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JOINING THE EUROPEAN UNION: THE ACCESSION PROCEDURE FOR THE CENTRAL EUROPEAN AND MEDITERRANEAN STATES

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On May 1, 2004, the European Union (“EU or “Union”)¹ will undergo the most dramatic change in membership in its history. Ten new member states—Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia—will join the present fifteen EU members: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. This is by far the largest and most complex enlargement of the European Union to date.

The process by which a nation joins, or accedes to the European Union is a relatively long and complex one. Inevitably, serious legal, political, economic and social issues must be confronted and resolved satisfactorily. On the one hand, the applicant nations must modify their legal, economic and social structures to conform to the pattern set in the European Union. On the other hand, the institutional structures of the European Union must be altered to the degree necessary to include and satisfactorily integrate the representatives of the new states. However, as we shall see, it has been a basic principle of the European Community (“EC”),² and now of the European Union, commonly termed the “*acquis communautaire*,”³ that the basic constitutional structure, laws, policies and programs of the European Union and the European Community must be accepted by applicant nations in order to join.

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¹ The European Union (or EU) was established by the Treaty on European Union (“TEU”), adopted as part of the Treaty of Maastricht (signed Feb. 7, 1992; effective Nov. 1, 1993), O.J. C 224/1 (1992). The European Community constitutes the largest constituent part of the European Union, but the EU also comprises the inter-governmental structures of the Common Foreign and Security Policy and Cooperation in Justice and Home Affairs. The three component parts are commonly called the three “pillars” of the EU. The current consolidated text of the TEU as amended appears in O.J. C 325/5 (Dec. 12, 2002).

² The European Community (or EC), originally designated as the European Economic Community, was created by the Treaty of Rome, 298 U.N.T.S. 11 (signed March 25, 1957; effective Jan. 1, 1958). With a structure of four institutions – the European Parliament, the Council of Ministers, the Commission and the Court of Justice – the European Community’s original goal was to establish a common market, but its sphere of operations has steadily expanded over its history. Article 3 of the EC Treaty sets forth its current sphere of activities. The current consolidated text of the EC Treaty as amended appears in O.J. C 325/33 (Dec. 12, 2002).

³ The French term, “*acquis communautaire*,” never translated into English, now figures as a key concept in Articles 2 and 3 of the Treaty on European Union, *supra* note 1. The term is briefly described in section III B *infra*.

Joining the European Union

This article is intended to serve as a sort of road map describing the process by which ten Central European and Mediterranean nations are joining the European Union on May 1, 2004. This increase in the size of the European Union, commonly called an enlargement, will have dramatic effects both for the EU and the applicant nations. In its meeting at Madrid on December 15 and 16, 1995, the European Council declared with regard to the then pre-accession strategy for the countries of Central Europe:

“Enlargement is both a political necessity and a historic opportunity for Europe. It will ensure the stability and security of the continent and will thus offer both the applicant States and the current members of the Union new prospects for economic growth and general well-being. Enlargement must serve to strengthen the building of Europe in observance of the *acquis communautaire* which includes the common policies.”⁴

The current enlargement is the fourth in the series. In the initial one in 1972, Denmark, Ireland and the United Kingdom (“UK”) joined the European Economic Community (“EEC”), as it was then called, in a process which set the pattern for subsequent enlargements.⁵ At this time, the then six member states of the EEC insisted, and the three applicant nations agreed, that the applicants would accept and respect the “*acquis communautaire*” i.e., the core of the EEC’s legal and political structure, together with its policies, principles and fundamental judicial doctrines. In 1981, Greece joined the EEC, as did Portugal and Spain in 1986, in what is often called the Mediterranean enlargement.⁶ By the third in 1995, Austria, Finland and Sweden acceded both to the European Union (created by the Treaty of Maastricht on November 1, 1993)⁷ and to the European Community (the word “Economic” having been deleted by the Maastricht Treaty).⁸ Although, as we shall soon see, the Treaty on European Union (“TEU”) describes the basic procedural steps in accession, these past enlargements provide the precedents for the mode of negotiations and the nature of the accession treaty.

This, the fourth enlargement, is certainly the most difficult to execute. One reason for this is the unusually large number of nations presently joining—ten, as compared to three in each of the prior enlargements. Moreover, only Poland,

⁴ EU Bull. 12/95, at 18 (1995).

⁵ GEORGE A. BERMANN, ROGER J. GOEBEL, WILLIAM J. DAVEY & ELEANOR M. FOX, *EUROPEAN UNION LAW* (2d ed. 2002) contains, in Chapter 1, a brief description of the historical evolution of the European Community. The first enlargement is described at pp. 10-11. For a more detailed treatment, see DESMOND DINAN, *EVER CLOSER UNION: AN INTRODUCTION TO EUROPEAN INTEGRATION* 64-67 (2d ed. 1999).

⁶ BERMANN ET AL., . at 11.

⁷ TREATY OF MAASTRICHT, *supra* note 1.

⁸ BERMANN, ET AL., *supra* note 5, at 18-19. For a detailed coverage, see Roger J. Goebel, *The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden*, 18 *Fordham Int’l L.J.* 1092 (1995) (hereinafter cited as Goebel, *The European Union Grows*).

with over thirty-eight million people, has a large population.⁹ Most of the current applicant states have relatively small populations. Cyprus, Estonia, Latvia, Lithuania, Malta and Slovenia have fewer people than Ireland, currently the second smallest EU state in terms of population, and Malta has fewer people than Luxembourg.¹⁰ Further, all of the current applicant nations have relatively weak economies. In 2001, their average gross domestic product (“GDP”) per person was only thirty-nine percent of that of the current member states of the European Union.¹¹ Finally, the Central European applicants have been recreating their democratic structures only since 1989, and Cyprus is divided between hostile Greek and Turkish communities.

This article will initially describe the process of accession set in the Treaty on European Union in Part I. Part II will cover the preparations for accession during the 1990s. Part III will review the progress of negotiations for accession. Finally, Part IV will briefly describe the Athens Treaty of Accession and the final stage of the process.

Because so many new nations are joining the European Union at the same time, its present political leadership decided that it was necessary to modify its political and judicial institutions significantly in order to keep their functional efficiency. The Treaty of Nice, which entered into effect on February 1, 2003,¹² and its Protocol on Enlargement, which becomes effective in 2004, revise the composition of the Parliament in order to make room for Members of the European Parliament (“MEPs”) from the new member states. The Protocol on Enlargement also modifies the system of weighted votes through which the Council adopts most legislation in order to accommodate the new states, and modifies the composition of the European Commission (“Commission”) to eliminate the second Commissioner currently allocated to France, Germany,

⁹ Eurostat population data figures for 2003 estimate Poland’s population at 38,214,000, slightly less than Spain’s 40,683,000. Eurostat statistics are *available at* <http://europa.eu.int/comm/eurostat>.

¹⁰ Eurostat estimated Ireland’s population for 2003 as approximately 3,961,000 and Luxembourg’s population as 448,000. Malta’s population is slightly under 400,000, Cyprus has around 804,000 people (including the Turkish community), Estonia, Latvia, and Slovenia have between 1,300,000 and 2,300,000 people, and Lithuania around 3,460,000. With over 10 million people each, Hungary and the Czech Republic are close in population to Belgium and Greece, while Slovakia’s 5 million population approximates that of Denmark and Finland. Eurostat statistics are *available at* <http://europa.eu.int/comm/eurostat>.

¹¹ The Commission Strategy Paper, *Towards the Enlarged Union*, COM(2002)700 final, at 14 (Oct. 9, 2002), indicated that the GDP per capita of the ten candidate nations represented 39.3% of the average of the EU Member States in 2001.

¹² The Treaty of Nice contains the most recent amendments to the Treaty on European Union, *supra* note 1, and the European Community Treaty, *supra* note 2. Its text is at O.J. C 80/1 (Mar. 10, 2001). The Treaty of Nice was signed on Feb. 26, 2001 and became effective on Feb. 1, 2003. For a brief description, see BERMANN ET AL., *supra* note 5, at 24-26, 37-38, 43-44, 52 and 60-61. Roger J. Goebel, *The European Union in Transition: The Treaty of Nice in Effect, Enlargement in Sight, a Constitution in Doubt*, 27 FORDHAM INT’L L.J. 455 (2004) provides a detailed analysis of the Nice Treaty [hereinafter Goebel, *The European Union in Transition*].

Italy, Spain and the United Kingdom.¹³ However, other conference papers deal with these revisions, which are accordingly not covered in this article.

The Treaty's Accession Procedure

Article 49 of the Treaty on European Union¹⁴ outlines the basic procedural steps in the process by which a new nation can join the European Union (and thus the European Community, which is the most important structural component of the European Union). The text of Article 49 traces back to the initial text of Article 237 of the European Economic Community Treaty,¹⁵ adopted as the Treaty of Rome on March 25, 1957. The Treaty of Maastricht, effective November 1, 1993, converted the text of Article 237, with some modifications, into Article O of the Treaty on European Union.¹⁶ Later the Treaty of Amsterdam, effective May 1, 1999,¹⁷ further amended the text and renumbered it as Article 49.

Article 49 begins with a limitation: "Any European State . . . may apply to become a member of the Union."¹⁸ On what basis is a nation determined to be "European?" If a strict geographic criterion were to be deemed decisive, the accession application of Turkey would pose an interesting question. Although Istanbul and Thrace are part of Europe geographically, the majority of Turkey's population live in Asia Minor, which also constitutes the bulk of its territory. However, the European Economic Community's early 1964 Association Agreement with Turkey¹⁹ recognized the possibility that Turkey could at some point join the European Economic Community. Given this treaty language, no one contested Turkey's claim to become an applicant state at the time of Turkey's formal application in 1987. Moreover, from the point of view of geography, Cyprus is an Asian nation, because the closest coasts to Cyprus are those of Asia Minor and Syria, both parts of Asia. However, in its 1993 opinion

¹³ The Protocol on the Enlargement of the European Union, annexed to the Treaty of Nice, *supra* note 12. The Protocol also provides for a system of rotation of Commissioners among all Member States as soon as the European Union has 27 member states (presumably after Bulgaria and Romania accede around 2007).

¹⁴ See the current text of the TEU, *supra* note 1.

¹⁵ See the initial text of the European Economic Community Treaty, *supra* note 2.

¹⁶ Article O supplanted the prior EEC Treaty Article 237 so that any new Member State must simultaneously become a member of the European Union and the European Community. Article O's text is in the Treaty on European Union as effective on Nov. 1, 1993, *supra* note 1.

¹⁷ The Treaty of Amsterdam amended both the Treaty on European Union and the European Community Treaty. The text of each in consolidated form after the Treaty of Amsterdam is in O.J. C 340/173 (Nov. 10, 1997). The Treaty of Amsterdam is briefly described in BERMANN, ET. AL., *supra* note 5, at 23-24. Roger J. Goebel, *The Treaty of Amsterdam in Historical Perspective*, 22 FORDHAM INT'L L.J. 57 (1999) commences a symposium issue devoted to articles analyzing aspects of the Treaty of Amsterdam.

¹⁸ TEU art. 49, *supra* note 1.

¹⁹ Association Agreement between the European Economic Community and Turkey, O.J. P 217/3687 (Dec 28, 1964).

on Cyprus' application for accession, the Commission finessed the issue by concluding that Cyprus should be considered to be "culturally" European, possessing the kind of "European identity and character" that suits it to membership.²⁰ Accordingly, strict geographic considerations have not blocked Cyprus' prospective accession, nor Turkey's pending application.

Article 49 sets another limitation in its first sentence through a cross-reference to the principles contained in Article 6(1): any applicant nation must be a democracy and abide by the principles of the rule of law and "respect for human rights and fundamental freedoms."²¹ This cross-reference to Article 6(1) was added by the Treaty of Amsterdam in 1999. The obligation upon all present member states to be democracies, with respect for the rule of law and human rights, was introduced by the Treaty on European Union in 1993, but this fundamental principle had in fact been articulated earlier by the political leaders of the European Community in the Declaration on Democracy made at Copenhagen on April 8, 1978.²²

The Declaration on Democracy specifically proclaimed that "respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership . . ." ²³ That the political leaders of the EC should proclaim this Declaration precisely at the time that Greece, Portugal and Spain were applying to join the Community was plainly not a coincidence. The three nations had only recently ended totalitarian dictatorships and returned to democratic rule. The Declaration effectively put them on notice that their new commitment to democracy must be irrevocable. Similarly, the 1999 amendment to Article 49, which inserted the cross reference to Article 6(1) giving treaty force to the prior policy commitment contained in the Declaration on Democracy, served to put the Central European applicant states on notice that they must be functional democracies in order to join the Union.

Article 49 then requires two key procedural steps: the Council of Ministers ("Council") must approve an application unanimously, after consulting the Commission. That the Council should be the body approving the application is natural, because the Council represents the governments of the member states whenever legislation is adopted or formal decisions made. The requirement for an unanimous decision is only logical, because all current member states must later ratify a treaty of accession.

As for the Commission, by tradition its consultation comes in the form of two opinions, the first evaluating an initial application request, and the second at the

²⁰ EU Bull. 6/93, at 100-01 (1993).

²¹ TEU art. 49, *supra* note 1.

²² The Declaration on Democracy is included in the conclusions of the European Council session in Copenhagen on April 7, 1978, 11 EC Bull. 3/78, at 5-6 (1978). For the background of the Declaration on Democracy, see Goebel, *The European Union Grows*, *supra* note 8 at 1145-47.

²³ 11 EC Bull. 3/78, at 6 (1978).

end of negotiations with the applicant nation, asserting that the applicant is ready for accession and recommending the Council's endorsement of the applicant. From a pragmatic point of view, the Council needs both opinions before it can make the initial political decision to open the accession negotiations, and the second political decision to conclude the negotiations.

Article 49 makes no reference to the European Council, but inevitably the real political policy decision in each case is made at a European Council meeting, followed by formal action by the Council. The European Council evolved out of summit meetings of the Heads of State or Government held since the early 1970s. Article 4 of the Treaty on European Union provides that the European Council, which now meets four times a year, is a body comprised of the Heads of State or Government of the member states, together with the President of the Commission.²⁴ Although the European Council has no power to adopt legislation or make a formally binding legal act, Article 4 assigns to the European Council the task of making major policy decisions and providing "the general political guidelines" for subsequent action.²⁵ Decisions relating to the accession of new member states—the initiation of negotiations, setting of essential terms and conditions, and final acceptance—are naturally the province of the European Council.

The 1993 Maastricht Treaty amended Article 49 to add a role for the European Parliament ("Parliament"), which now has a right of assent, or veto power, before an applicant can join. Parliament must vote in favor by an absolute majority of its members. Parliament first exercised this power on May 5, 1994 when it endorsed the accession of Austria, Finland and Sweden by a substantial majority exceeding eighty-five percent in each case.²⁶ As seen on April 9, 2003, Parliament has also endorsed the membership of the current ten applicant nations.²⁷

Article 49 then prescribes that the "conditions of admission and the adjustments to the Treaties" are to be set out in a complex accession treaty.²⁸ Because each enlargement has presented complicated and detailed issues which need to be resolved in treaty provisions or in protocols and annexes to the treaty, each successive treaty has become more lengthy. The accession treaty invariably provides for temporary derogations or transitional periods before the full entry into force of particular EU or EC Treaty provisions, or certain

²⁴ The composition and role of the European Council is specified in Article 4 (initially Article D) of the Treaty on European Union, *supra* note 1, in a provision originally inserted by the Single European Act, effective July 1, 1987. For a description of the historical evolution of the role of the European Council, see DINAN, *supra* note 5, at 237-43.

²⁵ TEU, art. 4, *supra* note 1.

²⁶ EU Bull. 5/94, at 85. Goebel, *The European Union Grows*, *supra* note 8, describes the circumstances of the Parliament's vote of assent at 1169-72.

²⁷ See *infra* note 210 and accompanying text.

²⁸ TEU art. 49, *supra* note 1.

secondary legislation.

Finally, Article 49 prescribes that the accession agreement must be "ratified by all the contracting states in accordance with their constitutional requirements."²⁹ An act of the national parliament customarily suffices for ratification by an existing member state. At the time of the first enlargement in 1973, Denmark and Ireland chose to have their citizens vote on their prospective accession in a referendum³⁰ (as did Norway, which failed to join in 1973 and again in 1995 due to a narrow adverse majority in its referenda).³¹ Subsequently, Austria, Finland and Sweden held referenda prior to their accession in 1995.³² All of the present ten applicant states, except for Cyprus, have also decided to hold a referendum. As we shall see, all of the referenda have proved to be strongly in favor of accession.

Preparations For Accession

The Europe Agreements

Although the European Community (and later, the European Union) has long had close trade relations with Cyprus and Malta, cordial relations with the Central European nations could only begin after their escape from Soviet hegemony and return to democratic self-rule in the 1989-92 period. During this initial period, the European Community entered into trade agreements with nine Central European states to reduce tariffs, reduce or eliminate quotas on agricultural and commercial products, and otherwise promote trade.³³

Given the poor economic conditions in all the Central European countries, conditions which tended to worsen perceptibly during the initial efforts to convert from a state-controlled to a market economy, large amounts of financial

²⁹ *Id.*

³⁰ European Commission, Sixth General Report on the Activities of the European Communities 18 (1973) [hereinafter Sixth General Report]. The majority in favor in Denmark was 63.3%, while in Ireland it was 83%.

³¹ The adverse Norwegian referendum vote in 1972 is reported in the Sixth General Report, *supra* note 30, at 17, while that in 1994 is noted in EU Bull. 11/94, at 75 (1994).

³² For a description of the 1994 referenda in Austria, Finland and Sweden, see Goebel, *The European Union Grows*, *supra* note 8, at 1172-74. The referenda in Austria and Finland produced large favorable majorities, while that in Sweden resulted in only a narrow 52% favorable majority. European Commission, General Report on the Activities of the European Union 1994, at 252 (1995).

³³ The nine Central European states were the current applicants, except for Slovenia, as well as Albania. See Roger J. Goebel, *The European Community and Eastern Europe: "Deepening" and "Widening" the Community Brand of Economic Federalism*, 1 NEW EUROPE L. REV. 163, at 215 (1998) [hereinafter Goebel, *The European Community and Eastern Europe*]. For a review of the trade and economic relations between the EC and Central Europe during this period, see Dan Horowitz, *EC-Central/East European Relations: New Principles for a New Era*, 27 COMMON MKT. L. REV. 259 (1990); Susan Nello, *Some Recent Developments in EC-East European Economic Relations*, 24 J. WORLD TRADE 5 (1990).

aid to them became imperative. The famous Phare program of the Commission commenced in 1989, providing substantial financial and technical assistance initially to Hungary and Poland, and by 1991, to the other Central European nations.³⁴ The Phare program has provided three billion euros in aid per year since 2000. In addition, in 1990 the European Bank for Reconstruction and Development (“EBRD”) was founded in London, with the European Community and the member states together holding the majority of its capital.³⁵ The task of EBRD is to provide capital for investments in infrastructure and development projects, as well as funds to support training and technological assistance programs.

Very quickly the European Community moved to a heightened level of cooperation with all the Central European countries outside the Balkans. In 1991, the EC devised a standard form for the arrangements, called a Europe Agreement.³⁶ Europe Agreements were negotiated between 1991 and 1996, and then entered progressively into force between 1994 and 1997 with all of the current Central European applicants (not only the ten presently joining, but also Bulgaria and Romania).³⁷ The Commission described the Europe Agreements as intended to “enable those countries to take part in the process of European integration and . . . progress toward [becoming] full members of the Community.”³⁸

Each Europe Agreement notably includes a specific declaration in its Preamble to the effect that the Central European state may look forward to ultimate accession.³⁹ With some variations in scope country by country, the Europe Agreements provide for a substantial liberalization in trade in products, although agricultural products are only partially covered. The Europe Agreements also provide for reciprocal rights to provide services and rights of establishment in many (but not all) sectors. These agreements do not, however, enable free movement of workers from the Central European nations into the existing EU, although they protect the rights of their migrant workers who have legally entered EU states. The Europe Agreements also require the Central European nations to commence the process of harmonizing their legislation to

³⁴ For a description of the early Phare program, see Goebel, *The European Community and Eastern Europe*, *supra* note 33 at 215-16.

³⁵ For a description of the legal structure and initial operations of EBRD, see D.R.R. Dunnett, *The European Bank for Reconstruction and Development*, 28 COMMON MKT. L. REV. 571 (1991).

³⁶ The Commission’s General Outline for the form, purpose and role of Europe Agreements appears in Agence Europe, Eur. Docts. No. 1646/47 (Sept. 7, 1990).

³⁷ Goebel, *The European Community and Eastern Europe*, *supra* note 33, at 218-23, describes the basic features of the Europe Agreements as signed in 1991-92 with Czechoslovakia (before the break-up into the Czech and Slovak Republics), Hungary, Poland, Bulgaria and Romania.

³⁸ European Commission, Twenty-Fifth General Report on the Activities of the European Communities ¶ 810 (1992) [hereinafter Twenty-Fifth General Report].

³⁹ See, e.g., The Europe Agreement with the Czech Republic, Preamble, O.J. L 360/1 (1994): The “final objective . . . to become a member of the Community.”

that of the European Community in a variety of fields, including internal market, social, environmental protection and consumer rights fields. Additionally, the Central European nations must establish and protect intellectual property rights and adopt competition rules modeled on those in the EC. Overall, the Europe Agreements provide for a ten year transitional period within which to achieve the various obligations placed upon the Central European states. Finally, the Europe Agreements provide for “Association Councils” representing the European Community and the Central European nation involved. These Association Councils meet regularly, both at the ministerial level and at lower operational levels, to coordinate and to deal with issues in the application of the agreements.

Manifestly, the Europe Agreements significantly helped prepare the Central European nations for eventual accession. They considerably facilitated the negotiations, as well as reduced the number of issues that needed resolution. Finally, they also helped the applicant nations in their movement toward becoming functional free market economies.

It is worth noting that the Court of Justice (“Court”) has already had occasion to interpret and apply the provisions in Europe Agreements that govern migrant workers and persons claiming the right of establishment in a series of five judgments. The Court has interpreted the Central European migrants’ rights in a liberal fashion, while recognizing the legitimacy of the current member states’ concern with preventing abusive entry of migrants. Thus in *Barkoci*,⁴⁰ the Court held that Polish and Czech migrants who sought respectively to establish themselves in the UK as self-employed household cleaners and gardeners had the right to do so without discrimination on the basis of nationality. The Court added, however, that the UK could impose proportionate conditions in order to be assured that a migrant had the qualifications and reasonable expectation of economic self-sufficiency in carrying out his trade. In *Jany*,⁴¹ the Court held that Polish women could establish themselves in the Netherlands as self-employed prostitutes, provided that they could satisfy conditions intended to ensure that they had reasonable expectations of self-sufficiency, would follow police and health regulations, and would not pay over all or part of their earnings to other persons. Viewed as a whole, the Court judgments in these and the other cases interpreting the extent of rights arising under provisions of the Europe Agreements⁴² suggest that the Court regards the Europe Agreements as pre-accession agreements, to be interpreted liberally in looking forward to the

⁴⁰ Queen v. Secretary of State for the Home Department, ex parte Barkoci & Malik, Case C-257/99, [2001] ECR I-6557.

⁴¹ Jany v. Staatssecretaris van Justitie, Case C-286/99, [2001] ECR I-8615.

⁴² E.g., Land Nordrhein-Westfalen v. Pokrzeptowicz-Meyer, Case C-162/00, [2002] ECR (Jan. 29, 2002) (Polish nationals cannot be obliged to accept only a fixed-term contract for employment as a foreign language assistant at a German university when German nationals may obtain indefinite term contracts).

ultimate accession of the applicant nations.

Standards for Applicants: The Copenhagen Criteria

The now famous European Council meeting in Copenhagen on June 21 and 22, 1993 agreed that “the associated countries in Central and Eastern Europe” could become member states when they ultimately satisfied “the economic and political conditions required.”⁴³ The European Council then set a list of key conditions for accession, now known as the “Copenhagen criteria.”⁴⁴ The European Council thus determined for the first time that at least some of the fledgling democracies in Central Europe could ultimately join the EU.

The Copenhagen criteria are commonly categorized as three criteria: the first political; the second economic; and the third relating to the necessary policies and infrastructure. The precise language is often cited. The political criterion is the “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for, and protection of, minorities.”⁴⁵ To satisfy the economic criterion, a state must have a “functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.”⁴⁶ The European Council’s third condition is that the candidate must possess the “ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.”⁴⁷ As we shall see, the Council and the Commission have insisted that each applicant must satisfy the political criterion before opening accession negotiations, and must essentially satisfy the other two criteria by the end of the negotiations.

The Copenhagen European Council also approved an interesting mode of enhancing ties between the Union and the Central European nations that had entered into Europe Agreements in the form of a structured system of high-level political meetings. The European Council declared that these should be held, usually at the ministerial level, “on matters of common interest,”⁴⁸ including not only internal market matters, but also common foreign and security policy and cooperation in justice and home affairs.

These “structured meetings” soon began and are perceived to have been an important mode of dialogue and planning for further assistance to the Central European states that have Europe Agreements. A Council report to the December 1994 Essen European Council proposed that the “structured relationship” should also include semi-annual meetings of the justice and home

⁴³ 26 EC Bull 6/93, at 13 (1993).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 14.

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affairs ministers (because, in addition to drug control and illegal immigration, stolen cars have become a serious problem), and annual meetings of ministers responsible for economics and finance, agriculture, environment, transport, research and development, telecommunications, cultural affairs, and education.⁴⁹ Thus, since the mid-1990s representatives of both the member states and all the applicant nations have been engaging in useful dialogues at the ministerial level in a wide variety of fields.

The Applications and the Commission's Initial Opinions

As previously indicated, before the Council can authorize the opening of negotiations with an applicant nation, the Commission must provide an opinion evaluating the suitability of the applicant for membership in the Union.

In June 1993, the Commission issued generally favorable opinions on the applications of Cyprus and Malta. However, the opinion on Malta cautioned that, because of its small population (then around 350,000 people), the mode of Malta's participation in the institutions of the Community would require consideration by the political leadership of the member states.⁵⁰ With regard to Cyprus, although the Commission concluded that it possessed a stable economy and "the kind of European identity that suits it to membership," "a peaceful, balanced and lasting settlement of the conflict" between the Greek majority and Turkish minority communities must occur before accession could be possible.⁵¹ In June 1994, the European Council meeting at Corfu under the presidency of the Greek government promised that the "next phase of enlargement of the Union will involve Cyprus and Malta,"⁵² referring to the next enlargement after the 1995 accession of Austria, Finland and Sweden.

Already in 1994, the Central European states began to knock on the door. On March 31 and April 5, 1994 respectively, Prime Minister Boross of Hungary and Prime Minister Pawlak of Poland formally applied for membership.⁵³ In the next two years, eight other Central European nations applied.

During 1994, the EU leadership was preoccupied with the final preparations for the accession of Austria, Finland and Sweden, which occurred on January 1,

⁴⁹ Report from the Council to the European Council on a strategy to prepare the accession of the associated CCEE states, Annex to the European Council Conclusions, EU Bull. 12/94, at 20-26 (1994).

⁵⁰ The Commission opinion on Malta, published in 26 EC Bull. Suppl. 4/93 (1993), is summarized in 26 EC Bull. 6/93, at 100-01 (1993). On Oct. 4, 1993, the Council approved the Commission conclusions. 26 EC Bull. 10/93, at 69 (1993). The European Commission, Twenty-Seventh General Report on the Activities of the European Communities 233 (1994) [hereinafter Twenty-Seventh General Report] states the Commission's conclusions on Malta.

⁵¹ The Commission opinion on Cyprus, published in 26 EC Bull. Suppl. 5/93 (1993), is summarized in 26 EC Bull. 6/93, at 100 (1993).

⁵² EU Bull. 6/94, at 13 (1994).

⁵³ Twenty-Seventh General Report, *supra* note 50, at 254.

1995.⁵⁴ This accession proved to be by far the easiest enlargement, because all three nations were politically stable democracies with strong economies and because all three had already been closely associated with the EU through the European Economic Area.⁵⁵ Incidentally, all three new member states have been strong advocates of the admission of Central European nations. Finland and Sweden have particularly pressed for the accession of the three Baltic states, Estonia, Latvia and Lithuania, with whom they have traditionally had close trade and cultural relations.

In 1995, the Commission and the political leadership of the now fifteen member states could devote concentrated attention to the next enlargement—that of the Central European and Mediterranean nations. The European Council meeting in Madrid on December 15 and 16, 1995 confirmed its desire to further develop the pre-accession strategy for the applicants.⁵⁶ In particular, the European Council requested the Commission to prepare its opinions on the suitability of each of the applicants for accession.⁵⁷

After working throughout 1996 and early 1997, the Commission issued its opinions on the ten Central European applicant nations in June 1997.⁵⁸ Each opinion comprises a detailed analysis of the political, economic and social situation in the applicant nation, the state of its administrative and judicial infrastructure, and the degree to which it has adopted legislation intended to harmonize its rules with those in the EU. Each opinion concludes with the Commission's assessment of the suitability of the applicant for an opening of accession negotiations.⁵⁹

In June 1997 the Commission published an influential report, "Agenda 2000 – For a Stronger and Wider Union."⁶⁰ Agenda 2000 is composed of an important analytical review of the current status of EU policies and its financial framework for the 2000–06 period, but its relevance here lies in its section on "The

⁵⁴ The Act of Accession containing the amendments to the treaties for the accession of Austria, Finland and Sweden is at O.J. C 241/21 (1994). Due to the failure of Norway to join the EU, the Act was amended by Council Decision of January 1, 1995, O.J. L 1/1 (Jan. 1, 1995) to revise the institutional structure accordingly.

⁵⁵ Goebel, *The European Union Grows*, *supra* note 8, provides a detailed description of the background and the process of accession of Austria, Finland and Sweden, discussing the European Economic Area at 1103-08. D. Booss & J. Forman, *Enlargement: Legal and Procedural Aspects*, 32 COMMON MKT. L. REV. 95 (1995), describes the negotiation process.

⁵⁶ See *supra* text accompanying note 4.

⁵⁷ EU Bull. 12/95 at 18 (1995).

⁵⁸ The ten opinions appear as Supplements 6 to 15 to the EU Bulletin for 1997 in the following order (based on the date of application of each state): Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, the Czech Republic and Slovenia.

⁵⁹ A summary of the Commission's conclusion concerning each applicant is provided in EC Commission, General Report on the Activities of the European Union 1997, at 299-303 (1998).

⁶⁰ EU Bull. Suppl. 5/97 (1997) (*hereinafter* cited as "Agenda 2000").

Challenge of Enlargement”⁶¹ and the annexed impact study on the “Effect of the Union’s Policies of Enlargement to the Applicant Countries.”⁶² Agenda 2000 summarizes the Commission’s opinions on the applications of all ten Central European states, thus providing a valuable overview of the situation in all of the applicant states. Furthermore, Agenda 2000 indicates both the foreseeable difficulties and the likely benefits for both the EU and the applicants occasioned by their accession.

In its review of each applicant’s political qualifications, the Commission observes that it “went beyond a formal description of political institutions . . . to assess how democracy actually works in practice,”⁶³ particularly with regard to the achievement of the rule of law, protection of human rights and respect for minority rights. In its overall assessment of whether each applicant satisfied the political criteria for accession, the Commission concluded that only Slovakia did not, due to a “gap between the letter of constitutional texts and political practice.”⁶⁴ The Commission also observed that Bulgaria and Romania had lagged behind, only achieving essential democratic reforms in 1996.⁶⁵

That in early 1997 the Commission could conclude that nine of the ten Central European applicants essentially satisfied the political condition for membership is quite a tribute to the extraordinarily rapid pace of the democratization in these nations. Consider what this meant. Each applicant had to draft a well-balanced modern constitution, create a governmental structure with a popularly elected and effective parliament and executive branch, develop political parties and responsible popular leadership, adopt essential legislation and administrative regulations appropriate for a functional democracy, create a functional and democratically inspired judiciary, and more—and all within the space of half a dozen years.⁶⁶

In substantial measure, the goal of membership in the EU provided an inducement to these nations to further their efforts in democratization. Certainly throughout the 1990s the political leadership of the European Council, together with the Commission and the Council, provided not only administrative and technical guidance and assistance in developing aspects of democratic government, but also a definite and persistent pressure for the attainment of functional democratic structures.⁶⁷

⁶¹ *Id.* at 39.

⁶² *Id.* at 77.

⁶³ *Id.* at 40.

⁶⁴ *Id.*

⁶⁵ *Id.* With regard to Romania, the Commission observed that it had achieved essential democratic reforms only after an election brought a change of government in November 1996.

⁶⁶ For an overview of the democratization process, *see*; DEMOCRATIZATION IN CENTRAL AND EASTERN EUROPE (Mary Kalder & Ivan Vejvoda eds., 1999).

⁶⁷ For a recent critical analysis of the influence of EU on the democratization process, *see*

Satisfaction of the Copenhagen European Council's political pre-condition for membership included attaining a proper level of respect for human rights.⁶⁸ Not only had all of the applicants adopted modern formulations of basic rights in their constitutions, but all had acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and accepted the Protocol permitting their citizens to take cases to the Strasbourg Court of Human Rights.⁶⁹ In view of this, and after its specific evaluation of human rights issues in particular applicant states, the Commission concluded that they all had met the basic human rights criterion.

The final element of the Copenhagen European Council's political criterion is respect for minority rights. This is a novel element in two respects: 1) neither the EC nor the EU had ever previously been concerned with minority rights protection within the current member states, and 2) neither the articles of the treaties dealing with human rights nor the Court of Justice case law on the subject had ever dealt with minority rights.⁷⁰ However, in Central European nations, large national and ethnic minorities not only existed, but were actually or potentially subject to discrimination and mistreatment.

Agenda 2000 indicated that in the Baltic states, minorities constitute forty-four percent of the Latvian population (thirty-four percent being Russian), thirty-eight percent of the Estonian population (thirty percent being Russian), and twenty percent of the Lithuanian people (nine percent Russian, seven percent Polish).⁷¹ Elsewhere there are substantial Hungarian minorities (eleven percent in Slovakia, and eight percent in Romania), and nine percent of the Bulgarian people are Turks.⁷² Finally the Roma people (commonly called gypsies in Western Europe) are also numerous: five percent in Bulgaria and Slovakia, and four percent in Romania.⁷³

Throughout the period prior to its Opinions, the Commission pressed the applicant nations to take legislative and administrative action to ensure protection of minority rights. As the Commission noted, "[m]inority problems, if unresolved, could affect democratic stability or lead to disputes with

Geoffrey Pridham, *EU Enlargement and Consolidating Democracy in Post-Communist States – Formality and Reality*, 40 J. COMMON MKT. S. 953 (2002).

⁶⁸ For a review of the EU's insistence on human rights protection, especially the protection of minority rights, see Andrew Williams, *Enlargement of the Union and Human Rights Conditionality: A Policy of Distinction?*, 25 EUR. L. REV. 601 (2000).

⁶⁹ Agenda 2000, *supra* note 60, at 41.

⁷⁰ Williams, *supra* note 68, at 611. See also Barbara Brandtner & Allan Rosas, *Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice*, 9 EUR. J. INT'L L. 468 (1998), noting that the "emphasis on minority rights is not anchored in any long-standing EC law tradition," *id.* at 487.

⁷¹ Agenda 2000, *supra* note 60, at 41.

⁷² *Id.*

⁷³ *Id.*

neighboring countries.”⁷⁴ In its Opinions and Agenda 2000, the Commission concluded that all the applicants concerned had made significant progress in promoting the welfare of minorities. However, the Commission expressed its concern about the low rate of naturalization of non-citizens (usually Russians) in Estonia and Latvia, the absence of recognition of the Hungarian minority’s right to employ its own language in the Slovak Republic and other administrative issues there, and the inadequate treatment of the Roma minority throughout Central Europe.⁷⁵ These deficiencies did not lead the Commission to conclude that the applicants (other than Slovakia) failed to satisfy the political criterion, but the Commission called for further progress before accession.

The Copenhagen European Council’s economic criterion has two constituent elements: the applicant must have a functional free market economy, and must be able to cope with competitive market forces within the entire EU. In its Agenda 2000 review, the Commission praised the substantial progress made by almost all the applicants in the transition to a market economy, including the privatization of state-owned enterprises, but noted that the average GDP per person was still only one-third that prevailing in the EU, and that many states had fragile economies, unfavorable trade balances and inadequate capital markets.⁷⁶ Overall, however, the Commission concluded that five Central European nations—the Czech Republic, Estonia, Hungary, Poland and Slovenia—could be considered to have achieved free market economies.⁷⁷ On the other hand, the Commission evaluated none of the applicants as capable as of 1997 to confront market forces within the EU for a variety of reasons (e.g., inadequate capital and financial markets, insufficient infrastructure, low wage levels, incomplete privatization, etc.)⁷⁸

The third, or infrastructure criterion, set by the European Council at Copenhagen also has two components: an adequate administrative and judicial infrastructure and an ability to adopt the “*acquis communautaire*,” notably to enact all the legislation required by harmonization measures adopted to date within the EU, not only to achieve the internal market, but also in the fields of agriculture, environment, transport, social policy, etc.⁷⁹ The Commission expressed considerable reservations concerning the quality of the administrative and judicial infrastructure in all the applicants, particularly with regard to their ability to properly enforce and apply Union law, and concluded that only the Czech Republic, Hungary and Poland could satisfy this criterion even in the

⁷⁴ *Id.* at 42.

⁷⁵ *Id.* at 41.

⁷⁶ *Id.* at 42.

⁷⁷ *Id.* at 43.

⁷⁸ *Id.* at 43-44.

⁷⁹ *Id.* at 44-46.

medium term.⁸⁰

With regard to Cyprus, the Commission in Agenda 2000 easily concluded that it satisfied the Copenhagen criteria,⁸¹ but expressed concern about the ongoing division between the Greek community and the Turkish one, which “threatens the stability of the island and the region.”⁸² However, it considered that negotiations could be opened with the government of the Greek Cypriots, as the “only authority recognized by international law.”⁸³

The Commission’s Opinions and its review in Agenda 2000 enabled the political leadership of the EU to make the decision to commence negotiations on accession. At its meeting in Luxembourg on December 12 and 13, 1997, the European Council decided to begin negotiations with Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia, setting March 30, 1998 as the date for the formal launching of negotiations.⁸⁴ The European Council also requested the Commission to make annual progress reports on the negotiations and to continue its analytical examination of progress in the other applicants.⁸⁵ The European Council also called for annual meetings of a European Conference composed of the Heads of State and Government of the member states and of all the applicants negotiating for accession, as well as Turkey, to address “questions of general concern,” especially in foreign policy, justice cooperation, economic matters and regional policy.⁸⁶ The first European Conference meeting was held in London on March 12, 1998.⁸⁷

The Commission’s October 1999 progress report on the state of negotiations with the initial six applicants and on the preparations within the other applicants indicated that Bulgaria, Latvia, Lithuania, Romania and Slovakia had by that time satisfied the Copenhagen political criterion, although none as yet fully satisfied the economic and infrastructure criteria.⁸⁸ Nonetheless, the European Council at Helsinki on December 10 and 11, 1999 decided to open negotiations for accession with those five nations.⁸⁹ The European Council also authorized the commencement of accession negotiations with Malta, where the election of a

⁸⁰ *Id.* at 46-47.

⁸¹ *Id.* at 54.

⁸² *Id.* at 55.

⁸³ *Id.*

⁸⁴ EU Bull. 12/97, at 10 (1997).

⁸⁵ *Id.* at 11.

⁸⁶ *Id.* at 9.

⁸⁷ European Commission, General Report on the Activities of the European Union 1998, at 275 (1999) [hereinafter 1998 General Report].

⁸⁸ The Commission’s Oct. 13, 1999 progress report is in COM (1999) 500. Its conclusions are summarized in EC Commission, General Report on the Activities of the European Union – 1999, at 205 (2000).

⁸⁹ EU Bull. 12/99, at 8 (1999).

nationalist government in 1999 resulted in a renewal of its accession application, which had been suspended by the prior Labor government.⁹⁰ Negotiations with these six nations began in February 2000.⁹¹ The European Council noted that the states commencing negotiations should “have the possibility to catch up within a reasonable period of time with those already in negotiations” but warned that “[p]rogress in negotiations must go hand in hand with progress in incorporating the *acquis* into legislation and actually implementing and enforcing it.”⁹²

With regard to Cyprus, the European Council at Helsinki made a crucial decision favorable to its entry into the EU. While urging further negotiations with the Turkish community under UN auspices, the European Council concluded that even “if no settlement has been reached by the end of accession negotiations,” a settlement would not be a “precondition” for accession.⁹³ Accordingly, the Greek Cypriot government would be able to join the EU on its own. It is frequently said that the membership of West Germany in the European Community prior to its reunification with East Germany serves as the precedent for the entry of only a part of Cyprus.

The Helsinki European Council also made a crucial policy statement concerning Turkey. Although not authorizing any negotiations for accession, the European Council declared that “Turkey is a candidate State destined to join the Union.”⁹⁴ The European Council welcomed “recent positive developments” in Turkey and urged further political reforms, particularly with regard to respect for human rights.⁹⁵ Finally, the European Council authorized an accession partnership program in which the Commission would provide further assistance to Turkey, focusing on areas requiring priority attention.⁹⁶ Accordingly, since 1999 there appears to be a genuine prospect that Turkey will eventually become a member state, even though the time frame for entry is quite indefinite and depends heavily on substantial progress in political and economic reforms.

The Negotiation Phase

The Mode of Negotiations

Neither the current Article 49 of the Treaty on European Union,⁹⁷ nor the

⁹⁰ *Id.*

⁹¹ EC Commission, General Report on the Activities of the European Union – 2000, at 217 (2001).

⁹² EU Bull. 12/99, at 8 (1999).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ TEU, *supra* note 1. See the analysis of Article 49 in section I, *supra*.

initial EEC Treaty Article 237,⁹⁸ specify who should carry out the negotiations with applicant nations. At the time of the commencement of negotiation for the first enlargement—the accession of Denmark, Ireland and the UK—this issue had to be confronted. Although the Commission had proposed that the Council should give it a mandate to negotiate the terms of accession with the then-applicant states,⁹⁹ a Council decision on June 8 and 9, 1970 declared that the Council itself would carry out the negotiations.¹⁰⁰ A representative of the Council President for each of the six-month terms of Council Presidency¹⁰¹ would preside over the working team engaged in the negotiations. Naturally, the Commission would assist in the process—assistance that would always be substantial in view of the greater staff resources of the Commission.¹⁰²

This precedent has been followed in all subsequent accession negotiations, and was employed again for the current enlargement. Negotiations were carried on with each candidate state largely on a separate basis, although a common pattern was followed. The ministers or deputy ministers of Foreign Affairs, sometimes joined by other cabinet ministers from the member states and the applicant states, met periodically, often monthly, to review the most important issues.¹⁰³ The Commission proposed the draft negotiating positions to the representatives of the member states at the level of working groups for specific topics, as well as at the ministerial or deputy ministerial level.¹⁰⁴ Frequent, often bi-weekly meetings, were held by working group experts from the Council, the Commission and individual applicant states, or groups of applicants. In all cases, the Minister of Foreign Affairs of the member state currently holding the presidency of the Council (which rotates every six months), or the Council staff member representing that state, formally chaired the session.¹⁰⁵ Not surprisingly, the Commission staff members participating in the process were highly active, due to their specialized expertise on particular topics. Since the fall of 1999, Commissioner Gunther Verheugen has been the Commissioner responsible for

⁹⁸ EEC TREATY art. 237, *supra* note 2.

⁹⁹ The Commission made its request at the time of its Oct. 1, 1969 opinion favoring the initiation of negotiations with the then applicant nations (which included Norway, as well as Denmark, Ireland and the United Kingdom). See EC Commission, Fifth General Report on the Activities of the European Communities 17 (1972).

¹⁰⁰ *Id.* at 17-18.

¹⁰¹ *Id.*

¹⁰² *Id.* (The Commission would help in seeking “possible solutions to specific problems arising in the course of negotiations.”)

¹⁰³ Eneko Landaburu, the Director General of the Directorate General for Enlargement, describes the negotiation process in Eneko Landaburu, *The Fifth Enlargement of the European Union: The Power of Example*, 26 FORDHAM INT’L L.J. 1 (2002). The ministerial level negotiations are described at 4. For a detailed description of the negotiation phase of the accession of Austria, Finland and Sweden, see Booss & Forman, *supra* note 55, and Goebel, *The European Union Grows*, *supra* note 8, at 1164-69.

¹⁰⁴ Landaburu, *supra* note 104, at 4.

¹⁰⁵ *Id.*

the accession negotiations. A special Commission Directorate General for Enlargement, headed by Eneko Landaburu, worked on the negotiations,¹⁰⁶ as well as provided continuing assistance to the applicants and monitored progress in each applicant. The Parliament was regularly informed of the state of progress of negotiations¹⁰⁷—a vital step, because Article 49 requires that the Parliament ultimately give its assent to any accession.

Throughout the accession negotiations, the EU joined with each candidate in an Accession Partnership. As proposed by the Commission in Agenda 2000, an Accession Partnership was to serve as a structure for establishing a timetable of precise commitments of the candidate for political and economic modifications and for the adoption of specific legislation to accept elements of the “*acquis communautaire*”.¹⁰⁸ On the EU side, the Commission would mobilize financial and technical resources to aid the applicant in progress toward membership. The Commission would also monitor progress of each applicant, preparing an annual overall progress report covering all the candidate countries.¹⁰⁹ The European Council at Luxembourg on December 12 and 13, 1997 authorized these Accession Partnerships.¹¹⁰ On March 16, 1998, the Council adopted Regulation 622/98 to set up a structure for the financial and technical assistance to each of the Central European applicant states under the Accession Partnerships.¹¹¹ On March 30, 1998, the Council immediately created the Accession Partnerships with each of the ten Central European applicants.¹¹²

The Role of the “*Acquis Communautaire*” Principle

As indicated at the outset of this article, all accessions of new member states are governed by the principle of the “*acquis communautaire*.” This term, so hard to translate that the French is invariably used even in English texts, means essentially that the intrinsic core of the Community (and also now the Union) legal and political structure is a given (“*acquis*”) which the new member state must accept, not challenge or call into question.¹¹³ The “*acquis communautaire*”

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Agenda 2000, *supra* note 60, at 53.

¹⁰⁹ *Id.*

¹¹⁰ EU Bull. 12/97, at 9-10 (1997).

¹¹¹ O.J. L 85/1 (Mar. 20, 1998).

¹¹² 1998 General Report, *supra* note 87 at 279-80 (1999).

¹¹³ For a detailed description of the evolution of the “*acquis communautaire*” concept in each successive enlargement, see Goebel, *The European Union Grows*, *supra* note 8, at 1140-57. Carlo Gialdino, *Some Reflections on the Acquis Communautaire*, 32 COMMON MKT. L. REV. 1089 (1995), analyzes the origin and meaning of the term. Christine Delcourt, *The Acquis Communautaire: Has the Concept Had Its Day?*, 38 COMMON MKT. L. REV. 829 (2001), also analyzes the meaning of the principle, expressing concern about its somewhat ambiguous character and variable content.

principle has a highly pragmatic origin. In 1969, the original six member states were confronted with the possible accession of four new ones: Denmark, Ireland and the United Kingdom, which ultimately joined in 1973, along with Norway, whose application ended after an adverse popular referendum. At the famous Hague Summit on December 1 and 2, 1969, the Heads of Government and State declared that “[i]n so far as the applicant States accept the Treaties and their political objective, the decisions taken since the entry into force of the Treaties,” the negotiations could commence.¹¹⁴ At the initial ministerial level negotiation session on June 30, 1974, Foreign Minister Harmel of Belgium, then President of the Council, told the applicant state representatives that they had to accept the Treaties and all Community decisions and policies to date.¹¹⁵ He added that “any problems of adjustment . . . must be sought in . . . transitional measures and not in changes of existing rules.”¹¹⁶ Thus, the principle of the “*acquis communautaire*” became an authoritatively stated condition for the first enlargement and subsequently for any future accession.

At the time of the first enlargement in 1973, based upon the text of the 1972 Act of Accession, the “*acquis communautaire*” could be analyzed as comprising six constituent elements: 1) the Treaties; 2) the institutional structure under the Treaties; 3) the legislation and other acts of the Community; 4) international agreements entered into by the Community; 5) legislation and other acts adopted during the negotiations; and 6) the somewhat vague concept of the “political objective” of the Treaties.¹¹⁷ In its Opinion issued on January 19, 1972, prior to the Act of Accession, the Commission added a seventh element—the “legal order” of the Community, which included the principles of the direct applicability both of certain treaty provisions and of certain legislation, of the primacy of Community law over any conflicting national provisions, and of the uniform interpretation of Community law—all major doctrines developed by the Court of Justice in the 1960s.¹¹⁸ As previously noted, the European Council’s famous Declaration on Democracy issued at its meeting in Copenhagen on April 7 and 8, 1978¹¹⁹ added another essential aspect to the “*acquis communautaire*.”

¹¹⁴Final Communique of the Conference of Heads of State or Government on 1-2 December 1969 at the Hague, in EC Commission, Third General Report on the Activities of the Communities – 1969, annex, at 189 (1970). The Commission had previously urged that the applicant states must accept “the Treaties plus the decisions taken since these came into force.” *Id.* at 334.

¹¹⁵European Commission, Fourth General Report on the Activities of the Communities 1970, at 260 (1971).

¹¹⁶*Id.*

¹¹⁷These are the essential elements cited in the 1972 Act of Accession, arts. 2-4, J.O. L 73/1, at 14-15 (1972).

¹¹⁸Sixth recital, Opinion of the Commission of Jan. 19, 1972 on the Applications for Accession of Denmark, Ireland, the Kingdom of Norway and the United Kingdom, J.O. L 73/3 (1972). The Opinion’s fifth recital declared that the applicants had accepted the Treaties, Community acts, and the Community’s political objectives. For further discussion, see Goebel, *The European Union Grows*, *supra* note 8, at 1144-45.

¹¹⁹Declaration on Democracy, *supra* note 22.

Joining the European Union

Issued at the time that negotiations for accession with Greece, Spain and Portugal were commencing, the Declaration made absolutely clear that “the principles of democracy, of the rule of law, of social justice and of respect for human rights” were required for membership.¹²⁰ As noted before, when the Treaty of Maastricht introduced the Treaty on European Union on November 1, 1993, the TEU in Article 6 (ex Article F) declares that “[t]he Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedom, and the rule of law, principles which are common to the Member States.”¹²¹ Article 49 was then amended to cross-reference to Article 6, requiring these principles as an express condition for accession.¹²²

When the Treaty of Maastricht introduced the Treaty on European Union, the concept of the “*acquis communautaire*” was emphasized in the text itself. Article 2 of the TEU states that one of the goals of the EU is to “maintain in full the *acquis communautaire* and build on it.” Article 3 further states that the Union’s institutions are to strive to “attain its objectives while respecting and building upon the *acquis communautaire*.”¹²³ The Maastricht Treaty added Economic and Monetary Union as a component of the European Community,¹²⁴ as well as the Union fields of a Common Foreign and Security Policy¹²⁵ and Cooperation in Justice and Home Affairs.¹²⁶ These accordingly became parts of the “*acquis communautaire*” accepted by Austria, Finland and Sweden when they joined in 1995,¹²⁷ and are aspects of the “*acquis communautaire*” for the current candidate nations.¹²⁸

All of the elements of the “*acquis communautaire*” are certainly also required of the current Central European and Mediterranean applicant states. The Copenhagen criteria set out by the European Council in June 1993¹²⁹ add another element: “[t]he existence of a functioning market economy.”¹³⁰ That this is now an element of the “*acquis communautaire*” is apparent from the fact that the Treaty of Maastricht amended the EC Treaty to include Article 4, which declares

¹²⁰*Id.* For a description of the link between the Declaration on Democracy and the applications of Greece, Portugal and Spain, see Goebel, *The European Union Grows*, *supra* note 8, at 1145-48.

¹²¹TEU, *supra* note 1.

¹²²*Id.* See *supra* text accompanying note 21.

¹²³TEU art. 3, *supra* note 1.

¹²⁴EC TREATY arts. 98-124, *supra* note 2.

¹²⁵TEU arts. 11-28, *supra* note 1.

¹²⁶*Id.* at arts. 29-42 (these are the provisions on Police and Judicial Cooperation in Criminal Matters which have succeeded the initial articles on Cooperation in Justice and Home Affairs, most of which have been transferred to the sphere of European Community action by the Treaty of Amsterdam).

¹²⁷For a more detailed discussion, see Goebel, *The European Union Grows*, at 1155-57.

¹²⁸The Commission specifically stated this in Agenda 2000, *supra* note 60, at 39.

¹²⁹See *supra* text accompanying notes 44-47.

¹³⁰See *supra* text accompanying note 46.

that “the activities of the Member States and the Community shall include . . . an economic policy which is . . . conducted in accordance with the principle of an open market economy with free competition.”¹³¹

Finally, as the Commission noted in its June 1997 Agenda 2000 report, the current applicants are obligated to go beyond the “*acquis communautaire*” in some respects, due to the requirements of some of the Copenhagen criteria.¹³² The Commission specifically cited the applicants’ obligation to have an adequate administrative and judicial capacity,¹³³ but it might also have cited the need to have “the capacity to cope with competitive pressures and market forces within the Union,” the second aspect of the Copenhagen economic criterion.¹³⁴ Moreover, in some respects one of the most difficult and time-consuming obligations of the applicants—yet one that is required in order for them to satisfy the third Copenhagen infrastructure or “*acquis*” criterion—is that of implementing into their own legislation all of the voluminous regulations and directives of the internal market program, together with those in the fields of social policy, environmental protection, consumer rights, transport, intellectual property, etc.¹³⁵

The Initial Phase of Negotiations, 1998-99

As we have seen, the European Council at Luxembourg on December 12 and 13, 1997¹³⁶ accepted the Commission’s recommendation to begin negotiations in March 1998 with six applicants—Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia¹³⁷—while urging that preparations for negotiations with the other applicants be accelerated.¹³⁸ The negotiations accordingly commenced on March 30, 1998.¹³⁹ Immediately prior to the start of negotiations, the European Conference, composed of the Heads of State or Government of all member states and the twelve candidate nations, met in London on March 12, 1998.¹⁴⁰ The Conference conclusions declared that it launched “the comprehensive, inclusive and ongoing process of European Union

¹³¹ EC TREATY art. 4, *supra* note 2.

¹³² Agenda 2000, *supra* note 60, at 39.

¹³³ *Id.*

¹³⁴ See *supra* text accompanying note 46.

¹³⁵ Delcourt describes this as the “[e]xhaustive adoption by the candidate countries of an extensive *acquis communautaire*,” *supra* note 113, at 852-57.

¹³⁶ EU Bull. 12/97, at 8 (1997).

¹³⁷ *Id.* at 10.

¹³⁸ *Id.*

¹³⁹ 1998 General Report, *supra* note 87, at 275. The launch of negotiations was endorsed by Parliament in a resolution of Dec. 4, 1997, O.J. C 388 (Dec. 12, 1997).

¹⁴⁰ EU Bull. 3/98, at 81 (1998).

enlargement".¹⁴¹

In order to prepare the negotiations, the Commission created on January 21, 1998 a Task Force for the Accession Negotiations. (The Task Force was transformed in 1999 by the current Prodi Commission into the Directorate General for Enlargement.) Commissioner Van den Broek supervised the Commission's role in pre-accession planning and in the initial negotiations.¹⁴² Because negotiations would have to cover all aspects of the "*acquis communautaire*," including the applicants' ultimate adoption of several thousand legislative measures in many different fields, the Commission and the Council structured the negotiations into thirty-one chapters.¹⁴³ These chapters covered all of the various substantive fields of Community activities (e.g., agriculture, competition policy, external commercial and trade relations, economic and monetary union, environmental protection, social policy, transport), as well as the fields of Union action (Common Foreign and Security Policy and Cooperation in Justice Affairs), and institutional structures and the budget. Each chapter could then be negotiated at the lower levels by groups of experts in the topic field, from the Commission and the Council on the EU side, and from each applicant state on the other side, with the more challenging issues raised to the level of ministerial or deputy ministerial negotiation.

At the initial stage in 1998, the Commission and the applicant state "screened" the latter's legislation to determine the degree of its compatibility with EU rules in each of the chapter fields.¹⁴⁴ Throughout the negotiation period, of course, applicant states continuously adopted new laws and regulations intended to parallel the harmonized rules of the EU. This process steadily removed issues from the negotiating table. By the end of 1998, a few easier chapters could be considered to be provisionally closed (to be revisited and brought up to date toward the end of negotiations) in the negotiations with each applicant.¹⁴⁵

The first phase of negotiations with the initial six applicants continued throughout 1999, identifying certain key issues for later resolution, but also making substantive progress—the negotiations provisionally closed between nine and eleven chapters with each applicant.¹⁴⁶ The Commission began its procedure of issuing an annual report on the progress made by each applicant toward accession on November 4, 1998.¹⁴⁷ This report contains valuable

¹⁴¹ *Id.*

¹⁴² 1998 General Report, *supra* note 87, at 275 and 441.

¹⁴³ *Id.* at 276.

¹⁴⁴ *Id.*; Landaburu, *supra* note 103, at 5-6.

¹⁴⁵ 1998 General Report, *supra* note 87, at 276.

¹⁴⁶ 1999 General Report, *supra* note 88, at 208.

¹⁴⁷ European Commission, Composite Paper - Reports on Progress towards Accession by Each of the Candidate Countries, COM(1998)700, summarized in EU Bull. 11/98, at 73-74 (1998)

summaries of the general progress of each applicant toward satisfaction of the Copenhagen political, economic and infrastructure criteria, noting briefly the results of the initial “screening” stage in negotiations. The report observes that all of the applicants made considerable economic progress, with annual GDP growth rates of between four to seven percent, “amongst the highest in the world.”¹⁴⁸ The Commission’s second progress report, issued on October 13, 1999,¹⁴⁹ marked another stage in the efforts of all the candidates to prepare for accession, and also summarized the achievements in the negotiations with the initial six states on the “fast track,” as it was often called. With regard to the political criterion, the report concluded that the September 1998 elections in the Slovak Republic had produced a government which had made essential reforms, notably in ensuring the independence of the judiciary, so that now all Central European candidates could be said to satisfy the political criterion.¹⁵⁰ However, the report continued to express concern that Estonia and Latvia were not adequately protecting minority rights, and that the Roma people everywhere continued to experience social and economic discrimination.¹⁵¹

On the economic side, the Commission observed that growth in the annual GDP had markedly slowed in late 1998 and early 1999, with some countries in recession (e.g., the Czech Republic and Romania), but that growth was recovering in late 1999.¹⁵² Overall, the Commission considered that Latvia was now a functioning market economy, while Lithuania and Slovakia were close to being ones.¹⁵³ However, only Cyprus and Malta were considered to be able to cope with competitive market forces in the EU.¹⁵⁴

The October 13, 1999 Commission report contained a section on an “Accession Strategy,” which recommended the start of negotiations with all of the candidates that met the political criterion (i.e., all except Turkey), in order to meet the “widely felt need for new momentum in the enlargement process.”¹⁵⁵ The Commission observed that this would permit “each applicant country to progress through the negotiations as quickly as is warranted by its own efforts to prepare for accession.”¹⁵⁶

[hereinafter 1998 Composite Paper].

¹⁴⁸ 1998 Composite Paper, *supra* note 147, at 5.

¹⁴⁹ European Commission, Composite Paper - Reports on Progress towards Accession by Each of the Candidate Countries, COM(1999)500, summarized in EU Bull. 10/99, at 55-57 (1999) [hereinafter 1999 Composite Paper].

¹⁵⁰ 1999 Composite Paper, *supra* note 149, at 14.

¹⁵¹ *Id.* at 15-16.

¹⁵² *Id.* at 17.

¹⁵³ *Id.* at 22.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 29.

¹⁵⁶ *Id.* at 30.

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Incidentally, on February 17, 1999, the Commission had updated its favorable opinion on the suitability of Malta for accession.¹⁵⁷ After an election in October 1996, the Maltese government froze its then-pending application, but new elections in September 1998 brought back into power a government desirous of renewing the application.

As we have previously noted, following the Commission's recommendation in its October 1999 progress report, the European Council at Helsinki on December 10 and 11, 1999 authorized the opening of negotiations with the second group of candidate nations, namely Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia.¹⁵⁸ This commenced a much more difficult and sustained period of negotiations with all the candidate nations except for Turkey.

The Final Negotiations, 2000-2002

Negotiations with the second group of applicants began on February 15, 2000 by an intergovernmental conference at the Foreign Ministers level.¹⁵⁹ The negotiations during 2000 moved fairly rapidly through most of the thirty-one chapters, provisionally closing from six to twelve for applicants in the second group, and from thirteen to seventeen for states that had begun negotiations in 1998.¹⁶⁰

The Commission's third progress report, presented on November 8, 2000, not only summarized with some satisfaction the steady evolution of the applicants toward accession, but also set out a "road map" for the remaining negotiations.¹⁶¹ On the political side, the Commission noted further progress, notably free and fair national or local elections in six applicants, together with efforts to modernize public administration and the judiciary.¹⁶² Even with regard to minority rights, the Commission noted favorable action in Estonia, Latvia and Slovakia.¹⁶³

With regard to the economic sector, the Commission observed that growth rates had risen substantially in Cyprus, Hungary, Malta, Poland and Slovenia, all over four percent, although the Baltic states and the Czech Republic were only ending recessions.¹⁶⁴ The Commission concluded that all the applicants except

¹⁵⁷EU Bull. 1-2/99, at 109 (1999).

¹⁵⁸EU Bull. 12/99, at 8 (1999). *See supra* text accompanying notes 89-92.

¹⁵⁹EU Bull. 1-2/00, at 78 (2000).

¹⁶⁰2000 General Report, *supra* note 91, at 218.

¹⁶¹European Commission, Enlargement Strategy Paper, COM(2000)700 [hereinafter 2000 Enlargement Strategy Paper], summarized in EU Bull. 11/2000, at 67-69 (2000) and in 2000 General Report, *supra* note 91, at 215.

¹⁶²2000 Enlargement Strategy Paper, *supra* note 161, at 15-16.

¹⁶³*Id.* at 16.

¹⁶⁴*Id.* at 18.

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Bulgaria and Romania were functional market economies and anticipated that all could withstand market forces in the Union within a medium term period.¹⁶⁵ The Commission also observed that financial assistance was now being considerably increased to over three billion euros¹⁶⁶ a year, including approximately one billion for environment and transport infrastructure, and 500 million for agricultural aid and rural development.¹⁶⁷

On the basis of this progress, the Commission decided to set out a “road map,” a strategy for moving the negotiations to a relatively rapid conclusion. The Commission outlined a schedule for serious examination of nine chapters in the first half of 2001, and nine more in the last half of 2001, reserving until 2002 the most sensitive chapters on agriculture, regional policy, finance and the budget, and institutional structure.¹⁶⁸

The European Council at Nice on December 7-9, 2000 endorsed the road map, expressing the hope that the new member states would be able to participate in the June 2004 Parliament elections.¹⁶⁹ The Council and Commission then put the “road map” into operation. Eneko Landaburu, Director General of the Directorate General for Enlargement, appraised the road map as working “extremely well,” enabling the negotiating teams to become better integrated into the process over time, and permitting the resolution of difficult issues more easily.¹⁷⁰ Incidentally, prior to the Nice European Council session, another European Conference of the Heads of State or Government was held on December 7, 2000, reviewing the state of progress to date.¹⁷¹

The European Council closely followed the progress of the negotiations and pressed for acceleration of the pace. At its meeting in Goteburg on June 15 and 16 2001, the European Council urged that negotiations be concluded by the end of 2002 with the candidate states then deemed otherwise ready for accession.¹⁷² On December 14 and 15, 2001, the European Council meeting at Laeken decided that negotiations should be concluded by the end of 2002 with the ten applicant nations that are, in fact, now joining.¹⁷³ The meeting also stated the firm goal of having the new member states participate in the June 2004 European Parliament elections. The European Council urged the candidates to continue energetic

¹⁶⁵ *Id.* at 21.

¹⁶⁶ *Id.* at 10.

¹⁶⁷ *Id.* at 25.

¹⁶⁸ *Id.* at 28-30.

¹⁶⁹ EU Bull. 12/00, at 9 (2000).

¹⁷⁰ Landaburu, *supra* note 103, at 6.

¹⁷¹ 2000 General Report, *supra* note 91, at 214.

¹⁷² European Commission, General Report on the Activities of the European Union 2001, at 1 (2002) [hereinafter 2001 General Report].

¹⁷³ EU Bull. 12/01 (2001).

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efforts “in particular to bring their administrative and judicial capabilities up to the required level.”¹⁷⁴

The Commission’s fourth report, “Making a Success of Enlargement,” issued on November 13, 2001,¹⁷⁵ continued to indicate the progress made by the candidate states in meeting the Copenhagen political criteria,¹⁷⁶ but urged greater efforts in reforming the judiciary, particularly to ensure its independence.¹⁷⁷ The applicant states enjoyed notable economic growth rates, on average in excess of that in the EU, but with a worrisome average inflation rate of over fifteen percent.¹⁷⁸ The report emphasized the need for action to improve the administrative and judicial capacity of the applicants.¹⁷⁹

The pace of negotiations in 2001 and early 2002 accelerated. By the end of 2001, between nineteen and twenty-five chapters were provisionally closed with all the applicants (except for Bulgaria and Romania, with whom negotiations moved slowly).¹⁸⁰ The European Council at Seville in June 2002 welcomed “the decisive progress made in the accession negotiations” and expressed a determination to conclude them by the end of 2002.¹⁸¹

On October 9, 2002, the Commission published an important strategy paper, “Towards the Enlarged Union,” along with its fifth annual report on the candidate countries’ progress toward accession.¹⁸² The key conclusion of the report is that ten nations—Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia—satisfied the Copenhagen political criterion¹⁸³ and either satisfied the Copenhagen economic criterion or would do so prior to accession.¹⁸⁴ As for the third criterion, the Commission concluded that all ten had made sufficient progress toward “alignment with the *acquis*” and “adequate administrative and judicial capacity,” so that with “further preparatory work” they could “assume the obligations of membership.”¹⁸⁵

¹⁷⁴ *Id.*

¹⁷⁵ European Commission, Making a Success of Enlargement, COM(2001)700, summarized in 2001 General Report, *supra* note 172, at 235-36.

¹⁷⁶ European Commission, Making a Success of Enlargement, *supra* note 175, at 10-12.

¹⁷⁷ *Id.* at 10.

¹⁷⁸ *Id.* at 13-14.

¹⁷⁹ *Id.* at 22-23.

¹⁸⁰ 2001 General Report, *supra* note 172, at 238.

¹⁸¹ EU Bull. 6/02, at 88 (2002).

¹⁸² European Commission, Towards the Enlarged Union, COM (2002) 700.

¹⁸³ *Id.* at 14.

¹⁸⁴ *Id.* at 15-16.

¹⁸⁵ *Id.* at 20.

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With regard to Bulgaria and Romania, the Commission considered that they both met the political criterion, that Bulgaria, but not Romania, could now be deemed to be a functioning market economy,¹⁸⁶ and that neither as yet satisfied the third criterion.¹⁸⁷ The two applicants proposed 2007 as the target date for their accession, and the Commission declared that it would strongly support their efforts to meet that goal.¹⁸⁸

The Commission determined that Turkey did not meet any of the Copenhagen criteria. The report particularly addressed the political criterion, noting that Turkey had made considerable progress in this regard through reform measures adopted by its Parliament in August 2002 (imposition of the death penalty only in case of war, and permission for broadcasting and education in languages other than Turkish).¹⁸⁹ However, the Commission found that serious issues needed yet to be resolved, e.g., ensuring civilian control over the military, guaranteeing freedom of expression, and ensuring administrative and judicial protection of human rights.¹⁹⁰

The October 2002 Brussels European Council endorsed the Commission's findings in its report, "Towards the Enlarged Union," and indicated that the final negotiations with the applicant nations should be concluded before its December meeting.¹⁹¹ The Brussels European Council also approved the Commission's proposal to deliver a final monitoring report on the applicants' further progress in November 2003.¹⁹² Moreover, the European Parliament on November 20, 2002, endorsed the Commission's report and the timetable for accession.¹⁹³ Although the final negotiations, especially on phasing in the Common Agricultural Policy, were extremely arduous, they were successfully concluded in December. The Copenhagen European Council on December 12 and 13, 2002 marked the conclusion of negotiations with the ten applicant states, and set May 1, 2004 as the accession date.¹⁹⁴ Accordingly, on May 1, 2004, the new member states will each designate a member of the Commission and a judge on the Court of Justice and the Court of First Instance, commence their membership and voting in the Council meetings, and will join with the present member states in the election of the Parliament in June 2004.¹⁹⁵ The Copenhagen European

¹⁸⁶ *Id.* at 16.

¹⁸⁷ *Id.* at 20.

¹⁸⁸ *Id.* at 29.

¹⁸⁹ *Id.* at 30.

¹⁹⁰ *Id.* at 30-31.

¹⁹¹ EU Bull. 10/2002, at 7 (2002).

¹⁹² *Id.* at 8-9.

¹⁹³ EU Bull. 11/2002, at 70 (2002).

¹⁹⁴ EU Bull. 12/2002, at 8 (2002).

¹⁹⁵ See the provisions concerning the Parliament, Council and Commission in the Protocol on the Enlargement of the European Union, annexed to the Treaty of Nice, *supra* note 12.

Council called this a “historic milestone” and declared that “[t]his achievement testifies to the common determination of the peoples of Europe to come together in a Union that has become the driving force for peace, democracy, stability and prosperity on our continent. As fully fledged members of a Union based on solidarity, these [new member] states will play a full role in shaping the further development of the European project.”¹⁹⁶

The Treaty of Accession and the Ratification Process

The Final Procedural Steps

At Athens on April 16, 2003, the formal Treaty of Accession (“Treaty”) was signed by the representatives of the present member states and the ten applicant nations, namely Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.¹⁹⁷ Other than setting May 1, 2004 as the date for accession, the Treaty has no substantive text. Instead, the Treaty is implemented through the Act Concerning the Conditions of Accession, composed of sixty-three articles which set out the amendments to the Treaty on European Union, the European Community Treaty and other fundamental treaties.¹⁹⁸ This Act of Accession is an extremely long document, accompanied by eighteen Annexes and various Protocols which contain the specific commitments of each applicant concerning each sector of the European Union, together with any exceptions to Community or Union rules and any transition periods before these rules are fully effective.

Naturally, the most vital provisions of the Act Concerning the Conditions of Accession are those that modify the institutional structure of the EU and the EC. Article 11 sets out the number of Members of the European Parliament (“MEPs”) allocated to the present and the new member states. The figures are slightly changed from those foreseen at the time of the Declaration on Enlargement annexed to the Treaty of Nice.¹⁹⁹ Because Bulgaria and Romania are not presently joining, the fifty MEPs initially allocated to them have been distributed among other states in such fashion that the total of all MEPs meets the ceiling of 732 (e.g., Spain and Poland both received fifty-four instead of fifty MEPs, the Czech Republic and Hungary twenty-four instead of twenty, etc.).

Article 12 sets out the weighted votes in the Council for each new state in accordance with those indicated in the Nice Protocol on Enlargement (e.g.,

¹⁹⁶EU Bull. 12/02, at 8-9 (2002).

¹⁹⁷TREATY OF ACCESSION TO THE EUROPEAN UNION 2003, Apr. 16, 2003, O.J. L 236/17 (Sept. 23, 2003) [hereinafter TREATY OF ACCESSION].

¹⁹⁸ACT CONCERNING THE CONDITIONS OF ACCESSION, O.J. L 236/33 (Sept. 23, 2003). The Act is followed by eighteen Annexes and the total text is nearly one thousand pages.

¹⁹⁹TREATY OF NICE, *supra* note 12. See also Goebel, *The European Union in Transition*, *supra* note 12, at Part I, *The Treaty of Nice in Effect*.

giving Poland twenty-seven weighted votes, the same number as Spain, while the Czech Republic and Hungary get twelve weighted votes, the same number as Belgium, and Cyprus, Estonia, Latvia and Slovenia join Luxembourg in having four weighted votes).²⁰⁰

Article 13 sets the number of judges for the Court of Justice and the Court of First Instance at twenty-five, so that each new member state will have a judge on both Courts. The Act does not add any new Advocates General to the present number of eight set by EC Treaty Article 222, as amended by the Treaty of Nice²⁰¹—presumably the new states will participate in the present system of rotation of Advocates General among the states.²⁰²

Article 45 provides that the ten Commission members to be designated by the new member states on May 1, 2004, will serve a brief term until October 31, because the 2004-09 Commission will take office on November 1, 2004. These transitional Commissioners will be formally named by the Council, acting by qualified majority, with the choices being made in accord with Commission President Prodi. This is a novel mode of selection. Traditionally each member of the Commission has simply been designated by his or her member state government. In the summer of 1999, for the first time, the nominees had to receive the accord of the newly chosen President (Prodi) in accord with the then-text of EC Treaty Article 214.²⁰³ The Treaty of Nice amended Article 214 to enable the Council to nominate prospective Commissioners by a qualified majority vote in accord with the President,²⁰⁴ the mode that will be used for the first time in choosing the ten new Commissioners. As a practical matter, the Council is highly unlikely to decline anyone nominated by a new member state. However, President Prodi might conceivably attempt to block a nominee whom he considers to be unsuitable, just as he did in 1999 when the present 1999-2004 Commission was selected.²⁰⁵ In analyzing TEU Article 49 on the mode of accession in Part I above, the final procedural steps before the signature of a Treaty of Accession were noted. The first is the opinion of the Commission. On February 19, 2003, the Commission issued a composite opinion endorsing

²⁰⁰ Because the system of weighted voting set out in Article 3 of the Treaty of Nice Protocol on Enlargement is only effective on Jan. 1, 2005, Article 26 of the Act Concerning the Conditions of Accession, *supra* note 198, provides for a transitional system of weighted votings from May 1 - Dec. 31, 2004.

²⁰¹ *Supra* note 12.

²⁰² Presently the five larger States each regularly name an Advocate General, while the other three Advocates General rotate among all the other States.

²⁰³ EC Treaty art. 214, as amended by the Treaty of Amsterdam, effective May 1, 1999, *supra* note 17.

²⁰⁴ EC Treaty art. 214, as amended by the Treaty of Nice, *supra* note 12, effective Feb. 1, 2003.

²⁰⁵ In the summer of 1999, Commission President-designate Prodi urged the UK to withdraw an initially proposed Conservative Party candidate for one of the two UK Commissioners. The Blair government did so, choosing instead the highly qualified Chris Patten.

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the accession of all ten applicants.²⁰⁶ The Commission opinion contains the customary two recitals concerning the “*acquis communautaire*.” Recital 9 states that “in joining the European Union, the applicant States accept, without reserve, the Treaty on European Union and all its objectives, all decisions taken since the entry into force of the Treaties establishing the European Communities and the Treaty on European Union and the options taken in respect of the development and strengthening of those Communities and of the Union.” Recital 10 declares that “the legal order introduced by the Treaties” includes the primacy of Community law, the direct effect of certain Treaty provisions and legislation, and the “uniform interpretation of Community law,” and concludes with the declaration that “accession to the European Union implies recognition of the binding nature of these rules.”²⁰⁷ Following the Commission opinion, the Council formally voted in favor of the accession of the new states on April 14, 2003.²⁰⁸

As previously indicated in Part I, the Treaty of Maastricht introduced into the TEU Treaty Article 49 governing accessions a requirement that the European Parliament give its assent before an accession can occur.²⁰⁹ The assent must be manifested by a vote showing an affirmative majority of all MEPs in office. The Parliament accordingly voted separately on each candidate state’s application for accession on April 9, 2003,²¹⁰ shortly before the formal signature of the Treaty of Accession. Although the numbers varied slightly, in each case the affirmative vote was over eighty-five percent. In its Resolution on the Conclusions of the Negotiations on Enlargement, the Parliament notably emphasized that:

“the accession of the ten new Member States will be an important step in building an even stronger and more effective European Union which will be needed to further stabilise the whole continent, consolidating democracy and peace, strengthening its economy and sustainable development and incorporating a cultural and human dimension based upon the shared values of liberty, respect for fundamental rights, good governance and the rule of law.”²¹¹

The ratification process is now in progress. Each of the applicant countries except Cyprus decided to hold a referendum on accession, but it is expected that all present member states will ratify by parliamentary action. Malta’s referendum on March 8, 2003, the first, provided only a narrow fifty-three

²⁰⁶ O.J. L 236/3 (Sept. 23, 2003); COM (2003) 79 final.

²⁰⁷ This recital parallels that in prior Commission opinions at the time of each successive accession. See *supra* text accompanying note 118.

²⁰⁸ O.J. L 236/15 (Sept. 23, 2003).

²⁰⁹ See *supra* text accompanying note 26.

²¹⁰ O.J. L 236/5 to 13 (Sept. 23, 2003).

²¹¹ Parliament’s resolution has not yet been published in the Official Journal. The text is available on the Parliament’s website in the section on plenary sessions.

percent majority for accession,²¹² but Slovenia's referendum, the second on March 23, 2003, produced a resounding ninety percent affirmative vote.²¹³ During successive referenda in May and June the people of Lithuania, Slovakia, Hungary, Poland and the Czech Republic also voted in favor by convincingly large majorities.²¹⁴ The final two referenda in Estonia and Latvia in September were expected to be fairly close, but in fact resulted in two-thirds majorities in favor of accession.²¹⁵

As previously noted, the Helsinki European Council in December 1999 urged renewed negotiations between the divided Greek and Turkish communities in Cyprus, but asserted that unification was not a precondition for accession.²¹⁶ The Brussels European Council on October 24 and 25, 2002 reiterated "its preference for a reunited Cyprus to join the European Union on the basis of a comprehensive settlement."²¹⁷ Despite vigorous negotiations under UN auspices, no agreement has been reached,²¹⁸ so only Greek Cyprus is expected to join in 2004. The Copenhagen European Council on December 12 and 13, 2002 declared that "in the absence of a settlement, the application of the *acquis [communautaire]* to the northern part of the island shall be suspended."²¹⁹ At least tensions between the Greek and Turkish communities were considerably reduced in 2003, particularly by the opening of the border to enable people to make visits, so that a long-term solution is no longer so doubtful. Indeed, an election in the Turkish community on December 14, 2003 resulted in an even split in its parliament between parties advocating negotiations in early 2004 to unify the island, and the former governing party led by President Denktash which prefers the status quo.²²⁰

²¹²T. Barber & G. Grima, *Island Melting Pot to Blend in EU Membership*, FIN. TIMES SPEC. REP. ON MALTA, Dec. 9, 2003, at 1.

²¹³See P. Green, *Slovenia Votes for Membership in European Union and NATO*, N.Y. TIMES, Mar. 24, 2003, at A7 (90% vote in favor).

²¹⁴The May referenda resulted in a 91% vote in favor in Lithuania and a 92% vote in favor in Slovakia. EU Bull. 4/03, at 62-63 (2003). The June referenda in both Poland and the Czech Republic produced a 77% affirmative vote. EU Bull. 6/03 at 91-92 (2003). See, e.g., R. Anderson, *Czechs Look Forward to Rejoining Western Europe*, FIN. TIMES, June 16, 2003, at 4; P. Green, *Poles Vote Yes to Joining European Union*, N.Y. TIMES, June 9, 2003, at A10.

²¹⁵EU Bull. 9/03 at 59 (2003). See N. George, *Latvian 'Yes' Vote Paves Way for Latest Addition to EU*, FIN. TIMES, Sept. 22, 2003, at 2 (67% vote in favor); *All In to Europe*, ECONOMIST, Sept. 20, 2003, at 48 (Estonian vote two-thirds in favor, despite June opinion polls showing an almost equal split).

²¹⁶See *supra* text accompanying note 93.

²¹⁷EU Bull. 10/02, at 8 (2002).

²¹⁸See, e.g., L. Boulton, *Denktash Rejects UN Peace Plan for Cyprus*, FIN. TIMES, Mar. 7, 2003, at 7 (President Denktash rejected the UN plan on behalf of the Turkish community).

²¹⁹EU Bull. 12/02, at 9 (2002).

²²⁰See A. Hadjipapas, *North Cyprus Poll Deals Blow to EU Hope*, FIN. TIMES, Dec. 16, 2003, at 4.

Transitional Arrangements and Safeguards

With their accession on May 1, 2004, the applicant states will become subject to the treaty rules and principles, notably the four freedoms, and to almost all of the internal market, agricultural, competition, social, environmental, transport and other legislative rules.²²¹ Fortunately, the applicant states have made substantial progress in adopting national legislation to conform to many of the Community directives and regulations in accordance with their obligations under the Europe Agreements and the programs set in the pre-accession partnerships. Indeed, the applicants' success in implementing so much of the "*acquis communautaire*" by the end of negotiations in 2002 has meant that there are remarkably few important derogations and transitional periods in the accession arrangements.

As is customary in accession treaties since the first enlargement in 1973, the Athens Treaty's Act of Accession provides, in detailed annexes, for a number of multi-year transition periods to phase in specific treaty or legislative rules.²²² Some periods are specific to individual applicant states, while others apply in identical terms to all or nearly all applicants. Occasionally the particular transitional arrangement is supplemented by a protocol which gives a binding permanent derogation with full treaty force, or by a declaration which serves as a statement of policy intention. It should be emphasized that in the absence of a transitional arrangement or a protocol, an applicant state is fully bound by the treaties and by all legislative and regulatory acts adopted pursuant to them (the full "*acquis communautaire*").

Undoubtedly the most fundamental treaty right limited by a transitional regime is that of free movement of workers, set out in EC Treaty Article 39, and of free movement of the self-employed, pursuant to Article 42. As noted above, the Europe Agreements did not contain any provisions enabling even partial free movement of persons.²²³ Austria, Germany and some other current member states have always been concerned with the risk that they might experience a flood of migrant labor from Central European nations with chronic high unemployment. From the outset of negotiations, restrictions on free movement of persons were certain to be inserted into the Act of Accession.

In point of fact, the transitional arrangements are not as restrictive as many observers had feared. The restrictions are stated in virtually identical terms in the Annexes covering the eight Central European applicants. (There are none in

²²¹On July 2001, a Commission report to Parliament estimated that the applicant states would have to translate into their own language some 90,000 pages of legislative texts constituting the "*acquis communautaire*." Commission Press Release IP/01/1145 (July 30, 2001).

²²²The Act of Accession, *supra* note 198, states in art. 24 that transitional measures are listed in Annexes V to XIV. Each applicant thus has an Annex that lists all transitional measures applicable to that state. The sequence is as follows: Annex V Czech Republic; VI Estonia; VII Cyprus; VIII Latvia; IX Lithuania; X Hungary; XI Malta; XII Poland; XIII Slovenia; XIV Slovakia.

²²³See *supra* text accompanying notes 39-40.

the Annexes for Cyprus and Malta, which have small populations and low unemployment rates.²²⁴) Thus, in Annex V for the Czech Republic, Article 1(2) permits present member states to continue their current national measures “regulating access to their labor markets by Czech nationals” until the end of a five year period following accession.²²⁵ Article 1(3) breaks the five years into an initial two year period, toward the end of which the Commission must make a report concerning migrant labor, and the Council must review the situation. Following this, each present member state has the option of continuing its restrictive measures for another three years. Article 1(5) permits the possible extension of such restrictions for a final two year period if a state can demonstrate that it is experiencing “serious disturbances of its labour market.”²²⁶ Germany and Austria, which presently have by far the largest number of legal migrant workers from Central Europe²²⁷ and may well expect more, due to their geographic propinquity and much higher wage levels,²²⁸ are expected to make use of the option to retain restrictive limits on migrant workers. Apparently only a few other states will permit free movement of workers from Central Europe virtually without restrictions.

Another fundamental treaty right that will be limited temporarily is that of free movement of capital in EC Treaty Article 56,²²⁹ with respect to the purchase of land. In this case it is the majority of applicant states that fear extensive purchases of their real estate, especially farms and secondary residences, by buyers from current member states. Accordingly, the Act of Accession Annexes for most applicant states permits them to retain for several years their current restrictions on purchases of certain types of land by non-nationals. Thus, Cyprus, the Czech Republic, Hungary and Poland may continue in effect for five years their current rules restricting the foreign ownership of secondary residences.²³⁰ Indeed, Malta obtained a treaty protocol enabling it to maintain its

²²⁴Indeed, Malta has a possible reverse protection against migration of labor from current Member States. Its Annex XI provides in art. 2 that if “Malta undergoes or foresees disturbances on its labor market,” it can request the Commission to permit it to suspend free movement of workers for a period necessary “to restore to normal the situation.”

²²⁵Act of Accession, *supra* note 198, Annex V at art. 1(2). The text does grant Czech nationals who have legally been employed for at least 12 consecutive months in a Member State full rights of “access to the labour market of that Member State but not to the labour markets of other Member States applying national measures.”

²²⁶*Id.* at art. 1(6). During this seven year period a Member State may require Czech nationals to possess work permits “for monitoring purposes.”

²²⁷*See, e.g., Moving Targets—Popular Fears about East Europeans Moving Westwards in Search of Work*, FIN. TIMES, June 16, 2000, at 14 (in 1998, Germany had 555,000 and Austria 103,000 migrants from Central Europe).

²²⁸*See, e.g., M. Smith, EU Expansion May Trigger Labour Inflow*, FIN. TIMES, May 20-21, 2000, at 2 (citing a Commission study indicating that Germany could anticipate a disproportionate number of migrant workers).

²²⁹EC Treaty Article 56, *supra* note 2, as amended by the Treaty of Maastricht (initially Article 73b, renumbered as Article 56 by the Treaty of Amsterdam).

²³⁰*See, Act of Accession, supra* note 198, Annex V for the Czech Republic, art. 2(1); Annex VII

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current restrictions on foreign ownership of secondary residences “for at least five years,” i.e., perhaps indefinitely.²³¹ All the Central European states except Slovenia received a derogation to protect ownership by nationals of agricultural land and forests for seven years.²³² Because the issue of agricultural land ownership is more sensitive in Poland than elsewhere, Poland was able to negotiate, and obtain, a derogation for twelve years.²³³

The most controversial transition period is with regard to the complete application of the Common Agricultural Policy (CAP). Because in Poland, Hungary and several other applicant states such a large percentage of the population is engaged in farming, and because the farms are usually small and often inefficient, the EU made clear at the outset of negotiations that its subsidies and support programs could only be phased in gradually.

Although negotiations on agriculture began in mid-2000, they centered principally on secondary issues, such as the phasing in of animal health and phyto-sanitary rules.²³⁴ After the Commission issued a strategy paper on enlargement and agriculture on January 30, 2002,²³⁵ the member states began a difficult debate on adopting a negotiation posture on agricultural aid, only concluding in late October 2002.²³⁶ Then the arduous negotiations with Poland, Hungary and other applicants with large agricultural sectors began. A final session held at the time of the Copenhagen Europe Council meeting in December 2002 achieved a compromise that somewhat sweetened the result for the applicant states.²³⁷

for Cyprus, art. 3; Annex X for Hungary, art. 3(1); Annex XII for Poland, art. 4(1).

²³¹Treaty of Accession, *supra* note 197, Protocol No. 6 on the acquisition of secondary residences in Malta. The Protocol cites “the very limited number of residences in Malta and the very limited land available for construction.” It is worth noting that Denmark obtained a Protocol to the Treaty of Maastricht enabling it to retain indefinitely its restrictions on the foreign ownership of secondary residences.

²³²See, e.g., Act of Accession, *supra* note 198, Annex V for the Czech Republic, art. 3(2); Annex VIII for Latvia, art. 3. Indeed, the seven year transitional periods may in each case be extended for a further three years if the Commission accept that the state concerned has provided sufficient evidence that this is necessary to avoid “serious disturbances or the threat of serious disturbances on the agricultural land market.”

²³³*Id.* at Annex XII for Poland, art. 4(1). Poland does not, however, have any expressly stated right to request the Commission for an extension.

²³⁴See, e.g., the transitional provisions concerning various Community veterinary rules on meat, egg and dairy products and on minimum standards for the protection of laying hens in Annex V for the Czech Republic, art. 3, and in Annex XII for Poland, art. 6.

²³⁵EU Bull. 1-2/02, at 107 (2002).

²³⁶See, e.g., E. Sciolino, *A Fight over Farms Ends, Opening Way to Wider Europe*, N.Y. TIMES, Oct. 25, 2002, at A.3 (Member States agreed to grant the applicants initially 25% of the customary farm aid level, phasing in the remainder in annual 5% increments).

²³⁷See, e.g., E. Sciolino, *European Union Acts to Admit 10 Nations*, N.Y. TIMES, Dec. 14, 2002, at A20 (Poland succeeded in obtaining a further \$430 million in farm aid for the new states between 2004 and 2006).

The final agricultural aid package is complex, easily understood only by specialists. The most important element is the phasing in of the direct subsidy payments to farmers, which will begin in 2004 at twenty-five percent of the level granted to farmers in current member states, rising gradually in percentage increments annually until they hit 100 percent in 2013.²³⁸ The applicants may increase (“top up”) the twenty-five percent amount by using their own funds to attain the level of fifty-five percent in 2004, and continue this “topping up” by thirty percent each year thereafter. In addition, the applicants will receive a special rural development aid package fixed at five billion euros for 2004-06.

In view of the fact that their farmers will receive substantially lower amounts of farm aid than those in current member states, the applicant nations will undoubtedly exert efforts for the creation of alternative employment in rural areas and the encouragement of early retirement of farmers. Indeed, already in 2002, the Community allocated 550 million euros to the rural development program, principally in Poland, Hungary, Romania, the Czech Republic and Slovakia.²³⁹ Nonetheless, many farmers are dissatisfied with the accord, and many less efficient farmers on small farms are apt to cease farming.²⁴⁰

The Annexes to the Act of Accession contain numerous additional transitional arrangements, but these are largely of concern only to specialists. Worth noting, however, are the emergency safeguard provisions in the Act of Accession itself. Under Article 37, during the initial three years after accession, either a present or a new member state may request the Commission to authorize emergency protective measures to ameliorate “serious deterioration in the economic situation of a given area.”²⁴¹ Under Article 38, the Commission has the power to adopt “safeguard measures” to remedy any “serious breach of the functioning of the internal market due to a new member state’s violation of its commitments,” again during the initial three years after accession.²⁴² Experience after past accessions suggests that neither article is apt to be frequently invoked, but these emergency safeguard provisions are manifestly a prudent precaution.

Future Challenges

Although May 1, 2004 marks a milestone in the efforts of the Central European and Mediterranean states to achieve a successful integration into the EU, there are inevitably many serious obstacles that they must yet overcome. In

²³⁸The agricultural aid package is described in detail in Commission press release IP/02/1882 (Dec. 13, 2002), summarized in Thomson, *European Union Law Reporter*, EU Update ¶ 1170 (2003).

²³⁹EC Commission, *General Report – 2002*, at 271 (2003).

²⁴⁰*See, e.g.,* C. Condon, *Small Farmers Face ‘Devastation,’* FIN. TIMES, May 2, 2003, at 4 (reporting concern that 250,000 small family farms in Hungary will become uncompetitive).

²⁴¹Act of Accession, *supra* note 198, at art. 37.

²⁴²*Id.* at art. 38.

particular, all of the applicants must substantially upgrade their administrative and judicial infrastructure and significantly improve their economic capabilities.

In application of the third, or infrastructure, criteria enunciated by the 1993 Copenhagen European Council, the Commission regularly reviewed this topic in successive progress reports, urging the Central European applicant nations to steadily improve their administrative civil service and their judiciary.²⁴³ On June 5, 2002, the Commission initiated an action plan to improve the administrative and judicial capabilities of each applicant.²⁴⁴ Special attention is being devoted to educating judges about the fundamental principles of Union and Community law and their appropriate mode of application and interpretation. Article 34 of the Act of Accession states that the EU will provide further financial assistance to the new states to “strengthen their administrative capacity to implement and enforce Community legislation.”²⁴⁵ The Commission’s final progress report, the Comprehensive Monitoring Report issued on November 5, 2003, expresses the concern that the applicants’ administrative capacity continues to “need strengthening in terms of human resources, training (including language training) and budget,” and notes the “perception . . . that the level of corruption in the acceding countries is still high.”²⁴⁶

In this final period, pre-accession financial aid to the Central European nations has been substantial. In 2002, the Phare program for infrastructure and technical aid totaled 1.7 billion euros, including, for example, eighty million euros to Lithuania to phase out its out-of-date nuclear plants.²⁴⁷ In addition, the European Investment Bank provided 3.6 billion euros in loans, chiefly for communications and telecommunication infrastructure development and for flood relief and control.²⁴⁸ The Act of Accession provides that no new financial commitment will be made under the Phare or similar programs after December 31, 2003.²⁴⁹ However, it is evident that in the future substantial amounts from the Community’s usual structural and infrastructure aid funds will have to be devoted to the needs of the applicant countries, a prospect which naturally concerns the chief past recipients of such aid (notably Greece, Ireland, Spain and Portugal).

²⁴³ See *supra* text accompanying note 174. Landaburu, Director-General for Enlargement, has observed that a “modern, well-functioning public administration” and a “well-trained judiciary versed in Community law” are indispensable for membership. Landaburu, *The Fifth Enlargement of the European Union*, *supra* note 103, at 9.

²⁴⁴ COM (2002) 256.

²⁴⁵ Act of Accession, *supra* note 198, at art. 34.

²⁴⁶ EC Commission, Comprehensive Monitoring Report on the State of Preparedness for EU Membership, at 8 (Nov. 5, 2003), available at http://www.europa.eu.int/comm/enlargement/report_2003/index.htm.

²⁴⁷ EC Commission, General Report – 2002, at 270 (2003).

²⁴⁸ *Id.* at 54.

²⁴⁹ Act of Accession, *supra* note 198, at art. 32.

Joining the European Union

There is no question but that the greatest challenges for the new states lie in the economic sphere. Although all of the ten applicants are considered to be market economies, several are relatively fragile economies that may find it difficult to meet the challenge of competition within the Union. None of the applicants is presently capable of joining the Monetary Union and adopting the euro, although all would like to do so, and Cyprus and Malta may be capable of joining the euro area in 2007 or 2008.

Although the Commission's Comprehensive Monitoring Report of November 5, 2003 concluded that "[m]acroeconomic stability has been preserved" in the acceding nations, it also noted that public finances have deteriorated in most applicant states, with annual deficits as high as nine percent, and persistent high unemployment.²⁵⁰ In view of the fact that none of the Central European applicant states have a GDP per person close to that of the lowest current member state (Portugal), it is apparent that stable economic growth remains a critical imperative for them.

A final word with regard to the applicant nations that will not be joining next May. Even Bulgaria and Romania accept that their economic progress has lagged behind that of the other candidate states. In its October 2002 report, the Commission asserted that both fulfilled the Copenhagen political criterion but would require several years to fully meet the economic and infrastructure criteria.²⁵¹ The two countries proposed 2007 as the target date for accession. Although the December 12 and 13, 2002 Copenhagen European Council endorsed this target, it did so provided that each applicant makes sufficient progress by that time, and the European Council specifically underlined "the importance of judicial and administrative reform" in this context.²⁵² On November 5, 2003, the Commission issued a special progress report on the pre-accession status of Bulgaria and Romania.²⁵³ While both continue to make political and economic progress, Romania lags behind economically.²⁵⁴ Both also continue to have serious problems in upgrading their administrative and judicial infrastructure.²⁵⁵ It is certainly by no means sure that each will be able to meet the 2007 target date for accession.

Incidentally, Croatia formally applied for accession in February 2003, and the Commission indicated in March that it would start the application review

²⁵⁰ *Supra* note 246, at 7.

²⁵¹ *See supra* text accompanying notes 186-88.

²⁵² EU Bull. 12/02, at 10 (2002).

²⁵³ EC Commission, Continuing Enlargement – Strategy Paper and Report on the Progress towards Accession by Bulgaria, Romania and Turkey (Nov. 5, 2003), available at http://www.europa.eu.int/comm/enlargement/report_2003/index.htm.

²⁵⁴ The Commission concluded that Romania was still not a functioning market economy, although close to being one. *Id.* at 10.

²⁵⁵ *Id.* at 11.

process.²⁵⁶ Croatia is considered to have a reasonable prospect of joining the EU before the end of the decade. No other European nation has any immediate prospects of applying for accession, although the Ukraine would certainly be interested in doing so at some point.²⁵⁷

With regard to Turkey, the Commission's October 2002 report concluded that it does not satisfy any of the Copenhagen criteria, although praising it for substantial headway in all three areas.²⁵⁸ The December 12 and 13, 2002 Copenhagen European Council declined to set a target date for negotiations, but stated that if the Commission concluded that Turkey fulfilled the political criterion, then the European Council meeting to be held in December 2004 would authorize the initiation of accession negotiations.²⁵⁹ Although it expressed great disappointment over the delay,²⁶⁰ the Turkish government continues to press vigorously for political and human rights reforms, as well as for economic progress, and requests accession negotiations with increasing intensity. Thus, in mid-2003, Turkey adopted legislation intended to place the military under stronger political control and permit the use of languages other than Turkish in the media.²⁶¹ However, because Turkey is considered to have a fairly decisive influence over the Turkish community in Cyprus, a peaceful integration of the Greek and Turkish communities may well also prove to be an implicit pre-condition for Turkey's accession.²⁶² The European Council at Thessaloniki on June 19 and 20, 2003 specifically supported Turkey's "efforts to fulfill the Copenhagen political criteria" but warned that "significant further efforts . . . are still required."²⁶³

Conclusion

This article has presented an overview of the complex legal and political process by which ten applicant nations from Central Europe and the

²⁵⁶EU Bull. 3/03 at 102 (2003). The new Central European Member States are quite likely to support early and rapid negotiations with Croatia.

²⁵⁷See, e.g., J. Dempsey & G. Parker, *EU Enlargement Chief Keeps an Eye on the Distant Horizon*, FIN. TIMES, Oct. 10, 2003, at 4 (Commissioner Verhergen reviews prospects of the Ukraine).

²⁵⁸See *supra* text accompanying notes 189-90.

²⁵⁹EU Bull. 12/02, at 10 (2002). See also E. Sciolino, *European Union Turns Down Turkey's Bid for Membership*, N.Y. TIMES, Dec. 13, 2002, at A16.

²⁶⁰D. Filkins, *Turks Denounce European Snub—But Then Soften Their Tone*, N.Y. TIMES, Dec. 14, 2002, at A10.

²⁶¹D. Filkins, *Turkey: Parliament Backs Reforms*, N.Y. TIMES, June 20, 2003 at A8 (Turkish legislation authorizes radio broadcasts in Kurdish); *Turkey Moves to Limit Military's Clout*, INT'L HERALD TRIB., July 31, 2003, at 4 (powers of military's National Security Council reduced).

²⁶²J. Dempsey, *'Cyprus Problem' Threatens Turkey's EU Aim*, FIN. TIMES, Nov. 5, 2003, at 4; J. Dempsey, *Turkey Told That Cyprus Deal Would Assist Its Bid to Join EU*, FIN. TIMES, Nov. 20, 2003, at 3.

²⁶³EU Bull. 6/03, at 13 (2003).

Joining the European Union

Mediterranean are joining the European Union. Within a matter of months, on May 1, 2004 the EU will be enlarged from fifteen to twenty-five member states, augmenting significantly its political and economic importance.

In view of the large number of candidate states, it is astonishing that the pre-accession process has been completed so quickly. Who could have foreseen in 1990 that within fifteen years so many fledgling Central European democracies would become an integral part of the EU? The rapidity with which the new democracies of Central Europe have carried through their evolution into free market economies capable of becoming member states is certainly remarkable. Also remarkable has been the role of the Commission as the working engine of the accession process. Finally, the political vision and leadership of the European Council is to be commended in its establishment of the Copenhagen criteria for membership and in its guidance of the successive phases of the accession process.

Although the candidate nations will certainly have transitional economic and social difficulties to overcome as they integrate their economies into the EU, in the long run this integration is bound to be highly beneficial to their people. Likewise, although the EU's institutional structure will undergo a period of adjustment in accommodating so many new member states, in the long run the European Union will benefit significantly from the political, social, cultural and economic contributions of the candidate nations.