

Preparing for EU Membership: The Paradox of Doing What the EU Does Not Require You to Do



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Summary

As acceding countries are progressing with their formal preparations to comply with the requirements of EU membership, they should also consider whether they have the capacity to play an active role within the EU and derive all the benefits of EU membership.

The purpose of this paper is to outline how acceding countries can become effective members of the EU. It identifies certain tasks which are not formally mandated by the EU and for which the EU provides no guidance. The application of EU directives and regulations depends on the existence of extensive institutional and administrative capacity. To build that capacity, they need to do much more than merely adopt EU law. Paradoxically, they have to do things that the EU does not ask them to do.

Their ability to derive the maximum benefits from EU membership will very much depend on their success or failure in influencing nascent EU rules, in complying with them and in re-engineering their economies so as to “exploit” as much as possible EU policies and programmes.

1. Identifying the challenges of being a member of the European Union

Ten countries are poised to enter the European Union. As from next year, the powers of national authorities in the acceding countries will be curtailed considerably. Many policy decisions will be taken together with the other member states within EU institutions while many of those taken locally will be subject to scrutiny by the EU. In the meantime, however, acceding countries have an important task to accomplish – they have to complete their preparations for membership of the EU.

The purpose of this paper is to explain that, as the acceding countries are progressing with their formal preparations for membership, they should also consider whether they have developed the capacity to play an active role within the EU and derive all the benefits of EU membership.

If their public pronouncements are to be accepted at face value, the governments of most of the acceding countries appear to regard entry into the EU as a fait accompli. Some politicians seem to believe that there is little left to do since the accession negotiations are over. After all, most laws required by the EU will soon be passed by their parliaments. So what is there to do more?

Until now their preparation for entry into the EU has mainly focused on the establishment of new institutions and procedures and the adoption of new laws and regulations; largely quantitative goals. From now on they will have to operate the new institutions and procedures efficiently, to enforce the rules effectively, to deal sufficiently with complaints and aggrieved persons and companies and, in general, deliver the expected service to the public; largely qualitative tasks.

Indeed, these qualitative tasks will become progressively more important. As I explain in more detail later on, being an EU member is not just about formally accepting the rules decided in Brussels. It is also about shaping them in the first place and then enforcing them vigorously. The integrity of the EU system depends on the ability and willingness of each member state to participate in common decision-making and then comply with the common rules. These roles of participation and implementation will become more significant in an enlarged EU.

The Commission, which is the “guardian” of the Treaties, has already vowed to maintain close scrutiny over the implementation performance of the 25-plus members. At the beginning of March 2003, the Commission, in an internal memorandum, found all candidates, with the exception of Slovenia, to be failing to maintain the pace of their domestic reform.² This is not so serious at this stage but it is indicative of the problems these countries may face in the future.

What is perhaps more serious is that, as instructed by the Copenhagen European Council, the Commission will publish in the autumn of this year a final and comprehensive assessment of the readiness of the acceding countries to assume the full obligations of membership. They do not have much time left to complete the adoption and application of EU rules. If they are found not to have completed those tasks, the EU may invoke the safeguard provisions included in the Treaty of Accession thereby restricting access to its internal market.

At this point in time, acceding countries are naturally preoccupied with reaching the targets defined in the

various pre-accession partnerships, filling the gaps identified by the Commission in its last regular report of October 2002 and subsequent updates, manning the newly established institutions required by the EU and finishing their legislative work.

This raises the question whether there is anything else for them to do in order to become effective EU members. The answer to this question depends, of course, on how one defines “effective membership”. I will return to this question in the next section.

Objective of paper

The purpose of this paper is to explain how acceding countries may try to become effective members of the EU. I will identify certain tasks which are not formally mandated by the EU and for which the EU provides no guidance. Previous research carried out at and published by the European Institute of Public Administration, explains in detail why the application of EU directives and regulations depends on building extensive institutional and administrative capacity.³ To build that capacity, member states have to innovate and identify solutions that suit their domestic conditions and traditions.

Similarly, when trying to maximise the gains from EU membership, prospective new members also have to innovate. In fact, they need to do much more than merely adopt EU law. Paradoxically, they have to do things that the EU does not ask them to do.

The paper outlines where new members can may innovate. In a nutshell, their ability to cope with the obligations of EU membership will very much depend on their success or failure to deal with the issues of influencing nascent EU rules and in complying with them. The next section defines the concept effective membership. Then, the paper will argue that prompt compliance and rigorous enforcement are inextricably linked with domestic institutional flexibility and accountability. The rest of the paper identifies ten factors that have a decisive effect on successful membership but which are not formally part of the “*acquis communautaire*”.

2. The concept of “effective membership”

Since no country would be interested in joining the EU unless it became better off, it is natural to define effective membership to mean maximisation of benefits from that membership. Although it is natural to define it in this way it is not easy at all to know when a country reaches the maximum level of benefits. Therefore, I will adopt a slightly different approach and ask what a country should do to reach that level. Given the fact that being a member of a system such as that of the EU means determining its rules, complying with them and using them to one’s own advantage, I, therefore, define effective membership to mean four things:

- ability to influence those rules so that they match as closely as possible a member’s own national interests;
- enforcing the rules rigorously;
- using all opportunities provided by the single market

- and
- maximising absorption of EU funds.

In this connection, I assume that the benefits of membership in general cannot be maximised unless the member state concerned complies with EU rules. This is a necessary rather than sufficient condition. Certainly, compliance does not by itself maximise potential benefits for the simple reason that EU rules leave much leeway to member states on how they should run their economies and deal with their social problems.

By contrast, however, EU rules are by and large designed, among other things, to protect free trade, free movement, investment, consumers and the environment. Although it is not inconceivable that under certain conditions, restriction of trade, investment or competition or tolerance of pollution could be in the national interest, I think it is safe to assume that, in general, each member is better off by maintaining an open market, safeguarding the rights of its consumers and protecting its environment. Even if under certain conditions a country would become better off by deviating from those rules, I very much doubt that all member states would be better off if they all behaved in the same way.

Therefore, in the definition adopted by this paper, there is a close link between being a successful member of the EU and being a loyal member. Loyalty, however, is not enough. Indeed, the ten factors identified later on prove this point.

3. Application of EU rules and institutional accountability

Apart from completing their legislative work, it is now widely recognised that the primary task of the governments in the acceding countries is to strengthen and extend enforcement procedures and instruments across the board: from the proper use of public funds (national and EU), to environmental protection, to health and safety at the workplace, to border controls, etc. The Commission has made many such statements in all its regular reports on the progress of the candidate and now the acceding countries.

Another, probably longer-term, task of these governments is to improve the functioning of their civil services.^{4,5} They have to be made more flexible, their different departments and agencies need to be given more decision-making autonomy and, at the same time, made more accountable.

Incidentally, this kind of restructuring and reform should also be extended to agencies and enterprises that are controlled or owned by the state. Article 295 of the EC Treaty prevents the Community to discriminate in favour or against state-owned or state-controlled enterprises or agencies involved in commercial transactions. That is why there is no EU law that requires privatisation. However, these agencies and enterprises will have to be fully subject to the rules of competition. How will they be able to compete, without receiving any aid or favour from the state, if they are shackled with antiquated practices? The implication is certainly not

that they should be sold off. Rather, the state, as their sole or main shareholder, should consider how they can gain operational and financial flexibility that will be necessary for them to function in the new environment of open markets and free competition.

Enforcement performance and the state of civil services in the acceding countries have been treated by many analysts as separate issues. In many respects they are. But in one crucial way they are closely intertwined. Decision-making autonomy is essential for rigorous policy enforcement. The enforcing authorities have to be able to take whatever measures are necessary to respond to changing market conditions, new corporate strategies and simply keep pace with criminals and fraudsters. The problem is that in closely-knit societies, as those of the acceding countries, decision-making autonomy or flexibility can also be easily abused to obtain or grant favours. That is why decision-making power should be counterbalanced with open, transparent and objective procedures.⁶

Both rigorous enforcement and accountable civil service imply that politicians should intervene less in the everyday business of government. This may sound paradoxical. After all, who will ensure that the civil servants do their job properly? In fact, the system, if it is properly designed, should run itself. Policy implementation and enforcement should be rule-bound and objective. Political intervention, even when it is well-intentioned, introduces problems and imperfections of its own.

The reader may think that I am exaggerating this argument. Markets, policies and public institutions do not always work perfectly – some would even say that they rarely do. Somebody, then, must intervene to correct them. I do not deny this. The point, however, is that there is intelligent policy adaptation and there is ad-hoc intervention. The difference between the two is that the former takes into account the possibility of policy failure at the early stages of policy formulation and makes provisions for regular and impartial policy reviews, while the latter relies on the initiative of higher political authority. Well, higher political authority may or may not seize the initiative and may or may not give up at the sight of the first difficulty.

What are the typical excuses for all kinds of failure to implement or enforce policies? Are they not that “there is a gap in the law”, or that “the law has not explicitly provided for this particular contingency”, or that “the department lacks resources”? Were these problems not predictable when the laws and policies in question were formulated? If they were predictable, why did no one do anything to prevent failures and remedy the very foreseeable problems?

I think the answer is that no one was responsible because no one was accountable, and no politician (i.e. the higher authority) found time or considered it worthwhile to deal with the problems. After all, very few laws have in-built policy or departmental reviews and assessments. Why, then, should anyone stick his or her neck out to do something that is not required?

One of the repercussions of the unprecedented amount of financial and technical assistance that the candidate countries have received has also been the extent and the depth of the legal reform they have undertaken. This has been partly the result of the advice offered and the many seminars that were organised by the EU and partly the impact of the presence of pre-accession advisors. All these activities have had beneficial effects but have also led legal drafters in the candidate countries to prepare very comprehensive EU-compatible laws. They have aimed for perfection whereas, I believe, they should have acknowledged the impossibility of trying to foresee all future contingencies and, instead, should have incorporated in the new laws pre-set reviews and institutional evaluations in case further reform proves necessary. That further institutional adjustment, if not outright reform, will prove necessary is, in my view, inevitable. Not only many of the rules are new to the acceding countries, the institutions responsible for enforcing them are also new. Periodic assessment of institutional performance is one of the most potent incentives to civil servants to carry out their tasks effectively.

The European Union relies on rules which must be effectively enforced. If the new member states wish to avoid being dragged before the European Court of Justice for failure to comply with EU law, their governments should try to make themselves “obsolete” by making it unnecessary for politicians to intervene to fix things. If that happens, they will have succeeded to “Europeanise” their countries in the sense that their partners in the EU will be in a position to trust that the commitments new member states make in Brussels are irreversible and immune to domestic political meddling.

This kind of “Europeanisation” would also mean that scarce resources, financial, human and material, are used efficiently and effectively. That would make a direct contribution to their economic and social development. See also the last point in the section below.

4. Maximising the benefits from EU membership or the paradox of doing what the EU does not require you to do

In the previous section I argued that the “Europeanisation” of public policy in the acceding countries should be one of their top priorities. This Europeanisation suggests that they should prepare for entry into the EU not just by going through the legal process of adopting the required EU laws. They should also modernise public services and strengthen policy implementation and enforcement.

One may argue, however, that the real issue is as much about modernisation of the government machinery and the civil service as it is about Europeanisation in the sense of getting ready to apply specific EU rules.⁷ For example, the issues of independence and accountability of civil service are not new. They were first debated in West European countries twenty or so years with the establishment of new institutions such as autonomous

regulatory and executive agencies. This raises the question whether modernising national civil services is sufficient to maximise the benefits from EU membership. The answer is that it helps but it is certainly not enough.

As I explain below, there are issues that have nothing to do with administrative reform or adopting modern methods of governance. The EU has its own peculiarities and special features that must be taken into account. I group them into the following ten issues that the governments of the acceding countries should include in their preparations for entry into the EU.

i. Minimising state liability

Under the EU treaties, liability for breaches of EU law falls on the member states. Irrespective of whether they may have a federal political system or whether the breach may have been effected by an autonomous municipality, in the eyes of the EU law, it is always the member states which are at fault. This has significant implications. It means that the central government must be able to instruct any other public authority, be it independent, regional or local, to comply with EU requirements and court rulings. If that is not possible because, for example, of the federal political structure of the country or the autonomy of regional authorities, there should at least be a provision in national law that obliges all public authorities to respect EU law. This issue of liability was not part of the 31 chapters of the accession negotiations, but it does not follow that it can be ignored.

Perhaps one may think that since a fundamental principle of EU law is its primacy over national law, it may be sufficient to rely on that principle. However, in the absence of any explicit domestic legal provision or administrative procedure, eventual compliance will be guaranteed only by resort to proceedings, most likely before constitutional courts. That is not an efficient way of ensuring speedy compliance at all levels of government.

ii. Direct effect of EU law and enforcement in national courts

The EU system confers certain rights to individuals, both persons and companies, which can be exercised before national courts. This is the concept of the “direct effect” of EU law.⁸ It does not matter whether a member state does not happen to have a corresponding national provision on its statute books. The national judge is obliged to enforce EU law when invoked in his or her court. Even where EU law is to have effect through transposition into the domestic national system, failure to do so or failure to do it correctly may create liability for the country concerned when the intention of the EU law is to generate explicit rights for individuals and such rights are manifestly impaired by that failure. This is the so-called “Francovich” doctrine which also enables individuals to initiate proceedings against their own authorities for any damages they may have suffered by the failure of those authorities to take measures to give effect to EU law.

The constantly expanding and evolving EU case law places a heavy burden on both national authorities and national judges. Judges in the acceding countries have already had some training on EU law. A few seminars are clearly not enough. Much more has to be done if they are to apply EU law properly, especially in those cases for which adaptation of national laws has not been necessary.

As a result of the direct effect of Community law, the introduction of new laws in the national systems of the acceding countries and the establishment of new institutions to implement those laws, court cases will multiply and their complexity will increase. For most acceding countries the specialised national regulatory authorities required by the EU are a new feature. Their decisions will also be subject to appeal before courts. In most cases, this is explicitly required by EU directives. This raises the question whether national courts can cope with the increase in their workload and whether they have the necessary expertise to deal with regulatory problems mixing law, economics and technical issues. The increase in workload can be dealt with by appointing new judges. The complexity of the cases can be addressed through the creation of specialist courts with judges specialising in certain types of cases. If, in this way, they are able to process more cases, they will also solve the problem of the heavier workload. Admittedly, however, the extra costs of establishing new courts will have to be set against the benefits from quicker and more efficient handling of cases. This is an empirical issue. It should, therefore, be considered before it is dismissed a priori. By contrast, specialisation of judges within existing structures will probably raise efficiency without imposing extra costs.

iii. Training

What applies to national judges also applies to any other officials responsible for enforcement of EU rules. EU rules and policies are constantly evolving. This means that training never stops. It should not be confined to updating officials on new policy initiatives and outcomes in Brussels. It should also seek to identify the best possible measures for implementing new EU rules and examine how other member states interpret such new rules and how they enforce older rules.

Training should also be provided to those that have to comply with EU rules, not only those that have to enforce them. Better awareness of the obligations imposed by EU rules would contribute to fewer infringements.

iv. Competition of views and technical expertise

As soon as one recognises the constant state of flux of EU rules and that, for some rules defined in the form of directives, the member states have discretion in determining the precise national implementing measures, then it becomes obvious that there is no single correct way of implementing EU law and complying with its requirements. It follows that it is important for member states to engage all relevant actors and consult widely

those that may be affected by the introduction of new regulations. At the same time, however, some EU rules are very technical. So it is necessary to build expertise that combines both legal knowledge and technical comprehension.

v. Citizen and consumer-oriented services

If the rights of persons or companies are infringed by national authorities, they can petition directly EU institutions, most usually the European Commission. They can also petition EU institutions in case their complaints are ignored or rejected by national authorities. They can do so anonymously or ask for confidentiality. This is not a legal process of appeal where they first have to exhaust domestic legal remedies. Aggrieved persons can contact the Commission, for example, at any stage in the domestic procedures. And, as mentioned above, aggrieved persons may also resort to domestic courts.

The implication is that public authorities in the acceding countries have to change attitude. They have to become pro-active, respond quickly to requests for information and complaints, and provide effective remedies. As also mentioned in the previous section, their decisions, even if ultimately found to be justified, must be clear and adequately reasoned. Timely response and adequate reasoning by public authorities are principles enshrined in the administrative law of most acceding countries. It remains to be seen whether their standards are on par with those of the EU and whether their public authorities have the means to be as pro-active as they should be.

This is good news for citizens. Despite the fuss about the EU's "democratic deficit", the mere fact that the EU exists separately from its member states, I believe, forces these states to be more democratic than otherwise and makes them and their public authorities more accountable.

vi. Information records and impact assessment

Ability to respond quickly to requests for information is important in the context of the EU for another reason. The Commission, in its capacity as the "guardian of the treaties", has the power to ask for information from any public authority. The request is normally sent to the permanent representation of the member state concerned in Brussels. From there it goes to the national capital and then to the responsible authority at any level of government in any region. The Commission expects answers usually within a couple of weeks. To respond quickly, public authorities must keep full records with easily accessible information. Do public authorities in the acceding countries have files with complete and retrievable information?

There is one more issue concerning provision of information to Brussels with which all acceding countries will soon have to grapple. That is the notification of state aid schemes. All public authorities at all levels of government and state-controlled enterprises will have to notify to the Commission any measure that contains state aid and obtain its authorisation before they can put

it into effect. At present, all acceding countries have state aid monitoring authorities that deal with state aid domestically without notification to Brussels. In a year's time the situation will change. As far as I know none of those countries has established a coordinator of national notifications to the Commission. No EU rules exist on this point apart from the requirement that notifications should go through permanent representations in Brussels. As I explain below, however, the channelling of information to the Commission has to be coordinated. I also explain below that sometimes a country should not do things that the EU allows it to do, like granting state aid.

Moreover, the real challenge concerning EU-required information is not about collecting, storing and retrieving it. It is mostly about using or processing it before it is passed on to Brussels. The Commission announced about a year ago that in the future it will carry out assessments of the impact of proposed legislation before it forwards it to the Council and Parliament for formal adoption.⁹ It follows that any member state that wants to influence forthcoming rules as they are being shaped it would have to be able to carry out similar impact assessments of its own. This is a significant issue and I will come back to it below when I examine the role of persuasion in the various Brussels committees.

vii. Coordination and identification of national interest

Coordination among public authorities will be more important than ever. Traditionally, the ministry of foreign affairs is the contact point of a government with other governments and international organisations. After entry into the EU, contacts with EU institutions and national authorities in other member states will increase exponentially.

There are four regular summits of heads of government and state and about 50-60 Council meetings per year attended by ministers. The Council has many committees and about 300 "working parties" of national officials who meet several times a year. The Commission has several hundred "expert groups" made up of national officials and chairs about 250 so-called "comitology" committees of national representatives which are responsible for managing and adjusting implemented regulations. There are literally hundreds of meetings per year.

National ministries in the acceding countries will by necessity have to deal directly with the corresponding services in the EU and other member states. Contact exclusively through their ministries of foreign affairs will become a bottleneck and, therefore, will largely be abandoned. But precisely because there will be so many national authorities involved in EU affairs there will be a great need for coordination. At minimum, coordination would aim to keep everybody concerned informed of what is going on. In addition, coordination will also be needed after new rules are adopted in Brussels in order to monitor their proper implementation within the new member states. But coordination will be found to be

indispensable to iron out domestic policy differences between ministries and arrive at a cohesive national position.¹⁰

Coordination done at the highest political level, say within cabinets or councils of ministers, should be a measure of last resort. If it is to be effective, it will have to be done largely in one or more dedicated committees at different levels, ministerial or technocratic, to be able to keep up with the load and pace of work in Brussels.

viii. In charge of European affairs

Coordination will be a full-time job. In view of the fact that that coordination also means forging policy compromises, all EU member states have a political person in charge of European affairs. That person may be a minister or, more often, a deputy minister or state secretary. Most acceding countries have similar political persons in charge of their dealings with the EU. Some do not. They should seriously consider the appointment of a European affairs minister.

ix. Using persuasion to advance national interests

In an enlarged EU every member will have correspondingly less power than what would be the case with fewer members. Some countries will have minuscule power. Compare, for example, the three votes allocated to Malta or the four of Cyprus against the 29 of Germany or France. Yet, recent research suggests that when the various committees of Community and national officials prepare new EU legislation, they listen to good arguments irrespective of the country of origin of the person who makes them.¹¹ This has been interpreted as a sign that national officials who participate in these Brussels committees transfer their loyalties to the Community. That may or may not be correct. Another less contentious way to interpret that result is that on a technocratic level conflicting views are resolved on the basis of technical arguments. This is very significant for small countries for the simple reason that their "political" power is virtually non-existent. Their only power is their skill of persuasion.

The UK, for example, one of the more diligent member states in transposing EU laws promptly and enforcing them effectively, is also one of the most active members in influencing new EU rules as they begin taking shape. In order to achieve that, it carries out its own preliminary impact assessment of draft rules. It then uses the results to determine its national position and persuade Commission and national officials in other member states to adjust the draft rules to make them less costly, more efficient, etc. This kind of intervention which aims to improve draft rules also furthers its own national interests.

For the new member states it will also be important to have a sufficient number of their nationals take positions in EU institutions. It is not that the new EU civil servants will somehow and surreptitiously protect the national interests of their home states. Their loyalty will indeed be transferred to the EU. However, they will bring into EU institutions a deeper understanding of the

economic and political systems and social conditions in the new member states.

x. Achieving the right economic conditions to absorb EU funds and exploiting opportunities

The prospective new members will be net recipients from the EU budget. At least this is the intention during the first three years of EU membership. However, in order to receive funds from Brussels they have to set up the right institutions and procedures. Moreover, in order to maximise the amount they can draw from the EU's structural funds they must release corresponding national funds. This is part of the *acquis*.

What is not part of the *acquis* is where to find that extra national money. The EU does not tell its members how to raise government resources or increase tax revenues. In fact all candidates have a major problem ahead of them. They all have budgetary deficits. This means that, since it is always politically difficult to raise taxes in order to boost tax revenue, they must reduce spending. But by reducing spending they will manage to absorb fewer structural funds because they will not be in a position to match EU money with extra national money.

Under these conditions there is only one alternative left. Public administrations, public programmes and public spending have to become more efficient to economise resources. We see now that in addition to administrative efficiency, national authorities in acceding countries must also achieve spending efficiency in order to maximise, in this case, the financial benefits of EU membership.

In this connection, it is necessary to point out that although the EU, in general, prohibits state aid, it nonetheless allows certain types of aid up to predetermined amounts. This, however, should not be seen as a licence to subsidise industry and regions, even if that is permitted. Surprising, the EU does not require member states to carry out cost-benefit analysis of the aid they grant. They only have to comply with the rules defined by the Commission. But, legal compliance is not the same as spending money prudently and to the maximum effect. So again, if they want to use their resources efficiently, member states have to do something extra that the EU does not require them to do. This is not the case, for example, in structural operations where the EU has much more extensive rules forcing member states to justify their regional programmes and evaluate their results both *ex ante* and *ex post*.

Last but certainly not least, the EU with its extensive networks between member states, its many Community programmes and its huge market offers a wide range of opportunities to both public authorities and the private sector. To public authorities it offers the possibility to learn from and cooperate with their counterparts in other countries.

For the private sector it also opens up many possibilities for cross-border joint ventures and investment and support from EU R&D programmes and SME financing. This is not the place for a full analysis of these opportunities. What is important to understand is that

there is no EU manual on how to exploit such opportunities. This requires planning and strategic preparation and investments both by public authorities and businesses.

5. Conclusion

The ten issues identified above have at least one common feature. There is no EU rule that tells member states what they must do. That is why another way to prepare for EU membership is not just to learn all the EU rules, but to look at how other countries have coped with the demands of membership and learn from the successes and failures of their membership.

In essence, preparation for membership requires a sort of risk analysis and market research. With respect to assessing the risks of membership, in addition to ticking off adopted legal acts, the governments of the acceding countries should also identify the things that can go

wrong. They should find out which are their weak points and take preventive action now rather than respond with remedial measures later on. Although it is never too late to carry out this risk analysis, failure to apply and enforce properly EU rules means, at best, that the Commission will eventually haul them before the EU Court of Justice. At worst, they will have failed to enjoy the full benefits of membership and protect adequately their citizens, consumers and environment.

Market research is also a useful tool for increasing the benefits of membership. Indeed, the EU has a huge internal market which offers many opportunities that can be exploited by the alert and nimble member states. Just as companies structure their internal operations so as to improve their market prospects, so should the acceding countries do to improve their prospects within the EU system.

NOTES

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² I am grateful for the comments I have received on an earlier version of this paper from Edward Best, Veerle Deckmyn, Christoph Demmke, Arjan Geveke, Ines Hartwig, Robert Polet and Adriaan Schout. I am solely responsible for the views expressed in this paper.

³ See "<http://www.euractiv.com/>", then click "enlargement".

⁴ See Phedon Nicolaides, *From Graphite to Diamond: The Importance of Institutional Structure in Establishing Capacity for Effective and Credible Application of EU Rules*, (Maastricht: European Institute of Public Administration, 2002) and Phedon Nicolaides et al., *A Guide to the Enlargement of the European Union (II): A Review of the Process, Negotiations, Policy Reforms and Enforcement Capacity*, (Maastricht: European Institute of Public Administration, 1999). See also the publications of the "capacity-building" project by Phedon Nicolaides on *Enlargement of the EU and Effective Implementation of Community Rules*, (EIPA, 2000); Christoph Demmke and Martin Unfried on *European Environmental Policy*, (EIPA, 2001); Frank Bollen on *Managing EU Structural Funds*, (EIPA, 2000); Pavlos Pazaros on *Effective Implementation of the CAP*, (EIPA, 2001) and Adriaan Schout on *Organisational Analysis of the European Activities of the Ministry of Economic Affairs*, (EIPA, 2000).

⁵ For a review of the state of public administrations in the acceding countries see Daniëlle Bossaert and Christoph Demmke, *Civil Services in the Accession States: New Trends and the Impact of European Integration*, (Maastricht: European Institute of Public Administration, 2003).

⁶ There is also the issue of opening up employment within public administrations to persons who are nationals of other EU member states. Although under Article 39(4) of the EC Treaty, employment in public administrations may be restricted to own nationals, the European Court of Justice and the

Commission have interpreted that derogation in a narrow manner. Not all jobs in public administrations may be reserved for own nationals. It has been estimated that between 60% and 90% of all civil service jobs may be opened up to persons of other EU nationalities. See Daniëlle Bossaert et al., *Civil Services in the Europe of Fifteen*, (Maastricht: European Institute of Public Administration, 2001) and Christoph Demmke and Uta Linke, *Who's a National and Who's a European: The Legitimacy of Article 39(4)*, *Eipascope*, 2003, No. 2.

⁷ For an explanation of the significance of decision-making autonomy and accountability in policy enforcement and regulatory supervision see Phedon Nicolaides, with Arjan Geveke and Anne-Mieke Den Teuling, *Improving Policy Implementation in an Enlarged European Union: National Regulatory Authorities*, (Maastricht: European Institute of Public Administration, 2003).

⁸ For a more sceptical view as to whether it is possible to make such distinctions, see Christoph Demmke, *Undefined Boundaries and Grey Areas: The Evolving Interaction between the EU and National Public Services*, *Eipascope*, 2002, No. 2, p.8.

⁹ Not all EU law has direct effect. Most directives, for example, need to be "transposed" into the national legal order before they can be legally enforced. However, even when a directive as a whole has to be transposed, some times provisions of the directive may themselves direct effect.

¹⁰ See Commission Communication on Impact Assessment, COM(2002) 276, 5 June 2002.

¹¹ For an account of the importance, the objectives and methods of coordination see Adriaan Schout and Kees Bastmeijer, *The Next Phase in the Europeanisation of National Ministries*, *Eipascope*, No. 1, 2003.

¹² See Morten Egeberg, Guenther Schaefer and Jarle Trondal, *The Many Faces of EU Committee Governance*, *Advanced Research on the Europeanisation of the Nation State*, Working Paper No. 03/2, University of Oslo, 2003. □