Preparing for Membership or The Paradox of Going beyond EU Requirements

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RÉSUMÉ

L'auteur explique comment un Etat candidat peut effectivement devenir membre de l'UE. Il indique que certaines tâches, qui lui incombent ne sont ni formellement décidées ni même prévues par l'UE. En outre, il rappelle que l'application des directives et des règlements dépent d'une forte capacité institutionnelle et administrative, qui exige des Etats membres un grand don d'innovation. En prenat l'exemple de Chypre, l'auteur démontre que ces Etats doivent accomplir plus d'obligations que celles que l'UE leur demande. Leur capacité de bénéficier au mieux du statut de membre de cette entité est fonction de leur pouvoir d'influencer des nouvelles règles de l'UE, et de se conformer à ces règles. Les Etats candidats doivent aussi re-outiller leurs systèmes économiques afin de tirer un profit maximum des règlements et des politiques de Bruxelles.

ABSTRACT

In this article, the author explains how candidate-countries can become effective members of the EU. He identifies certain tasks which are not formally mandated by the EU and for which the EU provides no guidance. The application of EU directives and regulations depends on the existence of extensive institutional and administrative capacity. To build that capacity, member states have to innovate. Using Cyprus as a reference point, the author demonstrates that the candidates need to do much more than merely adopt EU law. Paradoxically, they have to do things that the EU does not ask them to do. Their ability to derive the maximum benefits from EU membership will very much depend on their success or failure in influencing nascent EU rules, in complying with them and in re-engineering their economies so as to "exploit" as much as possible EU rules and policies.

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Identifying the challenges of EU membership

Ten countries are poised to enter the European Union. As of next year, the powers of national authorities in these countries will be curtailed considerably. Many policy decisions will be taken together with the other member states within EU institutions while many of those taken locally will be subject to scrutiny by the EU. In the meantime, however, acceding countries have an important task to accomplish - they have to complete their preparations for membership of the EU.

The purpose of this paper is to explain that as the acceding countries are progressing with their formal preparations for membership, they should also consider whether they have the capacity to play an active role within the EU and derive all the benefits of EU membership.

If their public pronouncements are to be accepted at face value, the governments of most of the acceding countries appear to regard entry into the EU as a *fait accompli*. Some politicians seem to believe that there is little left to do since the accession negotiations have ended. After all, most laws required by the EU will soon be passed by their parliaments. So what more is there to do?

So far preparation for entry into the EU has mainly focused on the establishment of new institutions and procedures and the adoption of new laws and regulations; largely quantitative goals. From now on they will have to operate the new institutions and procedures efficiently, to enforce the rules effectively, deal sufficiently with complaints, aggrieved persons and companies and, in general, deliver the expected service to the public, largely qualitative tasks.

Indeed, these qualitative tasks will become progressively more important. As explained in more detail later on, being an EU member does not mean merely accepting formally the rules decided in Brussels. It is also about shaping them in the first place and then enforcing them vigorously. The integrity of the EU system depends on the

ability and willingness of each member state to participate in collective decision-making and then comply with the common rules. This will be even more important in an enlarged EU.

The Commission, or "guardian" of the system, has already vowed to maintain close scrutiny over the implementation performance of the 25-plus members. At the beginning of March 2003, the Commission, in an internal memorandum, found all candidates, with the exception of Slovenia, to be failing to maintain the pace of their domestic reform.[1] This is not so serious at this stage but it is indicative of the problems these countries may face in the future.

Perhaps the more serious point, as instructed by the Copenhagen European Council, is that the Commission will publish in the autumn of this year a final and comprehensive assessment of the readiness of the acceding countries to assume the full obligations of membership. They do not have much time left to complete the adoption and application of EU rules. If they are found not to have completed those tasks, the EU may invoke the safeguard provisions included in the Treaty of Accession thereby restricting access to its internal market.

At this point, acceding countries are naturally preoccupied with reaching the targets defined in the various pre-accession partnerships, filling the gaps identified by the Commission in its last regular report of October 2002, staffing the newly established institutions required by the EU and finishing their legislative work.

This raises the question whether there is anything else for them to do in order to become effective EU members. The answer to this question depends, of course, on how one defines "effective membership".

The concept of "effective membership"

Since no country would be interested in joining the EU unless it became better off, it is natural to define effective membership as

maximization of benefits from that membership. Although it is natural to define it in this way it is not at all easy to know when a country reaches the maximum level of benefits. Therefore, I will adopt a slightly different approach and ask what a country should do to reach that level. Given the fact that being a member of a system such as that of the EU means determining its rules, complying with them and using them to one's own advantage, I, therefore, define effective membership to mean four things:

- influencing those rules so that they match as closely as possible a member's own national interests;
- enforcing the rules rigorously;
- using all opportunities provided by the single market;
- maximizing absorption of EU funds.

Accordingly, we can assume that the benefits of membership in general cannot be maximised unless the member state concerned complies with EU rules. Certainly, compliance does not necessarily maximise potential benefits for the simple reason that EU rules leave much leeway to member states on how they should run their economies and deal with their social problems.

In contrast, however, EU rules are by and large designed, among other things, to protect free trade, free movement, investment, consumers and the environment, among other things. Although not inconceivable that under certain conditions, restriction of trade, investment or competition or tolerance of pollution could be in the national interest, I think it is safe to assume that each member is better off by maintaining an open market, safeguarding the rights of its consumers and protecting its environment. Even if under certain conditions a country would become better off by deviating from those rules, I very much doubt that all member states would be better off if they all behaved in the same way.

Objective of paper

The purpose of this article is to explain how acceding countries may try to become effective members of the EU. In it are identified certain tasks not formally mandated by the EU and for which the EU provides no guidance. Previous research carried out and published by the European Institute of Public Administration, explains in detail why the application of EU directives and regulations depends on building extensive institutional and administrative capacity.[2] To build that capacity, member states have to innovate.

Similarly, in trying to maximize gains from EU membership, prospective new members have to innovate. Overall, this means that to achieve the purpose of this paper, it is necessary to identify where new members can innovate. In fact, they need to do much more than merely adopt EU law. Paradoxically, they have to do things that the EU does not ask them to do.

In a nutshell, their ability to cope with the obligations of EU membership will very much depend on their success or failure to deal with the issues of influencing nascent EU rules and in complying with them. After defining key terms, this article begins with the issues of compliance and enforcement of EU rules then argues that prompt compliance with rigorous enforcement are inextricably linked to institutional flexibility and accountability.

Application of EU rules and institutional accountability

Apart from completing their legislative work, it is now widely recognised that the primary task of the governments in the acceding countries is to strengthen and extend enforcement procedures and enforcement instruments across the board: from the proper use of public (national and, soon, EU) funds, to environmental protection, and health and safety at the workplace, as well as border controls. The Commission has made many such statements in all its regular reports on the progress of the candidate and now the acceding countries.

Another, probably longer-term, task of these governments is to improve the functioning of their civil services[3, 4] which have to be made more flexible. Their different departments and agencies should be given more decision-making autonomy and, at the same time, made more accountable.

Incidentally, this kind of restructuring and reform should also be extended to agencies and companies that are controlled or owned by the state. Article 295 of the EC Treaty prevents the Community from discriminating either in favour or against state-owned or state-controlled enterprises or agencies involved in commercial transactions. Hence there is no EU law that requires privatisation. However, these agencies and enterprises must be fully subject to the rules of competition. How will they be able to compete, without receiving any aid or favour from the state, if they are shackled with antiquated practices? The implication is certainly not that they should be sold off. Rather, the state, as their sole or main shareholder, should consider how they can gain the operational and financial flexibility necessary for them to function in what may be a new environment of open markets and free competition.

Enforcement and the state of their civil services have been treated by many analysts as separate issues. In many respects they are. But in one crucial way they are closely intertwined. Decision-making autonomy is essential for rigorous policy enforcement. The enforcing authorities have to be able to take whatever measures are necessary to respond to changing market conditions, new corporate strategies and simply keep pace with criminals and fraudsters. The problem is that in closely-knit societies, as those of the acceding countries, decision-making autonomy or flexibility can also be easily abused to obtain or grant favours. That is why decision-making power should be counterbalanced with open, transparent and objective procedures.[5]

Both rigorous enforcement and accountable civil service imply that politicians should intervene less in the everyday business of government. This may sound paradoxical. After all, who will ensure that the civil servants do their job properly? In fact, the system, if it is

properly designed, should run itself. Policy implementation and enforcement should be rule-bound and objective. Political intervention, even when it is well-intentioned, introduces problems and imperfections of its own.

The reader may think that I am exaggerating this argument. Markets, policies and public institutions do not always work perfectly - some would even say that they rarely do. Somebody, then, must intervene to correct them. The point, however, is that there is intelligent policy adaptation and there is *ad-hoc* intervention. The difference between the two is that the former takes into account the possibility of policy failure at the early stages of policy formulation and makes provisions for regular and impartial policy reviews, while the latter relies on the initiative of higher political authority. This is all well and good, but higher political authority may or may not seize the initiative and may or may not give up at the sight of the first difficulty.

What are the typical excuses for all kinds of failure to implement or enforce policies? Are they not that "there is a gap in the law" or that "the law has not explicitly provided for this particular contingency", or that "the department lacks resources"? Were these problems not predictable when the laws and policies in question were formulated? If they were predictable, why did no one do anything to prevent failures and remedy the problems?

Presumably the answer is that no one was responsible because no one was accountable, and no politician; i.e., the higher authority, found time or considered it worthwhile to deal with the problems. After all, very few laws have a built-in policy or departmental review and assessment. Why, then, should anyone stick out his or her neck to do something that is not required?

One of the unforeseen repercussions of the unprecedented amount of financial and technical assistance that the candidate countries have received has also been the extent and depth of the legal reform they have undertaken. This situation has been partly the result of the advice offered and the many seminars that were organised by the EU and

partly the impact of the presence of pre-accession advisors. All these activities have had beneficial effects but have also led legal drafters in the candidate countries to prepare very comprehensive EU-compatible laws. They have aimed for perfection. Instead, they should have acknowledged the impossibility of trying to foresee all future contingencies and, instead, they should have incorporated in the new laws pre-determined reviews and institutional evaluations in case further reform proves necessary. That further institutional adjustment if not reform will prove necessary is, in my view, inevitable. Not only many of the rules are new to the acceding countries, the institutions responsible for enforcing them are also new. Periodic assessment of institutional performance is one of the most potent incentives to civil servants to carry out their tasks effectively.

The European Union relies on rules which must be effectively enforced. If the new member states wish to avoid being dragged before the European Court of Justice for failure to comply with EU law, their governments should try to make themselves "obsolete" by making it unnecessary for politicians to intervene to fix things. If that happens, they will have succeeded in "Europeanizing" their countries in the sense that their EU partners will be in a position to believe that the commitments new member states make in Brussels are irreversible and immune to domestic political meddling.

This kind of "Europeanization" would also mean that scarce resources, financial, human and material, are used efficiently and effectively. That would make a direct contribution to their economic and social development. See the last point in the section below.

Maximizing the EU membership benefits or the paradox of doing what the EU does not require you to do

In the previous section I argued that the "Europeanization" of public policy in the acceding countries should be a top priority. This Europeanization suggests that they should prepare for entry into the

EU not just by going through the legal process of adopting the required EU laws; they should also modernize public services and strengthen policy implementation and enforcement.

One may argue, however, that the real issue is as much about modernization of the government machinery and civil service as it is about Europeanization in the sense of getting ready to apply specific EU rules.[6] For example, the issues of independence and accountability of civil service are not new. They were first debated in West European countries twenty or so years with the establishment of new institutions such as autonomous regulatory and executive agencies. This raises the question whether modernising national civil services is sufficient to maximise the benefits from EU membership. The answer is that it helps but it is certainly not enough.

As explained below, there are issues that have nothing to do with administrative reform or adopting modern methods of governance. The EU has its own peculiarities and special features that must be taken into account. They are grouped into the following ten issues which the governments of the acceding countries should include in their preparations for entry into the EU.

Minimising state liability

Under the EU treaties, liability for breaches of EU law falls on the member states. Irrespective of whether they may have a federal political system or whether the breach may have been effected by an autonomous municipality, in the eyes of the EU law, it is always the member states which are at fault. This has significant implications. It means that the central government must be able to instruct any other public authority, be it independent, regional or local, to comply with EU requirements and court rulings. If that is not possible because of the federal political structure of the country or the autonomy of regional authorities, there should at least be a provision in national law obliging all public authorities to respect EU law. This issue of liability

was not part of the 31 chapters of the accession negotiations, but it does not follow that it can be ignored.

In the case of Cyprus, which may soon have a new political system with extensive separation of powers and delimitation of competences, it will be even more important to ensure that all public authorities at all levels of government in both communities are obliged to respect EU law.

Some may think that since a fundamental principle of EU law is its primacy over national law, it may be sufficient to rely on that principle. However, in the absence of any explicit domestic legal provision or administrative procedure, eventual compliance will be guaranteed only by resort to proceedings, most likely before constitutional courts. That is not an efficient way of ensuring speedy compliance at all levels of government.

Direct effect of EU law and enforcement in national courts

The EU system confers certain rights to individuals, both persons and companies, which can be exercised before national courts. This is the concept of the "direct effect" of EU law.[7] It does not matter whether a member state does not happen to have a corresponding national provision on its statute books. The national judge is obliged to enforce EU law when invoked in his or her court. Even where EU law is to have effect through transposition into the domestic national system, failure to do so or failure to do it correctly may create liability for the country concerned when the intention of the EU law is to generate explicit rights for individuals and such rights are manifestly impaired by that failure. This is the so-called "Francovich" doctrine which also enables individuals to initiate proceedings against their own authorities for any damages they may have suffered by the failure of those authorities to take measures to give effect to EU law.

The constantly expanding and evolving EU case law places a heavy burden on both national authorities and national judges. Judges in the

acceding countries have already had some training on EU law. A few seminars are clearly not enough. Much more has to be done if they are to apply EU law properly, especially in those cases for which adaptation of national laws has not been necessary.

The direct effect of Community law, of introducing new laws into national systems and of establishing new institutions to implement those laws, will be more court cases of an increasingly complex nature. For most acceding countries the specialised national regulatory authorities required by the EU are a new feature. Their decisions will also be subject to appeal before courts. This raises the question whether national courts can cope with the increase in workload and whether or not they have the expertise necessary to deal with regulatory problems mixing law, economics and technical issues. The increased workload may be dealt with by appointing new judges; whereas the complexity of the cases can be addressed through the creation of specialist courts with judges specialised in certain types of cases. If, in this way, they are able to process more cases, they will also solve the problem of the heavier workload. Admittedly, however, the extra costs of establishing new courts will have to be set against the benefits from quicker and more efficient handling of cases. This is an empirical issue which should, therefore, be considered before it is dismissed a *priori*.

In Cyprus, for example, the situation is different. The Supreme Court, in addition to being the highest court of appeal, also functions as a primary administrative court dealing with cases against decisions of public authorities. By contrast, in France and the Netherlands there are designated district courts dealing with competition and regulatory cases. This both eases bottlenecks and ensures that the presiding judges have a high degree of technical expertise.

Training

What applies to national judges also applies to any other officials responsible for enforcement of EU rules. EU rules and policies are

constantly evolving. In other words, training never stops. It should not be confined to updating officials on new policy initiatives and outcomes in Brussels but should also seek to identify the best possible measures for implementing new EU rules and examine how other member states interpret such new rules and also enforce older rules.

Training should also be provided to those who must comply with EU rules, not only those who have to enforce them. Better awareness of the obligations imposed by EU rules would contribute to fewer infringements. The Cyprus Academy of Public Administration has organised many seminars for civil servants and other officials. Its work has been invaluable. But who will train those in the private sector that have to comply with the new rules? Although this is the natural role of the European Institute of Cyprus, its funding is running out at the end of 2003. No decision has been taken yet on whether its funding will be renewed and the role it should play after Cyprus joins the EU.

Training should also cover languages. Although in official meetings there is simultaneous interpretation, much work is done in the margins of meetings and compromises are forged in the corridors. The working languages of the EU are French, English and German. Many draft documents are first produced in only one of these languages. As explained later on, the only possibility for small states, like Cyprus, to influence EU policies will be to shape them while they are being developed. To be able to exert that kind of influence, national officials need to have, among other things, excellent communication skills including knowledge of the main EU languages.

Competition of views and technical expertise

As soon as one recognizes the constant state of flux of EU rules and that for some rules defined as directives the member states have discretion in determining the precise national implementing measures, it becomes obvious that there is no single correct way of implementing EU law and complying with its requirements. It follows

that it is important for member states to engage all relevant actors, consult widely and obtain independent advice. Later on I will come back to the issue of independent advice. At the same time, however, some EU rules are very technical. Consequently it is necessary to build expertise which combines both legal knowledge and technical comprehension.

Most acceding countries have lawyers with technical specialisation within individual ministries. However, this model of wide consultation (competition of views and ideas) and competence combining legal and technical knowledge exposes an institutional peculiarity of Cyprus. That peculiarity will probably become a serious problem in the future. No ministry has its own legal experts. All legal work is handled by the Legal Service of the Republic. No matter how many young and eager lawyers they hire, they will not be able to keep up with the technical developments in EU law and the evolution of the law as a result of the continuous stream of European court rulings. More than 2,500 legal acts and several hundred court rulings per year are processed in the EU. The best placed individuals to keep track of them, understand them and make recommendations for their adoption or for adaptation of existing policies would be legal experts with policy knowledge based in each ministry.

There is another problem with this absence of legal expertise in line ministries and, especially, the newly established regulatory authorities. The experience of the existing member states suggests that the decisions of the regulatory authorities will be repeatedly challenged before the courts by affected companies. These are usually the incumbent operators that hitherto have been under the control of the state and which in the future will have to function without any state support. These are also the organisations that have extensive technical and legal knowledge. So far, in most cases, the state has acted on their behalf. In the future it will certainly act against their attempts to protect their market share and other privileges. Since the operators will tend to challenge decisions of the regulators and since regulators will have to act independently, having their own staff with the

requisite legal training will improve the quality of their decisions and reduce the risk of their annulment on appeal.

Citizen and consumer-oriented services

If the rights of persons or companies are infringed by national authorities, they can petition EU institutions directly, most usually the European Commission. They can also petition EU institutions in case their complaints are ignored or rejected by national authorities. They can do so anonymously or ask for confidentialiry. Note this is not a legal process of appeal where they first have to exhaust domestic legal remedies. Aggrieved persons can contact the Commission, for example, at any stage in the domestic procedures. And, as mentioned above, aggrieved persons may also resort to domestic courts.

The implication is that public authorities in acceding countries have to change their attitude. They have to become proactive, respond quickly to requests for information and complaints, and provide effective remedies. As mentioned in the previous section, their decisions, even if ultimately found to be justified, must be clear and adequately reasoned. Timely response and adequate reasoning by public authorities are principles enshrined in the administrative law of most acceding countries. It remains to be seen whether their standards are on par with those of the EU and whether their public authorities have the means to be as proactive as they should be.

All this is good news for citizens. Despite the fuss over the EU's "democratic deficit", the mere fact that the EU exists separately from its members forces these states to be more democratic than otherwise and makes them and their public authorities more accountable.

Information records and impact assessment

Ability to respond quickly to requests for information is important in the context of the EU for another reason. The Commission, in its

capacity as "guardian of the treaties", has the power to ask for information from any public authority. The request is normally sent to the permanent representation of the member state concerned in Brussels. From there it goes to the national capital and then to the responsible authority at any level of government in any region. The Commission expects answers usually within a couple of weeks. To respond quickly, public authorities must keep full records with easily accessible information. Do public authorities in the acceding countries have files with complete and retrievable information?

There is one more issue concerning provision of information to Brussels with which all acceding countries will soon have to grapple. That is the notification of state aid programs. All public authorities at all levels of government and state-controlled enterprises will have to notify to the Commission any measure that contains state aid and obtain its authorization before they can put it into effect. At present, all acceding countries have state aid monitoring authorities that deal with state aid domestically without notification to Brussels. In a year's time the situation will change. As far as I know none of those countries has established a coordinator of national notifications to the Commission. No EU rules exist on this point apart from the requirement that notifications should go through permanent representations in Brussels. As explained below, however, channelling information to the Commission must be coordinated. Also explained below, sometimes a country should *not* do things that the EU allows it to do, like granting state aid.

Moreover, the real challenge concerning EU-required information is not about collecting, storing and retrieving, but rather about using or processing it before it is passed on to Brussels. The Commission announced about a year ago that in the future will assess the impact of proposed legislation before forwarding it to the Council and Parliament for formal adoption.[8] Logically any member state that wants to influence forthcoming rules as they are being shaped would have to be able to carry out similar impact assessments. This is a

significant issue to which I will return below when I examine the role of persuasion in the various Brussels committees.

Public policy has been formulated in Cyprus, perhaps amazing well, without input from independent think tanks. In view of the fact that citizens must be engaged in EU affairs, the absence of an independent forum for debate and analysis could prove to be the Achilles' heel of Cypriot policy processes.

Coordination and identification of national interest

Coordination among public authorities will be more important than ever. Traditionally, the ministry of foreign affairs is the contact point of one government with other governments and international organisations. After entry into the EU, contacts with EU institutions and national authorities in other member states will increase exponentially.

There are four regular summits of heads of government and state and about 50 to 60 Council meetings per year attended by ministers. The Council has many committees and about 300 'working parties' of national officials who meet several times a year. The Commission has several hundred 'expert groups' made up of national officials and chairs about 250 so-called 'comitology' committees of national representatives which are responsible for managing and adjusting implemented regulations. There are literally hundreds of meetings annually.

National ministries in the acceding countries will necessarily have to deal directly with the corresponding services in the EU and other member states. Contact made exclusively through their ministries of foreign affairs will become a bottleneck and, therefore, will largely be abandoned. But precisely because there will be so many national authorities involved in EU affairs there will be a great need for coordination.

At minimum, coordination would aim to keep everybody concerned informed of what is going on. In addition, coordination will also be needed after new rules are adopted in Brussels in order to monitor their proper implementation within the new member states. But coordination will be found to be indispensable to iron out domestic policy differences between ministries and reaching a cohesive national position.[9]

Coordination at the highest political level, say within cabinets or councils of ministers, should be a measure of last resort. If it is to be effective, it will have to be carried out largely in one or more dedicated committees at different levels, ministerial or technocratic, to be able to keep up with the pace and workload in Brussels. It will also have to be placed outside any ministry so that it can function impartially.

The reader should be aware that there is a fine line between coordination that eliminates internal policy discrepancies and reconciles conflicting positions and coordination that tries to control everything and, in the end, becomes a bottleneck. It is not obvious where that line should be drawn. Therefore, irrespective of the coordination protocol that is eventually adopted, it would be imperative to build in this protocol provisions for review and adjustment.

The issue of coordination is of particular importance to Cyprus for another reason. It will be the only member of the EU with a presidential democratic system. When other countries with parliamentary systems take positions in the EU Council or adjust those positions at very short notice they are quite sure that they can obtain the backing of their national parliaments because the prime ministers and the ministers are in most case themselves members of national parliaments or, if they are not, they do at least represent the party or coalition with majority in parliament. This is not necessarily true in the case of Cyprus with its separation of executive and legislative powers. It will be even more relevant in the future within a new political system with possibly three executive branches.

Consultation of parliament, sometimes on very short notice, will be very important if Cyprus is not to experience an internal democratic deficit. Obviously new and speedy consultation procedures will have to be developed.

In charge of European affairs

In fact coordination will become a full-time job. In view of the fact that coordination also means forging policy compromises, all EU member states have a political person in charge of European affairs. That person may be a minister or, more often, deputy minister or state secretary. Most acceding countries have similar political persons in charge of their dealings with the EU. Cyprus does not yet have any and it should seriously consider the appointment of a European affairs minister or deputy minister.

Using persuasion to advance national interests

In an enlarged EU, every member will have correspondingly less power than what would be the case with fewer members. Some countries will have minuscule power. Compare, for example, the three votes allocated to Malta or the four of Cyprus against the 29 of Germany or France. Yet, recent research suggests that when the various committees of Community and national officials prepare new EU legislation, they listen to good arguments irrespective of the country of origin of the person presenting them.[10] This has been interpreted as a sign that national officials who participate in these Brussels committees transfer their loyalties to the Community. That may or may not be correct. Another less contentious way to interpret the same result is that on a technocratic level conflicting views are resolved on the basis of technical arguments. This is very significant for small countries for the simple reason that their "political" power is virtually non-existent. Their only power lies in their skills of persuasion.

The United Kingdom, for example, one of the more diligent member states in transposing EU laws promptly and enforcing them effectively, is also one of the most active members in influencing new EU rules as they begin taking shape. In order to achieve that, the UK carries out its own preliminary impact assessment of draft rules, then uses the results to determine its national position and persuade Commission and national officials in other member states to adjust the draft rules to make them less costly, more efficient, etc. This kind of intervention which aims to improve draft rules also furthers national interests.

For the new member states it will also be important to have a sufficient number of their nationals take positions in EU institutions. It is not that the new EU civil servants will somehow and surreptitiously protect the national interests of their home states. Their loyalty will indeed be transferred to the EU. However, they will bring into EU institutions a deeper understanding of the economic and political systems and social conditions in the new member states. If not enough Cypriots, for example, succeed to pass the examinations to enter EU institutions, who will understand any problems that Cyprus may face in the future in its application of EU rules and policies?

Achieving the right economic conditions to absorb EU funds and exploiting opportunities

The prospective new members will be net recipients from the EU budget - at least this is the intention during the first three years of EU membership. However, in order to receive funds from Brussels they have to set up the right institutions and procedures. Moreover, in order to maximise the amount they can draw from the EU's structural funds they must release corresponding national funds. This is part of the *acquis*.

What is not part of the *acquis* is where to find that extra national money. The EU does not tell its members how to raise government

resources or increase tax revenues. In fact all candidates have a major problem ahead of them. They all have budgetary deficits. This means that, since it is always politically difficult to raise taxes in order to boost tax revenue, they must reduce spending. But by reducing spending they will manage to absorb fewer structural funds because they will not be in a position to match EU money with extra national money.

Under these conditions there is only one alternative. Public administrations, public programs and public spending must become more efficient to economise resources. We see now that in addition to administrative efficiency, national authorities in acceding countries must also achieve spending efficiency in order to maximise, in this case, the financial benefits of EU membership.

In this respect, it is necessary to point out that although the EU, in general, prohibits state aid, it nonetheless allows certain types of aid limited to pre-determined amounts. This, however, should not be seen as a licence to subsidise industry and regions, even if that is permitted. Surprising, the EU does not require member states to carry out cost-benefit analysis of the aid they grant. They need only comply with the rules defined by the Commission. Legal compliance is not the same as granting efficient aid, so again, if they wish to use their resources efficiently, member states have to do something extra that the EU does not require them to do. This is not the case, for example, in structural operations where the EU has much more extensive rules forcing member states to justify their regional programs and evaluate their results both *ex ante* and *ex post*.

Last, but certainly not least, the EU with its extensive networks between member states, many programs and huge market offers a wide range of opportunities to both public authorities and the private sector. To public authorities, it offers the possibility to cooperate for various reasons with their counterparts in other countries. For the private sector, it also opens up many possibilities for cross-border joint ventures and investment and support from Union, R&D programs

and small-business financing. This is not the place for a full analysis of these opportunities. However, it is important to understand that EU law and rules do not tell anyone how to exploit such opportunities.

Ireland achieved high rates of economic growth because it was able to attract American manufacturing companies which located their operations in Ireland and used it as a gateway to Europe. Japanese firms did the same with the United Kingdom. It has become a mantra of public policy that Cyprus is a bridge between Europe and the Middle East. This bridge, if it really exists, will become even more important when Cyprus becomes the eastern-most territory of the EU. However, what is it being done to build and widen this bridge?

Conclusion

The ten issues identified above have at least one common feature. There is no EU rule that tells member states what they must do. That is why another way to prepare for membership is not just to learn all the EU rules, but rather to look at how other countries have coped with the demands of membership and learn from their successes and failures.

In essence, preparation for membership requires a sort of risk analysis and market research. With respect to assessing the risks of membership, instead of ticking off adopted legal acts, the governments of the acceding countries should identify what can go wrong. They should find out which are their weak points and take preventive action now rather than respond with remedial measures later. Although it is never too late to carry out this risk analysis, failure to apply and enforce EU rules properly means, at best, that the Commission will eventually haul them before the EU Court of Justice. At worst, countries will have failed not only to enjoy the full benefits of membership but also to protect adequately their citizens, consumers and environment.

As such, market research may prove a useful tool for increasing the benefits of membership. Indeed, the EU has a huge internal market which offers many opportunities that can be exploited by the alert and capable member states. Just as companies structure their internal operations so as to improve their market prospects, so should the acceding countries do to improve their prospects within the EU system.

NOTES

1. See "http://www.euractiv.com/cgi-bin/cgint.exe/3777358-118?targ=1&204&OIDN=1504881".

2. See Phedon Nicolaides, *From Graphite to Diamond: The Importance of Institutional Structure in Establishing Capacity for Effective and Credible Application of EU Rules*, (Maastricht: European Institute of Public Administration, 2002) and Phedon Nicolaides *et al.*, *A Guide to the Enlargement of the European Union (II): A Review of the Process, Negotiations, Policy Reforms and Enforcement Capacity*, (Maastricht: European Institute of Public Administration, 1999). See also the publications of the "capacity-building" project by Phedon Nicolaides on *Enlargement of the EU and Effective Implementation of Community Rules*, (EIPA, 2000); Christoph Demmke and Martin Unfried on *European Environmental Policy*, (EIPA, 2001); Frank Bollen on *Managing EU Structural Funds*, (EIPA, 2000); Pavlos Pezaros on *Effective Implementation of the CAP*, (EIPA, 2001) and Adriaan Schout on *Organisational Analysis of the European Activities of the Ministry of Economic Affairs*, (EIPA, 2000).

3. For a review of the state of public administrations in the acceding countries see Danielle Bossaert and Christoph Demmke, *Civil Services in the Accession States: New Trends and the Impact of European Integration*, (Maastricht: European Institute of Public Administration, 2003).

4. There is also the issue of opening up employment within public administrations to persons who are nationals of other EU member states. Although under Article 39(4) of the EC Treaty, employment in public administrations may be restricted to own nationals, the European Court of Justice and the Commission have interpreted that derogation in a narrow manner. Not all jobs in public administrations may be reserved for own nationals. It has been estimated that between 60% and 90% of all civil service jobs may be opened up to persons of other EU nationalities. See Danielle Bossaert *et al., Civil Services in the Europe of Fifteen*, (Maastricht: European Institute of Public Administration, 2001) and Christoph Demmke and Uta Linke, *Who Is a National and Who Is a European: The Legitimacy of Article 39*(4), *Eipascope*, forthcoming 2003.

5. For an explanation of the significance of decision-making autonomy and accountability in policy enforcement and regulatory supervision see Phedon Nicolaides, with Arjan Geveke and Anne-Mieke Den Teuling, *Improving Policy Implementation in an Enlarged European Union: National Regulatory Authorities*, (Maastricht: European Institute of Public Administration, 2003).

6. For a more sceptical view as to whether it is possible to make such distinctions, see Christoph Demmke, *Undefined Boundaries and Grey Areas: The Evolving Interaction between the EU and National Public Services, Eipascope*, 2002, no. 2, p.8.

7. Not all EU law has direct effect. Most directives, for example, need to be "transposed" into the national legal order before they can be legally enforced. However, even when a directive as a whole has to be transposed, some times provisions of the directive may themselves have direct effect.

8. See Commission Communication on *Impact Assessment*, COM(2002) 276, 5 June 2002.

9. For an account of the importance, the objectives and methods of coordination see Adriaan Schout and Kees Bastmeijer, *The Next Phase in the Europeanisation of National Ministries, Eipascope*, no. 1, 2003.

10. See Morten Egeberg, Guenther Schaefer and Jarle Trondal, "The Many Faces of EU Committee Governance, Advanced Research on the Europeanisation of the Nation State", *Working Paper No. 03/2*, University of Oslo, 2003.