CHAPTER FOUR

ACCESSION TREATIES:
TRANSITIONAL ARRANGEMENTS AND OTHER
MEANS TO EASE THE IMPACT OF ENLARGEMENT

1. Flexibility mechanisms in accession treaties and
their negotiation

Various new means have been introduced into accession treaty practice used in the fifth and sixth Accession Treaties to allow a certain flexibility to smooth the entry of the incoming countries but without allowing permanent derogations from the *acquis communautaire*.

Typical devices in accession treaties to ease the newcomers’ entry, as much for the receiving Member States, are conceived as flexibility mechanisms. Transitional arrangements allow for the temporary derogations from provisions of the *acquis*. They have to be set out in the Act of Accession. Certainly, where no transitional arrangement is set out in an Accession Treaty – although perhaps it is to state the obvious – the reciprocal rights and obligations of membership demand compliance with the *acquis* in its entirety.

The vast approximation and capacity building exercise of the fifth, sixth and future enlargements was explicitly designed to reduce the margins for transitional arrangements and the Commission was keen

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1 Peculiar to the Fourth enlargement, certain transitional arrangements had to be agreed in the form of a Transitional Arrangements Agreement to enable Austria, Finland and Sweden to move from the EFTA pillar of the EEA Agreement to the EC pillar. See the Agreement on the transitional arrangements for a period after the accession of certain EFTA States to the European Union of 28 September 1994. On this Agreement, see Tichy and Dedichehm, ‘Securing a smooth shift between the two EEA Pillars: prolonged competence of EFTA institutions with respect to former EFTA states after their accession to the European Union’, 32 *CML Rev.* (1995) at pp. 131–156. However, generally speaking the Union took no role in the adaptation and approximation exercise undertaken by the incoming countries. It was for the applicant alone to set about adopting the entirety of the *acquis communautaire* and it was for the applicant to evaluate and guarantee its ability to take on the obligations of membership prior to their accession.

throughout to grant only the most worthy of requests for transitional arrangements. While transitional arrangements are a possibility in limited circumstances, it is certain that any request by a candidate for a transitional arrangement in the transposition of mundane but nevertheless necessary legislation for example, would have been rejected by the Commission services. As is addressed in Part Two, however, there are examples of such informal transitional arrangements in the agri-food and environment acquis.

This Chapter first looks at how transitional arrangements are negotiated, see 1.1 below. The structure of the Accession Treaties is briefly outlined at 1.2. The scope and content of transitional arrangements are dealt with at 2. This Chapter ends by considering the scope for emergency economic safeguard measures under an accession treaty, which are open to ‘old’ or ‘new’ Member States or both, depending on the circumstances, see 3 below. Chapter 2, at 3.2, has already emphasised the extreme unlikelihood of permanent derogations from the acquis. Where a new Member State has not transposed, implemented or complied with other measures, this would be illegal. Examples of such ‘informal transitional arrangements’ are looked at in the context of the EU agri-food and environment acquis in Part 2.

The next Chapter explores the new flexibility mechanisms that were introduced in the fifth and sixth Accession Treaties, which should be distinguished from transitional arrangements as such. Perhaps most novel of all is the partial or non-participation of the new Member States of the fifth and sixth enlargements in EMU, Schengen and the Common Agricultural Policy. There is also the special situation of Cyprus, which remains a divided island. The approach to the integration of the new (and future) Member States in these areas of the acquis is to gradually include them while the fifteen Member States continue to make their own progress in these fields. This marks a new era of differentiation between Member States, with all the legal complexity that this involves,³ and raises important broader questions for the future of the Union, including for example, solidarity among Member States and European identity.