

## Chapter 2

# The EU Enlargement

### 2.1 History

Since the establishment of the European Coal and Steel Community (ECSC) in 1952, the European integration process has constantly developed both in terms of the increasing number of nations joining the European Union and in terms of revisions and amendments of the founding Treaties in order to better match the needs and necessities of the European states and citizens. The merging of the institutions of the ECSC, the European Economic Community (EEC) and the European Atomic Energy Community (EAEC) in 1967 was the first big EU reform, establishing a single Commission, a single Council of Ministers as well as the European Parliament. At the time, there were six members of the EEC, the so-called founding countries Belgium, Germany, Luxembourg, France, Italy and the Netherlands. The next step in the history of the European treaties, i.e., the adoption of the Single European Act in 1986 modifying the founding treaties and introducing qualified majority voting, was accepted by the European Community which had been enlarged to 12 Member States—Denmark, Ireland and the United Kingdom (1973), Greece (1981), and Spain and Portugal (1986). A complete new era for the Community started in the early 1990s with the adoption of the Treaty of Maastricht in 1992 and with the launch of the internal market on 1 January 1993. The Treaty of Maastricht established the three-pillar structure, introducing a pillar on Common Foreign and Security Policy and a pillar on Police and Judicial Cooperation, which, together with the European Community, constituted the foundation of the European Union. Moreover, co-decision power for the European Parliament was introduced by the Treaty of Maastricht. In the meantime, the European Council of Copenhagen adopted, in 1993, an important decision on the enlargement of the EU towards the east and established a list of eligibility criteria to be fulfilled by applicant states. Austria, Finland and Sweden entered the EU on 1 January 1995, and the Treaty of Amsterdam, introducing minor modifications to the existing structure of the EU Treaty, was adopted in 1997.

In respect of the requirements for membership and the procedural aspects related to the EU enlargement included in the text of the Treaty, ex Article 237 of the EEC Treaty, stating that ‘every European state can apply for membership’, was changed several times in accordance with the Treaty modifications of the Single European Act, the Treaty of Maastricht and, finally, the Treaty of Amsterdam, which introduced a list of criteria for membership under Article 49 EU Treaty (TEU).

In 2001, the Treaty of Nice laid down the structural and institutional changes to the founding treaties required in order to ensure that the EU would function properly after the 2004 and 2007 enlargements to 27 Member States.

## 2.2 Legal Basis

The biggest and most important enlargement in the history of the EU was concluded with the accession of 12 Central and Eastern European countries<sup>1</sup> on 1 May 2004 and on 1 January 2007. Today, the express legal basis for the enlargement of the EU can be found in Articles 49 and 6 of the Treaty on European Union (ex Article O TEU).<sup>2</sup> Article 49 TEU includes an additional requirement for membership to be fulfilled by the applicant state in comparison with the pre-Amsterdam enlargement procedure, namely the reference to the basic principles of the EU enunciated in Article 6 TEU. Article 49 requires that ‘any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union’. The principles stated in Article 6 are ‘liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law’.<sup>3</sup> It is important to stress that Article 49 begins with the word ‘European’, thus first establishing a geographical condition to be fulfilled by the applicant state. The interpretation of this geographical condition is quite open, since there is no legal certainty regarding

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<sup>1</sup> The new EU Member States are Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia. In the context of this dissertation, the term new Member States refers to these 12 countries. Further to the different listing of parties within the international climate regime, the EU15 refers to Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, the EU12 to the new Member States and the EU10 to the new Member States with the exception of Malta and Cyprus.

<sup>2</sup> Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements [Article 49 TEU (ex Article O)].

<sup>3</sup> The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States [Article 6 TEU (ex Article F)].

the borders of the European continent, and the case of Turkey clearly shows the difficulty of dealing with states whose political, historical and cultural boundaries may be interpreted differently by the rest of the EU Member States.

Before final agreement on the text of the Treaty of Amsterdam was reached, the European Council of Copenhagen (1993) decided on the eligibility rules and obligations for membership of the EU. The so-called Copenhagen criteria responded to the necessity that the accession process should imply harmonisation of all national legislation with European Community law. In Copenhagen, the European heads of state and government acknowledged, for the first time, the possibility of a European Union enlarged to the east. On the basis of the common principles of Community law and the practice of the Member States, the Copenhagen criteria set the rules to be fulfilled by the candidate states to become members. The Copenhagen criteria have been codified over the years by the European institutions through the adoption of adequate Community legislation, as well as by the jurisprudence of the European Court of Justice (ECJ or the Court) and the European Court of Human Rights (ECHR). The three accession criteria to be satisfied by the applicant states in order for the European Council to decide to open negotiations on accession are:

- stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities (political);
- existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union (economic);
- ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union (*acquis communautaire*).

The political criteria indicated above have been codified in the EU Treaty in Article 6, which states that ‘the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.’ Article 49 of the EU Treaty defines the procedure for the accession of new states to the European Union and explicitly recalls the principles of democracy, human rights and the rule of law agreed in Copenhagen. An application for membership shall be addressed to the Council, which acts with the full support of the Commission and the Parliament (absolute majority of its component members).

Although the economic criterion is not mentioned in Article 49 EU Treaty, a few scholars distinguish in the EC Treaty a specific reference to such a criterion, namely in Article 4(1) which requires the Member States to adopt an economic policy based on, *inter alia*, the principle of an open market economy with free competition, or even in Articles 2 and 3(1)(g), which include among the general tasks and the activities of the Community the establishment of a ‘common market’, the promotion of ‘a high degree of competitiveness and convergence of economic performance’, and finally, the establishment of ‘a system ensuring that competition in the internal market is not distorted’.<sup>4</sup> In this regard, it is important to bear in

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<sup>4</sup> See Hoffmeister 2002a, b.

mind that the main goal of the European leaders in Copenhagen in 1993 was not to establish stringent and hard, measurable economic criteria for the Central and Eastern European states. On the contrary, for those countries accession to the EU should be considered the starting point of establishing a market economy.

Finally, the new Member States are required to comply with the so-called *acquis communautaire*: i.e., they shall accept the legal rules already binding on the existing Member States as of the date of accession. These are the obligations adopted within the framework of the Common Foreign and Security Policy (second pillar) and Justice and Home Affairs (third pillar) as well as resulting from the activities of the European institutions within the framework of the first pillar, notably secondary EC legislation. Additionally, the *acquis communautaire* encompasses all instruments related to Community legislation, such as ECJ jurisprudence and agreements with third states by which the Community is bound. Under the *acquis communautaire*, accession countries are obliged to harmonise national legislation with EU regulations. The implementation of the *acquis communautaire* by the new Member States shall concern two different aspects: firstly, the incorporation and transposition of all relevant and existing EU legislation into the national law systems, and secondly, its full implementation. In respect of the latter, the European Commission is very active in trying to ensure that not only Community legislation is incorporated into the national juridical framework, simply by transposition, but above all, that it works effectively and correctly. Two issues regarding the accession requirements are particularly relevant to the topic addressed in this book, i.e., the compliance by the European Community and the Member States with the international climate regime: firstly, the identification of the environmental *acquis* directly and indirectly related to European climate policy, and secondly, the consequences of the enlargement for the multilateral environmental agreements to which the Community and the Member States are contracting parties—in this case the UNFCCC and the Kyoto Protocol.

Immediately after a state's submission of its official request for accession to the Council, the European Commission is in charge of the preliminary verification of the applicant's ability to meet the criteria for membership. If the Commission's opinion is positive, it is the Council that is called upon to decide unanimously whether to grant that country or group of countries a negotiating mandate and eventually decide the date on which the negotiations between the candidate states and the Member States will be opened.

The process of EU enlargement to the east began in 1990 when the EC proposed that the former Central and Eastern European countries (CEECs) together with Malta and Cyprus sign the so-called *Europe Agreements*, a special form of Association Agreements<sup>5</sup> in order to establish closer collaboration and free trade between the EU and those states, and to prepare the

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<sup>5</sup> According to [Article 310 (ex Article 238) of the EC Treaty], the European Community can conclude association agreements with a non-Member State, or a union of states or an international organisation.

ground for full membership of the Union.<sup>6</sup> The Europe or Association Agreement represents the first official step of the pre-accession strategy and builds upon the bilateral relations between the applicant state and the European institutions. However, the main element of the pre-accession strategy is the Accession Partnership (AP). The AP is a legal instrument prepared by the Council on the basis of the Commission's annual reports on a candidate country's progress towards accession,<sup>7</sup> and it is this document which drives the new Member States in the accession procedure and requirements. The AP establishes the priorities and objectives to be pursued by the candidate country before accession. In order to comply with the obligations included in the Accession Partnership, the candidate country adopts the National Plan for the Adoption of the Acquis (NPAA).

Of the group of the 2004 new Member States, Hungary, Poland, the Czech Republic and the Slovak Republic were the first countries to sign a Europe Agreement with the EC in 1991, later followed by the remainder of the former CEECs. A pre-accession strategy based on the decisions of the European Councils following 1991 was designed at the Essen European Council (1994) where the European leaders decided to bring together into one single group those countries that had already signed a Europe Agreement with the European Community. Applications for membership of the EC were formally presented by the associated states according to the following timetable:

1. 1991: Cyprus and Malta;
2. 1994: Hungary and Poland;
3. 1995: Czech Republic, Romania, Slovak Republic, Lithuania, Latvia, Estonia and Bulgaria;
4. 1996: Slovenia.

Originally, the last EU enlargement was divided into two phases: the first wave of accession foreseen for 2003–2006 included Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia, while the second wave of countries scheduled to join the EU in 2005–2010 comprised Bulgaria, Latvia, Lithuania, Malta, Romania and the Slovak Republic. This orientation was the result of the European Commission's opinions on the application for EU membership of the CEECs that had signed the Europe Agreements concluded on 15 July 1997 in accordance with Article 49 of the EU Treaty. The Commission considered the progress of the applicant states towards compliance with the negotiation and accession criteria, as well as the political and economic differences among the applicant states.<sup>8</sup>

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<sup>6</sup> Steiner and Woods 2001, p. 12; Weatherill and Beaumont 1999, p. 8.

<sup>7</sup> The Accession Partnership concept was first developed at the 1996 Dublin European Council and then defined in more detail by the Commission in the document 'Agenda 2000: for a stronger and wider union', COM(1997)2000, Brussels, 16 July 1997.

<sup>8</sup> In 1993, Cyprus as well as Malta had already received a favourable opinion as to their application for membership. Malta's application was suspended in 1996 because of the change of government and then resubmitted in 1998.

The Amsterdam European Council of 16 June 1997 agreed on the possibility to accept the requests presented by some of the former CEECs. The enlargement process was finally opened by the European Council of Luxembourg on 12 and 13 December 1997,<sup>9</sup> which offered Cyprus, the applicant states of Central and Eastern Europe and Turkey<sup>10</sup> the possibility to preliminarily demonstrate compliance with a wide range of accession criteria.<sup>11</sup> The conclusions of the Luxembourg Presidency opened the way to the establishment of an annual European conference bringing together EU Member States and applicant countries and to the official launch of the enlargement process for the former CEECs and Cyprus. On the basis of the principle of differentiation, the Luxembourg European Council decided that accession negotiations could start for the first six countries in March 1998, but at the same time confirmed that the accession process for the rest of the applicant states could continue despite the Commission's opinion. The door was left open for the remaining candidate states called upon to demonstrate substantial progress in the process of harmonisation of their political, economic and legal system with the European standards. Accession negotiations between the European institutions and representatives of the governments of Cyprus, Estonia, Hungary, Poland, the Czech Republic and Slovenia thus began in 1998. In March 1999, the European Council of Berlin decided to establish a number of pre-accession financial instruments designed to support the efforts of candidate countries to restructure existing legislation with a view to accession to the EU. Between 1998 and 1999,<sup>12</sup> the European Commission presented its Regular Reports on the progress made by each applicant state towards accession, and the Helsinki European Council of 10 and 11 December 1999,<sup>13</sup> only two years after the Luxembourg meeting, decided to start accession negotiations (beginning officially in February 2000) with the remaining six applicant states—Romania, the Slovak Republic, Latvia, Lithuania, Bulgaria and Malta. At the same meeting, Turkey was granted the status of candidate country.<sup>14</sup>

<sup>9</sup> Presidency Conclusions of the European Council meeting in Luxembourg on 12 and 13 December 1997.

<sup>10</sup> Following a change of government in October 1996, Malta had temporarily withdrawn its application.

<sup>11</sup> See point 5, Presidency Conclusions of the European Council meeting in Luxembourg on 12 and 13 December 1997: 'The members of the Conference must share a common commitment to peace, security and good neighbourliness, respect for other countries' sovereignty, the principles upon which the European Union is founded, the integrity and inviolability of external borders and the principles of international law and a commitment to the settlement of territorial disputes by peaceful means, in particular through the jurisdiction of the International Court of Justice in the Hague.'

<sup>12</sup> The first Regular Reports were presented on 17 December 1998 and updated versions on 13 October 1999.

<sup>13</sup> See *supra* n. 9.

<sup>14</sup> Turkey applied for membership of the European Community on 14 April 1987.

## 2.3 The Enlargement Procedure

Already at the beginning of the European Community, the European legislator had foreseen the possibility for countries interested in joining the European Union to apply for membership. The basic steps of the enlargement procedure are listed below, although the treaty amendments introduced in the course of EU history have slightly modified the role of the different institutions<sup>15</sup>:

- Opinion of the Commission on the progress of the applicant state towards the harmonisation of its national legislative system with the EU rules and in respect of the accession negotiations;
- Decision of the Council and of the Parliament<sup>16</sup> on the Commission's opinion;
- Agreement between the Member States and the candidate country, i.e., ratification of the Treaty of Accession.

The current procedure is, as mentioned above, indicated in Article 49 EU Treaty which grants the Council the power to decide on applications for membership, 'after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.' The decision of the Council shall be taken unanimously.<sup>17</sup>

The final element of the enlargement procedure is the Treaty of Accession between the applicant state and the Member States.<sup>18</sup> The EU Treaty leaves the matter of formalisation of the new Member States' accession to the Community to the states.<sup>19</sup> Thus, approval of the Treaty of Accession by the European institutions is not required by the EC Treaty (Article 300). Following the collapse of the process of the adoption of the Constitution for Europe in 2005, due to the rejection by the referendums convened in France and the Netherlands aimed at its ratification, the procedure described in Article 49(2), notably 'the conditions of

<sup>15</sup> The Treaty of Rome establishing the EEC and the Treaty establishing the EAEC included a provision on enlargement in Article 237 and Article 205, respectively; the Single European Act amended Article 237, giving more power to the Parliament; the Treaty of Maastricht introduced Article O, which was followed by Article 49 of the Treaty of Amsterdam.

<sup>16</sup> The role of the European Parliament in the enlargement procedure was strengthened with the adoption of the Single European Act in 1986.

<sup>17</sup> At the time of writing, the Council of the EU has so far rejected only one application: Morocco in 1987.

<sup>18</sup> The Treaty of Accession to the EU of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia included several legislative acts and other instruments, such as the Act concerning the conditions of accession which is composed of principles, adjustments to the Treaties, permanent and temporary provisions, provisions relating to the implementation of this Act and a long list of Annexes.

<sup>19</sup> The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements [Article 49(2) EU Treaty].

admission and the adjustments to the Treaties on which the Union is founded [...] shall be the subject of an agreement between the Member States and the applicant State', may be seen as an alternative, indirect way to modify the original EU Treaty. Indeed, some European scholars consider that a few amendments to the current infrastructure of the EU further to its enlargement could be shaped within the framework of the Treaty of Accession.

In practical terms, two milestones of the EU enlargement procedure, i.e., the approval by the Council and the adoption of the Treaty of Accession and the relevant legal documents, are clearly interrelated. As soon as the Council has agreed to start the procedure for the accession of a new Member State to the Union, negotiations on the details of the legislative acts to be included in the Treaty of Accession can be initiated.

Accession negotiations have been conducted by candidate countries individually with the Commission and with the existing Member States at bilateral intergovernmental conferences. The final result of the negotiations is a joint common position of the Member States and of the Commission, followed by the Treaty of Accession. Due to the quality of Community legislation in place, negotiations were divided into 31 chapters covering all matters of relevance at the Community level. The main subject of negotiations is the timeframe for the implementation of the legislation, followed by considerations over the candidate country's administrative needs and capacities and possibly the applications for transitional periods with respect to particular pieces of legislation. By the date of accession, the applicant states are expected to have accepted all the *acquis* and to have adopted all necessary measures to implement it, the only exceptions being those pieces of legislation with negotiated transition periods.<sup>20</sup> Progress of candidate countries towards accession since 1998 has been monitored via the Regular Reports, which, since 2000, have been regularly summarised in the Commission's Enlargement Strategy Papers.<sup>21</sup> Negotiations regarding the 2004 enlargement were formally opened on 31 March 1998 during the British Presidency, when the screening of the national CEECs' legislation was initiated. Right after that, in the second half of 1998 when Austria took over the EU Presidency, negotiations on the first chapters started. At the Göteborg European Council of 2001, the heads of state of the EU15 agreed that negotiations should be completed by the end of the Danish Presidency in 2002 for those candidate countries that were supposed to join the EU in the first wave. The main objective of this plan was to open the European Parliament elections foreseen for June 2004 to the representatives of the new Member States. The 2001 European Commission Strategy Paper on Enlargement confirmed the Göteborg timeframe and the year 2004 as the date of the forthcoming EU enlargement, reporting the positive progress of ten candidate countries towards the 2002 deadline for the end

<sup>20</sup> For instance, the Czech Republic asked seven transition periods for transposing certain Community legislation into national law, such as Directive 94/62/EC on packaging and packaging waste (2005) and Directive 91/271/EC on urban waste water treatment (2010).

<sup>21</sup> European Commission 2000.



of the negotiations.<sup>22</sup> In its Regular Reports and Strategy Paper adopted on 9 October 2002, the Commission recommended the conclusion of accession negotiations with the first ten applicant states by the end of the year and indicated 2007 as the potential date for accession of Bulgaria and Romania. The Presidency Conclusions of the Copenhagen European Council held on 12 and 13 December 2002 were welcomed as ‘an unprecedented and historic milestone’ in completing this process with the conclusion of accession negotiations with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia.

## 2.4 The Treaty of Accession

On 1 April 2003, at the Thessaloniki European Council, the Treaty of Accession was signed by representatives of the Member States and of the candidate countries.<sup>23</sup> The Treaty of Accession of 2003 is very brief, consisting of three articles welcoming the new members of the EU as ‘Parties to the Treaties on which the Union is founded as amended or supplemented [Article 1(1) Treaty of Accession]. It is integrated into the Act of Accession [Article 1(2) Treaty of Accession] concerning the conditions of accession for the new Member States and the adjustments to the EC founding treaties which are necessary for the proper functioning of the Union as a consequence of the enlargement. The Treaty of Accession entered into force on 1 May 2004<sup>24</sup> and includes an important clause allowing the Treaty to come into force for all ratifying states except those that failed to deposit their ‘instrument of ratification in due time’.<sup>25</sup> In respect of the ratification process it is important to recall that the constitutional structure of many Member States requires an additional condition for the entry into force of the Treaty of Accession, in most cases a referendum where voters can decide to object to or approve the accession to the EU.<sup>26</sup>

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<sup>22</sup> European Commission 2001.

<sup>23</sup> All documents concerning the accession of the ten new Member States to the European Union can be found in Documents concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union *OJ L* 236, volume 46, 23 September 2003.

<sup>24</sup> At the Thessaloniki Summit, Romania and Bulgaria agreed on 1 January 2007 as the date of accession and signed the Treaty of Accession with the EU on 25 April 2005. The Accession Treaty of Bulgaria and Romania includes a clause [Article 39(1) of the Accession Protocol] on the possibility to postpone the joining date to 1 January 2008.

<sup>25</sup> Article 2 of the Treaty of Accession. This situation had already occurred in the history of the EU, namely when France vetoed Norway’s entry in 1962 and 1967.

<sup>26</sup> Malta was the first country to ratify the Treaty of Accession, following the referendum of 8 March 2003. Slovenia held a referendum on 23 March 2003, followed by Hungary (12 April 2003), Lithuania (10–11 May 2003), Slovakia (16–17 May 2003), Poland (8 June 2003), the Czech Republic (15–16 June 2003), Estonia (14 September 2003) and Latvia (20 September 2003). The result of the referendums on EC membership in Malta, Slovenia and Estonia was not binding regarding their decision to join the EU, while it was binding in Hungary, Lithuania, Slovakia, Poland, Latvia and the Czech Republic.

The binding force of the enlargement is based on Article 1(3) of the Treaty of Accession which requires the new Member States to comply with ‘the provisions concerning the rights and obligations of the Member States and the powers and jurisdiction of the institutions of the Union’ as established under the founding EU treaties. In other words, the Treaty of Accession and its related legal documents set a general obligation for the CEECs to comply with the *acquis communautaire*.

Annex II of the Treaty of Accession includes, for each individual chapter of negotiations, a list of acts to be adopted by the new Member States upon accession to the Union.<sup>27</sup> This list does not include the entire set of legislation related to the *acquis communautaire* which the new Member States are required to adopt upon accession. The Annex II list concerns only the legislation requiring amendment due to the enlargement before transposition into the national legal systems of the new Member States.<sup>28</sup> The list does not have particular relevance for the analysis which will follow in this book since Article 16 of Annex II, which relates to the environmental *acquis*, does not include provisions directly aimed at the reduction of greenhouse gas emissions in the EU; it contains provisions on environmental protection in the following fields:

1. Waste management;
2. Water quality;
3. Nature protection;
4. Industrial pollution control and risk management;
5. Radiation protection.

In respect of the binding force of the Treaty of Accession, the European Court of Justice has clearly stated that this Treaty constitutes a primary source of Community law.<sup>29</sup> Therefore, in accordance with the EC Treaty, judicial control over the Treaty of Accession can be ensured either through preliminary rulings on questions of interpretation raised before a national court or tribunal or the ECJ (Article 234 EC Treaty), or through the infringement procedure for issues of compliance by the Member States with the legal requirements included in the Treaty of Accession (Articles 226 and 227 EC Treaty).

## 2.5 The Environmental *Acquis*

EU legislation on environmental protection represented one of the most complicated chapters of the negotiations relating to the enlargement, in particular due to

<sup>27</sup> Article 20 of the Act concerning the conditions of accession.

<sup>28</sup> Specific adaptation of environmental regulation often concerned amendments to the legislation due to the accession of new countries, such as, for instance, the listing of national measuring stations, the list of definitions, the list of species, etc.

<sup>29</sup> ECJ, joined cases 194/85 and 241/85 *Commission v. Greece* [1988] ECR 1037.

the strong political commitment of the European institutions and the stringency and complexity of EU law in this field. The Community has been very active worldwide in the fight against environmental pollution and more than 300 EU laws have been adopted by the European institutions in this respect. Among others, EC environmental policy is based on the promotion of sustainable development and the integration of environmental protection concerns into other Community policies. Candidate countries were required to transpose into their national legal order and implement approximately 200 legal acts covering horizontal legislation, water and air pollution, management of waste and chemicals, biotechnology, nature protection, industrial pollution and risk management, noise, and radiation protection. The approximation process required accession countries not only to adopt or change existing national laws, rules and procedures in accordance with the *acquis*, but also to provide sufficient guarantees to ensure the effective implementation and enforcement of that legislation.

The environmental *acquis* at the time of the EU enlargement of 2004 included a limited number of specific pieces of legislation designed to fight global warming, but also other legislation indirectly relevant for the reduction of greenhouse gas emissions. Although this book focuses in particular only on a few pieces of EU climate change legislation, it is important to stress that the new Member States were called upon to transpose into their national systems several legislative acts designed to contribute to the European climate policy at the time of and after their accession. Furthermore, accession countries were required to develop an accession strategy which would also take into account the integration of aspects related to the mitigation of and adaptation to climate change in the development of other policy areas such as transport, energy, industry and agriculture.

The main EU laws on energy, air, water, waste and industrial pollution, as well as a few pieces of horizontal legislation such as the directives on environmental impact assessment and on public access to environmental information, represented the core of the relevant environmental *acquis* in relation to climate policy at the time of the negotiations on the accession of ten new Member States in 2004. The following list includes an indicative set of legislation relevant to fight global warming:

- Council Directive 96/62/EC on ambient air quality assessment and management<sup>30</sup>;
- Commission Recommendations 1999/125/EC, 2000/303/EC and 2000/304/EC on the reduction of CO<sub>2</sub> emissions from passenger cars<sup>31</sup>;
- Council Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations<sup>32</sup>;

<sup>30</sup> OJ L 296, 21 November 1996, pp. 55–63.

<sup>31</sup> OJ L 40, 13 February 1999, pp. 49–50, and OJ L 100, 20 April 2000, pp. 55–58, respectively.

<sup>32</sup> OJ L 85, 29 March 1999, pp. 1–26.

- Council Directive 1999/32/EC on the reduction of sulphur content of certain liquid fuels<sup>33</sup>;
- Council Directive 2001/81/EC on national emissions ceilings for certain atmospheric pollutants<sup>34</sup>;
- Council Directive 2002/3/EC relating to ozone in ambient air<sup>35</sup>;
- Council Directive 2001/100/EC of the European Parliament and of the Council of 7 December 2001 amending Council Directive 70/220/EEC on the approximation of the laws of the Member States on measures to be taken against air pollution by emissions from motor vehicles<sup>36</sup>;
- Council Directive 2001/1/EC of the European Parliament and of the Council of 22 January 2001 amending Council Directive 70/220/EEC concerning measures to be taken against air pollution by emissions from motor vehicles<sup>37</sup>;
- Council Directive 2003/17/EC of the European Parliament and of the Council of 3 March 2003 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels<sup>38</sup>;
- Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC)<sup>39</sup>;
- Council Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants.<sup>40</sup>

The negotiations on the environmental chapter did not include a section on climate change as was the case for the other fields such as air pollution, waste, water and others. A proper chapter on climate change was not set up during the negotiation process as the only pieces of legislation directly dealing with the fight against global warming when negotiations were closed in November 2002 ('cut-off date')<sup>41</sup> were Council Decision 93/389/EEC as amended by Decision 99/296/EC for a monitoring mechanism of Community CO<sub>2</sub> and other greenhouse gas emissions<sup>42</sup> and Council Decision 94/69/EEC concerning the conclusion of the United Nations Framework Convention on Climate Change.<sup>43</sup> These two acts were included in the chapter on air quality covering a wide range of Community legislation with an indirect influence on the level of greenhouse gas emissions in Europe.

<sup>33</sup> *OJ L* 121, 11 May 1999, pp. 13–18.

<sup>34</sup> *OJ L* 309, 27 November 2001, pp. 22–30.

<sup>35</sup> *OJ L* 67, 9 March 2002, pp. 14–30.

<sup>36</sup> *OJ L* 16, 18 January 2002, pp. 32–34.

<sup>37</sup> *OJ L* 035, 6 February 2001, pp. 34–35.

<sup>38</sup> *OJ L* 76, 22 March 2003, pp. 10–19.

<sup>39</sup> *OJ L* 257, 10 October 1996, pp. 26–48.

<sup>40</sup> *OJ L* 309, 27 November 2001, pp. 1–27.

<sup>41</sup> As we will see in the next chapters, apart from these two regulations, further EU legislation aimed at combating climate change was adopted after negotiations were closed in November 2002.

<sup>42</sup> *OJ L* 117, 5 May 1999.

<sup>43</sup> *OJ L* 33, 7 February 1994.

The accession negotiations between the candidate states and the European institutions on the different chapters were officially closed in November 2002. Obviously, several provisions were adopted by the European Community after that date and some were also of specific relevance, especially in respect of climate change. This is particularly due to the fact that EC environmental law and policy developed significantly in those years, in particular in the field of climate change and clean energy, and because of the progress of the commitments undertaken at the international level. The period between the 'cut-off date' (1 November 2002) and the date of accession (1 May 2004) is called interim period. Accession negotiations did not cover EU legislation adopted during this period, nor is it included in the Treaty of Accession. Those EU laws were therefore designed by the European institutions and the Member States in accordance with the legislative procedure laid down in the EC Treaty, but with the cooperation of the candidate countries which were granted the status of observers. Their governments were allowed to assist and participate in the different sessions of the Parliament (right to speak in parliamentary committees and interparliamentary delegations, but not the right to vote or to be elected to any positions of responsibility) and to sit in as observers and comment at ministerial and Council meetings. Community legislation approved during that period was adopted with a view to an EU enlarged to 27 countries and therefore included, in some cases, special arrangements for the acceding countries in the form of clauses, amendments or articles referring to the obligations of the new Member States, negotiated on a case-by-case basis by the representatives of those countries involved in the EU legislative process. A clear example is provided by Directive 2003/87/EC (EATD) of 13 October 2003 establishing a Europe-wide allowance trading system (EU ETS)<sup>44</sup>: Article 9(1) of the EATD requires Member States to publish and notify to the Commission and to the other Member States the national allocation plans (NAPs) by 31 March 2004 at the latest. For the new Member States, this deadline was postponed to 1 May 2004, following their accession.

At the time of accession, the CEECs were therefore required to implement, *inter alia*, the following legislation on climate change adopted by the EC in the interim period:

- Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder<sup>45</sup>;

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<sup>44</sup> Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, *OJ L* 275, 25 October 2003, pp. 32–46.

<sup>45</sup> Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder, *OJ L* 130, 15 May 2002.

- Council Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community (EU ETS);
- Directive 2003/30/EC on the promotion of the use of biofuels<sup>46</sup>;
- Directive 2003/96/EC on the taxation of energy products and electricity<sup>47</sup>;
- Directive 2004/8/EC on the promotion of cogeneration of heat and electricity.<sup>48</sup>

Moreover, specific arrangements limited in time and scope were agreed between the new Member States and the Commission in respect of certain legislation, for which a clear plan of implementation was drawn up. For instance, in respect of the Directive on integrated pollution and prevention control (IPPC—96/61/EC),<sup>49</sup> transitional periods were granted to specific installations as regards compliance with the ‘Best Available Techniques’ in Latvia and Poland (by 2010) and Slovenia and the Slovak Republic (by 2011), while 2007 was the deadline for the other Member States. In addition, a transitional period was granted to a few new Member States as regards the Large Combustion Plants Directive (LCP).<sup>50</sup> None of the transitional arrangements conceded to the new Member States affect legislation directly aimed at the reduction of greenhouse gas emissions. Nevertheless, talks over the possibility of agreeing a few transitional arrangements for the candidate states in respect of the Emissions Trading Directive (EATD—2003/87/EC) were opened before this Directive was adopted.<sup>51</sup> The EATD is a completely new instrument for climate policy, and its implementation required a lot of effort, especially by those CEECs with a certain lack of skilled capacities and resources at governmental and ministerial level as well as in terms of technical expertise for monitoring, reporting and verifying greenhouse gas emissions by installations. In particular, the preparation and drafting of the national allocation plans (NAPs) through which EU allowances are distributed to national installations require adequate expertise and knowledge. At the second meeting of the Interim Committee on the EU ETS, the CEECs asked for ‘further clarification’ and time to examine the EATD proposal<sup>52</sup> because of the lack of resources at their disposal to ensure a correct implementation of the Directive.<sup>53</sup> Considering the fact that since 1990 the economic collapse in most accession countries has contributed to the reduction of greenhouse gas emissions well below the targets agreed

<sup>46</sup> *OJ L* 123/42, 17 May 2003.

<sup>47</sup> *OJ L* 283/51, 31 October 2003.

<sup>48</sup> *OJ L* 525/50, 21 February 2004.

<sup>49</sup> See *supra* n. 39.

<sup>50</sup> Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants, *OJ L* 309 of 27 November 2001, p. 1.

<sup>51</sup> Lithuania and Latvia were the two countries which tried hardest to obtain such a transitional arrangement. See ‘Carbon Market Europe’, 14 March 2003, Point Carbon, available at: <http://www.pointcarbon.com>.

<sup>52</sup> See *Chap. 1* n. 3.

<sup>53</sup> Hungary had asked the meeting to convene and Latvia and Malta explicitly asked for further information on how the proposed Directive would be implemented.

under the Kyoto Protocol, a further reduction to be achieved through the emissions trading system would leave these countries with a slight margin of growth in respect of the obligations to reduce greenhouse gas emissions to the European and international level in the post-2012 phase. In this regard, at the Interim Committee meeting, the Hungarian representatives claimed that the acceding countries should have been granted emissions growth at least when the national allocation plans were drafted, as had been granted some EU countries when the EU Burden Sharing Agreement was negotiated in early 1998.<sup>54</sup>

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<sup>54</sup> See Chap. 3.

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Massai, L.

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