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**“THE IMPACT
OF THE ENLARGED EUROPEAN UNION
ON NEW MEMBER STATES AND PROSPECTS
FOR FURTHER ENLARGEMENT”**

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REPORT

**“INTEGRATION OF THE *ACQUIS COMMUNAUTAIRE*
INTO THE LEGAL ORDER
OF NEW AND FUTURE MEMBER STATES OF THE UE”**

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Introduction:

Signing an association agreement with and/or becoming a member of the EU usually conducts the relevant State to agree to the integration of part or all of the *acquis communautaire* into its legal order.

This is a major commitment, the consequences of which may easily be underestimated on both sides: the relevant states and the EU institutions and member states.

The presentation will therefore try and address three major questions: What is the *acquis communautaire*? How will the *acquis* be formally integrated into the legal order of new and future member states? How to ensure the effectiveness of this formal integration through an authentic internalisation of the *acquis* by all those concerned in the future and new member states of the EU?

1) WHAT IS THE ACQUIS COMMUNAUTAIRE?

a) Definition of the *acquis*

Two texts are especially useful in understanding the meaning of the notion of *acquis communautaire*¹. A careful appreciation of all the wording reveals the extension of the *acquis*, which is usually alluded to by referring to the thousands of pages of the Official Journal of the European Communities in which directives, regulations, decisions and others have been published since 1 January 1958.

i) Act Concerning the Conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on Which the European Union is founded Article 2

From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act.

ii) Treaty establishing a Constitution for Europe Article IV-438 Succession and legal continuity

1. [...]
2. [...]
3. The acts of the institutions, bodies, offices and agencies adopted on the basis of the treaties and acts repealed by Article IV-437 shall remain in force. Their legal effects shall be preserved until those acts are repealed, annulled or amended in implementation of this Treaty. The same shall apply to agreements concluded between Member States on the basis of the treaties and acts repealed by Article IV-437.

¹ NB the word French *acquis* is being used in other EU languages than French in daily practice, and is even taken up in the Treaties when it comes to the so-called “Schengen *acquis*”.

The **other components of the acquis of the Community and of the Union existing at the time of the entry into force** of this Treaty, in particular the interinstitutional agreements, decisions and agreements arrived at by the Representatives of the Governments of the Member States, meeting within the Council, the agreements concluded by the Member States on the functioning of the Union or of the Community or linked to action by the Union or by the Community, the declarations, including those made in the context of intergovernmental conferences, as well as the resolutions or other positions adopted by the European Council or the Council and those relating to the Union or to the Community adopted by common accord by the Member States, shall also be preserved until they have been deleted or amended.

4. The case law of the Court of Justice of the European Communities and of the Court of First Instance on the interpretation and application of the treaties and acts repealed by Article IV-437, as well as of the acts and conventions adopted for their application, shall remain, mutatis mutandis, the source of interpretation of Union law and in particular of the comparable provisions of the Constitution.

5. [...]

b) Origin of the notion of *acquis* : negotiations with Denmark, Ireland, Norway and the United Kingdom on their accession to the European Communities (1969-1972)

c) Why the *acquis*?

- i) The uniform application of EC law as a guarantee of the effectiveness of the 'fundamental freedoms' (circulation of goods, services, workers and capitals and freedom of establishment) and competition rules
- ii) Its extension beyond the functioning of the internal market through the notion of EU citizenship

d) The scope of the *acquis*

- i) For new member states : the whole, subject to gradual application in several sectors, as laid down in the Accession treaties
- ii) For associated members : according to the content of the Association treaties

e) The content of the *acquis*

- i) 'legislation':
 - (1) directives
 - (2) regulations
 - (3) decisions
 - (4) 'framework decisions'
 - (5) conventions
- ii) 'unwritten law' (case law of the European Court of Justice and Court of First Instance ; 'case law' of the European Commission in matters of competition)
 - (1) interpretation of the treaties and legislation; complements to the treaties and legislation – Nb: EU Charter of fundamental rights
 - (2) principles of Community law, e. g.:
 - (a) direct effect of Community law (*VanGend & Loos 1962*)
 - (b) primacy (*Costa v./ ENEL 1964*)
 - (c) 'effet utile' and procedural autonomy
 - (d) EC/EU compatible interpretation (*Pupino 2005* for IIIrd pillar)

(3) The European Code of Conduct for Good Administration (European Ombudsman)

2) THE FORMAL INTEGRATION OF THE *ACQUIS* INTO THE LEGAL ORDER OF THE NEW OR FUTURE MEMBER STATE

- a) **Regulations** (or decisions) **v. / directives** (or decisions)
 - i) For associated States
 - ii) For new member States
- b) **Schedule of priorities**
 - i) Association agreement / Accession treaties
 - ii) Endogenous list of priorities
- c) **Ensuring euro-compatibility** of national legislation, regulations and administrative practices
(not necessarily by the formal adoption of legislation)
- d) **Using legally binding instruments**
 - i) in order to allow for judicial review
 - ii) and precise information of citizens, businesses and associations
 - iii) about their rights and duties
- e) **How to do it?**
 - i) Translation v. transposition ('reformulation' into national legal traditions)
 - ii) Accompanying measures (also for regulations)
 - iii) Techniques according to national law
 - (1) For the adaptation of legislation and regulations
 - (2) For the setting up accompanying measures
 - (3) For publicity and transparency
- f) **Monitoring by the European Commission**
 - i) Under association or 'pre-accession'
 - ii) As new member state

Act Concerning the Conditions of Accession

Article 38

If a new Member State has failed to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market, including any commitments in all sectoral policies which concern economic activities with cross border effect, or an imminent risk of such breach the Commission may, until the end of a period of up to three years after the date of entry into force of this Act, upon motivated request of a Member State or on its own initiative, take appropriate measures.

Measures shall be proportional and priority shall be given to measures, which disturb least the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and enter into force as of the date of accession. The measures shall be maintained no longer than strictly necessary, and, in any case, will be lifted when the relevant commitment is implemented. They may however be applied beyond the period specified in the first paragraph as long as the relevant commitments have not been fulfilled. In response to progress made by the new Member State concerned in fulfilling its

commitments, the Commission may adapt the measures as appropriate. The Commission will inform the Council in good time before revoking safeguard measures, and it will take duly into account any observations of the Council in this respect.

Article 39

If there are serious shortcomings or any imminent risks of such shortcomings in the transposition, state of implementation, or the application of the framework decisions or any other relevant commitments, instruments of cooperation and decisions relating to mutual recognition in the area of criminal law under Title VI of the EU Treaty and Directives and Regulations relating to mutual recognition in civil matters under Title IV of the EC Treaty in a new Member State, the Commission may, until the end of a period of up to three years after the date of entry into force of this Act, upon motivated request of a Member State or on its own initiative and after consulting the Member States, take appropriate measures and specify the conditions and modalities under which these measures are put into effect.

3) THE INTERNALISATION OF THE ACQUIS IN THE NEW OR FUTURE MEMBER STATE

a) Identifying the relevant actors

- i) Government and Parliament
- ii) Public administration
- iii) Local government and independent authorities
- iv) Courts and tribunals
- v) Advocates and legal counsels
- vi) Citizens, associations and businesses

b) Making EU law known

- i) Using the appropriate materials for diffusion (not only official journals and the like)
- ii) Training on :
 - (1) Non discrimination and “fundamental freedoms” of movement
 - (2) EU Charter
 - (3) The European Code of Conduct for Good Administration (European Ombudsman)

EU Charter of Fundamental Rights Article 41 Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42 Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

(4) Sectoral legislations and regulation

c) Ensuring the proper environment for the development of questions for preliminary rulings

i) Understanding the functioning and role of the mechanisms of art. 234 ECT

Article 234 (ex Article 177)

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the **interpretation** of this Treaty;
- (b) the **validity** and **interpretation** of acts of the institutions of the Community and of the ECB;
- (c) the **interpretation** of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on the question is necessary to enable it to give judgment, **request** the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal **shall** bring the matter before the Court of Justice.

ii) Training on the use of preliminary rulings

(1) Judges

(2) Practicing lawyers

(a) Advocates

(b) Legal counsels

(c) Specialised officers in public administration