

The Eastern Enlargement of the European Union and Environmental Policy: Challenges, Expectations, Speeds and Flexibility

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Chair: Regina Axelrod (Adelphi University)

Discussant: John McCormick (Indiana University Purdue University Indianapolis)

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**Alexander Carius
Ingmar von Homeyer
Stefani Bär**

**Ecologic
Center for International and European Environmental Research
Friedrichstrasse 165
D - 10117 Berlin
Germany**

Phone +49-30-2265 1135

Fax +49-30-2265 1136

E-mail: carius@ecologic.de; homeyer@ecologic.de;

1. Introduction

At the June 1993 European Summit in Copenhagen it was decided that the Central and Eastern European countries (CEECs) associated with the EU can, in principle, accede to the EU¹. An indispensable precondition to accession is, however, that the candidate countries meet the 'Copenhagen Criteria'. These criteria are a stable democracy, the rule of law, an appropriate standard of human rights and the protection of minorities. A functioning market economy which can guarantee that the accession countries are capable of withstanding economic competition within the EU is considered to be a further central requirement.

To date, ten CEECs – the Czech Republic, Poland, Hungary, Romania, Bulgaria, Slovenia, Slovakia, Estonia, Latvia and Lithuania - have concluded association agreements with, and applied for membership of, the EU. All ten countries have been included in the European Union's intensified pre-accession strategy under whose auspices they receive various forms of support in their efforts to meet the preconditions for accession. In March 1998 accession negotiations formally began with the first five candidate countries (the 'pre-ins') who, in the opinion of the European Council, already meet the three essential criteria laid out above. The countries involved in these negotiations are Poland, the Czech Republic, Hungary, Slovenia and Estonia.²

The Eastern enlargement of the EU fundamentally differs in two ways from earlier accessions. On the one hand there are 'quantitative' differences:

- With ten CEECs as well as Cyprus and Malta, the number of candidate countries is substantially higher than for previous accessions (until now only one, two or at the most three countries acceded simultaneously to the EU);
- The *Acquis Communautaire*, the EU's legal corpus, which must be adopted by the accession countries is – particularly as a result of the increased harmonisation of recent years as necessitated by the creation of the internal market – substantially more comprehensive than at the time of the EU's Southern enlargement in the middle of the 80's,³

Lastly, the economic disparity between current EU member states and the accession countries is considerably larger than with previous accessions. This is particularly the case

¹ Meeting of the European Council in Copenhagen, from 21 and 22 June 1993.

² Accession negotiations have also begun with Cyprus. It seems likely that negotiations with Malta will start very soon.

³ Although, at the time of the Northern enlargement in 1995, the *Acquis Communautaire* was already very broad, it was substantially easier for Sweden, Finland and Austria to adopt Community law not least because all of these states had been long-term members of the European Free Trade Area (EFTA) or the European Economic Area (EEA) and as a result had already adopted important parts of Community law or were in the process of adopting them. Even more important was, certainly, the level of development already achieved in these countries, so that, for example, there was generally no need for a lifting of environmental standards to meet European norms (in fact, during the accession process the conditions for a lifting of some European standards were the subject of negotiation).

for countries such as Rumania and Bulgaria whose gross national product (GNP) per capita lies far below the EU average.⁴ The lower economic capabilities of these countries could cause problems both in the transposition of existing Community laws and the conclusion of new laws, for example, in the case where the transposition of particular pieces of legislation requires substantial investments. Additionally, the fact that countries with highly developed economies – e.g. Germany, Austria and Italy - border on substantially less developed accession countries could lead to difficulties in both the accession negotiations and later membership. In this context, the issue of workforce migration is currently the subject of controversial debate.⁵

In addition to these 'quantitative' differences between the EU's Eastern enlargement programme and previous enlargements one can also distinguish a number of 'qualitative' differences.

- In the time since previous European enlargements, European legislation has not only become more profligate but also changed in terms of its content and scope. On the one hand, EC law covers a greater range of policy areas than ever before. This is most evident in the field of economic and monetary union (EMU). However, even within specific sectors EC law has started to place higher demands on the member state institutions responsible for its implementation. This is particularly evident in the field of environmental policy where the Community now relies more heavily on procedural rules (for example, participation and information requirements) and pays particular attention to the administrative preconditions for integrating environmental policy with other relevant policy areas. These increased requirements are coupled with a shift in emphasis of EU environmental policy toward the effective implementation of existing legislation.
- The EU urgently needs to reform both its Common Agricultural Policy (CAP) and the methods it uses to calculate the extent of member states' financial contributions.⁶ Although the urgency of the required changes is, doubtless, partially a consequence of the planned enlargement, reform is also necessitated by factors independent from enlargement; in particular, German reunification and the efforts of the US and other countries to globally liberalise agricultural markets.⁷

⁴ While the GNP per capita in Portugal, the poorest member state, lay at \$11010 in 1997, and in Estonia, the poorest of the five first accession countries, at \$3360 per capita, the corresponding figures for Rumania and Bulgaria were \$1410 and \$1170 respectively. The last two countries are substantially less economically developed than the Russian Federation (\$2680). Their GNP per capita is at the level of Egypt (\$1200) or Indonesia (\$1110). Cf. World Bank (1999), *1999 World Bank Development Indicators*, "GNP per capita 1997, Atlas method and PPP".

⁵ Rothacher, Albrecht (1998), "Beitrittszenarien. Die Verhandlungen zur EU-Osterweiterung", in Wagener, Hans-Jürgen und Heiko Fritz, (eds.), *Aspekte der EU-Osterweiterung*, Bonn: Dietz, p. 262.

⁶ Cameron, Frazer (1998), *Preparing for Enlargement: Policy and Institutional Reform in the EU*, European Commission, DG 1A, Brussels, 14. 12. 1998.

⁷ Cf. Jørgensen, Lars und Michael Lund (1997), *EU's undvidelse – Problemer og muligheder*, Frederiksberg: Samfundslitteratur, p. 113.

- The process of Eastern enlargement is also underpinned by a strong foreign policy imperative. Spanish, Portuguese and Greek accession were certainly also motivated by foreign policy goals - i. e. the need to reinforce infant democracies. However, in the case of the EU's Eastern enlargement this goal is coupled with security concerns which since the break down of the Warsaw Pact and the dramatic geo-political developments in Central and Eastern Europe have assumed great importance.⁸ The current political developments and the military escalation in the Balkans underline the necessity for political stability in Europe.
- A particularly pertinent qualitative difference to previous European enlargements is the fact that the accession countries are still going through a process of economic transformation. Not only do these countries have to adopt the *Acquis Communautaire*, but they must also, and more or less coincidentally, fundamentally reform their economic and legal institutions, by, among other things, introducing new regimes of ownership, privatisation and the dismantling of state subsidy structures.

These observations show that the EU's Eastern enlargement programme is taking place under substantially more difficult conditions than any previous enlargements. On the one hand the foreign policy goal of the stabilisation of Central and Eastern European democracies and their alignment to the West implies a need to complete the enlargement programme as quickly as possible. On the other hand, the relatively high number of candidate countries, their economic situations, the increased scope and administrative requirements of the *Acquis*, the urgent need for reform of specific EU policies and practices and the ongoing economic, social and political upheaval in the accession countries - all speak in favour of an Eastern enlargement programme with a relatively long time frame which allows for careful preparations.

In addition to those factors mentioned above which seem to imply the need for a long preparation period, one should also consider that Eastern enlargement will not only intensify existing EU problems - such as the need to reform the CAP and the issue of member states' contributions - but also create new ones. In substantive terms, this will particularly affect EU structural policy. If the financial mechanisms currently in place were to continue unchanged after enlargement this would place a substantially increased burden on existing member states. In addition to reform of the CAP and member states' contributions, Eastern enlargement necessitates a rethinking of the Structural Funds.⁹ In this context, it is worth noting that the means used by the Community to successfully incorporate the Southern countries into the EU - substantial compensation payments from

⁸ Cf. e.g. Roper, John (1998), "Enlargement and Security", in Dehousse, Renaud, (ed.), *An Ever Larger Union?: The Eastern Enlargement in Perspective*, Baden-Baden: Nomos; Balázs, Péter (1998), "Strategies for the Eastern Enlargement of the EU: An Integration Theory Approach", in Pierre-Henri, Laurent und Marc Maresceau, (ed.), *The State of the European Union: Deepening and Widening*, Vol. 4, Boulder and London: Lynne Rienner Publishers, p. 72.

⁹ Cameron, Frazer (1998), *Preparing for Enlargement: Policy and Institutional Reform in the EU*, European Commission, DG 1A, Brussels, 14. 12. 1998; Dehousse, Renaud (1998), "Institutional Models for an Enlarged Union: Some Reflexions on a Non-Debate", in Dehousse, Renaud, (ed.), *An Ever Larger Union?: The Eastern Enlargement in Perspective*, Baden-Baden: Nomos, p. 146.

the Structural Funds and the creation of the Cohesion Fund – are, as a result of restricted financial capacity, no longer open to the EU for Eastern enlargement. This is of particular relevance in relation to environmental policy as, in the case of Southern enlargement, it was the creation of the Cohesion Fund which made it possible for the Southern countries to meet their obligations regarding implementation of European environmental law.

Eastern enlargement also raises new problems for the EU's decision-making mechanisms. The increased number of member states participating in the Council of Ministers would strongly increase the risk of deadlock in the decision making process if the existing rules, which require either unanimity or a qualified majority, were not substantially modified. Similarly, a significant increase in the number of Commissioners is likely to reduce the effectiveness of decision-making procedures and administrative arrangements in the European Commission. However, if the number of Commissioners remained constant after enlargement it would no longer be possible for each member state to nominate a Commissioner (or in the case of the most populous member states, two Commissioners).¹⁰ In view of these problems, the Treaty of Amsterdam provides for a conference of the Heads of Government of the member states to be held no later than one year after the total membership of the EU exceeds twenty countries. The purpose of the conference is to consider and initiate the necessary reforms to EU institutions.¹¹

Some of the above-mentioned challenges arising from Eastern enlargement can, however, be perceived not as problems but as political opportunities for the EU. For example, the need to reform the CAP has long been recognised and could - due to the fact that Eastern enlargement seems almost unthinkable without a drastically changed CAP - finally receive the necessary impetus to overcome institutional and member state inertia. A similar argument could be made for reform of the EU decision-making mechanisms and institutions.

Having sketched the general problems and opportunities raised by Eastern enlargement, the remainder of this paper will concentrate on the implications of enlargement for European environmental policy.¹² In this context, the conclusion reached by the European Commission that, as far as Community environmental law is concerned, no accession country will in the near future be in a position to meet in total the obligations laid down in the *Acquis*¹³ might give cause for scepticism, particularly as this level of pessimism is unparalleled for any other area of the *Acquis*. This begs the question which problems specific to the environmental sector lead the Commission to such a prognosis and further: What are the

¹⁰ Dehousse (1998), p. 146.

¹¹ Cf. Article 2 of the Protocol on Institutions with Reference to the Enlargement of the EU ??? (7th Protocol of the Treaty of Amsterdam).

¹² On this, for a extensive overview, see Bär, Stefanie, Alexander Carius und R. Andreas Kraemer (1998), *Umweltpolitische Aspekte der Ostverweiterung der Europäischen Union*, Studie im Auftrag des Rates von Sachverständigen für Umweltfragen, Berlin: Ecologic, Gesellschaft für Internationale und Europäische Umweltforschung, Oktober 1998.

¹³ European Commission (1997) *Agenda 2000*, vol. I, COM(97) 2000 of 15. 6. 1997, p.67.

possibilities of ensuring – in spite of these problems – the greatest possible level of compliance with Community environmental legislation in an expanded European Union?

From a point of view focusing less strongly on complete implementation of the *Acquis* than the Commission's Communication does, it is possible to see enlargement as a unique opportunity to develop, and benefit from, a 'pan-European' environmental policy, where Europe is understood as encompassing both Eastern and Western Europe. For example, the marginal costs for the reduction of environmental pollution in the accession countries are, as a result of the generally lower environmental protection and price levels, substantially lower in the CEECs than in the existing EU member states.¹⁴ This raises the question of how this can best be exploited to promote pan-European environmental policy goals in the process of Eastern enlargement.

Against this background, the environmental opportunities and problems of enlargement can be discussed with regard to the question of how to find ways to minimise the problems arising from the difficulties which the accession countries face in adopting the *Acquis* while at the same time maximising the environmental advantages of Eastern enlargement from a pan-European perspective. To this end, the next section of this paper looks more closely at the relationship between Eastern enlargement and European environmental policy. Section 3 deals with the EU's pre-accession strategy which could serve as an important point of departure for developing measures to integrate environmental aspects into the process of accession. In section 4, a brief discussion of important characteristics of the environmental situation in the accession countries and the ensuing adaptation requirements provides the background for a consideration of ways to minimise the negative consequences of the highly likely failure of the accession countries to meet the environmental obligations laid out in the *Acquis* at the time of their accession to the EU. Section 5 deals primarily with the urgent need for institutional change of the EU arising from Eastern enlargement. A controlled but flexible approach toward the accession process and the future shaping of European environmental policy is sketched out. The final section of the paper discusses possible ways to minimise the problems which the accession countries face in adopting the environmental *Acquis*, while ensuring a high level of environmental protection in the accession countries.

2. Environmental Policy and Eastern Enlargement

Given the state of environmental policy and the seriousness of environmental problems in the accession countries, the implementation of Community environmental legislation is likely to have a generally positive effect on environmental protection in these countries.¹⁵

¹⁴ According to the calculations of the European Commission, environmental investments in the region of 400 million ECU towards combating acidification in four accession countries would achieve improvements which in the member states would cost 1 billion ECU. See Maxson, Peter (1998), *The Challenge of Enlargement to EU Environmental Policy. A Discussion Paper*, Brussels: EDC Ltd., EPE asbl, p. 20.

¹⁵ Cf. The European Consultative Forum on the Environment and Sustainable Development (1998), *Enlargement and Environment*, Brussels, p. 8.

In section 4 we will look in more detail at some of the more pressing environmental issues. It should, however, be noted here that the likely positive effects of adoption of Community environmental legislation does not primarily derive from particularly tough European environmental standards. In fact, in many cases the accession countries already have relatively strict environmental legislation. In the past, however, this legislation has often not been effectively enforced by the competent authorities.¹⁶ Accession will therefore only lead to significant improvements in environmental protection if it is accompanied by effective implementation and enforcement measures.

Eastern enlargement could also have positive effects on the environmental situation in current EU member states. This seems particularly evident when considering transboundary environmental problems.¹⁷ Yet, in this respect the benefits of Eastern enlargement may be relatively limited because transboundary environmental problems are already addressed by various bilateral and multilateral agreements and mechanisms. For example, there is intensive co-operation between the Czech Republic, Poland and Germany on the issue of air pollution in the so-called "black triangle". For the protection of transboundary water courses the International Commission for the Protection of the Elba, the Odra and the Danube has been established. Similarly, more far-reaching and global environmental problems are dealt with in the framework of various UN-ECE Conventions for, among other things, long-range transboundary air pollution and the transboundary consequences of industrial accidents.

Member states also have a degree of environmental interest in effective environmental protection in the CEECs with regard to certain issues which do not, in the classical sense, fall into the category of transboundary environmental pollution. For example, there is a common European interest in preserving the expansive and, as yet, relatively unspoilt natural areas found in many of the accession countries.¹⁸

For the member states, certain aspects of EU enlargement could be of particular importance not just from an environmental but, also, from an economic point of view. Industries in the member states currently fear competitive pressure from producers in the accession countries who do not have to meet the same level of environmental protection. Enlargement is likely to significantly reduce the disparity in compliance costs for environmental regulations by imposing on accession countries and member states a much more similar level of environmental regulation. Moreover, the adoption of European

¹⁶ Interview, Slovenian Ministry of the Environment and Physical Planning, 29. 04. 1999 in Ljubljana; Baker, Susan and Petr Jehlicka (1998), "Dilemmas of Transition: The Environment, Democracy and Economic Reform in East Central Europe – An Introduction", *Environmental Politics*, 7, 2, p. 7-8, 15; European Consultative Forum on the Environment and Sustainable Development (1998), p. 4.

¹⁷ Cf. Caddy, Joanne E. (1998), *Sowing the Seeds of Deliberative Democracy? Institutions for the Environment in Central Europe: Case Studies in Public Participation in Environmental Decision-Making in Contemporary Hungary*, PhD Thesis, European University Institute, Florence, p. 89.

¹⁸ Cf. Maxson (1998), p. 20.

environmental standards by the accession countries is widely expected to create new export markets for the member states' environmental industries.¹⁹

From an environmental perspective, the effective transposition and implementation of the environmental *Acquis* in the accession countries is also important for the general levels of acceptance of, and compliance with, Community environmental legislation in the present member states. For a long time there has been a problematic deficit in the implementation of European environmental law in EU member states.²⁰ This raises the concern that a merely partial implementation and/or enforcement of Community legislation in the accession countries could have the knock-on effect of further reducing the willingness of existing member states to effectively implement European environmental law.

In addition to these consequences for environmental protection and policy in the accession countries and the member states, the effective transposition of the environmental *Acquis* in the accession countries may also have positive effects on the general economic and political conditions of accession. Enlargement requires sustained modernisation of economic and administrative structures in the accession countries. In particular, accession will only be successful if the economies in the accession countries are capable of competing with member state enterprises in a liberalised European internal market. At the same time, the effective transposition, implementation and enforcement of the *Acquis Communautaire* can only be carried out by sufficiently competent and modern state administrations. In this context, European environmental policy is seen by the European Commission and the Parliament as a motor for state and economic modernisation in the accession countries.²¹ It does, in fact, seem that the challenges posed by the transposition and implementation of the environmental *Acquis Communautaire* are particularly appropriate to contribute to the development of modern administrative structures in the accession countries. The environmental sector appears to be one of the few, if not the only, policy area where the Community has extensive competences which require the transposition and implementation of wide-ranging legislation by the accession countries and - particularly in the water management, air pollution control and waste management sectors - high levels of private and state investment. In addition, the environmental sector requires highly competent state authorities, capable of transposing and applying both complex substantive rules (for example, the application of concepts such as "best available technology") and procedural rules (participation and integrated licensing procedures). Moreover, to fulfil these normative requirements the administration must be capable of identifying, planning, financing and supervising the necessary investment programmes.

¹⁹ See, e.g., Regional Environmental Center (1997), *The Environmental Technology Market in Central and Eastern Europe. An overview of the Czech Republic, Hungary, Poland, Slovakia and Slovenia*.

²⁰ Cf. e.g. European Commission (1996) *Commission Communication on Implementing Community Environmental Law*. COM(96) 500 final. of. 22. 10. 1996; Krämer, Ludwig (1995), *Adaptation to EC Environmental Rules: Options for Central and Eastern European States*, in Winter, Gerd, Ed., *European Environmental Law. A Comparative Perspective*, Aldershot: Dartmouth, p. 427.

²¹ Cf. e.g. European Commission (1998), *Commission Communication on Accession Strategies for Environment: Meeting the Challenge of Enlargement with the Candidate Countries in Central and Eastern Europe*, COM (1998) 294 final. of. 20. 5. 1998, pp. 11, 18.

The experience which the administration accrues as a result of this process, can then, at least in part, be carried over to other sectors of the administration which are less directly affected by accession, for example the administration of social services.

The adoption and implementation of the *Acquis Communautaire* may also make an important contribution to the modernisation of economic structures in the accession countries. On the one hand it is already the case that those industries in the accession countries which are strongly dependent on the export market are obliged to comply with European environmental product standards in order to gain access to member states' markets. On the other hand, it seems particularly appropriate in the course of the intensifying integration of the accession countries into the European internal market, to prepare other traditionally less export-oriented firms for increasing competition and an increasingly export-oriented market. The adoption of European environmental law in the accession countries may, in this context, substantially neutralise at least one obstacle in the path of a stronger export market - the requirement that products exported to member states must meet EU environmental standards.

Many accession countries are traditionally very dependent on energy and raw material intensive economic structures.²² In this context stricter environmental regulation may also have a modernising effect. This is possible in two different ways; First, the need to meet higher levels of environmental protection creates incentives to reduce energy and raw-material consumption, which can lead to increased efficiency.²³ Second, higher environmental protection requirements may provide the incentive for structural changes, away from the traditional energy and raw-material intensive industries toward modern service industries.

As mentioned above, despite the importance of European environmental law for environmental protection in the accession countries and EU member states – and, moreover, for the modernisation of economic and administrative structures in the accession countries - the European Commission has stated that it is unlikely that the accession countries will have adopted and implemented the entire environmental *Acquis Communautaire* by the time of accession. Given that, by making this statement the Commission appears to have already relaxed the requirement of complete transposition by the time of accession even before the actual accession negotiations have taken place, there is a danger that environmental protection will be dealt with as a form of bargaining chip during the negotiations.²⁴

²² Cf. UNEP, Global State of the Environment Report 1997, Chapter 2: Regional Perspectives, Europe and CIS Countries, Major Environmental Concerns, Atmosphere, http://www.grida.no/prog/global/geol/ch/ch2_7.htm; Kerekes, Sándor und Károly Kiss (1997), *Hungary's Green Path to the EU – Summary and Progress Report 1997*, Budapest: Budapest University of Economic Sciences, Department of Environmental Economics and Technology, p. 15.

²³ For example, the level of energy efficiency in the accession countries is at least 10-60% below the level in West Europe. Cf. Leslie, John (1999), *East European Energy Report*, London: Financial Times Energy, p. 4. Cf. also *Social Democracy and Environmental Issues in Eastern Europe. Options for Solutions*, Amsterdam, November 1996, p. 34-38.

²⁴ Cf. Committee on the Environment, Public Health and Consumer Protection (1997), *Opinion for the Committee on Foreign Affairs, Security and Defence Policy on the Commission communication*

Consequently, measures which seek to support the adoption and implementation of European environmental law independently from the actual negotiation process seem all the more important. In this context, the accession and pre-accession strategies of the European Commission are particularly important factors. As well as these, the 'Environment for Europe' process under the auspices of the United Nations Economic Commission for Europe (UN-ECE) and the Regional Environmental Centre for Central and Eastern Europe (REC) also play a certain role.

3. The European Commission's Accession Strategy in the Environmental Sector.

EU policy towards the Central and Eastern European Countries has passed through a number of different phases since the fall of communism. While, initially, Community policy was dominated by the provision of emergency aid in the framework of the PHARE programme for economic restructuring in Eastern Europe, the following years were marked by intensified co-operation with the CEECs culminating in the signing of the above-mentioned association agreements. During this time the possibility of CEECs' membership of the EU became an increasingly real one. Since the Essen Summit of Heads of State and Government in 1994 the EU has pursued an active policy of accession preparation with those CEECs interested in accession. In 1997 the European Commission introduced its Agenda 2000,²⁵ which oriented the Community towards an intensification of its pre-accession strategy.

Figure 1 gives an overview of the Community's accession strategy. The general legal requirements for accession are laid out in the Treaty on European Union and the association agreements with the CEECs who want to join the Community. In addition to these, the pre-accession strategy is based on a number of decisions taken by the European Council since 1993 as well as some fundamental European Commission papers. Of particular relevance is the European Commission's White Book of 1995, which identifies that part of the *Acquis Communautaire* which is relevant for the functioning of the internal European market and is therefore considered to be of particular importance for accession. In the environmental sector this includes, above all, product standards which, however, only comprise about half the total environmental *Acquis Communautaire*.²⁶ Not least because of this, in 1998, the Commission published a "Communication on Accession Strategies for the Environment", which emphasised the particular importance of environmental protection in the pre-accession strategy and listed those specific areas of the environmental *Acquis* which should be transposed and implemented first.²⁷

'Agenda 2000' – For a Stronger and Wider Union (COM (97)2000 – C4-0371/97), European Parliament, p. 5; Interview, EU Phare Accession Programme Support Unit, 29. 03. 1999 in Tallin.

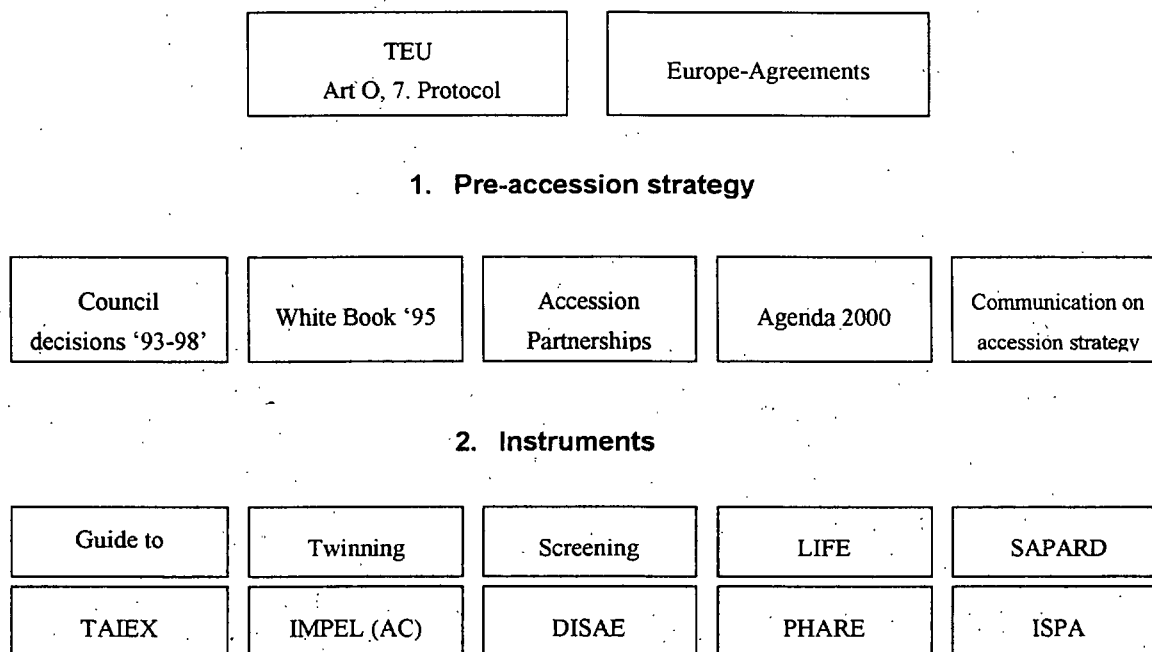
²⁵ European Commission (1997).

²⁶ See European Commission (1998), p. 9.

²⁷ European Commission (1998).

A year before this, the European Commission had introduced Agenda 2000 which, as mentioned above, contained proposals for an intensified pre-accession strategy, the key points of which are defined in the framework of bilateral accession partnerships between the individual accession countries and the European Commission. The accession partnerships govern the duties of the accession countries to develop, in co-operation with the European Commission, a national programme for adoption of the *Acquis Communautaire* (NPAAC). Under this framework, the Commission suggested to the accession countries, among other things, the short term priority of promptly transposing the environmental framework directives and developing detailed harmonisation and implementation strategies for individual directives. In the medium-term, priority is to be placed on the setting up of enforcement institutions and the increased integration of environmental concerns into other policy areas.²⁸ The progress made in the implementation of the NPAAC is assessed annually by the Commission.²⁹ The availability of assistance to accession countries under the various instruments of the intensified pre-accession strategy is dependent upon the level of progress made in the adoption of the *Acquis Communautaire*.

Figure 1: The environmental accession strategy of the EU



²⁸ European Commission (1998a), Commission Communication - Hungary: Accession Partnership, (98/C 202/04). On the growing importance of the concept of integration for European environmental policy, see also European Commission (1998e), *Partnership for Integration - A Strategy for Integrating Environment into European Union Policies*, COM (98) 333, of 27. May 1998.

²⁹ For each Candidate Country the Commission publishes yearly progress reports. The first reports were published in November 1998.

The European Commission's pre-accession strategy relies on both technical and financial instruments. Technical instruments are measures which have less to do with large capital investment and far more with the provision of information and experience, and which should make it easier for the accession countries to transpose European legislation into national law and to apply it effectively. In this context the Commission has prepared several documents whose primary intention is to provide orientation and advice to accession countries when adopting and implementing the environmental *Acquis Communautaire*.

With the publication of the *Acquis Guide*³⁰ the European Commission intends "to help leading political actors and civil servants from countries who are preparing to accede to the EU to deepen their understanding of the whole body of European environmental law".³¹ In addition to a short description of the content and implementation requirements of Community legislation dealing with the environment, the *Acquis* guide contains a "table of concordance" which should make it easier for both accession countries and the Commission to identify progress and deficits in the process of adjusting to the *Acquis Communautaire*.

The European Commission's *Progress Monitoring Manual* develops concepts for communication and reporting systems, which should allow the accession countries and the European Commission to systematically monitor progress in the adoption of the environmental *Acquis*. In addition to further, more detailed, tables of concordance³² the accession countries are, among other things, advised to use specially formulated implementation questionnaires, whose structure is set out in the manual. Additionally, a handbook is currently being drawn up, which should help the accession countries with the implementation of the environmental *Acquis* by describing and elaborating the implementation practices of the existing EU member states.

The Commission's TAIEX (Technical Assistance and Information Exchange) Office also provides the accession countries with support during the process of legal harmonisation. Among other things, TAIEX provides advice and organisational support to members of the administrative organs of candidates. The European Commission's DISAE (Development of Implementation Strategies for Approximation in Environment) facility fulfils similar functions and was set up with the particular goal of developing effective harmonisation strategies in the area of European environmental law.

IMPEL-AC, modelled on the European Union Network for the Implementation and Enforcement of European Environmental Law (IMPEL), was set up last year specifically for the accession countries. IMPEL-AC has the tasks of analysing the monitoring and supervisory structures of the accession countries, encouraging the exchange of experiences,

³⁰ European Commission (1997f), *Guide to the Approximation of European Union Environmental Legislation*, SEC (97) 1608 (updated version of 25. 8. 1997).

³¹ European Commission (1997f), p. 3.

³² Cf. Regional Environmental Center, *Progress Monitoring Manual*, <http://www.europa.eu.int/comm/dg11/enlarg/progman.pdf>, p. 11 und Annex 2.

and providing civil servants and inspectors in the accession countries with the necessary training.³³

In the framework of the PHARE Programme for economic restructuring in Eastern Europe, 70 % of the available financial means have been designated for investment and 30 % (approx. 500 million Euro) for the reconstruction for institutional capacity building in the accession countries. The “twinning projects” are the main instrument for this institutional capacity building, and are primarily focussed on four sectors: agriculture, environment, finance, home affairs and justice.³⁴ The central element of the twinning projects is the long and short term secondment of experts from one or more member states to the accession countries to work on specific projects, providing the accession countries with advice and expertise.³⁵

In preparation for the actual accession negotiations, the Commission has, since March 1998, been involved in the process of ‘screening’ accession countries’ legislation to measure the extent of its harmonisation with the *Acquis Communautaire*. Screening provides timely identification of both ‘gaps’ in accession countries’ legislation and areas which may in the future cause problems for the implementation of European environmental law. The screening procedures can form the basis of the first informal exchange of opinions regarding, for example, divergent understandings or interpretations of the requirements for transposition of the *Acquis* into the national law of the accession countries, and the possible necessity of transition periods for the adoption or implementation of the *Acquis* after countries accede to the Union. In particular, however, the screening process provides the Commission with the opportunity to gather the information it needs, in the context of its right of initiative, to make proposals for a common position of the Council, which will ultimately form the basis of the actual accession negotiations.

The Commission’s pre-accession strategy relies upon the availability of considerable financial assistance for the candidate countries. To this end, the Commission has a number of programmes to which it can turn. The PHARE programme is by far the most important of the EU’s financial instruments for accession – but also for aid to Central and Eastern Europe in general. From 1990 to 1999 almost 11 billion ECU will have passed from the EU to the CEECs under the auspices of the PHARE programme.³⁶ In the EU’s financial forecast for the period 2000 to 2006, yearly expenditures of 1.56 billion Euro have been earmarked for PHARE.³⁷ As a result, PHARE will, in the future, remain the EU’s most

³³ Cf. “Eastern Europe Inspectors Group Launched“, ENDS – 6th May 1998.

³⁴ Cf. European Commission (1998f), *Guidelines for PHARE Programme Implementation in Candidate Countries, 1998-1999*, <http://europa.eu.int/comm/dg1a/PHARE/implementation/guidelines/98-99.htm>.

³⁵ European Commission (1998d), *Preparing Candidate Countries for Accession to the EU. PHARE Institution Building. A Reference Manual on “Twinning projects”*, Version 29 April 1999, Brussels.

³⁶ By the end of 1994 the EU had placed more than 4.284 billion ECU at the disposal of the CEECs participating in the PHARE programme. For the period 1995 to 1999 the EU plan to make available assistance in the range of 6.7 billion. See European Commission (n. y.), *PHARE Horizontal Large Scale Infrastructure Facility*, p. 1; Mayhew, Alan (1998), *Recreating Europe. The European Union’s Policy towards Central and Eastern Europe*, Cambridge University Press: Cambridge, p. 139.

³⁷ Presidency Conclusions, Berlin European Council, 24 and 25 March 1999, SN 100/99, p. 4.

significant financial assistance programme for the CEECs.³⁸ Funds from PHARE finance, among other things, twinning projects and investments in the environmental sector, which facilitate the effective adoption of the *Acquis*.³⁹

The introduction of the Instrument for Structural Pre-Accession Aid (ISPA) is planned for the year 2000. It will have similar goals and functions to the current Cohesion Fund. According to the EU's financial forecast for the period 2000-2006, the ISPA will have an annual budget of 1.04 billion Euro.⁴⁰ In contrast to PHARE, only the 10 CEECs which are associated with the EU will benefit from the ISPA.⁴¹ It is intended that 50% of the financial means available to the ISPA will go toward investments in the environmental sector while the other 50% is to go toward investments in the transport sector. In the environmental sector it is envisaged that primary investment areas will be the water and air quality and waste management sectors, as it is these sectors which, in the course of accession, will have the greatest need for inward investment.⁴² In contrast to PHARE, which provides for full EU financing, ISPA projects will normally only be financed by Community funds to an upper limit of 85%. Such projects should be co-financed through other sources, for example, through national funds, the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), the World Bank and so on.⁴³ Parallel to ISPA specific structural help for the agricultural sector is envisaged from the year 2000 through the new programme Special Aid for Pre-Accession in Agriculture and Rural Development (SAPARD) under whose auspices certain environmental measures can be funded.⁴⁴

The LIFE programme⁴⁵ was originally intended only to finance environmental measures taken in existing member states, however it is now possible for measures taken in associated CEECs to fall within the LIFE framework and be eligible for financing through LIFE. A budget of 450 million ECU has been earmarked for the second LIFE programme from 1996 to 1999.⁴⁶

³⁸ This should not mask the fact that in the framework of its structural policy, the EU transfers substantial higher sums to the poorest member states. While payments made under the PHARE programme are equivalent to 10 ECU per person living in the participating CEECs, payments to the poorest member states amount to 250 ECU's per person. The additional funds flowing from the ISPA and SAPARD programmes to the CEECs which are referred to later are not sufficient to affect this ratio. See Mayhew (1998), p. 142.

³⁹ Cf. European Commission (1998f), p. 9-14.

⁴⁰ Presidency Conclusions, Berlin European Council, 24 and 25 March 1999, SN 100/99, p. 4.

⁴¹ Cf. European Commission (1998b) *Proposal for a Council Regulation (EC) establishing an Instrument for structural policies for pre-accession*, COM 98 (138) final, 18. 3. 1998, Art. 1.

⁴² Cf. European Commission (1998b), p. 3-4.

⁴³ Cf. European Commission (1998b), p. 7.

⁴⁴ Cf. European Commission (1998c), *Proposal for a Council Regulation (EC) for the pre-accession Measure for agriculture and rural development*, COM 98 (153) final

⁴⁵ Regulation EEC/1973/92 of 21. 5. 1992, on the establishment of a financial instrument for the environment, amended by regulation EC/1404/96 of 15. 7. 1996.

⁴⁶ European Commission <http://europa.eu.int/comm/life/whatis.htm>.

The EU's pre-accession strategy is mostly indirectly supported by a range of other actors. Of particular importance are the United Nations Economic Commission for Europe (UN-ECE) and the Regional Centre for Central and Eastern Europe (REC). The UN-ECE's involvement in the environmental sector emanates mostly from the "Environment for Europe" process for which the UN-ECE acts as secretariat. The core mechanism of the "Environment for Europe" process is the holding of regular ministerial conferences. The Environmental Action Programme (EAP) which forms a part of the "Environment for Europe" process is of particular importance for the co-operation with the CEECs. Under this programme CEECs are supported in the development of long-term National Environmental Action Programmes (NEAPs). In addition the World Bank is developing scenarios and cost estimates for alternative (and cheaper) implementation strategies for individual directives (in particular in the area of water management) in the Central and Eastern European countries.⁴⁷

In the drawing up of the NPAACs, which the accession countries are obliged to complete within the framework of the EU's pre-accession strategy, accession countries can, in part, draw on the experiences and results gleaned from the process of preparing the NEAPs. However, there is a need for increased co-ordination between the NPAACs and the NEAPs. In fact, the NEAPs have diminishing influence over the programming of environmental policy in candidate countries as a result of the political priority of accession.⁴⁸ Decisions of the UN-ECE which refocus its activities on environmental co-operation with the Newly Independent States (NIS) not included in the pre-accession strategy of the EU are best understood with this in mind⁴⁹.

While the "Environment for Europe" process largely promotes inter-governmental co-operation, the REC focuses more on the strengthening of the roles of civil-society actors in improving the environmental situation in CEECs. The REC was set up in 1990 by the USA, the European Commission and Hungary as an independent non-profit making organisation, largely funded through contributions from various countries and the Commission. The REC has time and again more or less directly supported EU activities.

⁴⁷ See, for example, World Bank (1999), *Republic of Slovenia. Complying with the European Union Environmental Directives*, Europe and Central Asia Regional Office Poverty Reduction and Economic Management Unit (ECSPE), Washington, D.C. : Draft January 1999; World Bank (o. J.), *Hungary: Meeting the Requirements of EU Environmental Legislation*, Background paper to the World Bank's Country Economic Memorandum, Washington, D.C.; World Bank (1998), *Poland. Complying with EU Environmental Legislation. Final Report*, Europe and Central Asia Environment Unit, Washington, D.C. Siehe auch Lázló Sömlyódy und Peter Shanahan (1998), *Municipal Wastewater Treatment in Central and Eastern Europe. Present Situation and Cost-Effective Development Strategies*, The World Bank, Washington D.C. The last study is based on an inquiry which took place in 1992/93. It does not cover the particular requirements of taking on the *Acquis Communautaire*.

⁴⁸ For example, the conclusion of an NEAP for Slovenia was delayed for many years as a result of co-ordination problems with the accession requirements. There were also problems in the Czech Republic with coordinating the reworking of the NEAP with the NPAAC. Interview; The Slovenian Foundation for Sustainable Development, 31. 03. 1999 in Ljubljana; Interview, Czech Environment Ministry, 01. 04. 1999 in Prague.

⁴⁹ Cf. e.g. the preamble of the Declaration of Environment Minister of the Region of the UN-ECE at the occasion of the Aarhus Conference.

For example, it played an important role in the gathering and preparation of the necessary information for the screening of environmental legislation in the accession countries.⁵⁰

4. The Environmental Situation and Harmonisation Requirements in Central and Eastern European Countries

The notion of 'transition' is, in the case of the accession countries, not only characteristic of political and economic conditions but also to a certain extent of the environmental situation. In comparison to the EU member states the most notable difference with respect to the environment is the wide disparity in accession countries between very heavily polluted 'hot spot' regions such as the so-called 'black triangle' between Poland, the Czech Republic and Germany, and expansive relatively unspoilt areas, which are often marked by high levels of bio-diversity.⁵¹

Since the end of the 1980's the situation in these 'hot spots' has been, to a significant extent, diffused. This is primarily a result of the economic problems in the relevant CEECs which resulted in a decrease in industrial production and a corresponding decrease in pollutant emissions. The collapse of traditional heavy industries and their replacement by the increasingly important service sector has, along with remedial environmental protection, substantially contributed to the reduction of environmental pollution in the 'hot spot' regions.⁵² Additionally, related bilateral and multi-lateral assistance and action programmes in these regions have played a role in the notable improvement in environmental quality. Although environmental pollution is frequently still very high in the so-called 'hot spots' the developments of recent years suggest a growing convergence with the situation in the EU member-states.

This increasing convergence with the West European environmental situation does not, however, concern only the reduction of pollution levels in the 'hot spot' regions, but also the danger of increased development of the still relatively unspoilt natural regions in Central and Eastern Europe as well as new causes of pollution in urban areas. This trend is increasingly evident, for example, in the dramatically expanding volume of road traffic. In Slovenia, at present the mostly highly economically developed accession country, the average number of cars per capita (1996: 425 per 1000 inhabitants) is already equivalent to the West European average although the economic strength of the country is still only equivalent to that of the poorest member states. In addition there has been a very clear increase in the level of transit and truck traffic. The Slovenian Government's extensive

⁵⁰ See e.g. Regional Environmental Center (1996), *Approximation of European Union Legislation: Case studies of Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic and Slovenia*, Budapest. Interview, Regional Environmental Center, 16. 03. 1999 in Szentendre

⁵¹ Cf. European Environment Agency (1998), *Europe's Environment, The Second Assessment*, p. 149; Republic of Poland (1998), *Agenda 21 in Poland*, Progress Report, p. 8; Regional Environmental Center (1994), *Strategic Environmental Issues in Central and Eastern Europe*, Vol. 2, p. 10.

⁵² Cf. Stehlik, Jiri (1998), "The Environment in the Czech Republic and the Association Agreement", in Lippert, Barbara und Peter Becker (1998), *Towards EU Membership: Transformation and Integration in Poland and the Czech Republic*, Bonn: Europa Union Verlag, p. 272-273.

road building programme threatens to interfere with the high bio-diversity of the countries natural areas. Road traffic is already responsible for 30% of the CO₂ emissions, more than 70% of the NO_x emissions and 90% of the CO emissions in Slovenia.⁵³ As a result of economic improvement in the accession countries - not least as a consequence of their impending accession - one should anticipate ever increasing volumes of road traffic as well as growing over-development of rural areas and increasing levels of tourism.

In terms of the fulfilment of European environmental norms, the most pressing environmental problem for the accession states is water management. For example, rural areas of Hungary are frequently not connected to the public sewage system. Whereas in Budapest approx. 90% of households are connected to the sewage system, in the rest of the country the figure is only just over 50%. Only 45% of the sewage water is treated before it is introduced into the surface waters, the rest remains untreated. On top of this, industrial sewage rarely undergoes any form of special treatment which results in heavy pollution through toxins and heavy metals. Further water pollution is caused by the use of chemical fertilisers and pesticides in agricultural practice.⁵⁴

In order to meet the European standards in the water management sector, the accession countries will have to make high investments. According to some estimates these investments in the five countries currently negotiating accession would alone total somewhere in the region 30.6 billion Euro.⁵⁵ A similar level of investment will be necessary in the air pollution control sector. However, as the actual level of investment required in this later sector is heavily dependent on the extent of economic growth (the level of energy consumption, increase in traffic etc.) and the required investments can, to a large extent, be privately financed the situation is somewhat less dramatic than it first appears. In order to meet the European standards on waste management substantial investment will also be required. However, the costs in this area are significantly lower than the costs of water management and air pollution control.⁵⁶

For the areas of air pollution control, waste management, water pollution control and waste water disposal, the European Commission and the European Parliament estimate a total investment requirement in the ten candidate countries of around 120 billion ECU, or an annual investment of 8 to 12 billion ECU over a time period of 20 years.⁵⁷ The debate over accession costs is however characterised by a number of uncertainties. For various reasons accession costs are difficult to calculate. First, it would be sensible not to discuss the absolute costs of accession, but instead those extra costs which result directly from

⁵³ UN-ECE (1997), *Environmental Performance Review: Slovenia*, Geneva, p. 137-139.

⁵⁴ Kerekes, Sándor und Károly Kiss (1997), *Hungary's Green Path to the EU - Summary and Progress Report 1997*, Budapest: Budapest University of Economic Sciences, Department of Environmental Economics and Technology, p. 13-15.

⁵⁵ Environment Policy Europe (1997), *Compliance Costing for Approximation of EU Environmental Legislation in the CEEC*. Brüssel: Environment Policy Europe, S. 97; "Water Main Hurdle in Slovenian Accession talks" - ENDS Daily, 29. 3. 1999.

⁵⁶ Cf. Environment Policy Europe (1997), p. 97.

⁵⁷ This refers to the total costs, that is the investment costs plus the operating costs over a time period of 20 years. Cf. *ibid.*, p. 18.

accession. In practice, however, these are often difficult to distinguish from those costs which would have occurred anyway (the problem of the baseline scenario).⁵⁸ Secondly, the level of costs is dependent on such different parameters as the time period under consideration, the technology and instruments to be applied, and the level of economic development. Moreover, the costs of accession should be weighed up against the benefits which they bring, and this includes both the purely economic benefits, such as the above discussed efficiency and modernisation gains, but also the welfare gains which result from improved environmental protection. In the costs estimates made until now, there has not been sufficient clarity over which of the various societal actors should be responsible for bearing which costs. From both social and capital funding perspectives it is, however, of the utmost importance whether costs are borne primarily by the state, by producers or by consumers.⁵⁹ Lastly, the discussion over accession costs in the environmental sector suffers from the fact that until now there have been no estimates of the costs of accession in other sectors, or, indeed, of total accession costs, which can be compared with those estimates for the environmental sector.

The adoption of the environmental *Acquis Communautaire* does not only present the accession countries with the problem of meeting the ensuing costs. The drafting of the necessary legislative acts and their implementation by the administration raise difficulties which vary considerably from country to country. In this context, the various institutional and political conditions which influence national legislative procedures and administrative structures play a large role. For example, due to the relatively instable governing coalition in the Czech Republic one can expect frequent, substantial delays in the enactment of legislation.⁶⁰ In contrast, this type of problem seems considerably less likely in Slovenia if only because the Slovenian Environmental Protection Act devolves relatively broad competences and discretions to the Minister for the Environment to set concrete standards etc.⁶¹

A lack of regional administrative structures in most accession countries makes the implementation of EU environmental legislation more burdensome. This is, for example, the case as regards the granting of licences and the carrying out of inspections in the framework of the Integrated Pollution Prevention Control (IPPC) directive. In this area, as well, the situation differs from country to country. Poland has very recently established powerful regional administrative structures. Here, the problem arises from the fact that they have yet to amass sufficient experience with these new structures.⁶² In the Czech

⁵⁸ For example, an IFO study assumes that by far the greatest proportion of investments in the area of water management which will arise during the course of accession would have been necessary anyway. Cf. Adler et al. (1994), *Environmental Standards and Legislation in Western and Eastern Europe Towards Harmonisation: Economic costs and benefits of harmonisation*, Munich: IFO.

⁵⁹ It is, for example, relatively easy for the larger Energy producers to finance high levels of environmental protection investment through the capital market under reasonably good conditions.

⁶⁰ Interview, Czech Environment Ministry, 03. 03. 1999 in Prague; Interview, Czech Environment Inspectorate, 01. 03. 1999 in Prague; Interview, Society for Sustainable Living, 19. 03. 1999 in Prague.

⁶¹ Interview, Ministry of the Environment and Physical Planning, 29. 04. 1999 in Ljubljana.

⁶² Interview, Ministry of the Environment, 08. 04. 1999 in Warsaw

Republic the old regional administrative structures were dissolved in the early 1990s as a consequence of the fall of communism. Although they are striving to create new regional structures due to political differences, as yet, these only exist on paper. In the environmental sector, however, particular functions are still carried out by the old regional institutions which, despite a formal decision to dissolve them, have remained in place.⁶³ Similarly, in Slovenia some tasks are still carried out by formally 'dissolved' administrative units. In Slovenia, however, the creation of new regional structures is neither planned, nor, in fact, seems particularly necessary as the country is relatively small.⁶⁴

As mentioned above in the discussion on the twinning projects and national administrative structures, all the accession countries have a deficit of personnel and technical resources in the environmental inspectorates which are charged with enforcing environmental law. This lack of enforcement capacity follows in the tradition of the accession countries which in the period before 1989 frequently had relatively strict environmental regulations which were, however, not enforced.⁶⁵ The enforcement deficit is today, as then, particularly worrying, given the historically grounded lack of general legal awareness in the CEECs.⁶⁶

Finally, the formal legal transposition of environmental laws is hindered by the general overtaxing of the national institutions charged with drafting and enacting the relevant rules. Meeting the various consultative and informative duties toward the Commission occupies considerable personnel resources.⁶⁷ In addition to this, the adoption of the *Acquis Communautaire* is made more difficult by the fact that the transition countries are also occupied with the task of introducing new legal regimes - in particular in the area of private ownership. For example, open questions relating to the issues of private ownership are holding up the introduction of measures in Estonia which, if introduced, could lead to an effective reduction in the high levels of environmental pollution caused by the use of oil shale for energy production.⁶⁸ Slovenian adoption of the water law related aspects of the *Acquis Communautaire* has been delayed for similar reasons.⁶⁹

According to the European Commission's official estimates the accession countries will, despite these problems, be able to at least formally legally transpose the environmental

⁶³ Interview, Society for Sustainable Living, 01. 03. 1999 in Prague.

⁶⁴ Interview, Slovenian Ministry of the Environment, 29. 04. 1999 in Ljubljana.

⁶⁵ Interview, Ministry of the Environment and Physical Planning, 29. 04. 1999 in Ljubljana; Interview, Czech Environment Ministry, 03. 03. 1999 in Prague.

⁶⁶ Interview, Ministry of the Environment and Physical Planning, 29. 04. 1999 in Ljubljana; Interview, Czech Environment Ministry, 03. 03. 1999 in Prague.

⁶⁷ "Accession countries warned on environment rules", ENDS Daily - 10. 5. 99; Interview, Ministry of the Environment and Physical Planning, 01. 04. 1999 in Ljubljana.

⁶⁸ Interview, EU Phare Accession Programme Support Unit, 29. 03. 1999 in Tallin. In Estonia and in Hungary there are also problems of environmental protection related to property laws. Interview, Central European University, 25. 02. 1999 in Budapest.

⁶⁹ Interview, Ministry of the Environment and Physical Planning, 01. 04. 1999 in Ljubljana.

Acquis Communautaire in the medium-term.⁷⁰ However, the Commission leaves open the question of whether the accession countries will have been able to complete legal transposition by the time they envisage accession to the EU (Hungary would like to accede in 2002, the other four 'pre-ins' in 2003).⁷¹ An even greater uncertainty as to the accession conditions or, more specifically, the date of accession, is obviously raised by the Commission's frequently cited expectation that the complete implementation of European environmental law by the accession countries will only be possible in the long-term, that is, doubtless, substantially later than accession. In fact, the recently concluded screenings in the environmental sector have confirmed that the five countries which are currently negotiating over accession to the EU will apply for transition periods for the implementation of existing European water law. Also, it is highly likely that with the exception of Estonia all these countries will apply for transition periods for implementation of the IPPC directive – and in particular for the provisions concerning old installations.⁷² Applications for individual transition periods are also to be expected in the waste management sector. There is, as yet, no certainty as to the length of possible transition periods. While in the EU's Environment Council talk was recently of transition periods of up to a maximum of five years⁷³ some of the accession countries are considering applying for substantially longer transition periods, for example, for the adoption of provisions of the IPPC directive dealing with old installations. Here, some accession countries raised the idea of transitional periods equivalent to those which were valid for the existing member states, in this case 11 years.⁷⁴ Figure 2 gives an overview of those areas of European environmental law for which the 'first round' accession countries indicated in the screening process that they intend to apply for transition periods.

⁷⁰ European Commission (1997a), Agenda 2000 - Commission Opinion on the Czech Republic's Application for Membership of the European Union. COM(97) 2009 final.; European Commission (1997a) Agenda 2000 - Commission Opinion on the Czech Republic's Application for Membership of the European Union. COM(97) 2009 final.; European Commission (1997b) Agenda 2000 - Commission Opinion on Estonia's Application for Membership of the European Union. COM(97) 2006 final.; European Commission (1997d) Agenda 2000 - Commission Opinion on Slovenia's Application for Membership of the European Union. COM(97) 2010 final.; European Commission (1997e) Agenda 2000 - Commission Opinion on Hungary's Application for Membership of the European Union. COM(97) 2001 final.

⁷¹ After the screening process for the environmental sector the European Commission pessimistically stated: "It was clear from the screening that very little has already been transposed and that the countries have to pass a considerable number of national legal acts in order to accomplish formal compliance before the date of accession [...] it is highly doubtful whether legal transposition will be accomplished by the candidates own official target-dates for accession". Jørgensen, Jesper (1999), *Speaking point. Screening the Environmental Acquis with the 'Ins'*, Informal Environment Council, Weimar, 7-9 May 1999, Lunch item: Enlargement, p. 1-2.

⁷² Interview, Slovenian Ministry of the Environment, 29. 04. 1999 in Ljubljana.

⁷³ ENDS, "Accession Countries warned on environment rules", ENDS Daily – 10. 5. 1999.

⁷⁴ Interview, Slovenian Ministry of the Environment, 29. 04. 1999 in Ljubljana.

Figure 2: Possible Need for Transition Periods⁷⁵

Country	Problemarea	Transition Period
Slovenia	<i>Urban Waste Water Directive</i>	2015-2017
	<i>Nature Protection (Birds-/Habitats-Directive; Natura 2000)</i>	> 2003
	<i>Packaging/packagingwaste Directives (recycling/incineration)</i>	?
	<i>perhaps IPPC (old installations)</i>	?
Estonia	<i>Urban Waste Water Directive (small and medium-sized settlements)</i>	> 2010
	<i>Habitats-Directive</i>	> 2003
	<i>Perhaps Nitrate Directive</i>	?
	<i>Perhaps Landfill Directive</i>	?
Poland	<i>Drinking Water/Waste Water Directives</i>	< 10 years
	<i>Fuel Quality (lead content)</i>	?
	<i>Waste Management</i>	?
Hungary	<i>Waste Management</i>	ca. 8 years
	<i>IPPC (old installations)</i>	≤ 8 years
	<i>Water Management</i>	?
Czech Republic	<i>Waste Management</i>	< 5 years
	<i>Water Management (weak control over small enterprises)</i>	< 5 years
	<i>Natura 2000</i>	< 5 years
	<i>IPPC</i>	< 5 years

5. The Need for Adaptation by the European Community: Flexibility and Institutional Reform

As discussed in the introduction, Eastern enlargement differs in many ways from earlier enlargements. Both the Commission's special pre-accession strategy and the need in some cases for very long transitional rules in central areas of European environmental law are indicative of these differences. One must also bear in mind that the environmental situation in most accession countries is characterised by 'hot spots' but also by expansive, relatively unspoilt natural regions. Among the accession countries there are also important shared characteristics regarding the need for adaptation. All the countries are confronted with the problem of requiring very high levels of investment in the water and other sectors, and are marred by substantial deficits in the structure and resources of the administrative and enforcement institutions.⁷⁶ Against the background of the special dimensions of Eastern enlargement discussed both above and in the introduction as well as deep rooted similarities among the accession countries which to a great extent derive from their shared

⁷⁵ ENDS, "Pace of Polish EU environmental accession slows", ENDS Daily-09. April 1999; ENDS, "Estonia will push for EU nature law amendment", ENDS Daily-07. April 1999; ENDS, "Hungary seeks delay on water law compliance", ENDS Daily-20. January 1999; ENDS, "Czechs to request EU accession transition", ENDS Daily-26. February 1999; ENDS, "Hungary to seek EU accession transition periods", ENDS Daily-23. February 1999; ENDS, "Water main hurdle in Slovenian accession talks", ENDS Daily-29. March 1999; ENDS, "OECD delivers environmental verdict on Czechs", ENDS Daily, 19. April 1999.

⁷⁶ The screening process in the environmental sector showed that "the main problematic areas, where the need for transitional periods was identified, were almost the same for all of the six countries". See Jørgensen (1999), p. 2.

historical experience of the last 50 years,⁷⁷ one might pose the question whether Eastern enlargement also brings with it a need for adaptation on the part of the EU, particularly in institutional and financial areas.

The need for reform of the CAP, of member states' contributions and of the Structural Funds has already been identified as a basic pre-condition to Eastern enlargement. Below, we discuss the institutional implications and flexibility requirements of Eastern enlargement. Here, one can draw a distinction between policy specific and policy non-specific forms of institutional reform and flexibility. In the present context policy-specific refers to changes which primarily concern European environmental policy, while policy non-specific reforms deal with general reforms of the EU's organs, for example, the number of Commissioners per member state or the general voting rules in the Council of Ministers.

In its "Communication on accession strategies for the environment" the European Commission already raises the possibility of a certain level of flexibility in the adoption of the *Acquis Communautaire* by the accession countries, stating that "conformity with the *Acquis Communautaire* [...] is an essential pre-condition for membership of the Union, but not an end in itself". "The most important environmental problems and priorities" of the accession countries as well as "economic consequences - both in terms of production and potential incentives for growth and competitiveness" are listed as criteria for the selection of harmonisation priorities for the accession countries.⁷⁸ It appears that the European Commission is essentially proposing a differentiated approach to harmonisation which takes into account not only the specific environmental problems of individual accession countries but also relevant economic factors.⁷⁹

On the whole, the European Commission's argumentation suggests that it has focussed its priorities on the temporal sequence in which various elements of the environmental *Acquis Communautaire* should be adopted. On this model, transition periods are possible but permanent exceptions are not. This kind of approach was to some extent already adopted at the time of the EC's Southern enlargement – the accession of Spain and Portugal – and laid down in Art. 8c of the Single European Act.⁸⁰ In that context, however the Community was not concerned with the adoption of the then existing *Acquis Communautaire* but, instead, with new measures for the introduction of the internal market. Art 8c provided for temporary derogations for those member states which - as a consequence of relatively underdeveloped economies – expected to be placed under a particularly heavy burden by the introduction of the internal market. A wide application of transition periods for the

⁷⁷ Baker and Jehlicka (1998), p. 7.

⁷⁸ European Commission (1998), p. 8.

⁷⁹ The European Consultative Forum on the Environment and Sustainable Development is also calling for a flexible approach to the adoption of the *Acquis Communautaire* in the accession countries. This should make it possible to take advantage of innovative and economical solutions to implementation issues. See European Consultative Forum on the Environment and Sustainable Development (1998), p. 5.

⁸⁰ Cf. Wallace, H. und W. Wallace (1995), *Flying Together in a Larger and More Diverse European Union*. Netherlands Scientific Council for Government Policy, Working Documents W87, The Hague, p. 58.

adoption of the environmental *Acquis Communautaire* by the accession countries would appear to conform to current notions of differentiated or “abgestuft”(multi-level) integration, which imply temporary and functionally relatively limited derogations from Community legal obligations.⁸¹

The Commission Communication does not, however, exclude more far-reaching interpretations. This is particularly the case with its above-mentioned statement that adoption of the *Acquis Communautaire* is not an end in itself. This wording appears to imply that European environmental law need not be adopted *per se* by the accession countries. Adoption is only necessary where it would serve particular substantive goals such as environmental protection or the functioning of the internal market. A highly selective adoption of European environmental law by the individual accession countries according to heavily localised criteria of expediency would, of course, be counterproductive as this could not but lead to a collapse of the system of unified environmental legislation at European level. However, given the similarities among the accession countries with regard to their current environmental situations and general problems with the adoption of the *Acquis* it might perhaps be sensible to consider releasing them from the obligation to adopt particular aspects of the *Acquis Communautaire*. For example, bearing in mind that a number of the accession countries contain large areas of thinly populated, relatively undeveloped land, a strict application of EU water law might not be productive, given that existing Community legislation was by and large drawn up for relatively populous regions. The environmental benefits do not necessarily justify the particularly high levels of investment in either absolute terms or in reference to concrete pollution sources (for example for the construction of sewage systems) which a strict application of European water law in these thinly populated regions would entail.⁸²

This type of consideration seems to imply a need for permanent exceptions for the accession countries in certain areas and this is most closely reflected in integration theory by the concept of variable geometry. Variable geometry allows for European integration to be differentiated across country groupings, where countries are grouped together under the functionalist criterion of expediency. Already the notion of ‘flexibility’, first articulated in the Treaty of Amsterdam, appears to reflect, to some extent, the concept of variable geometry.⁸³ Under the flexibility provisions a group of member states can now agree on common regulations which are more far-reaching than existing EU regulations. This, they

⁸¹ Cf. *ibid* at p. 57-60.

⁸² Before releasing the accession countries from certain water law provisions, one should first check very carefully whether a) given the particular conditions of the affected areas in the CEECs, these provisions might not permit a substantially cheaper form of waste water treatment and b) the necessary techniques are actually available. In fact, the Urban Waste Water Directive, which is of central importance in this context contains provisions (Arts. 3, 4, 6, & 8) which might allow for measures which could drastically reduce the investments required in the accession countries. However, at present, there appears to be scarcely any discussion of alternative methods of implementation by it in the accession countries or the European Commission. Cf. Interview, Prime Ministers Office, 25. 02. 1999 in Budapest; Interview, University of Economics, 24. 04. 1999 in Budapest; Interview, The Slovenian Foundation for Sustainable Development, 31. 03. 1999 in Ljubljana.

⁸³ Cf. Wallace (1995) p. 56.

can do within the institutional framework of the EU, provided that they do not infringe upon the essential interests of the other member states (effectively guaranteed by the right of veto (Art. 11 (2) EC (as amended)), which retain the right to participate in the regime at a later date (principle of non-exclusion).

The 'flexibility' concept is, however, not designed for the selective application of individual directives in parts of the European Union, rather it is intended for use across whole policy areas such as monetary union, the Schengen agreement on freedom of movement etc. It should also be noted that these provisions only permit increased co-operation through the introduction of new measures or of measures which go further than those previously taken at European level. They do not allow for 'negative' derogations.

A differentiated integration approach is an appropriate tool with which to accommodate problems related to the adoption of the *Acquis Communautaire* which are basically temporary in nature, for example, a short or medium-term lack of capital. The use of transition periods in no way calls the usefulness of the full application of the directive after the transition period into question. The concept of variable geometry is, on the other hand, more appropriate to deal with important relatively constant differences between constellations of member states or future member states, where these differences raise a case for permanently distinct rules for particular groups of countries.⁸⁴

However, in the context of certain environmental problems, it also seems possible that, for a number of reasons, the future development of important parameters for the envisaged level of regulation may be difficult to predict or that rules allowing for exceptions for specific sub-national regions seem to make particular sense. In the face of the increased natural and social-economic diversity which Eastern enlargement will bring to the EU, the benefits of regulation strategies that can be flexibly adapted to possible differences and uncertainties will become increasingly evident.⁸⁵ The first signs of such a flexible harmonisation strategy can be clearly seen in the EU's new auto-oil programme e.g. the new directive on petrol and diesel fuel.⁸⁶ Arts. 3 & 4 of the directive allow member states longer deadlines for the introduction of environmentally friendlier fuels "if [the member state] can demonstrate that severe difficulties would ensue for its industries", were the originally envisaged deadlines to be met. On the other hand, member states are also permitted to set stricter requirements for fuel quality for conglomerations or environmentally sensitive regions. This type of exception is, however, only permissible where the member state can demonstrate that "atmospheric pollution constitutes or can

⁸⁴ For a similar line of argument Cf., for example, Forgó, Katrin (1998), "Zwischen 'Europe à la carte' und Einheit: Modelle differenzierter Integration", in Breuss, Fritz und Stefan Griller, (eds.), *Flexible integration in Europa – Einheit oder 'Europe à la carte'?*, Vienna; New York: Springer, S. 50-51. Cf., also, Hughes, Kristy (1996), "The 1996 Intergovernmental Conference and EU Enlargement", *International Affairs* 72, 1, p. 4-5.

⁸⁵ Cf. Forgó (1998), p. 49.

⁸⁶ Directive 98/70/EC of 13 October 1998 relating to the Quality of Petrol and Diesel Fuels and amending Directive 93/12/EEC.

reasonably be expected to constitute a serious and recurrent problem for human health or the environment”⁸⁷

Flexible integration strategies are only now just beginning to be institutionalised and are rarely practised. A stronger institutionalisation of these strategies could, in the long term, help to cater better for the increasing diversity in the EU which will result from Eastern enlargement. In particular, it may reduce the danger of a long term drop in the standard of environmental protection at EU level, and/or counter the risk of an uncontrolled collapse of a unified level of environmental protection across the EU. Such dangers seem plausible in the long-term not least because one can reckon with the fact that the accession countries - as was the case with those countries which joined the EU as part of its Southern enlargement - will belong to the group of member states which tend to lag behind in environmental policy issues. The accession countries do not have a impressive tradition of pursuing effective environmental policies that could motivate them to emphasise environmental priorities. Moreover, these countries will, for the foreseeable future belong to the poorer EU member states, who are naturally less prepared to bear the costs of a high level of environmental protection.

The lack of a flexible environmental integration strategy could lead to two problems. First, it may be more difficult to harmonise a high level of environmental protection as the necessary regulations could be relatively easily blocked in the Council of Ministers by the accession countries, or by the accession countries in tandem with the environmental policy ‘laggards’ among the existing member states. To a certain extent, such a trend could be counteracted by a voting system in the Council which made it more difficult for thus-intentioned countries to build blocking minorities (by, for example, redefining the number of votes necessary for such a blocking minority). This type of solution falls under the heading of non-specific institutional reforms which will be dealt with in more detail below. Second, the continuous blocking in the Council of Ministers of a high level of environmental protection could lead those individual member states who want a higher level of protection, either acting under Art. 95 (4) or 95(5) EC, Art. 30 EC or, under their powers where the EC fails to agree on a common measure, to introduce measures at national level. In extreme cases this could even lead to the gradual erosion of a unified standard of regulation at EU level.

A level of flexibility in the harmonisation strategy could, against this background, provide an ‘outlet’ which would make it easier to accommodate to the growing differences and requirements of the existing and future member states. Transition periods allow the economic ‘laggards’ a period of catch-up time, without allowing them to definitively ‘miss the boat’. Clearly defined exceptions at sub-national or regional level and the building of country groupings according to the principle of variable geometry allow for the recognition of permanent differences or, perhaps, for a group of countries to become ‘forerunners’, thus preventing the collapse of a unified system of regulation through increasingly individual national legislation. The successful application of the concept of flexibility

⁸⁷ Ibid., Art. 6 (1).

requires, however, a more far-reaching institutionalisation of the corresponding practices. The creation of clear procedural rules which facilitate a unified approach is thus of the utmost importance. Particularly necessary are the creation of generally accepted criteria and measuring procedures to ascertain as objectively as possible the existence of any economic, environmental or other conditions which might support the use of transition periods or derogations.

As mentioned above, a conference of government representatives of the member states is due to be scheduled not later than one year after the total membership of the EU exceeds 20 in order to consider the necessary reforms to the various EU institutions. For the future development of European environmental policy one of the highest priorities in this context must be a change in the system of weighted voting and/or the blocking minority for decisions taken in the Council of Ministers. As a consequence of Eastern enlargement and the accession of Cyprus and Malta further 'microstates' and 'ministates' will be joining the EU, which will undoubtedly put the weighting of national votes high on the agenda of this conference. A more consequent relationship between the level of a country's population and the weight of its vote in Council would prevent the increasing disparity between votes in Council and population levels caused by Eastern enlargement were the existing system to remain in place.⁸⁸

From the perspective of environmental policy, one should consider which voting weights would be most effective in preventing a more or less stable grouping of countries from blocking progress in environmental policy.⁸⁹ If, for example, it is assumed that the accession countries (with Malta and Cyprus) could form such a group, then if the present voting system remained in force, according to the current weighted voting these countries could form a slim blocking minority in the Council of Ministers.⁹⁰ If, instead, voting weight was directly proportional to population then this group would be relatively far from reaching a blocking minority. However, were voting weight quadratically related to population then this group would have an even larger share of the vote than under the current system.⁹¹ Naturally, this type of consideration demands a far more differentiated

⁸⁸ If the current weighting were not changed, then, given an EU enlargement to over 20 member states, a group of countries which represented less than half the population of the EU would be able to pass decisions in the Council of Ministers by qualified majority. Cf. Ersbøll, Niels (1995), "The Overriding Problem is the Next Enlargement", in Philip Morris Institute for Public Policy Research, *What Future for the European Commission?*, Brussels, p. 25; See, however, also: Kerremans, Bart (1998), "The Political and Institutional Consequences of Widening: Capacity and Control in an Enlarged Council", in Pierre-Henri, Laurent und Marc Maresceau, (eds.), *The State of the European Union: Deepening and Widening*, Vol. 4, Boulder and London: Lynne Rienner Publishers, p. 101; Schmitter, Phillipe C. und José I. Torreblanca (1997), *Old 'Foundations' and new 'Rules' for an Enlarged European Union*, Policy Papers. RSC No. 97/1, The Robert Schuman Centre, European University Institute, Florence.

⁸⁹ For an informative analysis of the decision-making mechanisms in the Council in the context of enlargement which emphasizes the importance of the criterion of the blocking minority, see Kerremans (1998).

⁹⁰ Cf. Dehousse (1998), p. 147.

⁹¹ C.f. Cameron (1998).

analysis, including consideration of the likely voting behaviour of current member states, than this study permits.

6. Opportunities for Optimisation of Environmental Protection

The question raised in our introduction concerning the opportunities for minimising the difficulties arising out of adoption of European environmental law by the accession countries while, at the same time, maximising the environmental policy advantages of Eastern enlargement from a pan-European perspective can, against the background of the points we have made above, clearly not be definitively resolved. However, it is possible to draw some conclusions as to the factors and the various possible avenues which should be considered.

As a basic principle, in order to optimise the environmental policy consequences of accession it is necessary to pursue a strategy which, in the short and medium-term, relies on both a high level of technical support for the accession countries (an approach already visible in the EU's intensified pre-accession strategy) and on differentiated integration instruments, such as the agreements on transition periods for the complete adoption of the environmental *Acquis Communautaire*. In particular, bearing in mind the lower marginal costs of environmental protection in the accession countries, it might also be worth considering whether to make additional funding available to them.

Given that the accession countries will need substantial time to fully adopt European environmental law, it must be seen to that after the pre-accession strategy has ended, the accession countries continue to have access to sufficient financial means to ensure that they are in position to complete the harmonisation process. In this context, reform of the Cohesion and Structural Funds seems particularly pertinent.

Against the background that there are only limited funds which can be made available to assist the accession countries - and that at least some of these future member states could belong to the environmental policy 'laggards' in the Community - it seems that a certain level of adaptation of the Community's environmental integration strategy and Union organs and institutions is, in the middle to long-term, unavoidable. In particular, one might consider the use of an integration concept which relies on the notion of variable geometry. This would allow a group of like minded environmentally advanced member states to play the role of fore runners by intensifying co-operation among themselves. But it would also allow for defined, relatively constant differences between the accession countries and the member states to be accommodated by means of temporally unlimited exceptions and derogations.

In addition, in the context of the accession negotiations, agreements on the granting of exceptions and derogations could be reached by means of 'log rolling'. So, for example, the accession countries could be exempted from having to completely fulfil certain provisions of European water law, which, as mentioned above, would require very high levels of investments in the particularly thinly populated regions of the accession countries. This type of agreement could be coupled to the condition that the accession countries agree

on specific rules for the long term protection of the particularly valuable natural areas at their disposal. These areas could, thus, be effectively protected from the consequences of the intensified economic growth and the ensuing increase in volume of traffic which might stem from, among other things, accession to the EU.⁹² In this way it may be possible to avoid those mistakes which were made in the existing member states and during the Community's Southern enlargement as a result of certain negative environmental effects of the Structural and Cohesion Funds.

7. Bibliography

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⁹² There are generally shared concerns that the expected intensified industrialization of the accession countries as a consequence of EU membership will result in a dramatic reduction in the current level of environmental protection in these countries. Cf., e.g. Interview, Regional Environmental Center, 16. 3. 1999 in Szentendre; Interview, Society for Sustainable Living, 19. 03. 1999 in Prague; Interview, Prime Minister's Office, 25. 02. 1999 in Budapest.

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