

EDITORIAL COMMENTS

AGENDA 2000: For a stronger and wider Union

Ever since the European Council of Copenhagen in 1993 took the historic decision to enlarge the Union towards the countries of Central and Eastern Europe there has been a dramatic sense of venturing into unknown realms of cooperation and integration. This decision accelerated the process of integration which started after the implosion of the former socialist States in Central and Eastern Europe. The initial impetus for this process was formed by the conclusion of the Europe Agreements, the first of which were negotiated in 1990 and signed on 16 December 1991 with Poland, Hungary and the Czecho-Slovak republic (subsequently the Czech and Slovak republics).¹

The Commission's communication, "Agenda 2000," was published shortly after the Amsterdam IGC.² It was accompanied by separate opinions on the application for membership of the EU of the ten coun-

1. See Maresceau and Montaguti, "The Relations between the European Union and Central and Eastern Europe: A legal appraisal", 32 CML Rev. (1995), 1327–1367. See further Maresceau (Ed.), *Enlarging the European Union, Relations between the EU and Central and Eastern Europe* (Longman, London, 1997), which provides an extensive overview of many of the issues involved in enlargement. During the same period the Community started negotiations with Cyprus.

2. Document drawn up on the basis of COM(97) 2000 final, Bull. EU, Supp. 5/97. On 18 March 1998 the Commission adopted legislative proposals for the implementation of Agenda 2000, the proposals concern agricultural regulations, regulations on the structural and cohesion funds, instruments for the pre-accession period and financial perspectives for 2000–2006.

tries of Central and Eastern Europe.³ In December 1997 the Luxembourg Council endorsed the Commission's recommendation to open negotiations with Hungary, Poland, Estonia, the Czech Republic and Slovenia. The other applications will, for the time being, be accommodated in the Partnership programmes.

Now that the enlargement negotiations have started in earnest it is time to assess the main features of this process and to look at the conditions which have to be met for attaining the objectives.⁴ It is useful to distinguish clearly between the conditions which the EU itself has to meet: the conditions for enlargement, and the conditions which the applicants have to meet: the conditions for entry. Looming large among the former are the issues of institutional reform of the Union. These subjects were at the centre of attention at the Amsterdam IGC, and have accordingly already been discussed in this journal.⁵ Moreover, as they will also be given further attention in more extensive future contributions, these institutional issues will not be addressed here. The main substantive conditions for enlargement, that is, for putting the EU house in order, are, according to the Commission, the following:

- setting the conditions for sustainable growth and employment especially in the light of the advent of the EMU;
- putting knowledge at the forefront;
- modernizing employment systems;
- improving living conditions;
- continuing to strive for cohesion. This includes a reassessment of the goals and the operation of the cohesion funds as well as reforming the structural funds;

3. Bull. EU, 6/97 Hungary, 7/97 Poland, 8/97 Romania, 9/97 Slovakia, 10/97 Latvia, 11/97 Estonia, 12/97 Lithuania, 13/97 Bulgaria, 14/97 the Czech republic, and 15/97 Slovenia.

4. In writing this editorial, great benefit has been derived from an Opinion from the SER, the Social and Economic Council in the Netherlands, on the topic of Agenda 2000: enlargement and its financing. Similar tributes are due to House of Lords Select Committee on the European Community, Session 1997–1998, 10th Report, “The Financial Consequences of Enlargement”.

5. See the Editorials in this Review, “The Treaty of Amsterdam: Neither a bang nor a whimper” 34 *CML Rev.*, 767–772 and “Union without constitution”, 34 *CML Rev.*, 1105–1111.

- new orientations for the CAP, and finally
- the new financial framework.

A few words on the cohesion and the structural funds, the development of the CAP and the financial framework may be appropriate here. It should be recalled that the cohesion funds were the creation of the Maastricht IGC in order to assist Member States to meet the goals of the Economic and Monetary Union. This idea was eventually laid down in the Protocol on Economic and Social Cohesion which referred to the economic convergence criteria as set out in Article 104C EC.⁶ Article 130D, last paragraph, EC instructs the Council to set up a Cohesion Fund to provide a financial contribution to projects in the field of environment and trans-European networks in the area of transport infrastructure. The Cohesion Fund was duly established by Regulation 1164/94.⁷ There is a total of some ECU 3 billion per annum available. Although the text of Article 130D does not link the provision of cohesion funding with meeting the economic convergence requirements of Article 104C EC, the text of the Protocol on Economic and Social Cohesion stipulates that the “cohesion Member States” must pursue a programme which enables them to meet the economic convergence criteria of Article 104C EC.⁸ Following this requirement, the provision of the Cohesion Funds can actually be continued after the entry into force of stage 3 of the EMU.⁹ In line with this view, the Commission proposes “that this fund be maintained in its present form.

6. These criteria are laid down in Art. 1 of the Protocol on the excessive deficit procedure in the Maastricht Treaty. These criteria should be distinguished from the convergence criteria for the passage to the third stage of the EMU contained in the Protocol on the convergence criteria referred to in Art. 109J EC. By referring to the convergence criteria laid down in Art. 104C rather than to the criteria in the Protocol on convergence criteria for the passage to the third stage of the EMU the assistance was no longer strictly linked to preparatory stage of the EMU.

7. O.J. 1994, L 130/1.

8. This is reiterated in Art. 2(1) of Reg. 1164/94.

9. If it assumed that the provision of the Cohesion Funds is linked to meeting the convergence criteria of Art. 109J, the criteria for acceding to the third stage of the EMU, then it is logical that the funds will no longer be provided to Member States who have acceded to the third stage. This is the position in the Opinion by the Dutch SER, cited *supra* note 4, p. 56.

For countries taking part in the third phase of EMU, this will require compliance with the Stability and Growth Pact and in particular the stability programmes.”¹⁰

It should be observed that the Commission does not propose to provide Cohesion funds for the new entrants. However, it does propose, to provide, apart from the Phare funds, additional resources for the pre-accession period to the newcomers, who on their way to full membership are also committed to participating in the third stage of the EMU. Even though the Commission's interpretation is in line with the text of the Maastricht Protocols it is nevertheless to be regretted that the Cohesion Funds are without discussion continued for the present Member States while the funds as such are not extended to the newcomers.

The structural funds have been around in the Community much longer. In their present form they were introduced in Articles 130A–130E by the Single European Act.¹¹ They also represent a much higher level of assistance than the cohesion funds. At the European Council in Edinburgh a level of 0.46% of the Union's GNP was set. This represents some ECU 30 billion annually: the second largest EU budget item. For the structural funds the Commission proposes a considerable reorganization with a view to making the funds more effective. The Commission also proposes to limit transfers to a maximum of 4% of the GNP of the recipient Member State, in order not to exceed the absorption capacity of the recipient.¹² The present seven objectives will be reduced to three: regional development, economic and social restructuring, and the development of human resources. For objective 1, regional development, a 75% threshold will be introduced, limiting assistance to Member States whose GNP is below 75% of the average Community GNP. The Commission, in its latest proposals of 18

10. Agenda 2000, Bull. EU 5/97, 24.

11. Their implementation was effected by Reg. 2052/88, O.J. 1988, L 185/9 and Reg. 4254/88, O.J. 1988, L 374/1.

12. In the economic literature it is generally assumed that there is an inherent limit as to the amount of financial assistance which a country can absorb, beyond which funds will be more or less wasted, see e.g. Rollo, “Economic Aspects of EU Enlargement to the East”, in Maresceau (Ed.) *op. cit. supra* note 1, pp. 252–276.

March 1998, invites the Member States to propose new criteria for the new objective 2. But in doing so Member States must respect the condition that the totality of the new areas should not cover more than 18% of the EU population. Although this goes same way to reduce the provision of structural funds to the wealthier Member States, the Commission shies away from proposing a threshold for assistance from the structural funds where objectives 2 and 3 are concerned. Thus, wealthy Member States will continue to enjoy benefits from the structural funds even if they may at times be hard pressed to find suitable projects. Furthermore, the Commission notes that there are at present some 13 Community initiatives resulting in around 400 projects. It proposes to trim the number of projects, resulting in a 5% saving.

The Commission also proposes to include the new entrants in the benefits of the structural funds, to the amount of ECU 11.6 billion. To this end, it wants to reduce the benefits for the present Member States from ECU 31.3 billion in 2000 to ECU 27.3 billion in 2006.

The Common Agricultural Policy remains in the limelight of the Community's reform efforts, not least because this policy takes the largest share of the Community's budget, at 0.6% of GNP. Reforming the CAP is widely thought necessary in order for the Community producers to meet the challenges of the world market, in particular in the context of increasingly liberalized markets. It is also public knowledge that enlargement has special problems in store due to both the size of the agricultural sectors in the Central and Eastern European States and their price and productivity level. The Commission's communication contains a relatively long section on the CAP reform process. The Commission's proposals of 18 March 1998 tighten up the proposed cuts in the dairy sector. Instead of a 10% reduction of the intervention price, 15% is proposed, although this is partly offset by an increase in the level of income support. The financial consequences of the Commission's proposals are that whilst keeping in line with the CAP financial guideline, there will be a slight increase in expenditures for the 15, from a total of ECU 41 billion in 2000 to 42 in 2006, and additional expenditures for the newcomers of ECU 3.8 billion. In order to put this figure into perspective, it should also be observed that the Commission does not foresee any expenditures for the entrants for price support.

This seems to be a serious flaw in its proposals. It may be acceptable as a transitional measure, not to introduce the same price support in the new Member States as is presently applied in the 15, but it is naive to think that such differential treatment can be sustained in the longer term. The experience in Germany with the former East *Länder* shows the cost of such an exercise, but it is doubtful if this could provide a blueprint for the EU. The enlargement should be the occasion for a complete review of the CAP.

The new financial framework

The Commission's proposals cover the period 2000–2006. The Communication proposes that the enlargement take place within the present medium term financial framework. This represents a ceiling of 1.27% of the Community GNP. It should be recalled that the financial framework can only be amended by unanimous Council vote, hence the political attractiveness of the Commission's proposal. The Commission's budget calculations are based on an average real growth rate of 2.5% annually, which creates an additional ECU 20 billion by the year 2006. Given the recent trends in the average Community growth rate, this seems to be a somewhat optimistic assumption. A growth rate of 2% would be more in line with recent trends, which would only result in an increase of ECU 16 billion. The Commission does not discuss the credibility of its assumptions. The Commission is of the opinion that this budgetary framework will be adequate for the necessary additional outlays for enlargement.

We should also remember that the Commission's financial framework is subject to two important conditions which were briefly indicated above i.e. the reform of the structural funds and the CAP.¹³ It would seem that the combined effect of the Commission's financial framework is based on overly optimistic assumptions, while leaving out important policy aspirations on the side of the new entrants. These have

13. The House of Lords Report cited *supra* note 4, at p. 7, puts it succinctly: "Reform of the Common Agricultural Policy is pivotal to the financing of enlargement."

been identified earlier as an understandable wish to see the price support measures in the agricultural sector extended to the new entrants.

Another element of concern related to the new financial framework is the problem of “net contributorship”. Ever since Mrs Thatcher secured for the United Kingdom its rebate from the Community budget in 1985, coupled with the less than proportionate contribution to financing this rebate granted to Germany, the ghost of the principle of the “*juste retour*” has been around in the Community.¹⁴ At the moment of writing this editorial, some ministers of finance are already sharpening their swords for the next round in the battle over net contributions. The Commission may consciously or unconsciously have fuelled this debate by failing to address some key issues in its new financial framework. It has thus not allayed fears that increased contributions for enlargement may in fact be necessary. At the same time it cannot be expected that the issue of rebates will disappear as long as the Community is unable to agree on criteria for contributions to the budget. There is another danger in leaving this problem unsolved. Some Member States may, in order to achieve what they consider to be a “*juste retour*”, seek additional benefits from the structural funds even though this would run counter to their avowed principle of operating these funds in an efficient manner.

With regard to the other side of the coin, the 1993 Copenhagen Council has defined the entry conditions as follows;

“membership requires that the candidate country:

- has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities,
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union, and

14. The House of Lords Report, at p. 24, states: “The present system may suit the United Kingdom but it is not accepted as conspicuously fair or transparent. In many British eyes the CAP in its application across the EU is an unfair subsidy to be cut back or abolished, but to non-British eyes the United Kingdom’s rebate is also a source of dissension in the EU.”

- [has] the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.”

The Commission observes “that the Copenhagen criteria are broad in political and economic terms and go beyond the *acquis communautaire* (for example assessing the administrative and judicial capacity) and because the *acquis* itself has expanded considerably since previous enlargements.”¹⁵ The legal community in the Union should be aware of the enormous tasks that our politicians have, in taking their decision on enlargement, and without prior democratic consultation of the European or the National Parliaments, thrust upon us. In view of the historical momentum of this integration process, it is not realistic, and even borders on cowardice, to question their judgement. Yet our profession has to be prepared to shoulder the immense burden that the implementation of the *acquis communautaire* in the countries of Central and Eastern Europe will require. One thing is certain, however: without an unprecedented effort to achieve this task, the Community legal order will weaken and the discipline now present in the Europe of the 15 will gradually be eroded until there is not enough left to sustain the very essence of that order, or of the Community itself.

15. Agenda 2000 at p. 39.