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Demand for Take-Over of the Whole *Acquis* by the Accession Countries – an Impediment for Membership?*

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Summary

According to Copenhagen criteria from 1993, EU defined the take-over of the complete body of common EU legislation (so called *acquis communautaire*) as one of the requirements for EU membership – together with democracy, protection of human rights, market economy and external security. While the accession countries have mostly achieved other prerequisites of becoming an EU member, the implementation of the *acquis* remains a difficult and contested issue and is hence an impediment for membership. The author investigates the corresponding position of interests for both the old EU members and the candidates concerning the *acquis*. The author concludes that the EU enlargement will not fail due to the opposition of the old members, since the potential enlargement losers will be compensated for. In the accession countries, however, the fulfilment of membership requirements must be democratically legitimised: therefore it needs support both from EU and candidate country governments.

Key words: European Union, accession countries, *acquis communautaire*, economic policy, equalization policy



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The European Union's (EU) demand to the admission candidates, to take-over the common body of legislation, the *acquis communautaire*, is surely an impediment for admission. Without that demand the preparations for admission would have been completed faster, but the admission negotiations not necessarily easier, as in that case the regulation facts, which are now defined by the *acquis*, would have to be determined in another way. Admission requires, however, in any case an equalization of interests be-

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tween the EU and their member states on one hand and the accession countries on the other hand.¹

The different interests though go far beyond the *acqui*. Very early the EU adopted already at the EU summit of Copenhagen in 1993 a list of criteria, which the candidates have to fulfil, in order to be able to become a member. That list includes apart from the take-over of the *acquis* further far-reaching demands like those for democracy, constitutional state, respect of human rights, market economy, competitiveness, and non-impairment of the integration process. Two years later, the Copenhagen list was extended in Madrid by the demand, according to which the accession countries had to provide for sufficient administration and justice capacity in order to incorporate the *acqui*. These demands go in some points beyond the conditions, which are foreseen by the treaties to the present member states, both in letters and in interpretation. The EU is verifying the observance of conditions and the approach of the candidates on how they perform them within the framework of their annual progress reports.

So it happened that the EU stopped the accession process of Slovakia for years, as they accused the Mečiar Government of using undemocratic practice. And in fact, a number of measures and activities of that government did not meet Western conceptions, but they merely violated in clear and provable form the letters of international treaties. That applies especially to his policy towards the Hungarian minority. Minority policy is generally an important part of the critical EU demands, although traditionally they are of almost no importance within the EU. The conflicts that do exist within the EU (for example Northern Ireland, Basques, Corsicans) were hardly an object of diplomatic initiatives by other member states or even the community itself. It can also hardly be imagined that the member states in question would have tolerated such interference, as the example shows of the failed anti-Haider-policy towards Austria. Other examples for such cases where double standards are being applied can be found: for years, the EU had criticized Romania for the conditions in the orphans' homes. Also the criticisms uttered by some member states at border-near nuclear power stations (for example Temelin in the Czech Republic) is not covered by EU-law, but emerges from the – maybe justified – concern about security. The referendum that was organized in Austria in January 2002 rose interesting questions in that field concerning democracy and integration- policy in the way that it binds Austria's approval to the Czech membership to the shutdown of the power plant. Another critical problem is the membership of Cyprus, of which Greece is threatening that they will give their approval by making it conditional on further enlargements. Here are among others candidates affected, who almost have no influence on the fulfilment of the conditions, that is an acceptable settlement between the two partial entities of the island.

Insofar, the take-over of the *acquis* is only one of many possible impediments for membership and maybe not even the most important one. Nevertheless, the take-over of the *acquis* represents for both parts a central element in the accession process. In the following text, we will in more detail investigate the corresponding position of interest for both the old members and the candidates concerning the *acquis*.

¹ Cf. Lippert 2000. In this publication there are also two contributions by the author.

View of Present EU Members²

The *acquis* itself is the product of a decade-long equalization of interests among the present member states and in fact also the product of former enlargements and the equalization of interests of old and new member states achieved by that. The most important Community policies represent such compromises. The Common Agricultural Policy and the Customs Union for industrial goods represented an equalization of French agricultural interests and German industrial interests, which formed the economic core of the Community foundation. With the enlargements of the Community the regional and structural policy gained importance, to equalize the growing differences in income and structure. For the member states of today the safeguarding of these parts of the *acquis* is an important condition for the enlargement.

Thereby the extension of the existing policies on the new members is jeopardizing also the old compromises, as it potentially implies burdens and redistribution to a sensitive extent. So the extension of Agricultural Policy on the countries with big agrarian sectors and low income is costly, although a matter that can be financed. Likewise an extension of the regional policy in its present form will not only burden the EU-budget but also bring about a considerable redistribution of means between the poorer old member and the still poorer accession countries. The old members who could not arrange in Berlin – when adopting the agenda 2000 at the EU-summit of Berlin in 1999 – for a far-reaching reform of the Agricultural and structural policy, postponed that need for reform into the accession negotiations and the advanced negotiations, whose result, however, the candidates would have to accept.

But even here it is not improbable that they use double standards. The EU intends to fix, in the field of structural and regional policy, for new members an upper limit of 4 % of the national income of the recipient country. On the other hand, other poorer member states received in some periods higher percentages, although they were relatively richer than the present candidates. In a similar way, in agricultural policy the EU is trying to avoid direct payments to the farmers of the new members – with the likely reasons that they would not have to be compensated for decreases in the price subsidies, of which they never benefited before. It remains to be seen on which compromise the EU and the candidates will agree here. It is natural though that every reform in structural and agricultural policy triggers also a conflict among the old members, who are differently affected as net payers or receivers. The coalitions and majorities arising thereby depend especially on the shaping of the reform, like the threshold for regional aid (percentage of EU average income below which countries are eligible for transfer claims) or the form of aid (transition from regional to national principle, whereby the aid for poorer regions in rich countries is left with the rich countries themselves, without any EU transfers). The *acquis* and its concrete formation, therefore, cannot be separated from the accession process.

The legislation that regulates the internal market and the four basic liberties (free movement of goods, services, persons and capital) has to be evaluated in a more differentiated way. Here the distribution effects among the present members and between the

² The following statements are a broader version of an earlier article by the author (Dauderstädt 2000).

old and new members (finally also among the new members) turn out to be more complex. The market integration is – to a different extent – of advantage and disadvantage respectively, for the different social groups (work and capital), economic fields and regions. Essentially it will be Germany and – to a lower extent – Austria and Italy that will benefit of more economic exchange. At the same time, however, in these countries the groups negatively affected by the competitors are also most burdened (for example low qualified work force in the construction sector, in the catering industry and in agriculture, especially in border-near regions). Investors, exporters and importers are interested in improved legal security and risk elimination but also in the cutting down of competition distortions, which brings about the take-over of EU laws in accession countries.

The following table 1 shows some important advantages and disadvantages of enlargement effects which are to be expected in the member states and the EU as a supranational organization respectively.

Table 1: Expected Advantages and Disadvantages of the Enlargement for the EU and their Member States

Fields of action	Advantages	Disadvantages
Trade liberalization	Development and providing for export markets	Import competition
Free flow of capital	Providing for investment locations	Job rotation
Economic integration on the whole	Higher overall competitiveness	Production relocation
Freedom of movement	Cheap labour forces	Social consequences of migration
Transfer payments, structural funds, regional funds	Additional exports thanks to higher demand in Central and Eastern Europe (for example counselling, supply)	Budget costs (transfer payments), lower transfers to previous receivers
EU as supranational actor	More international weight	Higher diversity of interests, more complicated decision procedures, lower ability to act

The said advantages and disadvantages naturally affect mostly different social groups and member states respectively. The corresponding interest and distribution problems have to be solved both nationally and within the EU. Even without a deeper analysis of the interests on the side of the old members, it becomes clear that the role of the *acquis* is conflicting. Its take-over by the accession states on one hand can not be renounced for the old members and the EU as supranational organization, on the other hand it also burdens in single points the member states, and that's why they aim at real-

izing exemption provisions in fields they consider problematic, like for example Germany or Austria in the free movement of employees.

View of the Accession Countries

During the change of the system, the transformation countries early fixated on the EU-membership. Especially for the anticommunist opposition elite a EU-membership seemed to offer the best international hedge of their three goals: democracy, market economy and return to Europe. Also public opinion polls in general showed up to 1996 high rates of approve of more than 80 %, whereby the ideas concerning the EU were mostly vague or wrong. As the membership preparations advanced, public consent decreased and the awareness of future problems increased. Many goals were achieved, which were aspired with the membership, while the take-over of the *acquis* involves also considerable costs.

Some of the goals, which were important ten years ago, today seem already achieved to a large extent:

- *External security* is hardly threatened and at least the NATO-members Poland, Czech Republic and Hungary cannot expect better protection from a membership in the EU.
- *Democracy* is in most countries – despite massive social crisis – astonishingly stable. It is also more a condition for a EU-membership (Copenhagen criteria) than its consequence. In some respect an EU-membership restrains also democracy or exposes it to new risks. Many decisions that now underlie national democratic control are made after the membership in Brussels, which shows a notorious “democracy deficit”. The membership may polarize also the political forces and provoke a coalition of membership opponents of different kidneys (transformation losers, anti-Western and authoritarian forces, nationalists, market sceptics).
- Also the *transition to market economy* is mostly completed thanks to liberalization and privatisation. It is also part of the conditions set forth at Copenhagen and would not be a result of the membership. In the field of regulation policy the take-over of the *acquis communautaire* now rather deals with a certain moulding of market economy in the form of an overwhelming regulations’ density both in quantity and quality.
- *Economic integration* has already far advanced. In foreign trade of the candidates, the shares of the EU are with more than 60 % on the level that can be expected in view of size and proximity of the involved national economies. The “return to Europe” has already been reached in economy.

That immense transformation performance of the countries of Central and Eastern Europe has, however, in many points so far failed to meet its most important goal, which is to achieve a higher prosperity for the population of these countries. For with both the departure from planned economy and the EU-membership, the people were first of all interested in more prosperity, and to approximate their standards of living to

the standards of Western Europe. Already the experience with the transition to market economy and the opening of foreign trade were rather traumatic for the countries: Deep slumps in growth and employment, more poverty and inequality as well as a place in the international division of labour, which is now defined by low wages and cheap local resources (not like before 1989 in the role of sellers of medium level technology and highly qualified labour in the Eastern bloc). Correspondingly bad is the opinion of many people in Central and Eastern Europe about market economy in general – which nonetheless often does not impede them to be in favour of EU-membership.

Thus, the change of rules and property situations in the course of transformation brought about only partly the wished results. The differences between the countries are considerable in that context. Poland and Slovenia are the only two countries that exceeded in 1998 the national income of 1989. Hungary is – thanks to early reforms and massive foreign direct investments – the only country whose export structure has started a clear change to products of higher value (especially of machinery).

The specific problem for the accession countries of Central- and Eastern Europe is their relative low development in comparison to Western Europe. They need a long phase of growth above the average, in order to catch up. It would, especially in the interest of political stability, be desirable if impoverishment and growing inequality is inhibited and possibly made undone. “Prosperity for all” is the best guarantee for democracy, peace and stability in Central and Eastern Europe and should therefore also be the goal of the EU. But is membership and a quick take-over of the *acquis* the best way to that and how should the accession process be arranged, in order to meet its main purpose?

Growth development of other poor countries, which joined the EU, shows no definite pattern: Portugal that acceded in 1986, is a relative story of success, Greece (membership in 1980) is a deterring example. Ireland (membership in 1972) has for only ten years been the economic wonderland of the EU with 5 % growth, but considerable distribution problems. If one measures the Irish growth not as usual against the gross domestic product but the gross social product³, then it is still one of the poorest countries of the EU. Nobody knows whether the image without EU-membership would have been better or worse. The first post-communist “Eastern enlargement” by the former German Democratic Republic (GDR) led – true under special conditions like an over-valuated currency – to an almost total economic collapse and permanent dependence on transfers. This special form of the “Dutch disease” threatens also Central and Eastern Europe after their membership (see warning “currency appreciation” in the following table 2).

³ Hereby the income produced by foreigners in Ireland, especially foreign investors, is deducted and the income gained by the Irish abroad added.

Table 2: Probable Advantages and Disadvantages of EU-membership for Accession Countries

Fields of action	Advantages	Disadvantages
Transfer payments of EU	Additional budget receipts, higher import capacities	Currency appreciation, burden of national households by co-financing, high costs due to take-over of <i>aquis</i> (for example environment, Schengen)
Free flow of capital	More direct investments, growth of productivity through modernization of investment stocks, infrastructure, education etc. with the help of EU and direct investments	Currency appreciation, competition for domestic suppliers
	More portfolio investments, higher import capacity	Currency appreciation, “selling out” of domestic property, increase of property prices, redistribution in favour of property owners
Trade liberalization	Secured market access to EU	Competition for domestic suppliers, adoption of internal market rules burdens Central and Eastern European companies and benefits suppliers from former EU, price increase of merchantable goods (food!), therefore pressure on real income, undermining of competitiveness based on low wages
Freedom of movement	Jobs in EU-countries, foreign exchange earnings by guest workers’ remittances	Loss of qualified labour force (<i>brain drain</i>)
Schengen, Regional development	Recovery in EU border regions	Segregation against East, problems in border regions, aggravation of regional disparities
Economic policy	Lower risk of indebtedness, balance of payments’ and fiscal crisis (like in Hungary and Czech Republic 1995/96), obligation to pursue solid monetary and fiscal policy	Loss of monetary, fiscal, trade and structural policy governing capacities, stability bias of monetary policy, in case of Estonia’s deliberalisation of trade and agricultural policy
EU as supranational actor	Influence on arrangement of EU policies	Loss of sovereignty, especially for small countries relatively minor influence despite institutional reform of EU

Obviously it is each national policy that decides on how the new member develops. Membership in the EU as such is no success guarantee for growth. In international comparison, the EU is rather characterized by unemployment above average than especially quick growth. Also the reducing of income disparities between rich and poor regions of the EU is remaining in tight bounds. In a monetary union, this equalization is only possible through an “inflating” of incomes (Balassa-Samuelson-effect) in the

catching-up regions/countries, which the EU economic policy would have to tolerate, but it does this only reluctantly. From the viewpoint of some observers it would be preferable to unilaterally take-over the Euro without membership in the monetary union with its stability policy strait jacket.⁴ All in all the development of the accession countries depends on the fact, how they use the advantages of EU-membership, without succumbing to their risks and side effects. Special attention has to be paid to the political dangers of redistribution effects, which are attributed to foreign forces.

If one compares the advantages and disadvantages of EU-membership in analogue with the member states (table 1), then there results a similarly differentiated picture as is shown in table 2.

- No demands in the field of science and research, education and schooling, small and medium-sized companies, common foreign and security policy, statistics and financial control;
- Few demands in the fields of culture and audio-visual communication, industrial policy, fishery (existing treaties, aids, preservation of species), economic and monetary union (Article 109k), judiciary and internal affairs (Schengen), structural policy and free movement of persons (costs of medical care, recognition of exams);
- Transitional periods in the field of telecommunication (public telephone nets, cable TV etc.), enterprise law (patents), free flow of goods (medicine), consumer protection (national regulations on product liability are more severe), foreign trade relationship (existing free trade zones and customs unions, bilateral market protection), agriculture (abundance of rules and standards), customs union (maintenance of low customs towards the neighbors), competition policy (subsidies), social policy (job security, content of tar in cigarettes), energy (among others stock supplies in crude oil), transport (access for EU flight lines, liberalization of freight transport, truck weight, liberalization of transport by water, tachograph, cabotage etc.), movement of capital (sale of real estate, pensions funds, etc.), environment (municipal waste water, drinking water directive, package, ground water protection etc.), free flow of services (demand for own capital, protection of investors, regulation of banks, protection of depositors), taxation (value added tax rates, taxation of regular companies and subsidiary companies, taxes on alcohol and tobacco, etc.).

Most demands indicate that there are fears concerning high costs and / or competitive disadvantages. In single cases it is about cultural concerns.

Prospects

The *acquis* would turn out to be a real impediment for membership, if the accession failed due to the question of its take-over. The above elaborated interest conflicts give some rise to such fears, as there do exist considerable groups of enlargement losers on the side of the old members and of accession losers respectively on the side of the candidates.

⁴ That is about the proposition of Andrzej Bratkowski and Jacek Rostowski (2001).

Whether and how strong these groups can enforce their claims, depends on one hand on the national and European compensation and equalization policies. On the other hand, the different groups have different abilities to enforce their demands in the national political systems and the EU policy on the whole – either directly by influence on EU institutions (Parliament, Commission) or indirectly through the National Government (and thus on the Council). Finally the weight and willingness of the integration winners to compromise (i.e. readiness to pay in the framework of compensation strategies) has to be put against that.

On the side of the old members a refusal of accession of new candidates is rather improbable. The negatively affected member states will probably be compensated by interim regulations, as there is an indication in the fact that in the December 2000 Nice summit, they gave in to the Spaniards' insisting on consensus in the regional policy by 2007. But the refusal of the contract of Nice by Ireland portends that in the end there is no absolute security. There will probably be in no old member state country a referendum on the enlargement, as it took place only once in France in 1972 before the first EU enlargement. We already referred above to the possible reservations of Austria and Greece.

It is different with the candidate countries. In many countries there are foreseen referendums. In opinion polls the rates of consent oscillate, which as a rule have been clearly decreasing since 1996. True, there are only a few political parties, who plainly declare themselves against a EU-membership, but they do exist and occasionally (for example in 2001 in Poland) they achieved surprising successes. So far, most of the articulated interests in that context are rather vague (fear from excessive proportion of foreigners etc.). If they should manifest themselves more in form of concrete compensation and interim regulations, which put the national and EU policy before concrete decisions, then the supporters of an enlargement would have to develop more political imagination than they did so far with simple insisting on the *acquis*.

Then, in the enlarged Union more differentiating will be probably necessary on one hand and stronger equalization policies on EU level on the other hand. In any case, it has to be assumed, in view of the here-above described constellation of interests, that such a trend – if it does not occur in the course of the accession process – will prevail after the enlargement under the pressure of the then considerably more influential new members. From their point of view the swallowing of the bitter pill of the *acquis* may be the price to finally enter the Club and thus participate in determining the standards. The double standards described in the beginning, which the EU uses for the members and candidates (for example in the minority policy) have probably taught the candidates an important lesson.

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