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ENVIRONMENTAL ENLARGEMENT IN THE EUROPEAN UNION: APPROXIMATION OF THE ACQUIS COMMUNAUTAIRE AND THE CHALLENGES THAT IT PRESENTS FOR THE APPLICANT COUNTRIES

By Patrick J. Kapios

The European Union (“EU” or “Union”) has begun the process of enlarging its membership. Currently, ten countries located in Central and Eastern Europe are under consideration for membership in the Union, in addition to Cyprus, Malta and Turkey. One of the requirements for accession to the European Union is that the applicant countries¹ approximate their legislation to that of the *acquis communautaire*. The *acquis* contains the laws and regulations of the EU. One section of the *acquis* contains EU laws and regulations concerning the environment. Approximation of this section of the *acquis* by the applicant countries will not be an easy task. They face difficulties ranging from a lack of the necessary financial resources to an administrative structure that is not prepared to implement and enforce the EU legislation. Successful approximation, however, is necessary in order for accession to occur.

This Paper will discuss the challenges facing the applicant countries in approximating the European Union’s environmental *acquis*. Part II will discuss some of the EU’s environmental legislation and the Treaty provisions that are used by the Union to enact environmental legislation. An overview of the enlargement process will be given in Part III. Finally, Part IV of the Paper will discuss the process of approximation and the challenges that it provides the applicant countries. A discussion of the financial resources available to the applicant countries will also be included in this section.

ENVIRONMENT IN THE EUROPEAN UNION

Initially, the European Union did not regulate the environment of its member states. A common environmental policy was not provided for in the Treaty of Rome.² Over time, however, the EU recognized the need to have a common environmental policy. Since environmental protection became a priority of the EU in the early 1970’s, over 400 pieces of environmental legislation, primarily in the form of directives, have been adopted.³ In fact, over half of all environmental legislation that member states are subject to has been the result of actions taken by the European Union.⁴ The European Union has passed legislation in a wide range of environmental disciplines, including air quality, water, and waste.⁵ The Union’s environmental legislation has developed in line with the three main beliefs it has relating to the environment: that prevention is better than a cure, that the polluter should pay, and that pollution should be rectified at the source.⁶ Environmental protection must be taken into account in any new policy that is considered by the Union. The result is that EU member states have some of the strictest environmental standards in the world.⁷

The majority of European Union environmental legislation occurs in the form of directives and regulations. Directives establish the policy that the EU wants to take. The requirements of a directive are binding on the member states, but it provides the member states with discretion on the methods used to achieve the policy.⁸ A regulation does not allow the member states discretion in how to implement it. Regulations are used when it is necessary that all of the member states have the same requirements. They become the law in the member states from the date that they are to become effective – transposition into national law is not required.⁹

Legislation within the European Union follows the principle of subsidiarity. Consequently, the EU can legislate only in areas where action at the Union level would serve to better achieve the desired results than would action at the national level.¹⁰ Any policy areas that are better addressed at the national level must be left to the discretion of the national governments. This principle applies to areas, such as the environment, where the Union does not have exclusive powers.¹¹

Environmental policies are enacted by the European Union based on either Article 100a or Articles 130(r-t). It is up to the Commission to determine which of these articles serves as the appropriate mechanism for enacting environmental legislation.¹² Article 100a of the EC Treaty allows the Union to enact environmental laws in areas that “affect the establishment or functioning of the common market.”¹³ Legislation enacted under this provision is intended to prevent against unfair competition and remove barriers to trade throughout the Union. An individual member state may apply stricter environmental standards only with the approval of the Commission and after demonstrating why stronger measures are necessary.¹⁴

Articles 130(r-t) give the European Union the authority to enact environmental legislation that does not directly affect the common market.¹⁵ These provisions apply to policy areas that are better developed at the Community level. Article 130r lists the principles of Union environmental policy. The legislative procedure to be followed in enacting environmental legislation is listed in article 130s. Finally, article 130t allows individual member states to adopt stricter standards for policies enacted under section 130s.¹⁶ This is a broader section than article 100a. It allows for the implementation of stricter standards provided that they do not arbitrarily discriminate and do not serve as a trade restriction. Under Article 100a the Commission must only be notified – its approval is not required.¹⁷

ENLARGEMENT OF THE EUROPEAN UNION

THE ENLARGEMENT PROCESS

Enlargement is the process of adding new member states to the European Union. Since its inception as the European Coal and Steel Community in 1951, the European Union has undergone enlargement four times. The most recent enlargement occurred in 1995 with the accession of Austria, Finland, and Sweden. Enlargement in the European Union occurs based on Article O of the Treaty of the European Union.¹⁸

Article O establishes the procedures to be followed in the application process, as well as setting out the requirements for which countries are eligible for European Union membership.¹⁹ Any country that is considered to be within Europe can be considered for membership in the Union.²⁰

The application process begins by filing a formal application with the Council of Ministers. The Council then decides to either reject the application or request an opinion about the applicant from the Commission.²¹ Depending on the outcome of the Commission's opinion, negotiations may be commenced with the applicant country. The terms of the applicant country's accession to the Union are determined through the negotiations.²² Once negotiations have been initiated, the length of time before accession occurs varies depending upon the nature of issues that must be resolved between the applicant and the Union.²³ After an agreement has been reached with the applicant, the agreement is submitted to all member states for ratification in accordance with the requirements of their national constitutions. Ratification by the member states must be unanimous for an applicant country to be approved for accession.²⁴

ENLARGEMENT TO THE EAST

The European Union is comprised of nations mainly from Western Europe. Recently, the European Union began the process of enlarging to countries located in Central and Eastern Europe. The possible enlargement to include countries from this region has been referred to as a "historic opportunity."²⁵ It is also viewed as the most challenging enlargement that has been undertaken by the Union in its history. Enlargement to the countries currently under consideration would increase the EU's population to roughly 500 million and nearly double the number of member states in the organization.²⁶

The foundations for the current enlargement process were established by the Copenhagen European Council that was held in 1993. This Council meeting concluded that "[t]he associated countries in Central and Eastern Europe that so desire shall become members of the Union. Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions."²⁷ Thus, the basis for further expansion of the European Union was created. The Council also established the "Copenhagen Criteria" – the basic conditions that applicant countries must fulfill in order to join the Union. The Copenhagen Criteria consist of three requirements. The first is that the applicant must have stable institutions that guarantee democracy, the rule of law and human rights. Second, the applicant must have a functioning market economy. Finally,

the applicant must have an infrastructure that is capable of implementing and enforcing European Union law.²⁸

Thirteen countries have applied for accession to the European Union.²⁹ Since March 1998, the accession process has begun for all of the applicant countries. However, due to the length of time necessary to meet the requirements for accession, it is not anticipated that any of the applicant countries will be ready for membership until 2002 at the earliest.³⁰

One requirement for accession is that the applicant countries align their national legislation with the legislation that is currently in force within the European Union.³¹ This is a difficult process because the existing legislation in many of the applicant countries is vastly different from European Union legislation.³² Applicant countries must approximate their national laws in all areas covered by the *acquis communautaire*. Unfortunately, many applicants view the approximation process only in relation to economic issues, seeing accession as a guarantee of economic success.³³ However, this would be a mistake. Approximation must occur in all areas of the *acquis* in order for the applicant countries to be admitted to the Union.

The environmental portion of European Union legislation is one area that the applicant countries should not ignore. Environmental conditions in the applicant countries are considered to be "abysmally low," especially when compared with legislation within the EU.³⁴ Standards between the applicants and the EU vary widely, and EU regulation of the environment covers a wider scope of issues.³⁵ Failure by the applicant countries to properly approximate their environmental legislation, by focusing instead only on economic issues, may prevent a country from membership in the Union.³⁶ Because of this possibility, it is important that the applicant countries focus attention on approximating the Union's environmental measures. Attention is especially needed in meeting the Union's environmental requirements relating to drinking water, wastewater, solid waste management, and air quality.³⁷

ENLARGEMENT AND THE ENVIRONMENT

THE EFTAN ENLARGEMENT

The environment has played a significant role in accession negotiations of past enlargements, especially the 1995 enlargement to the EFTA countries of Austria, Finland and Sweden. However, the environmental situation faced by these three countries was vastly different from the situation currently faced by the applicant countries. The EFTA countries generally had what were considered to be high environmental standards, in many cases more stringent than what was required by the European Union.³⁸ These countries sought to maintain their strict environmental standards upon their accession to the EU, despite the fact that the standards could influence the functioning of the common market.³⁹ The result was that a compromise had to be achieved between the applicants and the member states. The compromise allowed the EFTA countries to maintain their stricter standards for four years.⁴⁰ During that time period, the EFTA countries would work to increase the environmental standards of the Union. The EFTA countries would attempt to bring the environmental standards of the Union up to the level that was in force within the EFTA countries.⁴¹ At the end of the four years, common standards would be in force for all of the Union's members.

Applicant countries seeking membership in the European Union must adopt the *acquis communautaire* (“*acquis*”). The *acquis* consists of the laws of the EU. It is roughly 80,000 pages of laws and regulations that applicant countries must approximate into their national legislation.⁴² It includes directives, regulations, and decisions adopted on the basis of the EU’s treaties.⁴³ The *acquis* has been divided into thirty-one different chapters, corresponding to different areas of Union policy. One of the chapters of the *acquis* is devoted to the Union’s environmental rules and regulations.⁴⁴ Adoption of the entire *acquis* is a prerequisite for Union membership.

The environmental *acquis* has been developing since the 1970’s, when environmental issues became a focus of Union policy. Since that time, the European Union has enacted approximately 400 pieces of environmental legislation. However, the environmental *acquis* only consists of about ninety-one pieces of the EU legislation – seventy directives and twenty-one regulations.⁴⁵

The challenge faced by the applicant countries is due to the scope of the legislation that comprises the *acquis*. The *acquis* is much more complex than in previous enlargements, and the EU is insisting that the applicants have adopted the entire *acquis* before accession occurs.⁴⁶ This is despite the fact that no new member state has ever adopted the entire *acquis* before joining the Union.⁴⁷ Typically, the EU allows the applicants a transition period during which the new Member State can continue to adopt the *acquis*.⁴⁸

Applicant countries have already begun the process of adopting the provisions contained in the *acquis*. Compliance with the requirements of the *acquis* is an expensive process, and the applicant countries have limited funding. Because of this, it is important for the applicant countries to set priorities to follow in their adoption process.⁴⁹ The most significant investment is needed in the areas of drinking water, waste management and air quality.⁵⁰ Priority should be focused in these areas because they are also important for adopting other EU legislation. However, in the long run, environmental priorities must be country specific, because different areas have different needs.⁵¹

STEPS IN THE APPROXIMATION PROCESS

Applicant countries must approximate their legislation to resemble that of the European Union in all areas of the *acquis*, including the environmental chapter. Approximation is a difficult task that will require significant improvements and capital investments within the applicant countries.⁵² The goal of the approximation process is ensure 100 percent compliance with the *acquis* “not just on paper, but . . . also in fact.”⁵³ To reinforce this requirement, the approximation process is typically seen as consisting of three elements: adoption or transposition, implementation, and enforcement.⁵⁴ These three elements are highly dependent upon each other, meaning that all of them must be addressed for approximation to be successful.

1. Adoption/Transposition

The first element of the approximation process is transposition. Transposition means that competent national authorities take legislative, regulatory and administrative measures in order to incorporate into national law the

obligations of the EU’s environmental directives, for the environmental chapter of the *acquis*.⁵⁵ The first step in the transposition process is to compare existing national legislation with the measures that the environmental *acquis* requires the applicant countries to adopt. This will help the applicants to identify gaps that need to be addressed during the approximation process.⁵⁶ Next, the national authority responsible for environmental approximation must determine the scope of discretion that they have when transposing EU laws into their national legislation. The responsibility for correctly transposing the environmental measures of the EU falls to the national governments, and in particular on the environmental ministry.⁵⁷ After determining where legislation is required and the discretion that they have to transpose the EU requirements, actual transposition of the requirements must occur. This is done by either adopting new legislation or modifying existing legislation to achieve the requirements of the environmental *acquis*.⁵⁸ Applicants must do more than merely copy the text of the EU requirements into their national legislation. Existing environmental legislation, as well as the administrative capabilities of the government should be taken into account when transposing the requirements of the environmental *acquis*. It may be necessary to create new administrative structures or modify and enhance the environmental standards within the country, in order to successfully transpose the *acquis*.⁵⁹

Applicant countries have begun the process of approximating their legislation to the requirements of the *acquis*. So far, transposing the requirements into the applicants’ national legislation has been the area where the most progress has occurred.

2. Implementation

While the applicant countries have started to transpose the requirements of the environmental *acquis* into their national legislation, the approximation process is far from complete. Transposing the requirements is actually the easy part of the approximation process. National legislatures can easily adopt the requirements of the *acquis* % just ratifying a piece of paper. The applicants still need to implement and enforce the legislation that is transposed into national law.⁶⁰ Achieving progress in these portions of approximation has proven to be much more difficult for the applicant countries.⁶¹

Implementation is the process of having the national authorities that are in charge of the environment take EU environmental requirements into account when making individual decisions.⁶² The European Union believes that implementation of the environmental requirements will provide the applicant countries with significant benefits.⁶³ Because of this, the EU is requiring that the provisions of the environmental *acquis* be clearly implemented by the applicants. The failure to clearly implement the requirements or a delay in doing so may result in delays to the accession process.⁶⁴ The possibility of a delay in accession resulting from the failure to successfully implement the environmental *acquis* serves to signify the importance that the environment has in the approximation process.

Applicant countries will have to make improvements in many areas in order for successful implementation to occur. Among the necessary improvements are the creation of reliable data collection systems, effective systems of monitoring and

reporting, increasing the awareness of industry and the public in environmental matters, and facilitation of public participation in environmental issues.⁶⁵ Perhaps the most pressing requirement for the applicant states, in order to successfully implement the environmental *acquis*, is the development of competent national authorities to carry out environmental administration.

European Union legislation often does not specify who is responsible for ensuring compliance with the law's requirements. Typically, compliance is left to the discretion of the member states, or in this case the applicant countries. It is often done at the local or regional level of government.⁶⁶ Therefore, it is necessary that the applicant countries have an administrative structure capable of ensuring compliance with the requirements of the *acquis*. The EU expects that member states will have administrative agencies possessing an adequate capacity to implement and enforce EU law.⁶⁷ Unfortunately, this does not exist in most of the applicant countries. Many applicant countries lack the qualified personnel necessary to implement and enforce the environmental *acquis*.⁶⁸ These tasks belong to several different administrative agencies in some applicant countries, resulting in a lack of coordination in ensuring compliance.⁶⁹ The result is that significant improvement in administration is required in most applicant countries. Without improvement, implementation and enforcement of the *acquis* will be impossible.

Due to financial constraints and the amount of improvement that is necessary, applicant countries have requested transition periods from the EU in order to comply with the environmental *acquis*.⁷⁰ However, the Commission insists that the *acquis* should be complied with as soon as possible. For the most part, requests for transition periods have been viewed as "totally unacceptable."⁷¹ Transition periods may be granted for some elements of the *acquis* – those that require significant investments.⁷²

3. Enforcement

The adoption and implementation of the environmental *acquis* by applicant countries does not ensure that these measures will be adequately enforced. Enforcement is the use of measures that encourage or compel others to comply with government legislation.⁷³ The environmental *acquis* contains the environmental standards that EU members must satisfy. Enforcement of these standards is then left to the member states.⁷⁴ Enforcement is subject to many of the same problems, especially administratively, that plague implementation.

Enforcement of EU environmental legislation is often based on self-monitoring.⁷⁵ Self-monitoring allows individuals within the country to monitor compliance with environmental regulations. Should a violation occur, an individual engaged in self-monitoring is expected to report the violation to the responsible authority. The EU views self-monitoring as the ideal mechanism for enforcement. This is because it passes the costs of monitoring to the individual and it satisfies the polluter pays principle.⁷⁶ For a self-monitoring system of enforcement to prove effective, violations of the law must be reported and the results must be seen as trustworthy.⁷⁷

Even if a self-monitoring system of enforcement is followed, inspections should still be conducted as part of the

enforcement process. Inspections conducted on the basis of information supplied through self-monitoring ensures that environmental requirements are being complied with.⁷⁸ Inspections can be as simple as a walk through of an area to a full inspection of the area. The criteria used for an inspection have been established through an EU recommendation.⁷⁹ While additional administrative personnel are necessary to adequately enforce environmental requirements, most applicant countries are seen as having "reasonable inspection procedures."⁸⁰

Enforcement also requires that appropriate penalties be established for violations of environmental legislation. Penalties should serve to punish for violations of environmental legislation that do occur, while at the same time serving as a deterrent against future violations. Violations are punished by fines in most countries. Unfortunately, fines do not always serve as adequate punishment or provide effective deterrence against future violations. They are often included in the costs of operation by many individuals.⁸¹ More effective penalties, such as heavy fines or criminal prosecution, are not frequently used.⁸²

Applicant countries need to ensure that enforcement of environmental legislation is carried out. Self-monitoring may be appropriate as long as it is conducted in conjunction with periodic inspections. A system of penalties for failure to comply with environmental legislation also needs to be established. This system must adequately punish violators and deter individuals from committing further violations.

COSTS OF COMPLIANCE WITH THE ENVIRONMENTAL ACQUIS

Accession to the European Union has been made conditional on compliance with the environmental *acquis* by the applicant countries. The applicant countries must adopt, implement and enforce the provisions of EU legislation. Currently, environmental standards within the applicant countries require significant improvement in order to meet the standards set forth in the environmental *acquis*. The applicant countries are also expected to comply with the requirements of the *acquis* as soon as possible. Complete compliance with the environmental *acquis* by the applicant countries, as the EU desires before accession can occur, will be difficult to achieve. This is due to the significant amounts of financial resources compliance with the environmental *acquis* requires.⁸³

Predictions of the costs of complying with the environmental *acquis* vary depending on the factors that are taken into consideration. Typically, three factors must be known in order for an estimate to be made. These are the total amount of pollution, the amount of pollution that must be reduced, and the amount that it costs to reduce a specified unit of pollution based on different reduction techniques.⁸⁴ Taking these factors into account, estimates of the costs of compliance have been made. These estimates have determined that it will cost the ten applicant countries located in Central and Eastern Europe approximately eighty to one hundred-twenty billion euros to satisfy the requirements of the environmental *acquis*.⁸⁵ These estimates include cost estimates for both the public and private sector. Cost estimates appear to be significantly higher in the private sector. Due to this fact, the EU suggests that all new project development that occurs within the applicant countries before they accede should comply with the environmental *acquis*.⁸⁶ This is because it is more costly to

retrofit an existing structure than it is to include the technology when the structure is initially constructed.

Approximation of the *acquis* is most costly in the areas of air pollution, water and wastewater management, and solid waste management.⁸⁷ Setting up the administrative structure necessary to carry out the environmental *acquis* is also very expensive.⁸⁸ Full compliance with the *acquis*' requirements for water and wastewater is estimated to cost roughly fifty billion euros.⁸⁹ The cost of complying with the requirements for air pollution is estimated at 1.4 percent of a country's gross domestic product.⁹⁰ In an effort to minimize the expense as much as possible, the applicant countries should seek to identify the most cost efficient methods available to meet the requirements of the *acquis*.

Obtaining the resources necessary to successfully approximate the environmental *acquis*, while at the same time, attempting to satisfy the other chapters of the *acquis* will prove to be extremely difficult for the applicant countries. It is made even more difficult by the fact that there is only limited funding available. The EU has established some programs (which will be discussed below) to assist the applicant countries in complying with the *acquis*. However, the applicant countries are expected to mobilize the majority of the necessary resources on their own.⁹¹ Thus, the applicant countries face a significant challenge.

BENEFITS OF COMPLIANCE WITH THE ENVIRONMENTAL ACQUIS

While compliance with the environmental *acquis* may require significant investment on the part of the applicant countries, they also stand to receive significant benefits as a result of raising their environmental standards. Determining the impact of compliance with environmental legislation is difficult. However, it is anticipated that the benefits to the applicant countries will at least equal the costs, in monetary terms. Compliance with the *acquis* will result in improved health and quality of life throughout the European Union.⁹² The applicant countries that should benefit the most from compliance with the *acquis* are Poland, Turkey, Romania, and the Czech Republic.⁹³

Assuming that the applicant countries comply with the *acquis*, it is anticipated that they will receive benefits ranging between 134 billion and 681 billion euros through the year 2020.⁹⁴ These benefits will range from better public health to increased tourism. Benefits will occur in areas covered by the water, air and waste directives.⁹⁵ The ecosystem will also realize benefits. Half of the total benefits result from reduced air pollution. It is expected that between 15,000 and 34,000 premature deaths will be prevented and that up to 180,000 cases of chronic bronchitis will be avoided, through implementation of the air directives alone.⁹⁶

FUNDING MECHANISMS AVAILABLE TO THE APPLICANT COUNTRIES

The European Commission proposed "Agenda 2000" to the Parliament in 1997. Agenda 2000 contained the Commission's opinions on how enlargement to the Central and Eastern European countries should be conducted.⁹⁷ It called for the creation of accession partnerships between current EU members and the applicant countries. This program recognized that full compliance with the environmental *acquis* by the applicant countries can only be achieved in the long term. It

recommended that realistic strategies for approximation are established and that implementation should begin in all of the applicant countries.⁹⁸

Agenda 2000 also recognized that approximation would require significant financial resources. Recognizing that the EU could not meet the costs of approximation, this program contained proposals for other methods of financial assistance. Among the recommended programs were the Instrument for Structural Policies for Pre-Accession ("ISPA") and PHARE.⁹⁹ The amount of aid available to the applicant countries through these programs is approximately twenty-two billion euros.¹⁰⁰ The EU wants the applicants to use these resources as a catalyst in the implementation of the *acquis*.¹⁰¹ Once a country becomes a member of the EU, it will lose any assistance from these programs, and the money will be redistributed admitted to the Union.¹⁰²

1. PHARE Program

The PHARE program is a financial assistance program that is used by the EU to help the applicant countries implement the accession partnerships. PHARE consists of roughly eleven billion euros.¹⁰³ These funds are to be used for institution building and *acquis* related investments. Approximately 30 percent of the funding go towards institution building – the strengthening of institutions that implement and enforce the EU legislation. The remaining 70 percent of funds go towards strengthening regulatory infrastructure and investments in economic and social cohesion.¹⁰⁴ In the environmental area, programs financed under PHARE helps address immediate environmental problems in the applicant countries.¹⁰⁵

2. ISPA

ISPA is a program created by the Commission to provide funding for improvements in environmental and transport infrastructure. It will provide partial funding for the large environmental projects that are necessary in the applicant countries prior to accession. It will also help the applicants' to align their infrastructure standards with those of the *acquis*.¹⁰⁶ ISPA encourages the applicant countries to obtain private funding for projects. The amount of funding that it provides is relatively small, compared to the total costs that these projects require. Up to seventy-five percent of the public funding can be provided to the applicant countries under ISPA. One hundred percent of the cost of preliminary studies will be covered under the program.¹⁰⁷

3. Structural and Cohesion Funds

A third possible source of financing exists for the applicant countries; however, they will not have access to it until they become members of the Union. These are the Structural and Cohesion Funds. These funds comprise approximately 80 percent of the EU's budget.¹⁰⁸ They provide financial assistance to the EU's poorest member states. The goal is to reduce the economic and social disparities that exist in different regions of the EU. Resources from the Cohesion Fund are available to regions that have a per capita gross domestic product of less than ninety percent of the EU average. Structural Funds are available to regions that have a per capita GDP of less than seventy-five percent the EU average.¹⁰⁹

The EU has not decided how these funds will operate upon accession of the applicant countries. Many current

member states do not want to lose the funds they presently receive and are therefore objecting to any modifications. The applicant countries have per capita GDP's that are significantly lower than those of the existing members. If the criteria for receiving funds from these programs are not altered, the majority of funding would go to the new members.¹⁰ However, it appears unlikely that this will occur, at least in the immediate future. The Commission has proposed a plan that would limit the amount of funding that the new member states could receive from these programs to four percent of the national GDP.¹¹

CONCLUSION

The European Union has entered into a period of enlargement. The candidate countries come from Central and Eastern Europe, in addition to Turkey, Malta, and Cyprus. The EU insists that the applicant countries approximate their legislation to include the entire *acquis communautaire* prior to accession into the Union. One of the chapters of the *acquis* that the applicant countries must satisfy is the environmental one. Compliance with this chapter of the *acquis* will be difficult for the applicant countries to achieve prior to accession. It may be necessary to provide the applicants' with a limited transition period to approximate some of the requirements. The applicant countries need to make improvements to the administrative agencies that will be responsible for implementing and enforcing the EU legislation. They also need to train employees to staff the agencies. Furthermore, the applicant countries are lacking the significant amounts of financial resources that are necessary to successfully approximate the environmental *acquis*. It has been left to the applicants to obtain the funding that is necessary – the EU is only provided limited assistance that is intended to serve as a catalyst in the approximation process. Due to the applicant countries desire to accede to the EU, it will only be a matter of time before they achieve full compliance with the environmental *acquis*. The result will be that the applicant countries gain access to a major economic market and the EU will receive a cleaner and healthier environment to live in.¹² ○

¹ The term applicant countries will be used throughout this paper for consistency. After negotiations have begun with the applicant countries, they are considered to be candidate countries.

² See JOHN McCORMICK, *THE STATE OF THE EUROPEAN UNION VOL. 4: DEEPENING AND WIDENING* 192 (Pierre-Henri Laurent & Marc Maresceau eds. 1998) [hereinafter McCORMICK, DEEPENING & WIDENING].

³ See GABRIEL GLOCKLER ET AL., *GUIDE TO EU POLICIES* 232 (1998).

⁴ See WYBE TH. DOUMA, *EUROPEAN ENVIRONMENTAL LAW: AN INTRODUCTION*, available at [http://www.asser.n1/ce1/dossier/European%20environmental%20law\[1\].htm](http://www.asser.n1/ce1/dossier/European%20environmental%20law[1].htm) (last visited Oct. 17, 2001).

⁵ See e.g., EUROPEAN COMMISSION, *New EU Instrument to Attract Fresh Funds for Environmental Investment*, 15 *ENLARGING THE ENVIRONMENT* 1, 1-2 (Aug. 1999) (citing to the air, wastewater, drinking water, and waste directives).

⁶ See EUROPEAN COMMISSION, *HOW IS THE EUROPEAN UNION PROTECTING OUR ENVIRONMENT?* 8 (1996).

⁷ See RESOURCE RENEWAL INSTITUTE, *SUSTAINABLE DEVELOPMENT POLICY IN THE EUROPEAN UNION*, available at

<http://rri.org/envatlas/Europe/euprofile1.html> (last visited Oct. 19, 2001). But see EUROPEAN ENVIRONMENT AGENCY, "WEATHER FORECAST" FOR EUROPE'S ENVIRONMENT: FIRST ENVIRONMENTAL OUTLOOK FOR THE EUROPEAN UNION (commenting that EU environmental quality is not recovering after twenty-five years of

legislation), available at <http://org.eea.eu.int/documents/newsreleases/eu98.html?prettyprint=1> (last visited Oct. 19, 2001).

⁸ See RALPH H. FOLSOM, *EUROPEAN UNION LAW IN A NUTSHELL* 2 (2d ed. 1995) (citing to Article 189 of the Treaty of Rome which states that a directive is "binding as to the result to be achieved" but "leaves to the national authorities the choice of form and methods").

⁹ See FOLSOM, *supra* note 8, at 87 (citing to Article 189 of the Treaty of Rome which states that regulations are "directly applicable in all member states").

¹⁰ See FOLSOM, *supra* note 8, at 36 (stating that the Union can only act in areas where it does not have exclusive authority when the member states cannot sufficiently achieve the objectives by acting on their own).

¹¹ See FOLSOM, *supra* note 8, at 36.

¹² See Isabelle Martin, *Environmental Panel: The Limitations to the Implementation of a Uniform Environmental Policy in the European Union*, 9 *CONN. J. INT'L L.* 675, 696 (1994).

¹³ See Rod Hunter & Koen Muylle, *European Community Environmental Law: Institutions, Law Making, Enforcement and Free Trade*, 28 *ENVTL L. REP.* (1998) (page numbers unavailable).

¹⁴ See EUROPEAN COMMISSION, *GUIDE TO THE APPROXIMATION OF EUROPEAN UNION ENVIRONMENTAL LEGISLATION* 21 (1998) [hereinafter COMMISSION, APPROXIMATION GUIDE].

¹⁵ See SEA art 130 r-t.

¹⁶ See *id.*

¹⁷ See COMMISSION, APPROXIMATION GUIDE, *supra* note 14, at 22. Any European State may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by absolute majority of its component members. The conditions of membership and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the Applicant State. This agreement shall be submitted for ratification by all the contracting states in accordance with their respective constitutional requirements.

¹⁹ See *id.*

²⁰ See *id.*

²¹ See STUART CROFT ET AL., *THE ENLARGEMENT OF EUROPE* 60 (1999) (commenting that the Commission recommendation can be either positive, negative, or conditional).

²² See EUROPEAN COMMISSION, *ENLARGEMENT NEGOTIATIONS*, available at <http://europa.eu.int/comm/enlargement/negotiations/index.htm> (last visited Oct. 17, 2001).

²³ See *id.*

²⁴ See EUROPEAN UNION IN THE US, *ENLARGEMENT: QUESTIONS & ANSWERS*, available at <http://www.eurunion.org/legislat/extrel/enlarge.htm> (last visited Oct. 19, 2001).

²⁵ See EUROPEAN COMMISSION, *AGENDA 2000: STRENGTHENING AND WIDENING THE EUROPEAN UNION* 18 (1999).

²⁶ See *id.* (indicating that enlargement will result in the EU having twenty-eight member states and a population of over 500 million people).

²⁷ EUROPEAN UNION IN THE US, *supra* note 24.

²⁸ See THE SWEDISH PRESIDENCY, *CONDITIONS FOR EU MEMBERSHIP*, available at http://www.eu2001.se/static/eng/eu_info/utvidgning_villkor.asp (last visited Oct. 19, 2001).

²⁹ The thirteen applicant countries are Turkey, Cyprus, Malta, Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, the Czech Republic, and Slovenia.

³⁰ See EUROPEAN UNION IN THE US, *supra* note 24.

³¹ See COMMISSION, APPROXIMATION GUIDE, *supra* note 14, at 3 (referring to this as the approximation process).

³² See HEATHER GRABBE & KRISTY HUGHES, *ENLARGING THE EU EASTWARDS* 59 (1998) (remarking that the applicant countries have not been so far from EU standards in previous enlargements).

³³ But see CROFT, *supra* note 21, at 59 (contending that accession is not an instant solution to the economic problems of the applicant countries). See also Stanimir Alexandrov & Latchezar Petkov, *Paving the Way for Bulgaria's Accession to the European Union*, 21 *FORDHAM INT'L L.J.* 587, 598 (1998) (stating that the applicant countries have an average GDP of 32 percent the EU average).

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ENVIRONMENTAL ENLARGEMENT IN THE EUROPEAN UNION:

(CONTINUED FROM PAGE 9)

³⁴ See DESMOND DINAN, *EVER CLOSER UNION: AN INTRODUCTION TO EUROPEAN INTEGRATION* 418 (2d ed. 1999).

³⁵ See EUROPEAN COMMISSION, *ACCESSION STRATEGIES FOR ENVIRONMENT: MEETING THE CHALLENGE OF ENLARGEMENT WITH THE CANDIDATE COUNTRIES OF CENTRAL AND EASTERN EUROPE 1* (2000) [hereinafter *COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT*]

³⁶ See EUROPEAN COMMISSION, *5 ENLARGING THE ENVIRONMENT* (July 1997) (interview with Environment Commissioner Bjerregaard) (commenting that environment could be a stumbling block for accession).

³⁷ See EUROPEAN COMMISSION, *New EU Instrument to Attract Fresh Funds for Environmental Investment*, 15 ENLARGING THE ENVIRONMENT 1, 1-2 (Aug. 1999).

³⁸ See JOHN PETERSON & ELIZABETH BOMBERG, *supra* note 17, at 54.

³⁹ See DINAN, *supra* note 34, at 418.

⁴⁰ See PETERSON & BOMBERG, *supra* note 17, at 54.

⁴¹ See McCORMICK, DEEPENING AND WIDENING, *supra* note 2, at 201-02 (stating that it was expected that the EU would raise their environmental standards to the level of the new members, rather than having the new members lower their environmental standards to those of the Union).

⁴² See Nicole Lindstrom, *Rethinking Sovereignty: The Politics of European Integration in Slovenia*, 24 FLETCHER F. WORLD AFF. 31, 35 (Fall 2000).

⁴³ See COMMISSION, APPROXIMATION GUIDE, *supra* note 14, at 8 n.2.

⁴⁴ See THE SWEDISH PRESIDENCY, ACCESSION PROCESS, available at http://www.eu2001.se/static/eng/eu_info/utvidgning_anslut.asp (last visited Oct. 19, 2001).

⁴⁵ See EUROPEAN COMMISSION, 6 ENLARGING THE ENVIRONMENT (Sept. 1997), available at <http://www.europa.eu.int/comm/environment/news/enlarg/news6.htm>.

⁴⁶ See GRABBE & HUGHES, *supra* note 32, at 1.

⁴⁷ See GRABBE & HUGHES, *supra* note 32, at 30.

⁴⁸ *But see* Alexandrov & Petkov, *supra* note 33, at 592 (stating that the Commission has ruled out accession after only partial adoption of the *acquis*. See also THE SWEDISH PRESIDENCY, CENTRAL CHALLENGES (commenting that applicant countries are requesting long transitional periods for environmental compliance), available at http://www.eu2001.se/static/eng/eu_info/utvidgning_utmaningar.asp.

⁴⁹ See Dr. Mar Campins Eritja & Dr. Andreu Olesti Rayo, *The New Accessions to the European Union from the Central and Eastern European Countries: The Strategy of Accession and its Implications on the Environmental European Community Policy*, 6 ILSA J. INT'L & COMP. L. 613, 632 (2000).

⁵⁰ See EUROPEAN COMMISSION, 13 ENLARGING THE ENVIRONMENT (Oct. 1998), available at <http://www.europa.eu.int/comm/environment/news/enlarg/news13.htm>.

⁵¹ See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, *supra* note 35, at 6.

⁵² See EUROPEAN COMMISSION, HANDBOOK ON THE IMPLEMENTATION OF EC ENVIRONMENTAL LEGISLATION 7 (2000).

⁵³ COMMISSION, APPROXIMATION GUIDE, *supra* note 14, at 1.

⁵⁴ See EUROPEAN COMMISSION, 6 ENLARGING THE ENVIRONMENT, *supra* note 45.

⁵⁵ See COMMISSION, APPROXIMATION GUIDE, *supra* note 14, at 140.

⁵⁶ See EUROPEAN COMMISSION, 6 ENLARGING THE ENVIRONMENT, *supra* note 45.

⁵⁷ See COMMISSION, APPROXIMATION GUIDE, *supra* note 14, at 11.

⁵⁸ See COMMISSION, APPROXIMATION GUIDE, *supra* note 14, at 11.

⁵⁹ See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, *supra* note 35, at annex 2 (declaring that some areas of the *acquis* will not be covered by existing legislation, making it necessary to create new authorities).

⁶⁰ See Helen E. Hartnell, *Subregional Coalescence in European Regional Integration*, 16 WIS. INT'L L.J. 115, 167-68 (1997) (suggesting that it is easy to adopt legislation, but to make the legislation function requires more effort).

⁶¹ See e.g., COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, *supra* note 35, at 3 (commenting on progress made by the applicant countries in the fields of air, waste and water). Implementation plans to comply with air emissions had not been developed yet. The waste sector also requires significant work by the applicant countries.

⁶² See COMMISSION, APPROXIMATION GUIDE, *supra* note 14, at 140.

⁶³ See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, *supra* note 35, at 10 (predicting benefits applicant countries will receive from compliance, including more efficient industries, healthier products, cost efficient products).

⁶⁴ See MILIEU LTD. & THE REGIONAL ENVIRONMENTAL CENTER, PROGRESS MONITORING ON APPROXIMATION IN THE CANDIDATE COUNTRIES OF CENTRAL AND EASTERN EUROPE 14 (2000) (commenting that much of the *acquis* requires lengthy implementation periods, but a delay in implementation may result in delays in accession).

⁶⁵ See EUROPEAN COMMISSION, HANDBOOK ON THE IMPLEMENTATION OF EC ENVIRONMENTAL LEGISLATION 7-8 (2000) (listing some requirements of effective implementation and enforcement).

⁶⁶ See ECOTEC RESEARCH & CONSULTING, ADMINISTRATIVE CAPACITY FOR IMPLEMENTATION AND ENFORCEMENT OF EU ENVIRONMENTAL POLICY IN THE 13 CANDIDATE COUNTRIES

81 (2000) [hereinafter ECOTEC, ADMINISTRATIVE CAPACITY] (contending that the regional level is most important for implementation in many applicant countries). This source also provides information on the administrative agencies that implement the *acquis*. For country reports on the progress made by the applicant countries in implementation and an overview of the administrative agencies that have responsibility for the approximation process visit <http://europa.eu.int/scadplus/leg/en/s15000.htm>. This site contains links to the applicant countries and how they are performing in approximating the environmental *acquis*.

⁶⁷ See *id.* at 8 (referring to the need of the administrative agencies to have the resources and procedures necessary to carry out implementation).

⁶⁸ E.g., EUROPEAN COMMISSION, 10 ENLARGING THE ENVIRONMENT (June 1998), available at <http://www.europa.eu.int/comm/environment/news/enlarg/news10.htm>.

⁶⁹ See EUROPEAN COMMISSION, 4 ENLARGING THE ENVIRONMENT (JUNE 1997), available at <http://www.europa.eu.int/comm/environment/news/enlarg/news4.htm>.

⁷⁰ See Alexandru R. Savulescu, *Enlarging the European Union will Save Lives by Cutting Pollution* (commenting that the applicant countries are requesting transition periods of up to fourteen years) (Apr. 30, 2001), available at <http://ens.lycos.com/ens/apr2001/2001L-04-30-04.html>.

⁷¹ See *id.* Among the areas where time requests are seen as unacceptable, are implementation of the framework directives and providing access to information.

⁷² See *id.* These include urban wastewater treatment and meeting requirements for large combustion plants.

⁷³ See COMMISSION, APPROXIMATION GUIDE, *supra* note 14, at 140.

⁷⁴ See ECOTEC, ADMINISTRATIVE CAPACITY, *supra* note 66, at 3.

⁷⁵ See ECOTEC, ADMINISTRATIVE CAPACITY, *supra* note 66, at 7.

⁷⁶ See ECOTEC, ADMINISTRATIVE CAPACITY, *supra* note 66, at 7 (asserting that it is important that self-monitoring is done honestly).

⁷⁷ See ECOTEC, ADMINISTRATIVE CAPACITY, *supra* note 66, at 7.

⁷⁸ See ECOTEC, ADMINISTRATIVE CAPACITY, *supra* note 66, at 122

⁷⁹ See Commission Recommendation 2001/331/EC (establishing the minimum criteria for environmental inspections).

⁸⁰ See ECOTEC, ADMINISTRATIVE CAPACITY, *supra* note 66, at 135 (concluding that the types and nature of inspections in the applicant countries are similar to those in operation in the member states).

⁸¹ See ECOTEC, ADMINISTRATIVE CAPACITY, *supra* note 66, at 135.

⁸² See ECOTEC, ADMINISTRATIVE CAPACITY, *supra* note 66, at 143.

⁸³ See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, *supra* note 35, at 11.

⁸⁴ See LEO DE NOCKER ET AL., COMPLIANCE COSTING FOR APPROXIMATION OF EU ENVIRONMENTAL LEGISLATION IN THE CEEC 12 (Apr. 1997).

⁸⁵ See ECOTEC ET AL., THE BENEFITS OF COMPLIANCE WITH THE ENVIRONMENTAL ACQUIS FOR THE CANDIDATE COUNTRIES 3 (2001) [hereinafter ECOTEC, BENEFITS OF COMPLIANCE]. This estimate for the cost of compliance with the environmental *acquis* does not include Turkey, Malta and Cyprus. Including these countries would significantly raise the expected costs. One United States Dollar is equal to approximately .90 euros.

⁸⁶ See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, *supra* note 35, at 9.

⁸⁷ See EUROPEAN COMMISSION, 6 ENLARGING THE ENVIRONMENT, *supra* note 45 (estimating that forty percent of the investment is needed in air pollution abatement, forty percent in water and wastewater management, and twenty percent in solid waste management).

⁸⁸ See EUROPEAN COMMISSION, 5 ENLARGING THE ENVIRONMENT, *supra* note 36.

⁸⁹ See NOCKER, *supra* note 84, at 50. This figure estimates compliance with the *acquis* for water supply, sewerage and wastewater treatment.

⁹⁰ See NOCKER, *supra* note 84, at 74. It only costs current EU members .2 percent of their GDP annually to satisfy this portion of the *acquis*.

⁹¹ See SCADPLUS, ENVIRONMENT: ACCESSION STRATEGIES FOR THE ENVIRONMENT (declaring that it is the responsibility of the applicant countries to acquire outside investing in order to receive the funds necessary to comply with the *acquis*), available at <http://europa.eu.int/scadplus/leg/en/lvb/128057.htm> (last visited Oct. 18, 2001).

⁹² See Savulescu, *supra* note 70.

⁹³ See ECOTEC, BENEFITS OF COMPLIANCE, *supra* note 85, at 10.

⁹⁴ See generally ECOTEC, BENEFITS OF COMPLIANCE, *supra* note 85.

⁹⁵ See generally ECOTEC, BENEFITS OF COMPLIANCE, *supra* note 85. Water quality is expected to improve. It is estimated that six million households in Turkey will gain access to drinking water. There will

be less groundwater pollution. Increased crop production is also predicted to occur after compliance.

⁹⁶ See ECOTEC, BENEFITS OF COMPLIANCE, *supra* note 85, at 12.

⁹⁷ See GLOCKLER, *supra* note 3, at 352.

⁹⁸ See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, *supra* note 35, at 1.

⁹⁹ See EUROPEAN COMMISSION, AGENDA 2000 AND ENLARGEMENT, available at <http://europa.eu.int/comm/environment/agenda2000/enlargement.htm> (last visited Nov. 9, 2001).

¹⁰⁰ See EUROPEAN COMMISSION, ENLARGEMENT: WHAT HAS BEEN ACHIEVED SO FAR?, available at http://europa.eu.int/comm/enlargement/negotiations/ach_en.html (last visited Oct. 17, 2001). These funds were made available at the Berlin Conference in 1998. This conference resulted in the amount of funding available through these programs being doubled to twenty-two billion euros.

¹⁰¹ See COMMISSION, ACCESSION STRATEGIES FOR ENVIRONMENT, *supra* note 35, at 12 (concluding that the applicant countries could obtain leverage of two to four times the value of EU grants under the aid programs).

¹⁰² See EUROPEAN COMMISSION, AGENDA 2000: STRENGTHENING AND WIDENING THE EUROPEAN UNION 21 (1999).

¹⁰³ See EUROPEAN COMMISSION, ENLARGEMENT: WHAT IS PHARE?, available at <http://europa.eu.int/comm/enlargement/pas/phare/intro.htm> (last visited Nov. 1, 2001).

¹⁰⁴ See EUROPEAN COMMISSION, ENLARGEMENT: PHARE'S PRINCIPAL FOCUS, available at <http://europa.eu.int/comm/enlargement/pas/phare/focus.htm> (last visited Nov. 1, 2001).

¹⁰⁵ See Eritja & Rayo, *supra* note 49, at 637.

¹⁰⁶ See EUROPEAN COMMISSION, 15 ENLARGING THE ENVIRONMENT, *supra* note 20.

¹⁰⁷ See EUROPEAN COMMISSION, 15 ENLARGING THE ENVIRONMENT, *supra* note 20.

¹⁰⁸ See MICHAEL J. BAUN, A WIDER EUROPE: THE PROCESS AND POLITICS OF EUROPEAN UNION ENLARGEMENT 6 (2000).

¹⁰⁹ See JOHN MCCORMICK, UNDERSTANDING THE EUROPEAN UNION: A CONCISE INTRODUCTION 130 (1999).

¹¹⁰ See GRABBE & HUGHES, *supra* note 32, at 10.

¹¹¹ See BAUN, *supra* note 108, at 150.

¹¹² One topic that warrants further consideration, but it outside of the scope of this paper, is whether other international and supranational organizations can force countries that desire to join their organizations to improve their environmental quality as a condition for membership. The EU has proven to be an effective model for improving the environmental quality of countries that join it.