compared to the pre-accession circumstances. One may speculate that these changes will have at least two forms, leading in two opposite directions. On the one hand, the burden of argument will shift even more to those seeking to *resist* the adoption of the rules or institutions presented as in compliance with EU standards: if such a characterization of a particular measure is credible, there will be a strong presumption in favour of its adoption, and resistance to this will be more difficult. On the other hand, however, those supporting the adoption of such a rule or institution will not benefit from the argument about the *other* gains of accession to the EU: the argument, "We have to adopt this rule, otherwise we will not be admitted," will no longer be valid. In the situation of lowered sanctions for non-adoption, what could have previously been represented as part of a non-negotiable package that on balance is good for the candidate state, will from the moment of accession take on a much more discretionary character for each new member state.

Naturally, the alteration of the pattern of incentives and of the calculi of costs and benefits will affect much more than the discursive assets on both sides of any future domestic controversy over rule adoption. There will be also a very substantial alteration of control in terms of knowledge of the relevant facts, of which the most important will be: to what extent a proposed rule or an institution is indeed part of the EU *acquis*, part of the "EU model", part of the "common constitutional traditions" of EU Member States, or part of any other such formula that suggests that membership in the EU *commits* a Member State to adopt a given rule or institution. Once in the EU, some elites in new Member States will be able to claim a better expertise in what the EU *really* requires than others: they will be able to gain public and political support for their knowledge-claims based on proximity to the EU centres of power, due to the much higher level of interaction between national governing elites and the "Eurocracy" than was the case during the accession negotiations. One can speculate that the governing parties, which will all have extra incentives to be "pro-European" regardless of their official positions pre-2003, will acquire this asset of inside knowledge and be able to use it more effectively against the "anti-European" oppositions, with the knowledge-claims of the latter suffering from lower credibility, and thus less potency in resisting the claims for the adoption of any given rule.

3. The Role of Parliaments

Both the very process of managing the preparations for accession by a *candidate* state, and the dynamic of participation in the EU decision-making process by a *member* state, inevitably strengthen the powers of the executive branch of government to the detriment of the legislature. The former phenomenon has already left its imprint upon the government-parliamentary relationships in CEE, and with good reason; with only minor exaggeration it has been stated that conditionality "can be seen as the functional equivalent of war: [it] give[s] the executive more

power to by-pass parliament and to justify the lack of consultation with the public by the need to avoid economic crisis."[8] Even the formal institutional set-up emphasized the primacy of the respective executives in the whole strategy of adjusting each legal system to EU requirements: Europe Agreements established Association Councils (or Association Committees) composed of the representatives of the EU and of the candidate country concerned (usually, members of the government), with formidable powers to take legally binding decisions taking precedence over national law. In addition, the negotiations, due to their delicate nature, were largely conducted in secret, thus further reducing the potential of the parliament to balance the power of the executive; moreover, a good deal depended upon informal contacts among the negotiators on both sides, not easily subjected to formal control.

This focus on the executive meant that parliamentarians often lacked sufficient knowledge as to the details of the laws being passed in conformity with the *acquis*. The sheer volume of the *acquis* meant that parliaments had to adopt fast-track procedures for passing the related laws, and this inevitably lowered the importance of parliaments *vis-à-vis* the governments. Although some countries have resisted this move to speed up the legislative process (for example, the Slovenian parliament rejected a proposal to introduce a faster and less thorough legislative process for *acquis*-related law)[9] the Commission put pressure on them to co-operate in this way. Thus, the 1999 Commission Report on Slovenia (before the above-noted rejection by parliament) stated that the legislative process there was too slow. In some cases, the parliamentary route was side-stepped altogether: in Slovakia, the constitution was amended in 2001 and the new Art 120(2) allowed the government to issue decrees in execution of the Europe Agreement. In Romania, the government has adopted *acquis* into national law through the use of extraordinary governmental decrees, which require only retrospective approval by parliament. The overall system of incentives created by the EU put a premium on efficiency over democracy in the accession process.

However, the picture was not as bleak as presented thus far. Whilst there has undoubtedly been a shift in power to the executive, there have been also factors pointing in the other direction. For one, the EU has on occasion acted to control abuses by the executive in candidate states. Thus, the *démarche* against Slovakia during the Meciar regime "included a concern over the growing power of the executive in Slovak politics, attempts to undermine parliamentary control and the

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8 Report of the Reflection Group chaired by Jean-Luc Dehaene, *The Political Dimension of EU Enlargement: Looking Towards Post-Accession* (Robert Schuman Centre for Advanced Studies at the European University Institute, Florence 2001), http://www.iue.it/RSCAS/e-texts/Dehaene_report.pdf, p. 63.

9 Darina Malovà and Tim Haughton, "Making Institutions in Central and Eastern Europe, and the Impact of Europe," in Peter Mair and Jan Zielonka (eds.), *The Enlarged European Union: Diversity and Application* (London: Frank Cass 2002), pp. 111–112.

opposition parties . . . ".[10] It managed to prevent the worst abuses of the parliamentary system, such as the expulsion from Parliament of a democratically-elected party. More generally, the sections on parliaments in the Commission's Regular Reports have, at times, pointed out negative phenomena, such as the lowering of parliament's ability to effectively scrutinize legislation as a result of the increased volume of legislation combined with tighter deadlines and limited resources;[11] the disturbing growth of legislation through ordinances, adversely affecting the importance of parliament *vis-à-vis* the executive;[12] the malfunctioning of certain parliamentary committees resulting from the unwillingness of some parliamentary parties to take seats in them;[13] the failure to fulfill a constitutional obligation to ensure the direct parliamentary representation of minorities;[14] doubts as to the adequate staffing of the parliamentary administration responsible for EU integration,[15] etc. Even when a section of the Report devoted to the parliament opened with the ritualistic phrase: "The Parliament continues to function properly . . . " and further contained no critical remarks, the very fact that the parliaments themselves were placed under the spotlight emphasized the existence of critical and careful scrutiny.

So much for the pre-accession period. Once in the EU, the political dynamic of a Member State renders the executive the most powerful body in relation to the Union. Indeed, very few Member States' parliaments can control or veto the position of their government in the Council; the power of national parliaments is therefore curtailed as the EU's growing competencies reduces the exclusive sphere of national competence.[16] There have been, on the part of current member states, some brave attempts aimed at countering this trend, and also, since the Maastricht Treaty, there has been a tendency within the EU to emphasize, through various declarations and protocols, "the role of national parliaments in the European Union". They call for an increase in the role of national parliaments in the EU in order to offset the inevitable

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10 Geoffrey Pridham, "The European Union's Democratic Conditionality and Domestic Politics in Slovakia: the Meciar and Dzurinda Governments Compared," *Europe-Asia Studies* 54 (2002), p. 212.

11 2002 Regular Report on Romania Part B.1.1, see http://europa.eu.int/comm/enlargement /report2002/ro_en.pdf, p. 21.

12 *Id.*

13 2002 Regular Report on Slovakia Part B.1.1., seehttp://europa.eu.int/comm/enlargement/ report2002/sk_en.pdf, p. 21.

14 2002 Regular Report on Hungary, Part B.1.1., see http://europa.eu.int/comm/enlargement/ report2002/hu_en.pdf, p. 20.

15 2002 Regular Report on Bulgaria, Part B.1.1., see http://europa.eu.int/comm/enlargement/ report2002/bu_en.pdf, p. 20.

16 See Eric Carpano, " 'La transformation des régimes parlementaires : des réalités dans les Etats membres aux perspectives ouvertes par la constitution pour l'Europe," in Jacques Ziller (ed.), *L'Europeanisation des droits constitutionnels à la lumière de la Constitution pour l'Europe—The Europeanisation of Constitutional Law in the Light of the Constitution of Europe* (L'Harmattan: Paris 2003), p. 164.

weakening of their role resulting from the transfer of competencies from the national to the EU level. Some remedial action has been taken at the level of member states; for example, the German, Finnish, Portuguese, Austrian. Swedish, French and Belgian Constitutions were all amended to ensure parliamentary participation in EU affairs. In Denmark, the executive is controlled by the opinion of parliament; this is, however, the only example of such a strong parliamentary role. The Austrian and German parliamentary resolutions are stronger in effect than those of France, Italy and Portugal, which do not constrain the government at all in any legal sense but which may, nevertheless, have a political effect.

What will be the likely involvement of the parliaments of new member states in EU affairs? The most probable institutional mechanism will be that of non-binding resolutions to the governments regarding their positions in the Council. Looking at the constitutional amendments adopted in this regard, it can be seen that parliaments have *not* been given a strong post-accession role. Although experts in the Czech Republic suggested that the Parliament should be able to bind the government with its resolutions regarding EU issues, when the Constitution was actually amended it only allowed for the parliament to express its opinion—this in no way being binding on the executive.[17] The Hungarian constitutional amendment provides that, in matters related to European integration, parliamentary "supervision" and harmonization (understood as consultation) between Parliament and the government is to be determined by a law adopted by two thirds majority. This seems to have weakened the level of parliamentary supervision that had been envisaged in an earlier draft, which stated that the government should act "in cognizance" of the parliament's position when participating in the decision-making procedures of the EU institutions.[18] The *draft* amendment (of February 2003) to the Lithuanian Constitution does, however, provide for a stronger role for Parliament, as it states that the executive shall "take into account" the parliament's views.[19] In other new member states, including Poland, no constitutional provisions have been introduced aimed at including the respective parliaments in the European policy-making. At present, the only formal mechanism that most MPs have at their disposal regarding their government's European policy is a routine question to a minister within the framework of parliamentary question time.

It has to be said, however, that the new Member States will join the EU at the time when awareness is growing of the need to strengthen the role of national parliaments in the EU process; the parliaments of the new Member States may benefit from this dynamic. The Convention on the Future of Europe has adopted a Draft Protocol on the Role of National Parliaments in the European Union, which

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17 András Sajó, "Accession's Impact on Constitutionalism in the New Member States," in George Bermann and Katarina Pistor (eds.), *Law and Governance in an Enlarged Europe* (Oxford: Hart, 2004), pp. 415–435.

18 *Id.*

19 *Id.*

suggests a number of ways meant to "encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on legislative proposals . . . ".[20] The proposal includes various means of informing the national parliaments about EU legislative proposals, such as sending to them Commission consultation documents, the annual legislative programme, policy strategy documents, legislative proposals, agendas and minutes of Council meetings, and the Court of Auditor's annual report. It then states that national parliaments would have the right to send their opinion to the relevant EU organs as to whether a particular legislative proposal contravenes the principle of subsidiarity. To facilitate this, legislative proposals would have to be sent (except in cases of urgency) to the national parliaments at least six weeks before they are to be adopted. Finally, the draft suggests that the European Parliament and the national parliaments should work out together how to more effectively implement inter-parliamentary co-operation.

If these proposals are fully implemented, it would go some way towards redressing the shift of power in favour of the executive. The core problem of the lack of information would be partly remedied (also through the simplification of procedures) and the possibility of sending opinions to EU bodies could potentially increase the number of parliamentary debates on EU issues and also galvanize public opinion thereby encouraging more of a debate, and one which is better-informed in that sphere. The parliaments of new Member States are likely to join the bandwagon—especially given that participation in European affairs is seen as a prestigious and lucrative role for MPs, and that only very few of them can count on being elected to the European Parliament. They will, therefore, have incentives to keep parliamentary involvement in European policy lively, and in this way to send the message to their electorates and party leaders about their "European" credentials and competence. This will not, of course, remedy the continuing transfer and consolidation of power to the executive after accession, and one can easily imagine the situation in which the national parliaments from CEE will happily and actively participate in the European fora while maintaining a rather meek position *vis-à-vis* the governments of their own states in terms of EU law and policy. In the end, some observers may conclude that this will be a natural correction of these parliaments' perhaps unduly inflated role in the first years following the collapse of Communism.

4. Constitutional Courts

Constitutional courts in CEE have played a very important role, often becoming an independent and active player in the law- and policy-making processes; it may be expected that accession to the EU will, if anything, create the opportunity for these

[20] Preamble to the Draft Protocol on the Role of National Parliaments in the European Union, CONV 797/1/03 REV 1, Annex 1.

courts to assume an even more powerful role. This prediction may be informed by analyses of the experience of constitutional courts in the older Member States, and also by the behaviour of these courts in the new Member States even before the accession, and, in particular, their perception of the relationship between EU law and national constitutional law. The point is to try to gauge the likelihood that the constitutional courts of the region will attempt to carve out for themselves an important and independent role as an actor that has to be reckoned with by other branches of government in the context of their European policy.

Indeed, whether they want it or not, these courts will probably face an obligation to sort out the constitutional position of new Member States *vis-à-vis* EU law, and, in particular, the position regarding "direct effect" and the supremacy of EU law over national constitutions. This task will not be made easy by the strong pro-sovereignty orientation of most of the constitutions of new Member States, combined with a pragmatic, minimalist approach to constitutional amendments as accession approaches. As is well known, there is no such thing as a "constitutional *acquis*": the EU does not prescribe whether and how the relevant countries' constitutions should be changed to make them fit for accession. Significantly, the Regular Reports from the EU Commission on progress towards accession did not mention any required constitutional changes. When one considers the experience gained from for previous accession processes, it is readily evident that the candidate states at the time did not follow the same constitutional model for entry to the EU (and this is true also of the six original member states)[21]: some opted for allowing a limitation of national sovereignty, although without mentioning the EU directly,[22] while others opted for allowing entry specifically into the EU.[23] Regarding the domestic effect of EU law, some member states did not mention this at all in their amended constitutions,[24] while others stated that EU laws are binding at a national level,[25] or that Parliament must ensure compliance with them.[26]

Judging by the experience thus far, one may expect that the constitutional courts of new Member States will be invited—or tempted—to pronounce on questions on whether EU laws should take precedence over the national constitution, who should adjudicate in cases in which it is claimed that the EU acted *ultra vires*, and what to do about specific constitutional provisions that are in conflict with the EU

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21 Bruno De Witte, "Constitutional Aspects of European Union Membership in the Original Six Member States: Model Solutions for the Applicant Countries?," in Alfred E. Kellermann, Japp W de Zwann, Jenö Czuczai (eds.), *EU Enlargement: The Constitutional Impact at EU and National Level* (The Hague: T.M.C. Asser Press, 2001), pp. 65–80.

22 For example, the first six member states and Denmark, Greece, Spain and Portugal.

23 For example, Ireland, Austria, Finland and Sweden.

24 For example, the first six member states.

25 Ireland.

26 Spain and Portugal.

treaties. So far, the constitutional position of the EU *vis-à-vis* the current Member States has been shaped both by the ECJ and by the constitutional courts of Member States, with at least some national courts reacting against the ECJ's view that EU law has supremacy over national constitutions. Constitutional Courts in Germany (the Solange I,[27] Solange II[28] and Maastricht[29] cases), Italy (the Granital[30] and Frontini[31] cases) and Denmark (the Maastricht[32] case) have all stated that they can declare EU law unconstitutional if it contradicts the fundamental aspects of their own constitution, or exceeds the bounds of the authority granted to the EU. The German Maastricht decision announced that the constitutionally entrenched principles of democracy (and in particular, the constitutional right to vote which at this stage is best exercised through election to the federal Parliament) dictate the limits on the extension of the functions and powers of the EU. The French Maastricht decision[33] went further, though in narrower domains: the *Conseil constitutionnel* declared squarely the Maastricht Treaty unconstitutional in three specific areas (Union citizenship, a single European currency and the right of non-French nationals to vote in French municipal elections), and it was only after France amended its Constitution to eliminate these conflicts that the *Conseil* determined that the Treaty could be ratified.[34] The same sequence was repeated in France with respect to the 1997 Treaty of Amsterdam.

This shows that there is significant space for the activism of constitutional courts at the intersection of the EU and national constitutional legal systems, especially with regards to the identification of the outer parameters beyond which EU law must not infringe upon the national constitutional legal order (as in German Solange cases where the absolutely entrenched constitutional rights of German Basic Law were erected as insurmountable limits to the expansion of EU competence),[35] and for mandating national constitutional amendments in order to remove

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27 [1974] 37 BverfGE 271.

28 [1974] 73 BverfGE 378.

29 German Constitutional Court Decision Concerning the Maastricht Treaty [October 12, 1993], (1994) 33 ILM, pp. 388–444.

30 Decision No. 170, 1984.

31 Decision No. 183, 1973.

32 Danish Supreme Court's Judgement of 06.04.1998, I 361/1997.

33 92-308 DC of 9 April 1992.

34 92-312 DC of 2 September 1992.

35 In Solange I, of 1974, the German Federal Constitutional Court found that the standard of fundamental rights under Community law did not yet show the level of legal certainty to satisfy the fundamental rights standards of the German Constitution, and this limited the transfer of sovereign rights from federal Republic to the Community. In Solange II, of 1986, the same Court expressed its satisfaction that the EC by this time ensured an effective protection of fundamental rights, and therefore the Court would no longer review secondary Community legislation by the standards of fundamental rights as contained in the German Constitution.

the inconsistencies between these orders (as in the French Maastricht decision). How does it augur for the role of constitutional courts in new Member States?

At first blush, there would exist a certain irony if those courts were to replicate, at today's stage of the development of EU law, the Solange-I doctrine of the German Constitutional Court of 1974 based upon a concern for the standards of protection in EC law of domestic constitutional rights—a doctrine now rendered obsolete by developments in EC law since that time. However, there are other grounds that can be used by constitutional courts in new Member States to mark their activism. As a foretaste of what may follow one can consider the Hungarian Constitutional Court's decision of 1998 regarding the Europe Agreement, in which it held that the *acquis* had no direct effect before accession or its explicit implementation by national statutes, and in which it, in effect, dictated the need for constitutional amendment preceding accession. The Court found unconstitutional a provision of the Implementing Rules to the Europe Agreement with Hungary (stating that the Hungarian Office of Economic Competition had to take into account Articles 81 and 82 of the EC Treaty when making their decisions).[36] The Court stated that

> The constitutional issue is whether the norms of the domestic law of another subject of international law, another independent system of public power and autonomous legal order . . . can be applied directly by the Hungarian competition authority without these foreign norms of public law having [first] become part of Hungarian law.[37]

The Court held the provision of the Rules (but not of the Europe Agreement itself) to be unconstitutional (although it delayed a decision on annulment). It did this on the basis of Article 2 of the Constitution, which declares Hungary to be a sovereign and a democratic state based on the rule of law. The Court thus suggested in this judgment that a constitutional change allowing for the transfer of sovereignty to an international organization was necessary, and indeed such change was made on 17 December 2002.

We have to be cautious about drawing any conclusions from this decision: the Hungarian Court did not suggest that it would not accept the notion of direct effect *after* accession but rather its decision related to the lack of direct effect *prior* to accession (and in the absence of a relevant constitutional amendment). And yet this may suggest that the Hungarian Court—and other constitutional courts of the region—could follow the path of the German Court's Maastricht decision. Indeed, in its earlier decision—the Preliminary Issues Judgment[38]—the Hungarian Con-

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36 Decision 30/1998 (VI.25)AB 25 June 1998.

37 Decision 30/1998 (VI.25) 25 June 1998 III.I, quoted in Janos Volkai, "The Application of the Europe Agreement and European Law in Hungary: The Judgment of an Activist Constitutional Court on Activist Notions", Harvard Jean Monnet Working Paper 8/99, http://www.JeanMonnetProgram.org/papers/99/990801.html at 9.

38 Hungarian Constitutional Court Decision 4/1997 (I.22) AB. 22 January 1997.

stitutional Court declared that it had the competence to conduct *ex post* review of international treaties (or rather, the national law that promulgates the treaty); in doing so, it made explicit reference to the Maastricht decision of the German Constitutional Court, and stated that national constitutional courts have the power of review over the constitutionality of EU laws that have direct effect in the relevant country. At least one Hungarian legal scholar has argued that the Hungarian Constitutional Court's decisions allow one to tentatively predict how the Court will act after Hungary's accession to the EU, and he has suggested that it may well continue to imitate the German Constitutional Court, and "thereby develop a conflictual relationship with the Community legal system after accession."[39]

Be that as it may, it may be anticipated that, immediately after accession, the constitutional courts of new member states will adopt an activist stance towards the relationship between EU law and the respective national constitutions, and to the questions of the direct effect and supremacy of EU law. They have some useful constitutional instruments for this purpose. First, almost all constitutions of new member states contain provisions to the effect that the constitution is the supreme source of law in the country, or (which comes to the same thing) that any law that violates the constitution is invalid; on this basis, some top constitutional justices in these countries have already announced their hostility towards the primacy of Community law towards the domestic order, in particular, toward the constitutional rules of their states.[40] Second, all of these courts have the power of preliminary review of the constitutionality of treaties (or rather, of the instruments of ratification), and in addition, the constitutional courts of Hungary, Poland and Estonia have the power of *ex post* review of treaties. Therefore, even though national law is subject to international agreements entered into by the State, such agreements are still themselves subject to the national Constitution. Third, as the above-mentioned decision of the Hungarian Constitutional Court indicates, these courts will adamantly insist that Parliament must not change the Constitution "by the back door," for example by ratifying a Treaty containing provisions that conflict with it, but rather that any change to the Constitution can be only made by using the proper amendment procedures. By adopting the position of supervisor over whether a legislative or constitutional amendment path should be adopted, the constitutional courts may become significant players in the European policy of new member states.

The argument is not that the constitutional courts in these states will in any way be a hindrance towards adopting the principles of direct effect and the supremacy of EU law, or that they will be obstacles to the process of legal integration of the new member states within the Union. On the contrary, it seems that most of the judges in these courts are strongly "pro-European": this is what their social and educational

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39 Volkai, *op. cit.* n. 37, p. 31.

40 See, e.g., Marek Safjan, "Konstytucja a członkostwo Polski w Unii Europejskiej," *Państwo i Prawo* n. 3, 2001, pp. 9–10. Professor Safjan is President of the Constitutional Tribunal of Poland.

background, aspirations and political views incline them to. Some of the courts have even been eager to make use of EU law and EU legal principles well before accession. The Estonian Constitutional Review Chamber was so enthusiastic that, as early as 1994, it referred to the general principles of the Council of Europe *and EU law* as sources of Estonian law, even though, according to the Estonian Constitution, the courts should administer justice in accordance with the Constitution and the laws.[41] The point here is rather that accession will provide these courts with an extra opportunity to herald their importance as significant political and legislative players.

5. Regionalisation

The relationship between regionalization and democratic consolidation is not self-evident. There is no necessary truth in the statement that the more decentralized and "regionalized" the state, the more democratic it is. But it is a reasonably plausible contingent truth: all else being equal, decentralized states, especially when the local or regional units have responsive and elected institutions, tend to provide more spaces for spontaneous political actions of citizens, and, by establishing multiple focal points of power, spread the capacity for political action more widely within the community. Regions and local units are also attractive political alternatives to those "insular" minorities that may be voiceless nationally (due to small numbers, or traditional prejudices) and yet numerous and powerful enough to organize themselves at a sub-national level.

The Commission has shown a preference for democratically elected regional self-governments with significant financial and legal autonomy. The aspiration for this type of multi-level governance is due to the EU's desire, firstly, for democratic stability (the promotion of cohesion with the EU and reducing economic disparities is seen to be a good way of consolidating democracy), and secondly, for the effective management of the EU Structural Funds: regional and local authorities are considered as "partners" of the central government in managing those funds. However, before 1997, the Commission did not express a preference or demand for regionalization in CEE. For example, whilst talking of administrative reform, the Commission's 1995 White Paper did not refer to regionalization. This was based on the prevailing idea that aiding regions would help particularly backward regions at the expense of the better-off ones which, in turn, would slow down economic growth in the CEE countries.[42] It was only after 1997 that the Commission did push for regionalization, as by then it had been decided that the candidate states

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41 Decision II-4/A-5/94 of 30 September 1994, discussed in Julia Laffranque, "Co-Existence of the Estonian Constitution and European Law," *Juridica International* 7 (2002), pp. 12–22.

42 Martin Brusis, "Between EU Requirements, Competitive Politics, and National Traditions: Re-creating Regions in the Accession Countries of Central and Eastern Europe," *Governance* 15 (2002), p. 541, referring to Martin Hallet, *National and Regional Development in*

would have to implement all of the *acquis* before accession, and this "implied that the accession countries needed to improve their administrative capacities at the regional level in order to manage Structural Funds."[43] In addition to the Accession Partnerships—for example those of Bulgaria, the Czech Republic and Slovakia in March 1998—that explicitly stated that the countries in question should set up regional administrative structures in order to be able to take advantage of the structural funds, the Commission's pressure was also based on the direction of PHARE resources towards regional assistance, and the setting up of twinning programmes. The Commission's Regular Reports made remarks on the extent of administrative reforms in the relevant states, though there is a very clear emphasis on the administrative capacity for the management of structural and cohesion funds, and on effective monitoring, financial management and control at regional level rather than on democratic self-government and autonomy.

The *acquis* includes (in Chapter 21) the requirements of regional administrative capacity, inter-ministerial co-ordination of regional policy and means for monitoring structural programmes. The candidate states must also organize their territory to fit within the so-called NUTS (*la Nomenclature des Unités Territoriales Statistiques*) classification system used to implement the Structural Funds.[44] Regarding these, the regions need to be autonomous enough to be credible partners to the Commission in the Structural Fund partnership process: the principle behind the co-management of the Structural Funds is to create policy not just for the regions, but also by them—that is, to ensure that local governments and NGOs, etc. are involved in the administration and management of the funds, within a collaborative process. The Structural Funds implement over 90% of all EU structural funding, the most important objective of which is the promotion of development in economically backward regions with GDP per capita of less than 75% of the EU average.

When evaluating the importance of the EU accession factor in the decentralization of CEE states, it should be emphasized that a high degree of regionalization in the countries of the region could well have occurred anyway, without any such pressure from the EU. Brusis has shown that much of the impetus towards regionalization came about due to the traditions of the countries and their move away from Communism, and also due to the preferences of the political actors on the scene in the 1990s.[45] Indeed, in relation to local government, many CEE states introduced reform well before the Commission or other EU bodies became active in promoting regionalization. For example, Poland did so in 1990 and then introduced another reform in 1993, the Czech Republic did so in 1990, with Hungary

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Central and Eastern Europe: Implications for EU Structural Assistance (Brussels: European Commission/DG for Economic and Financial Affairs, 1997), p. 25.

43 Brusis, *id*. at 542.

44 See Dan Marek and Michael Baun, "The EU as a Regional Actor: The Case of the Czech Republic," *JCMS* 40 (2002), pp. 895–919 at 897–898.

45 Brusis, *op. cit.* n. 42, pp. 546–548.