversity” is discussed in WRR (2001).

²⁰ The Commission has stated that to carry out its role of ensuring the application of EU legislation in an enlarged EU (assuming ten new Member States join in 2004) it will need an additional 3,800 staff posts between 2003 and 2008 (Commission 2002d).

not just paralysis of decision-making in the Council, is a serious potential consequence of EU enlargement.

3. IMPLICATIONS FOR THE U.S. AND TRANSATLANTIC RELATIONS

As one prominent analyst of European politics has put it, “Whether Europe’s states do succeed with their union is scarcely less important to others than to the Europeans themselves” (Calleo 2001, 10). Of course, it is relevant not only whether the EU succeeds, but also, if it does, just how it does so—in other words, what form and approach future EU integration takes. Among the significant “others” who have a stake in the outcome of Europe’s grand integrationist experiment, and in the consequences of the EU’s current efforts at eastward enlargement, is the United States.

Enlargement will no doubt have many important consequences for transatlantic relations. An enlarged EU will have new external borders and will incorporate new actors and interests. It could find it more difficult to achieve a policy consensus on key issues, and its decision-making system could become more complex and inefficient, thus leading it to become a more difficult or problematic partner for the United States in many policy areas. The addition of new Member States and interests could also affect the substance of EU policy positions in areas of concern to the United States, including agricultural trade, the environment, economic and monetary policy, and security and defense. The implications of these and other aspects of enlargement for transatlantic relations are considered more directly in other papers in this study group project.

Enlargement could also affect transatlantic relations through its direct impact on American trade interests. Accession to the EU requires full and immediate acceptance of its common commercial policies towards non-member countries and the abrogation of existing third country trade agreements. As was the case with previous enlargements, therefore, the United States government will seek to ensure that American companies receive adequate protection from the trade-diverting effects of enlargement, including possible tariff and other forms of compensation.

While the potential trade-diverting effects of enlargement is indeed an important issue that will be the subject of intense U.S.-EU discussions in the next few years, this paper is concerned more with the longer-term implications of enlargement for U.S.-EU relations via its impact on the functioning and effectiveness of the EU *acquis*. The remainder of this section, therefore, focuses on this specific issue. I argue that, through its impact on the *acquis*, enlargement will affect transatlantic relations in two key ways: 1) through its consequences for the coherence and effectiveness of the *acquis*; and 2) deriving from this, its consequences for the functioning and balance of the EU’s governing institutions.

Enlargement by itself will not change the *acquis*; this must be accepted as is by the candidate countries, with the possibility only for limited (in number and duration) transitional arrangements before its full implementation. In the medium and longer term, however, it could well lead to alterations in the *acquis*, once the candidate countries are Member States with full voting rights and the ability to press their own particular interests and agendas within the EU. However, while enlargement will not automatically lead to changes in the *acquis*, it could result in it being applied less uniformly and functioning less effectively. This could be the consequence of negotiated transitional arrangements (which could result, in the near term at least, in the greater complexity of EU rules, thus creating confusion and difficulties for market actors and resulting in some distortions of competition), as well as the problems in fully applying and

enforcing EU rules in the new Member States that were discussed at the end of the previous section.

The diminished coherence and effectiveness of the *acquis*, as a result of enlargement, could have potentially significant consequences for transatlantic relations. These include problems for U.S. companies and investors stemming from the post-enlargement complexity of EU rules (due to the proliferation of transitional arrangements in such areas as social and employment policy, the environment, and taxation) and the failure or inability to uniformly enforce EU rules and standards in the new Member States. To be sure, enlargement will create many new opportunities for American companies and investors: it will create a more unified market in Europe and eliminate many current discriminatory rules that disadvantage U.S. businesses in relation to their EU competitors in the candidate countries, making it much easier for U.S. companies to operate in Central and Eastern Europe than at present (Crane 2002). However, U.S. companies will also face problems stemming from the complexity of EU rules and non-compliance in the new Member States. The Commission itself has warned that problems are to be expected in the application and enforcement of EU rules in such areas as intellectual property rights, state aids to industry, regulation of the telecommunications, energy, and transport sectors, and money laundering, mainly due to the lack of sufficient administrative and judicial capacity in the candidate countries (Commission 2001a, 9-10; 2001b, 23). Such non-implementation or lack of compliance will also create problems for EU companies and governments, of course. The extent to which such problems can be avoided will depend largely on the ability of the Commission to effectively monitor and enforce EU law, a task that is sure to absorb an increasing amount of its time and resources in the future enlarged EU.

The increased preoccupation of the Commission with its tasks of monitoring and enforcing compliance with EU law could be yet another way in which enlargement affects transatlantic relations. Aside from the question of whether the Commission will even have the necessary capacity to effectively perform this role, its increased focus on issues of monitoring and compliance will leave less time and fewer resources available for its other key roles: as the primary “motor” or driving force of EU integration, and as an aspiring (more autonomous) external actor. Thus, enlargement could reinforce current tendencies within the EU that favor the Commission becoming more of a technocratic or regulatory actor (i.e., a “secretariat”) with less of a political role, with decision-making power shifting decisively towards the more intergovernmental mechanisms of the Council. Such a development is supported by some larger Member States, while smaller Member States, who tend to view the Commission as their protector against the dominance of the larger countries, prefer to see the Commission retain its political role.

The implications of a weaker or internally preoccupied Commission for the United States and transatlantic relations are potentially bad or good, depending upon one’s perspective. On the one hand, an EU without strong executive leadership (assuming this void isn’t filled in some other way, for instance by a more effectively functioning Council) could become a less coherent and effective actor, and a thus more problematic partner to deal with. On the other, some U.S. policy makers would no doubt welcome a weaker and less coherent EU, along with the renewed importance of traditional bilateralism in U.S.-Europe relations. This would allow the United States to bypass the messy and complex institutions of the EU and deal more directly with specific national governments and leaders (and sometimes play them off against each other). This is an approach, in fact, that continues to dominate transatlantic relations in certain key areas, such as military and security policy.

However, although somewhat more speculatively, a reduced political role for the Commission may not automatically translate into more intergovernmentalism. It may also open the door for a greater role and powers for the European Parliament, traditionally the weakest branch of the EU's governing institutions but today a more dynamic and increasingly self-confident body about which there is a certain sense of "movement." Using its claims to democratic legitimacy based on its status as the EU's only directly elected institution as leverage, the European Parliament could push for and achieve a significant enhancement of its role in EU decision-making in the future. An EU with a stronger European Parliament would be more democratic, perhaps, but it would also be even "messier" and more difficult for the United States and others to deal with than one dominated by a detached council of national leaders or an overly bureaucratic Commission.

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