



SIGMA

Support for Improvement in Governance and Management

A joint initiative of the OECD and the European Union, principally financed by the EU

The Preparation of Countries in South East Europe for Integration into the European Union

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THE SIGMA PROGRAMME

The Sigma Programme — Support for Improvement in Governance and Management — is a joint initiative of the Organisation for Economic Co-operation and Development (OECD) and the European Union, principally financed by the EU.

Sigma supports partner countries in their efforts to improve governance and management by:

- Assessing reform progress and identifying priorities against baselines which reflect good European practice and existing EU legislation (the *acquis communautaire*);
- Assisting decision-makers and administrations in building institutions and setting up legal frameworks and procedures to meet European standards and good practice;
- Facilitating donor assistance from the EU and other donors inside and outside Europe by helping to design projects, ensuring preconditions and supporting implementation.

Sigma's working partners are governments in:

- Most EU candidate countries — Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and Turkey.
- Western Balkan countries — Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro / Montenegro, Serbia and Kosovo.
- Russia (under OECD financing).

The Sigma Programme has set its priorities to support reform efforts of partner countries in the following areas:

- Design and Implementation of Reform Programmes
- Legal Framework, Civil Service and Justice
- External Audit and Financial Control
- Public Expenditure Management
- Policy-making and Co-ordination Capacities, including Regulatory Management
- Public Procurement

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1. EU Enlargement at the End of 2005

The enlargement of the European Union to the countries of Central and Eastern Europe has been one of the most successful policies of the Union in recent years. Eight countries joined the Union on 1 May 2004, together with Cyprus and Malta, and are now playing a full part in the new EU-25. Bulgaria and Romania have signed their accession treaty and are due to join the Union in 2007. Preparations to meet the conditions set by the Union for accession have been an important factor in the modernisation of these countries and the development of their democracies and economies.

The countries of the Western Balkans have also been promised full accession to the European Union once they meet the conditions. Negotiations with Croatia have already opened and the opening of negotiations with the former Yugoslav Republic of Macedonia (fYR Macedonia) will be under consideration by the EU following the decision of the European Council in December 2005 to accord fYR Macedonia the status of “candidate country”. Stabilisation and Association Agreements (SAAs) are being negotiated with Albania, Bosnia and Herzegovina, and Serbia and Montenegro. The Stabilisation and Association process (SAP) also applies to Kosovo.

The experience of the new member states in Central and Eastern Europe has shown that institutional issues are amongst the most difficult to resolve and frequently hold back the preparations for accession. This paper raises some of these issues and suggests solutions that have been tried and tested in the new member states.

As the countries of the Western Balkans are at different stages of integration into the European Union, this paper deals with both the institutional consequences of a Stabilisation and Association Agreement with the EU and the preparations for accession negotiations.

2. Stabilisation and Association Agreements (SAAs)

The negotiation of an SAA and its implementation are vital steps on the road to full accession to the European Union. The SAA is not, as some describe it, “simply a trade agreement”. Liberalising trade is a very important step in itself, but the SAA deals with other vital areas, like political dialogue, regional cooperation, competition and intellectual property protection. It also underlines the importance of legal harmonisation and the adoption of the *acquis communautaire*.

From the institutional point of view, the important elements are the domestic structures put in place to negotiate and then implement the SAA and the creation of the SAA Council and Committee and the Parliamentary Committee, which bring together the two parties to the Agreement. The importance of all these elements was recognized by the new Member States in the context of their Association Agreements (Europe Agreements).

Many of the recommendations that can be made with respect to the negotiation of the SAA apply also to the accession negotiations and are treated in the sections dealing with accession.

2.1 Coordination of SAA Negotiations

The negotiation of the SAA is one of the first important tests of coordination in the state administration in relation to EU matters.

The negotiation of the SAA is not likely to be a long drawn-out matter. SAAs already exist for fYR Macedonia and Croatia, and it is unlikely that the EU will stray far from these successful precedents. There is of course always room for certain country-specific articles to deal with major differences between states. Already in the case of Serbia and Montenegro and Kosovo as well as in that of Bosnia and Herzegovina, the actual construction of the state will impose certain differences to the previous SAAs. Some differences may be achieved in the trade regimes, but this is also only likely in the detail. On the whole, however, the new agreements are likely to be extremely close to the existing ones.

This implies that, ex post, there will appear to be less substance to the negotiations than some people had expected. Nevertheless, the SAAs will have a profound impact both on the economy and on the future deeper integration into the EU. The negotiations must therefore be approached very seriously and by technically-appropriate negotiators.

The appointment of the chief negotiator is a significant step. The person should have experience of international negotiations (EU, WTO or similar), be multi-lingual and know the domestic economy and economic legislation rather well. In most countries this selection has already been made.

The chief negotiator and his secretariat may be embedded in the Ministry or Office of European Integration, the Ministry of Foreign Affairs or another related ministry (in Croatia, for instance, in the Ministry of the Economy). The chief negotiator will head up a negotiating team consisting often of junior ministers from key ministries (MFA, Economy, Agriculture, Finance, etc.). It is vital that this team should work well together. The members do not have to be associated with the governing political parties; the government will be consulted regularly through the chief negotiator, and national positions will be approved by the government. In many cases it is indeed better if the negotiating team consists of technicians. However, experience has shown that to include people who are totally outside the administration, perhaps because of their technical ability, has frequently led to major problems for the negotiating country.

The essential element is that a coordination apparatus is established that will allow the chief negotiator to rapidly obtain opinions about the impact of articles of the SAA on the domestic economy and society. This implies institutional arrangements both within ministries and between ministries and the negotiating team.

Each line ministry or government agency involved in the negotiation should obviously have an EU unit, which coordinates work internally within the ministry and externally with the negotiating team. Such units exist in most, if not all, countries in the region. These units are most important because they are responsible for assessing the impact of SAA measures (see below for a discussion of regulatory impact assessment). These impact assessments will help the negotiators to concentrate on a few priority areas in the negotiations, which could have a serious negative impact on the country.

The coordination process will probably require rules of procedure to be laid down by the government (perhaps delegated to the chief negotiator) to ensure that smooth progress is made. Especially where there is a government coalition of two or more parties, party political interests can sometimes get in the way of progress in negotiations. This possibility can frequently be eliminated if the government agrees clear rules from the outset.

As later with the accession negotiations, it is advisable for governments to ensure that citizens are made aware of the impact of the SAA on their lives as early as possible. In the past, some countries have negotiated without any communication strategy, which has led to problems later on in the process.

2.2 SAA Implementation

The proper implementation of the SAA is considered by the EU as a necessary condition for later accession to the EU. If the fulfilment of promises made in the Agreement is allowed to slip, this will be taken as a sign that the country would be unable to implement the *acquis communautaire* after accession.

The institutional management of SAA implementation is not new — examples exist in all of the new Member States (for Europe Agreements) as well as in Croatia and fYR Macedonia. The essential elements are:

- Decision concerning the responsible coordinating authority;
- Development of an implementation plan, indicating a timetable, the responsible ministry or agency, and associated ministries or agencies;
- Government oversight procedure to ensure that the plan is adhered to;
- System for ensuring that the EU and the country's citizens are aware of the progress being made.

The essential elements of a successful implementation plan can be followed in the case of Croatia, as these are still presented on the Web site of the Croatian Ministry of Foreign Affairs (www.mei.hr). The chosen coordination authority (the Ministry of European Integration) drew up the implementation plan immediately after agreement on the SAA was reached. To ensure that implementation actually took place, quarterly progress reports were drawn up for the government, which allowed the government to take action whenever ministries were not performing as expected.

The attention paid by Croatia to implementation impressed EU institutions and member states. The fact that the progress reports were made public on the Internet also suggested that the government had nothing to hide.

2.3 *Enforcement of SAA Implementation*

The EU will nevertheless want to look beyond government implementation of the SAA to enforcement of the changes that have been implemented.

Enforcement requires that the judiciary, government agencies and the police know and understand the changes that have been implemented. It also requires the provision of information concerning these changes to economic actors.

The European Commission has drawn attention to enforcement problems in almost all of the new member states and in the countries of the Western Balkans. In future it is likely that enforcement will play a much larger role in terms of the conditions for accession to the EU.

3. Pre-Accession

The institutional arrangements for the implementation of the SAA will normally be transposed smoothly into the arrangements for pre-accession.

The main policy instruments for promoting integration into the European Union were set out in the Thessaloniki Agenda for the Western Balkans in June 2003.

The pre-accession period is dominated by the implementation of the SAA, without which no further progress can be made. Progress is guided by the European Partnerships (now “Accession Partnership” for Croatia), which underline the priorities for action in the coming period. The European Partnerships also form the basic guidelines for financial assistance to the country in the pre-accession period.

Progress in implementation of the SAA and the European Partnership is judged officially by the regular reports of the Commission, which have become the key annual documents by which an assessment of the country is made public. However, all member states have their own sources of information on the state of implementation of the SAA and on the general political and economic situation in the country.

At the same time as overall progress in implementation of the SAA is being measured, the ability of countries to use the financial assistance they receive from the EU will also be considered as an indication of whether they could manage the far larger flows of assistance that they would normally receive as full members of the EU.

These two “performance indicators” are therefore the key to proceeding beyond the position of “potential candidate country” to reach the “candidate country” status now enjoyed by Croatia and FYR Macedonia.

3.1 *Institutional Requirements for Pre-accession*

The essential tools for management of the integration process (excluding the management of financial assistance) during the pre-accession period are:

- Implementation plan for the SAA and related monitoring reports; these will generally be supplanted gradually by
- National Strategy for European Integration and related monitoring reports; additionally, the countries will need to supply
- Information for the preparation by the European Commission of the annual progress report.

The institutional necessity is that the above documents are controlled by a strong coordinating body (ministry or agency), which if possible ensures continuity in the personnel responsible for preparing the documents.

Poland may be taken as an example. Here there was a very long period between the signature of the Association Agreement in 1991 and the opening of negotiations in 1998. In the Western Balkans this period is expected to be shorter (in the case of Croatia it was a mere four years, from October 2001 to October 2005). The equivalent pre-accession period in Poland can be taken to run as from the beginning of the first National Programme of Preparation for Membership in the European Union (NPPM) in 1998. At that time coordination in Poland was assured by a separate European Ministry — the Office of the

Committee for European Integration (UKIE). Within UKIE the National Programme (NPPM) was coordinated by the Department for Integration Policy, beginning with the first programme in 1998 and carrying right through until accession. The director of the department and the two deputy directors remained the same throughout the period, in spite of changing governments and ministers. The department was also responsible for supplying information to the Commission prior to publication of the annual progress report (“regular report”).

This coordinating department, the Department for Integration Policy, was supported by the Legal Service, the Department for the Coordination and Monitoring of Foreign Assistance, and later by the Department of Economic and Social Analysis. The department had a well developed network of contact points throughout the administration, and it elaborated set patterns of activity in order to facilitate the work of the network.

This institutional stability — even when governments were changing and key junior ministers were being sacked because they were not members of the governing party — was extremely important for Poland’s preparations during the pre-accession phase. It is frequently difficult to maintain the interests of civil servants in the long process of European integration as governments change and therefore the definition of national interest changes.

Moving from the SAA Implementation Plan to the National Strategy for European Integration may cause some institutional instability. This instability is minimised if the department in charge is the same for both programmes. The National Strategy will of course be far wider and include all of the SAA measures. However, it is important to be able to separate out the SAA measures in order to convince the EU that SAA implementation will not suffer from the fact that the government now has a wider vision of integration.

3.2 *Communication Strategies*

Communication strategies, both internal and external, are most important during this pre-accession phase.

Internally the candidate country needs to continually reassure public opinion that accession preparations are on track, even if bad news appears in the media. In addition, it needs to provide economic actors with early warning of developments that are going to affect them.

During the pre-accession phase it will become clear to certain groups in society that EU integration will negatively affect their economic situation or their influence. These groups will begin to agitate publicly, with the result that support for integration will gradually diminish. This has happened in most of the new member states. It is a process which accelerates during the negotiations and is not generally reversed until after accession has taken place. It will be essential for government, as the arbiter of national welfare, to communicate with the public to counteract the efforts of these groups. This is best done by the leaders of society and by the government, the President and the Prime Minister.

It is also the duty of government in most countries to inform the private sector of the changes which the SAA and accession will bring to it. Serious information can help to work against biased information coming from certain groups. Above all this information gives companies the opportunity to prepare themselves early on for the new possibilities and challenges which accession will bring. Where there are strong business organisations (and strong trade unions), the work of dissemination can sometimes be done better by these organisations than by government, as they are nearer to the working level.

Externally the communications strategy may become very complex because of the large number of external actors with an influence on the accession of a new member state. In the pre-accession period, the argument to be won concerns the submission of an application for membership, the subsequent “opinion” of the Commission, and the decisions on “candidate country” status and the opening of negotiations. For a small country, this is a very difficult task because normally the size of the public service and government is limited. It is also more difficult in the sense that small countries find it harder to lobby large member states, EU institutions and the European Parliament. The European Commission, however, is generally more attentive to the needs of small countries than are EU Member States.

If one or more member states clearly support EU integration of a country in the Western Balkans, it would make sense for the country to concentrate some of its resources on these members, as they will be efficient relay points for transmitting information to other member states. The classic example in the region is the

support shown to Croatia by Austria, which in the end proved to be invaluable. However, equally important is to influence the known opponents of the country's integration into the EU. Nearly all of the decisions in the course of the long accession process require unanimity at EU level, and progress can therefore be blocked by any single member state.

It is therefore essential that both embassies in key member states and representations to the EU in Brussels are staffed with extremely able people. Ideally, politics should play a minor role in these appointments, which should rather be made on the basis of technical ability, capacity to influence interlocutors in their own language, and capacity to act independently in the interest of the state.

It is obvious that considerable efforts should be made to influence the European Commission, which will be writing the annual progress reports that will have such an important place in the preparations for accession. These efforts clearly have to be aimed at all levels in the Commission, not just at the level of Commissioner or Director General. By the time the Commissioner deals with a subject, it is usually too late to have changes made. It is usually middle-ranking officials who need to be influenced, as they will be the ones initially drafting reports or managing the drafting of reports.

The European Parliament legally has little influence on the decision to enlarge the Union. However, as the power of this EU institution is clearly growing, it cannot be ignored. The work of the Stabilisation and Association Parliamentary Committee can be extremely helpful here. Having good supporters within the European Parliament will obviously help integration efforts.

Many other non-governmental organisations and institutions will need to be lobbied at some point during the pre-accession period. However, given the limited resources, it would be advisable to concentrate lobbying on the main centres of influence.

3.3 The Decision to Apply for Membership

Prior to the rejection of the draft EU constitutional treaty by voters in France and the Netherlands, the decision on when to officially apply for membership was not simple, but it was certainly easier than it is today.

The countries of the Western Balkans have all been promised accession once they have met the conditions. However, there has always been a certain institutional resistance to applications for accession. The new member states in Central and Eastern Europe were advised that it was too early to apply, and the same message was given to Croatia. In the latter case, the government correctly judged potential support for Croatia's accession to the EU and decided to apply for membership in spite of the institutional opposition. This decision turned out to be a successful strategy.

Today, after the demise of the draft EU constitution, the resistance to further enlargement has strengthened. The conditionality set by the EU has also been raised in recent months and years. The conditions contained in the negotiating frameworks for Croatia and Turkey are far stricter than those used for the May 2004 enlargement.

In the light of these changes, it will be important for countries to consider very carefully indeed the decision to apply for accession. **The keys will be the successful implementation of the SAA and, above all, effective implementation on the ground.**

4. The Institutional Framework for Negotiations

The institutional framework for negotiations established in the countries negotiating — or about to start negotiating — with the EU will be critical to the success or failure of these negotiations.

There is no rule about how decisions should be taken or where in the administration the negotiating team should be established. These matters depend mainly on the structure of the administration in each country; and here there are of course considerable variations. However, some common elements can be discerned from the demands that negotiations put on administrative structures and from the experience of other countries that have gone through this process.

4.1 Support from the President and Prime Minister

A necessary condition for the negotiations to proceed smoothly and lead to a successful conclusion is *support from the highest level of the state* — from the Prime Minister and other leading political figures

and, where appropriate, from the President. Without such high-level support, it will be very difficult to obtain the commitment of junior ministers and civil servants.

Negotiating for accession has always been an *eminently political process* in all countries that have joined the EU, and there is no reason to believe that it will be any different for the countries of South East Europe. As the integration process proceeds, so will the support for EU integration decline, and some political parties, either out of conviction or for political advantage, will oppose integration. Under these circumstances, it may seem absurd to suggest that political parties in candidate countries should have *cross-party support for EU integration*. However, an investigation of most EU accessions shows that the main government party and the main opposition party were always in favour of accession, even if they had different approaches to the negotiations. It may well be advisable, therefore, to try to take the EU accession process out of normal conflictual policy in some countries, as this may increase confidence in the success of the process, both within and outside the country.

4.2 Screening

The *screening of the acquis* will take place on the basis of the breakdown into chapters. Screening is simply a series of meetings, usually presided over by the official in the Commission responsible for the negotiations. At these meetings the Commission explains the EU *acquis* to the candidate country, and a comparison is made with the legal situation in the country. The result is a screening report, which highlights differences between the two.

Screening is an important part of the accession process for several reasons. It is often the first opportunity of officials from line ministries in the candidate country to contact their counterparts in the Directorates-General of the Commission. The meetings open the prospect of a rich debate between specialists in all of the various areas of the *acquis*. The contacts during the screening process generally last throughout the negotiations and are therefore very valuable.

Screening offers the first real analysis of the distance the candidate country has to travel in a regulatory sense to achieve full implementation of the *acquis*. It allows officials on both sides to comprehend some of the main problems that will arise in the negotiations and to begin thinking about how these problems can be overcome. For the candidate country, it helps the chief negotiator to identify strengths and weaknesses in the national administration that will affect the course of the negotiations.

As the screening of each chapter is concluded, a screening report is drafted by the Commission and forwarded for approval to the candidate country authorities. These reports are important, as they purport to deliver an agreed analysis of the problems to be negotiated in each chapter. While any subject can be brought up at a later stage in the negotiations, it will be considered as somewhat unethical to raise major problems that have not already been described in the screening reports. It is therefore rather important to emphasize to national civil servants that screening is an integral part of the negotiations and needs to be thoroughly prepared.

4.3 Position Papers

Position papers are basic documents for the negotiations. Good, well-prepared position papers can speed up the negotiating process. In order to appreciate this, one has to keep in mind their function and the ensuing processes.

In principle, the *acquis* is applied to a candidate country at the time of accession. If either the EU or the candidate country cannot accept this principle, this issue has to be put clearly on the table during the negotiations, together with proposed solutions.

These proposals (i.e. at this stage, the position papers of the candidate country) are sent to the other party, which has to formulate its own position on the issue. Within the EU, this process involves all member states (and in the member states, all relevant institutions). The other party can only formulate its position if it knows precisely what special rules (such as transitional measures) are being proposed.

Therefore, all position papers of candidate countries are reviewed in each member state, and each member state must formulate its own position before the EU position can be laid down. Member states cannot arrive at a position if they do not know exactly what the nature of the problem is, what transitional (or other) measures are sought by the candidate country, and why this particular type of transitional provision is proposed.

For these reasons, position papers should, wherever possible, provide very precise proposals and reasons for these proposals. If proposals are imprecise or insufficiently reasoned, this might create the impression that the country does not really know what it wants or has not thought the issues through. Of course this is a negotiation, and a candidate country may want to play on the safe side by proposing a longer transitional period than it estimates is necessary simply because it knows that the EU will usually react if a shorter period is proposed. What is most important, however, is that the candidate country leaves the impression in Brussels that it is fully in control of every situation and has done all of the necessary work to measure the scope of each issue.

There will nevertheless be some occasions where governments may want to leave positions open. This may be the case if the government has not clarified the impact of a measure on the domestic economy or if the *acquis* is not clear enough at the time of writing the position paper for the government to define a position.

Generally speaking, however, if position papers lack precision, negotiations may be delayed. Member states will demand clarification, and after the clarifications have been given, the process of EU internal coordination must start all over again before negotiations can really begin. A lack of precision will also provide an argument to those member states wanting to delay the negotiations, on the basis that it is too early to negotiate as the other party does not know what it wants.

It is vital for candidate countries to send only finished, “perfect” position papers (and other papers) to the Commission. As a general rule, it is not possible to send papers with the idea that the Commission will look at them and then come back with informal remarks and questions, making it possible for the country to change its position, taking into account the Commission’s remarks. Nearly every document that goes to the Commission is distributed and becomes public immediately.

There will of course be situations where the candidate country will discover problems at the last moment and not have the time to determine exactly what is required. The country could react in one of two ways. The first (and perhaps preferable) reaction is simply to say that the issue is being analysed further and to give a date when the negotiating partners will be given more details about what is required. The second is to be careful and ask for what seems to be a reasonable adjustment period, even though the issue has not been completely understood. The candidate country can always inform the EU afterwards that it requires a shorter transition period or none at all — the EU will only be too happy. Obviously the candidate country cannot ask for too many transition periods.

Position papers are no secret — their distribution among all Brussels institutions concerned and among all member states ensures that anyone who is interested will have access to them. A great number (if not the majority) of issues for which transition periods are sought have an “objective” quality — i.e. they are in areas where the immediate application of the *Acquis* would pose real problems. Candidate countries and the EU have an equal interest in finding appropriate solutions in such cases.

It is generally advisable to draw up a more precise “model” (or “scheme”) for inputs to position papers and to require all ministries to use this model when drafting their contributions. Ministries should be required to formulate precise proposals that can serve as a concrete basis for the negotiations and to provide sufficient reasoning for their proposals right from the outset. Of course the final version of all position papers (before submission to the Council of Ministers) must be established by the negotiating team and under the authority of the chief negotiator.

A “model” position paper should include as an introductory statement that the candidate country has set a specific date as a technically assumed date of accession to the Union. This statement is necessary as position papers will frequently make reference to the country’s intention to transpose and implement the EU *acquis* before accession.

The model will also usually start with a sentence that the country accepts the EU *acquis* in this negotiating chapter. This statement obviously does not exclude the negotiation of transition periods, but it emphasizes that the country will eventually adopt the whole *acquis*.

Horizontal consistency in the position papers is vital. If transition periods or temporary derogations are requested in many of the negotiating chapters, it is clear that a selection of priorities for transition periods will have to be made if the negotiations are to succeed. It is also obvious that a strict coordination is required between the positions taken in the negotiations and the National Programme for the Adoption of

the *acquis*. The EU is likely to put special emphasis on the implementation of the *acquis* and on the positions taken by the candidate countries. For this reason, a very good horizontal coordination of the accession process is required.

A final point that needs careful consideration is the way in which coordination operates between candidate countries. Such coordination was essential for the countries in Central and Eastern Europe during the last enlargement, even though it was far from perfect. In the case of the Western Balkans, there may not be parallel negotiations. If these do develop, however, then clearly some coordination between the candidate countries would be necessary.

4.4 *The Negotiating Structure*

Key decisions on negotiating positions and final approval of position papers will normally be matters for the Council of Ministers or the Cabinet. It is dangerous — for political and constitutional reasons — for these decisions to be delegated to the specific negotiating structure.

As negotiating positions are frequently extremely complex, it is normal for such decisions to be prepared by a government committee consisting of senior ministers who have a particular responsibility in the area of European integration (for instance, Foreign Minister and Ministers of Finance, Economy, Agriculture, Social Affairs, and Justice). In the new member states these committees were generally created before the negotiations commenced in order to guide the accession preparations and to oversee the implementation of the Association Agreement with the EU.

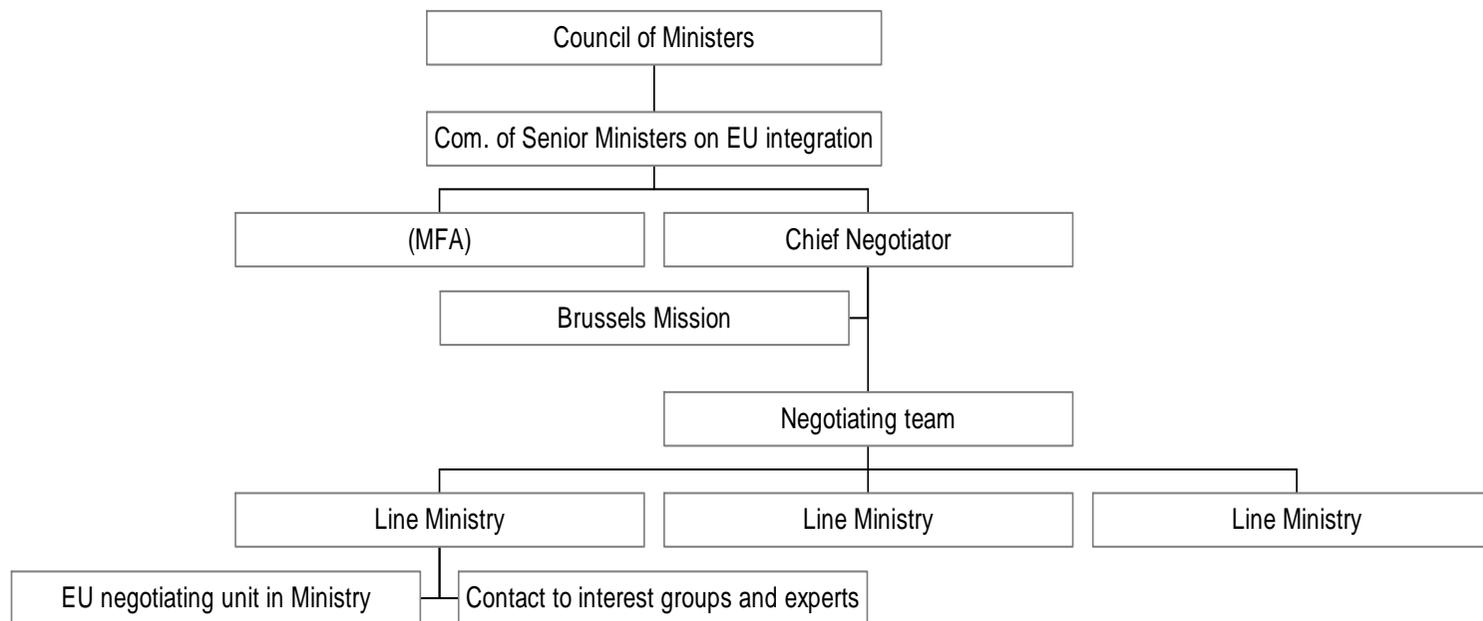
The actual negotiating team usually consists of deputy ministers from the relevant line ministries, together with the chief negotiator. Depending on the situation, the meetings of the team will usually be chaired by the Minister of Foreign Affairs or by the chief negotiator.

Deputy ministers from line ministries are responsible for drafting the relevant position papers, which they first submit to the negotiating team. Frequently the negotiating chapters require contributions from more than one ministry, and therefore it becomes necessary to determine the exact responsibility for each position paper. Frequently this will already have been worked out during the screening process. The chief negotiator's staff will certainly be closely involved in the drafting of position papers, as they will have the best overview of the whole negotiating process. In the case of Hungary, the chief negotiator actually drafted many of the position papers himself.

Deputy ministers in charge of the negotiating chapters clearly have the responsibility for creating or modifying existing structures within their ministries, in agreement with their minister. The relationship between the deputy minister and the minister may well be a difficult one, especially when major internal reform programmes take up most of the latter's attention and obviously dominate the national press. In such cases, support from the top level of the government is important to keep the negotiating process going forward.

Finally, the candidate country's representation to the EU in Brussels must play an important role in the negotiations, acting as a vital information channel between the government and European institutions.

Example of an Institutional Structure for EU Negotiations



4.5 *Position and Role of the Chief Negotiator*

The role of the chief negotiator will vary according to his/her political position in the country. If, as suggested above, the chief negotiator should not be a leading political figure, the position is still clearly a political one. The chief negotiator will be accused in the press of selling out the vital interests of the country to Brussels. He/she will be attacked in parliament because the negotiations are going either too slowly or too quickly. Brussels will let it be known if he/she is considered to be too tough a negotiator. The chief negotiator can only do an efficient and effective job under these conditions if he/she is seen to be supported totally by the government and so long as he/she does not become the object of political scheming.

Apart from not being too prominent a politician, the chief negotiator should also have achieved a degree of neutrality vis-à-vis the members of the governing coalition (where there is one) and the line ministries participating in the negotiations. This perceived neutrality should also exist in relation to the various groups in society that are interested in and affected by the accession process. The chief negotiator has to demonstrate that he/she is interested in the good of the country rather than that of pressure groups or individual sectors in the economy and society.

This perceived neutrality is important, because the wishes of all line ministries and all groups in society can clearly not be achieved in the negotiations. The chief negotiator has an important role to play in convincing powerful political ministers that their negotiating stance is inconsistent with the interests of the country as a whole and perhaps even that there is no chance of negotiating their positions with the EU at all. In some countries, this neutrality has been underlined by making the chief negotiator directly responsible to the Prime Minister.

This neutrality can only be maintained if the roles of the chief negotiator, the negotiating team, the line ministries and the representation in Brussels are clearly determined. The chief negotiator will normally have his/her own group of civil servants, although the staff in this group need not be numerous. It is important to avoid conflict between the chief negotiator and line ministries as this can seriously impair negotiating efforts. The larger the group of highly-motivated civil servants surrounding the chief negotiator, the higher the chance that he/she will try to develop a parallel service to line ministries in the context of the negotiations. On the other hand, the chief negotiator's service must be sufficiently large to manage the important coordination function, which is the core of any negotiation.

There are clearly many ways of managing this coordination. Normally a member of the chief negotiator's staff would be involved in drawing up the position paper in each negotiating chapter, even though the line ministry is in the lead role. This is important to ensure horizontal consistency between position papers. The chief negotiator's staff will also be involved in the work of the negotiating team and will act as the negotiating "memory bank" of the government. Experience has shown that they will also be required to carry out numerous ad hoc functions that slip through the responsibilities of line ministries.

Finally, the chief negotiator will devote a considerable part of his time to relations with Brussels, member states, and the other candidate countries. The representative of the country at the full negotiating sessions in the Council of the European Union in Brussels will normally be the Foreign Minister. However, these sessions are usually formal, at least at the beginning of the negotiation process. The chief negotiator is generally the representative at the meetings of deputies in Brussels, where much of the serious negotiating will be carried out. He/she will also need to foster good relations with the EU negotiators, and especially with those members holding the EU Presidency, which changes every six months.

4.6 *Role and Composition of the Negotiating Team*

The quality and effectiveness of the negotiating team is vital to the success of the negotiations. Its functions are to set general parameters for the preparation of the negotiations, discuss and provisionally decide on key issues in the negotiations, organise the preparation of position papers on the various negotiating chapters, and submit these papers to the Council of Ministers for approval.

Experience has shown that the most effective negotiating teams are those that are kept relatively small, consisting of representatives of the 10 or 11 key line ministries involved in the preparation of accession. Typically these ministries will be Finance, Economy (Industry and Trade in some countries), Labour and Social Affairs, Interior, Justice, Agriculture, Environment, Transport, Energy, and Foreign Affairs, together with, if created, the Office for European Integration. Other parts of the administration can be brought in as required. In some countries additional full members are nominated to reflect the particular situation in the country.

It is here that the technical capacity of the members of the team is particularly important. They must be fully competent to deal with EU complexities and with the national policies in their area and to outline to the other members the policy choices available to them. This is particularly important in the core policy areas of the Internal Market and in politically sensitive areas, such as the environment and agriculture.

The high level of technical competence required from these junior ministers must be combined with an acquired understanding of the functioning of the EU and its institutions in their area of expertise. This leads to a high level of investment in human capital, which should be protected. The stability of the negotiating team membership is therefore vital and, as far as possible, members who have proved themselves effective should be protected within reason from political changes.

As the negotiating team will probably meet weekly, with the help of the team chairman and the chief negotiator (in some cases the same person), strong feelings of affiliation to the team will develop. These internal relationships must nevertheless promote mutual criticism of positions and global discussion of prioritisation in the negotiations. Some negotiating teams have been characterised by an unwritten rule of “no mutual criticism”. Such a policy leads to major conflict at a later stage, when it becomes apparent that the chosen positions in the various negotiating chapters are inconsistent.

A problem for each member of the team will be the relationship to his/her minister and potential conflicts on negotiating positions, which have an impact on domestic policy. Such conflicts will inevitably arise and must be dealt with at the highest level of government.

5. The Decision-making Process and Transparency

The normal decision-making process in the negotiations will consist of the following steps:

- proposal for a negotiating position forwarded by a member of the negotiating team to his/her line minister;
- submission of draft position paper to the chief negotiator;
- discussion of the draft position paper in the negotiating team and decision to send the paper to the Council of Ministers;
- discussion of the position paper in the restricted government committee on European integration, if created;
- submission of the position paper to the Council of Ministers;
- agreed position paper sent to the EU in Brussels.

In the preparation of positions, transparency is a good policy. Time pressure will always tend to work against a policy of informing the electorate of the position the government is intending to take. However, if the government is seen to be taking positions without consulting and informing the public, this will lead to a fall in support for the whole integration process. This is especially important in countries that have only recently regained full policy sovereignty. Accession to the EU implies the pooling of sovereignty, which can be a politically painful process. The regular communication of information to the public, explaining why positions are being taken, is therefore vital.

Transparency is particularly important vis-à-vis the parliament, which, as a result of accession preparations, will be asked to pass a stream of legislation to adapt national law to that of the EU.

Transparency will become even more important as the negotiations progress and as cherished national positions have to be changed in order to keep negotiations moving forward. At the crucial stage later on in the negotiations, positions will start to change so quickly that transparency — even within the government — may be difficult to achieve. It is therefore good policy to devote resources to consultation, information and public relations from the start of the negotiating process.

6. Impact Assessment and European Integration Policy

Policy analysis and assessment of the impact of policy changes should be a part of normal government activity. Ministers should require that various policies or ways of meeting policy goals should be properly analysed before decisions are taken. Unfortunately, policy analysis and impact assessment are frequently absent when governments

make crucial policy decisions. EU accession is one area where impact assessment is vital if sensible negotiating strategies are to be developed.

The preparation for integration into the European Union is a complex exercise in cost minimisation. In spite of what has often been said, there is no one way of joining the Union, but many ways. These different ways can have very different impacts on the economy and society. One role of government is therefore to negotiate a least cost (or benefit maximisation) accession to the EU.

In order to choose the optimal route to the EU, it is necessary to know what the economic, financial, political, legal and social impacts of adopting EU policy and regulation will be and what the different ways of implementing specific policy decisions will imply for the country. Without this knowledge, imprecise as it may be, the government will not be able to negotiate efficiently nor to provide the necessary information to groups in society that will allow them to prepare for accession.

For this reason, some form of impact assessment of EU regulations and policies is necessarily performed by government or for government. Ideally, this information should be available early in the process of preparing for accession and certainly should be available before negotiations start.

6.1 What is Impact Assessment?

Impact assessment is a term that covers a multitude of related but different analytical techniques, which are designed to give policy-makers a measurement (quantitative and qualitative) of the potential impact of their policy decisions on important aspects of national life. As such it is a guide to policy-makers on the choice of policies to be followed or, where a policy decision is inevitable, it gives them a guide to the impact of the decision on other policy variables.

Some impact assessment is now an obligation for policy-makers in the EU. An example is the EU directive on environmental impact assessment, which obliges the public and private sectors to estimate the environmental consequences of major construction projects, such as the construction of roads or the building of new industrial complexes. Clearly such techniques are well established and can be carried out with some degree of precision, allowing policy-makers and regulators to make decisions, such as choosing between different engineering techniques or, in the case of infrastructure, different routes.

6.2 What is the Aim of Impact Assessment in European Integration Policy?

In the specific context of policy on European integration, the aims of impact assessment are essentially to provide governments and the private sector with assessments of the impact of adopting EU policies or individual pieces of regulation. Clearly such impact assessments ideally give quantitative estimates of net costs and apportion them to different financial sectors — the national budget, local budgets, private sector, consumers, and so on. Equally obvious is the fact that this can usually only be done in a very rough way because of imprecise knowledge of the changes going on concurrently in other areas, which in turn affect the situation under analysis.

Qualitative information is therefore also of considerable importance in such analyses. For instance, it will often be possible to indicate the implications of a measure for domestic institutions, without being able to specify exactly what the costs of such changes will be. Indeed, in some cases qualitative analysis may be important to highlight problems that need to be tackled but do not involve clearly attributable costs. A possible example is that of an institution which might have to change its legal position on accession to the EU and which would then need time to prepare the management and staff for these changes in a way that would cause the least disturbance. Even in this case the cost of the impact could of course in theory be estimated, but it is unlikely to be of any practical use.

6.3 What Are the Uses of Impact Assessment in Preparing European Integration

Impact assessments of policy measures are a routine part of the policy-making process, although they are frequently neglected by government. The aims of these assessments are:

- to facilitate the processes of prioritisation and sequencing in policy-making and of the adoption and implementation of the *acquis*;
- to assess the costs of different approaches to the implementation of EU policies or measures and therefore to serve as part of the evidence needed by government to make policy decisions;
- to assess the impact of measures on the public and private sectors in order to provide information on changes that will be required in management or production processes;

- to assess quantitatively the impact of measures on the national (and where appropriate regional) budgets and on the financing needs of companies.

Without such analysis, it will be impossible for the Council of Ministers to make serious decisions on negotiating positions. Globally it will also be difficult to prioritise positions of national interest in order to determine which positions can be given up with the least cost to the country and which positions must be defended absolutely.

Clearly, impact analysis is balanced by political considerations. One of the clearest examples is that of the Swedish negotiating position on the use of Swedish snuff. Sweden decided to negotiate for a permanent derogation on this issue, which is of limited economic or financial impact on the national economy, because the government felt that giving in to the EU would jeopardise the referendum on accession. In Finland, where a similar problem arose, the government took the opposite view.

6.4 The Techniques of Impact Assessment

It is not within the scope of this paper to develop the concept and techniques of impact assessment.

One point worth remembering, however, is that in the case of accession negotiations, the candidate country is being asked to adapt thousands of individual pieces of regulation as well as much policy. It is inconceivable that a country could undertake serious impact analyses of all of these changes. Impact assessment must be carried out in such a way as to identify the crucial areas of impact on the national economy and society and to concentrate impact assessment on these areas.

There are many ways of identifying these major areas of impact. For countries still preparing for negotiations, one straightforward reference is the set of position papers of new member states, which will show where previous candidate countries encountered difficulties with the EU *acquis*.

7. Institutionalisation of Contacts with Interest Groups

The assessment of impact of the EU *acquis* is always complicated by the lack of data and experience in ministries. In-house knowledge of sectors will always have to be complemented by information coming from outside government.

Experience has always shown that it is in the national interest for government to work closely with non-governmental organisations (NGOs), which represent the various economic and social interests in the country. The government must of course always maintain its independence from these interests and must avoid “agency capture”. However, without the input of NGOs, impact assessment will be difficult.

It has proved interesting for many countries to try to institutionalise these contacts in the context of EU accession preparation. Given the nature of the EU *Acquis*, the most vital contacts — both general and sectoral — are between government and business organisations.

Experience in the countries of Central and Eastern Europe has shown that building a relationship between these new and sometimes contested organisations and government is a long and difficult process. However, without access to the information which business, trade unions and other similar bodies hold, the government will not be able to reliably assess the impact of EU accession.

Annex 1

Transitional Periods and Derogations

A. *Some definitions*

Derogations: A derogation is a temporary or permanent permission granted by the European Union to a member state (or candidate country) not to apply an EU act, or to apply it only partially.

Transition period: A transition period is a permission granted to a candidate country to apply an EU act on its territory a defined number of years after the country accedes to the European Union rather than upon accession. By definition transition periods are temporary.

B. *Characteristics of derogations*

- Derogations are usually temporary but they can be permanent. Examples of permanent derogations are those granted to Sweden in the Maastricht Treaty on the use of snuff or to Denmark on the purchase of real estate by foreigners.
- Derogations are nevertheless usually limited to a certain time span and are therefore similar to transition periods.
- Derogations are often geographically determined; many of the peripheral regions of the EU (e.g. the Azores) are exempt from some directives.
- The directive itself must specifically permit derogations when it is adopted; otherwise derogations are not allowed.
- Derogations are most common in two areas:
 - in areas where decisions are taken unanimously, such as on taxation issues. In order to obtain agreement on a directive in this area, concessions have to be made to all member states. The directives on excise tax therefore have as many derogations as there are member states!
 - whenever there is a particular, and often unique, situation in a member state, which must be respected. Such derogations are very rare and are usually granted when the particular situation has no impact on the internal market or on other member states (e.g. snuff in Sweden). The real estate question in Denmark is also a “unique” national problem, but in fact it has wide and serious implications for future developments in the EU.
- Derogations are not usually granted in the product-related internal market area.

C. *Characteristics of transition periods*

- Transition periods are always temporary.
- The length of time agreed for the transition depends on the negotiations.
- Transition periods frequently envisage gradual implementation of a directive over the whole period; occasionally transition periods are back-loaded, and in theory they could be front-loaded. In all cases progress is monitored by the Commission.
- Generally speaking it is difficult, but not impossible, to negotiate transition periods in the narrow product-related internal market area. Short transition periods for technical adjustments after accession may be agreed, however.
- Transition periods have to be well justified; they are not available “à la carte”.
- The EU always insists on the shortest possible transition period for a new member country and for as few transition periods as possible.
- The EU itself insists on transition periods in certain areas (e.g. the free movement of labour).

D. What philosophy should a negotiating country's authorities have on derogations and transition periods?

1. In general, transition periods and derogations are not good for the country benefitting from them, as they slow down necessary reforms and cause losses of market share. For example, the new member states that requested temporary derogations from the liberalisation directives in telecommunications will not be able to develop viable telecommunication sectors, and this will have a negative affect on the whole economy. Arguments for protecting national champions should be rejected; such protection usually leads to disaster because it puts other sectors at a competitive disadvantage, and the national champion itself eventually withers away.
2. Negotiating countries should be prepared to take over upon accession all of the product-related internal market *acquis*. There may be a few directives which cause problems; these should be investigated and, if serious, discussions on them should be raised in the negotiations. However, these discussions should focus on purely technical arguments, i.e. that it is physically impossible — even with the best will in the world — to implement a directive in time for accession. Any attempt here to use derogations or transition periods to protect domestic enterprises, public or private, will complicate the negotiations and perhaps lengthen them considerably.
3. The process-related directives should be properly impact-assessed, with the most important areas being environment, social policy (especially health and safety at work), and perhaps transport. Where the impact of the directive is going to be very significant and lead to a serious financing problem (or in some cases an institutional problem), a proposal for a transition period should be made.
4. The design of the transition period will depend on the nature of the problem:
 - Where the problem is a technical one of simply inadequate time to complete the implementation of a directive before accession (where implementation of the directive is in the clear interest of the candidate country), as short a timescale as possible should be adopted.
 - Where implementation would cause serious financing bottlenecks, two possible transition routes should be considered:
 - If it is nevertheless important for economic growth and macroeconomic stability to adopt the directive, the shortest, progressive transition period that is financially possible should be negotiated.
 - Where the impact of a directive on growth, stability and employment is not significant in the short-term — or is perhaps even negative — long, back-loaded transition periods are best. An example would be the urban waste water directive, which in the long term is clearly in each country's interest to adopt. However, in the short and medium terms there is little relationship between implementing this directive and economic growth or even social welfare, except in a negative way; implementation is so costly that its financing would have a slowdown effect on growth. In this case, a long transition period, with most of the implementation coming at the end of the period (when the country's GDP is much higher), would be the ideal solution.
5. There may be some specific national problems, like the case of Swedish snuff, where the EU will not resist the negotiation of a derogation. However, it will in general be impossible to negotiate any permanent derogations, even in an area such as land purchase by foreigners.
6. It is important to prioritise demands for transition periods. The sum of all transitional periods requested by line ministries will be greater than the number that can be successfully negotiated. The candidate country will then have to decide which requests are vital for the national interest and which can be dropped. There may also be different ways of overcoming particular problems, which make it possible to avoid asking for transition periods or derogations. An example of this would be the directive requiring member states to hold strategic oil reserves to cover 90 days of supplies. Rather than asking for a transition period to permit the extremely expensive construction of new storage, it might be acceptable to count oil in maritime transit as strategic reserves or alternatively to keep strategic reserves in other member states.
7. As a guide to determining which directives should be subject to detailed impact assessment, existing derogations are quite a good indicator of where member states have encountered difficulties in implementation. The other main guide is the annual report on the internal market, which shows the parts of the internal market legislation that are the most difficult to implement. The countries of the Western Balkans

should also look at the position papers of the new member states. It is probable that if these countries found it necessary to request transition periods, the new countries will also have problems.

8. The negotiations are not an objective exercise in which all sides are searching for some optimum solution. They are sometimes brutally political and must be understood in that way by the countries of Central and Eastern Europe. The political nature of the negotiations must be taken into account in designing negotiating strategies. For instance, the EU will not want to make concessions in areas such as food safety and veterinary and phyto-sanitary regulations, because these subjects are at the top of the political agenda in Western Europe. On the other hand, the EU is unlikely to object to transition periods for the implementation of the drinking water directive, which has practically no trans-border significance.

Annex 2

The Coordination of EU Accession and Integration Policy

The coordination of EU policy in the countries of the Western Balkans in the coming years will essentially be directed by two closely-linked processes:

- the continuous development of the National Programme for Integration (in the last enlargement this programme was referred to as the National Programme for the Adoption of the *acquis*), which is a crucial document in the pre-accession period;
- the coordination mechanism of the negotiating process.

Coordination will not work well unless there is complete agreement between the two processes.

Introduction

The national administration in the candidate country must now undertake a very significant series of interlocking tasks. These include:

- following on from the screening process, preparation of the overall negotiating position in detail and continuation of the impact assessment process;
- revision and updating of the National Programme for Integration (NPI) on a regular basis;
- implementation of the NPI;
- programming of EU and other financial assistance;
- preparation, programming and implementation of pre-accession funds;
- organisation of the institution-building exchange programme;
- ongoing work of the Stabilisation and Association Committee.

All of these matters are closely interrelated and should not be considered in isolation.

Screening and the Preparation of Negotiations

By now most of the problems of screening are well known to the participants, in theory at least.

The Commission will make it clear that screening is part of the negotiations, because its role is not only informative but also to identify those parts of the *acquis* where negotiations are necessary and therefore also those parts of the *acquis* that are acceptable to the candidate countries. Of course points that were not discussed during the screening process can be raised in the course of the negotiations.

The negotiations connect with the other policy elements listed above through the conditionality associated with the various pre-accession assistance facilities provided by the EU and through the Commission's annual reports on progress in candidate countries. The various possibilities for assistance are linked to the European Partnerships and to the National Programme for Integration.

Ideally, the negotiating position of the government should be reflected completely in the measures described in the NPI. For instance, if the government decides that it will meet all veterinary and phyto-sanitary standards before accession and therefore does not wish to negotiate these points, then it should be expected that the NPI will contain a complete listing of the measures needed to achieve this, with details of timing and financial costs implied by the measures.

The National Programme for Integration (NPI)

The NPI will play a very central role in the period prior to accession. Apart from the negotiating process itself, in the minds at least of the European Commission, the NPI will be the most important determinant of activity and financial support.

The NPI is linked to the negotiations as it will direct assistance to those sectors that really pose difficult problems for the negotiations – for instance, in the areas of agriculture or the environment.

The NPI is the main vehicle for implementing EU financial assistance, including pre-accession funds. The great advantage of the NPI is that it is a national document over which the government has complete control.

The NPI contains considerable detail on the timetable for adoption of measures responsibilities for preparing and implementing measures, and financial requirements for completing these measures. It therefore becomes the crucial document for:

- the negotiating team;
- the coordinating team for the preparation of accession;
- line ministries;
- those in charge of the management of assistance programmes.

The NPI should serve all parts of the administration as a horizontal reference document. As such it should be made available in a form that can be easily accessed and updated.

The National Budget, the NPI and the Negotiations

While it is obvious that there should be total consistency between the negotiating positions or the results of the negotiation and the NPI, it is equally obvious that these should be consistent with national budget planning.

Normally, position papers for the various negotiating chapters should be costed in order to obtain a medium-term profile of financed steps for the implementation of the *acquis*. Certainly budgetary constraints must be brought to bear on the NPI, as otherwise it will develop into an adjusted “wish list”, without any real significance in the real world. As each one of these elements changes — the budget, negotiating positions and the NPI — corresponding adjustments in the other two elements of the package must also be changed.

Ongoing work in the Stabilisation and Association Committee/Council

The NPI will also be integrated with the positions taken in the context of the Stabilisation and Association Committee. The decisions made for instance on industrial restructuring or on certification will be reflected in the measures adopted in the NPI.

The work of the Stabilisation and Association Committee should not be underestimated when negotiations get underway. Most of the serious problems in the coming years between the countries of the Western Balkans and the EU will still arise in relation to the interpretation of the Stabilisation and Association Agreement.

Annex 3

Human Resources

Although EU integration is a political process, some *stability in the personnel* dealing with accession is crucial to success. Ideally every person who is directly involved in the process and is efficient in his/her job should stay on for the duration of the negotiations. This may be very difficult to achieve in some of the political situations in Central and Eastern Europe, but changes in personnel for political reasons must be kept to a minimum to avoid any serious loss of human capital. This is one of the reasons why most candidate countries have avoided nominating major political figures as chief negotiators. In this regard, Hungary nominated its ambassador to the EU in Brussels, the Czech Republic a state secretary in the Foreign Ministry who had been posted for many years in Brussels, and Poland its first ambassador to the EU after 1989.

This short list also underlines the importance of EU experience amongst senior negotiators. It is particularly important that the senior figures in the negotiations have a *good understanding of how the European Union institutions operate* and, if possible, of one or more member state administrations. It is true that this can be learnt, but the pace of negotiations may mean that the learning curve is too steep. Contact with Brussels and with member states comes automatically through the negotiating process. It is nevertheless advisable to provide younger civil servants involved in the negotiations with some *formal training in EU affairs*. Formal training will allow them to fit their own particular policy area into the complete picture of EU policy and practice, and this will help them to become far more discerning negotiators or analysts.

More generally, European integration requires a country to have access to a reservoir of intelligent, hard-working, multilingual young people who have, or can acquire, specific knowledge in particular areas of EU affairs. These people will often be economists or lawyers, but of course many other disciplines are of equal value. Above all, it is the quality of the individual that is important. The government should have an interest in promoting the education and training of this group, which will guide the country, as officials, towards accession. The Croatian example here is interesting: young people are offered training in universities in other EU countries in return for promising to work for a certain number of years (usually three) as officials in Croatian ministries or government agencies.