

Andreas Bågenholm

The Dynamics of Enlargement:

The Role of the EU in
Candidate Countries' Domestic
Policy Processes

Andreas Bågenholm

The Dynamics of Enlargement:

**The Role of the EU in
Candidate Countries' Domestic
Policy Processes**

– SIEPS 2006:4 –

Report No. 4
May/2006

Publisher: Swedish Institute for European Policy Studies

The report is available at
www.sieps.se

The report can also be ordered from
info@sieps.se

The opinions expressed in this report are
those of the author and are not necessarily
shared by SIEPS.

Cover: Svensk Information AB

Print: EO-print AB

Stockholm, May 2006

ISSN 1651-8942

ISBN 91-85129-37-2

FOREWORD

Two years after the historic enlargement of the European Union, the attraction of membership is manifested by the long line of new applicant countries. This report studies the role of the EU in the domestic policy processes in the former and current applicant countries of Central and Eastern Europe, with a focus on the dynamics of the legal approximation process.

The Swedish Institute for European Policy Studies, SIEPS, conducts and promotes research and analysis of European policy issues within the disciplines of political science, law and economics. SIEPS strives to act as a link between the academic world and policy-makers at various levels. By issuing this report, we hope to stimulate the European discussion on enlargement and on the role of the European Union in former, current – and coming – applicant countries.

Stockholm, May 2006

Annika Ström Melin

Director

SIEPS

ABOUT THE AUTHOR

Andreas Bågenholm is a PhD. Candidate in political science at Göteborg University. His work focuses on the political transition process in Central and Eastern Europe in general and on the adaptation process to the European Union's legislation in particular.

TABLE OF CONTENTS

| | |
|--------------------------------------------------------------------------------------------------------------|----|
| EXECUTIVE SUMMARY | 6 |
| 1 INTRODUCTION | 7 |
| 2 THE CASE OF EU INTEGRATION | 10 |
| 3 ANALYTICAL STRUCTURE AND DATA | 14 |
| 4 THE EU'S ROLE IN THE LEGISLATIVE PROCESSES IN THE CANDIDATE COUNTRIES | 17 |
| 4.1 Background | 17 |
| 4.2 The agenda setting: The Europe Agreements and the White Paper.... | 18 |
| 4.3 The pre-accession strategy: Assisting the candidate countries to adopt the Acquis | 22 |
| 4.4 Assistance refined: The Twinning Programme | 24 |
| 4.5 Conclusions | 27 |
| 5 CONSEQUENCES OF THE EU'S ROLE IN THE LEGISLATIVE PROCESSES IN THE CANDIDATE COUNTRIES | 30 |
| 5.1 Reactions from the elites: Cold resistance or warm embrace? | 30 |
| 5.2 Reactions from the masses: The perception of the EU and EU integration | 32 |
| 5.3 Conclusions | 39 |
| 6 CONCLUDING REMARKS | 42 |
| SAMMANFATTNING PÅ SVENSKA | 44 |
| 7 REFERENCES | 48 |

EXECUTIVE SUMMARY

This report is about the EU's role in the domestic legislative processes in former and current candidate countries. The aim is twofold. First it aims at describing how the EU has acted towards the candidate countries in matters concerning the adoption of EU related legislation and how the EU has ensured that the commitments of the applicant states are fulfilled. The second aim is to analyse what consequences the EU involvement in the domestic legislative processes bring in terms of elite and mass perceptions on the EU and EU integration in the former and current applicant countries, from which lessons for future enlargement rounds may be drawn.

The study shows that the EU is successively increasing its involvement in the candidate countries, in particular from 1995 on, when the specific assistance programme for legal approximation was launched, which implied that officials from member states' administrations were located in the ministries or agencies in the candidate countries. From 1998 on that became a very efficient tool for ensuring that the candidate states fulfilled their obligations. The EU moreover increased its control over the agenda setting.

From an elite perspective there are indications that there was some initial resistance towards the EU involvement at the beginning of the process, but that these sentiments gave way to very positive ones, characterised by enthusiasm, gratefulness and appreciation. The study also shows that there has in general been an overwhelming public support for the EU and EU institutions in the candidate countries, the only exceptions being countries where EU was demanding political reforms in sensitive areas, such as citizenship laws in Estonia and Latvia for example. The conclusion is that it is not the extent of involvement per se that affects the perceptions of the EU, but rather the policy issues the EU gets involved in.

The study concludes by claiming that the EU has found a very useful instrument, which is both efficient and democratically acceptable and despite some remaining problems, could be recommended for future enlargement rounds.

1 INTRODUCTION

The attraction of the European Union, manifested by a seemingly never ending pool of membership-seeking countries, has made enlargement a standing feature on the EU's agenda – and will for many years to come. If the European Commission has its way, there will be at least another eight states in the European Union, bringing the number of member states to 33. There are many benefits to be drawn from further enlargement, both from the EU's and the current and would-be candidate countries' point of view. Peace, stability and economic prosperity in the region have been the main arguments why the process should not be halted despite growing resentment from different quarters in the member states (Baun 2000:8; Rehn 2005).

However desirable, membership is strictly conditional making the road to full membership long and difficult and leaves, moreover, little room for real negotiations between the EU and the applicant states.¹ With the exception of a few areas where transitional periods are accepted, all conditions, as they were spelled out at the summits in Copenhagen in 1993 and in Madrid in 1995, have to be met by the time of accession (Baun 2000:14).²

The EU is not passively waiting for applicants to comply with the membership criteria, however. On the contrary, the EU has increasingly become an active party in the integration process, giving financial, technical and administrative assistance on the basis of the European Commission's annual opinions on the progress made. Thus, the EU is deeply involved in the national policy processes of the applicant countries and thus it also has a potentially enormous influence on the content of a significant amount of the legislation produced in the candidate countries, due to the strict conditionality combined with the growing number of policy areas under the EU's jurisdiction.

¹ The terms applicant and candidate countries will be used interchangeably and refer mainly to the former socialist countries in Central and Eastern Europe. In the Eurobarometer data, Cyprus, Malta and Turkey are also included.

² The membership criteria are: "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 conditions for its integration through the adjustment of its administrative structures, so that European Community legislation transposed into national legislation implemented effectively through appropriate administrative and judicial structures" (European Commission 2006a).

This asymmetrical power relationship between the national governments of the candidate countries and the EU raises many interesting and urgent questions related to sovereignty, democracy and accountability, issues which all have a potential spillover effect on the perception of the EU and the opinion on EU integration. How the EU is dealing with these sensitive issues may therefore be crucial for the willingness of current and future candidate states to pursue their membership bids.

There is an increasing body of literature on the EU enlargement policy in general and on the impact of EU conditionality in particular (see for example Grabbe 2001 and 2002; Tallberg 2002; Glenn 2004; Papadimitriou and Phinnemore 2004; Raik 2004; Schimmelfennig & Sedelmeier 2004; Spendzharova 2004). These studies tend to focus primarily on the conditions spelled out in accession related documents and on the Commission's opinions on the progress made; they pay relatively little attention to the actions taken by the EU in the integration process per se.

This report will attempt to fill this gap in the literature on enlargement by studying the role of the EU in the domestic policy processes in the former and current applicant countries of Central and Eastern Europe, with a focus on the EU's involvement in the legal approximation process, which aims to align the national legislation of the candidate countries with the *Acquis Communautaire*, in other words Community legislation.³ The aim of this report is twofold. First it aims to describe how the EU has acted towards the candidate countries in matters concerning the adoption of EU related legislation and how the EU has ensured that the commitments of the applicant states are fulfilled. The second aim is to analyse the ramifications of EU involvement in the domestic legislative processes in terms of elite and mass perceptions of the EU and EU integration in the former and current applicant countries, and from which lessons for future enlargement rounds may be drawn.

This report is divided into five sections. In the first section, the case of EU integration is briefly discussed in terms of its implications for sovereignty, democracy and accountability in the candidate countries. The adaptation process is arguably unique, particularly for the former socialist countries in Central and Eastern Europe, as far as the extent of the measures that are required as well as their profound impact on society as a whole are con-

³ The terms "approximation", "harmonisation" and "align" will be used interchangeably throughout this report and refer to the process whereby EU legislation is transposed into national legislation, through the adoption of legislation (laws, regulations, orders etc.) either by parliament, government, ministries or agencies.

cerned. At the end of this section a couple of more precise research questions are put. The second section briefly accounts for how this study has been pursued and what data has been used.

The third section focuses on the role of the EU in the domestic policy processes in the candidate countries. It mainly describes involvement from the early 1990s up until today, but also tries to analyse the shifts in the actions taken by the EU in terms of conditionality, sovereignty, democracy and accountability. The main findings are that the EU markedly stepped up its involvement in the domestic policy processes of the candidate countries over time, and this was done on the basis of its pre-accession assistance programme. The final turn this programme took in 1998, moreover, allowed for a greater involvement of national actors in this process. The strategy of ensuring that the candidate countries are fulfilling their obligations is mainly carried out via the afore-mentioned pre-accession assistance programme but also, albeit more subtly, by publicly pointing out the areas where insufficient progress has been made. Since this assistance is demand driven to a large extent, in other words it is offered upon the request of the candidate countries themselves, objections in terms of sovereignty, democracy and accountability are not considered to be justified.

The fourth section deals with the consequences of EU involvement. The main findings are that there is no evidence of any substantial resistance or hostility towards EU involvement on the part of civil servants and ministers in the candidate countries, quite the contrary in fact. That conclusion is also valid if you look at the popular attitudes towards the EU and opinions on EU integration in the applicant states. With a few exceptions, the attitudes are overwhelmingly positive throughout the region and there is accordingly little to suggest that the citizens of the candidate countries have any major objections to EU involvement.

In the fifth and final section the conclusions of the study are discussed in relation to the lessons to be drawn for future enlargement rounds. The conclusion is that on the whole the EU has found a useful, effective and well-balanced strategy to approach the delicate issue of legal harmonisation in countries that wish to become members of the European Union.

2 THE CASE OF EU INTEGRATION

Having been dominated by the Soviet Union for almost half a century, giving up national sovereignty in order to join another organisation – albeit this time voluntarily – was particularly sensitive for the Central and East European countries. Even though the predominant opinion was to “return to Europe”, there were nevertheless underlying concerns about shifting allegiance from one union to another - and in some respects for good reasons (Mayhew 1998:202; Smith 2002:107).

In principle, joining the European Union is like joining any other similar organisation in the sense that would-be members have to comply with the membership conditions and show adherence to the basic norms and values underpinning that organisation. EU integration is thus not unique in kind, but rather in the extent to which adaptation is required. The extent of co-operation is unprecedented in the world today. More than 50 years of co-operation, with an increasing number of member states, an increasing number of policy areas and an increasing depth of cooperation, has among other things resulted in a body of legal texts that comprises some 80 000 pages, which any new member not only has to adopt but also has to implement correctly. That task does not only require financial resources to cover expensive reforms in different areas, but also a highly skilled civil service, high institutional capacity in terms of efficient and well functioning implementing institutions and efficient legislative procedures, and last but not least full commitment to the task from the decision makers and the acceptance from the population at large (Baun 2000:6-7).⁴ To arrive at the full extent of the reforms required from countries which less than two decades ago were harsh socialist dictatorships with little previous experience of either democratic governance or market economy, one must add the two basic conditions of being a consolidated democracy and a functioning market economy. Thus, it is not surprising that the scope of adaptation made some people anxious about its consequences for their countries’ newly regained national sovereignty.

For the countries in Central and Eastern Europe, with their limited experience of democratic governance and law-making, and their shortage of financial as well as human resources, it was obvious from the very beginning that they would not make it without substantial assistance (European Commission 1995:1.7). Concerning the legal harmonisation process, that

⁴ The term decision maker denotes above all the people in the governmental administrations, both politicians and civil servants.

assistance almost by definition implied a deep EU involvement in the national decision making processes.

There are at least two problems with the condition to harmonise legislation connected to sovereignty, democracy and accountability. The first relates to the fact that a large body of legislation has to be adopted and implemented within a very limited timeframe, which almost certainly has a negative impact on normal democratic procedures, such as consultation with organised interest groups and civil society, and parliamentary scrutiny and debate. To put it bluntly, there is a trade-off between efficiency and democracy. On the one hand, there was a common understanding among the elites as well as the population in all the candidate states that EU membership was highly desirable, perhaps *the* most desirable goal of all (Baun 2000:xvii). However, a speedy accession required speedy harmonisation and, moreover, in areas and on specific issues that were sometimes very controversial and where a conflict of goals emerged.⁵ A case in point was the citizenship law in Latvia, which was highly contested, but which was eventually passed in 1998 (Pabriks and Purs 2002:78-79). Governments have at times been accused by the citizens of using the urgency of EU integration as a pretext to force through unpopular pieces of legislation, without sufficient debate. A situation where there is a widespread perception that this process is mainly driven by external experts runs the risk of exacerbating the feeling of giving up control.

The second problem is related to the fact that an external actor not only tells another state which laws to adopt, but also actually drafts the legal texts on their behalf. National decision making actors are in the most extreme case thereby reduced to passive bystanders. If it is the will of the government to adopt a certain piece of legislation, whoever drafts it is not much of a problem. However, in cases where the corresponding EU legislation allows for different transposition approaches, there is a risk that the solution that is the most favourable to the country in question, may not be chosen if the government leaves the drafting in the hands of external forces.⁶ There have been warnings that a situation where national decision makers and the civil service get the feeling that their power is being

⁵ Even though the whole integration process was to last for one and half decade, there was during the last ten years a constant pressure on the candidates to keep up the pace in order not to fall behind the others. Moreover, as mentioned elsewhere, the adaptation task was huge and certainly required full speed for a long period of time.

⁶ This point is reinforced by the claim that the candidate countries are to some extent unaware of their own needs and the array of available solutions to their specific problems (European Commission 2000:24).

eroded may lead to resistance towards accession among these groups (Mayhew 1998:2002).

In short, the scope of the task makes the candidate countries' governments vulnerable to criticism for side-stepping normal democratic procedures, both as a result of the speed with which the reforms are to be carried out and as a result of letting external actors assume a too dominant a role in the legislative process. If decision makers in the candidate countries and/or the population at large become more hesitant towards the idea of becoming a member of the European Union, then clearly the EU should alter its pre-accession approach towards the candidate countries.

In order to identify potential problems in this regard the following questions will be useful tools. The first four questions are derived from the first aim (to describe how the EU has acted towards the candidate countries in matters concerning the adoption of EU related legislation and how the EU has ensured that the commitments of the applicant states are fulfilled).

- What influence does the EU have on the candidates' legislative agendas regarding EU related legislation?

The first question is motivated by the generally acknowledged importance of agenda setting on the control of the policy process. If the agenda setting, in other words the legislative priorities, is relinquished to external actors, the scope for the national decision makers will be limited to a reactive rather than a proactive approach. In particular the influence of the EU in the national accession planning documents will be studied.

- How does the EU interfere in the candidates' domestic legislative processes?

The second question is broader and relates to the instruments the EU uses for its involvement as well as how these instruments are used in practice, to what extent and under what conditions.

- Where in the legislative process does the EU interfere?

From a democratic point of view it is of interest to know at what point in the legislative process the interference from the EU takes place. The earlier it takes place, the more scope is left to national actors to debate and, if deemed necessary, to make amendments. To be more concise, it is less problematic to give a piece of advice on how to draft a law and then leave the rest to the government and parliament, than it is to interfere and make adjustments to a draft just before the final vote in the parliament.

- How does the EU ensure that the candidates' commitments are fulfilled?

Given the magnitude and complexity of the task of integration discussed above, the incentive structure for making the candidates comply is of crucial importance. In other words the use of sticks and carrots will be studied.

The next three questions are derived from the second aim (to analyse the ramifications of EU involvement in the domestic legislative processes in terms of elite and mass perceptions of the EU and EU integration in the former and current applicant countries, and from which lessons for future enlargement rounds may be drawn). Since they are more straightforward than the previous questions, no additional comments are considered necessary.

- To what extent has EU involvement in the candidates' domestic legislative processes resulted in resistance from national decision making actors?
- To what extent is EU involvement accepted by the citizens of the candidate countries?
- How should the EU deal with legal harmonisation in candidate countries in future enlargement processes?

3 ANALYTICAL STRUCTURE AND DATA

The role the EU is taking in the process of legislative approximation in the applicant countries has at least three different components, which are all, however, intertwined. The first component is the enumeration of what needs to be done, i.e. which pieces of EU legislation have to be transposed and with what priority. This component is the least controversial one, since it merely specifies the much broader and vaguer Copenhagen criterion.⁷ In this role the EU could be regarded as a passive and distanced actor, leaving the candidate countries in charge of coping with the legislative workload. The second component is the accession assistance programme aiming at facilitating the task of legal harmonisation. In this role the EU is apparently much more active and has a potentially huge influence on the domestic policy processes in the applicant countries as long as the assistance is accepted. The third component, finally, is the evaluation and monitoring of the approximation process and the passing of judgements on the progress made and the shortcomings that still exist and which have to be corrected. The main instrument for this activity is the regular progress reports which the Commission issues annually. In some respect this third component of the role of the EU could be seen as the most sensitive one in the sense that the EU takes on the role of the teacher who tells the pupils whether they have passed the test or not and also harshly and publicly criticizes those who fail. The monitoring aspect, moreover, runs the risk of leaving the applicant states with the feeling that the EU is adding demands or at least is continuously raising the standards, instead of giving proper credit for the progress made. Hurt national feelings are most likely to surface at this stage of the process, of which there are numerous examples, not least the reactions from those countries who were considered not to be prepared enough to start membership negotiations in 1997 (Baun 2000:87–88).

As mentioned above, these components are by no means separate from one another. On the contrary, they are closely interrelated in a circular way, in the sense that the enumeration of what needs to be done is based on the latest evaluation of the progress made and the assistance need is continuously reconsidered and adapted according to the current demand. In the analysis that follows these three components will be described and analysed in more detail.

The study covers the period from the fall of the Berlin wall until today, but with the main focus on the last ten years. Moreover, it is the ten former socialist countries that are the prime target of the study, but occasionally

⁷ See footnote 2.

other countries, such as Malta, Cyprus, Turkey and Croatia are referred to as well. The reason why the current candidate countries, Turkey, Croatia and Macedonia, are not included to a greater extent in this study – which would be reasonable given the aim to study the prerequisites for future enlargement – is that it is considered that their integration processes have not come far enough yet to make an analysis of the role of the EU meaningful. Although different in some respects, the Central and East European countries' experiences are considered to be sufficient in order to tell whether the EU should alter its strategy in any way.

The data used in this study mainly consists of official EU documents, evaluations of assistance programmes, which have been made on behalf of the Commission by independent analysts, data from the Eurobarometer and interviews with EU and candidate state officials made in September 2005.⁸ In addition, a few scholarly works analysing the EU assistance programmes have been used. For the empirical mapping out of the role of the EU in the domestic policy processes, in other words the first aim of the study, the data is in general unproblematic and provides the information required. When it comes to the second aim, however, to the assessment of the ramifications of the role of the EU, the data is much more troublesome. Since very little attention has been paid to the particular issue of popular and elite reactions to EU involvement, the documents and the opinion polls must be interpreted with great caution. The absence of evidence of elite resistance in evaluation reports, for example, is taken, in this study, as an indicator that such problems did not exist or were very limited, since one would have expected that these issues would have been mentioned had they actually been perceived as a problem. The interviewees, on the other hand, are all asked if they ever encountered resistance or hostility from domestic decision makers and they are therefore a more reliable, but alas a rather limited, source of information. The popular opinion on EU involvement is even more problematic, since no such questions are asked in the Eurobarometers. Instead various questions about the popular perception of the EU more generally and the desired speed of integration have been included. Positive attitudes in these respects are interpreted as an acceptance of the role the EU is playing in the integration process in general, including its influence on the domestic decision making

⁸ The interview data in this study is based on nine interviews made with EU officials involved in the negotiations and integration process with above all Poland, Lithuania and Romania and officials from the Lithuanian and Romanian delegations in Brussels. All of the EU officials had experience from other candidate countries as well. The interviews were semi-structured.

processes. However, one should be aware that this “acceptance” could just as well be due to insufficient knowledge of these matters. Nevertheless, it seems reasonable to claim that a generally positive view of the EU and EU integration combined with a desire to move at a faster speed would hardly be affected negatively by an increased knowledge of the EU’s role, unless a major incident occurred, in which case the public would be informed about it and the role of the EU.

4 THE EU'S ROLE IN THE LEGISLATIVE PROCESSES IN THE CANDIDATE COUNTRIES

4.1 Background⁹

It was only in the dying days of the communist regimes in Central and Eastern Europe that cooperation with EU was put on the agenda. After the fall of the Berlin wall and the collapse of the Soviet dominated regimes, official statements were made by the new governments in favour of closer cooperation with the EU with the aim of future membership. Agreements on trade and economic cooperation were signed and ratified with the ten former socialist states during 1990 and even more ambitious Europe Agreements were signed with Poland and Hungary in 1991.¹⁰ It was not until 1993, however, that membership conditions for the new would-be applicants were laid down by the EU, thereby acknowledging the former socialist states as potential future members for the first time (Mayhew 1998:27).

Between 1994 and 1996 these ten countries formally applied for membership, which was followed by a screening process during which the Commission checked to what extent the legislation in the candidate countries was in line with the *Acquis Communautaire*. On the basis of this process the Commission issued opinions in July 1997 on the applicant states' readiness to start membership negotiations and the recommendation was made to commence negotiations with the five Central European countries (+ Cyprus) that were considered to be the most advanced in this respect.¹¹ The negotiations, which subsequently started in the spring of 1998, were divided into 29 different chapters or policy areas and were based on the position papers of the two negotiating parties. In the position papers, the candidate states declared the extent to which the *Acquis* had been accepted in any particular policy area and in which areas derogations were being sought and for what periods of time. In addition, the candidate countries also prepared extremely detailed National Plans for the Adoption of the *Acquis* (NPAA), which in great detail described exactly which laws that had to be transposed, the EU directive to which they corresponded and the deadlines for the transposition as well as for when they would come into force. These were produced as a response to the deficiencies found in the

⁹ A general overview of the accession process can be found on the EU enlargement homepage at: www.europa.eu.int/comm/enlargement

¹⁰ Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

¹¹ These were the Czech Republic, Estonia, Hungary, Poland and Slovenia.

Commission's annual Regular Report and the shorter and more concise Accession Partnerships, but became at the same time one of the main instruments for monitoring whether the candidate countries were fulfilling their commitments and were keeping up the pace in the legal harmonisation process (Baun 2000:101).

In the spring of 2000, negotiations were also opened with the remaining five former socialist countries (+ Malta) and it soon became obvious that this latter group was quickly catching up with the five frontrunners. The exceptions were Bulgaria and Romania, which have always been considered to be laggards (Papadimitriou 2002:117). Accordingly, negotiations could be closed with the other eight Central European countries (+ Cyprus and Malta) at the same time at the summit in Copenhagen in December 2002. The accession agreements were ratified by the EU institutions as well as the candidate countries (see below) and the accession took place on 1 May 2004. Bulgaria and Romania subsequently concluded negotiations in 2004 but are still waiting to get the green light for accession, which is assumed to take place on 1 January 2007 or 2008.¹²

In addition Turkey, Macedonia and Croatia have applied for membership. Negotiations with Turkey and Croatia started in October 2005 and Macedonia was recognised as a candidate country at the summit in Brussels in December 2005. The negotiations are pending an evaluation report by the Commission due to be published in late 2006. Finally, the remaining states in the western Balkans have entered the early stages of EU integration, with a prospect of becoming members during the 2010s.

4.2 The agenda setting:

The Europe Agreements and the White Paper

Long before the Copenhagen summit explicitly made it a membership criterion, the approximation of national legislation with the *Acquis Communautaire*, in other words Community legislation, was put on the agendas of the newly democratised countries in Central Europe. Indeed, that condition had applied to all previous candidates as well and it was therefore not surprising that the issue was brought up already in the Europe Agreements, which were signed between 1991 (Poland and Hungary) and 1996 (Slove-

¹² In the Bulgarian and Romanian accession treaties a safeguard clause was included, which enables the EU to postpone accession by one year if the shortcomings that the EU has identified are not remedied. The opinion of the Commission on whether sufficient reforms have been undertaken will be issued during the spring of 2006 (European Commission 2006b and 2006c).

nia) and came into force between 1994 and 1999. In these Agreements, which aimed to establish a free trade area, the aspiring new member states committed themselves to align their national legislation in a number of policy areas such as customs, company law, banking, intellectual property, financial services, competition, transport and the environment. However, the need for rapid progress was particularly stressed concerning internal market legislation (Title V, Chapter 3, Art. 69 & 70) (European Commission 2006d).

In most areas no specific deadlines were mentioned, but the Agreements were more precise regarding competition and state aid policies (Mayhew 1998:50). Nevertheless, the explicit conditionality was very weak, stopping short of making anything but vague references in the preamble to the overall reform progress, references which, moreover, the EU never made use of (Ibid:44). It should be pointed out, however, that the Commission already in April 1990 had set both political and economic conditions, such as the rule of law, human rights, free elections and economic liberalisation, for the commencement of Europe Agreement negotiations. Due to its perceived deficiencies in the political aspects, the relations with Romania were frozen in mid 1990, which delayed the Romanian integration progress (Papadimitriou 2002:125, 173). However, due to the negative developments in the Balkans, the EU loosened up its criteria and started negotiations with Bulgaria and Romania, even though they did not fulfil the requirements (Ibid.:96).

In order to implement the Europe Agreements, an institutional framework for the bilateral negotiations and relations between the EU and the would-be candidate countries was set up, consisting of the Association Council at the level of ministers, which was assisted by Association Committees and sub-committees. These were to meet on a more regular basis discussing issues in more technical detail. A specific sub-committee for the approximation of laws was also established within this framework, which became operational in 1994 (European Commission 2006d; Mayhew 1998:52). Moreover, the need for technical assistance was recognised and it was promised to be channelled through the Phare Programme, including expert exchange, seminars, training activities and translation aid (Title V, Chapter 3, Art.71).¹³

¹³ Phare is the French abbreviation for Assistance for Economic Restructuring in Poland and Hungary, which was introduced already in 1989, with the aim of helping to restructure the economic and political systems of the former socialist countries. For many years it was by far the most important assistance offered by the EU, expanding continuously to cover all candidate countries in an increasing number of areas (European Commission 1999a:6).

In conclusion, the Europe Agreements required the associated countries to approximate their legislation in a number of policy areas, but often without clear deadlines and without any concrete threats of sanctions in case of failure to do so. However, this does not mean that conditionality was weak. There was always an implicit risk of being left behind in the integration process and consequently left out of a future enlargement round. Quick adaptation and compliance with the commitments made were the best guarantors for future membership. Because of their general lack of deadlines, the Europe Agreements were quite weak in terms of setting the agenda and left, moreover, much of the practical aspects such as legislative priorities, the drafting of legislation and finding financial support in the hands of the candidates themselves. The financial and institutional assistance offered at this point was mainly targeted towards other areas than legal approximation and to the limited extent it was aimed at legal advice, private consultants rather than EU officials were involved (European Commission 1995:4.4; 4.9). In short, the EU was not very deeply involved in the domestic legislative processes of the candidate countries at this point. However, with the pre-accession strategy launched at the summit in Essen in December 1994 that was about to change.

The aim of the pre-accession strategy was to help the candidate countries to prepare for accession to the European Union. At the Essen summit, the European Council therefore gave the Commission the task of preparing a White Paper in which the internal market Acquis was thoroughly explained and which included a recommendation of the priority in which the directives ideally should be transposed into the candidates' national legislation. Close to 900 measures, divided into 23 policy areas, were identified in the voluminous annex of the White Paper which was approved at the summit in Cannes in the summer of 1995. The White Paper claimed to give three contributions to the accession process: First, by facilitating the approximation of legislation, second by describing the institutional structure that would be necessary for the implementation of the legislation and third by enhancing the assistance for the achievement of these goals (European Commission 1995:1.5 – 1.7). In particular the first and third of these contributions are the most relevant to this study.

Since the aim of the White Paper was to help the candidate countries to structure their legislative agendas, there was no conditionality attached (Ibid.:5.1). No deadlines were mentioned, only the preferred sequencing of transposition within a given policy area. When the Commission was asked by the European Council to issue opinions on the candidate countries' readiness to start membership negotiations, the extent to which the mea-

asures in the White Paper had been implemented was taken into account. The information was given by the candidate countries themselves, however, and was not checked by the Commission (European Commission 1997: Annex). The White Paper was nevertheless used as an important agenda setter, structuring the harmonization process in great detail, which the quotation regarding Estonia below clearly shows. However, similar passages are to be found in the Commission's opinion on the other countries as well.

In response to the White Paper the Government drew up in June 1996 an Activity Plan for Joining the European Union. This document includes a detailed list of all legislative initiatives necessary for the implementation of the *acquis*. For each legal act, the Plan states the main responsible ministry, the state of existing legislation as well as tentative deadlines for the approximation work (Ibid: v).

The White Paper was very precise concerning technical assistance, which was to cover the whole policy process from planning and drafting to the implementation and enforcement of the legislation (European Commission 1995:5.6). A large number of different assistance measures were enumerated. The only relevant measure for this study was: "advice from legal and technical experts, on the Union's legal system and, sector by sector, about the interpretation of Community texts and the drafting of national laws" (Ibid.:5.6).

It was clearly spelled out for the first time that the Community was adopting an open hands-on approach towards the candidate countries, even though expert assistance, often in the form of external consultants, had been practised before. This, however, had led to wide divergences regarding transposition strategies and results, which the new approach from the EU was set to remedy (European Commission 1995:4.5). How the new approach was implemented in practice is discussed in the following section.

In conclusion, the White Paper offered a much more detailed and extensive plan for the approximation of the *Acquis* than the Europe Agreements and was thus structuring the legislative agendas of the candidate countries to a much greater extent than before, despite the absence of deadlines. As noted above it was used as a checklist for the candidates to keep track of the pieces of legislation that had been transposed and what still remained to be transposed. In addition, deadlines were voluntarily set by the candidates. In the following section, the new assistance approach, which targeted legal harmonization more directly, will be discussed.

4.3 The pre-accession strategy: Assisting the candidate countries to adopt the Acquis

Accession related assistance was launched early on in the integration process, but it was not until 1995 that approximation of the Acquis was made a specific target for financial support (Mayhew 1998:141). This was, as mentioned above, a result of the Essen summit in 1994, which introduced the pre-accession strategy and which also identified the assistance provided to prepare and adopt the Acquis as one of the most important issues (Mayhew 1998:30). The focus of the Phare Programme shifted accordingly after 1995, but the newly added types of assistance aimed at facilitating the approximation of the Acquis, which included institutional support for managing and coordinating the transposition process, legal advice, training and documentation and translation, accounted for only a minor share – 7 percent – of the overall Phare assistance offered between 1992 and 1998. There were, moreover, major variations between the candidates. In Bulgaria, only 2 percent of the Phare support went to approximation assistance, whereas the Slovenian share was 19 percent (European Commission 1999a:6–7).

Nevertheless, the new approach resulted in a much deeper involvement of the EU in the actual policy processes of the candidate countries. From 1995 onwards there was a frequent exchange of experts, who were physically placed in ministries and agencies in those countries with the task of helping to draft EU related legislation and to give legal advice, for example commentaries on drafts, organization of working groups or advice on how to enhance the legislative process (Ibid.:9, 28).¹⁴ Due to inadequate documentation routines, it is unfortunately not possible to assess the results of the approximation assistance provided, in terms of number of pieces legislation passed (Ibid.:28). However, it is not the output results that are the important issue here, but rather how the legislative process has been conducted, the actors that have been involved and reactions from the national decision makers. The latter issue will be dealt with in section 5.1.

As a complement to the assistance mentioned above, a specific body called TAIEX was established and became operational in 1996.¹⁵ Its aim was to manage short-term (up to two weeks) technical assistance on the request of the candidate countries by sending experts to ministries and agencies in the

¹⁴ There is no exact information on the number of projects. The report evaluates 37 projects, covering 11,8 percent of the total Phare allocation for legal approximation assistance. The extrapolation would thus suggest that there were around 300 projects until 1998. Of those, legal advice and institutional support were by far the most frequent types of projects (European Commission 1999a:22-24).

¹⁵ Taiex is the abbreviation for Technical assistance and information exchange unit.

candidate countries and also by arranging seminars on how to interpret, transpose and implement specific EU directives. The funding was to be channelled through the Phare Programmes (European Commission 1995:5.11-5.12).¹⁶

The vast bulk of the assistance was targeted at the governments, while the parliaments and implementing bodies received little attention, despite the ambition to cover the whole policy process. This fact was criticized in an evaluation made in 1999, because the exclusive focus on the very earliest stages of the policy process, in other words preparing and drafting legislation, was said to occasionally have resulted in a possible mismatch between the national law and the corresponding EU directive, due to amendments made at later stages in the process (European Commission 1999a:48).

There was little collaboration between the foreign experts and their domestic counterparts in most instances. Instead it seems that the foreign experts were working on their own, taking little consideration of the particularities of their host countries and applying the same model across over the board. Needless to say the quality of the advice given suffered. An exception from this general pattern was Poland, where domestic officials collaborated with the foreign experts, with much better results than elsewhere (Ibid.:10).

Turning now to the conditionality attached to the Phare assistance, it has on the one hand been pointed out that a firm commitment to substantial economic reforms was a prerequisite for obtaining assistance (Papadimitriou 2002:25). On the other hand, the lack of conditionality has been considered to be one of the biggest problems of the Phare assistance programme (Mayhew 1998:144; European Commission 1999a:12). The evaluation report recommended that the Phare Programme should replace its focus on the demand side, or its input driven approach, with a system based on output, whereby the assistance provided should correspond with the amount and quality of legislation produced. The Twinning Programme (see the following section) was taken as a good example in that respect (European Commission 1999a:12).

To conclude, the EU became much more involved in the legislative processes in the candidate countries after 1995, as a result of the new direction in the assistance programme focusing on facilitating the approximation of the Acquis. However, the new initiative left much to be desired,

¹⁶ In 2001, for example, 492 events took place, mainly seminars and workshops, involving more than 2 000 experts from the member states and more than 11 000 participants from the candidate countries (European Commission 2003a:9). In 2004, 84 expert visits were paid to the candidate countries (European Commission 2004:15).

in terms of the type of assistance, the recipients of the assistance and the working relations between the EU experts and the domestic decision makers. From a democratic perspective this period was more problematic, partly because the EU was more involved, but above all because of the tendency to side step domestic decision makers.

4.4 Assistance refined: The Twinning Programme

As mentioned in passing above, another Phare funded assistance initiative called Twinning was launched by the EU in 1998. The aim was to provide both long-term assistance in the form of secondment of civil servants from member states' administrations as well as short-term expert exchanges and training (European Commission 2003a:9). The projects were to focus on the transposition, implementation and enforcement of EU legislation and the financial allocation was set at around one third of the total Phare budget (Ibid.:6; European Commission 2006e). Up until today more than 1100 projects have been initiated (European Commission 2005:8) and in late 2005 it was estimated that around 200 civil servants from the member states were assisting their counterparts in the candidate countries (European Commission 2006e).

There are above all three crucial differences in the Twinning Programme compared with the previous Phare approach. The first difference is the method of identifying what needs to be done in the candidate countries. Before the twinning process, the task of identifying the needs and obtaining the proper assistance for transposition, implementation and enforcement was to quite a large extent left in the hands of the candidates themselves to decide. The EU, its member states and early in the process quite often also private consultants did indeed offer support, however, as mentioned above, without taking much consideration of the existing diversity and specific needs of the different countries. In the Twinning Programme the need for assistance was based on the evaluations made annually by the Commission on the progress made in meeting the membership criteria. Thus the assistance was directed at the weak spots and areas where progress had to be made, with tailor-made solutions for each country's specific problems and needs (European Commission 2001:6 and 2006f).

The first such opinion on progress in meeting the accession criteria was published by the Commission in July 1997 and the ranking order of the candidates' progress were decisive for the decision taken by the European Council to start membership negotiations with the top five.¹⁷ These opin-

¹⁷ See footnote 11.

ions were quite detailed in their identification of the shortcomings of the candidate countries, but the main priorities in both a short and a medium-term perspective were published in a separate document called Accession Partnership, which was an agreement between the EU and the candidates on what needed to be done and was, together with the NPAA (see section 4.1), to be used as a checklist of fulfilled and unfulfilled promises in coming evaluations (European Commission 1999a:6). You could say that the Accession Partnership was a kind of official approval of the Commission's opinion and it was above all these documents that determined the assistance.

From 1997 onwards evaluation, monitoring and ranking orders thus became a new instrument for the EU, which on the one hand helped the candidate countries to focus on the important issues and with the adequate means, but on the other hand made the governments in the candidate countries' vulnerable to embarrassing public reminders from the Commission. As will be discussed below this method of "naming and shaming" is understood to have had a great effect on the reform ambition of the ministries in the region (Interview, EU official).

The second difference with the Twinning Programme was the rigorous procedures in preparing the projects. The aim was obviously to get as much as possible out of every project once it was running (guaranteed success was in fact a requirement), but a side effect was that many projects were seriously delayed and eventually outdated and consequently cancelled (European Commission 2000:26).

The third difference is linked to the second one, in the sense that the twinning projects were to be a collaboration between the EU, its member states and the candidates, rather than one party doing it on their own. The projects were to be jointly developed and implemented, based on the said evaluations made by the Commission. Together with representatives from the member states, assistance offers were produced and in turn discussed with the candidate countries, who finally chose the twinning partner they found the most suitable for the task (Ibid. 2001:6). The Resident Twinning Advisor was to be located at a ministry or an agency in the candidate country for period of at least twelve months (www.europa.eu.int/comm/enlargement/pas/twinning).¹⁸

¹⁸ In 2001, the Twinning Light Programme was launched as an intermediary type of assistance, offering medium-term assistance for a duration of eight months and without the condition of permanent location in the candidate country (European Commission 2006g).

As the accession date came closer, the attention on the need to implement the Acquis was increasingly emphasized. The focus on the assistance of approximation – Twinning as well as TAIEX assistance - was accordingly shifted from 2001 onwards from transposition towards implementation, which right through the integration process has been considered to be the greater challenge (but yet neglected in terms of assistance) of the two (European Commission 1995; 2003a:8; 2003b:10). The Twinning Programme thus covered much more of the policy process than previous Phare Programmes had, but there is still little evidence of assistance targeted at the parliamentary proceedings.

In conclusion, the role of the EU did not change very much in principle during this period. It was instead a qualitative transformation that took place with the initiation of the Twinning Programme, with a much closer cooperation between the EU and the candidate states, a more efficient method of identifying needs and a more flexible way of remedying the problems. More attention was also given to later stages in the policy processes. Thus, the EU took a firmer control of the agenda setting, leaving few options for the candidates than to handle the issues the EU was putting on the timetable. On the other hand, the candidates were freer to implement the agenda in a fashion more suitable to the national context and were more involved in the assistance programmes.

Also in terms of conditionality, not much changed during this period. Membership continued to be the prime carrot and was the main driving force behind the efforts made by the governments in the candidate countries. In particular the safeguard clause included in the Bulgarian and Romanian Accession Treaties was “helpful for us to have some leverage to be able to put pressure on Romania”, as one EU official put it (Interview 2005).

Another, more subtle way of pushing the candidates in the right direction was through the criticism delivered in the annual Regular Reports. According to a Brussels official the ministers and civil servants concerned were:

quite afraid of having a bad assessment from the Commission. A bad assessment [...] could lead to the sacking of the secretary of state. It is hard to underestimate how serious that is. The efforts to avoid [...] a kick in the backside have been remarkable (Interview 2005).

Formally, the financial assistance was linked to the compliance with the commitments made by the candidates in the Accession Partnership (European Commission 2006h), but there is no evidence of assistance being denied for a lack of reform ambition. On the contrary, it seems that assis-

tance continues to be demand driven rather than conditionality driven, which the generous assistance to Romania is proof of (Interview 2005). The Twinning Programme has been regarded “as an instrument of policing the EU’s conditionality” (Papadimidiou and Phinnemore 2004:623), but the possibility of withholding financial resources if a projects fail is limited to only 10 percent of the budget something that has occurred rarely (Official Journal 2003:27).

4.5 Conclusions

In this section, the answers to the questions concerning chapter 4 will be summed up and briefly discussed. For the sake of clarity the questions will be repeated.

- What influence does the EU have on the candidates’ legislative agendas regarding EU related legislation?

The EU has markedly increased its influence on the legislative agendas in the candidate countries over time. Initially the candidates were left to structure their work pretty much as they wished and the EU merely pointed out which the important areas were. With the White Paper, the legislative task became much more concrete, but it was not until the Accession Partnerships were agreed on, that the EU took a firmer grip on the setting of the agenda. Even though the enhanced EU involvement had facilitating effects for the approximation process in general, the fact that the candidate countries felt that the Accession Partnerships had been imposed on them from above and with very limited scope for internal discussion and debate, makes these actions democratically doubtful (Baun 2000:102). In the long run it may be tactically better to spend more time on the agenda setting phase and ensure that the legislative agenda is properly anchored among the stakeholders in the candidate countries, instead of having a continuous debate with these stakeholders and running the risk of having them hamper the speed of approximation.

- How does the EU interfere in the candidates’ domestic legislative processes?

It is above all through the assistance programmes on legal approximation that the EU becomes involved in the legislative processes in the candidate countries. This specific type of assistance started fairly late in the integration process and was preceded by a more passive approach from the EU. Up until 1994 the EU handled the integration process from a distance and rarely took an active part in the concrete drafting of laws. The candidates were provided with rough guidelines, but were left to find the proper solu-

tions and the proper aid themselves, even though it was covered by funding from the Phare Programme.

With the pre-accession strategy launched in 1994 the EU became more involved and more active in the legislative processes of the candidate countries. The need for assistance with legal approximation was identified and subsequently initiated, which resulted in much closer cooperation between officials from the member states and the candidate countries. The new approach meant a major shift from great diversity to blueprints in terms of solutions in transposing legislation.

The initiation of the Twinning Programme became the starting point for the latest turn in EU involvement in the legislative process. Not only did the EU and its member states increase their involvement in the actual drafting process in quantitative terms, but they also strengthened their role as agenda setters. Even though EU involvement reached its peak during this phase, there was at the same time a clear shift towards much more collaboration between the EU officials and their counterparts in the candidate countries as well as more flexibility and tailor-made solutions. The new approach thus paid more respect to the diversity of the candidate countries' administrative and legislative culture, thereby reducing the possibility of criticizing the governments for giving up national interests. Both from a democratic and an efficiency point of view, the Twinning Programme was a clear improvement. On the one hand, the EU provided extensive support and offered solutions, but on the other it was up to the candidate states to pick and chose the solution of their liking. Apart from the bureaucratic hassle accompanying the twinning procedure, there is hardly a better way to help the candidate countries to achieve their much-desired goal of EU membership. As will be discussed in section 6, it takes a firm commitment on EU membership and unreserved adherence to the norms and values of the EU for this strategy to be successful.

- Where in the legislative process does the EU interfere?

As has been discussed above, EU involvement has on the whole been limited to the early phases of the policy process, i.e. preparing and drafting legislation. It is only during the last couple of years that the parliaments have been involved through limited TAIEX assistance in the form of seminars. From a democratic point of view, the limitation of involvement to the early phases is preferable, since it leaves the relevant national actors to give their opinions and sometimes amend the draft. It would have been more complicated if the EU interfered in the parliamentary proceedings and influenced the outcome of the deliberations taking place there. From a

result-oriented point of view, however, the limitation to early involvement was detrimental for the concordance between the national legislation and the corresponding EU directive. To relinquish control long before all the crucial decisions have been taken could be regarded as a waste of the scarce resources of EU competence. Thus, there is a clear trade-off in terms of the effectiveness of the advice given and the extent of EU involvement in the policy process. Even though a candidate country may lose some speed in the integration process by having “approved” drafts amended by parliament, it would still be a price worth paying, instead of running the risk of being accused of side-stepping the normal democratic procedures and reducing the parliaments to rubber-stamp institutions.

- How does the EU ensure that the candidates’ commitments are fulfilled?

Turning to the issue of how the EU makes the candidate countries comply, it has been pointed out that conditionality has always been a crucial factor in the integration process. That is true to the extent that membership is strictly conditional as are the criteria for starting membership negotiations. Recently the safeguard clause included in the Bulgarian and Romanian accession treaties has been considered a useful tool for the EU to put pressure on the two laggards to make a final effort. On paper, the assistance programmes are also conditional, but much less strictly so, with the general adherence of reforms as the only stipulation. Difficulties in keeping up the pace in the integration process and failure to keep the promises made have only rarely resulted in assistance being withdrawn. The desire to become an EU member has been a big enough carrot to make the candidates comply and the stick has therefore not been necessary.

More important than conditionality per se, is the fact that the EU has been able to influence the legislative process on the spot in candidate countries, through approximation assistance. To put it bluntly, the EU did many of the things it wanted the candidates to achieve themselves, rather than trying to push them in the right direction through incentives. A more subtle way the EU had its way in the candidate countries was through the annual Regular Reports, in which the areas where progress was considered insufficient were mercilessly revealed. For both the ministers and civil servants concerned, their jobs were in jeopardy if they received a bad report. Thus, the risk of being blamed for not fulfilling the commitments ensured a high level of ambition in the candidate countries’ administrations. Privately, the EU was encouraged by reform-minded actors in the candidate countries to be even harsher, thereby pushing the reforms at a quicker pace (Interview 2005). Now it is the time to turn to the ramifications of the role assumed by the EU.

5 CONSEQUENCES OF THE EU'S ROLE IN THE LEGISLATIVE PROCESSES IN THE CANDIDATE COUNTRIES

5.1 Reactions from the elites: Cold resistance or warm embrace?

The presence of foreign experts in the candidate states' ministries and agencies, which traditionally have been bastions of vested interests with strict hierarchies reluctant to relinquish power, was a potential threat to the perception of the EU as a benevolent actor (see Papadimitriou and Phin-nemore). Little is written about this particular aspect of the EU integration process. The issue is touched upon and mentioned in passing in studies with a focus on different aspects of that process. The lack of any systematic research in this area makes the criteria for drawing conclusions methodologically difficult. In this study, two types of data have been used in order to assess the extent of this problem. Firstly, the documents dealing with approximation assistance, such as reports and evaluations, have been consulted and analysed to see the extent to which they explicitly bring up this particular problem. The absence of any reference to the problem is a vague indicator, but still an indicator, that the problems have been limited. The second type of data consists of interviews with EU and candidate state officials made in Brussels in September 2005. The officials were explicitly asked if they had experienced or heard of any hostility or scepticism from the candidate countries.

The evaluation reports on legal approximation assistance in 1999, carried out by independent analysts, was quite short on information on whether the foreign experts were perceived as a threat to the authority held by the domestic officials and ministers or not. The general report concluded that "[a]ssumptions [...] concerning the willingness to abandon autonomy enjoyed [...] by quite narrowly-based sectoral Ministries have in many cases proven to be flawed" (European Commission 1999a:9). Given this general statement it is all the more surprising that the country reports avoid any references to any problems of this kind.¹⁹ On the contrary, the Polish report states that "[t]he potential problem of 'ownership' (i.e. unwillingness of ministries to put forward drafts produced by outsiders) often associated with this methodology, did not turn out to be an issue" (Ibid 1999b:24).

Given the fact that the 1999 reports were generally quite critical, listing various shortcomings and problems, and in addition providing detailed recommendations on how to remedy the problems, without giving anything

¹⁹ Volume I contained the general report and volume II the ten country reports.

but negligible coverage to the issue regarding hostile domestic officials, you may conclude that the problem cannot have been of that great importance.

Later evaluations and also interviews with officials in Brussels, indirectly confirm the notion that there were initial problems with hostility or at least scepticism towards the new approach from the domestic ministries. To quote a Brussels official: "If I think about how they [Romanian officials] were seven, eight years ago [...] they used to be very suspicious which was a hangover from the Ceausescu regime" (Interview 2005).

The main picture is that this initial hesitation has now disappeared, even though there is occasional evidence of some remaining problems, such as demarcation disputes and dissatisfaction with the Commission being considered to be too dominant in some respects (Baun, 2000:102; European Commission 2000:4; Hughes *et al.* 2004:536; Official Journal 2003:28). Moreover, it seems that the problems tend to occur when issues become politicized (European Commission, 2001:19).

According to the evaluations of the Twinning Programmes most of the shortcomings that marred the previous approach have been remedied. They were considered "more useful and relevant [...] than classical PHARE consultancy projects", resulting in a greater degree of impartiality and understanding from the parties involved (European Commission 2000:3). Initial reservations from the candidate countries were also said to have been overcome and the authors of the report were "immensely impressed by the general commitment, dedication and enthusiasm of almost all the stakeholders in the [...] process" (Ibid.:5). The suspicion of the EU trying to impose its will in the candidate countries eventually gave way to the perception that the assistance instead served the interests of the candidates by speeding up the integration process (European Commission 2001:23). As one Brussels official put it: "The people in the ministries and agencies are delighted that we are involved" (Interview 2005). In addition, the short-term visits were considered very successful by the candidate countries, which held the member state experts in much higher esteem than the private consultants (European Commission 2000:16).

This view is confirmed by the interviewees, whose general picture is one of gratefulness, appreciation and helpfulness from the candidate countries, rather than suspicion and hostility. Some countries have been very keen in receiving help, in fact so keen that the Commission has felt obliged to turn down requests that would reduce the domestic officials to passive bystanders in the legislative process. As one official put it :

They asked us 'you tell us what to do and we'll do it' and we said 'it is actually up to you to decide. We can't hold your hand'. They would have been very happy if we would have held their hand all the way (Interview, Brussels, 2005).

To summarise, there are quite a few indicators on improvements being made over time, even though the problem of relinquishing power to external actors seems to have been limited. Most of the explicit references to this particular issue are in positive terms, which strongly indicates that most officials in the candidate countries believed that assistance was the fastest way of becoming a member of the European Union. If there had been substantial problems in this respect it would most likely have been subject to more analyses and discussion. In the following section the opinion of the people in the candidate countries will be analysed.

5.2 Reactions from the masses:

The perception of the EU and EU integration

In the previous section the absence of hostility and resistance from the domestic officials was discussed. It is now time to turn to the citizens of the candidate countries and see whether the EU approach affects opinion on the EU. It should be pointed out right away that it is very difficult to isolate the specific factor of EU involvement in the policy processes from other integration related ones. The direct question of how that role is perceived by the citizens has never been included in the Eurobarometers. There are a couple of questions, however, that can indirectly give us an idea of whether the approach taken by the EU is regarded as a problem or not, namely trust in the EU, whether membership is a good thing, how to vote in the referendum, the perceived image of the EU and the desired pace of the integration process. These questions will be elaborated on in turn below. First the selection of opinion data will be briefly discussed.

Two types of Eurobarometers have been used, the standard Eurobarometer, covering all member states and the Candidate Countries' Eurobarometer (CCEB), which commenced in 2001 and hence covers the candidate countries. Sometimes it has been difficult to obtain comparable data over time, since the countries comprising the candidate group change. In order to present as accurate data as possible, various units of analysis have been included. The time period covered is mainly 2001–2005 unless otherwise stated. The first constellation is the average figure for the 13 candidate countries.²⁰ With the accession of ten new member states in May 2004, the

²⁰ The CC13 are Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey. Croatia is not included but will be commented on separately.

data set on that particular constellation was discontinued. Therefore the average scores of the ten accession countries are included.²¹ Even though the average scores are high, some countries might have a low score. Therefore the highest and lowest score for each year have also been included. Finally, figures on Poland and Turkey have been included, since they could be regarded as “critical cases”, since they are often portrayed as being difficult in the negotiations and as harbouring substantial EU sceptical sentiments among its citizens. If the scores in these countries are high, then there is reason to believe that the EU approach is a useful strategy.

The extent to which the EU as a whole is trusted by the citizens seems to be a good indicator of their perception of the EU as a fair and trustworthy partner in the integration process and one which is analytically disconnected from the opinion on membership. You may hold the opinion that membership is a good thing, but still tend to think that your own country has been treated badly in the process, in which case your trust in the EU tends to be low. Conversely, you may be opposed to EU membership but still believe that there is nothing wrong with the way the EU treats the candidate countries, in which case trust in the EU is presumably higher. To put it in another way, it is difficult to see that the EU would be trusted if there was a widespread perception of the maltreatment of the candidates. If people trust the EU it will be interpreted as evidence for the fact that the approach of the EU is approved of or at least not sufficiently disliked to have any effect on the level of trust in the European Union. Even though a low level of trust in the EU cannot automatically be attributed to dissatisfaction with the way the EU is involved in the policy processes, such an outcome would still be interpreted as an absence of enthusiasm for the role of the EU.

Table 1 shows that the EU tends to be trusted rather than not trusted by the citizens of the candidate countries. The average balance for the 13 candidates as well as the smaller group of accession countries was positively stable between 2001 and 2005, ranging from + 21 to + 45 in the years where average figures are available.²² It should be pointed out, however, that the trust level for the AC10 decreased considerably in the autumn 2003 and spring 2004 polls, declining to + 3, i.e. exactly at the time of accession, which may seem a bit strange. There are no figures for the individual countries in those Barometers, however, which is why the data is

²¹ The AC10 are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

²² The figure is calculated by subtracting the share of the respondents who tend not to trust from the percentage who tend to trust. It is the same logic that is behind the other questions included in this study.

Table 1: Trust in the European Union.

| | 2001 | 2002 | 2003 | 2004 | 2005 |
|---------|------|------|------|------|------|
| CC13 | + 36 | + 35 | + 35 | NA | ** |
| AC10 | NA | + 36 | + 45 | * | + 21 |
| Highest | + 65 | + 67 | + 66 | + 63 | + 49 |
| Lowest | + 11 | + 6 | + 12 | + 12 | - 9 |
| Turkey | + 19 | + 20 | + 12 | + 12 | - 9 |
| Poland | + 34 | + 31 | + 46 | + 23 | + 21 |

* The balance score is ranging between + 53 and + 15.

** Bulgaria + 31, Croatia - 30, Romania + 49 and Turkey - 9.

Sources: CCEB 2001, 2002 & 2003; Eurobarometer 62 & 63.

Comment: The following question was put: "Please tell me if you tend to trust or tend not to trust the European Union". The figures are the difference between the share who tend to trust and the share of those who tend not to trust. The CC13 refers to Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey. The AC10 refers to Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Highest refers to the highest balance score of CC13. Lowest refers to the lowest balance score of the CC13.

not included in the table. In the autumn of 2004 the trust increased again, ranging from + 63 in Romania and + 12 in Turkey. Thus it seems that the decline was a contingent phenomenon and that the level of trust is again positively stable. The exceptions are Turkey, where there was a marked decline trust in 2005 compared to the previous year and Croatia, which was included for the first time in the Barometers in 2004 and where the people were obviously dissatisfied with the postponement of their membership negotiations, resulting in a staggering trust balance of - 30 in 2005, down from -1 the previous year.

The EU is most trusted by the Romanians, with scores ranging between + 49 to +67. Malta (2001), Estonia (2002) and Turkey (2003 & 2004) are the countries where the EU is the least trusted, with the lowest score in Turkey in 2005 as mentioned above. The 2002 figure was also quite low but still on the positive side. In Poland finally, trust in the EU is solidly positive, even though there has been a decline in the last two years.

Concerning trust in the European Union, you can conclude that the solidly positive scores indicate that the citizens of the candidate countries have few objections concerning the role of the EU in their policy processes, if they are sufficiently informed, alternatively the EU has kept a sufficiently low-key profile not to arouse any public debate about its involvement. In the two cases where there were negative scores (Turkey and Croatia) the reasons behind the scores seem to be quite obvious and partly related to

the role of the EU being perceived as too demanding, adding conditions in the case of Croatia and raising the bar in the case of Turkey.

The second useful question is whether the citizens in the candidate countries think EU membership is a good, neutral or bad thing. As discussed above, holding the opinion that membership is a good thing can still go together with thinking that the EU has treated your country badly. However, being in favour of membership also indicates that becoming a member was considered a price worth paying. As long as the citizens do not change their minds on EU membership due to the way the EU behaves, there is little reason for the EU to be worried and change its strategy. If, however, there is a surge in EU scepticism, it may, among other things be due to a dissatisfaction with EU involvement.

Table 2: Support of the European Union.

| | 2001 | 2002 | 2003 | 2004 | 2005 |
|---------|------|------|------|------|-------|
| CC13 | + 49 | + 51 | + 56 | + 63 | NA |
| AC10 | NA | + 42 | + 50 | + 27 | + 39 |
| Highest | + 69 | + 76 | + 72 | + 67 | + 46* |
| Lowest | + 8 | + 14 | + 16 | + 10 | + 21 |
| Turkey | + 45 | + 52 | + 56 | + 62 | NA |
| Poland | + 40 | + 41 | + 54 | + 24 | + 46 |

* Among AC10.

Sources: CCEB 2001, 2002, 2003 & 2004; Eurobarometer 64.

Comment: The following question was put: "Generally speaking, do you think that (country's) membership of the European Union would be a good thing/ a bad thing/ neither good nor bad?" The figures are the difference between the share who think membership is good thing and those who think it is bad thing. The CC13 refers to Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey. The AC10 refers to Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Highest refers to the highest balance score of CC13, except for 2005 where it refers to the AC10. Lowest refers to the lowest balance score of the CC13.

Table 2 shows that there is an overwhelming perception that membership is a good thing in almost all the countries concerned. However, for the AC10 there was a marked decline in 2004 but the level was still comfortably high from the EU's point of view. The figures for 2005 only comprise the AC10, which is why Poland held the most positive view that year. When asked whether they were in favour or against an EU membership, 84 percent of the Romanians, 75 percent of the Croats and 74 percent of the Turks were said to be in favour (Eurobarometer 64:35), which indicates that both the Turks and Croats, despite distrusting the EU, still think that

their perceived maltreatment is not reason enough to change their minds about membership. Malta, Estonia and Latvia take turns in being the most sceptical country, with scores ranging between + 8 and + 21. Since all the balance scores are clearly on the positive side, no other conclusion can be drawn, than that the citizens of the candidate countries at least accept the role the EU plays in the domestic policy processes as far as they are aware of it and that positive opinions on membership are not threatened.

Table 3: Results of the accession referenda in 2003

| | For | Against | Turnout | Date of Date of referendum |
|----------------|------|---------|---------|-------------------------------|
| Czech Republic | 77,3 | 22,7 | 55,2 | 13-14 June 2003 |
| Estonia | 66,9 | 33,2 | 64,1 | 14 September 2003 |
| Hungary | 83,8 | 16,2 | 45,6 | 12 April 2003 |
| Latvia | 67,0 | 32,3 | 72,5 | 20 September 2003 |
| Lithuania | 91,0 | 9,0 | 63,3 | 10-11 May 2003 |
| Malta | 53,6 | 46,4 | 91,0 | 8 March 2003 |
| Poland | 77,5 | 22,5 | 58,9 | 7-8 June 2003 |
| Slovakia | 92,5 | 6,2 | 52,2 | 16-17 May 2003 |
| Slovenia | 89,2 | 10,4 | 60,3 | 23 March 2003 |

Sources: Bengtsson 2004:94.

The results of the accession referenda held in all but one of the AC10 (Cyprus) confirm the positive attitudes, even though the low turnout may hide a substantial EU sceptic minority that just did not find it worth the effort to vote, as the outcome was certain. As far as the Eurobarometer data is concerned, those in favour at any given time and in all candidate countries have always outnumbered those against.

The image of the EU is another indicator which gives you a more general picture of the citizens' perceptions. There is no need to repeat the arguments from the discussion on the other questions above. Suffice it to say that the question of the image of the EU complements the indicators above.

The pattern of opinion shown above is repeated concerning the image of the EU. Again there is a clear positive average perception of the EU in both the CC13 and the AC10. Not surprisingly, Romania comes out ahead of the others as the most positive candidate in this round as well and Estonia, Latvia and Malta consolidate their position as harbouring the most sceptical populations. In particular the Estonian scores in 2001 through 2003 were very low, yet the opponents were outnumbered by the adherents. The high Turkish score is perhaps the most surprising given their low trust in the EU in 2005. Their image score reached as high as + 40. Croatia in

Table 4: The image of the European Union

| | 2001 | 2002 | 2003 | 2004 | 2005 |
|---------|------|------|------|------|------|
| CC13 | + 34 | + 35 | + 37 | + 51 | NA |
| AC10 | NA | + 29 | + 26 | + 18 | + 32 |
| Highest | + 65 | + 68 | + 71 | + 66 | + 56 |
| Lowest | + 3 | + 3 | + 7 | + 2 | + 14 |
| Turkey | + 26 | + 29 | + 35 | + 44 | + 40 |
| Poland | + 26 | + 27 | + 26 | + 14 | + 37 |

Sources: CCEB 2001, 2002, 2003 & 2004; Eurobarometer 64.

Comment: The following question was put: "In general, do you have a very positive, fairly positive, neutral, fairly negative or very negative image of the European Union?" The figures are the difference between the share who have a very or fairly positive image and those who have a fairly or very negative image. The CC13 refers to Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey. The AC10 refers to Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Highest refers to the highest balance score of CC13. Lowest refers to the lowest balance score of the CC13.

contrast had the lowest score of all in 2005 at + 13, which matched its low trust score better than the Turkish one, but was still unexpectedly high. Also Poland, despite being generally perceived as a reluctant partner keeps fairly high scores, except for a dip in 2004.²³

In conclusion, the populations in general have a positive image of the EU, which most likely would not be the case if they were dissatisfied with the way the EU interferes in their domestic policy processes. As argued above, it is reasonable to suggest that the populations would have been informed if major conflicts of goals had arisen in their country, which the Estonian and Latvian cases are evidence of.

The last question to be used from the Eurobarometer data is the perception of the pace of your country's adaptation to EU rules and the desired pace. People who disapprove of the extent of EU involvement should be more likely to think the adaptation process is too fast and should be more willing to reduce the speed. If, on the other hand, you would like to increase the speed, it is hardly very likely that you object to the involvement of the

²³ The question of trust in the European Union was also included in the Central and Eastern European Eurobarometer in 1998 and the figures were at that time even more positive among the ten Central European candidate countries, ranging from + 22 (Estonia) to + 51 (Romania) (Central and Eastern Eurobarometer 8). This was before the EU stepped up its presence and involvement in the domestic policy processes and it seems reasonable to suggest that the Estonian decline in their opinion of the EU is an effect of just that increased involvement in sensitive areas. In most countries, however, a similar decline has not taken place, which indicates an acceptance of the shift in the approach of the EU.

Table 5: Desired speed of the accession process.

| | 2001 | | | 2003 | | |
|------------|-------------------------------|------------------|------------|-------------------------------|------------------|------------|
| | Perceived current speed | Desired speed | Difference | Perceived current speed | Desired speed | Difference |
| CC13 | 3.23 | 5.22 | -1.99 | 3.79 | 5.61 | -1.82 |
| AC10 | NA | NA | NA | 4.92 | 5.27 | -0.35 |
| Romania | 3.19 | 6.13 | -2.94 | 3.49 | 6.18 | -2.69 |
| Turkey | 2.49 | 5.48 | -2.99 | 2.68 | 5.83 | -3.15 |
| Slovakia | 3.49 | 4.99 | -1.50 | 4.81 | 5.22 | -0.41 |
| Poland | 3.88 | 4.98 | -1.10 | 5.03 | 5.62 | -0.59 |
| Bulgaria | 3.21 | 4.97 | -1.76 | 3.29 | 5.28 | -1.99 |
| Cyprus | 4.36 | 4.83 | -0.47 | 5.97 | 6.00 | -0.03 |
| Hungary | 3.59 | 4.61 | -1.02 | 4.20 | 4.75 | -0.55 |
| Lithuania | 3.98 | 4.49 | -0.51 | 5.72 | 5.58 | +0.14 |
| Czech rep. | 3.80 | 4.43 | -0.63 | 4.70 | 4.66 | +0.04 |
| Slovenia | 3.92 | 4.15 | -0.23 | 4.89 | 4.94 | -0.05 |
| Malta | 5.13 | 4.05 | +1.08 | 6.32 | 5.07 | +1.25 |
| Latvia | 3.86 | 3.99 | -0.13 | 5.37 | 4.63 | +0.74 |
| Estonia | 4.48 | 3.69 | +0.79 | 5.34 | 3.84 | +1.50 |

Source: CCEB 2001 & 2003.

Comment: The question put is: "In your opinion, what is the current speed of the accession process? Please look at these figures (SHOW CARD WITH SCALE), No 1 is standing still, No 7 is running as fast as possible. Choose the one which best corresponds with your opinion of the current speed of the accession process and which best corresponds to the speed you would like."

EU, since it obviously leads to a quicker rather than a slower integration process. If a higher speed is desired, the interpretation is that EU involvement not only is accepted as a necessary evil, but is instead perceived as highly desirable.

Table 5 shows that the citizens of a majority of the candidate countries preferred a faster pace in the accession process in their own countries in both 2001 and 2003. In 2001 only the two EU sceptics Estonia and Malta desired a slower speed, whereas in 2003 they were joined by the Czech Republic, Latvia and Lithuania. On a seven grade scale, where 1 is standing still and 7 is moving as fast as possible, the CC13 on average set the desired speed at 5.22 in 2001 and 5.61 in 2003, which were almost two points higher than the perception of the actual speed. The Romanians were not surprisingly those who desired the highest speed, coming quite close to the maximum level. The Estonians at the other end of the scale desired the slowest pace of all, just above the middle point on the scale (3.69 and 3.84 respectively). The biggest gap between the perceived and desired pace was not unexpectedly displayed by the Turks.

It is worth pointing out that the most restraining forces are found in those countries which are perceived to be moving at quite a quick pace. A possible explanation is that they were the ones who could “afford” to reduce the speed without jeopardising their membership, whereas the laggards really had to speed things up if they were going to attain their goal. Moreover the accession treaties were ratified in 2003 and the date of accession set, making it quite risk free and even preferable in many respects to opt for a slower pace. Thus, it seems that only Malta and Estonia stand out as genuinely sceptical towards the EU and the integration process, and it is a fair guess that EU involvement, or at least the tough political demands in the case of Estonia, have contributed to this opinion pattern. It should, however, be made very clear that taken together the opinion has markedly leaned in a positive rather than a negative direction in both countries.

To sum this part up, the fact that there is a general overwhelming trust in the EU, a support for the integration process and a desire to speed up the process in the candidate countries, would seem to suggest that there are good reasons for thinking that an equally overwhelming part of the population has or would have few objections to the way the EU is involved in the domestic legislative processes in their countries. The only exceptions to this general pattern are Estonia, Latvia and Malta, who seem to be reluctant and hesitant on most accounts.

5.3 Conclusions

The two questions focused on in this chapter were the extent in which EU involvement in the candidates’ domestic legislative processes resulted in resistance from national decision making actors and the extent in which it was accepted by the citizens. The overall conclusion is that the EU in general has met little resistance from the domestic actors involved. On the contrary, the reactions have, with a few exceptions, been enthusiastic and supportive.

The decision makers in the candidate countries seem to have gone from being slightly sceptical towards EU involvement in the beginning of the legal approximation process, to wielding unconditional support for the assistance offered. There are in all probability several reasons for this change. One reason was that there was a rejuvenation at the ministries and agencies in the candidate countries, a process in which officials with experience from the communist era, who in general were quite unwilling to give up their acquired status of power, were replaced with younger forces, often educated abroad and who, moreover, had a generally more positive attitude towards the EU. Thus, the political culture of scepticism, mistrust

and the clinging to power, gave way to one of mutual trust and shared values. Another reason was that the EU assistance appeared to be efficient and to benefit the candidates, and that the EU actually had good intentions with the assistance and did not use it as a pretext to try to dominate the candidate countries.

You should not turn a blind eye to the problems that still remain, for example the opinion that the EU sometimes runs over the candidate states and tries to dictate the conditions. If things go smoothly, as has generally been the case in the last enlargement round, the EU could be tempted to be more dominating in the next round, convinced that the new candidates will be as docile as the previous ones. If that is not the case, there could be a backlash, with the new candidates turning their back on the EU. In short, the EU should be very keen to understand the attitudes in the new candidate states and should try not to adopt a too dominant role, unless it is absolutely necessary.

The citizens in the candidate states have been equally enthusiastic and supportive of both the EU in principle and the integration process of their own countries. With very few exceptions a clear majority of the people tend to trust the EU, think that EU is a good thing, be supportive of membership, have a positive image of the EU and desire a higher pace in the integration process. There are a few exceptions, some which can be attributed to particular events, such as the postponement of the Croatian negotiation start and the harsh criticism and demand for extensive political and judicial reforms in Turkey. In some cases the scepticism has been more persistent over time, for example in Estonia, Latvia and Malta.

You could explain the low scores in Latvia and Estonia with the fact that they were part of the Soviet Union and even more reluctant to give up their newly won sovereignty. That is true for Lithuania too, however, without resulting in such low levels. The fact that the EU interfered quite persistently with regard to the legislation on citizenship and language in the former two states is therefore a more probable explanation to the sceptical attitude. Moreover, it is the two candidate states that have been told to make profound political reforms (Turkey) and have been given an ultimatum in a politically sensitive issue (Croatia) that display the most sceptical attitude among the current candidate countries, whereas Romania who has been criticized quite harshly in most evaluations, but mainly on less nationally sensitive subjects is found at the opposite end of the scale. Thus it would seem that EU involvement and demands concerning political issues that are considered sensitive to the nation have a much stronger impact on EU opinion in candidate countries than the general level and extent of overall

involvement. The Maltese reluctance also has historic roots, since it was the only country which has frozen an application, due to a lack of political will (Baun 2000:77).

To summarise, the opinion of the people of the candidate countries indicates that EU integration has not had a negative impact on their views in these matters and you could even suggest that they have or would have had few objections to the way the EU has been involved in the national legislative processes. The same goes for the decision makers.

6 CONCLUDING REMARKS

Since the conclusions of the two main sections have already been made, the question left to discuss is how the EU should deal with legal harmonisation in candidate countries in future enlargement processes. The study has shown that the EU has continuously improved its handling of legal approximation, both in terms of the procedures, which are less objectionable from a democratic point of view than during the earlier phases of the integration process and also in terms of the outcome. The efficiency has clearly increased, which was beneficial to the previous candidate countries' before they become members and which should also benefit future candidates in the same way.

As has been discussed elsewhere in the report, the EU has every reason to be satisfied with the current system of assistance for the approximation of the *Acquis* and apart from minor flaws it should be kept intact during the next enlargement rounds. You should bear in mind, however, that the new member state and the soon-to-be member states (Romania and Bulgaria) have been quite exceptional in terms of support and overall enthusiasm for accession, ever since the fall of the Berlin wall. It has been the highest priority and no price seems to be too high for attaining this goal. Accordingly, the elites as well as the citizens of these countries have put up with and accepted the extent of EU involvement, without complaining too much. It is far from certain that that will be the case in future enlargement rounds as well. There have already been indications of widespread dissatisfaction with how the EU conditions the integration process, even though the vast majority of the people are still in favour of membership. The crucial question will be how the decision makers and the people will handle the difficult trade-offs between the overall priority of EU membership and what it takes in terms of reforms of politically sensitive issues to get there. Given that EU membership remains the overarching priority, there will be fewer problems than if the same issues are considered non-negotiable from the candidates' point of view. The priority between membership and giving in on politically sensitive issues is obviously related to the general adherence to and understanding of the norms and values, such as democracy and a free market, that form the ideological basis of the European Union. If these norms and values are accepted by the candidate countries, the major problem aligning the legislation with the *Acquis* would be more technical in nature and as easily solved as in previous enlargements. If, however, there is the slightest doubt with regard to these norms and values, the integration process is bound to be very problematic.

The question is thus how the EU should deal with the latter types of states.

The base line is perfectly clear. The Copenhagen criteria should be fulfilled before joining the Union, but the tricky business will be to get hesitant candidates to that point. The assumption for making the effort to do so is of course that the EU, the candidate in question and the whole of Europe have a great deal to gain from such a process. The EU approach has to be more cautious and strike a fine balance between firm demands and flexible concessions, particularly on politically sensitive issues. The results of this study indicate that the extent of involvement in the legislative process is not the primary cause of concern in the candidate countries. Instead it is the types of issues that the EU interferes in that determines how the EU will be perceived by the candidate in question. The citizenship legislation in Estonia and Latvia, as well as the demand for extensive political and judicial reforms in Turkey are cases in point. Therefore it may be wise to neither take direct part in the drafting of legislation nor to demand this too demonstratively or in the most sensitive areas, but instead keep a low profile and provide assistance in the background. It will for sure be difficult for the EU to tell in advance which issues that are too sensitive to get openly involved in, since such matters tend to differ between countries. But from the Estonian, Latvian and Turkish experience it seems that issues which in the eyes of the public and the elite to some extent pose a threat to the national identity and involve ethnic minority issues are particularly sensitive. Bearing in mind the current situation and recent history of the western Balkans, which is next in line to join the EU, the EU will have to tread carefully in order not to stir nationalistic feelings in those countries. Legitimacy, both for the EU as well as for the domestic political institutions, will be strengthened if the domestic decision makers have argued for their cause and if they take full responsibility for sensitive decisions, without blaming the EU.

It is the type of candidate state that thus provides the key to which strategy the EU should select. If there is a consensus on the merits of membership and a genuine understanding and acceptance of the norms and values underpinning the EU, then the EU can afford to be very demanding without any negative consequences in terms of elite or mass scepticism. In a more sceptical candidate country, the effects of such a strategy would apparently be very different. If the basic terms for the negotiations are not readily accepted, a strategy that is perceived to be too intrusive could easily lead to more nationalistic forces gaining ground, to the detriment of the continent as a whole.

SAMMANFATTNING PÅ SVENSKA

En studie av EU:s roll i lagstiftningsprocesserna i ansökarstater och dess konsekvenser för kommande utvidgningar

Denna studie handlar om EU:s roll i lagstiftningsprocesserna i de förutvarande och nuvarande ansökarstaterna i Öst- och Centraleuropa och tar sin utgångspunkt i den unika process som anpassningen till EU utgör. De krav som ställs för att ett land skall bli medlem i EU är oerhört rigorösa och måste ovillkorligen uppfyllas, vilket innebär att termen medlemskapsförhandlingar är något missvisande. Det råder med andra ord en stark asymmetrisk maktrelation mellan EU och ansökarstaterna, där de senare i princip bara har att anpassa sig till de villkor som ställs. Det faktum att EU inte bara är en passiv åskådare i denna anpassningsprocess, utan tvärtom en synnerligen aktiv aktör, gör att frågor kring demokrati och suveränitet blir särskilt intressanta.

Vid toppmötet i Köpenhamn 1993 fastställde Europeiska Rådet de kriterier som måste uppfyllas för att ett land skall kunna bli medlem i EU. Denna studie fokuserar på ett av dessa, nämligen det som innebär förmågan att ta på sig de skyldigheter som följer med medlemskapet, vilket bl.a. innefattar införlivning av EU:s omfattande lagstiftning i den nationella lagstiftningen. Syftet med studien är tvådelat. För det första, syftar den till att beskriva hur EU har agerat gentemot ansökarstaterna vad gäller just anpassningen till EU:s lagstiftning och på vilket sätt EU har sett till att de krav som ställs uppfylls. För det andra syftar studien till att analysera vilka konsekvenser EU:s agerande får, vad gäller beslutsfattarnas och befolkningarnas inställning till EU och till EU-integrationen och vilka lärdomar man kan ta med sig inför kommande utvidgningar.

I studiens första avsnitt diskuteras EU-integrationen utifrån ett demokrati- och suveränitetsperspektiv. Två huvudsakliga problem tas upp. Det första rör svårigheterna att upprätthålla acceptabla demokratiska procedurer, såsom konsultationer med intresseorganisationer och civilsamhället samt parlamentarisk granskning och debatt, då en mycket stor mängd lagstiftning på mycket kort tid skall införlivas i den nationella lagstiftningen. Demokrati står här mot effektivitet. Det andra problemet rör det faktum att en extern aktör, i det här fallet EU, inte bara talar om för en annan stat vilka lagar som skall antas, utan också är med att utforma den faktiska lagtexten. En känsla av att de demokratiska procedurerna åsidosätts och att EU tar en alltför stor plats i det nationella beslutsfattandet riskerar att ge upphov till motstånd från ansökarstaternas sida. Detta motiverar således att EU:s roll i ansökarstaterna samt dess konsekvenser undersöks, i synnerhet eftersom systematiska studier härvidlag saknas.

Studien avser att besvara följande frågor:

- Vilket inflytande har EU över ansökarstaternas lagstiftningsagenda?
- På vilket sätt är EU involverat i det nationella beslutsfattandet i ansökarstaterna?
- I vilka/en fas/er av lagstiftningsprocessen är EU inblandat?
- Hur försäkrar sig EU om att ansökarstaterna uppfyller sina åtaganden?
- I vilken utsträckning har EU:s inblandning i de nationella lagstiftningsprocesserna lett till motstånd från de nationella beslutsfattarna i ansökarstaterna?
- I vilken utsträckning är EU:s inblandning accepterat bland ansökarstaternas befolkningar?
- Hur bör EU hantera anpassningen till EU:s lagstiftning i kommande utvidgningsprocesser?

I kapitel fyra besvaras de fyra första frågeställningarna. EU har på det hela taget successivt ökat sin inblandning i ansökarstaternas lagstiftningsprocesser. I de Europaavtal som undertecknades mellan 1991 och 1996 förband sig ansökarstaterna att anpassa sig till EU:s lagstiftning på ett antal områden utan att några konkreta sanktioner hotade om framsteg skulle utebli. EU:s bistånd var under dessa tidiga år inriktat på andra områden än anpassningen av lagstiftning, vilket innebär att EU inte var särskilt involverat i lagstiftningsprocesserna under dessa tidiga år.

Vid toppmötet i Essen 1994 igångsattes den sk. föranslutningsstrategin (pre-accession strategy), vilken betonade behovet av stödåtgärder för införlivningen av lagstiftning. Som ett led i denna strategi publicerades en vitbok, vilken innehöll detaljerade rekommendationer för i vilken ordning lagstiftningen vad gäller den inre marknaden skulle införlivas. Detta innebar en hjälp för ansökarstaterna att strukturera lagstiftningsarbetet. Genom att biståndet från och med 1995 också kom att innefatta stödåtgärder för att införliva lagstiftning kom EU att trappa upp sitt inflytande i ansökarstaternas lagstiftningsprocesser. Stödet innebar bl. a. att EU och dess medlemsländer skickade experter på olika områden till ansökarstaterna för att där fungera som rådgivare och ibland också som författare till lagtexter. Stödet gavs huvudsakligen till regeringarna och var inriktat mot framarbetandet av lagförslag, medan senare skeden i lagstiftningsprocessen förbistågs. Inte heller var det fråga om något regelrätt samarbete mellan EU-experterna och de nationella beslutsfattarna, utan de förra jobbade i stor utsträckning på egen hand.

1998 kom EU att förbättra flera av de problem som förelåg med det gamla

stödet för lagstiftningsbiståndet. Ett program som kallades Twinning skapades och detta byggde i större utsträckning på ansökarstaternas individuella behov och baserades på de kontinuerliga utvärderingar som Kommissionen från 1997 och framåt publicerade. Dessutom strukturerades expertutbytena upp väsentligt och samarbetet mellan de nationella beslutsfattarna och experterna stärktes. Projekten kom också att löpa över längre tid. EU kom således att ytterligare öka sin inblandning i ansökarstaterna under denna period, men strategin gjordes samtidigt mer effektiv och mer demokratiskt acceptabel.

Vad gäller konsekvenserna av EU:s inblandning rörande inställningen till EU och EU-integrationen kan konstateras att det under hela processen på det hela taget rått en positiv attityd bland såväl beslutsfattare som befolkning.

Under de tidiga skedena av anpassningsprocessen fanns vissa tveksamheter bland beslutsfattarna, framförallt beroende på att deras maktbas ansågs hotad samt missnöje med att EU påtog sig en alltför dominant roll i lagstiftningsprocessen, vilket upplevdes som att EU dikterade villkoren. Dessa smärre missnöjesyttringar gav emellertid vika och under de senaste åren har den hjälp som EU bistår med kommit att uppskattas mycket.

Även befolkningarna i ansökarstaterna har på det hela taget varit mycket positiva till EU. De frågor som tas upp i studien rör förtroendet för EU, huruvida medlemskap är något bra, hur man tänker rösta om det vore folkomröstning, vilken bild man har av EU samt i vilken takt man vill att anpassningen skall gå. På samtliga frågor och under hela undersökningsperioden (2001-2005) ställer sig en stor majoritet av befolkningen positiv till EU. De undantag som finns är Estland och Lettland som är de två skeptikerna bland de forna ansökarstaterna. I dessa länder ställer sig endast en knapp majoritet positiv till EU och EU-integration, vilket sannolikt beror på EU:s inblandning i den känsliga medborgarskapsfrågan. Även i Turkiet och Kroatien kan ett visst missnöje skönjas, vilket torde hänga ihop med EU:s omfattande krav på politiska och juridiska reformer i det första fallet och uppskjutandet av förhandlingsstarten i det andra. Eftersom Rumänien uppvisar den särklassigt mest positiva attityden till EU, trots stora krav och omfattande kritik från EU, kan det konstateras att det knappast är omfattningen av EU:s inblandning som ger upphov till missnöjet, utan snarare i vilken typ av frågor som EU blandar sig i.

Studiens slutsats är således att EU har hittat ett verkningsfullt instrument för att hantera den känsliga frågan som anpassningen till EU:s gemensamma lagstiftning innebär. Även om problem fortfarande kvarstår, anses de

nuvarande biståndsformer tillgodose de demokratiska behov som finns i termer av ökat samarbete mellan experter och de nationella beslutsfattarna. Inte heller har EU:s lagstiftningsbistånd givit upphov till någon fientlig eller ens tveksam inställning till EU. Tvärtom förefaller EU:s engagemang uppskattas, eftersom det ses som ett underlättande och påskyndande av anpassningsprocessen. Det bör dock påpekas att de central- och östeuropeiska staterna generellt varit oerhört angelägna att nå ett EU-medlemskap. Detta är inte en självklarhet i kommande utvidgningsprocesser. Den strategi EU väljer måste alltså anpassas till de specifika omständigheter som råder i ansökarstaten i fråga. I de fall det finns en genuin vilja att gå med samt en förståelse för de krav och villkor som gäller kan EU använda sig av den beprövade metoden. Om det inte finns en sådan konsensus måste emellertid EU vara mer varsam, inte minst vad gäller områden med stor politisk sprängkraft.

7 REFERENCES

Baun, M. J., *A Wider Europe. The process and politics of European Union enlargement* (Rowman & Littlefield, 2000)

Bengtsson, R., *Historisk brytpunkt i Europa. EU:s utvidgning* (SNS Förlag, 2004)

Candidate Countries Eurobarometer 2001-2003 (Brussels).

Available at http://europa.eu.int/comm/public_opinion/cceb_en.htm

Eurobarometer, No 62-64 (2004 -2005) (Brussels) Available at:

http://europa.eu.int/comm/public_opinion/standard_en.htm

European Commission, White Paper of 3 May 1995: Preparation of the associated countries of Central and Eastern Europe for integration into the Internal Market of the Union (COM (1995) 163 final). Available at:

<http://europa.eu.int/en/agenda/peco-w/en>

European Commission, Agenda 2000 – Commission Opinion on [country's] Application for Membership of the European Union (Com (1997) 2001-2010 final)

European Commission, *Evaluation of Phare Programmes in Support of EU Integration and Law Approximation*, Vol. 1, Final Report (May 1999a).

Available at: http://europa.eu.int/comm/europeaid/evaluation/reports/cards/951483_fin.pdf

European Commission, *Evaluation of Phare Programmes in Support of EU Integration and Law Approximation*, Vol. 2, Poland, Final Report (May 1999b).

Available at:

http://europa.eu.int/comm/europeaid/evaluation/reports/cards/951483_pl.pdf

European Commission, *Report on an Assessment of the Twinning Instrument under Phare* (July 2000).

Available at: www.europa.eu.int/comm/enlargement/pas/twinning/pdf/assessm_july.pdf

European Commission, *Twinning in Action* (October 2001)

European Commission, The Phare Programme Annual Report 2001 (COM (2003) 97 final) (2003a)

European Commission, *Taiex Activity Report 2003* (Brussels, 2003b).

Available at: <http://taiex.cec.eu.int>

European Commission, *Taiex Activity Report 2004* (Brussels, 2004).
Available at: <http://taiex.cec.eu.int>

European Commission, *Twinning: A Tested Experience in a Broader European Context* (Brussels, October 2005).
Available at: www.europa.eu.int/comm/enlargement/pas/twinning/pdf/assesm_july.pdf

European Commission, 2006a, www.europa.eu.int/comm/enlargement/intro/criteria.htm (Enlargement criteria)

European Commission, 2006b, www.europa.eu.int/comm/enlargement/romania/eu_relations.htm (Safeguard clause)

European Commission 2006c, www.europa.eu.int/comm/enlargement/bulgaria/eu_relations.htm (Bulgarian – EU relations)

European Commission, 2006d,
http://europa.eu.int/comm/enlargement/pas/europe_agr.htm
(Europe Agreements)

European Commission, 2006e,
www.europa.eu.int/comm/enlargement/pas/phare/intro.htm
(Twinning/Phare)

European Commission, 2006f,
www.europa.eu.int/comm/enlargement/pas/twinning (Twinning/Phare)

European Commission, 2006g,
www.europa.eu.int/comm/enlargement/phare/focus.htm (Twinning light)

European Commission, 2006h,
www.europa.eu.int/comm/enlargement/pas/aps.htm (Accession Partnership)

Glenn, J. K., From Nation-States to Member States: Accession Negotiations as an Instrument of Europeanization, *Comparative European Politics*, 2 (2004), 3-28

Grabbe, H., How does Europeanization affect CEE governance? Conditionality, diffusion and diversity, *Journal of European Public Policy*, 8:6 (2001)

Grabbe, H., European Union Conditionality and the *Acquis Communautaire*, *International Political Science Review*, 23:3 (2002)

Hughes, J., *et al.*, Conditionality and Compliance in the EU's Eastward Enlargement: Regional Policy and the reform of Sub-national Government, *Journal of Common Market Studies*, 42:3 (2004)

Mayhew, A., *Recreating Europe. The European Union's Policy towards Central and Eastern Europe* (Cambridge University Press, 1998)

Official Journal of the European Union, *Special Report No 6/2003 concerning twinning as the main instrument to support institution-building in candidate countries together with the Commissions' replies* (OJ 2003 C 167/02)

Papadimitriou, D., *Negotiating the New Europe. The European Union and Eastern Europe* (Ashgate, 2002)

Papadimitriou, D. and Phinnemore, D., Europeanization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform in Romania, *Journal of Common Market Studies*, 42:3 (2004)

Pabriks, A and Purs, A., *Latvia. The challenges of change*, in Smith, D. J. et al. *The Baltic States. Estonia, Latvia and Lithuania* (Routledge, 2002)

Raik, K., EU Accession of Central and Eastern European Countries: Democracy and Integration as Conflicting Logics, *East European Politics and Societies*, 18:4 (2004)

Rehn, O., Is the future enlargement of the EU in peril?, Speech held at the *European Policy Center*, Brussels, 20 June 2005. Available online at: www.delmkd.cec.eu.int/en/whatsnew/2005/15%20Olli%20Rehn%20speech%20EU%20future.htm

Schimmelfennig, F., and Sedelmeier, U., Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe, *Journal of Public Policy*, 11:4 (2004)

Smith, D. J., Estonia. Independence and European integration, in Smith, D. J. et al. *The Baltic States. Estonia, Latvia and Lithuania* (Routledge, 2002)

Spendzharova, A. B., Bringing Europe In? The Impact of EU Conditionality on Bulgarian and Romanian Politics, *Southeast European Politics*, 4:2–3 (2004)

Tallberg, J., Paths to Compliance: Enforcement, Management, and the European Union, *International Organization*, 56:3 (2002)

Interviews (September, 2005)

Lithuanian official, Lithuanian mission in Brussels

Romanian official, Romanian mission in Brussels

Official, DG Enlargement, Romanian Team

Official, DG Enlargement, desk officer for Romania

Official, DG Enlargement, Slovakian, Maltese and Romanian Teams
Official, DG Enlargement, Polish and Romanian Teams
Official, DG Enlargement, Lithuanian Team
Official, DG Enlargement, Lithuanian Team
Official, DG Enlargement, Cabinet (Estonia, Latvia, Lithuania and Poland)

SIEPS PUBLICATIONS AVAILABLE IN ENGLISH

2006:2

Armed and Ready? The EU Battlegroup Concept and the Nordic Battlegroup

Author: Jan Joel Andersson

2006:1

Leader or Foot-Dragger? Perceptions of the European Union in Multilateral International Negotiations

Author: Ole Elgström

2005:2op

The 2005 UK Presidency: Beyond the British Question?

Author: Edward Best

2005:10

The Role of the National Courts in the European Union:

A Future Perspective

Author : Xavier Groussot

2005:9

Is the Commission the Small Member States' Best Friend?

Authors: Simone Bunse, Paul Magnette and Kalypso Nicolaïdis

2005:8

What Remains of the Stability Pact and What Next?

Author: Lars Calmfors

2005:7

European Integration and Trade Diversion: Yeats revisited

Authors: Ari Kokko, Thomas Mathä and Patrik Gustavsson Tingvall

2005:5

From Policy Takers to Policy Makers:

Adapting EU Cohesion Policy to the Needs of the New Member States

Editors: Jonas Eriksson, Bengt O. Karlsson and Daniel Tarschys

2005:4

The Enigma of European Added Value:

Setting Priorities for the European Union

Author: Daniel Tarschys

2005:1op

The 2005 Luxembourg Presidency:

*A Presidency Devoted to the Stability and Growth Pact
and to the Lisbon Process*

Authors: Patrick Dumont and Philippe Poirier

2004:9

The Political Dynamics of Turkish Accession to the EU:

A European Success Story or the EU's Most Contested Enlargement?

Author: Kirsty Hughes

- 2004:1op
The Netherlands 2004 EU Council Presidency
 – *Dutch EU Policy-making in the Spotlights*
 Author: Mendeltje van Keulen
- 2004:1u
European Governance
 – *an Overview of the Commission's Agenda for Reform*
 Authors: Josefin Almer and Matilda Rotkirch
- 2003:1op
Contrasting Transatlantic Interpretations
 – *the EU and the US towards a Common Global Role*
 Author: Ludger Kühnhardt
- 2003:19
Industrial Structure and Industry Location in an Enlarged Europe
 Author: Karolina Ekholm
- 2003:18
Coming of Age? Economic Management of the European Union
 Authors: Per Molander and Allan Gustafsson
- 2003:17
Reinventing Cohesion: The Future of European Structural Policy
 Author: Daniel Tarschys
- 2003:14
Decentralized Agencies and the IGC – a Question of Accountability
 Authors: Carl Fredrik Bergström and Matilda Rotkirch
- 2003:9
Reforming the Council – a Work in Progress
 Authors: Helen Wallace and Fiona Hayes-Renshaw
- 2003:8
Simply Simplification? The Proposal for a Hierarchy of Legal Acts
 Authors: Carl Fredrik Bergström and Matilda Rotkirch
- 2003:7
The Invisible Transformation of Codecision
 – *Problems of Democratic Legitimacy*
 Authors: Henry Farrell and Adrienne Héritier
- 2003:1
The Open Method of Coordination
 – *a New Governance Architecture for the European Union?*
 Author: Claudio M Radaelli



Swedish Institute for European Policy Studies

Universitetsvägen 10 F
SE-106 91 Stockholm
Office: Stockholms universitet,
Frescati, House F, 6th floor
Tel: +46-(0)8-16 46 00
Fax: +46-(0)8-16 46 66
E-mail: info@sieps.se
www.sieps.se