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PEDALLING AGAINST THE WIND

**STRATEGIES TO STRENGTHEN THE EU'S CAPACITY TO ACT
IN THE CONTEXT OF ENLARGEMENT**

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PREFACE

The enlargement of the European Union with a considerable number of new member states will have great influence on the ability of the Union to function adequately. In this study the authors therefore offer a comprehensive and reasoned overview of enlargement and integration strategies that may strengthen the EU's capacity to act in the context of enlargement. After having delineated the main features of the EU model as it emerges from the Treaties and other major EU documents, the authors identify two sets of evaluation criteria, on the basis of which the strengths and weaknesses of the various enlargement strategies are assessed.

This working document has been written for the project 'Enlargement of the EU to Central and Eastern Europe (CEE)' that the Netherlands Scientific Council for Government Policy (WRR) has on its working programme. As such, it contributes to achieving the central objective of the project, that is to provide building blocks for the European policy of the Dutch government with respect to the process of accession to the European Union of the CEE countries (the enlargement problem); the preservation of the achievements of the Union after enlargement (the implementation and enforcement problems); and the design of decision-making structures that would put the EU in the position to meet the internal and external challenges after enlargement in an effective and legitimate way (the decision-making problem).

These aspects form the subjects of two WRR reports to the Dutch government, i.e. *Towards a Pan-European Union* (2001), which focuses on accession and preservation problems, and a second report, to be published in 2002, that zooms in on the challenge of decision-making after enlargement.

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CONTENTS

Preface	3
Contents	5
1 Introduction	7
1.1 Background: Towards a Pan-European Union	7
1.2 Research objective and central questions	11
1.3 Limitations of the study	13
1.4 The structure of the study	13
2 Problematic diversity and adequate strategies for the European Union: the normative points of reference	15
2.1 Introduction	15
2.2 The essence of the EU	17
2.2.1 A Union built on geographical and historico-cultural foundations?	18
2.2.2 A Union built on civic foundations?	19
2.2.3 A Union of values and action pursued through a ‘rights-and-obligations’ approach	21
2.2.4 The intrinsic qualities of the current EU model	26
2.3 Problematic diversity for the union of values and action	27
2.3.1 Nature of the challenge, sources of diversity and types of problematique	27
2.3.2 The enlargement problematique	30
2.3.3 The problematique of the preservation of the <i>acquis</i>	31
2.3.4 The integration problematique	32
2.4 Criteria for the evaluation of enlargement and integration strategies	33
2.4.1 Managerial criteria	33
2.4.2 Systemic criteria	34
3 Strategies to manage diversity: existing toolbox and alternative solutions	39
3.1 Suppressing diversity	39
3.2 Diminishing diversity	40
3.3 Buying off diversity	41
3.4 Accommodating diversity	42
3.4.1 EC/EU policies with a differentiated application of common obligations and rights	43
3.4.2 EC/EU policies incorporating an element of case-by-case flexibility	43

3.4.3	EC/EU policies established on the basis of ad hoc flexible arrangements (predetermined flexibility)	44
3.4.4	Intra-EU closer co-operation established on the basis of ad hoc flexible arrangements	44
3.4.5	Intra-EU closer co-operation established on the basis of the general enabling clauses set out in Title VII of the TEU	45
3.4.6	Extra-EU closer co-operation with a direct link with the EU	45
3.5	Circumventing diversity	46
4	Evaluation of enlargement strategies	47
4.1	Introduction	47
4.2	Suppressing diversity	48
4.2.1	Formulating conditions	55
4.2.2	Promoting unilateral adoption and implementation of the acquis	57
4.2.3	Offering or imposing partial integration	67
4.3	Diminishing diversity	81
4.3.1	Convergence through market forces	84
4.3.2	Convergence through financial transfers	87
4.3.3	Convergence through learning	89
4.4	Buying off diversity	91
4.5	Accommodating diversity	94
4.5.1	Transition periods	94
4.5.2	The core acquis test	98
4.5.3	Permanent exemptions	101
4.5.4	Redefinition of the intervention	103
	Literature	109

1 INTRODUCTION

1.1 BACKGROUND: TOWARDS A PAN-EUROPEAN UNION

The EU presently envisages a process of enlargement that might more than double its membership over the next decades. Negotiations with a first group of applicants (Poland, Hungary, the Czech Republic, Slovenia, Estonia and Cyprus) started in March 1998. At the Helsinki European Council, in December 1999, the EU decided to open negotiations with six other candidate countries (Slovakia, Latvia, Lithuania, Bulgaria, Romania and Malta). In addition, the EU granted Turkey official 'candidate status', although no negotiations are to be opened before some time. After having declined to attend the 'European Conference' (the multilateral forum for political consultation on issues of common interest to the EU Member States and aspirant countries), Turkey eventually decided to join in in November 2000.

The list of prospective members goes well beyond these thirteen candidates. Some of them have already received explicit or implicit recognition of their European ambitions. Norway and Switzerland have long since been recognized as eligible candidates. The Union is following with interest attempts to prepare renewed applications. At the Vienna European Council (December 1998), it invited Switzerland to participate in the European Conference as a 'member elect'. Among the more recent aspirants are the countries that failed to qualify for candidate status with the rest of the Balkans: Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, and Albania. Crises in Albania and Kosovo nevertheless have led to a deeper involvement of the EU in the region, resulting in the 'Stability Pact for South Eastern Europe' (June 1999). Although the wording of the Pact is not straightforward, it states that: 'The EU will draw the region closer to the perspective of full integration of these countries into its structures ... through a new kind of contractual relationship taking fully into account the individual situations of each country with the perspective of EU membership' (Stability Pact 1999: par. 20). Besides states already included in the enlargement process (Hungary, Slovenia, Bulgaria, Romania, and Turkey), the Stability Pact involves the five Balkan countries mentioned above. Further East, Ukraine and Moldova were both invited to join the European Conference. The European Council of June 2001 in Göteborg went one step further with Ukraine by explicitly recognizing its 'European aspirations' (Presidency Conclusions Göteborg European Council: par. 14). The long-term perspective of accession for countries such as Belarus, Georgia and Armenia is also envisaged in the literature, although the Union has taken no official position on this issue. Finally the case of Morocco should be mentioned, even if the Union has already declared that the country is not eligible for membership.

There is a certain anxiety within the EU that such a large increase in the number of members as well as the diversity that each of them would bring in, could jeopardise what has been already achieved and could diminish the Union's capacity to act.

This concern underpins the reports of a number of think tanks and reflection groups on enlargement-related institutional questions (Amato and Batt 1999; Commissariat général du Plan 1999; Dehaene, Weizsäcker and Simon 1999; Independent Commission for the Reform of the Institutions and Procedures of the Union (ICRI) 1999; Gablentz, et alii 2000).

This enlargement-driven discussion on the institutions of the Union is, for some, ‘... an odd debate in so far as the cataloguing of problems is somewhat divorced from solid evidence’ (Wallace, Helen 2000: 162). Among other arguments, it is said that there are well-established techniques for adapting EU legislation to accommodate different circumstances in individual Member States (De la Serre and Wallace 1997) and that numbers of participants in EU negotiations make much less difference to the outcomes than is supposed. Calling for ‘evidence rather than assertion’, Helen Wallace therefore pleads for systematic assessment of the impact of previous enlargements on the EU process of integration.

The study of previous enlargements could improve our general insight into enlargement dynamics, but would not provide ‘evidence’ on post-2004 developments. Previous rounds show that enlargement is usually accompanied by a deepening of integration and that, for many late-joiners, EU membership ran ‘in parallel with an extension of positive interconnectedness and domestic adaptation’ (Wallace, Helen 2000: 162). However, because of several differences between past and upcoming enlargements, one should be cautious in making extrapolations and recommendations on the basis of precedents. Firstly, comparative research suggests that the nature of the *ancien régime* makes a crucial difference in terms of impediments to democratic transition and consolidation. Current candidate countries with a (post-)totalitarian or sultanic history face more serious arrears and different problems in (re)building their civil society, democracy, public administration, judicial system, and market economy than countries with an authoritarian past (e.g. Spain, Portugal and Greece) (Linz and Stepan 1996; Smith, et al. 1996). These transformation problems complicate the accession process. Secondly, the level of socio-economic development of most current aspirants is lower than that of countries having acceded so far. Finally, the EU *acquis* that candidate states have to adopt and implement has substantially increased in volume and complexity since the last accessions.

These differences between the previous and upcoming enlargements have consequences for:

- 1 the enlargement process (enlargement questions);
- 2 post-enlargement implementation and enforcement of the *acquis* (preservation questions); and
- 3 the development and/or reform of the *acquis* after enlargement (integration questions).

This study mainly focuses on enlargement and integration questions. Other WRR-working documents dealt with the implementation and enforcement problematique (Curtin and Van Ooik 2000; Verheijen 2000).

The forthcoming enlargement rounds are special because they involve countries that lived, at least at one point in time, under a totalitarian regime (Poland being the exception). This means that former communist countries are faced with a double and most demanding challenge. Not only have they subjected themselves to multiple economic, political, cultural, administrative and judicial transformations, as well as to the task of generating catch-up growth, but they need to conform to the accession conditions set by the EU. In many cases these objectives create mutually supporting dynamics: the accession criteria put pressure in favour of a swift transformation of the candidates into democratic market-economies with independent judicial systems and effective modern public administrations. In some cases however, partial incompatibility or even clear tensions may arise. For instance, some costly public investments required to implement the EU's *acquis* (e.g. for environment protection or control of external borders), would put a severe strain on other investments needed for the multidimensional transformation of these countries and their catch-up growth (Smith, et al. 1996; Grabbe 1999; Pelkmans, Gros and Nunez Ferrer 2000). Because of this special mix of challenges and limited capacity of the candidates to face them, and because of the tensions between transformation, catch-up growth and accession dynamics, there is a need to revisit EU enlargement strategies.

The specificities of the future enlargements will also have direct and indirect effects on the development and reform of the *acquis* after accession. With a higher level of heterogeneity within the EU, non-negotiable conflicts are likely to become more frequent (Scharpf 1999). Differences in the level of socio-economic development and the geo-economic situation can lead to conflicts between economic (sub)national interests, resulting in long-lasting deadlocks. Divergent political views, dictated for instance by the respective geo-political location or the size of the Member States, may result in EU stalemate, in particular with respect to Common Foreign and Security Policy (CFSP) initiatives. Differences in institutional structures or administrative, legal and policy cultures among Member States can induce substantial differences in adjustment costs to proposed harmonization, resulting in strong bureaucratic opposition in particular. Diverging appreciation of what is a 'fair' distribution of costs and benefits of membership can also cause ominous paralysis when manifesting itself by recurrent budgetary impasses, or decisions on distribution of European funds. Last but not least, ideological divergence on the role of the state *vis-à-vis* the market, the division of labour between various levels of governance, or the *modus operandi* of the Union (supranational versus intergovernmental-oriented Member States) can be yet another source of 'non-negotiable conflicts' (Scharpf 1999: 80-83; Philippart and Sie Dhian Ho 2000: 301-2). Managing problematic diversity and overcoming decision-making deadlock are, of course, nothing new to the EU. Many formal and informal

strategies have been developed for that purpose over the years (De la Serre and Wallace 1997; Héritier 1999; Philippart and Sie Dhian Ho 2000). However, considering the foreseeable scale of the post-2004 diversity, it is important to revisit these strategies now.

The Union has recognized the special character of the coming enlargements and has drawn the consequences for its enlargement and (post-enlargement) integration strategies. As regards enlargement strategies, the Copenhagen European Council of December 1993 innovated by making explicit the criteria for accession. At the Madrid European Council in December 1995, the issue of administrative capacity of the candidate countries was directly addressed. Finally, the 1997 Luxembourg European Council reinforced the accession strategy on the basis of the 'Agenda 2000' proposals of the European Commission. Candidates now receive individual coaching for the adoption of the *acquis* through the 'National Programmes for the Adoption of the *Acquis*' (NPAAs). The European Commission monitors the individual candidates and produces regular reports on the progress made. In parallel, the EU's pre-accession aid has been more than doubled.

As far as post-enlargement integration is concerned, two successive Intergovernmental Conferences (IGCs), concluded in Amsterdam (June 1997) and Nice (December 2000), were devoted to the adaptation of the institutions and procedures of the Union in the perspective of enlargement. The central objective of the IGC 2000 was to complete the institutional changes necessary for the accession of the new Member States. At the end of the long and bitter European Council in Nice, the governments of the Member States managed to agree on a new Treaty. In a declaration on the future of the Union annexed to the Treaty of Nice, they declared that the 'way for enlargement' was now open. However, they also acknowledged implicitly that the question of the future development of the EU had not been fully addressed. They indeed called for 'a deeper and wider debate' on this issue. In the process, the governments scheduled a new IGC for 2004, the fifth in less than twenty years.

By the end of the 2004 IGC, the constitutional texts of the Union will have been subjected to a quasi permanent revision for more than a decade (the ratification of the new Treaties being, *grosso modo*, the only breathing space between the negotiation of the 1991, 1997 and 2000 packages of measures). This remarkable feature corresponds to the acceleration of a long-established practice: since its early days, European integration has been characterised by periodical institutional reforms responding in a pragmatic way to internal and external challenges. The Spaak Report, which formed the basis for the negotiations on the Euratom and European Economic Community Treaties, was indeed already based on the postulate that institutions have to be designed according to the substantive tasks they have to perform. Repeated changes in the tasks assigned to the EC/EU as well as the arrival of new members logically led to an ongoing series of institutional reforms, be it at treaty level or not. For many European decision-makers, European integration has

always been in an unstable equilibrium. Henceforth successive adjustments and moves forward were seen as indispensable to prevent the construction from unravelling. In other words, they became convinced that they had to pedal constantly if they wanted to prevent the bicycle from falling over (Bieber, Jacqué and Weiler 1985: 8).

With the difficulties surrounding the ratification of the Maastricht Treaty as well as the negative result of the June 2001 Irish referendum on the Nice Treaty, it appears that, in addition, actors in favour of closer cooperation nowadays have to struggle against strong adverse wind. The permissive consensus characterising the initial phases of European integration has significantly declined; Euro-sceptic political movements have become more numerous and vocal than ever before; generally speaking, European issues are more politicised, with the stronger involvement of national parliaments and civil societies. Besides, socio-economic and political diversity is debated more and more openly, not to say assertively, among Member States. Successive enlargements have brought and will bring inside the European club countries differing substantially in terms of their political system, their level of economic development, administrative and judicial capacities, as well as their views on the future course of European integration. Ideological differences stand out in bolder relief as integration strides along to policies at the core of the Member States' sovereignty. Since Maastricht, the proponents of adjustments and a further integrated Union have been confronted with a major fact of life in the Low Countries: they had to pedal against the wind.¹

1.2 RESEARCH OBJECTIVE AND CENTRAL QUESTIONS

The general objective of this study is to contribute to the general debate on:

- 1 EU strategies for enlargement (the enlargement problematique); and
- 2 EU strategies for post-enlargement integration, that is, on how an enlarged Union should be configured and should work to cope effectively with internal and external challenges (the integration problematique).

'Integration problematique' has a connotation of further Europeanization, unification and further development of the *acquis*. We however use the expression in a more neutral way to refer to problems arising from efforts to combine and coordinate interdependent but separate and diverse units into a harmonious multi-level unit that is capable of acting. These efforts can involve the development and/or the reform of EU *acquis*. Such a neutral definition implies a broad palette of strategies to manage integration problems, ranging from the unification mentioned above, via more accommodating strategies, to the renationalisation of (part of an) EU policy on the other side of the continuum (see chapter 3).

As far as enlargement is concerned, the EU so far seems to stick to its classical enlargement strategy, be it with unprecedented pre-accession assistance and individual coaching and monitoring of candidate countries. Meanwhile, in academic

and think tank circles, unorthodox enlargement strategies have been suggested, such as partial membership and a 'core *acquis*' test. By contrast, EU top decision-makers reckoned that keeping the Union integrated after enlargement would require institutional and procedural changes. The Treaties of Amsterdam and Nice decided in particular to extend the scope of decisions taken by majority voting and to introduce a mechanism for closer cooperation within the EU. Besides, prominent politicians launched far-reaching proposals intended to guarantee the Union's capacity to act after the expected increase of diversity.

Upholding as well as reforming enlargement and integration strategies involve trade-offs and dilemmas. In order to gain insight in these trade-offs and dilemmas and to make informed decisions on reform of enlargement and integration strategies, systematic analysis of the effects of various alternatives as well as a comparison of the pros and cons is therefore needed. This analysis and evaluation should both comprise the 'managerial' effects (how functional and feasible are the proposed strategies) and the 'systemic' effects (what are the consequences of the proposed strategies for the preservation of the project of an 'ever closer Union', and what are the consequences for the development of peace, welfare and stability in Europe as a whole).

Many contributions to the literature have already discussed the merits of specific enlargement and integration strategies. The aim of this study is to contribute further to the debate by offering:

- a comprehensive and reasoned overview of enlargement and integration strategies available to the group of Member States willing to overcome decision-making deadlock;
- an analysis of the essence of these strategies;
- two sets of evaluation criteria, after explicitly identifying the main features of the EU model as it emerges from our reading of the Treaties and other major EU documents;
- a systematic evaluation of the effects of enlargement strategies at managerial and systemic levels, with occasional comparisons of their pros and cons.²

In short, the three central questions dealt with by this report are:

- 1 What can be identified as problematic diversity requiring specific action in the context of enlargement and (post-enlargement) integration?
- 2 What are – from the point of view of Member States willing to overcome decision-making deadlock – the available or conceivable solutions to problematic diversity in the context of enlargement, which are their managerial and systemic consequences and how adequate are they?
- 3 What are – from the point of view of Member States willing to overcome decision-making deadlock – the available or conceivable solutions to problematic diversity in the context of integration?

1.3 LIMITATIONS OF THE STUDY

This working document is a first step in a research programme conducted by the Netherlands Scientific Council for Government Policy. It gives an overview of enlargement and integration strategies (the 'toolbox'), followed by a general evaluation of enlargement strategies on the basis of criteria derived from the Treaties. Although our evaluation does take into account the policy situation and the characteristics of the Member States, it does not offer a systematic account of variations per policy area. The policy recommendations have been deliberately kept general, conditional and in some cases tentative. It will be for the Scientific Council, in two reports to the Dutch government, to assess in detail the various *enlargement* strategies in specific policy-areas (Scientific Council for Government Policy 2001), as well as evaluate the pros and cons of various *integration* strategies in particular fields of activity of the Union (Scientific Council for Government Policy forthcoming).

1.4 THE STRUCTURE OF THE STUDY

In order to answer the first central question, we need to conceptualise problematic diversity in the context of enlargement and integration. Clearly, not all diversity is problematic for the European Union. On the contrary, diversity among Member States is seen by many as an asset, in terms of cultural richness but also institutional and policy experiences from which decision-makers can learn and draw. In order to distinguish between problematic and non-problematic diversity, a vision of the essence of the Union is needed. This vision of the essence of the EU, which could be described as 'a union of values and action', is substantiated in chapter 2. From this vision of the EU, we delineate problematic diversity, i.e. we infer which characteristics and/or positions of (candidate) Member States are problematic in the context of enlargement and integration respectively. Then we deduce from this vision a series of managerial and systemic criteria on the basis of which the enlargement and integration strategies can be evaluated.

Chapter 3 provides an overview of enlargement and integration strategies that have been used by Member States willing to overcome decision-making deadlock. A distinction is made between strategies eliminating, diminishing, trading off, accommodating and circumventing diversity. In Chapter 4, each type of enlargement strategy is analysed and its managerial and systemic effects evaluated.

NOTES

- ¹ The title of the working document and the choice of this metaphor have been suggested by Desmond Dinan during fruitful conversations on European integration and other topics in The Hague.
- ² A follow-up study to this working document will give an evaluation of the effects of integration strategies.

2 PROBLEMATIC DIVERSITY AND ADEQUATE STRATEGIES FOR THE EUROPEAN UNION: THE NORMATIVE POINTS OF REFERENCE

2.1 INTRODUCTION

The questions at the centre of this report cannot be properly addressed without explicit points of reference. Points of reference are first needed to define what type of diversity is problematic. Perceptions on diversity – a very enduring characteristic of Europe (Guizot 1828; Davies 1997) – vary indeed greatly. For many, one of the most important missions of the EU is the preservation of the historical, cultural, linguistic, ethnic, and institutional diversity of its Member States. Proponents of this Union of diversity insist on the primordial value of cultural richness and wide variety of experiences. Is there not, however, a point beyond which diversity ceases to be a blessing and becomes dysfunctional or even paralysing for the Union? The answer to this question is fundamentally linked to what the Union is supposed to be and achieve, that is, to the preferred model for the EU. For instance, if respect for human rights is seen as one of the main features of the EU system, forms of diversity that end up violating these should be considered as problematic for the EU. In order to agree on potential problems caused by diversity in the context of enlargement or integration, one must agree beforehand on the principal norms that should preside over the construction of the Union. Proper argument on the question of problematic diversity therefore requires an explicit and unequivocal presentation of the normative perspective chosen.

15

Points of reference are also needed for the evaluation of enlargement and integration strategies. As far as enlargement is concerned, it seems that the EU sticks to its classical strategy for enlargement, be it with unprecedented pre-accession financial support, individual coaching and monitoring of progress (Avery and Cameron 1999; Nicolaïdes, et al. 1999; Commission 2000; Sedelmeier and Wallace 2000). Meanwhile, in academic circles and think tanks unorthodox enlargement paths have been suggested, such as partial membership and a ‘core *acquis* test’ (Sociaal Economische Raad 1999; Pelkmans, Gros and Nunez Ferrer 2000). By contrast, integration strategies have been extensively revisited. Successive IGCS have indeed been organised in order to reform the EU institutions and procedures with a view to enlargement. The Treaties of Amsterdam and Nice decided in particular to extend the scope of majority voting and to introduce a mechanism for enhanced cooperation within the EU. In addition, prominent politicians launched far-reaching proposals intended to guarantee the Union’s capacity to act after the expected increase of diversity (Chirac 2000; Fischer 2000; Giscard d’Estaing and Schmidt 2000; Juppé and Toubon 2000; Delors 2001; Sozialdemokratische Partei Deutschlands 2001). All in all, the EU has to choose from a large palette of existing and potential tools. Upholding as well as reforming enlargement and *integration* strategies involve trade-offs and dilemmas. How should decision-makers decide

between these various options? Some schemes, for instance, see the preservation of a single institutional framework as a critical element of the ensemble. If the proposed approach presupposes the creation of parallel structures, it will then be seen as a negative development. Those who back a non-unitarist model for the EU will of course appraise the same proposal differently. So, here too, the normative perspective selected must be clearly stated, but this time to facilitate the formulation of the criteria or benchmarks against which solutions are to be judged.

There are of course many possible models for the EU to choose from. In a previous evaluation, we used the visions encompassed in four stylised models of EU governance – the Westphalian, the Intergovernmentalist, the Regulatory and the Multi-level Governance models (Philippart and Sie Dhian Ho 2000) (for a lucid exposition of these models see also Caporaso 1996; Dehousse 1998). We identified their respective standards and prescriptions in terms of the scope, depth and output of EU policies, methods of integration, institutional architecture and legitimacy. These standards were then used to evaluate the potential effects of the ‘closer cooperation’ mechanism on the future evolution of the EU system. Such a multi-perspective angle enriched the analysis, but made the evaluation very arduous (even though it encompassed just one policy tool studied in the integration problematique only).

Because of practical constraints as well as the orientation of this study, we have opted for a single normative point of reference based on ‘realistic’ assumptions. On the basis of our previous experience, a large multi-perspective approach appeared to be simply unmanageable once the entire palette of EU enlargement and integration techniques has to be taken into consideration for assessment, evaluation and comparison. Considering the limited number of pages at our disposal, we reckoned that the only way of keeping this study reasonably readable was to go down from four stylised models to one main point of reference. As for the choice for a ‘realistic’ point of reference, it follows from the main focus of the study: how to meet the challenge of large-scale enlargement with countries that are simultaneously undergoing fundamental and multiple transformation processes. The main risks involved are probably mostly short and medium term. Our objective is therefore to examine enlargement and integration strategies that might be required to solve short- and medium-term problems. We acknowledge that revolutionary changes are an interesting and perhaps desirable option for the reform of the EU, in particular regarding further democratisation of the Union. Examples of such revolutionary changes are a clustering of Member States according to their size, recently proposed by Schmitter (2000) or the proposal by Lijphart to turn the EU into a consensus democracy (Lijphart forthcoming). However, besides the scenario of ‘creative destruction’ triggered by a major crisis, there is no serious medium-term prospect for such quantum leaps within the EU. Hence, visionary schemes are of less immediate use for our research. In order to be directly relevant for the debate on enlargement and institutional reform, we decided to look for a ‘realistic’ norma-

tive point of reference, i.e. a model that could enjoy sufficient support within the Union in the years to come.

In short, the aim of this chapter is to describe the normative perspective that informs the remainder of the study, that is, to present the points of reference determining the contours of problematic diversity and the criteria against which enlargement and integration methods are to be judged. In section 2.2, we look at different ways of defining the essence, main features and objectives of the Union. We then sketch a normative model of the EU corresponding to what, directly or indirectly, has been accepted by the majority of the constituents of the Union. For that purpose, the Treaties offer a good starting point. They have been ratified in all Member States, and therefore are a normative framework European actors will always (be able to) appeal to. This does not mean that the proposed evaluation will be merely neutral, building on indisputable benchmarks. Some of the provisions of the Treaties indeed are – often deliberately – vague. Moreover, the Treaties do not refer explicitly to all the principles that underlie the Union. Inevitably the identification of the model and the selection of its core features require some degree of interpretation and extrapolation. From that normative model of the EU, we deduce in section 2.3 which characteristics of (candidate) Member States and/or diversity among Member States are problematic in the context of enlargement and integration. Finally, section 2.4 presents the three sets of criteria derived from our model, which will be used to evaluate enlargement and integration strategies.

2.2 THE ESSENCE OF THE EU

Just as any other political system or polity, the EU is a social construct. Many political constructions are built by reference to an ethnic and/or linguistic identity. That quasi-organic definition of a nation is clearly not an option for the EU. There is no single ethno-linguistic basis for a ‘European Volk’ or any willingness to create one, as the systematic reference of the Treaties to ‘European *peoples*’ or ‘*peoples* of Europe’ (emphasis added) clearly indicate. Basically, it leaves the Union with two possible founding clusters to choose from. Either the EU is built on geographical and historico-cultural ideas, emphasising European environmental features and common cultural heritage (sub-section 2.2.1). Or the EU is founded on common civic values (sub-section 2.2.2). Our reading of the Treaties is that the EU’s foundations are composite, borrowing from both clusters – with a clear preponderance of the second one, though. Besides, the EU model appears to be strongly action-oriented and largely grounded in a legal or contractual approach. We therefore propose to describe the essence of the model as a Union mainly based on values and action, pursued primarily through a ‘rights and obligations’ approach to enlargement and integration questions. This model and approach, which will be our points of reference for the identification of problematic diversity and for the evaluation of strategies, are presented in the last sub-section (sub-section 2.2.3).

2.2.1 A UNION BUILT ON GEOGRAPHICAL AND HISTORICO-CULTURAL FOUNDATIONS?

The Treaties explicitly link membership and Europeaness. Any ‘European state’ may apply to become member of the European Coal and Steel Community (ECSC) according to Article 98 of its founding Treaty. The Treaty of Rome in its Article 237 and the Treaty on European Union in its Article 49 use the same phrasing: ‘any European State [which respects the principles set out in Article 6(1)] may apply to become a member of the Union’ (the text between brackets was added by the Treaty of Amsterdam). Moreover, whenever the population of the Union is concerned, the Treaties systematically refer to ‘*European* peoples’ or ‘peoples of *Europe*’ (emphasis added). The Treaties, however, stop short of giving any indication as of the actual geographical extension of Europe. How straight then, from a geographical or historico-cultural point of view, is that reference to ‘European’ states and peoples of ‘Europe’?

Studying attempts to delineate Europe *geographically* – that is to say on the basis of geographical features – leaves the impression of what W.H. Parker has called a ‘tidal Europe’, whose frontiers ebb and flow (Davies 1997: 9). This is particularly true for Eastern European borders. In ancient and medieval times, Europe was usually pictured as stretching as far as the river Don. The beginning of the eighteenth century saw Europe pushed further east, with the Ural Mountains presented as a more ‘natural’ boundary. More recent times witnessed a reversal of that trend, geographers underlining a number of environmental features that undermine Russia’s European credentials. The lack of consensus on Europe’s contours is undeniably a consequence of geography being a social construct and therefore inevitably bent by its designers’ interests. This is, for instance, clearly illustrated by the reference to a Europe ‘from the Atlantic to the Urals’. The concept emerged with the rise of the Russian empire and the ambition of Peter the Great and Catherine the Great to have Russia accepted as a European state (Neumann 1997: 147-8). During the nineteenth and early twentieth centuries, the founders of British, American and German geopolitics tended to portray Russia as the latest avatar of the Asian threat. Much later, and despite the fact that most of his contemporaries considered the concept of the Atlantic to the Urals Europe as hopelessly out-dated, De Gaulle resurrected it because of his political preference for regional thinking and structures including Russia while excluding the United States.

Attempts to define Europe on the basis of *historico-cultural* criteria display similar fluctuations. If there is a large consensus over the dominant role played by the shared experience of Christianity and its resulting cultural features, exegeses disagree on the respective importance of historical events such as the Reformation, the Enlightenment or the French Revolution in the build-up of the European cultural identity. Here too the contours of Europe vary with the country from where and the person by whom they are drawn. For example, the historico-cultural definition of Europe enthusiastically embraced by the post-communist governments of

Eastern Europe – in Vaclav Havel’s words, the Europe to which they feel they belong and want to ‘return to’ – had way lesser echo among West Europeans (Wallace, William 2000: 479). Moreover the European culture, with its large diversity among regions, is not a monolith. Searches for the European roots encounter such diversity in terms of (sub-)national cultures and heterogeneity in reaction to common experiences, that many see diversity itself as a central characteristic of Europe. Alberto Moravia has compared Europe’s cultural identity with ‘a reversible fabric, one side variegated... the other a single colour rich and deep’ (Davies 1997: 10). For all the reasons aforementioned, it is hard to define with precision and forever the boundaries of Europe on the basis of geographical or historico-cultural considerations.

The Commission reached the same conclusions and therefore considered neither possible nor opportune to take a final decision on the frontiers of the European Union. In a report on the enlargement of the Union, the European Commission alleged that the term ‘European’ combines geographical, historical and cultural elements that all contribute to the European identity, but argued that the shared experience of proximity, ideas, values, and historical interaction cannot be condensed into a simple formula. For the European Commission, each succeeding generation is bound to review the European identity according to its own criteria (European Commission 1992: 11).

2.2.2 A UNION BUILT ON CIVIC FOUNDATIONS?

An alternative to geographical and historico-cultural foundations is for the EU to define itself in civic terms. Membership of the Union would then be understood as a commitment to a number of fundamental values and civic duties. In the words of Weiler et alii: ‘The substance of membership is in a commitment to the shared values of the Union as expressed in its constituent documents, a commitment to the duties and rights of a civic society covering discrete areas of public life, a commitment to membership in a polity which privileges exactly the opposites of classic ethno-nationalism – those human features which transcend the differences of organic ethno-culturalism’ (Weiler, Haltern and Mayer 1995: 21). Reasoning from the civic approach, the admission of, say, Turkey, Ukraine and Russia to the EU would depend on the conformation of these countries to the Union’s self-declared values.

Primarily preoccupied with integration via concrete steps, the architects of the Treaties initially devoted little direct attention to democratic principles and other fundamental rights. The European Communities were, admittedly, founded on common, institutionally entrenched, liberal-democratic principles and introduced a rule of law in the relations between their Member States. Furthermore, the preambles to the ECSC and EEC Treaties both set economic integration in a broader political and security context, as a means to a better end, referring to fundamental

values as peace and liberty. But, beyond that, the original Treaties contained hardly any explicit reference to fundamental values. The only express references to fundamental rights were limited to the prohibition of discrimination on nationality grounds, as well as provision for the freedom of movement of workers and rights of establishment for nationals of Member States, for the principle of equal pay between men and women, and for improved working conditions and a better standard of living for workers (Burca 1996: 296; Lords 2000: par. 11).

Through the years, the various European institutions became more explicit and assertive on the issue of civic values and fundamental rights, starting with the European Court of Justice (ECJ). Complaints of individuals claiming that their fundamental rights were affected by Community decisions, resulted in a considerable development of the Court's case law. The ECJ declared that respect for fundamental rights 'forms an integral part of the general principles of Community law' and, as such, falls under its jurisdiction. In that undertaking, the ECJ took its inspiration from the constitutional traditions of the Member States and the international treaties they signed (in particular the 'European Convention for the Protection of Human Rights and Fundamental Freedoms'). More recently the ECJ also referred to judgements of the European Court of Human Rights in Strasbourg (Barents 1999: 65-66; Macía 2000: 186).

20

Other European institutions contributed to the expressed recognition of fundamental values and rights at EU level. Against the background of the imminent accession of Greece, the European Parliament, the Council and the Commission issued a non-binding joint declaration on fundamental rights in 1977. One year later the heads of state and government adopted in Copenhagen a declaration on Democracy suggesting that a democratic regime was a political condition for EC membership. The European Parliament, for its part, regularly insisted on the need to entrench the fundamental rights in the Treaties. One of its most ambitious attempts was included in the proposal of a 'Draft Treaty Establishing the European Union' adopted under Altiero Spinelli's stewardship by the first directly elected Parliament in 1984 (Burgess 2000: 139-49). That proposal, among other things, included a mechanism sanctioning Member States that violate the principles of democracy and the rule of law.

The Court's case law and the call of the European Parliament eventually found their way in the Treaties. The Preamble of the Single European Act stressed the Member States' determination 'to work together to promote democracy on the basis of the fundamental rights recognised in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice'. A couple of years later, the Maastricht Treaty reiterated in its Preamble the attachment of the Union 'to the principles of liberty, democracy and respect for human rights and fundamental freedoms and the rule of law'. Besides, it made headway by establishing EU citizenship, conferred to 'every person holding

the nationality of a Member State'. According to Weiler et al., this could be interpreted in two ways. Either the specific political and civic rights granted to EU citizens represent 'another step in the drive towards a statal, unity vision of Europe'. Or they indicate the development of 'a polity the membership of which is understood in civic rather than ethno-cultural terms'. Individuals, in that kind of polity, would be invited to see themselves as belonging simultaneously to two *demos*: 'I am a German national in the strong sense of ethno-cultural identification and sense of belongingness. I am simultaneously a European citizen in terms of my European transnational affinities to shared values which transcend the ethno-national diversity' (Weiler 1995: 20-21).

New efforts to define more explicitly the EU's fundamental values were prompted by the post-2000 perspective of large-scale enlargement. On 17 June 1997, the European Council meeting in Amsterdam opted for a revision of the conditions for membership, which emphasises the civic approach. According to revised article 49 TEU, European states wishing to become member of the Union may only apply if they respect the principles that found the Union, that is, the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law (Article 6(1) TEU). The Amsterdam Treaty, in addition, introduced mechanisms to supervise the respect by the Member States of these principles, and to sanction any serious and persistent breach (article 7 TEU). At a more specific level, the perspective of enlargement also contributed to tighten the Community's anti-discrimination system and to expand its scope. With Article 13 TEC, the Union has for the first time a specific legal basis for action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Finally, the 'Charter of Fundamental Rights' took the Union one step further, not by creating new rights but by consolidating the civic, political, economic and social rights already applicable at EU level. Drafted more or less in parallel with the IGC 2000, the Charter was welcomed by the Council, the European Parliament and the Commission in a 'solemn proclamation' issued on the fringes of the December 2000 European Council in Nice. The nature (binding or non-binding) and status (integration into the Treaties or not) of the Charter will be discussed during the IGC 2004.

2.2.3 A UNION OF VALUES AND ACTION PURSUED THROUGH A 'RIGHTS-AND-OBLIGATIONS' APPROACH

From the reading of the Treaties presented *supra*, it appears that the EU is built on historico-cultural and civic foundations, the civic dimension being clearly predominant. If the Treaties refer to 'European State' and 'peoples of Europe', the EU has consistently refrained from giving official geographical and/or historico-cultural interpretations of these concepts. By contrast, the liberal-democratic principles written in the Treaties establishing the European Communities were progressively detailed, consolidated and expanded. Besides, the affinity with these civic values

was presented as the only constitutive element of a common 'European' culture (Amato and Batt 1999: 34).¹ Consequently, the reference to a 'Union of values' should be at the core of the model's description.

Unlike organisations such as the Council of Europe, the EU goes largely beyond a Union of values. Considering the emphasis put on concrete common objectives and the attention devoted to the methodology to be followed for achieving these objectives, it can be said that the EU is also, and perhaps first and foremost, a 'Union of action'. That characteristic is clearly put in evidence by the comparison between the EU and the Council of Europe, as Philippe de Schoutheete suggests. Contrary to the case of the EC/EU, sharing the values on which the Council of Europe is founded suffices to be admitted to the organisation. Indeed, 'countries wishing to become members of the Council of Europe are not required to participate in particular policies or make concessions in matters of sovereignty. They may ratify the numerous conventions, notably on legal and cultural matters, which the Council of Europe has very usefully drafted over the years, but they are under no obligation to do so' (De Schoutheete 2000: 4). We therefore propose to refer to the EU model as a 'Union mainly based on values and action'.

As regards the institutional design of that 'Union of values and action', an incremental and pragmatic approach was officially chosen. Paraphrasing the famous Schuman declaration, Europe was not to be designed at once according to a single plan, but would take shape via concrete results that first have to create a *de facto* solidarity. Since the Spaak report which set the path for the Euratom and European Economic Community negotiations, the official line has been to define the institutions (i.e. their nature, working methods as well as the division of competences between them) according to the substantive tasks they have to carry out (Kapteyn and Verloren van Themaat 1998: 111). Instead of conceiving from the start a democratic institutional structure for an integrated Europe on the basis of political and constitutional considerations, the institutions have been continuously adapted to achieve the common objectives of the Member States (Siedentop 2000: 33).

That institutional pragmatism had direct consequences for the equilibrium and the legitimacy of the EU. First, it created a system in unstable equilibrium, the EU having to engage in iterative institutional reforms in order (to attempt) to preserve its capacity to act. Secondly, this integration method based on concrete steps meant that European institutions derived their legitimacy primarily from the effective contribution to the common welfare of the European constituency (what Scharpf has called 'output-oriented legitimisation') (Scharpf 1999: 6-25). These institutions therefore were more the embodiment of the 'government *for* the people' than the 'government *by* the people' – in which political choices are (more or less) directly dictated by the 'will of the people'. Although the direct election of the European Parliament and the subsequent expansion of its powers represent a

dramatic change at that level, the importance of 'input-legitimacy' in the EU is still underdeveloped by comparison with the situation in most Member States.

If, in the name of pragmatism and incrementalism, the final shape of the European structures was left undefined, the model nonetheless gave a general indication about the direction institutional development should take. The initial reference to an 'ever closer Union' clearly implied that institutional dynamics should lead to further political integration. That orientation was confirmed by the Paris summit of October 1972, where the Member States announced their intention to transform their mutual relations into a European Union before the end of the decade. The symbolically and politically important switch from the European Communities to the European Union only happened in 1992, following the ratification of the Maastricht Treaty. The Treaty mandated the newly established Union to organise both the relations between the Member States and between their peoples (Article 1 (3) TEU), in line with the subsidiarity principle (Article 1 (2) TEU) and while respecting the national identities of the Member States (Article 6 (3) TEU). Put differently, the establishment of the Union was not affecting the statal identity of its Member States, but, as Alberta Sbragia put it, it heralded the true transformation of the 'nation-state' into the 'Member State' (Sbragia 1992: 258). The Treaty also stipulated that the Union would be 'served by a single institutional framework' (Article 3 TEU). Here the drafters wanted to make sure that the grouping of three distinct cooperative endeavours under the umbrella of the Union (the communautarian European Community, the intergovernmental Common Foreign and Security Policy (CFSP) and the intergovernmental cooperation in Justice and Home Affairs (JHA)) would not affect the institutional settings of the European Communities. Institutionally speaking, the message was dialectically non- and pro-integrationist. Once more, no definitive description of the system's institutional set-up was given, despite proposals to refer to the perspective of federal-like development. At the insistence of the British government, the Treaty stuck to the 'ever closer union' wording.

If there is no literal reference to any specific regime in the Treaties, the EU institutional structure has undeniably much in common with a federal system. This is not to say the Union resembles a federal state, the specific institutional structure many think of when federalism is discussed in the European context. The European Union is not a state and the model embedded in the Treaties gives no indication that it is meant to become one. The EU does not monopolise the use of force, the right to tax or pass sentences. The supreme power over the territory of the Union has not been entrusted to the EU, insofar as the model preserves the statal identity of the Member States which, furthermore, remain the 'masters' of the Treaties. This being said, just like the modern Western nation-state is not the only framework for the exercise of political authority, the federal state is only one manifestation of the federal principle. Federalism considered as contractual links that involve power sharing among individuals, among groups or among states can be used in other environments (Cappelletti, Seccombe and Weiler 1986: 13). In the

words of Pescatore, judge at the European Court of Justice, that particular political and legal philosophy adapts itself to all political contexts wherever and whenever two basic prerequisites are fulfilled, that is, the search for unity, combined with genuine respect for the autonomy and the legitimate interest of the particular entities (Cappelletti, Seccombe and Weiler 1986: 13-4).

In their reaction to the speech Joschka Fischer delivered in 2000 on the finality of European integration, (Börzel and Risse 2000: 53) point at the features the EU shares with federal systems:

- 1 'The EU has a system of governance which has at least two orders of government, each existing under its own right and exercises direct influence on the people;
- 2 The European Treaties allocate jurisdiction and resources to these two main orders of government;
- 3 There are provisions for 'shared government' in areas where the jurisdiction of the EU and the Member States overlap;
- 4 Community law enjoys supremacy over national law (...);
- 5 European legislation is increasingly made by majority decision obliging individual Member States against their will;
- 6 At the same time, the composition and procedures of the European institutions are based not solely on principles of majoritarian representation, but guarantee the representation of 'minority' views;
- 7 The European Court of Justice serves as an umpire to adjudicate conflicts between the European institutions and the Member States;
- 8 Finally, the EU has a directly elected parliament.'

These features, which are the hallmarks of fairly decentralised federal constructions, should be considered as key systemic dimensions of the EU institutional model.

A rights-and-obligations approach to enlargement and integration

There are different ways to uphold and develop a Union of values and action as the comparative study of regional integration shows. Contrary, for instance, to some Asian regional organisations, the EU has chosen a contractual and legal path. In other words, the EU is structured as a regime, that is, an ensemble of principles, norms, rules and procedures. Consequently, the essential requirement for the incumbent and candidate countries is that they are and remain committed to that regime.

This contractual and legal approach was chosen because of the type of objectives and foundations of the system, as well as of the political and administrative preferences of the elites that forged the initial model. The ambitious set of objectives assigned to the Union poses indeed various collective action dilemmas. Softer approaches such as self-regulation by the economic actors were seen as unable to deliver durably the negative and positive integration required, for instance, for the single market. The choice of a contractual and legal approach also flows from the

fact that the Union is predominantly based on civic values. With such foundations, one reasons more ‘naturally’ in terms of rights and obligations than is the case with more ‘organic’ systems (cf. for instance, the Arab League). Finally, this approach was congruent with the dominant political and administrative culture in Western Europe, at the time of the creation of the European Communities.

The importance of this commitment to the regime en place is explicitly stated in the fifth objective assigned to the Union (Article 2 TEU), i.e. the obligation to ‘maintain in full the *acquis communautaire* and build on it’. For enlargement, this *acquis*-based approach means that candidates are expected to accept the regime in all its constitutive elements (the provisions of the Treaties, all the decisions taken by the EU institutions as well as the jurisprudence of the European Court of Justice). As for governance, it means that further steps should build on the existing *acquis*. If the Treaties leave a lot of room for variation and invention as far as the development of the *acquis* is concerned, they however do indicate a clear preference for the community method(s). Decision-makers are indeed requested by the same fifth objective to consider to what extent the more intergovernmental policies and forms of cooperation (CFSP and JHA) ‘need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community’.

Restrictions to the rights-and-obligations approach

The Treaties have not embraced a pure ‘rights-and-obligations’ approach. They imposed a number of geographical, functional and political restrictions to this approach, especially as regards the enlargement problematique. Firstly, membership is restricted to *European* States (see sub-section 2.2.1). Without this geographical restriction, any country able and willing to adopt the *acquis* would have been eligible. By introducing a geographical conditionality, the model protects the Union against territorial overstretch. In the context of globalisation and multiplication of multilateral and interregional organisations, the EU provides a unique forum for meeting a number of specific regional functions. Safeguards against the imperial mirage of an ever-expanding territorial basis and its dysfunctional consequences are therefore important.

Secondly, enlargement is conditioned by the (functional) capacity of EU structures to cope with larger numbers. Geographical limits in themselves are not sufficient to protect the Union against dilution and decision-making paralysis. The model therefore links enlargement with preliminary or simultaneous adjustment of EU structures to larger and more diverse membership.

Thirdly, the rights-and-obligations approach to enlargement is subordinated to the political willingness of the government and people of the incumbent Member States. Accession treaties must indeed be ratified by each Member State and receive the assent of the European Parliament. The model imposes this restriction for two reasons, which reflect the dual nature of the Union’s foundations. Ratifica-

tion is first required because, in a Union based on democratic values, the people(s) must (more) directly endorse important decisions. Besides or beyond the concern for democratic legitimacy, ratification also relates to the instrumental necessity for the model to forge from the start some sense of political Community and/or European family. The ratification process raises indeed the question of civic and ideological affinities as well as historico-cultural kinship. The people(s) of the Union or their representatives are called upon to recognise the existence of either or both of these between them and the candidate country. The formal acknowledgment of common ideological and/or cultural roots – however mythical – adds to a sense of social cohesion, shared destiny and collective European identity. In particular it can contribute to Member States conceiving the ‘welfare of all as an argument in their own preference function’ (Scharpf 1999: 8). In short, successful ratification generates key political capital for the post-accession EU system, insofar as the latter cannot function properly without occasional transfers of resources and other forms of solidarity.

2.2.4 THE INTRINSIC QUALITIES OF THE CURRENT EU MODEL

The essence of the EU model could be summarised by saying that the Union is mainly based on values and action, the preservation and realisation of which are pursued through a ‘rights and obligations’ approach. The model imposes nonetheless a number of geographical, functional and political restrictions to this logic based on the *acquis*. This is more particularly true in the case of enlargement.

The current EU model has a number of important intrinsic qualities. Its advantages are three-folded. First, by defining the EU as a Union of values and action, its designers have created an open system that does not break the dynamics of the EU polity. The model, in particular, provides the flexibility enlargement requires. The EU, just like all communities larger than primordial villages (i.e. where all inhabitants know each other personally) is an ‘imagined community’ (Anderson 1991). If the boundaries of the European community are ‘imagined boundaries’, it might be necessary to adjust them according to changes in political, economic and security circumstances. Pro-active political leadership or increased interaction between communities through trade and investment, migration, professional exchange and tourism can gradually affect ‘imagined Europe’. The fact that the model does not lock the European identity into fixed geographical dimensions and/or purely historically determined communalities is, from that perspective, an appreciable advantage.

Secondly, the model recognises and respects Europe’s diversity. This organising principle is written in the Treaties and guaranteed by the rights-and-obligations approach. The commitment to a common regime can indeed be met in various cultural contexts. In other words, affinity with the foundations of the EU regime and fulfilment of its ensuing obligations do not require unification of the various

national political, administrative and legal systems. Unity can be realised ‘in diversity’. Social and cultural diversity is valued in its own right, but it may also be conducive to social, cultural and political experimentation, and therefore be instrumentally advantageous (Bermann 1994: 342).

Thirdly, by uncoupling EU citizenship from the notion of a European *Volk*, the model has the proper foundation for building an open and democratic political community. Proponents of civic as well as rights-and-obligations approaches do not deny that ethnic and historico-cultural grounding creates a sense of closeness and social cohesion, conducive to the sense of duty and loyalty at the root of citizenship. They do claim however that exclusive ethno-national or historico-cultural approaches would have provided weaker foundations for the EU, not to mention that such a world view is less attractive than civic or constitutional patriotism (Weiler, Haltern and Mayer 1995: 20; Amato and Batt 1999; Wallace, William 2000: 486).

In the introduction of chapter 2, the choice of a single normative point of reference derived from the Treaties was justified by referring to practical constraints and to the medium-term problem-solving orientation of this study. Having now identified the main features of the current EU model, we argue that its choice can be justified on other grounds too. That model is indeed dynamic, respects diversity and has (firmer) non-Volkish foundations. It is therefore not only a ‘convenient’ but also a ‘good’ benchmark at various levels.

2.3 PROBLEMATIC DIVERSITY FOR THE UNION OF VALUES AND ACTION

Diversity is not problematic in itself. Some developments are eased by similarities; others require (complementary) differences.² As already mentioned, the point beyond which diversity becomes problematic is determined by the normative perspective chosen by the evaluator – in other words, by what the EU is supposed to be and to do. Our point of reference is the model presented in section 2.2, conceiving the EU as a ‘Union of values and action’. On this basis, diversity should be considered as problematic when it represents or induces a departure from the values on which the Union is founded. It should also be the case when diversity, while not necessarily clashing with the Union’s core values, impinges on the Union’s capacity to act and prevents the Union from achieving its objectives.

2.3.1 NATURE OF THE CHALLENGE, SOURCES OF DIVERSITY AND TYPES OF PROBLEMATIQUE

The nature of the challenge to the EU’s values and action plan varies with the type of diversity involved. There is indeed more than one source of potentially ‘sacrilegious’ or ‘paralysing’ diversity. Among them, differences in the level of socio-economic development and the geo-economic situation can be a first and

important source of problems. Divergent political views dictated for instance by the respective geo-political location or the size of the Member State are another one, in particular with respect to Common Foreign and Security Policy (CFSP) initiatives. Differences of institutional structures or administrative, legal and policy cultures among Member States can be very problematic too, especially when they induce substantial differences in adjustment costs of harmonisation. Diverging appreciation of what is a 'fair' distribution of costs and benefits of membership also caused ominous paralysis, manifesting itself by recurrent budgetary impasses. Finally, ideological divergence on the role of the state *vis-à-vis* the market, the division of labour between various levels of governance, or the *modus operandi* of the Union (supranational versus intergovernmental-oriented Member States) can be a lasting source of 'non-negotiable conflicts' (Scharpf 1999: 80-83).

In the Treaties and in the doctrine, a sharp distinction is usually made between objective (socio-economic) and subjective (political-ideological) diversity. The delineation between the two is however not absolute. Objective diversity is supposed to be linked to factors beyond Member States' control. But what is 'beyond' the control of a government is often defined by reference to 'unaffordable' costs of adjustment. As a consequence, what is reckoned to be 'objectively' impossible one day sometimes becomes 'subjectively' doable the next day. The self-imposed adjustments to meet the convergence criteria that determine the participation to the Euro-zone clearly show that the limits of the possible are variable in time and space. Irrespective of such evolution, the delineation is also blurred by the players' tendency to dress up subjective diversity as objective diversity.

Besides being influenced by the type of diversity involved, the challenge to the EU's values, norms and action plan also varies according to the context concerned. We distinguish here between three main contexts: enlargement, preservation of the *acquis* and integration (see Figure 2.1). The enlargement problematique refers to whatever constitutes a problem for the preparation of enlargement and for the decision to enlarge. The preservation problematique comprises whatever undermines the implementation and enforcement of existing EU policies. Finally, the integration problematique includes whatever hinders the policy preparation and decision-making required for the reform of the *acquis* or its development, be it in 'house' or 'by import' (Philippart and Sie Dhian Ho 2001: 170-1). The development of *acquis* 'in house' refers to the new *acquis* elaborated through EU 'normal' procedures (e.g. the adoption within the Union of new food safety directives proposed by the Commission), whereas the development of the *acquis* 'by import' refers to rules initially designed outside the EU institutional framework (e.g. the European Political Co-operation and the Schengen *acquis*) and integrated at a later stage in the EU *acquis* by decision of an Intergovernmental Conference mandated to reform the Treaties.

What helps, analytically speaking, is to acknowledge that these problematiques and their stages are interlinked. Taken together, the integration and preservation

problematic forms what can be described as the EU policy cycle (Wessels 1996: 29-33).³ We will see that the enlargement problematic is, in addition, directly connected to the EU policy cycle for at least two reasons. Firstly, the preservation of the *acquis* is a major preoccupation of the EU decision-makers throughout enlargement preparation and decision-making. Secondly, enlargement requires sometimes changes in the club's rules (the prospective arrival of new Member States triggering pre-accession reforms). Enlargement is then the driving factor behind the preparation and decision on the reform of policies.

When the management of one type of problem is inadequate, one should expect to see other types of problems rising in magnitude. Problematic diversity not addressed in the run-up to accession (e.g. insufficient and/or inadequate aid for the adoption of the *acquis* by the candidate) will have consequences for the accession decision (e.g. the candidate not being ready to fulfil all obligations for EU membership). Problematic diversity that is not acknowledged in the accession treaty (e.g. no transition periods granted) will return with a vengeance in the implementation and enforcement phases (non-implementation and 'erosion' of the existing *acquis*). Besides, strategies applied in one phase can have far-reaching (desired or undesired) effects in other policy-phases. For instance, too much emphasis on uniformity in the development of the *acquis* is very likely to lead to growing non-compliance and/or non-enforcement. Graph 2.1 visualises the interdependences that will be reviewed in the evaluation in chapter 4.

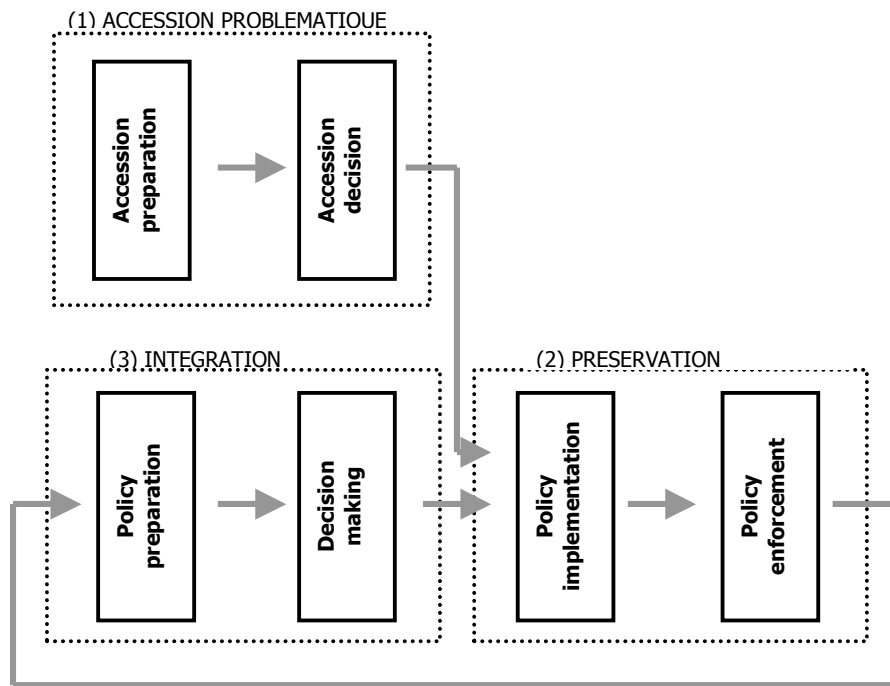
Admittedly, referring to 'the' EU cycle is an analytical simplification, but a valid one. On one hand, the cycle described *supra* does not do justice to the variety that characterises the EU. The Union is made of several subsystems with their own procedures and sets of institutions. These subsystems largely coincide with the three 'pillars' of the Union, although various subsystems also co-exist within the pillars (for instance, the Economic and Monetary Union, although embedded in the Community pillar, has its own procedures; the same is also true for defence matters under the second pillar) (Curtin and Dekker 1999: 831-103). Intergovernmental Conferences mandated to reform the Treaties also have their own specificity. On the other hand, notwithstanding these variations, it remains that the phases listed *supra* can be identified in all subsystems. This conceptualisation is therefore globally pertinent for the analysis of problematic diversity.

Because Member States dominate many stages of the EU cycle, diversity among Member States should be considered as of primordial importance and given a central place in the evaluation. The European Commission certainly plays a major role in the preparation and implementation phases. The European Parliament is more and more involved in decision-making and control of EU policies. All these phases can also be influenced, among other players, by the representatives of sectors or social groups. It remains that, the Member States still play a key role in most phases identified in the graph. As a consequence of the fairly decentralised structure of the Union, the ability and willingness of the national and sub-national

public authorities to cooperate are especially important in the enlargement and integration problematiques, the main focus of our research. This gives a particular importance to their diversity. We have therefore included a largely 'Member State' centric questioning in our study. When evaluating the pros and cons of a strategy in the context of enlargement, preservation and integration, we will ask ourselves if diversity is problematic for:

- 1 the proper functioning of the Union;
- 2 the proper functioning of a unit of the system;
- 3 the proper functioning of a future unit of the system.

Graph 2.1 Diversity and the policy cycle



30

2.3.2 THE ENLARGEMENT PROBLEMATIQUE

Various forms of diversity can hamper the preparation of enlargement and/or block the decision to enlarge, either because the characteristics of the candidate impede its preparation and preclude the adoption of the *acquis*, or because its characteristics are so problematic for incumbent Member States or for the good functioning of the Union after enlargement that they lead to the blockage of the negotiation or the ratification process.

Because of the differences in socio-economic development, some of the requirements for EU membership might simply prove impossible to meet. For candidates with a communist past, these intrinsically high demands come at a time when they

already face the challenges of multiple fundamental transformations as well as of generating catch-up growth. Political and civic differences may result in unwillingness to embrace some of the EU's values or, at least, in divergent interpretation of these values.

Either the candidate is denied membership on the basis of its diversity. This might pose a problem for the Union if non-accession represents a risk for the stability of Europe as a whole. Or the candidate is authorised to accede irrespective of its incapacity or unwillingness to accept and implement sections of the existing *acquis* upon membership. Its diversity then is problematic because such restrictions are likely to upset the balance of rights and obligations embedded in the EU regime and to undermine the contractual and legal approach of the model, but also because they might jeopardise the EU agenda for action. Problems will indeed resurface with a vengeance in the context of the preservation of the *acquis*.

Besides impeding candidates' adoption of the *acquis*, diversity can also block the accession process when certain characteristics of the candidate affect negatively the interests of incumbent Member States. For example, if the entry of low-income countries is bound to provoke substantial changes in the distribution of structural funds, present-day recipients are likely to resist enlargement. Blockage of this type is problematic for the model, because of its possible consequences for the stability in Europe as a whole. Moreover, it runs counter to the idea that the Union should be open to any European state which respects the principles set out in Article 6(1) TEU (cf. Article 49 TEU), or even stronger, that the Union has a pan-European ambition (cf. the Preamble to the Rome Treaty).

31

Geopolitical diversity can also constitute a problem. The ruling elites and populations of the Member States may not always share the same conception of the European space. Insofar as accession treaties must be ratified by all, variation in the perception of Europe's geographical boundaries or dispute over the outer limits of historico-cultural kinship can block the enlargement process.

Finally, diversity can be more directly problematic for the EU action plan when some thresholds are likely to be crossed as a consequence of the additional 'specificity' that candidates will bring in. This is, for instance the case of the particularly high number of Polish farmers whose inclusion in the Common Agricultural Policy would require resources that are simply not available in the limits set by the current multi-annual financial perspective of the EU.

2.3.3 THE PROBLEMATIQUE OF THE PRESERVATION OF THE ACQUIS

Most forms of objective and subjective diversity introduced above can also pose problems for the preservation of the *acquis*. Constrained by some of their specific characteristics, Member States (old and new alike) are at times unable to imple-

ment and enforce EU policies, or appear to engage in deliberate non-compliance. As the European system leans heavily on the Member States for the implementation and enforcement of its policies, this can quickly lead to dangerous erosion of the *acquis* (e.g. threat on the single market due to differences in enforcement).

Among particularly ‘threatening’ types of diversity is the heterogeneity in legal and administrative cultures, as well as differential in the capacity of the administrative and legal systems. For instance, the use of preliminary rulings as a method for judicial review of Member States compliance will depend on the acceptance by national courts of the utility and/or obligation to make references. Even if preliminary rulings are requested, once received, affinity with and/or proper knowledge about EU law will determine if they are followed by the referring court and by the local administrative system (Weiler 1982: 301-2). More generally and at another level, formal rule of law can come down to very little when confronted with conflicting informal rules and ingrained patterns of corruption. Environmental legislation, whose enforcement depends on the cooperation of the population, cannot produce much in a passive civil society. And rules that guarantee democratic rights cannot thrive in a society in which citizenship is defined in an exclusive manner, *de facto* denying citizenship to large minorities. In the worst cases, enforcement gaps contribute if not to the development of implementation gaps, at least to their persistence.

32

The preservation of the *acquis* is likely to become more problematic with the influx of newcomers and the resulting increase in EU diversity. Our study however does not directly deal with that dimension. For that we refer to other WRR working documents (Curtin and Van Ooik 2000; Pelkmans, Gros and Nunez Ferrer 2000; Verheijen 2000) and academic contributions (Nicolaidis 1999).

2.3.4 THE INTEGRATION PROBLEMATIQUE

Above a certain threshold diversity may hinder policy preparation and decision-making, and therefore constitute a problem for the reform or the development of the *acquis*. As far as policy-preparation is concerned, diversity in administrative capacity is often seen as a major concern. Lack of effective sectoral administrative capacities and horizontal administrative capabilities at Member State level can seriously delay the formulation of national standpoints or lead to inconsistent ones (Nicolaidis 1999; Verheijen 2000).⁴ Diversity at that level often magnifies Member States’ conflicting interests and standpoints – although cases where it does just the opposite are not rare. In the decentralized structure of the EU, in which decision-making strongly depends on consensus among Member States, great or sensitive diversity in standpoints among Member States is bound to lead to decision-making deadlock. Diverse standpoints are likely to relate to differences in socio-economic development. Enlargement will bring in Member States with relatively low income levels, which will not be able to afford, for instance, the

further development of costly environmental and social European regulation, primarily reflecting preferences and means of rich Member States. Geopolitical considerations could at times be equally problematic. For example, new Member States with large Russian minorities could be more reluctant to develop EU-Russia relations in certain areas. And by way of a last example, as a consequence of differences in legal and administrative culture the trust necessary for effective judicial and police cooperation might be slow to come.

2.4 CRITERIA FOR THE EVALUATION OF ENLARGEMENT AND INTEGRATION STRATEGIES

Evaluation and comparison of strategies require yardsticks or standards against which the various approaches can be assessed and contrasted. Insofar as our main research question is how to strengthen the EU's capacity to act in the context of enlargement, it is only logical to choose managerial variables as the starting point of our evaluation. The potential of each strategy will therefore be first appraised in terms of functionality and feasibility, two classical managerial criteria. Non-managerial dimensions must be taken into consideration as well. However functional and feasible, solutions should indeed be discarded if their negative impact on key systemic features is too great. We will use two sets of systemic criteria derived from the model presented in section 2.2, one linked with the preservation of the project of an ever closer Union of values and action, and another linked with the development of peace, welfare and stability of Europe as a whole (see table 2.1).

33

Our study should be clearly distinguished from those studies evaluating strategies to promote *systemic dimensions*. Our purpose is to evaluate *enlargement and (post-enlargement) integration strategies*. We aim at identifying the most functional and feasible enlargement and integration strategies, which at the same time have the best record from a systemic point of view. Another thing is to study strategies to promote one systemic dimension (e.g. democratic legitimacy), even if the latter strategies can also be evaluated in terms of their functionality and feasibility (e.g. whether the strategy is effective and feasible to enhance democratic legitimacy) as well as their side-effects on other systemic dimensions (e.g. protection of groups in minority positions). In other words, we look for the most functional *enlargement strategy*, which, among other things, would not undermine EU democratic legitimacy. We do not look for the best *democratisation strategy* per se.

2.4.1 MANAGERIAL CRITERIA

When a project is framed as a pragmatic structure aimed at achieving common objectives, the problem-solving capacity of the various strategies reviewed must be regarded as crucial. That capacity is appreciated here in terms of functionality and

feasibility. Because these variables concern the way strategies deal with accession and integration problems, they are hereafter referred to as *managerial criteria*.

Our first key managerial criterion is the functionality of a strategy. This utilitarian criterion refers to the capacity of a strategy both to unblock decision-making and to contribute to the achievement of EU objectives. Ideally speaking, a functional strategy should not only offer a proper (technical) solution to enlargement/integration problems, but should also do so in consonance with EU objectives.

Our second key managerial criterion is the feasibility of a strategy, both in financial and political terms. Strategies must be financially sustainable for the EU, its Member States and the candidate countries.⁵ They should also be politically sustainable. Strategies necessitating far-reaching centralisation, for example, may not be viable in policy areas long organised on a decentralised basis. Besides taking into account the Union's path-dependency, solutions should be able to muster enough public support in the (applicant) Member States. Financial and political dimensions are of course linked. For instance, a particular approach leading to uneven burden-sharing among (aspirant) Member States may erode popular support for European enlargement or integration, and consequently prove to be unsustainable.

The evaluation of a strategy should encompass its performance for all the stages of the problematique concerned, its impact on the management of other types of problems and its cumulated effect. A strategy may well offer a solution to overcome decision-making deadlock, but create new problems at preparation level. Besides one must verify if a strategy facilitating, say, accession does not have dire consequences for the preservation or the development of the *acquis*. Finally, an option that would solve a discrete problem without creating new ones for the other stages of the EU cycle and for the other types of problematiques may still prove to be, managerially speaking, inadequate if its cumulated effect exceeds certain financial or political limits. Increasing aid programmes to candidate countries would solve many enlargement problems. Increasing structural funds would do the same for many integration problems. Their simultaneous increase could however prove financially untenable. Similarly, a solution penalising a group of Member States could seem acceptable if considered in isolation, but would be politically untenable if part of a sequence of decisions harming structurally the interests of that group. Consistence, coherence and holistic feasibility are therefore other important criteria for the managerial evaluation.

2.4.2 SYSTEMIC CRITERIA

The problem-solving capacity of EU enlargement and integration strategies is but one element of the equation. Often set at (technical) managerial level, the European debate tends to overlook the (intended and/or unintended) effects enlarge-

ment and integration strategies may have on EU governance as a whole, and the strategic and ideological choices they represent for the long-term trajectory of the Union. One of our aims is to evaluate explicitly these 'systemic' effects.

The possible impact of each solution on the key aspects of the EU model sketched in section 2.2 will therefore be reviewed in order to see if that solution preserves the model and, if not, in which direction it pushes the model. These aspects listed under the 'systemic criteria for the preservation of the project of an ever closer Union of values and action' are: unity, supranationality, legitimacy, transparency and readability, solidarity, protection of the minority, open-endedness, adaptability, and subsidiarity and proportionality (see table 2.1).

The external effects of EU strategies should be evaluated as well. The reasons to do so are twofold. First, the close interconnections between EU Member States and non-EU European states command that attention be paid to the external effects of EU strategies and their potential backlashes. Secondly, the EU's collective identity includes the notion of a special responsibility for peace, welfare and stability in Europe (Sedelmeier 2000: 166). By stating that the EU has 'not lost sight of the fact that it represents only a part of Europe', and that 'any progress in building the Community is in keeping with the interests of Europe as a whole', the report of the Dooge Committee reemphasized what have been two constants in the discourse of the EU (Dooge Committee 1985). A number of parameters linked to the development of peace, welfare and stability in Europe as a whole have therefore been added to our list of systemic criteria. That second cluster of systemic criteria revolves around the effects of the various approaches in terms of: the EU requirements for membership (open door), non-discrimination among candidates (fair treatment), the elimination of divisions among European countries (non-divisiveness), and the promotion of transformation and catch-up growth in aspirant countries (synergy).

Table 2.1 Evaluation criteria

Managerial criteria	
Functionality	Is the proposed approach solving the problem blocking accession / integration? How functional is it in terms of the EU's policy objectives?
Feasibility	Is, from the standpoint of current and/or applicant Member States, the proposed approach feasible financially and politically?
Systemic criteria for the preservation of the project of an ever closer Union of values and actions	
Unity	Is the proposed approach preserving the single institutional framework of the EU and/or the unity of the legal system?
Supranationality	Is the proposed approach preserving the central role devolved to the Community method?
Legitimacy	Is the proposed approach reinforcing the (democratic) legitimacy of the EU?
Transparency & readability	Is the proposed approach increasing the transparency and readability of EU structures and actions?
Solidarity	Is the proposed approach increasing the solidarity and cohesion between Member States?
Protection of the minority	Is the proposed approach preserving the protection of Member States in a minority position?
Open-endedness	Is the proposed approach allowing the Union to further widen its scope of actions and further deepen its level of integration?
Adaptability	Is the proposed approach preserving or strengthening the capacity of the EU to adapt?
Subsidiarity & proportionality	Is the proposed approach consonant with the subsidiarity and proportionality principles?
Systemic criteria linked to the development of peace, welfare and stability in Europe as a whole	
Open door	Is the proposed approach keeping the EU membership option open?
Fair treatment	Is the proposed approach not discriminating against some candidate countries?
Non-divisiveness	Is the proposed approach eliminating divisions among European countries?
Synergy	Is the proposed approach reinforcing transformation and catch-up growth processes in aspirant and candidate countries?

NOTES

- ¹ This means that the EU regime can be implemented in diverse cultural contexts, but also that it is, to some extent, culture-bound. As Amato and Batt notice, ‘... the cultural context, especially the underlying political culture (in the sense of values, attitudes, and ingrained patterns of behaviour), does enter into the equation insofar as the stability of democratic institutions, the real enjoyment of rights and freedoms, and the quality of the Rule of Law in practice all presuppose an underlying web of more or less unspoken, taken-for-granted common understandings and assumptions’ (Amato and Batt 1999: 34-5).
- ² Diversity is not the only source of problems when defending values and pursuing actions. Problems indeed can also arise when the units of the system are too similar, as the history of regional integration in Latin America shows. Problematic similarity however is clearly outside the scope of our study, that is, problematic diversity. This dimension will therefore not be treated here.
- ³ ‘Policy cycle’ is used here in a broad meaning, encompassing not only day to day policy making but also the budgetary cycle as well as the cycle of Treaty reforms.
- ⁴ Horizontal capabilities refer among others to coherence of the policy-making framework, inter-ministerial consultation mechanisms and coordination of EU affairs to achieve common standpoints and develop coherent negotiating strategies (Verheijen 2000).
- ⁵ The efficiency of a strategy and its financial feasibility are two different things. A strategy may be very efficient, but still unaffordable for the EU.

3 STRATEGIES TO MANAGE DIVERSITY: EXISTING TOOLBOX AND ALTERNATIVE SOLUTIONS

In order to prevent and overcome problems that diversity may cause in the context of enlargement or integration, EU players have progressively developed a rich palette of formal and informal instruments. In some cases, the group of Member States keen to solve problems chose to suppress diversity, to diminish it or to buy it off. In others, they decided to accommodate or circumvent it.

Very often, these strategies were used in combination. Many players, for instance, have negotiated issue-linkages and package deals by which their acceptance of uniformisation in one domain was exchanged against the accommodation of their diversity in another domain. For the sake of clarity, we have discussed these strategies separately, each type of instrument being categorised according to its main effects on problematic diversity.

For some, the existing toolbox – albeit versatile – is partially outdated or could be further added to. Next to existing instruments, we therefore list hereafter the main additional or alternate solutions recently debated but as yet outside of the EU's arsenal. Finally, insofar as different problems often call for different solutions, we also indicate the relative importance each category has in the enlargement and integration contexts.

3.1 SUPPRESSING DIVERSITY

Suppressing diversity is a very important strategy both when having to deal with problems of enlargement and integration. In the context of enlargement, suppressing diversity refers to those strategies that result in the candidate's alignment with the norms set by the *acquis*. In the post-enlargement context, suppressing diversity refers to those integration strategies that result in one unified norm for all.

In the case of enlargement, the elimination of the applicant's diversity vis-à-vis the *acquis* is even at the heart of the EC/EU method. Applicants have indeed to submit themselves to the principle of the wholesale adoption of the *acquis* of the Union (that is, they are expected to accept all the provisions of the Treaties, all the decisions taken by the EU institutions as well as the jurisprudence of the European Court of Justice and the Court of first instance). A variety of subsidiary strategies are applied around the core strategy of suppressing diversity. A first option is to make explicit the conditions to pass through various stages towards accession. Secondly, the unilateral adoption and implementation of the *acquis* before accession can be encouraged. This can be done by funding adjustment costs, screening/setting priorities/planning and monitoring, encouraging candidates to develop relations in line with the *acquis*, the introduction of probation periods,

and/or defining a timetable for enlargement. Thirdly, the suppression of diversity vis-à-vis the acquis before accession can be fostered by offering or imposing partial integration. This can be through association agreements, participation in the implementation of policies and programmes, partial membership and/or protecto-rates.

The suppression of diversity, although less central, has also been used as an integration strategy. The adoption of uniform regimes or the substitution of national policies by a centralized one has repeatedly been chosen as a way to solve integration problems. In many policy areas, even if the search for consensus is still pursued at great length, unanimity is indeed no longer required. By resorting to qualified majority voting (QMV), a group of Member States can decide to impose the suppression of diversity. Where unanimity is still required, another way for a majority of Member States to obtain the suppression of diversity is to threaten to resort to extra-EU co-operation. If co-operation among Member States taking place outside the EU framework (like the 1985 Schengen initiative) is obviously not part of the 'EU' toolbox of diversity management, its evocation is an instrument in EU negotiation. It strengthens the bargaining power of some Member States over those faced with the possibility of exclusion and the potential negative policy externalities that come with it.

3.2 DIMINISHING DIVERSITY

Some problems can not be (directly) resolved by the imposition of uniform rules. They demand for an approach aimed at gradual convergence, diminishing diversity to an unproblematic level. Three processes can contribute to convergence:

- 1 Convergence through market forces. According to the liberal logic, foreign trade and investment contribute to greater cohesion between regions or Member States. In the enlargement context market forces can be unleashed by removing impediments to foreign trade and investment and/or promoting market integration. In the post-enlargement integration, the further development of the internal market likewise contributes to socio-economic convergence.
- 2 Convergence through financial transfers. Since the restructuring of coal and steel industries, the more interventionist logic of temporary financial redistribution has been progressively developed and expanded to facilitate convergence. In the integration context the main instruments of financial convergence are the structural and cohesion funds. Similar financial programs have been developed to assist socio-economic catch-up and restructuring processes in candidate countries (e.g. Special Accession Programme for Rural and Agricultural Development (SAPARD) and Instrument for Structural Policy Assistance (ISPA)).

- 3 Convergence through learning and coordination. Learning can arise from exchange of information, staff exchange and cross-training. Convergence can also be arranged through policy coordination, in the process of which European guidelines, national benchmarks and targets are set, national policies are monitored, and peer pressure is used to achieve adequate compliance and performance. The Commission in its early years already resorted frequently to the 'OECD technique' of policy coordination in order to address a number of issues relating to environment, research and development as well as education policies (Wallace Helen, 2000a, 32). Since the beginnings of the 1990s, this approach benefits from a renewed enthusiasm with the extension of the so-called 'open method of coordination' applied to macro-economic, employment and justice and home affairs issues. Learning-by-doing, benchmarking and policy coordination all play an important role in the enlargement context as well, where convergence between candidate and incumbent Member States is pursued, for instance, by inviting candidates to join in the implementation of several EU policies and programmes.

3.3 BUYING OFF DIVERSITY

In order to secure enlargement or deeper integration preservation, a group of Member States can choose or be obliged to buy off the diversity of other countries. In exchange for various unconditional side-payments or regulatory concessions in other areas, the latter let the EU continue or go ahead as if their diversity did not exist. If they accept to trade off their diversity, those countries do not however commit themselves to do anything about it. It is the unconditional nature of the side-payments that is characteristic for 'buying off' diversity. If transfers are made under the express condition that the recipient takes action to suppress or diminish diversity, they belong in the category of suppressing diversity with the aid of financial assistance (dealt with under 3.1) or diminishing diversity through convergence programs (see section 3.2).

This strategy mainly applies to integration problems, more particularly in areas ruled by unanimity. Its use can nevertheless be envisaged for at least two types of accession problems. Firstly, it allows dealing with incumbent Member States menacing to veto accession because they feel that their specific interests are greatly compromised by the characteristics of an applicant (cf. the position taken by the Spanish government in the late 1990s). Secondly, it could be used to dispose of threats posed by the characteristics of the new comers to an established EU policy. The number of Polish farmers, for instance, is such that the accession of their country would lead to an unsustainable budgetary increase for the Common Agricultural Policy. The reform of the CAP has proven to be very difficult because of the deeply entrenched interests of a number of incumbent Member States. For them, an alternative solution would be to keep the regime as it is and push for EU

unconditional side-payments that would compensate candidates for their partial exclusion from the CAP.

3.4 ACCOMMODATING DIVERSITY

Accommodation of diversity implies a certain acknowledgement of diversity by way of granting officially a special treatment. A first manner to push through package deals is by opting for '*vertical accommodation*', leaving the management of part of the package to lower levels of government or governance, and thereby removing thorny issues from the EU agenda. This form of accommodation could be used to solve *integration* questions. For instance, a compromise on the development of common rural policies could be found by deciding to leave the financing of specific rural support programmes at national level. Vertical accommodation could also be used to solve *enlargement* problems, in which case a redefinition of the *acquis* would be required. An example would be the (partial) renationalisation of redistributive policies, in case the prospected claims of new Member States, and the ensuing post-accession costs of these redistributive policies, would provoke an incumbent Member State to block enlargement.

As a second mode, diversity can be accommodated '*horizontally*', at EU level. One way to do this is by opting for less constraining regimes of cooperation in which all Member States participate. Opting for minimum harmonisation or outline legislation in stead of a more constraining uniform legal regime could solve *integration* questions by accommodating the less integrationist Member States. Solving *enlargement* questions through a less constraining regime would require a redefinition of the *acquis*, substituting for instance uniform rules by outline legislation, thereby relaxing the obligations imposed on Member States.

Apart from using less constraining regimes, diversity can be accommodated at EU level by differentiation in Member States' rights and obligations (flexibility).

Variation in the participation of Member States can take many forms, and this second type of horizontal accommodation requires a more detailed presentation. We have classified these forms into six categories on the basis of the following dimensions: the choice of the framework (inside or outside the EU); the commonality of the objectives (maintaining common objectives for all Member States or not); the status of the *acquis* produced (EC/EU *acquis* or no EC/EU *acquis*); the scope within which flexibility applies (one decision up to an entire policy area); and the basis of the closer cooperation (ad hoc or on the basis of the enabling clauses for closer cooperation in the Treaties).

3.4.1 EC/EU POLICIES WITH A DIFFERENTIATED APPLICATION OF COMMON OBLIGATIONS AND RIGHTS

This form of flexibility implies that, although Member States are and remain equally committed by the Treaties, the application of the Treaties is subject to variation dictated by 'objective' differences. For example, the Outermost regions of the Union – which include the French overseas departments and the Azores – enjoy special treatment on the basis of Article 227(2) TEC, this for as long as their situation does not allow for the full application of the general provisions of the TEC and common policies. In most cases, a determined period is set for the derogation. This form of differentiation was and still is crucial for the reform and development of the *acquis*.

Temporary derogations have also been widely used to facilitate a number of accessions. Foreseeing the difficulty linked to future rounds of enlargement, some have suggested the introduction of a reasoned system that would prevent the anarchic multiplication of derogations granted by the Union on an *ad hoc* basis. They argued in favour of a systematic identification of the sections of the *acquis* indispensable for the proper functioning of EU policies. Derogations, possibly en bloc, could then only be given for what is not part of this 'core *acquis*'.

3.4.2 EC/EU POLICIES INCORPORATING AN ELEMENT OF CASE-BY-CASE FLEXIBILITY

In a number of EC/EU policy areas, some or all Member States have the chance to 'pick and choose' the measures that will commit them. This form of flexibility allows for permanent and, to a large extent, discretionary exemptions, that is, based more on unwillingness than inability. Member States 'opting out' do not have to apply the decision of the Council, but must accept that the Union is committed by the action or position in question (cf. Article 23 TEU allowing for 'constructive abstention' in the CFSP). In other areas, some Member States do not take part in the adoption of EU measures and these measures do not bind them unless they decide otherwise. In other words, they are allowed to 'opt in' on a case-by-case basis (cf. Title IV of the TEC). Such mechanisms have been introduced in the Treaties to secure limited integrative progress in the decision-making process or the policy scope. Their use has been fairly limited so far.

As a consequence of the prevalent accession method (see sub-section 3.1), candidate countries are not entitled to permanent opt-outs from the *acquis* of the Union. This also applies to this form of opting out. Demand for it is fairly limited, if any.

3.4.3 EC/EU POLICIES ESTABLISHED ON THE BASIS OF AD HOC FLEXIBLE ARRANGEMENTS (PREDETERMINED FLEXIBILITY)

In this case, the exemptions granted to some Member States do not apply to individual acts or decisions (case-by-case flexibility) but to an entire policy (sub)area. Reference is often made to the 'predetermined flexibility' method because the policy is established on the basis of a protocol detailing in advance all aspects of the flexibility arrangement (specific scope and procedures) for that particular area. For instance, in the case of the EMU, one part of the monetary policy is run through 'normal' procedures, involving notably the Ecofin Council, while another part, including the monitoring of government deficits or the adjustment of the Euro exchange rate, is dealt with through *ad hoc* procedures and modalities, largely defined in protocols attached to the treaties. Title IV of the TEC (on visas, asylum, immigration and other policies related to free movement of persons) and Article 14 TEC (area without internal frontiers) are two other important examples in this category. The multiplication of these various exemptions has been the price for much of the integrative developments of the 1990s.

The way the Union went to extra-length to accommodate the diversity of incumbent members makes the contrast with the rigid accession rules imposed on new comers all the more flagrant. Some are therefore suggesting that candidates should be offered the possibility of a permanent opt out from areas where such exemptions already exist. Proponents of regressive flexibility would go one step further and envisage opt outs for candidates from EU policies that at the moment commit all incumbent Member States. In that way, accession problems would be solved by exempting or excluding new comers from sensitive EU policies.

3.4.4 INTRA-EU CLOSER CO-OPERATION ESTABLISHED ON THE BASIS OF AD HOC FLEXIBLE ARRANGEMENTS

This form of flexibility authorises, sometimes informally, Member States to use the institutional framework of the EU to develop closer co-operation among them. Such co-operative developments take place inside the EU but are not considered as part of the EC/EU *acquis*, even if they all build on an existing EC/EU policy or innovate in line with EC/EU objectives. Their scope, objectives, rules and procedures are defined on an *ad hoc* or 'occasional' basis.

Examples of such arrangements include co-operation for additional research programmes, co-operation within the 'euro-group' or the possibility for closer co-operation offered by the Protocol integrating the Schengen *acquis*. By definition they all aim at developing integration. This technique is therefore of no direct use for easing the adoption of the existing EC/EU *acquis*.

3.4.5 INTRA-EU CLOSER CO-OPERATION ESTABLISHED ON THE BASIS OF THE GENERAL ENABLING CLAUSES SET OUT IN TITLE VII OF THE TEU

The Council can decide by QMV to authorise a majority of Member States to make use of the institutions, procedures and mechanisms laid down by the Treaties to further co-operation among themselves in a restricted number of policy areas of the first pillar, in the second pillar – albeit limited to the implementation of joint actions and common positions – and in the entire third pillar (Article 43 TEU; Article 11 TEC and Title VI, Article 40 TEU). Its use has been seriously envisaged a couple of times, but no authorisation procedure has been taken since the Amsterdam Treaty came into force in May 1999. The importance of this instrument for the development of *acquis* is therefore still conjectural. Its importance will, in any case, grow after the ratification of the Nice Treaty. The Heads of state and government have indeed agreed, in the latest revision of the Treaties, to make ‘enhanced cooperation’ more operational.

Insofar as the Treaties expressly stipulate that this instrument can only be used for the development of *acquis* and that the acts and decisions adopted in such framework shall not form part of the Union *acquis*, ‘enhanced cooperation’ as defined by Title VII cannot be considered as part of accession strategies. Some have nevertheless suggested that the Treaties should organise similar mechanisms for regressive flexibility. In that case, existing EU policies would logically be replaced by instances of ‘enhanced cooperation’ among the incumbent Member States, in which new Member States do not participate.

3.4.6 EXTRA-EU CLOSER CO-OPERATION WITH A DIRECT LINK WITH THE EU

This form of flexibility refers to (intergovernmental) co-operation between EU Member States outside the EC/EU framework but which has a link to the Union. In most cases, Extra-EU closer co-operation has been explicitly conceived, as the signatories of the 1985 Schengen agreement did, as a ‘laboratory of EU policies’ whose output is intended to integrate eventually the framework of the EU. Co-operation in the field of foreign policy followed the same pattern, with the pragmatic development of an intergovernmental mechanism established outside of the Treaties in 1970 – the ‘European Political Cooperation’ – and eventually incorporated into the Single European Act of 1986. Extra-EU closer cooperation has also been considered as ‘an integral part of the development of the Union’, notwithstanding differences in the respective membership, as in the case of the Western European Union (WEU). The EU went even further by establishing on that basis a structural and functional link, when it stipulated that it ‘will avail itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications’ (Article 17 TEU).

The idea of extra-EU closer cooperation with a link to the EU recently resurfaced to serve a bigger ambition. Jacques Delors and other leading thinkers on Europe now play with the idea of a ‘Treaty outside of the Treaties’. This would allow like-minded Member States to further deepen their integration if that ambition would prove too difficult to fulfill within a Union of 25+.

Here too, all past and present cases have been concerned with developing integration. Nonetheless, this technique could in theory also be used in a regressive way, by transferring EC/EU *acquis* to the extra-EU closer cooperation framework, in which new EU Member States would not participate. Considering the extraordinary change in EU orthodoxy it would require, such innovation is even more hypothetical than the other forms of regressive flexibility envisaged *supra*.

3.5 CIRCUMVENTING DIVERSITY

Problems linked with diversity can be solved by the development of co-operation outside the EU framework, on a formal or informal *ad hoc* basis. Circumventing diversity as a strategy to overcome problems of integration, although not uncommon, remained limited to a small number of policy areas. Among these areas are foreign policy and defense. The failures of the CFSP, often attributed to divergence among the 15, lead large Member States – France, Germany, Italy and the UK – to form ‘contact groups’ among them. In armaments production, the same Member States, which are also the main arms producers, pursue a similar multi-track approach: they co-operate in the OCCAR (Organisation of Co-operation in Armaments), to the detriment of the working group for armament policy (POLARM) established by the Council and the European Armaments Group, part of the WEU. Diversity and the institutional structure of the Union (its principles, norms, rules and procedures) are in these cases circumvented.

In the context of accession, circumventing diversity would imply the transfer of EC/EU *acquis* to an extra-EU cooperation framework, thereby reshaping the policy scope of the Union according to the needs of the next round of enlargement. The core principle of the current EU approach to accession clearly excludes such option. Considering the level of interconnectedness of EU policies, it hard to imagine that it will ever be otherwise.

4 EVALUATION OF ENLARGEMENT STRATEGIES

4.1 INTRODUCTION

This chapter seeks to evaluate enlargement strategies at two levels. Firstly at the managerial level: Does the proposed approach solve the problem that is blocking enlargement? How functional is it in terms of the EU's policy objectives? Is, from the standpoint of current Member States and/or applicant countries, the proposed approach feasible financially and politically? Secondly at the systemic level: How desirable are these solutions and their consequences for the EU system of governance and for Europe as a whole? Owing to the number of systemic criteria included in our analysis (see table 2.1) we will only refer to those considerably affected by the enlargement strategy reviewed.

Such an evaluation is particularly important at the time when the most advanced accession negotiations are entering their most crucial part.¹ On the basis of the results of the screening process, some argue that the classical EC/EU enlargement strategy can adequately deal with the coming enlargement. This is possible but far from certain. For that reason, EU decision-makers should contemplate various scenarios and think through additional and alternative solutions. This is all the more necessary when dealing with those countries which have expressed their interest in Union membership, but have not yet achieved candidate status. Admittedly, in many cases, their compliance with the Copenhagen criteria will be a much bigger challenge. Anchoring these countries to the EU might therefore call for new approaches.

In chapter two, we argued that not all differences between aspirant countries and Member States are problematic for the EU. Diversity should *a priori* be considered as problematic (and therefore be dealt with before enlargement) in two cases: firstly if the characteristics of the aspirant are such that they will probably result in that country being either unable or unwilling to live up to membership' standards; secondly if the characteristics of the aspirant will harm significantly the interests of an incumbent Member State.

Table 4.1 Dealing with problematic diversity in the context of enlargement – the Toolbox

	Inventory of enlargement strategies
Suppressing diversity	<p><i>Strategies through which problematic diversity is suppressed</i></p> <ol style="list-style-type: none"> 1. Formulating conditions <ul style="list-style-type: none"> • Criteria to become a candidate (art. 49) • Criteria to start accession negotiation • Criteria to become a member (Copenhagen and Madrid criteria) 2. Promoting unilateral adoption and implementation of the <i>acquis</i> before accession without granting rights to the aspirant/candidate country <ul style="list-style-type: none"> • Financial support • Screening, setting priorities, planning and monitoring • Encouraging candidates to develop relations in line with the <i>acquis</i> • Probation periods • Defining timetables for enlargement 3. Offering or imposing partial integration <ul style="list-style-type: none"> • Partial integration through association agreements • Participation in the implementation of EU policies and programmes • Partial membership • Protectorate
Limiting diversity	<p><i>Strategies through which (future) problematic diversity is decreased by dealing with the source of problematic diversity</i></p> <ol style="list-style-type: none"> 1. Convergence through market forces 2. Convergence through financial transfers 3. Convergence through policy transfer 4. Redefinition of EU policies
Buying off diversity	<p><i>Strategies through which problematic diversity is removed from the agenda in exchange for unconditional financial transfers</i></p> <ol style="list-style-type: none"> 1. Unconditional side-payments
Accommodating diversity	<p><i>Strategies through which problematic diversity is acknowledged by way of granting officially a special treatment</i></p> <ol style="list-style-type: none"> 1. Transition periods 2. Core <i>acquis</i> test 3. Permanent derogations (Regressive flexibility)

48

The elements presented in this section are restricted to the four most relevant approaches of problematic diversity in the context of enlargement: suppressing, diminishing, buying-off and accommodating strategies. An enumeration of the enlargement strategies discussed is given in table 4.1.

4.2 SUPPRESSING DIVERSITY

The suppression of the applicant’s diversity *vis-à-vis* the *acquis* is at the heart of the EU’s method of enlargement. The classical strategy implies the acceptance of the entire *acquis* on the day the accession treaty enters into force, both terms of this equation being somewhat at odds with the general practice in international

relations. The first term – ‘acceptance of the entire *acquis*’ – means that applicants are not eligible for any permanent exemptions: ‘take-it-all-or-leave-it’ could adequately encapsulate the official line of the Union. Whether incumbent Member States managed to have opt-outs from the *acquis* has no influence on the enlargement strategy. Accession negotiations do – at least theoretically – not deal with the contents of the *acquis*, but with how and when the applicant will apply it. Contrary to international agreements which are usually built by exchanging concessions on the nature of the new regime, the main outcomes of the accession negotiations are known from the outset. As Graham Avery says, the applicant is expected to accept the *acquis* in its entirety and to adjust its system accordingly (Avery 1999: 32). Transition periods for the gradual implementation of the *acquis* after accession are the only degree of freedom offered – in exceptional circumstances – to acceding countries (see accommodating diversity, dealt with under section 4.5). As for the second term – ‘on the day the accession treaty enters into force’ – it means that the package of rights and obligations presented to the candidates at the start of the negotiations may change, even after the signature or the ratification of the accession treaty (in case the treaty does not enter into force on the day of the last ratification). In other words, the development of *acquis* does not stop during enlargement rounds, contrary to what happens for instance during GATT-WTO negotiations.² With the EU approach candidates are confronted with a ‘moving target’.

Textbox 4.1 The EU *acquis*

The EU *acquis* comprises :

- the content, principles and political objectives of the treaties;
- the legislation adopted in application of the treaties and the case law of the Court of Justice;
- the declarations and resolutions adopted by the Union;
- measures relating to the common foreign and security policy;
- measures relating to justice and home affairs;
- international agreements concluded by the Community and those concluded by the Member States between themselves in the field of the Union’s activities.

In the EU’s ideology, this approach has gained an axiomatic value. Indeed the guardian of the Treaties, the European Commission, and a large majority of Member States see it as a fundamental rule for the preservation of the EU model. Being repeatedly reminded of this rule, applicants tend to see the non-negotiability of the *acquis* as a non-negotiable principle. Since Maastricht and the multiplication of opt-outs granted to incumbent Member States, it has of course become more uncomfortable for the Union to insist on the wholesale adoption of the *acquis* insofar as the rule does not apply equally to all. The defence line of the EU is to present implicitly these breaches in the Community orthodoxy as an exception, not a precedent. Recent attempts to exploit that inconsistency have nevertheless been made. For example, the ambassador of Hungary to the EU, Endre Juhasz, was among those explicitly stressing that ‘candidates should be allowed to ask for justified exemptions to the EU *acquis* as have had the current Member States when EU

legislation was adopted' (interview to *Uniting Europe*, N° 132, 19 February 2001: 5-6). Similarly, in the run-up to the Swiss referendum of February 2001, campaigners favourable to the opening of accession negotiations with the Union used the EU's new flexibility as an argument to reassure voters (Schwok 2001). It remains that those attempts are, first and foremost, tactical. The axiomatic status of the 'take it all or leave it' approach has not been fundamentally undermined.

Those who notwithstanding attempt to negotiate their accession on a different basis are quickly confronted with the same reality: the bilateral nature of the enlargement process, another key component of the standard EU enlargement method, creates an asymmetry between negotiating parties which dramatically benefits the EU and allows the latter to dictate the rules of the game. Bilateralism in itself is not sufficient to guarantee EU domination. A large number of applicants formally negotiating in parallel but coalescing informally could still challenge the EU's position in the negotiation. In order to avoid this, the EU tends to limit accession negotiations to a small number of countries at a time. A large number of applications would be taken into consideration if, and only if, the countries concerned are small and/or have many similarities with incumbent Member States. Irrespective of the nature of the process and the number of applications considered at a time, the asymmetry varies with the importance the EU and the candidate respectively attach to accession (the lower the EU's interest in enlargement, the greater the asymmetry).

50

From the EU standpoint, this 'take it all or leave it' logic has proven to be effective as far as accession negotiations are concerned. In such a negotiating frame, delaying tactics or non-cooperative postures generally bring no benefits to candidate countries. For those aspiring to a quick accession, this format is also effective insofar as it insulates the negotiation from wider integration debates (Preston 1997: 9). A crucial condition for the effectiveness of suppressing diversity as an enlargement strategy is asymmetry between the negotiating parties. Asymmetry in the distribution of power ('objective hegemony') combined with willingness of the most powerful actor to take the lead ('subjective hegemony') means that solutions are put forward more quickly and get accepted more easily. The 'take it all' strategy has both and is consequently very effective in overcoming obstacles linked with ideological or political differences in particular.

Besides being a very effective way for delivering convergence of views, the strategy of suppressing diversity *vis-à-vis* the *acquis* is the cheapest for the EU, at least in theory. The practice, however, shows that it does not always work so neatly. Political imperatives, combined with window dressing by candidates and problems in measuring candidates' implementation capacity, have often led to grant of membership while problematic diversity had been suppressed but on paper. In such cases, the full magnitude of a problem only appears after accession, that is to say, when it has become an EU problem. This makes of course a crucial difference: once a country has a seat in the institutions of the EU, it indeed has a much better nego-

tiation position. Applicant countries are well aware of that fact and might be tempted to be overoptimistic about their state of readiness. By doing so, they would not only secure a quicker accession, but also have a better chance to shift a larger share of the adjustment costs on the EU budget. Without proper verification of the implementation capacity of the candidate, this approach might therefore well turn to be very efficient for the Union only in the short run.

The strategy of suppressing candidates' diversity *vis-à-vis* the *acquis* is also, in principle, highly functional as far as the EU policy objectives are concerned. The Treaties bound the action of the Union: by definition, the EU cannot adopt measures that do not serve the objectives listed in the Treaties. Forced alignment on what has been decided by the Union in the past should therefore guarantee that enlargement has no detrimental impact on EU policy objectives. This hypothesis however disregards two things. Firstly, some parts of the *acquis* might have become obsolete: measures necessary to achieve certain objectives in the nineteen-fifties might not be needed anymore. Secondly, other parts of the *acquis* are the result of package deals and side-payments, necessary at some point in the past to buy off specific Member States, but in themselves not consonant with EU objectives. In those cases where suppressing candidates diversity *vis-à-vis* the *acquis* would contribute to maintain or even reinforce these obsolete or 'perverse' policies, the 'take it all' strategy would certainly not serve EU policy objectives.

While functional on short term, the 'take it or leave it' logic, or rather its implicit assumption about post-accession burden sharing, can prove to be disruptive in the longer run. Insofar as the Union forces no country to join in, one can assume that those applying have made their cost-benefits calculations and reckoned that they would gain from membership. There is therefore no necessity for the EU to make sure that the interests of incoming Member States are going to be fairly served by the design of the Union. And indeed, in its preparation for enlargement, the EU generally assumed that post-accession burden-sharing was going to be sufficiently balanced and only made limited efforts to integrate that dimension in its pre-accession reform of the *acquis*. The consequences can be dire: the *ex-post* discovery that the design of the *acquis* generates substantial structural losses for one of the newcomers can be very destabilising for the system as a whole. Doubts about the fairness in the distribution of costs and benefits of the EU have in the past generated strong and sometimes very disruptive post-accession demands for the renegotiation of the *acquis* such as in the case of the UK. The neglect of the predictable budgetary problems arising from the gradual application of the *acquis* to the UK's specific trade structure led to a renegotiation of British entry conditions in 1975, and a protracted, bitter budget dispute that was not settled until 1984 (Preston 1997: 9).

From the standpoint of applicants and incumbent Member States, the proposed approach may complicate the negotiation, slow it down, and involve significant domestic costs, but eventually it has proven to be politically feasible in most cases.

Considered in its entirety, the *acquis* happens indeed to be reasonably functional for all parties. Instead of using their power to extract immediate benefits, the leading states used it to convince secondary states to organise around agreed upon principles and institutional processes which are mutually beneficial and therefore represent, on the long term, a better guarantee for the conservation of their dominant position. In other words, the hegemony have engaged in 'strategic restraint' aimed at power conservation (Ikenberry 1998: 153). The conclusion of four rounds of enlargement and the long queue of applicants speak for themselves. To this day, the 'take it all' strategy happened to be prohibitive only in a couple of cases. The refusal to grant the permanent exemptions demanded by Norway for its agriculture and fisheries, and the subsequent rejection of the accession Treaty is one.³ The other main failure concerns Switzerland where a majority considers the *acquis* on freedom of movement of workers, transport and banking as unacceptable, and the EU decision-making processes as incompatible with the Swiss confederal political system and direct democracy. In those cases, a more flexible approach on behalf of the EU would make a substantial difference. From the reverse perspective, there were and still are cases where an application is politically unpalatable for incumbent Member States, leading them to veto the opening or conclusion of the negotiations, or even the ratification of the accession treaty (e.g. France *vis-à-vis* the United Kingdom; Greece and other Member States *vis-à-vis* Turkey). In those cases however, the exclusion of the problematic applicant from a number of policy areas would not unblock the enlargement process since it is less the applicant's participation to policies than its very presence in the club which is generally at the root of the veto. The most deeply entrenched vetoes are usually more political than financial by nature.

52

Even if its political feasibility has proved to be satisfactory in most cases, the suppressing approach does little to alleviate financial problems hindering enlargement, either for candidates or for incumbent Member States. Opting for the 'take it all' strategy and putting the burden of pre-accession adjustment entirely on the applicant may pose a serious problem for candidate countries that lag behind the socio-economic performances of the Union and/or whose state apparatus is unable to 'extract' much resources from the society. Insofar as the 'take it all' logic forecloses options such as freeing the new Members from major obligations or tailoring their contribution to the budget, it means two things for the weakest applicants: some might never be able to close the gap and accede and as for the others, accession is likely to be a far remote perspective. Provided that the level of development of the applicants varies substantially, this approach also leads to the formation of enlargement 'waves'. All in all, it creates an exclusive enlargement system based on socio-economic criteria. It is of no help for dealing with financial issues that pose problems for enlargement.

The suppressing strategy offers no solution either to incumbent Member States that see enlargement as, financially speaking, impossibly costly because it would mean a significant increase of their net contribution and/or the loss of benefits (for

instance, structural funds monies). In the first case, the problem can only be solved by reforming the *acquis* in order to reduce the global cost of EU policies or re-defining burden sharing among Member States (see section 4.5.4). Changing unilaterally what is imposed or offered to the candidates is of course likely to create frustration and resentment among them. In the second case, reluctant Member States will simply wait for an acceptable side-payment to be put on the table (see section 4.4. evaluation of buying off diversity as an enlargement strategy).

From a systemic standpoint, the suppressing logic *a priori* offers the best protection for the ever closer Union model. Candidates indeed can only enter the Union if they formally subscribe to all the principles and rules of the Union. Their formal assent with the *acquis* can be used to call them to account after accession in order to preserve the ever closer Union model if necessary. At a more specific level, the suppressing strategy moreover fully preserves the unity of the EU institutional framework and legal system.

Basically neutral for all the other evaluation criteria, it is however potentially harmful for the adaptability of the Union as well as the solidarity between Member States (i.e. between the old and the new ones). As for the adaptability of the Union, the extension to new Member States of side-payments systems designed to solve past deadlocks could create powerful coalitions for the defence of specific group interests. These new coalitions could have the capacity to block reforms that would better serve the general interest. As regards solidarity, the strategy of suppressing diversity might also have negative side effects. When an organisation starts from the basic premise that the applicants must bear all the adjustment costs, it does not signal indeed a great sense of solidarity with the new comers. Those who had to cope with harsh accession terms or did not obtain adequate pre-accession financial assistance from the EU are likely to feel resentful and might oppose in the future the establishment of intra-EU solidarity mechanisms not to their direct benefit. This is especially the case if far-reaching developments of the *acquis* are decided among incumbent Member States just before accession. For example, the accession terms imposed on Spain for agriculture and fisheries have contributed to the Spanish taking a hard line on subsequent CAP and CFP negotiations, and to increase their demands for side payments (Preston 1997: 9).

Seen from the angle of the development of peace, welfare and stability in Europe as a whole, the merits of the classical enlargement strategy are a matter of controversy. On one hand, the take-it-all strategy implies severe requirements for candidates that aspire to accede. The highly demanding nature of this strategy generates a lot of frictions, pushing (bigger) applicants possibly on a conflicting course with the EU, while keeping other (weaker and smaller) third countries out of the scheme, because the harsh terms of membership make it more interesting to free ride (Kahler 1993: 318). Presuming that the inclusion of Central, Eastern and South Eastern Europe in the EU would make Europe more stable, peaceful and wealthier, such a strategy assuredly does little to facilitate their swift integration.

On the other hand, stern accession conditions are justified in order to preserve the Union of values and action, as argued *supra*. It is not sure that Europe as a whole would gain in stability and prosperity if speeding up accession was at the cost of diluting the EU.

On the whole, albeit demanding, the take-it-all strategy is keeping the membership option open. In principle, it is non-discriminating insofar as all aspirants – big or small, powerful or not – have to live up to the same accession conditions. Equal treatment is however not synonymous with equity. It is indeed more difficult for some candidates to meet EU requirements. Fair treatment would require taking those special difficulties into account.

The fact that the suppressing strategy favours the formation of enlargement ‘waves’ is bound to disrupt social, economic and political links between European countries, as well as to create or amplify gaps. The extent of these disruptions however should not be overestimated. Exclusive competences of the Union are limited. In many domains, the status of Member State is compatible with the continuation of special relationships and membership of other regional organisations. The accession of frontrunners does not need to interrupt cultural or educational links with less advanced candidates. Moreover, for candidates that enjoy free trade agreement with the Union, the early accession of economic partners will only have a limited impact. Finally, as long as the countries concerned are all candidates, the disruption will by definition be only temporary. It will be indeed possible to rebuild their links once the second or third wave countries will have joined the Union. Notwithstanding these qualifications, the effect on trade, border controls and visa-policy is likely to be substantial and (re)create divisions. With regards to new gaps among European states, early access to the benefits of membership should in theory boost development and growth, and therefore increase the differential with countries which remain outside the Union. In practice, the latter might also benefit from their non-accession. For instance, in the case of Foreign Direct Investment (FDI), becoming a Member State should work as a pull-factor, but countries staying outside the EU can make use of their larger autonomy to offer extra incentives to international capital. Hungarian or Estonian experts have voiced concern over a loss of relative attractiveness after accession. They expect major relocalisation to Ukraine or Romania in the first case, and to Lithuania or Latvia in the second case. So it is difficult to predict with certainty if gaps will develop and to which extent.

Effects on our last systemic criterion, synergy, are mixed as well. For one thing, the demand of full *acquis* alignment creates in many cases synergy and mutually supporting dynamics with the reforms the former communist countries have subjected themselves to (cf. the political and economic Copenhagen criteria and most internal market rules). In some cases however, tensions or even incompatibility may arise. For instance, some costly public investments required for implementing the

EU *acquis* put a severe strain on other investments needed for the multiple transformations of these countries and their catch-up growth.

All in all, the ‘take it all’ approach is highly effective for delivering convergence of views, but offers in itself no answer to problems linked with the sheer incapacity of candidates to live up to EU standards, or with the reluctance of Member States whose interests would be particularly harmed by enlargement. Improperly prepared or not fully completed, this approach may even create the conditions for important post-enlargement backlash, defection and free riding that could harm the EU model. At systemic level, it is likely to harm post-accession solidarity within the Union and introduce new divisions in Europe as a whole. Various subsidiary strategies have therefore been used or envisaged in order to organise, encourage and monitor the suppression of problematic diversity before accession, either by formulating conditions, promoting unilateral adoption and implementation of the *acquis*, or offering partial integration (see table 4.1.1). These options are reviewed hereunder.

4.2.1 FORMULATING CONDITIONS

The suppression of problematic diversity can be organised or phased in by distinguishing different pre-accession stages and by setting a number of conditions for each of them. The Union currently knows three stages in the enlargement process: recognition of the status of ‘candidate’, opening the accession negotiation and granting membership status. The Union formulated a number of criteria for applying to become a member of the Union (being a European State which respects the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law) and for becoming a member (the so-called Copenhagen and Madrid criteria). As for the formal opening of the accession negotiation, no explicit criteria have been laid down: the Council, after having invited the Commission to give its opinion, takes a sovereign decision. Other intermediary steps are conceivable but have never been officially introduced as such (cf. probation periods or partial membership discussed in the following sub-sections).

Text box 4.2 Conditions for EU candidate status and for EU membership

Criteria for applying to become a member of the Union

Since the entry into force of the Treaty of Amsterdam (May 1999), the Treaty on European Union stipulates that ‘Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union’ (Article 49 TEU). Article 6(1) TEU, which has also been further defined by the Treaty of Amsterdam, states that ‘The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.’

Criteria for becoming a member of the Union

The European Council of Copenhagen (June 1993) stated that *membership* requires:

- that the candidate state has achieved stability of institutions, guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

The European Council of Madrid (December 1995) added the need for the candidate states to adjust their administrative structures in order to ensure the harmonious operation of Community policies after accession. In Luxembourg (December 1997), the European Council moreover stressed that incorporation of the *acquis* into legislation is necessary, but not in itself sufficient: it is necessary to ensure that it is actually applied.

In the absolute, dividing the accession process into discrete stages and formulating criteria is functional for at least three reasons. Firstly, provided that criteria are precise enough, it provides the aspirant country with some sequencing for the elimination of problematic diversity. At that level, it must be said that, EU sets of criteria being rather vague, the existing system only offers very general guidance to applicants (hence the various attempts to roadmap accession by other means, such as the White Paper on the internal market or Accession partnerships discussed below).

Besides, insofar as the degree of preparedness of the applicants varies greatly, formulating conditions enables *a priori* the EU to get some control over the stream of enlargements. Because of their general nature, the existing criteria are conducive to internal disputes over their interpretation and expose the EU to strong political pressures from outside. This undermines the Union's control over events. Nonetheless, the formalisation of intermediary stages proved to be an effective way for postponing enlargement. As for the management of numbers, it only allowed fractioning the flow of applications into 'big' waves (i.e. the size of upcoming accessions batches remains a challenge).

Finally, it offers the possibility of encouraging adjustment efforts by issuing intermediate positive signals (recognition of candidate status or start of formal negotiations). In this instance, the vague definition of EU criteria gives precious room of manoeuvre. It made possible a number of very timely encouragements to aspirants that are lagging behind (Romania, Bulgaria, Turkey).

All in all, the way the accession process was divided into discrete stages and criteria were formulated is therefore fairly functional as far as suppressing problematic diversity is concerned. From a systemic viewpoint, that subsidiary strategy should be considered as fairly neutral or even positive. Defining explicit and objective accession conditions should indeed contribute to a non-discriminatory manage-

ment of membership applications – an important criterion for peace and stability in Europe as a whole.

4.2.2 PROMOTING UNILATERAL ADOPTION AND IMPLEMENTATION OF THE ACQUIS

In order to encourage, organise, monitor and control the adoption and implementation of the *acquis* before accession, a variety of means has been used or envisaged over the years. Those reviewed below have in common that they promote or impose unilateral adoption and implementation of the *acquis* by the aspirant/candidate country. They include direct funding of adjustment costs; screening, setting priorities, planning and monitoring; encouraging the adoption and implementation of the *acquis* at regional level among aspirant and candidate countries; introducing probation periods; and defining of accession timetables.

Funding adjustment costs

Funding some of the adjustments imposed on the candidate is a straight way to facilitate the introduction of the most urgent and difficult changes required by EU membership. In the case of Central and Eastern Europe (CEE), it was recognised from the start that candidates were not in a position to finance those adjustments by themselves. The EU quickly provided funding on an unprecedented scale for institution building, equipment and infrastructures, mainly under the PHARE programme.

Text box 4.3 The PHARE programme

Originally set up for supporting the transition towards market economy in Poland and Hungary, PHARE stands for Poland-Hungary Assistance for the Restructuring of the Economy. The programme was gradually extended to cover most Central, Eastern and Southern European countries. Since the 1997 Luxembourg European Council, it has been primarily concerned with suppressing problematic diversity. Its first two goals are indeed promoting the adoption and implementation of the *acquis* (and reducing the need for transition periods) and strengthening the governance and institutions in the candidate countries so that they can function effectively within the Union. The programme is also aimed at diminishing problematic diversity, through its third goal i.e. promoting economic and social cohesion (see section 4.3).

Roughly one third of PHARE's funds (or € 1.5 billion per year) is allocated to the co-financing of institution building and the development of human capital. This is done by means of training (via TAIEX, the Technical Assistance Information Exchange Office, responsible for short-term technical support by experts) and by means of twinning (medium and/or long-term secondment of officials from ministries, regional bodies, public agencies and professional organisations in the EU member states to corresponding institutions in the candidate countries). Another third of the budget is used for co-financing of equipment and infrastructures in general. As for the last third, it is used to prepare the candidates for their inclusion into the Structural Funds. It also finances Structural Funds-like projects, for instance, in transport and environment with ISPA (Instrument for Struc-

tural Policies for pre-accession Aid) or rural development with SAPARD (Special Action for pre-accession measures for Agriculture and Rural Development).

The budgetary solution can be very functional for helping lesser-developed candidates to suppress problematic diversity, provided that four conditions are met. The authority responsible for the allocation of the funds has to have the political and administrative capacity to build coherent and well-coordinated programs. The level of funding has to match the needs. Finally, the recipient must have sufficient absorption capacity and aid must not create dependence.

Because of the nature of the EU system, large funding programmes are usually implemented through sub-contracting at national level, each interested Member State being *de facto* guaranteed some sort of minimum quota of projects (a recurrent problem with EU distributive policies). As a result, the transfer of expertise required for the implementation and enforcement of the *acquis* tends to be national or even sub-national rather than European. This need not be a problem if the approach taken by the various Member States towards institution building is regarded as basically equivalent or if pluralism is seen as indispensable. This is sub-optimal if one sees the actual level of diversity among national ministries, agencies and other professional bodies as (partly) dysfunctional. A decentralised and piecemeal management of funding programmes would indeed contribute to perpetuate this dysfunctional diversity after enlargement.

58

Although potentially serious, problems of coordination and coherence pale into insignificance beside problems of inadequate funding. Budgeting funds matching the needs of lesser economically developed applicants can be both politically and financially (very) difficult. In the case of Central and Eastern Europe, it was politically speaking not feasible because of aid fatigue in general and relative disinterest for the region in particular. As for the financial feasibility, the ceiling put on the EU budget means that the resources of the Union are fairly limited in absolute and relative terms. The current budgetary constraints do not allow for adequate funding. A special effort was certainly made in 1999, with the decision to more than double funds allocated to pre-accession programmes. In Berlin, the European Council agreed that, as from 2000, up to € 3.1 billion per annum could be made available for these programmes. Compared to the estimation of total costs, that amount looks modest. If the level of funding for building up institutions and human capital is often said to be insufficient, the situation for equipment and infrastructures is even dire (e.g. investments required to meet the expensive environmental *acquis*).

Assuming that pre-accession funds were significantly larger, one would still have to verify that there is no absorption problem or risk of deleterious dependence. Since the necessary administrative structures were put in place only recently and – especially at regional level – need further reinforcement, the absorption capacity of the candidate countries is indeed sometimes limited (European Commission,

Directorate General Enlargement 2000: 7). Undue dependence on European aid flows – for example in the environmental field – could moreover reduce the incentive for a change in culture and behaviour among public and private parties at national level.

On the whole, aid programmes certainly facilitate the suppression of problematic diversity. At the current level of funding, however, this instrument could probably play but a relatively minor role in overcoming enlargement blockages. As long as intra- EU cohesion funds are not reduced to finance pre-accession programmes, this approach is basically neutral from a systemic viewpoint.

Screening, setting priorities, planning and monitoring

The EU may try to lower adjustment costs and guard itself from bad surprises by ensuring that candidates do the right things and do things right when preparing for accession. In other words, the EU could promote the unilateral adoption and implementation of the *acquis* before accession by becoming actively involved in identifying what is problematic, setting priorities, planning and monitoring the suppression of what has been identified as problematic.

The identification of problematic diversity by the EU certainly is an indispensable functional prerequisite in the classical approach to enlargement. This so-called ‘screening process’ however suffers from a number of weaknesses. In the current EU practice, the identification of issues which may pose problems and therefore ‘may need to be taken up in the negotiation’ is mainly conducted by the Commission. For that purpose, the Commission submits a series of questionnaires to the applicant countries. For those countries keen to enter the EU as soon as possible, there is an objective interest to minimise organisational and implementation problems in particular. Other may lack sufficient evaluation expertise to give accurate answers to the questionnaires. The limited resources made available to the Commission to conduct the screening mean that independent verification of the information can be very superficial, if non-existent. In the area of Justice and Home Affairs, the Council has established an additional instrument for evaluation, which is less vulnerable to these possible biases (see Joint Action 98/428/JHA, OJ L 191/8 of 7 July 1998). Strictly confidential ‘collective evaluations’ are produced by a group of experts working, among other sources, on material provided by the national authorities of the Member States as well as on Schengen material. Confidentiality limits however the effectiveness of these reports as an instrument for suppressing problematic diversity. Another shortcoming is that there is little if any cross-fertilisation between the collective evaluation and pre-accession support (Monar 2000). Screening as it is practised today seems insufficient to shield the Union against post-enlargement bad surprises.

When screening reveals a major problem, the Union may intervene by defining priorities and establishing the sequence of adjustments. As already mentioned, accession criteria only give general guidance for the suppression of problematic

diversity. In most domains, nothing else was initially proposed to candidates. One of the few attempts to provide more guidance was the 1995 White Paper on the preparation of the associated countries of Central and Eastern Europe for integration in the internal market of the Union, which indirectly defined a number of priorities.⁴ These attempts did not provide an adequate frame of reference either (Pelkmans, Gros and Nunez Ferrer 2000: 77). The 1997 Luxembourg European Council therefore decided that pre-accession strategy should be strengthened through individual preparations for the candidate countries. National 'Accession Partnerships' were created for that purpose. They set short and medium-term priorities for each candidate country and indicate which EU support instruments will be used for what. Each Accession Partnership was supplemented with a 'National Programme for the Adoption of the *Acquis*'. Drawn up by the candidate, the NPAA sets out a detailed schedule for the realisation of the priorities, together with a specification of administrative and institutional requirements, funding needs and financing sources. Those various planning exercises are certainly a good way for improving coherence and efficiency in the preparation of enlargement. They could therefore contribute to minimise the costs of adjustments, a major problem with the 'take it all' strategy.

The next logical step for EU intervention is the monitoring of the adjustment process. Such monitoring has indeed been established and put in the hands of the European Commission. For each candidate the latter publishes an annual report on the progress made with respect to the accession criteria, the obligations arising under the Europe agreements (see below), the adoption and implementation of the *acquis* and the priorities set in the Accession Partnership. This is of course very functional for ensuring that there is no window dressing with the suppression of problematic diversity. The main problem at this level, once again, is that the Union relies for a large part on unchecked information provided by the candidates.

By and large, flanking measures such as screening, individual setting of priorities, planning and monitoring are certainly an adequate way to solve several key problems posed by the general assumptions underlying the 'take it all' strategy. The main problem with these flanking measures is the extra managerial and financial burden for the Union, hence their financial feasibility for the Union and its Member States. If extra resources are not made available, in particular for information gathering and processing, their effectiveness will necessarily remain limited. From a systemic viewpoint, they are basically neutral with two exceptions. Transparent planning and progress reports based on common indicators should *a priori* be welcomed because they guarantee fair(er) treatment. Planning should also be seen as a plus because, in theory, it offers the opportunity of better coordination between the accession preparation and the transformation processes in the candidate countries.

Encouraging candidates to develop relations in line with the *acquis*

Another flanking measure for solving problems induced by the orthodox approach to enlargement would be to encourage applicants and candidates to develop among each other relations in line with the *acquis*. The EU did so in trade and economic matters. This policy has also been envisaged for areas such as border control.

The encouragement of regional cooperation by the EU in Central and Eastern Europe may be regarded in this light (Inotai 1995). With the collapse of the soviet system, CEE countries were keen to establish new forms of cooperation in the region. When the idea of a Central European Free Trade Area (CEFTA) came to the fore, the EU discreetly suggested that it would be opportune to design the new framework in line with the *acquis* of the Union, at least in a number of domains including competition policy. In December 1992, the four Visegrád countries eventually created the CEFTA along those lines (Dangerfield 2000). The Union has subsequently encouraged Poland, the Czech Republic, Slovakia and Hungary to open the structure to other candidates. Slovenia, Romania and Bulgaria now participate in the CEFTA. Inter-regional developments followed, in particular between CEFTA and Baltic countries (Karnite 1999). More recently, it was suggested that candidate countries sharing borders could start implementing the Schengen *acquis* among themselves before accession, with the technical and financial aid of the EU (Monar 2000: 56).

The development of this type of relations does not solve all problems posed by the 'take it all' strategy. As described above, the 'take it all' strategy ceases to be functional when candidates opt for window dressing and if the implementation capacity of the candidates is not properly evaluated. At those levels, the approach reviewed here brings some reassurance albeit limited. We also saw that the political and financial feasibility of the 'take it all' strategy are not optimal from the perspective of the candidates. On the political side, extra-EU relations among candidates bring *a priori* no answer. If the *acquis* is unpalatable enough for a country to refuse to join the EU, it is indeed unlikely to become more attractive as part of extra-EU cooperation schemes among candidates. Such cooperation may, on the contrary, help overcoming problems of inability. As for the main potential problems at systemic level, the record is similarly contrasted. This technique allows for the selective adoption of the *acquis*. Synergy with the other transformation processes in the candidate countries could therefore be fully taken into account. On the minus side, the development of extra-EU relations based on the *acquis* does not help solving the solidarity issue and, more importantly, could even aggravate the divisions in Europe.

From the EU perspective, this approach offers some reassurance about the real degree of preparation of the candidates. This presupposes of course that extra-EU bilateral and regional schemes function properly, and that adequate and reliable enforcement and verification mechanisms are built-in. Even so, this reassurance

can only be partial insofar as, on one hand, the candidate only adopts a fraction of the *acquis* and, on the other hand, the EU has to rely on indirect evidence (this is of course less true for a number of cooperative schemes such as those developed in the Baltic area, in which some Member States and even the Commission are participating – cf. Council of Baltic Sea States). By comparison with the other approaches pursuing an early implementation of the *acquis*, the relative advantage of this technique is not so much the level of reassurance as the price tag. It provides testing grounds that come virtually at no direct cost for the Union.

From the perspective of the candidates, normalising relations between themselves on the basis of the *acquis* offers an opportunity to adjust progressively to the EU regime and may lower the total costs of adjusting to the various regional regimes they will participate in. For those struggling with their sheer incapacity to absorb in one go the entire *acquis*, half-way houses are of course useful. Besides, opting for early adoption of the *acquis* may also diminish total adjustment costs, at least for candidates in a position to join the Union in the medium term. For the most advanced CEE countries, it would indeed make little sense to adjust to an *ad hoc* CEFTA system and having to readjust to the EU system within five or ten years. This is also true for border control. Instead of inventing procedures and investing in non EU-compatible infrastructures, there is for them an objective interest to develop cooperative schemes corresponding to the post-accession situation, i.e. to focus their efforts on what will become the external borders of the Union and do the minimum on the future ‘internal’ borders. Finally, taking the *acquis* as a common starting point when designing bilateral and multilateral relations among candidates could simplify their management and therefore free resources for other adjustment efforts. For instance, over the last decade, free trade agreements proliferated in Europe. Having to deal with more than 90 of those agreements has a significant cost. Imposing one common regime (the *acquis*) is a way to take care of this anarchic development and alleviate the managerial burden for all, the candidates included.

Promoting the development of extra-EU schemes based on the *acquis* is not always easy. Some candidates are not fully convinced by the reasons given by the Union for promoting such schemes. They tend to see them not as a stepping-stone but as a substitute to EU membership. They are therefore often reluctant to embrace them. Furthermore, frontrunners are likely to oppose such schemes if they are open to less advanced candidates. The implementation of the *acquis* can be very demanding. Depending on the policy area, the size and composition of the group willing and able to develop their relations on the basis of the *acquis* will vary. Mixing those groups could well put extra-burden on the frontrunners. Supposing that the resources of the latter are limited and their impatience to become a member of the Union is great, cooperation mirroring the *acquis* will be politically hard to develop among diverse candidates. Without differentiation (that is, advanced packages for the most advanced candidates and more basic packages for the others), the political and financial feasibility of this approach will probably be low.

Incidentally, it also means that, inasmuch as it seems urgent to rationalise the new European architecture, it would be difficult and perhaps counterproductive to try to develop one single multilateral framework.

At systemic level, this approach has one main drawback: it could worsen divisions in Europe. Because of what we just wrote on political and financial feasibility, the development of cooperation based on the *acquis* would probably require clustering based on the level of development of the candidates and their preparedness for accession. Such cooperative schemes could crystallise differences and reinforce the formation of ‘enlargement waves’. If those waves are not far apart, it does not matter too much. If being part of a second or third wave means being relegated for a decade or more in pre-accession limbos, wave-pattern enlargement can become very divisive and therefore threaten stability in Europe. Any wave-inducing policy will pose the same systemic problem.

Introducing probation periods

The suppression of problematic diversity could be controlled by introducing probation periods during which the future member is subjected to a number of tests in order to ascertain its ability to implement the *acquis*. Probation periods can take many forms. One has indeed to define their scope, nature, timing, duration and consequence. What should be their object of scope? The EU could encourage or impose either full-scale trials, encompassing the entire *acquis*, or tests restricted to the most sensitive and/ or demanding parts. What should be their nature? They could be optional or compulsory. When should they take place and for how long? Trials could be conducted before accession or during the first months following accession (which would suppose the introduction of a kind of junior or probationary membership). Pre-accession probation periods could be invited on a unilateral basis at different key moments: for instance, each time one chapter of the *acquis* has been provisionally closed (i.e., once the parties have agreed on the terms of the adoption, implementation and enforcement of one part of the *acquis*) or just before accession. They could also be required as the counterpart to partial integration in the EU. Association or protectorate agreement, participation to technical bodies or partial membership would then be conceived as opportunities to test the candidate’s potential and would therefore comprise a number of formal tests (the evaluation of these approaches is presented in the following sub-section). Probation periods could be of a fixed or open-ended duration. What should be the penalty in case of failure? Accession could be postponed – it would suffice to stipulate that the Accession Treaties would only enter into force after a successful probation period. Alternatively, the candidate could become a member at the end of the probation period even if the test was not fully conclusive, but some of its rights would then be suspended till a number of essential requirements are met (the merits of this option are discussed in the following sub-section under ‘partial membership’). This would in a way duplicate the approach taken for the area of freedom, security and justice or the European

Monetary Union, where some Member States are not involved in parts of the Union's policies.

Never having been formally used to this day, probation periods seem to offer the ultimate way to make sure that problematic diversity has been effectively suppressed. In practice, that verification might not necessarily be easy nor produce final evidence. Some governments may try to pass the test by resorting to window dressing and/or by introducing policies that are unsustainable over the long run (cf. statistical or accounting tricks as well as one-shot budgetary or fiscal measures used by a number of incumbent Member States to qualify for the Euro-group). With limited resources available for verification, not all stratagems and artifices are immediately visible. Moreover, it has become more and more difficult to assess long-term sustainability. Modern societies are complex and many parameters need to be taken into account. Cautious interpretation of the probation findings should therefore be in order here: conclusive results only prove that the candidate was able to implement the *acquis* at some point in time.

The introduction of probation periods appears as politically feasible, but would come at a cost, the candidates having some reasons to fear and resent such innovation. The more encompassing, compulsory, open-ended and penalising the format, the higher the political cost. The addition of a (coercive) element in the enlargement strategy at a late stage is indeed not likely to be welcomed by the candidates. As Monar points out, frontrunners will regard probation periods as just another burden imposed on them (Monar 2000: 57). They will suspect other motives behind the last minute introduction of new and tighter procedures, i.e. to keep them out a little longer. Insofar as no probation period has been imposed during the previous enlargement rounds, they will probably also see the measure as discriminatory. If it is *a priori* rather (too) late for the first wave of enlargement, what about introducing probation periods for countries with which candidate status has yet to be recognised or accession negotiation has yet to start? It would certainly be politically less costly insofar as they could not complain about rules being changed in the middle of the game. The impression of discrimination would still be there. The Union should therefore only resort to probation periods if there is strong suspicion of serious implementation deficits in domains of central importance. Limiting the test to the most sensitive parts and conducting it just before accession would also increase the financial feasibility of that solution, on both sides.

At a systemic level, adding probation periods to the enlargement panoply would probably have only a marginal impact. They could add to the negative effect the suppressing approach in general may have on intra-EU solidarity after accession. They could increase the probability of new Members insisting on the renegotiation of the enlargement deal. Prolonged and intrusive trials could also be portrayed as unfair and be the occasion of clashes between the EU and some parts of Europe. In

that respect, they could be counterproductive for the development of stability in Europe as a whole.

Defining a timetable for enlargement

Defining a timetable for enlargement is yet another means for encouraging the suppression of problematic diversity. In the logic of the ‘take it all’ strategy, there is intrinsically no timetable: whenever a candidate has adopted the *acquis* and is able to implement it, it should become a member of the Union. The EU could however decide to set up different types of timetables in order to encourage adjustment efforts. It could indicate in particular when it intends to be ready for enlargement (timetable for enlargement related reforms of EU policies and institutions); when it will decide on the admission of new members (timetable for the completion of the accession negotiations); and when new members could actually be admitted (choice of a number of convenient dates for enlargement such as the beginning of a new EU legislature). The Union could also introduce a *numerus clausus* dimension in the latest types of timetables (for instance, by announcing that a maximum of ten new members could be admitted in 2005 and a maximum of five more in 2010).

This subsidiary strategy has gained considerable importance in the current enlargement round. The Union imposed on itself timetables for enlargement related reforms of EU policies and institutions. After the Agenda 2000 and the 1996-7 Intergovernmental Conference’s partial failure to deliver, the Union eventually considered itself ‘in a position to welcome those new Member States which are ready as from the end of 2002’ – assuming that the Treaty of Nice will have been ratified by then (presidency conclusions of the European Council of December 2000 in Nice). More recently, the European Commission expressed its hope that ongoing accession negotiations could be closed by the end of 2002 and accession Treaties ratified by 2004. It was also agreed that the most convenient moment for the arrival of new members would be 1 January 2005. No maximum number of countries admissible at different times has been fixed.

Because of the slow pace of the present enlargement round, the choice of conditional timetables is an effective way to (re)gain momentum in favour of reforms, both in the candidate countries and in the EU. It would not have been necessarily the case in a different enlargement context. Whenever enlargement is perceived as a fast moving process, there is no need for a timetable. In the absence of information on when the Union might admit new members and how many it will be ready to absorb initially, emulation and competition will naturally prevail. As Dangerfield rightly describes, during the first part of the 1990s, the Central and Eastern European countries ‘engaged in a fierce competition to stay ahead in the race for early EU membership’. Even for those on fast track, it seemed to be an absolute priority at least to keep pace with the other frontrunners (Dangerfield 2000). However, if membership is a far-remote perspective or if the enlargement process seems to drag on, the absence of information about the first window of opportuni-

ty for joining and about the size of the initial batch of entrants becomes a factor of demobilisation. Setting various target dates would then contribute to revive emulation among candidates. Most importantly, by signalling that there is light at the end of the tunnel, it would also decrease the risk of seeing public opinion in the candidate countries turning against membership. Both ways, timetables would contribute to increase the political feasibility of the 'take it all' strategy.

Paradoxically, the flip side of setting up a timetable is that it may undermine the core requirement of 'the take it all' strategy, i.e. the insistence on being fundamentally 'acquis-compatible'. As the SER rightly pointed out, 'once fixed ... a target date can start to lead a life of its own and prevent any objective assessment of the degree to which candidate countries in fact meet the accession criteria' (Sociaal-Economische Raad 1999: 8). The launch of the EMU is a good illustration of this type of phenomenon. In Maastricht, Member States committed to the single currency project opted for a stepwise approach combined with a number of firm deadlines. On the one hand, this approach contributed significantly to push through painful adjustments in countries with a long history of lax fiscal and budgetary policies. On the other hand, because of the political capital already invested and the symbolic importance of being part of the euro-group from the start, it became impossible to say no to countries which had not fully adjusted. On 1 January 1999, when stage III started, Germany, Italy and Belgium were allowed in despite the fact that they did not satisfy some of the convergence criteria. In the case of enlargement, defining a timetable and making it public would not only raise expectations and mobilise energies, but also magnify failure cases and create greater political embarrassment. Because of the greater risk of political backlash, there is a greater pressure to fudge accession criteria and, for instance, grant exaggeratedly long transition periods or exemptions.

Systemically speaking, defining a timetable could increase the divisiveness inherent to the 'take it all' strategy. By exacerbating competition among candidates, it could have a negative effect on peace, welfare and stability in Europe. In that respect, the fact that no formal *numerus clausus* has been introduced is a good thing.

All in all, if this instrument could contribute to improve the political feasibility of the 'take it all' strategy, it is not without managerial and systemic risks for Europe as a whole. It would only be a useful addition to that strategy if it were used in the right circumstance and manner. As for the circumstance, accession should be a remote perspective and adjustment fatigue should be significant both at governmental and public opinion level. Concerning the manner, the Union should always insist heavily on conditionality (that is, making clear that nothing is set before the actual end of the accession negotiation) and perhaps let the Commission do the job. Hopes and forecasts of the Commission about key accession dates are probably preferable because that institution does not have the final say on the admission of new Member States.

4.2.3 OFFERING OR IMPOSING PARTIAL INTEGRATION

A last category of measures aimed at backing up the ‘take it all’ strategy consists of formulae that offer or impose to the candidate countries partial integration in the Union. Traditionally, this took the form of bilateral or multilateral association agreements establishing mutually beneficial rights and obligations (see text boxes 4.4 and 4.5). Candidates have also been directly involved in the implementation of a number of EU policies and programmes, in most cases either via protocols supplementing the Association Agreements or via EU-led regional Pacts. Affiliate or partial membership formulae have been discussed too but never materialised. Finally, protectorate regimes involving the EU have been established or envisaged. These four variants are discussed below.

Text box 4.4. Bilateral Association: the Europe Agreements

Article 310 of the TEC allows the Community and the Member States to enter into agreements with one or more states or international organisations creating an *association* based on mutual rights and obligations, common action and special procedures. While sharing a number of features, the association agreements concluded to date widely vary. The loose formula of article 310 leaves indeed plenty room for tailor-made arrangements. Some association agreements were drawn up with a view to possible accession (e.g. that with Greece). Others were originally conceived as an alternative to accession (e.g. the multilateral ‘Europe Economic Area’ discussed below).

The Europe agreements bilaterally concluded with the Central and East European countries in the early 1990s were not originally intended as part of an accession strategy. Several Member States, convinced that enlargement to CEE would necessarily dilute the European Community, were strongly arguing in favour of a new European architecture based on concentric circles. As a result, not much emphasis was put on the obligation for the associated countries to eliminate their diversity with respect to the legal order of the Community. Europe agreements’ prime goals were the development of political dialogue between the parties, the gradual development of a free trade area and a basis for cooperation in the economic, financial, cultural and social fields as well as for prevention of illegal activities. The focus on accession came after the announcement at the 1993 Copenhagen European Council that the Central and Eastern European associated countries that so wished could join the EU as soon as they would have satisfied the obligations of membership.

Provisions on the movement of goods, workers, services and capital form the core of the Europe agreements. They organise the asymmetrical dismantlement of tariffs and quotas for (industrial) goods, with special regimes for sensitive sectors such as agriculture, textile and steel. As for the free movement of labour, they state general principles based on the EC Treaty and encourage the conclusion of further agreement. Under some conditions and subjected to limitations (public order, security, health), they recognise the right of establishment and provision of services in the other party’s territory. They regulate capital movements, authorising restrictions on land and/or property acquisitions. They define the legal and regulatory principles that must preside over competition policy and state aids. They encourage associated countries to adopt Community rules for property rights and public procurement. Finally, they underline the importance of legal approximation in the perspective of closer economic integration – that is, the necessity for the associated countries to make sure that their legislation is compatible with Community laws – and provide technical assistance for doing so.

Each association agreement is overseen by an Association Council (at ministerial level), backed by an Association Committee and by special (sub)committees set up by the Association Council. A parliamentary committee is also established under the association agreement, consisting of members of the European Parliament and of the parliament of the associated country.

Partial integration through Association Agreements

Partial integration through association agreements may be envisaged as a way to cope with the shortcomings and negative side effects of the 'take it all' strategy. Bilateral association agreements have been used as a pre-accession tool since the early 1960s (with Greece and Turkey). In the early 1990s, a new generation of agreements were concluded with the Central and East European countries, setting the general framework for the relations between the Union and candidate countries (see Text box 4.4). These so-called 'Europe Agreements' were followed by the 'Stability and Association Agreements' for South-East Europe. We focus here on those two generations of agreements.

Text box 4.5. Multilateral Association: The European Economic Area

Signed in 1992 and into effect since 1994, the European Economic Area (EEA) agreement establishes a large and highly structured partnership between the EU and the countries of the European Free Trade Association (EFTA). The agreement required EFTA countries to adopt wholesale almost 80 % of the EC's *acquis communautaire* including the associated body of case law. The core of the agreement revolves around the so-called 'four freedoms': duty-free trade in industrial goods, together with the reduction of technical barriers to trade, prohibition of state aid to industry if it distorts competition and harmonisation of standards; liberalisation of trade in services including transport, financial services (banking, insurance and securities trading), telecommunications and television, as well as the right of establishment for all EEA companies or the right to offer their services anywhere in the EEA; elimination of almost all restrictions on capital movements, with in addition the obligation to treat all EEA operators as domestic companies for granting concessions on natural resources; and finally free movement of persons (including the right to work in the EEA countries on the basis of the mutual recognition of diplomas). In addition, the agreement includes a number of 'horizontal provisions' by which much EC law regarding social policy, consumer protection, environmental policy and company law applies to the EEA. Measures to facilitate greater cooperation in education, training, research and development, tourism have also been added.

While EFTA countries insisted on some sort of co-decision for the development of the *acquis* applying to the EEA as well as on the establishment of a joint Court (superseding the European Court of Justice) to interpret the EEA *acquis* and settle EC-EFTA disputes, the institutional framework eventually designed corresponds to fairly standard Association council and committees (see Text box 4.4). The EFTA countries must be informed and consulted at an early stage on relevant EU projects. This being done, the Union follows its normal decision-making procedure which formally excludes EFTA countries. Once a decision reached by the EU, the EFTA countries have the following options: they collectively accept the new *acquis*, they propose and get a compromise, or they reject the new *acquis* policy but risk suspension of those parts of the EEA agreement concerned. At the request of the EU, an EFTA surveillance authority and an EFTA Court were established to control and enforce the adoption and transposition of EC law in a consistent manner at EFTA level.

Partial integration through association can also be organised at a multilateral or regional level. The European Economic Area is the only precedent of mutually binding multilateral implementation of the *acquis* prior to accession. The EEA agreement establishes a large and highly structured partnership between the EU and the countries of the European Free Trade Association (EFTA). It was seen as a possible intermediate step for the Central and East European countries on the path to membership.

Association agreements designed in the perspective of accession basically revolve around strategies aimed at suppressing diversity along the lines of the *acquis* as well as diminishing underlying socio-economic, administrative and legal diversity. The latter is pursued through fairly classical convergence processes relying on market forces, aid and policy transfers – via political dialogue in particular (their are evaluated in section 4.3). The suppression of the candidate's problematic diversity is organised through conditionality (the preamble of the agreement poses a number of prerequisites such as the rule of law or respect of human rights) and specific obligations imposed on the third country in a number of areas such as competition policy. The implementation of those obligations means that the third country is integrated in some EU sectors of activity. The rights recognised to the third country do not include the participation in EU decision-making.

With regard to the main managerial problems posed by the 'take it all' strategy (high political and financial threshold for the candidates, as well as verification challenge for the Union), it could be said that association agreements *a priori* facilitate painful adjustments, but do relatively little in terms of organising and controlling the suppression of problematic diversity. The facilitation may result from a number of factors: acclimatisation following the recognition of a special status; learning by doing; access to some of the benefits attached to EU membership; and the opportunity to phase in the suppression. The 'Association' offers a good platform for positive engagement. The formal recognition of a special status – associate state – leads indeed to more intensive socialisation and acclimatisation processes. Through partial sectoral integration prior to accession, candidates are also exposed to a highly functional process of learning by doing. Both processes usually result in the progressive erosion of the candidate's unwillingness to adjust. Besides, to the extent association agreements bring some of the membership advantages, they should boost the candidate's capacity and therefore diminish resistance rooted in incapacity (insofar as these agreements are based on reciprocity, the net benefit for the candidates is however often rather limited). They should further help at that level by offering the possibility to phase in the adoption and implementation of the *acquis* (bilateral agreements giving *a priori* more opportunity to tailor that phasing in to the individual needs of the candidate). Just as any other half-way house system, they assuage the brutality of the 'take it all' strategy by keeping at bay the most demanding parts of the *acquis* for a while. The EEA partnership is said to have greatly facilitated the transition of Austria, Finland, and Sweden to EU membership. Looking at those facilitating factors, the contribution

made by the Association Agreements appears not to be in the obligations imposed on the candidates but rather in the rights granted to them.

This mode of partial integration, and the rights and obligations that come with it, does relatively little in terms of guidance, organisation and control. Up to the 1997 European Council of Luxembourg, the reforms in the Central and East European countries had lacked direction (Gaudissart and Sinnaeve 1997: 42). Organising fast track enlargement was not among the Union's top priorities. The rights and obligations of the Europe agreements had not been defined with the preparation for membership in mind. Because of their vagueness, these have only played a limited role in suppressing problematic diversity (Pelkmans, Gros and Nunez Ferrer 2000: 76-80). The PECAS (Protocol to the Europe Agreement on Conformity assessment and Acceptance of industrial products), which require full alignment of the candidates' sectoral legislation with that of the Union, were among the few exceptions. So, as long as the present design prevails, this approach will do little to alleviate anxiety of the EU about the actual suppression of problematic diversity.

Even though association agreements facilitate the adjustment process, they are not the fastest way to solve problems of political and financial feasibility. Because their scope goes beyond the exclusive competences of the Union, these agreements have to be ratified by the EU and by all the Member States. In practice, they are therefore not only difficult to negotiate but, once agreed, it takes on average more than two or three years to see them come into force. They could easily be blocked for much longer if one Parliament dislikes the agreement or decides to use it to extract some concession on another issue. It is not clear which of the bilateral or multi-lateral option would be the fastest. When larger interests are at stake, it is often more difficult to hold on to a veto. This being said, the situation is likely to further deteriorate after the next round of enlargement. Ukraine for instance is keen to upgrade its relationship with the Union in the long-term perspective of full membership. Moving from cooperation agreement to association agreement would soon mean mustering probably more than 25 national ratifications, including some of Ukraine's direct neighbours.

Another managerial problem inherent to the most developed association agreements is the suspicion they raise among candidates. The EEA package is a demanding one (approximately 80% of the *acquis*). If candidate countries are in a position to adopt and implement such a share of the *acquis*, there is little reason for them to pause at the 'EEA stop' on the way to the 'terminal station of full membership'. Suggestions to follow the EEA route would therefore raise suspicion among the candidate countries that they are directed towards an 'ever closer waiting room' (Peers 1995).

As for the systemic problems induced by the 'take it all' strategy, partial integration through bilateral association agreements does not compensate for the solidarity deficit but lessens the enlargement waves and allows the development of syn-

ergies. As already mentioned, the association agreements in their suppressing mode are based on reciprocity, not on solidarity. Therefore they do not provide much at that level. By contrast, their general use presents the advantage of mitigating the impression of first, second and third class candidates. The fact that the status of 'associate state' is granted to very advanced and less advanced countries counterbalances to some extent the hierarchy based on the progress made in the accession negotiations. Finally, nothing in the way the Treaty establishing the European Community defines association agreements precludes the possibility of designing those agreements in order to develop synergy with the transformation processes in the candidate countries. And indeed, besides providing the framework for the development of close economic and political links, and leading to the gradual integration of candidate countries into the Union, association agreements are meant 'to create the conditions for political and economic reform' (Macleod, Hendry and Hyett 1996: 375). If the definition of their contents is largely left to the discretion of the negotiators, in practice association agreements have however become fairly standardised. Tailoring is therefore not unlimited, particularly in multilateral schemes.

This approach has some limited systemic costs. It does not affect the project of an ever closer Union of values and actions. The associated countries have no say in policy-making. Consequently the single institutional framework of the EU is unaffected. On the other hand, it may introduce tensions for Europe as a whole, if used as a way to close the Union's door for a while (it was initially the case with the Europe Agreements). If association agreements are viewed by the candidates as an additional hurdle or, worst, as an alternative to membership, their use could become disruptive. On the whole, this flanking measure only provides limited answers to managerial problems, but does so at modest systemic costs.

Participation in the implementation of policies and programmes

Allowing the direct involvement of candidates in the implementation of EU policies and programmes may be used as a measure backing up the 'take it all' strategy of the Union. In most cases, this has been organised via protocols supplementing the Association Agreements or via regional Pacts committing the EU and a number of candidates.

The 1997 Luxembourg European Council in particular decided to open up specific programmes, agencies, committees and working groups of the EU to the candidate countries (European Commission 1999). CEE countries were invited to submit projects in the framework of programmes designed to promote cooperation between the Member States in the fields of research and development, education, professional training, youth, culture, environment and energy, among other things. The selected projects were paid from the EC budget. Candidates were also invited to participate as observers in several working groups of the Council as well as in the management committees of a number of EU agencies. The invitation was however restricted to sessions during which the application of the *acquis* was discussed.

Associated countries did not attend meetings in which the committees are required to give an opinion on the management powers delegated to the Commission (comitology).

Familiarising the candidates with the various policy fields and working methods of the Union took many forms and is not restricted to Community matters. In the domains of the second pillar, the political dialogue – set up by the Europe Agreements – has been expanded to provide the candidates with the opportunity to associate themselves with declarations, diplomatic measures and joint actions decided upon by the Union as part of the Common Foreign and Security Policy (CFSP). Besides, when the Council decides on an EU-led operation, the candidate countries are invited to contribute to its implementation. The candidate countries also made national contributions to the EU rapid reaction force (Limonard 2001). With regards to the third pillar, the candidates' participation was organised under the 1998 Pre-accession Pact on Organised Crime (Monar 2000: 55).

The participation in the implementation of policies and programmes should facilitate adjustment as well as provide useful guidance and control over it. The acclimatisation and learning by doing processes should be more intense than in the case of bilateral association agreements, because of the direct involvement of the candidates. The facilitating effect should *a priori* be larger. Moreover, this involvement can be organised through lighter formulae (which in particular do not require numerous ratifications) and therefore be a much faster option than the treaty approach epitomised by the association agreements. Finally that option is fully relevant as far as preparation for EU membership is concerned. In other words, it is a good answer in terms of guidance and control of the adjustment process. As for the systemic problems posed by the 'take it all' strategy, it could be argued that participation in the implementation of policies and programmes is conducive to reciprocal solidarity, counterbalances to some extent the formation of enlargement waves, and is a mixed blessing for the development of synergy with the transformations undertaken in the candidate countries.

Because the managerial costs of this option are substantial, it should be used with parsimony. The multiplication of participants under different statuses represents an extra-burden for the Union in general and the European Commission in particular. The presence of non-member countries in a number of EU instances will probably complicate the management of the policies concerned. Even if those countries have no decision-making power, they will quite naturally become part of the policy-making equation. The participation of candidates in the implementation of EU policies is not neutral either from the point of view of the ever closer Union model. Insofar as the associated countries are excluded from decision-making, this approach fully preserves the single institutional framework of the EU. However it affects negatively the readability of EU structures and lowers to some extent the adaptability of the Union (as already mentioned, their limitations will *de facto* be integrated in the policy equation of the Union). On the whole, the benefits probab-

ly outweigh the costs, in particular where increasing the number of participants improves the policy output (cf. security, defence, immigration).

Partial membership

One could envisage to solve problems linked to the ‘take it all’ strategy by offering partial or affiliate membership to the candidates. In essence, this would mean inviting candidates to adopt and implement the *acquis* in a restricted number of domains in exchange for full membership rights in those domains only. This makes a major difference with the association agreements and standard protectorate formulae where the country concerned has no say in the decision-making processes.

Frans Andriessen, then Vice-President of the European Commission, first floated this idea in April 1991, during the negotiation of the Europe Agreements with (at that time) Czechoslovakia, Hungary and Poland. His proposal was to ‘provide membership rights and obligations in some areas, while excluding others, at least for a transitional period’. The affiliate member would have a seat at the Council table on a par with full members in specified areas, together with appropriate representation in other institutions, such as Parliament. The European Political Cooperation, the predecessor of the CFSP, and the European Monetary System would be the first two areas to be opened to affiliate members, a flexible formula allowing for occasional opting out being envisaged in order to meet the concerns of the neutrals in security-related decisions. In a second phase, affiliate membership could be extended on a case-by-case basis to Community activities in diverse areas, such as transport, energy, the environment, research and development.

73

In December 1993 the British Foreign Minister, Douglas Hurd, and his Italian counterpart, Beniamino Andreatta, revisited the idea. Their joint letter to the Belgian Presidency was however less straight than the Andriessen proposal. Associate countries, it was suggested, should be involved in a different manner in the work done by the Union under the second and third pillars, in order to enable them ‘to align their policies and practices more closely with those of the EU’ and ‘to respond positively to their desire to develop their political relations with the EU’ (Andreatta and Hurd 1993). Three years later, in the run-up to another reform of the EU treaties, the CDU spokesman for foreign affairs, formally suggested starting with membership limited to the Second and the Third Pillar until applicants become fit to participate fully in the Community pillar (De la Serre and Lequesne 1997: 354)(Financial Times, 21 May 1996).

In 1999 the International Affairs Committee of the Dutch Socio-Economic Council (SER) adopted an advisory report further developing the formula.⁵ While insisting that the *acquis* should remain the basis for accession, the report proposed to strengthen the existing accession strategy by providing candidate countries that are unable to accede around 2005 with ‘an interim stage on the road to full membership’, i.e. partial membership. In order to underline the temporary nature of

this arrangement, partial membership would only be established for a limited period of time (the suggestion being 10 years). No country could become a 'partial member' before satisfying the Copenhagen political criteria and upholding 'important basic rights' (more or less those listed by the Charter of Fundamental Rights adopted at the European Council of December 2000 in Nice). 'Partial membership' would consist of a non-pillar or interpillar 'standard package (no *à la carte* integration) in which rights and obligations are evenly balanced' (Sociaal-Economische Raad 1999: 12). As under the Europe Agreements, it would encompass the free movements of goods, services and capital, the right of establishment, property rights protection, common trade policy, common competition policy and relevant approximation. In addition, partial members would also participate in foreign and security policy as well as in structural and cohesion policies. They would nevertheless remain excluded from the CAP and free movement of workers. At an institutional level, the partial members would be 'involved in the decision-making process within the EU (in any event by participating in the Council of Ministers and the European Parliament) and have access to the Court of Justice' (Sociaal-Economische Raad 1999: 13). For the authors of the report this formula should be seen as the reverse of enhanced cooperation (the mechanism that authorises a group of Member States to make use of the institutions, procedures and mechanisms laid down by the Treaties for developing closer cooperation between themselves – title VII of the TEU). It is however not sure that the report means full participation in some areas and the right to participate in the deliberations without voting rights elsewhere. Indeed another passage states that the involvement of partial members should be limited to areas where they have accepted obligations. The reference to closer cooperation should therefore not be taken too literally.

What is the likely contribution of partial membership to the suppression of problematic diversity? At managerial level, it could improve the political and financially feasibility of the 'take it all' strategy for reasons already exposed under 'Partial integration through bilateral association agreements' (see *supra*). Here too acclimatisation, learning by doing, membership benefits in some areas and the possibility of phasing in should facilitate the suppression of problematic diversity. The actual importance of those facilitating factors should of course vary with the package on offer. If restricted to the two intergovernmental pillars, it is likely to be of limited help. By contrast, partial membership would be a good solution, albeit incomplete, to the verification problem posed by the 'take it all' strategy. More than any other flanking measures reviewed above, it could provide solid evidence on the extent to which adjustment has been thoroughly and properly conducted. This evidence however is likely to be fragmentary or missing altogether where reliable information is most important. Partial membership has indeed been imagined first and foremost as a way to stabilise third countries and help them to catch up, not to suppress problematic diversity. Some of the most demanding parts of the *acquis*, those requiring a lot of attention, are therefore going to be left out of partial membership's packages. In other words, this approach offers a kind of post-

accession probation system in a number of policy areas, but not necessarily where it is most needed. Incidentally, taking the obligations defined in the Europe Agreements as a basis for partial membership would be far from optimal in terms of preparation for full membership (cf. the detailed criticism of the SER proposal by Pelkmans et al. 2000: 76-80).

At systemic level, the introduction of partial membership formulae would soften divisions in Europe and help developing synergy, but would not necessarily solve the solidarity problem. The impact of the introduction of partial membership on intra-EU solidarity could be serious. It is indeed not clear if partial membership would actually be used to help the candidate carrying the burden of adjustment. If it does, it would prevent post-accession resentment and subsequent opposition to the development of intra-EU solidarity mechanisms. It remains that tensions might nevertheless arise, this time because of the 'second-class' connotation of partial membership. Partial membership would certainly be more useful for tackling divisiveness induced by wave-based enlargement. This option would make the exclusion from the first wave less dramatic: having some sort of consolation prize would necessarily soften the Union's stark 'in or out' logic. In the early 1990s, partial membership could have provided a solution to the 'time-inconsistency problem' described by Pelkmans et al. (Pelkmans, Gros and Nunez Ferrer 2000). Ten years later, the security and economic equation considerably changed, making the option of affiliate membership largely obsolete at least for the CEECS. The continent, including most of the Balkans, has been progressively stabilised and pacified through other means. The assertion that the Union would be unable to make the CEECS wait for more than 15 years before accession has proved incorrect. It is however not certain that the same scenario could be repeated for the third (Balkans & Turkey) and fourth (Ukraine) rounds of enlargement. Finally, because partial membership would combine stabilising elements and light economic obligations, it should be easier to develop synergy with the domestic economic and political strategies.

If potentially adding to the 'take it all' strategy, partial membership has nonetheless several serious practical disadvantages. Firstly, its introduction demands confidence-building efforts. The Union will need to convince candidates that partial membership is but a temporary solution on the path to full membership in a not too distant future. Secondly, putting in place such a formula would probably be cumbersome and slow. The Treaties of the Union would indeed need to be amended and (partial) accession Treaties drafted. Ratification would then be required. The pace of such negotiations and ratifications is likely to be much slower than in the case of the Association Agreements. Thirdly, partial membership tends to overlook the close interconnectedness between EU policies. The pillar option is of course the worst case scenario in that respect. It completely dismisses or ignores interpillar dynamics particularly important in the field of external relations or internal security. Doubts should therefore be cast over the functionality of such arrangements. Fourthly, there is the exposure to the risks inherent to an accession

timetable. Setting dates in that context would raise questions similar to those discussed *supra* under 'Defining a timetable for enlargement'. Supposing that partial membership is granted for 10 years, what should happen if the affiliate member is not ready for full membership by the end of that period? Even if renewal of the partial member status were an option, would it still be possible to say no to countries that have not fully adjusted? As already mentioned, target dates tend indeed to live a life of their own. Moreover, the need to reassure candidates that partial membership is only temporary could lead to excessive promises about the next step. Last but not least, partial membership may help in terms of the adoption of the *acquis*, but be dysfunctional from the point of view of the development of the *acquis*. Supposing the Union had offered CEE countries to become members of the Third pillar in the beginning of the 1990s, the subsequent development of Justice and Home Affairs would have probably been much more limited. Partial membership would indeed have put those countries in a position where they could have used their decision-making power to block *acquis* development financially or politically too demanding for them.

Seen from the perspective of the Union, the introduction of partial membership would have substantial systemic drawbacks. Formally speaking, partial membership would fully preserve the unity of the legal system – this form of differentiated integration remains indeed within the confines of a multi-speed approach. The single institutional framework of the Union would also be unaffected, even if partial membership would lead to complications and tensions (the most sensitive issue would concern the Commission – because of the collegial nature of that institution, it is difficult to envisage the appointment of a Commissioner from a country which is not a full member of the Union). More problematic, the 'CFSP & JHA only' formula, by further entrenching the pillar structure, would contribute to undermine the central role devolved to the Community method. Partial membership would also affect negatively the readability of EU structures, this more than any other option. Furthermore, it would lower to some extent the adaptability of the Union. Because of the direct presence of those countries within the Union, their characteristics, needs and limitations will probably quickly start to be taken into account even in policy areas not covered by partial membership. This could mean further management overload for the EU and poorer policy performance.

On the basis of the above-mentioned considerations, partial membership should not be used for the second and third waves of candidates. The magnitude of the functional drawbacks and the risks for the project of an ever closer union of values and action are too big.

Integration through protectorate

Pre-accession integration could be pursued through protectorate, i.e. whereby the Union would directly or indirectly assume authority over the non-EU territory and population concerned. Regimes of international governance – one of the modern denominations for protectorate – are usually established at country-level. The

authority is often exerted by coalitions of international institutions and/or States, either led by or including the EU. Another option is to put the EU or one of its Members fully in charge, as the main regional player. Revisiting the preparation of South East Europe for membership, the Centre for European Policy Studies (CEPS) has proposed a regional scheme partially inspired by the regimes of international governance. According to this ambitious multi-speed and modular scheme, third countries would be integrated in the Union via several Areas touching at different domains (Emerson 1999). The international protectorate option and the CEPS proposal are detailed and evaluated in turn.

Two regimes of international governance have been established in South East Europe: one for Bosnia and the other for Kosovo. In the Bosnian case, the regime has been defined in the 'General Framework Agreement for Peace in Bosnia and Herzegovina' and the twelve protocols in annex, initialled in Dayton on 21 November 1995 and signed in Paris on 14 December 1995. The agreement distinguished between the civilian and military aspects of the protectorate. A 'High Representative' of the international community has the final authority in theatre to interpret the civilian aspects, but has no authority over the NAVO-led Stabilisation Force (SFOR) in charge of all military and inter-ethnic border aspects. He is nominated by the Steering Board of the 'Peace Implementation Council', a group of more than fifty governments and international organisations involved in peace building in the region. His nomination then has to be endorsed by the Security Council of the UN. The 'Office of the High Representative' has to coordinate the work of a large palette of international organisations and implementing agencies, including the IMF which supervises the Central Bank and appoints the governor controlling the Euro-based currency board, the OSCE which adopts and puts in place an election programme and supervises the preparation and the conduct of elections, or the EU and the World Bank which run large reconstruction programmes. After bitter complaints of the first High Representative, Karl Bildt, the 1997 Bonn Peace Implementation Council decided to strengthen the High Representative's mandate to enable binding arbitration.

Although arguable less complex, the international regime designed for Kosovo is of a similar nature. Interestingly enough, during the war, the EU expressed its willingness to establish an interim administration for Kosovo. The UN Security Council resolution 1244 of 10 June 1999 decided instead the deployment of international civil and security presences. The NATO-led Kosovo Force (KFOR) is in charge of the security matters. More than 30 countries are contributing to the force. As for the civil presence, the UN is in charge of the interim civil administration, with the UNMIK headed by a Special Representative of the UN Secretary General, while the OSCE takes the lead for institution-building and the EU for Kosovo's economic reconstruction, rehabilitation and development. This pillar structure is obviously leaner than the Bosnian design, but the Kosovar problem is of a different nature insofar as it is still regarded as a Serbian province. There is no question here of the much more demanding (re)construction of an independent state.

Such international regimes are barely the right kind of settings for easing up the suppression of problematic diversity. The coalition format is serving other purposes. It is needed to get the blessing of other regional powers and the assent of some parts of the 'protected' population. Besides meeting geopolitical and geo-strategic constraints, this type of international regime allows for the pooling of large resources and expertise. All that leaves the EU with a loose grip on events. Those invited to contribute being independent entities and sometimes competitors, it is usually fairly difficult to establish some kind of central authority. Policies are made in different international fora, where the high or special representative is at best considered as a *primus inter pares*. Such diffuse networks are barely the right kind of structure to ensure the coherence, consistency and complementarity of any type of actions, including the suppression of problematic diversity from the EU viewpoint. It does not matter too much though. The territories concerned are very far from acceding anyway.

The alternative is to give the lead to the EU or one of its Members, as the main regional player. There is however no Member State able and willing to single-handedly undergo such a task in the region – it is not without reason that Greece, Bulgaria or Romania are only referred to as 'anchor States'. The CEPS therefore proposes to develop a regional scheme under the responsibility of the Union. Under that scheme, applicants would have to go through a succession of integrative steps in various sectors. This multi-speed and modular approach would be designed according to what is feasible and what is most urgent. The first step would be the creation of a multilateral pan-European free trade area (zero tariffs on industrial goods and full cumulation of the rules of origin) between the EU, the EFTA, the existing EEA, the CEFTA, the EU's customs union partners (Cyprus, Turkey) as well as five Balkan States which would be compensated for the loss of customs revenues (Albania, Bosnia, Croatia, Macedonia, former republic of Yugoslavia composed of Serbia and Montenegro – hereunder referred to as the '5'). The next stages for the '5' would be the establishment of a Customs Union with the EU, followed by their eventual inclusion in the Single Market (forming then what the CEPS calls the 'EEA II').

78

The CEPS proposal goes further by suggesting a swift pre-accession integration of these countries in a number of other areas:

- monetary policy (with the introduction of Euro-based currency regimes and subsequent full 'euro-isation', together with budget compensation by the EU for loss of seigniorage revenues);
- infrastructures (with the inclusion of the territory of the '5' in the design and planning of the Pan-European Transport Networks and Corridors, backed by special lending facilities provided by a South-East European Agency for reconstruction and development, subsidiary of the European Investment Bank);
- education (with the setting of a South-East European for Education);
- policies on immigration and asylum, police, customs and judicial cooperation (with the creation of a European Area of Freedom, Security and Justice, in-

cluding the deployment of EU customs services and policing powers to control port and frontier crossing where necessary – an option discussed in 2001 in connection with the new prosperity of immigration rings in the Balkans); and

- foreign, security and defense policies (with the creation of a European Area of Military Security, implying the acceptance by the '5' of the principle of EU-led operations in the region, using NATO assets and capabilities or not).

Because the region is made of 'communities suffering chronic disorders or consumed by conflict', the report insists on the need for a formula 'carrying a real sense of immediate inclusion in the EU' (Emerson 1999: 18). While the report argues that the existing category of associate member is clearly inadequate for this purpose, its institutional suggestions are not fundamentally different from what has been already offered to the CEECS. This is true for the participation without voting rights of the national and regional authorities of the '5' to specific joint sessions of the Council, for the inclusion in the 'European Conference' and its 'structured dialogue', or for the participation in various working parties and committees of the Council (as in the pre-accession programmes). The possibility for the European Commission and the European Court of Justice to hire experts and junior professional lawyers from these countries on a temporary basis is not revolutionary either. The major innovation among the features of 'virtual membership' would be the possibility for 'New Associate Members' to elect Members of the European Parliament with a non-voting status, although voting powers could be recognised later. Fully 'euro-ised' states could in addition send observers to the European Central Bank (no further precision is given, but the authors probably mean to the General Council of the ECB). As for consultative institutions such as the Committee of the Regions and the Economic and Social Committee, full participation would be granted.

Because of the absence of any direct participation in decision-making, the proposition has a smack of EU protectorate. It resembles in various respects the models applying to several European micro-states such as Monaco and Andorra, or to the US - Puerto Rico relations. The fact that the CEPS report mentions the possibility of a High Representative, 'designated by the EU in New Associate Members or other regions, especially where security agreements are substantial', reinforces that impression. This approach is obviously less about participation to policy making than about acceptance of monitoring and/or transfer of sovereignty during a consolidation period.

Would the CEPS formula improve the feasibility and reliability of the 'take it all' strategy? Politically speaking, would candidates accept more easily demanding alignment in exchange for a soft form of protectorate? The question obviously makes little sense here. Territories for which a protectorate formula is envisaged are usually characterised by power vacuum - following military defeat and/or chaotic situations. The main problem should therefore not be the political willingness to adjust but the capacity to undergo reforms and reconstruct. In other words,

if the Union is in a position to establish a protectorate, it should *a priori* not be a problem to obtain *acquis* alignment. Questions about financial feasibility and reliability make more sense. Because protectorates nowadays come with massive involvement and support, this option should improve the financial feasibility of the 'take it all' strategy. Besides, because of the authority given to the EU and its direct role in the implementation of policies in 'protected' territories, uncertainty about the depth and scope of the candidate's adjustment should greatly diminish.

In terms of post-accession solidarity, divisions in Europe and synergy with domestic transformations in candidate countries, the CEPS formula should score well. Considering the present international context, it would be very difficult for the EU to run a protectorate in a purely self-interested manner. The formula should logically diminish the risk of backlash against intra-EU solidarity mechanisms after accession. As for the divisiveness of the 'take it all' strategy, it could also be softened by this scheme. Indeed, it will be politically impossible to grant this special status without offering the same advantages – in particular the immediate possibility to elect MEPs and participate fully in EU consultative bodies – to countries more advanced in their preparation for accession. The automatic extension of new privileges and the closer inclusion would rather diminish divisions in Europe. Finally, insofar as most decisions would be in the hands of the same actor (the EU), it should be easier to solve problems of coherence and develop synergies with the domestic transformations undertaken by the candidates.

80

A major problem with this approach is that the EU does not seem ready for such a challenge. It is true that, with the Treaty of Amsterdam and the Treaty of Nice, the Union is in theory better equipped to deal with such tasks. But previous experiences warn against high ambitions based on untested or underdeveloped instruments (cf. the expectation put on the nascent CFSP with regards to the Yugoslavian situation in 1992). At times, even relatively modest targets seemed to be out of the EU's reach (cf. the administration of Mostar, the first example of EU-led protectorate on a small scale). In practice, the new instruments required for the European Area of Military Security and of Freedom, Security and Justice are yet to be fully developed. Their development might take a while considering that some Member States have still to be convinced of the necessity of additional qualitative and quantitative jumps.

This does not mean that the CEPS formula is unaffordable or undoable, but it would certainly be slow to put in place, costly and risky. This approach would indeed require new human and financial resources on an important scale to convince the international Community, reassure the future Members and manage the scheme. The EU would have first to make sure that the international environment is reasonably favourable or at least not adversary to such formula. The US acquiescence is of particular importance. Under the second Clinton administration, the evolution of US-EU relations was such that the scenario of a EU protectorate was inconceivable for the Americans (Philippart and Winand 2001). It could be more compatible

with the orientations taken by Georges W. Bush administration. It seems at least possible for the Union to shorten the intermediary step of an international administration in post-war situation, this at a reasonable cost. In addition, just as for the association agreements or partial membership, the Union will have to reassure the third countries concerned about the scheme in order to avoid loss of adjustment impetus and appetite for membership. Insofar as the '5' are not likely to move up the integration ladder at the same pace, some parts of the package will have to be tailor-made, which will also add to its management load.

Finally the systemic costs of this scheme, from the angle of the ever closer Union model, would be equally important. This type of differentiation, together with partial membership, would put the greatest pressure on the integrity and exclusive nature of the institutional framework of the Union (cf. the idea of MEPS from the 'protected' states). It would seriously impair the readability of EU structures and actions. Once overstretched and flooded with associates, the Union is also likely to see its capacity to adapt diminished.

Considering the very significant managerial costs and the serious systemic disadvantages induced by such an innovation, on one side, and the relative stabilisation of South East Europe through more classical means, on the other side, the Union would be better inspired not to resort to the protectorate option.

4.3 DIMINISHING DIVERSITY

Not all enlargement questions can be (directly) resolved by the imposition of (uniform) rules. Some enlargement problems for instance result from underlying differences in socio-economic development and/or administrative and legal capacity and culture (e.g. the aspirant's inability to adopt and implement the *acquis*). A second way to deal with enlargement questions focusses on the gradual reduction of this underlying diversity to an unproblematic level, using instruments that contribute to a progressive convergence. Three processes can produce convergence: market forces, financial transfers and learning processes. The effects of convergence strategies depend partially on the processes through which convergence is pursued, which is the reason why separate sub-sections are dedicated to these three processes below. However, convergence strategies share some general pros and cons that will be discussed first.

In the introduction to this chapter we distinguished between three types of enlargement problems: those following from the inability of an aspirant state to adopt and implement the *acquis*; those caused by the aspirant's unwillingness to do so; and the ones resulting from an incumbent Member State blocking enlargement in order to protect his interests.

Convergence strategies are most relevant in cases where enlargement problems are related with the aspirant's inability to properly adopt and implement the *acquis*. This inability may be a result of the aspirant's low level of socio-economic development, lack of administrative and legal capacity and/or its involvement in a fundamental process of societal reform. There is no *acquis* in respect of these factors (e.g. there is no EU standard for effective public administration or the level of socio-economic development). Many actors might consider indeed the development of EU rules in these fields as too expansive. Nonetheless, these factors can be of critical importance for the functioning of a Member State and the pursuit of EU objectives. Thus, in its 1976 Opinion on the Greek application the Commission proposed a pre-accession period of unspecified duration, in order to allow Greece to reform and develop its economy. The idea was to use EC Structural Funds to assist Greece in doing so. Only after this pre-accession political and economic convergence process, Greece would be ready to take on the *acquis*, according to the Opinion (which was rejected unanimously by the Council on political grounds; Greece acceded in 1981). In a 1978 overall study of the impact of enlargement with Greece, Spain and Portugal, the Commission held on to its conviction that co-ordinated programmes to stimulate economic growth in these aspirant countries should be undertaken before accession (European Commission 1978). Spain and Portugal received substantial pre-accession aid packages to that effect, and – in contrast with Greece – joined the EC only in 1985, eleven years after their democracy had been restored. When confronted with Central and Eastern European appeals for accession in the beginning of the 1990s, there was consensus on the EC side, that enlargement could not take place before the vast socio-economic, political, administrative and legal disparity between the two halves of Europe had been diminished. EC relations with the CEE aspirants were therefore initially primarily set up to contribute to the transformation and economic growth of these new democracies.

The functionality of convergence strategies to deal with the aspirant's inability to adopt and implement the *acquis* depends on the process through which convergence is pursued. This is why this question will be addressed in more detail in the sub-sections below. What is true for all processes though, is that convergence does not take place overnight, making strategies aimed at diminishing diversity effective only at the medium to long term.

In case enlargement problems are a result of the aspirant's unwillingness to adopt and implement the *acquis*, convergence strategies will be of limited use at best. The unwillingness of an aspirant to adopt for instance the CFSP and ESDP *acquis*, following from its pertinent wish to remain neutral, is unlikely to be affected by convergence strategies. In other cases preferences might change in the long term under the influence of convergence strategies. Socio-economic convergence might in some cases lead to convergence of interests and standpoints (e.g. on new environmental regulation). Involvement in epistemic communities, learning processes and convergence of politico-administrative and legal cultures may lead to adjust-

ment of standpoints as well. In all cases however, the solution of problems of aspirants' unwillingness through convergence strategies will be very slow to come.

In case enlargement is blocked by an incumbent Member State that fears more intensive competition for its 'sensitive' sectors, convergence through market forces is not likely to bring a solution at all. The blocking Member State might indeed be convinced that the aspirant's very catch-up growth through mutual market opening would be realised to the detriment of his weaker regions. Convergence programmes through financial transfers – financial transfers to the incumbent Member States to be precise – could provide relief in this case.

The usage of strategies diminishing socio-economic and administrative diversity reduces the risk that enlargement will take place at the expense of achieving EU objectives. Diminishing diversity will contribute to a more stable and sustainable adoption and implementation of the *acquis*, as the aspirants' implementation problems are tackled at root. Convergence can be promoted without having to open accession negotiations right away (in contrast with the suppression of diversity, where the opening of negotiations seems a fair counterpart). Not to open negotiations before the aspirant is sufficiently prepared is of considerable importance, since their very start raises expectations about actual accession. Considering this momentum the period in between the opening of the negotiations and accession cannot last too long without generating lassitude and backlashes on the side of the applicant. Opting for convergence strategies allows for the aspirant's preparation for the adoption of the *acquis*, while keeping the risk of too early an accession to the minimum. Moreover, diminishing underlying socio-economic and administrative diversity before embarking on the full-scale adoption of the *acquis* reduces the risk of poor implementation after accession. All in all, convergence strategies lead to an accession 'in due time', granting membership only when the candidate is really ready to implement the EU *acquis* and to contribute to the achievement of EU objectives. The flip side of the coin is that enlargement is slow to come when convergence strategies are exclusively applied. If accession is strongly desired by incumbent Member States or aspirants (e.g. for political reasons), the political feasibility of a convergence-only strategy will be low.

Convergence strategies' systemic effects on the EU are not far-reaching. Characteristic of this approach is the recognition of the major importance of non-public parties for the integration of Central and Eastern Europe in the EU, namely private actors (i.e. convergence through market forces), professional practitioners and more in general civil society (i.e. convergence through learning processes). Their involvement will enhance the legitimacy of the enlarged EU. For the rest, convergence strategies preserve the single institutional framework of the EU, the unity of the legal system and the centrality of the community method. Neither have they any significant effect on the status quo in terms of transparency and comprehensibility, protection of the minority, and open-ended nature of the Union.

As regards the systemic effects on Europe as a whole, there is a clear trade-off. On the one hand convergence strategies equip aspirant countries to better deal with the burden of adjustment to the EU regime. Moreover, the synergy of convergence strategies with transformation and catch-up processes is high in so far as convergence strategies are primarily aimed at the aspirants' reform conform the model of the democratic market economy as well as at their socio-economic development. On the other hand, convergence-only packages are usually interpreted by aspirants as a way of closing the door on potential new members. Reacting to the Commission's Opinion, the Greek government for instance argued that a pre-accession period was a way of indefinitely postponing the Greek application. The optimum between sufficient preparation and synergy on one hand and timely accession on the other will vary among aspirants.

All in all, instruments inducing convergence seem to be best suited to prepare for and supplement the suppression of diversity along the lines of the *acquis*. The specific pros and cons of the various convergence processes will be dealt with in more detail below.

4.3.1 CONVERGENCE THROUGH MARKET FORCES

Convergence can be secured through market forces, which can be unleashed in several ways. First, the suppression of diversity in aspirant countries (see section 4.2) has a spin-off on market integration. In general, foreign trade and foreign direct investment (FDI) will be stimulated and attracted by the aspirants' alignment with the *acquis* and fulfilment of accession criteria (e.g. the development of a market economy), although some specific investors might be looking for less regulated business environments or host governments providing more state aid. Second, the EU can encourage candidates to join multilateral trade arrangements (e.g. the World Trade Organisation), which contribute to market integration. Third, the Union can arrange (partial) market opening to aspirants on a reciprocal basis (e.g. using various forms of association agreements such as the Europe agreements or the Stabilisation and Association agreements). In the context of enlargement, the latter option – partial opening and integration of the EU and aspirant's markets – is the most specific and important instrument. We therefore focus our evaluation on this type of convergence through market forces.

As stated above, convergence through market forces may contribute to the solution of enlargement problems caused by the aspirant's inability to adopt the *acquis* and to a lesser extent to problems caused by its unwillingness to do so. The expectation is that socio-economic convergence will lead to convergence in interests and standpoints as well. How functional are market forces then in producing socio-economic convergence?

Once unleashed, market forces can contribute to cohesion through four mechanisms (Pelkmans 1997: 256-7). Market integration allows for the exploitation of comparative advantages and specialisation, bringing higher welfare to all parties. FDI towards the candidates will increase, catalysing reorganisation and product/process innovations. Competitive exposure will rise as well, forcing higher productivity and the fulfilment of minimum quality criteria. And last but not least, a real opening of markets – if the EU decided so – would imply a better protection of the candidates against EU export subsidies and other market distorting measures.

First, reciprocal market opening facilitates a process of exploitation of comparative advantages and specialisation, which should increase welfare in the aspirant countries. One significant problem with relying on market forces is the cost of adjustment. Key sectors in several CEE countries have for instance long enjoyed state-ownership and/or a high level of national protection. Catch-up growth of CEE regions through activation of their indigenous capacities is therefore bound to lead, in some cases, to considerable redundancies of firms and workers. This is a particular problem in the CEECS because of the comparative inflexibility of the labour market. Unemployment in those regions is often characterised as a 'stagnant pool', where only few unemployed manage to get employed again. It takes a long time for the labour displaced from the shrinking agricultural and declining industrial sectors to be absorbed by the service sector and private enterprises (Boeri 1997; Brusis 2000: 270). Although most of these adjustments would be necessary anyway to achieve competitiveness in the global economy, an enlargement strategy relying exclusively on convergence through market forces might suffer from backlashes relating to adjustment problems and lack of perspective, diminishing its political feasibility.

85

Second, market opening between the EU and the applicants should produce convergence by triggering an increase of FDI-inflows to the less favoured regions in aspirant countries. The beneficial effects of the inflow of resources and know-how are already visible in many of the CEE regions, inducing badly needed reorganisation and product/process innovations. The allocation of FDI among CEE regions shows however a clear preference for the advanced transition countries. The South-East European countries are relatively neglected, as reflected in lower FDI per capita, lower per-capita incomes, lower labour force productivity, and higher unemployment rates. The distance in terms of cumulated FDI per capita between Poland and Bulgaria or Romania has even increased (Brusis 2000: 267 and 271). A favourable business environment seems to be one of the absolute prerequisites for substantial inflows of FDI. Moreover, foreign firms invest primarily in CEE regions close to western markets and in market segments offering a high value added. The functionality of convergence through market forces to solve enlargement problems will thus differ substantially among regions.

A third mechanism reported to exert positive effects on convergence is competitive exposure. True, exposure to competition compels higher productivity and the ful-

filment of minimum quality standards. For weak, previously protected, CEE regions it will however entail a harsh adjustment process, with uncertain results.

Finally, the realisation of convergence will depend on the extent to which market distorting national and/or regional policies will be phased out. If market distortions caused by EU policies are indeed reduced, aspirant countries are likely to gain better access to the EU market and suffer less from state aids to their EU competitors, enabling aspirants to catch-up. EU association agreements with lesser-developed aspirants differ in terms of the priority the EU has given to the protection of its sensitive sectors (e.g. agriculture) and solidarity with the associated aspirant country (e.g. by removing its trade barriers faster than the aspirant removes his). In this respect, the Europe Agreements have been criticised for their protectionist content. The 'sensitive' sectors for which liberalisation has been restricted (agricultural products, steel, coal and textiles) are precisely those in which the CEECS have a comparative advantage (Preston 1997: 199).

All in all, (partial) opening of markets on a reciprocal basis is expected to be highly functional in facilitating catch-up growth for certain regions in CEE. In so far as enlargement problems are a consequence of aspirants' limited level of socio-economic development and financial resources, their catch-up growth should enable them to better adopt and implement the *acquis*. However, in some weak regions with sectoral concentration, convergence might be uncertain, slow to come and only at the cost of painful adjustment processes. Exclusive reliance on market forces will not be effective to solve enlargement problems for these regions. Moreover, the political feasibility of market-driven convergence strategies will be low, if not met by adequate flanking policies like education and re-training programmes to prevent protracted unemployment. While the financial feasibility of market opening itself may be high, societal adjustment costs to market integration as well as public expenditure on programmes to alleviate these will be rather high in certain regions and/or sectors.

In systemic terms, convergence through market forces provides an 'ever closer union' according to the European economic integration textbook role model. In addition to the evaluative points made above for convergence strategies in general, convergence through market forces has more specific systemic effects as regards cohesion, solidarity and legitimacy. As some weaker regions within the EU will face increased competition following full market opening to aspirants, cohesion and solidarity among Member States will suffer (temporarily). Without compensation the legitimacy of the EU and its enlargement will decline in these afflicted regions and Member States.

As for the development of peace, welfare and stability in Europe as a whole, convergence through market forces can take many years and – if not complemented by other enlargement strategies – keep lesser developed candidates at the door of the EU for a very long time, if not forever. The reliance on market forces and their

‘volatility’ can also be divisive. The main systemic risk concerns marginalisation of peripheral regions and the fragmenting effects thereof on Europe as a whole. Moreover, market forces are likely to amplify the consequences for the ‘ins’ and ‘outs’ of an enlargement decision that does not include all aspirants (e.g. diversion of trade and FDI to the detriment of the aspirants that fail to enter with the ‘first wave’). Aspirants in principle receive equal treatment in terms of access to markets (with the consequences of the unleashing of market forces obviously not being equal). However, insofar as the opening of markets takes place through bilateral association agreements and insofar as these agreements are partially tailor-made, discrimination could be introduced against some applicants.

4.3.2 CONVERGENCE THROUGH FINANCIAL TRANSFERS

Convergence can secondly be promoted by financial assistance. These funds can be transferred to aspirants that are unable to adopt and implement the *acquis*, or to incumbent Member States fearing that enlargement will damage their (regional or sectoral) interests.

The strategy of providing financial transfers to aspirants, in order to promote socio-economic cohesion and reform and to prepare their integration into the EEC, has been practised in the cases of Spain, Portugal, and the current candidates. Thus, in the first half of the 1980s the Council recommended the European Investment Bank to grant substantial pre-accession loan packages to Spain in order to facilitate its economic integration into the EEC. The EEC-Portugal foreign trade agreement was complemented by financial protocols designed to strengthen Portugal’s economy and to help it to overcome the legacies of the pre-1974 period (e.g. by supporting the modernisation of agriculture and fisheries, restructuring of small and medium sized businesses, and development of (regional) infrastructure). Likewise, the original orientation of the PHARE programme – which has been redirected in 1997 to mainly assist the adoption and implementation of the *acquis* – was the support of economic and political transition in the CEE countries. Part of the PHARE investment programmes (e.g. the SME facility) as well as parts of the SAPARD and ISPA funds are still directly or indirectly aimed at economic and social cohesion. PHARE has also recently started to support investment in economic and social cohesion in the candidate countries, in preparation of their future involvement in the Structural Funds. Moreover, in the PHARE 2000 Review, the Commission recognised that the issue of fundamental public administration reform needs to be revisited: “While there is no *acquis* in this area and no standard EU model of an effective public service, PHARE’s possible intervention in this area is warranted because general public administration problems are repeatedly cited in regular reports and negotiations as constraining applicant countries’ capacity to meet EU accession requirements” (European Commission, Directorate General Enlargement 2000: 4 and 6).

The feasibility of large-scale financial transfers aimed at convergence is rather low for political and budgetary reasons. The possibility of extracting more resources at European level is limited at a time when some Member States are still struggling with their budget in order to respect the Maastricht convergence criteria and when all are confronted with the perspective of a world recession. Moreover, experience has learnt that it is politically more difficult to mobilise resources for applicants than for Member States. This is illustrated by the fact that, while the poorest Member States in the EU-15 (Greece and Portugal) receive cohesion transfers amounting to approximately € 400 per capita annually, the 10 CEE candidates are granted pre-accession aid of approximately € 30 per capita per year in 2000 and 2001 (Brusis 2000: 269). According to the PHARE 2000 Review, PHARE's budget will never approach that of the Structural Funds, the PHARE budget of the candidate countries representing less than 10 percent of the per capita support for Objective 1 regions within the Union (European Commission, Directorate General Enlargement 2000: 11). Because of limited political and financial feasibility, funds will be inadequate to meet developmental needs.

Given the limited EU budget for pre-accession aid, financial transfers to aspirants can only make a relatively small contribution to convergence and through that to the solution of enlargement problems caused by aspirants. Nonetheless they can be very functional as a complement to convergence through market forces. On the one hand financial transfers can be functional to support the unleashing of market forces. Where CEEC governments lack resources for public infrastructural investment needed to absorb a larger inflow of FDI financial transfers can provide relief. On the other hand, financial transfers can compensate for the societal costs caused by market opening, and support regional and sectoral restructuring and modernisation processes. For financial transfers to be effective they should be well-targeted (relevance for cohesion and sufficient prioritisation). They should reach a critical mass, without exceeding the recipient's absorption capacity. Moreover, funds should be properly managed and coordinated with other donors. Apart from all this the key to successful convergence through financial transfers lies with the policies in the recipient country and the coordination of those policies with pre-accession convergence programmes (European Commission 2000g: 9-10).

Compared to the systemic remarks made above on convergence strategies in general, financial transfers stand out in two respects. First, offering pre-accession assistance to aspirants in cases where the relationships are not yet mutually beneficiary will contribute to solidarity among Member States after enlargement. Aspirants who have felt supported by the EU in their catch-up and transformation processes, are as new Member States more likely to support the development of intra-EU solidarity and cohesion mechanisms not (only) to their direct benefits. Second, there is a risk that financial transfers for convergence purposes become permanent and diminish the Union's capacity to adjust. If targets are not reached by the time of accession, it is very likely that extra funds will be asked to pursue the task of convergence. Once fully integrated in the decision-making process of

the EU, the new Member States will be in a much better position to secure this prolongation. If the transfers are substantial enough, they might form an incentive to stay below objectives and free ride as long as possible. In such a case, the strategy based on financial transfers might in some cases even become dysfunctional: providing an alternative, it can lead to the postponement of restructuring processes and slow down the pace of 'natural' convergence.

As for the development of peace, welfare and stability in Europe as a whole, financial transfers to aspirants can mitigate the (temporarily) divisive effects of market opening. A lot will obviously depend on the financial allocation decisions of the EU, which are not exclusively motivated by developmental needs of aspirants. Where the Union has so far chosen to give priority to 'frontrunners' among aspirant states, financial transfers increase the distance between a first wave of new Member States and those that will join later.

Financial transfers are also used to help incumbent Member States in their adjustment to enlargement. In that case EU funds are deployed to support economic development in EU regions presumed sensitive to competition from candidate countries. The creation of the Integrated Mediterranean Programmes in 1984 was for instance meant to assist the Mediterranean Member States to adjust to the Iberian enlargement. The functionality of convergence through financial transfers to solve enlargement problems caused by an incumbent Member State depends on the willingness of the latter to withdraw its demands from the agenda in exchange for cohesion funds and the willingness of other Member States to foot the bill. The financial and political feasibility of this strategy are of course higher if convergence programmes indeed contribute to the catch-up of the region and/or industry in question. In that case financial transfers not only compensate the incumbent Member State for the costs of enlargement (like side-payments do, see section 4.4), but also help to actually solve the problem (which is not the case with side-payments). The resulting temporary nature of the transfers will increase the political feasibility of the strategy for the Member States being charged.

The deployment of financial transfers to support a Member State's weaker regions in their catch-up and adjustment to enlargement will strengthen cohesion and solidarity among Member States. In order not to overcharge solidarity and negatively affect the EU's capacity to adjust, it is important though that these financial programmes are limited in time (that is, they end once sufficient convergence has been realised).

4.3.3 CONVERGENCE THROUGH LEARNING

Convergence can also be realised by a process of policy learning. Exchange of information and staff as well as cross training contribute to the convergence of legal, administrative and political cultures. The same holds true for the participa-

tion of aspirant countries in existing EU programmes, agencies, benchmarking and policy coordination processes. An example of the latter are the so-called Joint Assessments. In these the European Commission and the individual candidate country lay down priorities for macro-economic policy as well as the policy efforts required to achieve these, while the results are periodically evaluated jointly (Pelkmans et al. 2000: 83-4). The Joint Assessments gradually familiarise candidate countries with the economic policy coordination among the EU member states in the framework of the Cardiff process.

In case enlargement is blocked (either by an aspirant unwilling to adopt and implement the entire *acquis*, or by an incumbent Member State) because of a clear conflict of socio-economic interests, learning processes will not be of much help. It is in those instances where enlargement is impeded by the inability of the aspirant to adopt and implement the *acquis* (e.g. caused by differences in administrative capacity), that convergence through learning can make a difference. The effectiveness of these instruments as a steppingstone and complement to the adoption and implementation of the *acquis* depends on the extent to which aspirant countries are open and dedicated to institutional and policy change. Insofar as the success of this method is contingent on the open-mindedness of actors vis-à-vis each other's practices and their willingness to adjust, policy learning will be more functional in areas dominated by a strong epistemic community (e.g. a professional group with a common educational background, strong personal network, clear code of conduct, etc.). Moreover, convergence is more likely and sooner to be achieved if clear convergence points are set (e.g. OECD or Council of Europe norms, professional codes), if the learning processes incorporate scoreboards, timetables and deadlines, if the convergence results are transparent (allowing governmental and non-governmental actors to exert pressure for convergence by comparing and referring to them), and if there are enforcement mechanisms. The financial feasibility is relatively high, although dependent on the instrument at issue and the way it is applied. The costs of training, exchange and monitoring are relatively limited, but in case of intensive and/or encompassing application, the institutional burden can be substantial. The political feasibility is also relatively high, both for EU Member States (limited budgetary consequences) and aspirants (limited adjustment costs). In fact, because of the emphasis on exchange and mutual learning, this strategy is suitable for tackling more sensitive (e.g. cultural and institutional) diversity as well.

The systemic effects of learning strategies do not significantly differ from the systemic effects of convergence strategies in general, discussed above. They are notable for their involvement of governmental and non-governmental actors, thereby anchoring enlargement and integration firmly in political and civil society, contributing to the legitimacy of the enlarged EU. As regards the systemic effects on Europe as a whole, a lot will depend on finding the right balance between adequate preparation through convergence and timely accession. Keeping the door closed for candidate states by pleading that more convergence is needed before

accession, is not very credible when at the same time capacities and cultures of the current Member States differ substantially.

4.4 BUYING OFF DIVERSITY

In order to secure enlargement, a group of Member States can choose or be obliged to buy off the diversity of other countries. In exchange for unconditional side-payments the latter let the EU enlarge as if their diversity did not exist. Enlargement could require to buy off an applicant country and/or an incumbent Member State.

The current format of accession leaves no official room for side-payments in order to get candidate countries to remove their problematic diversity from the EU agenda. The only (informal) linkage would consist of persuading a candidate to withdraw its demands against the vague promise of possible renegotiation once it has won a 'seat at the table'. Put another way, the postponement of its demands is traded off against the granting of membership. In the accession negotiations some EU negotiators have indeed emphasised that the accession process would be accelerated if candidate countries were to limit their requests for transition periods and derogations. Following the statement by the Nice European Council that the first accessions could take place in 2004, the frontrunners among the candidate countries (the Czech Republic, Hungary and Poland) have indeed proved willing to withdraw or scale down requests for transition periods in various areas (e.g. taxation, environment and liberalisation of the energy sector).

Another possibility is that the accession of a particular candidate country is highly desired by the Union, while integration in a certain element of the *acquis* would have adverse effects for that country. The Union could then offer financial compensation in order to lure the country into membership. The promise to applicants of eligibility for (newly created) Structural Funds sometimes contained an element of horse trading in order to de-block enlargement deadlocks, even though these financial transfers are in principle conditional and meant to be instruments for diminishing diversity. The introduction of the European Regional Development Fund (ERDF) in 1975 was for instance mainly a response to the UK budget problem, rather than a serious effort to promote convergence in the Community framework (Preston 1997: 20). The UK had expressed its concern that – because of its trade structure – it would become a major net contributor to the Community budget. The ERDF was seen by the applicant as a way to compensate for these contributions. The creation of a new category for the Structural Funds to suit the needs of Finland and Sweden's Arctic regions after accession, was another example of this strategy. One of the sensitive issues in the EFTA enlargement negotiations was the applicants wish to continue their regional policies and receive Structural Funds for their sparsely populated areas. Since these regions did not satisfy the criteria for achieving an 'Objective 1' status, the Union agreed to create a new 'Objective 6' for

regions with a population density below eight persons per square kilometre (Preston 1997: 104).

A second form of buying-off can arise if an incumbent Member State fears that its interests will be negatively affected by the accession of a candidate country. Also in this case Structural Funds have provided relief. Thus Italy and Greece (and to a lesser extent France) feared that the accession of Spain and Portugal – with their large agricultural sectors – would imply a reduction of their receipts from various Community funds. The creation of Integrated Mediterranean Programmes (IMPS) in 1984 was – apart from their objective to diminish regional diversity – seen as a way to compensate the Mediterranean Member States for the adverse effects of the Iberian enlargement. Another example was Spain's threat in 1994 (after the accession treaties had been ratified by nearly all the Member States) to withhold ratification unless the EU were to grant it a fisheries arrangement comparable to Norway's. The deadlock was overcome at a meeting of the Fisheries Council on December 22, when the EU ministers promised to integrate Spain into the Common Fisheries policy six years earlier than had been agreed in Spain's own accession treaty (Dinan 1999: 169).

Whether buying-off of diversity is functional to solve accession problems depends on the willingness of the 'blocking' Member State or applicant country to withdraw its demands from the agenda in exchange for concessions or financial compensation. This is less likely to be the case if the sector involved is politically sensitive (e.g. agriculture) and/or if the gains and losses are not internalised to the same groups (e.g. if losses for farmers are traded off against gains for industrial trade) (Moravcsik 1998: 65). In general, this strategy is only financially and politically feasible if the adjustment costs, required to drop the demands, are moderate. At the same time there have to be countries that stand to gain a lot from enlargement and are prepared to come up with compensation. These side-payments are most likely to take the form of policies that impose costs on diffuse constituencies (e.g. the examples mentioned supra of newly created Structural Funds) (Moravcsik 1998: 66). If a 'price for enlargement' can thus be agreed between parties, the strategy of buying off can solve the problem blocking the enlargement at issue. However, the provision of unconditional compensation will create a potentially costly precedent. By resorting to unconditional side-payments, the EU runs the risk of having to buy off the same diversity again in the future, and being confronted with more compensation claims from other Member States and applicants in future enlargement rounds. Albeit functioning as a short-term lubricant, side-payments might contribute to future enlargement blockages and thus turn out to be a long-term burden.

Frequent usage of buying off strategies will neither be functional to achieve EU objectives. Multiple linkages and side-payments tend indeed to produce complex packages which are more the addition of various solutions than the expression of a coherent approach, leading in the worst cases to shaky policy design with unclear,

vague or inconsistent objectives as well as inadequate or contradictory instruments. Moreover, this strategy suffers from the major drawback that it does not tackle the problem at source in so far as, by definition, no action on the part of the opposing Member State(s) is demanded in exchange for the side-payments. In the absence of a trade-off perspective, countries would probably make a bigger effort to comply with the *acquis*.

In terms of legitimacy and solidarity, the record of buying off strategies is mixed. On the one hand, the (long) search for the right balance of mutual concessions ensures that all parties have some reason for satisfaction and see the output as not entirely unfair. On the other hand, few governments are willing to co-operate in a system where they would have to bail out other members repeatedly. Likewise, while concessions to countries facing high adjustment costs are an expression of solidarity, the institutionalisation of a form of free-riding, where some Member States do little to solve their specific problems and are counting on others to help them out time and again, would strain resources and goodwill.

Recourse to buying off strategies generally decreases the transparency and comprehensibility of EU policies. At best, the practice of package dealing and creating new policy instruments overlaying existing ones will add to the complexity of the EU *acquis*. The worst case in terms of transparency would be an informal exchange of membership against withdrawal of a candidate's demands, along with down-playing of implementation problems. Market parties and citizens will be left with little indication about the new Member State's real implementation capacity (like transition periods would have provided), resulting in a diffuse uneasiness. The necessary trust for the functioning of the internal market and the area of freedom, security and justice is consequently likely to erode.

Another point of concern is the negative effect the use of side-payments may have on the adaptability of the Union. Member States that have been bought off might see these transfers as acquired rights and permanent financial flows, rather than a one-off compensation. Anxiety about the Union's adaptability has been one of the reasons why the Member States footing the bill have often insisted on the temporary nature of side-payments (e.g. the acceptance of the new 'Objective 6' under the condition that it would be re-evaluated during the 1999 Structural Fund review).

Trading off diversity in order to facilitate enlargement also has effects on Europe as a whole. Firstly, irrespective of whether an incumbent Member State or candidate country is bought off, the use of this strategy will obviously open the door to membership a bit wider. Problematic diversity that might otherwise be a reason for the postponement of enlargement is dealt with through compensation and/or concessions. The willingness to buy off will however vary with the power of the demanding country involved as well as the desirability of the accession at issue, resulting in differentiated treatment of aspirant countries which might be per-

ceived as unfair. Whether the practice of buying off will reinforce transformation and catch-up growth processes depends on what the recipient country will do with the compensation provided. By definition there is no guarantee that it will be used for reform or investment purposes.

4.5 ACCOMMODATING DIVERSITY

Since suppressing or buying off diversity is not always possible or desirable, and since an approach aimed at diminishing diversity can only achieve results after some time, methods accommodating diversity are possibly needed. Accommodation of diversity implies a certain acknowledgement of diversity by way of granting officially a special treatment.

A first manner to push through enlargement is by opting for *horizontal accommodation* (at EU level). One way to do this is by differentiating in Member States' rights and obligations (flexibility). Three forms of differentiation are relevant in the context of enlargement: transition periods allowing for temporary derogations (section 4.5.1), a core *acquis* test, encompassing a systematic identification of transition periods (4.5.2), and permanent exemptions (4.5.3). A second way to accommodate diversity at European level is by opting for less constraining regimes of cooperation in which all Member States participate. Solving *enlargement* questions through a less constraining regime would require a redefinition of the *acquis*, substituting for instance uniform rules by outline legislation, thereby relaxing the obligations imposed on all Member States (including the new Member States). Apart from accommodating diversity at EU level, enlargement problems can be solved by resorting to *vertical accommodation*. In the context of enlargement vertical accommodation requires a redefinition of the *acquis* as well, moving the management of part of the former *acquis* to lower levels of government or governance. An example would be the (partial) re-nationalisation of redistributive policies, in case the prospected claims of new Member States, and the ensuing post-accession costs of these redistributive policies, would provoke an incumbent Member State to block enlargement. These last two ways of accommodating diversity, both requiring a redefinition of the EU intervention, are dealt with in section 4.5.4.

4.5.1 TRANSITION PERIODS

Transition periods, allowing for temporary derogations from specific EU laws or policies for a specified period, have so far been the main Community method of accommodating diversity. Two types of temporary derogations are possible: those allowing new Member States to adjust gradually to the adoption and implementation of the *acquis* and those granting extra time to incumbent Member States to adjust to the consequences of enlargement. Examples of the former are the transi-

tion periods requested by the current candidate countries for implementation of the 'heavy investment directives' of the environmental *acquis*. An example of the latter was the demand by Germany during the actual accession negotiations for a seven-year transition period for the free movement of persons. During that period each Member State would be permitted to apply national measures to regulate access to its labour market.

Both types of transition periods can be functional to shorten the timetable for accession. In stead of postponing accession until all candidates have implemented the entire *acquis* and all incumbent Member States have prepared their sensitive sectors for enlargement, accession can take place at an earlier point in time by making temporary derogations for problematic parts of the *acquis*. If enlargement problems are caused by the unwillingness of a candidate to adopt the entire *acquis* or the permanent objection of an incumbent Member State to a new Member State's participation in (parts of) EU policies, the political feasibility of this solution will be low. Transition periods will only provide a solution for those enlargement problems caused by the inability of a candidate to adopt and implement the entire *acquis* upon accession and/or temporary adjustment problems of incumbent Member States. For these cases the financial feasibility will depend on the magnitude of the challenge that has to be met at the end of the transition period in relation to the capacity of the state involved.

In order to be in line with EU objectives, the granting of transition periods should be limited to those instances where temporary derogations do not disrupt the internal market or other core functions of the EU. The ad-hoc character of transition periods and the sectoral, parallel format in which their negotiation is taking place provide little guarantee for that. The criteria recently formulated to grant transition periods are not of much help either. In its November 2000 Enlargement Strategy Paper, the Commission distinguishes between three categories of requests for transition periods: acceptable, negotiable and unacceptable ones:

- 1 'Acceptable' are those transitional measures of technical nature that are 'limited in time and scope' and do not have 'a significant impact on competition or the functioning of the internal market'. These criteria are very economic in their exclusive focus on avoidance of market distortion and protection of the internal market. What about transitional measures that do not have a significant impact on competition or the functioning of the internal market, but do affect negatively the area of freedom, security and justice? Are they acceptable?
- 2 Requests which are likely to have 'a more significant impact' in terms of competition or the internal market, or in time and scope, are still considered as 'negotiable', but more conditions can be put to their acceptance and their effect for 'the economy, health, safety, the environment, consumers, citizens, other common policies and the Community budget' will also be taken into account. This list of criteria is so exhaustive and general, that it does not help in discriminating between acceptable and non-acceptable requests.

- 3 Finally, it is said that those requests ‘posing fundamental problems’ will be ‘unacceptable’. The crucial question which requests are unacceptable and why, is in other words answered in a tautological, non-operationalised way.

With the adoption of the Commission’s proposal to make explicit the criteria for granting transition periods, the European Council of Nice took a step in the right direction, reducing the ad-hoc character of the accession strategy. Ideally, however, these criteria should be non-tautological, properly operationalised, discriminating and less economic of a nature.

For transition periods to be consonant with EU objectives, more is needed than clear criteria to judge their acceptability. Transition periods have to be well organised, in order to result in an optimal contribution of the new Member State to the achievement of EU objectives, following the ‘expiration date’. Transition periods should be accompanied by a strategy laying down priorities, planning, incentives, financing and control elements. The progress made towards the full implementation of the *acquis* should be regularly screened in a process comparable to that currently taking place under the National Programmes for the Adoption of the *Acquis*. For some parts of the *acquis* such as water quality management, industrial pollution, air pollution and waste management, requested transition periods are likely to be long. Rather than granting 15 or 20 years derogations, it would be preferable to set shorter periods comparable to standard transition periods (5 to 7 years), combined with periodical monitoring and review as well as the possibility of extending the transition period. This would create a stronger adjustment momentum and allow for economic and technological developments to be taken into account along the way. The need to properly organise and supervise the granting of transition periods sets an upper limit to their number, duration and scope. There is clearly a ceiling beyond which it is preferable to postpone accession.

One important threat to the achievement of EU objectives is the complete reliance on the initiative of candidate countries. Accommodation by means of transition periods has been highly reactive to candidates pointing out implementation problems so far. When granting transition periods it is advisable not to rely too heavily on the assessments of the candidate countries, inclined as they may be to downplay some implementation problems (in particular when an accession target date is approaching). The Commission in many cases expressed doubts vis-à-vis the short duration of transition periods requested or the complete withdrawal of other requests.

Transition periods have mixed systemic effects. This classical multi-speed differentiation maintains the principle of Member States’ common obligations and rights and (in contrast with permanent derogations) minimises the fragmentation of EU law. The unity of the legal system is thus preserved, as is the single institutional framework, and the Community method. As far as the readability and transparency of EU policies and actions are concerned, any differentiation of rights and

obligations of course contributes to the complexity of EU policies and actions. Moreover, the ad-hoc treatment of different requests from different candidates can lead to a patchy and intransparent end result. On the other hand, the increase in complexity will only be temporary. The idea is that the differentiation of rights and obligations should cease before the deadline. The legitimacy of accommodating enlargement through transition periods is rather high. The decision to grant a transition period is taken by unanimity within the Council. Contrary to other accommodating approaches, the incumbent and new Member States subscribe to the same common policies and are connected by common institutions in which they participate, contributing to some feeling of a common polity the rules of which should be adhered to.

If less conspicuous than direct financial transfers, transition periods granted to candidates can be an expression of solidarity. This is not the case with transition periods sought by incumbent Member States, which may be perceived by candidates as purely driven by self-interest. This can lead to a similar stance being taken by the new Member States at some future point. Such resentment could however be prevented by the mutual exchange of accommodating arrangements (cf. informal deals between limitations on the purchase of land by foreigners requested by candidates, in exchange for limitations on the free movement of workers as preferred by incumbent states).

The protection of states in a minority position is rather high in case of recourse to transition periods. A decision to grant a transition period is taken unanimously after a request from the candidate. The receipt of a temporary derogation does not affect a Member State's voting rights in the policy-area involved. After implementing the decision, they are therefore not confronted with an *acquis* that has been developed in their absence. The flip side of allowing temporary derogations to new Member States that keep their decision-making rights is a temporary reduction of the Union's capacity to adjust. If some Member States still need to implement yesterday's decisions, they will be less eager to support tomorrow's integration initiatives.

From the viewpoint of Europe as a whole, transition periods are of value. By lowering the threshold for membership, it becomes possible for the CEE countries to enter the EU at an earlier point in time, thereby contributing to regional stability. The effects on prosperity can also be positive, since the sequencing of investments in the CEEC's can be more effectively tailored to catch-up growth. If the new Member States succeed in realising catch-up growth, they will be better able to invest in administrative and legal capacity and eventual full implementation of the *acquis*. The ad-hoc character of granting transition periods also has negative external effects. Because of lack of strategy and clear criteria, decision-makers will be vulnerable to lobbies and power politics, the result of which may be discriminating vis-à-vis certain candidates or candidates' sectors.

4.5.2 THE CORE ACQUIS TEST

As far as the coming enlargements are concerned, the optimal option – i.e. not too distant accession of fully prepared candidates – is simply out of reach. A first sub-optimal option – the most orthodox one – would be to postpone enlargement until candidates are able to cope with the entire *acquis*. This will take more than a couple of years and, politically speaking, such a time horizon is very difficult to envisage. It could provoke a backlash in candidate Member States, which could have damaging consequences for the EU as well. From the angle of the Union's effectiveness, the scenario of a first wave of accessions in 2004-5 seems a preferable option. A second sub-optimal option would be to downplay implementation problems and quickly move on with accession (EU negotiators formally insisting on full implementation on day one and candidates refraining from large-scale requests for transition periods). Market players and informed citizens will spot such an obvious window dressing. Doubts on what is really implemented could affect non-problematic areas. In other words, the 'ostrich strategy', by undermining the element of trust so crucial in the accession process, could lead to a progressive unravelling of the internal market and the area of freedom, security and justice. In such circumstances some accommodation of diversity clearly is the second-best option.

Given the need for accommodation of diversity in the coming enlargements and considering the disadvantages of large-scale resort to an ad-hoc, reactive and sectoral approach in the form of transition periods, there are reasons to consider a reorientation of the enlargement strategy towards a 'core *acquis* test' approach. The 'core *acquis* test' would require two main things:

- 1 Prioritisation: the EU would formulate in a proactive way and at an earlier stage what is essential for the Union (the core *acquis*) and what could be implemented according to pre-defined trajectories after accession without causing harm to the essence of the Union (the non-core or non-essential *acquis*);
- 2 A proved compliance with the core *acquis* as a pre-condition for accession: the EU would test the capacity of the candidate to implement in full the core *acquis*; if the candidate fails the test, the signature of the accession treaty would be automatically postponed.

The core *acquis* test would not change the rule of the wholesale adoption of the *acquis*, i.e. the candidates will still be expected to accept all the provisions of the Treaties, all the decisions taken by the EU institutions as well as the jurisprudence of the European Court of Justice. The core *acquis* test approach is based on temporary derogations (transition periods), not permanent ones. Opting for a core *acquis* test neither means that transition periods would be granted *en bloc* for the entire non-core *acquis*. Only in those instances where full implementation of EU provisions would imply disproportionate costs, transition periods should be allowed. The operationalisation of 'disproportionate costs' varies from one country to another. This implies that the core (the minimum) will be the same for all candi-

date countries but that certain countries in a position to do so will be expected to implement more of the non-core *acquis* upon accession than others. The accession treaties should define these transition periods (including deadlines and implementation trajectories), providing the basis on which progress of the new Member States can be monitored. The screening process by the Commission would thus continue after enlargement.

In order to distinguish core *acquis* from non-core *acquis*, one needs a clear vision of the essence of the EU. Above it was stated that the current criteria used to accept or decline a candidate's transition period requests, are not very clear. What could give some grip in this respect? On the basis of the Treaties, the EU has been described in chapter 2 as first and foremost a Union of values and action. Reasoning from there, the core *acquis* would consist of:

- The Union's essential values. These are summarised by the Copenhagen political criteria: stable institutions guaranteeing democracy, the rule of law, human rights and respect and protection of minorities.
- The Union's essential capacity for action. This concerns the Union's *acquis* regarding the single market and the safety of the EU citizens in a broad sense (e.g. health and environmental risks, internal and external security risks).
- An administrative and judicial system capable of implementing and enforcing these essential parts of the Union's *acquis*.

EU objectives would be better served by a pro-active and integrated core *acquis* test approach. The proactive nature of the core *acquis* test approach obliges the EU to identify beforehand which parts of the *acquis* are indispensable for the proper functioning of the Union. It thereby addresses the weakness linked to the absence of explicit, clear and general criteria to decide which accommodation is acceptable or not (and the possible ensuing case-by-case improvisation). If applicants are subjected to a core *acquis* test before accession, unpleasant surprises due to window-dressing by the candidate countries can be prevented. Such implementation deficits, the full scale of which would only emerge after accession, could have serious consequences for the achievement of EU objectives. In a core *acquis* test approach, candidate countries will be committed to eventual full implementation of the *acquis* by means of firm implementation trajectories and timetables laid down in the accession treaties. The credibility of that commitment will be larger, as the core *acquis* test approach creates better circumstances for realising the necessary catch-up growth.

The integrated character of the core *acquis* test approach is also a plus in terms of achievement of EU objectives. Instead of granting transition periods within the context of sectoral negotiations, a core *acquis* is formulated on the basis of the effects of sectoral accommodation on the Union of values and action as a whole. An integrated approach is not just important for reasons of interdependence between elements of the *acquis*, but it also provides a certain protection against sectoral lobbies and power politics. Altogether, the core *acquis test* provides a means to counterbalance to some extent the politicisation of the accession process

and to restore some credibility to the threat of blocking accession if required essential standards are not met.

A clear disadvantage of the core *acquis* test approach is that the room for concessions and transition periods that the EU has is disclosed at an early point. This could increase the appetite of candidate countries to secure transition periods for parts of the *acquis* where they originally had no such intention. The introduction of a core *acquis* test is moreover bound to have some negative effect on the negotiation position of the Union in the next rounds of enlargement. The second and third waves of candidates will probably be less ambitious in their adjustment efforts in non-core areas.

The financial feasibility of a core *acquis* test approach would not significantly differ from the application of transition periods. Like transition periods, the core *acquis* test only provides relief in terms of postponing the implementation deadline. Financial transfers may be necessary to help the candidate implementing the full *acquis*. The core *acquis* test approach could be of help in this respect, by providing guidelines to better prioritise and focus EU and bilateral aid programmes.

As regards the political feasibility, the introduction of a core *acquis* approach will probably not be tension free. Last minute revision in general is likely to be unpopular. One might question whether it is not too late to design and apply a 'core *acquis* test' approach. The European Commission has recently drafted an information note distinguishing between Schengen *acquis* that should be implemented upon accession and Schengen provisions which should be implemented simultaneously with the lifting of internal border control at the latest. Although the criteria for distinguishing between the two bodies of *acquis* were less explicit than for the core *acquis* test, this exercise shows that the Commission acknowledges the need for prioritisation and that it can be done without significant delays. The 2002 regular reports of the European Commission would provide a first opportunity to carry out the core *acquis* test. The result could then be regarded as one of the parameters on which the accession decision would be taken at the end of that year. Even if candidates are likely to be upset by this last minute change, the Union is in a position to impose additional tests insofar as it can decide unilaterally on such matters. Last but not least, one should keep in mind that 2002 is only the target date for the end of the negotiations with accession frontrunners. Beyond them there are many more candidates and aspirants for whom it is certainly not too late to design and apply a core *acquis* test.

As it is based on transition periods, the core *acquis* test shares many systemic effects with them, preserving the unity of EU law, the single institutional framework and community method. Like transition periods, the core *acquis* test contributes to solidarity among future fellow Member States by allowing postponement of costly investment in non-core *acquis*. New Member States receive full decision-making rights, even if they do not manage to implement the entire non-core *acquis*

upon accession (contrary to partial membership, in which case partial members only receive decision-making rights in those areas where they have fully implemented the *acquis*). Like in the case of transition periods, the granting of full decision-making rights to countries with implementation arrears, may temporarily affect negatively the Union's capacity to adjust.

However, because of the proactive, integrated, strategic and development-led character of the core *acquis* test (in contrast to the reactive, sectoral, ad hoc approach under the transition periods) there are also remarkable differences. The pro-active announcement of criteria to establish the core *acquis* and the test of candidates prior to accession increase readability and transparency, contribute to trust in the continued functioning of the internal market and area of freedom security and justice, and thereby increase the legitimacy of an enlarged EU.

As Europe as a whole is concerned, protracted postponement of accession is prevented, thereby avoiding that aspirants will be deprived at length of the economic and stability benefits of integration in the Union. The explicit announcement of criteria to judge transition periods in combination with an objective test of all candidates is likely to decrease the influence of sectoral lobbies and power politics, and to contribute to a fair treatment of different aspirant countries. The development-led character of the core *acquis* test on the one hand allows candidates to benefit from the mutually reinforcing dynamic between the accession criteria and the transformation process. The accession criteria put pressure in favour of a swift transformation of the candidates into democratic market-economies with independent judicial systems and effective modern public administrations. On the other hand however the development-led character implies that candidates will be granted dispensation from the non-essential elements of the *acquis* that would put a severe strain on other investments needed for their multidimensional transformation and catch-up growth.

4.5.3 PERMANENT EXEMPTIONS

Apart from derogations for a limited period of time, permanent exemptions can be granted or announced by the Union. In this case candidates acquire full membership, yet they do not participate (in full) in some part of the *acquis*, which means that the rights and obligations concerning that part do not (fully) apply to them. An example of a permanent exemption from rights is the decision of the Berlin European Council (March 1999) that candidate countries will not be eligible for direct income support after accession. An example of an exemption from obligations would be a candidate's request not to be obliged to implement a specific water quality directive.

Permanent exemptions can be functional to solve enlargement problems for which temporary derogations are of little help. These concern instances where enlarge-

ment is blocked by unwillingness (either of incumbent Member States to extend part of the *acquis* to new Member States, or of a candidate to adopt and implement part of the *acquis*). They can also provide relief in case enlargement problems result from major, relatively constant objective differences between the incumbent Member States and a candidate. It has been argued for instance that CEECs should be exempted from elements of the environmental *acquis* (e.g. water quality requirements) if the situation in the CEECs clearly differs from the EU (e.g. lower population density in some CEECs) (Carius, Homeyer and Bär forthcoming).

The financial feasibility of permanent exemptions is high. They are an inexpensive way to deal with the unwillingness or long-term inability of candidates to implement parts of the *acquis* (contrary to transition periods, where the candidate – with foreign assistance or not – still has to finance the implementation of the *acquis*). However, the political feasibility of permanent exemptions is low, as their logic runs counter to the enlargement orthodoxy. The ‘take it all’ orthodoxy prescribes that the entire *acquis* will apply to new Member States, thereby excluding permanent exemptions. As regards permanent exemptions requested by candidates, it has to be said that the credibility of the ‘take it all’ principle has suffered somewhat from the permanent opt-outs granted to incumbent Member States in the context of integration initiatives. Referring to these opt-outs candidates demand fairness. As regards exclusion of new Member States from parts of the EU *acquis*, Member States are of course in the position to oppose the orthodoxy and announce unilaterally the permanent exemption of new Member States from certain policies. This would however conflict with the spirit of the non-discrimination principle of the Treaty, and would put accession negotiations under considerable pressure.⁶

102

Since the *acquis* is supposed to serve EU objectives, permanent exemptions from the *acquis* will in general not contribute to their achievement. This logic can easily be reversed, as is shown by candidate states arguing that if the adoption of the *acquis* does not represent progress in terms of achievement of EU objectives, they should not be obliged to adjust. Thus, Endre Juhasz, the Hungarian ambassador to the EU stated that: ‘... too strict interpretation of the *acquis* implementation would not only complicate negotiations ... but also disregard the possible existence of valid and effective alternative rules or systems in the candidates’ (interview to *Uniting Europe*, N° 132, 19 February 2001: 5-6). He thereby pointed at fiscal legislation (where the Hungarian Value Added Tax is below EU level) and external trade (where Hungary has a zero duty for import). This argument may certainly be valid in some cases. However, account should be taken of the fact that the achievement of EU objectives in many cases requires a level playing field, (minimum) harmonisation of policies and some element of collective action, which is at odds with a proliferation of different national policies to achieve the same ends.

Permanent exemptions have substantial disadvantages for the EU system. The centripetal dynamic imparted by the principle that candidates eventually have to im-

plement the entire *acquis*, is lost, to the detriment of the unity of the legal system. Although formal legitimacy may be high (the decision to permanently exempt new Member States is taken unanimously), social legitimacy is likely to suffer from frequent recourse to opt-outs. The fact that some policies structurally do not apply to some Member States damages the sense of commonality. Moreover, if used repeatedly, this pick-and-choose rationale will make EU policies and actions less readable. The fact that incumbent Member States respect the choice of new Member States not to implement certain parts of the *acquis* could be interpreted as a form of political solidarity. However, permanent exemptions could also be seen as ‘an easy way out’, relieving incumbent Member States from the obligation to express their solidarity in financial assistance. A decision by the incumbent Member States to exclude new Member States from part of the *acquis* will be seen as a selfish deed and is likely to have negative effects on the solidarity among members of the enlarged EU. In case permanent exemptions are used in this way, the protection of the minority – the excluded candidate – is obviously minimal. If permanent exemptions would be granted on the candidate’s request, the protection of his rights would depend to a large extent on the consequences of the exemption for his involvement in decision-making. Unorthodox as permanent exemptions are, no rules exist in this respect. A parallel could be made with the usage of opt-outs to accommodate incumbent Member States in the context of integration initiatives. An opt-out at the level of a decision or directive (e.g. constructive abstention from a Common Foreign and Security Policy decision) does not influence the Member State’s involvement in future Council deliberations and decision-making. However, an opt-out from an entire (sub)policy area (e.g. the opt-out of the UK and Ireland from Title IV TEC on visas, asylum, immigration and other policies related to free movement of persons) does have institutional consequences (e.g. the UK and Ireland will not take part in the adoption by the Council of proposed measures pursuant to Title IV TEC). Only one positive systemic effect comes to mind: the expectation that unwilling or structurally incapable new Member States will not frustrate the EU’s capacity to adjust or develop the *acquis* in the field they will be permanently exempted from.

The systemic effects on Europe as a whole are comparable with those of transition periods. The synergy effects could even be higher, in so far as a candidate would be permanently (instead of temporarily) relieved from investing in costly *acquis* that does not correspond with its growth and transformation priorities.

4.5.4 REDEFINITION OF THE INTERVENTION

The most far-reaching form of accommodation would be to redefine the EU intervention before enlargement. This could first involve the renationalisation of certain tasks formerly provided at EU level. An example of such a ‘vertical’ accommodation would be a shift to co-financing by national Member States of direct income payments in the context of the CAP, or a more encompassing move within the

CAP from market regulation to a co-financed rural policy. Co-financing will decrease expenditure for agricultural policy in the enlarged EU and is expected to contribute to a more critical look of Member States at agricultural policies and their costs. Proposals to that effect can be expected in the run-up to the 'mid-term review' (evaluating the Agenda 2000 reforms) that will take place in 2002 (Dutch government 2001).

A second form of redefinition of the EU intervention would involve the replacement of detailed regulations by less constraining policies, leaving more room of manoeuvre to national and sub-national authorities in the enlarged EU (horizontal accommodation). In the White Paper on European Governance the European Commission announces its intention to 'further simplify existing EU law'. The Commission states that: 'Building on work on single market and agricultural legislation, a comprehensive programme of simplification of existing rules is called for – regrouping legal texts, removing redundant or obsolete provisions, and shifting non-essential obligations to executive measures' (European Commission 2001: 23).

In principle vertical accommodation could be a solution to enlargement blockages caused by incumbent Member States that fear the (financial) consequences of extending the *acquis* to new Member States. Vertical and horizontal accommodation could in principle also provide relief in case a candidate is unable or unwilling to adopt and implement the *acquis*. In practice however, this strategy is not likely to contribute to a swift enlargement. If made dependent on prior reform, enlargement could even run the risk of serious delay. The political feasibility of this strategy is likely to be low, not only because of conflict with the 'take it all' enlargement orthodoxy, but also because of conflict with interests of incumbent Member States and candidates. A qualified majority in the Council needed to accept reform proposals could be very difficult to reach. Take the example of CAP reform: a shift to co-financing would be favourable for net payers to the CAP like the Netherlands, but would likely run into opposition of net receivers like France, Spain and Ireland that would see their budgetary position deteriorate. If pre-enlargement reforms boil down to smaller benefits of membership, the political feasibility of this strategy is not very high for candidates either, although a reform affecting all Member States is easier to defend domestically than arbitrary exclusion from benefits through permanent exemptions. The financial feasibility will depend on the nature of the redefinition and the situation of the (candidate) Member State involved. Renationalisation of policies will in some cases have far-reaching financial consequences, which can be infeasible for previously net-beneficiaries of EU policies or new Member States with limited means. The financial feasibility of redefining strict regulation into lighter policies should however be rather high.

Will this strategy to facilitate enlargement contribute to the achievement of EU objectives? In many cases the answer to this question is negative, as accession-related reform is in general not motivated by the ambition to better serve EU

objectives. More likely it is driven by financial motives of incumbent Member States or the (unorthodox) idea of redefining membership obligations at the level manageable for the newcomers. In case reforms *are* initiated in order to serve EU objectives in a more effective and efficient way, they are better dealt with separately and independently from the enlargement process. Matters would however be different if enlargement is expected to strand a substantive reform process that has already been set in motion. This could be the case if enlargement would bring in a group of newcomers that together with some incumbent Member States could form a blocking minority after accession, thereby precluding further reform being sought by a majority of the Member States.

The systemic effects of a redefinition of the intervention depend on the nature of the redefinition and the motives behind it. On the one hand, redefinitions of the *acquis* solely motivated by the aspiration to facilitate enlargement and not driven by the ambition to make policies more effective and efficient, mean that an ever larger Union is realised at the expense of an ever closer Union. A redefinition of membership obligations at a level manageable for the candidates would for instance mean a dilution of the *acquis*. Likewise, a redefinition of membership obligations at a level incumbent Member States are ready to pay for, tends to conflict with solidarity within an enlarged EU. Moreover, it may run counter to the subsidiarity and proportionality principle (in so far as net contributors push to abandon a solution which is more efficient for the EU as a whole, but does not correspond with their direct national financial interest).

105

On the other hand, under special circumstances redefinitions of the intervention before enlargement could be necessary to preserve key systemic features of the Union. This would be the case if a process of substantive policy reforms, launched to increase effectiveness/efficiency, would be jeopardised by enlargement. If a small group of newcomers and incumbent Member States would form a blocking minority, this would undermine the Union's capacity to adjust as well as the legitimacy of its policies. By aiming at a political compromise on reform between the incumbent Member States before enlargement, the functional and systemic disadvantages mentioned above could be countered and the effectiveness and legitimacy of the Union retained.

The effects on Europe as a whole depend on the time needed to reach agreement on the redefinition among incumbent Member States. On one hand, such a redefinition of the intervention could in principle unblock enlargement negotiations, thereby moving up the date of accession and the stability and prosperity effects for Europe as a whole that come with it. On the other hand, the process of redefinition may be a very lengthy one, in some cases de facto 'closing the door' for new Member States if enlargement is made dependent on successful reform. Synergy with catch up and transformation processes in candidate countries will vary with the nature of the redefinition. It could be high if the *acquis* is reformulated in a less

demanding way, or in a way which better serves transformation and restructuring processes (e.g. a more market conform CAP).

NOTES

- 1 Accession negotiations have opened on 31 March 1998 with Hungary, Poland, Estonia, Slovenia, the Czech Republic and Cyprus, and on 15 February 2000 with Malta, Slovakia, Latvia, Lithuania, Bulgaria and Romania.
- 2 The negotiating parties accept the principle of a 'freeze' of their respective legislation, in order to prevent the last minute introduction of restrictive measures the removal of which could then be used as a bargaining chip. The generalization of such practice would indeed turn the negotiation into an exchange of 'hollow' concessions, ending up with little more than the *status quo ante*.
- 3 In order to secure the maintenance of settlement in remote regions and coastal communities, permanent exemptions were demanded for Norwegian agriculture and fisheries. Although willing to discuss special arrangements for these sectors, the European Community insisted on their temporary nature. At the end of difficult negotiations, it was agreed that, for ten years, Norwegian fishermen would benefit from a special protection in a 12-mile zone along the Norwegian coast and that this protection could be extended beyond this transitional period, under conditions to be arranged at the time. The compromise proved to be politically unacceptable: The northern farming and fishing communities mobilised heavily against membership in the referendum on the 1972 accession Treaty, resulting in a rejection of the accession terms by a narrow margin. Because of the principle of the wholesale adoption of the *acquis*, the European side could not go beyond a vague formulation promising that temporary derogations could be renewed. This fell short of the demand of the Norwegian electorate, that is, a guarantee against the eventual obligation to align Norwegian policies with the *acquis*. Twenty years later, in the wake of the enlargement of the EU to EFTA countries, the referendum on the second Norwegian Treaty of Accession produced another 'No'.
- 4 The White Paper (COM(95)163 final) was released on 10 May 1995 by the European Commission as part of the pre-accession strategy launched at the European Council of Essen (1994) and was endorsed by the European Council of Cannes (1995).
- 5 The fact that F. Andriessen was the chair of the working party set up to draft the advisory report was probably not foreign to the similarities between his 1991 proposal and the contents of the 1999 SER proposal.
- 6 A formal appeal to the non-discrimination principle before the European Court of Justice is not likely to have much of a chance. Differential treatment of candidate countries could be laid down in the Accession Treaties. The Court of Justice would then have to test one treaty against another, which is expected to be problematic since no order of ranking exists between the treaties. Moreover, the example of the extension of direct payments to the new Member States is a special case. Incumbent Member States can claim that the direct income support they receive themselves serves as compensation for past price decreases in the EU-15 following the 'MacSharry' and 'Agenda 2000' reforms. Candidates have not experienced these price decreases and most of them are likely to experience on the contrary price increases in the run-up towards EU membership. According to the incumbent Member States the matter therefore concerns different cases, which, in line with the Treaty, justifies different treatment Dutch government (2001) *The Financing of the Common Agricultural Policy after enlargement of the European Union*, The Hague.

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