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Impact on the national interest

### **1. What has been the impact of EU enlargement on UK interests? How has the UK influenced the enlargement process?**

The UK's national interests have been from the point of view of its policies, public statements, as well as work of its diplomatic staff strong support for EU enlargement in terms of accepting new member states. In the period since the transformation of the European Communities to the European Union, the UK has succeeded in underling its interest in furthering EU enlargement. This has enhanced the role of the state's political influence and its government in the eyes of potential new member states. The EU currently has four candidate states (Albania, Montenegro, Serbia and Turkey) and three possible candidate states (Kosovo, Macedonia and Bosnia-Herzegovina.) In recent years among the South East European candidate states and possible candidate states a meeting with a British official has been reported in general with the same media presence, interest and as carrying equal importance to that of the EU's officials who represents 28-member states, or that of the United States. Among the media of South East European states the perceived important role of Britain as a promoter of EU enlargement has enhanced overall the access of its officials to those in leadership positions and has made Britain better known to the public.

In current candidate and possible candidate states institutional memory is not that of the European Union, but of Great Britain in the world. The UK's position is often mixed with perceptions of Britain's historic role as a European Great Power. Current politics are sometimes thought of with perceptions and recollections of the UK's history and previous political roles. The UK was generally perceived in previous centuries as a European center not historically inclined to support regionalism or regional nationalisms, but central governments. Therefore, previous political positions are sometimes remembered in terms of those presented by the British general council in the country in the past. As many current candidate and possible candidate states are successors to Yugoslavia, this point carries some significance. Although the UK is remembered as an ally of strong states and centers instead of minorities, it is also against its history perceived as a nation of influence en par or greater to that of other EU states. As historical memories are sometimes mixed with current affairs even in policy analysis, the UK's role is not always calculated or perceived in terms of the present qualified majority voting system, the relationships of its current government within

the Council of the European Union, or even its role outside the Schengen and Eurozone. Instead, to Britain's advantage it is often suggested that close contact and a relationship with the UK carries with it strong advocacy vis-à-vis other EU heads of state. The thinking is related to previous decades and longer history of how South East European states (where most current candidate and possible candidate states are currently found) became independent in the 19<sup>th</sup> and 20<sup>th</sup> century. Perception of the importance of Euroatlantic integration over EU integration is often highlighted as well.

Whereas perceptions of the 19<sup>th</sup> and 20<sup>th</sup> century history of Britain are sometimes recalled in diplomatic analysis, Britain is also occasionally portrayed as a former colonial power among commentators in candidate and possible candidate states. Despite the variety of importance and perceptions attributed to Britain's international relations' history, in diplomatic thinking the UK's role and legacy in the European continent is perceived as a strength in EU politics. When candidate states that have reached the stage of accession negotiations find themselves with 28 member states on the opposite side of the table, having a strong advocate from among those states is important. A strong advocate is also considered an asset in achieving the stages of transitioning through the accession process i.e. being awarded Candidate Status; In opening accession negotiations; Completing accession negotiations; Accession treaty ratification completion; Joining the EU. Owing to Britain's pro-enlargement position and perceived significant strength among the EU states makes it an attractive ally to many EU candidate and possible candidate states.

It is in general understood that the UK's promotion of EU enlargement in recent decades has been predicated on the goal of accepting new member states and enlarging the EU internal markets, but simultaneously diluting the integration of the union's common social policy standards by numbers. This supposition has not particularly interfered with the perception of the UK as a strong and valuable advocate and ally for candidate and possible candidate states within the accession process.

The perception that the UK is an important EU state that can feasibly play an important role in aiding a possible candidate state in becoming a candidate state has enhanced the UK's political influence within South East Europe. Britain is considered against its history in European, world and EU politics as a strong political and commercial ally. This perception emerges against a broader and longer, sometimes historic background. If Britain were to leave the EU it would lose both its current perceived role as an important EU state in a position to advocate for new candidate and possible candidate states as well as leverage to affect the content of accession negotiations including that related to commerce and trade.

## **2. What effect has EU enlargement had on UK interest in specific policy areas? What advantages and disadvantages has the UK experienced as a result?**

### *Rule of Law*

Eleven of the sixteen countries that have joined the European Union since 1989 emerged from one-party states after the end of Communism. The EU's newest member states are in the majority post-communist democracies. The UK has a strong interest in supporting the spread of democratic governance to which the rule of law and the rights of the individual are key components. In previous one-party states the defining elements transparency and individuals' rights were marginalized; Their establishment across new EU member states has been one of the most significant effects EU enlargement has contributed to.

Democracy in a global world adds to the UK's external security. It also serves British economic interests. Enlargement has brought new member states under shared legislation which enables British businesses to better function across these states under enforced and equal rules. The process of EU accession is one where the laws of the candidate country are harmonized with those of the EU. In membership negotiations the UK as a member state can affect the course and outcome of what is agreed to in the membership treaties of new member states. Member states are subject to the provisions agreed to in their membership treaty which the Court of Justice of the European Union (ECJ) enforces. The ECJ interprets EU law and guarantees that the Treaties of the EU are applied correctly across member states. It settles disputes between EU governments and institutions. Whereas an individual cannot sue his or her state per se in this court, individuals, companies and organizations can bring cases before the court if they feel their rights have been violated by an EU institution, or if the binding obligations of membership have been violated.

In most of the sixteen countries that became EU members since 1989 transparency has increased. Even in the case of Finland, Sweden and Austria, that were democracies and already enjoyed high degrees of transparency before accession in 1995, the judiciaries have shown extensive ability to function, engage and integrate with EU law. These states have largely chosen the 'law in context' approach where national courts and the ECJ play an active role as central protectors of fundamental rights including those pertaining to EU membership by interpreting and enforcing law. In *Dortel S. Martinsen's* and *Marlene Wind's* reference to Montesquieu the national courts and the ECJ working together are no longer a mere *bouche de la loi* of what politicians have decided. Instead, national courts can and have asked the ECJ for interpretation of EU law through the preliminary reference mechanism. The ECJ made between 200 and 288 preliminary references annually from 1993 to 2008. (It had heard over 15 000 cases altogether from its establishment in 1952 to 2010.)

After Croatia became the EU's latest member state 1 July 2013 only four cases to date have been brought in front of the ECJ where the nationality/language of the parties were Croatian (C-

254/14 – VG Vodoopskrb; T-546/13 Šumelj and Others v Union européenne; T-452/13 AJ – GI v Croatia; T-380/13 AJ – GD v Ministarstvo.) It is good to note that the court has processing times of approximately 16 months. Two of the Croatian cases (T-380/13 and T-452/13) concerned legal aid, but seem to be individuals suing the state, which is not possible in the ECJ and therefore dismissed. One case (C-254/14) concerned a request for a preliminary reference from a Croatian court. The proceedings of this case were however, interrupted and therefore it is possible that the court cancelled or withdrew its motion. One case (T-546/13) is ongoing.

A low number of cases at the ECJ in the first year of membership was the norm among the EU-12 that joined in the 2004 and 2007 accessions. Majority of these states are post-communists states from Eastern Europe. In the years between 2004 and 2008 the Czech Republic referred 7 cases, Estonia 4 cases, Latvia 3 cases, Lithuania 5 cases, Hungary seventeen cases, Poland fourteen cases, Slovenia 0 cases and Slovakia 2 cases to the ECJ (whereas Austria in comparison referred 333 cases between 1995 and 2008.) The number of references here do not correlate directly to population size, but reflect other patterns including experience with democratic governance. Croatia has thus far shown a similar trend to the EU-12 in low numbers of cases, but the low number of cases also simultaneously indicates that there has been no immediate objection to the membership treaty that was negotiated between 2005 and 2011 or its application. Importantly, Croatia is beginning to adapt to the process in which national courts and the ECJ interact.

Immediately following the 2004 enlargement many of the court cases heard focused on taxation law (including value added tax-related cases and vehicle taxation related cases.) The process through the ECJ helped to clarify tax related legislation in the example of these member states and the rulings from the European court helped to solve some of the problems related to the rule of law after (not before) membership. Perhaps the most significant decisions of the ECJ have been in relation to social policy and consumer protections within the EU. After the ECJ's ruling pensioners living in another member state cannot be obliged to pay more taxes than they would be subject to at home.

It is difficult to know yet, on which subject matter cases from Croatia will focus, or the timing of when a multitude of cases will be brought to the court. In the past, a bottle neck effect formed, but after cases were heard the release through the ECJ process also clarified legislation in those states in question.

The law in context based functioning of the ECJ together with the national courts helps protect the rights and interests of UK citizens, organizations and businesses within the EU. This protection is enhanced as the ECJ not only has one judge from each member state. It includes in addition nine advocates-general who present opinions on the cases before the court. One of the advocate-generals is permanently from the UK. Spain, Italy, France, Germany and Poland also have permanent seats while the other three rotate. In the future, according to the provisions of the Lisbon Treaty, it is possible for additional special EU courts to be established for example in the

area of trademarks and patents. The UK has an opportunity as a member state to affect the content of such possible developments. This may be advantageous as London currently is one of the active centers where international copyright cases are being litigated and decided over large sums of money. Moreover, at present the EU's newest member Croatia's Commissioner serves as the Commissioner for Consumer Protection. New member states occasionally step immediately into roles that are important to particular interests. With this in mind, the well-developed relations that were fostered across membership negotiations between the UK and Croatia can help cooperation in the future across areas of interest.

The UK has a strong say on the content of the emerging EU law through both membership negotiations and the ECJ. Enlargement brings more states under EU law and therefore increases the area of protection for the UK. Both bring significant advantages to the interests of British businesses functioning within the EU, as well as advance the spread of democratic governance.

### *Labor market*

Goods and labor should flow freely within the EU according to the Union's ethos. Yet, one of the most often discussed and disputed effects of EU enlargement within the current British public debate concern the EU's common labor market. Croatia is the latest member to join the EU in 2013 increasing the EU's total population by 4,3 million people. Its accession treaty provides for the possibility of the transitional period in which EU member states may impose restrictions on workers from Croatia according to the 2 years + 3 years + 2 years formula. All member states have had the same option since the 2004 EU enlargement to limit workers from new member states up to the seven year period according to this labor force exemption.

The UK is one of nine countries (Austria, Belgium, Cyprus, Germany, Great Britain, Slovenia, Spain, the Netherlands and Luxembourg) to apply restrictions on Croatian workers. Many other EU states announced early on after the end of Croatia's membership negotiations that they would not seek the restriction. These included among others Finland, Sweden and the Czech Republic. This helped Croatia's government to make the case for EU membership to its public offering some labor mobility early on.

The period of seven years is substantially long and the policy serves the interests of the British labor market in that it offers also shorter phases of restriction according to the formula. The transitional arrangement should in principle come to an end after five years; however, it may be prolonged for a further two years in those member states where there would be serious disturbances of the labor market or a threat of such disruption. In addition labor markets are not blocked at any time even in the transition period and Croatian citizens can always enter the labor market as a third country national according to those regulations. In fact member states must also give preference to Croatian nationals over non-EU labor as has been for example the case in Austria. The text of the transitional arrangement on free movement of **workers** for Croatia can be

found in the Accession Treaty of Croatia: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:112:0067:0086:EN:PDF>

Mass immigration and flooding of the British labor market from Croatia is not to be expected. The Croatian labor migration to the EU has thus far after the July 2013 accession concentrated on skilled labor for example those working in the medical professions. In the first four months of membership (July-October 2013) 151 physicians from Croatia requested documentation to continue their specialization or work abroad. If the same rate continues it is expected in the estimation of the Croatian Medical Chamber (Hrvatska liječnička komora) that 400 physicians would migrate for work or professional specialization abroad annually. Of these in 2013 approximately 50% left for Germany, 22% for the UK and 18% for Scandinavia. The early estimation therefore is approximately 88 physicians in total annually would seek to migrate to the UK within the example of the medical profession.

### *Trade*

In addition to labor mobility, EU membership has the potential to effect, incentivize and increase trade. British investment and trade has in the past decade focused on the regions of Central and Eastern Europe as a whole. In South East Europe British businesses have sought opportunities to invest in infrastructure development (particularly SMEs and education), financing and transportation. One concrete example is British Airlines' commencement of daily flights between London and Zagreb in December 2012 in addition to flights to Dubrovnik. There are also other airlines which operate between Britain and Croatia at increasing frequency.

Studies and measurements of how much trade and investment has increased between particular member states after accession are only few. Contemporary economic benefits of EU membership for British bilateral trade with new member states and possible member states are difficult to measure after the commencement of global economic crises in 2008. As all economies have come under constraints to various degrees, effects of economic reforms are difficult to size precisely. The economies in South East Europe where the majority of candidate states and possible candidate states are located are closely tied to economies in the US and Europe. Growth in the past two decades was driven by heavy external borrowing. Highly-indebted countries are particularly exposed to the current crises, because creditors are re-evaluating regional risks and countries' credit ratings are declining. Most of the banks in South Eastern Europe are subsidiaries of West European parent banks that are now less willing to offer domestic loans. The economic downturn in the US and Western Europe has therefore developed a credit shortage that has limited household borrowing and investment in South Eastern Europe. Foreign direct investment has slowed as well.

Preceding the current economic crises, the EU launched a series of trade policies that succeeded close to eliminating its tariffs on exports from South Eastern Europe from 1998 onwards. By 2005, exports from the region to the EU grew close to 68 percent. Area experts have underlined

the significance of smaller sums of aid arriving from the EU under The Community Assistance for Reconstruction, Development and Stabilization (CARDS) program 2000-2006 and the Instrument for Pre-Accession (IPA) program. This gives room for political and administrative reform during the accession process and support fiscal reform. The EU has supported the creation of a single economic space by other means as well. In 2006, the governments of the South Eastern Europe formed Central European Free Trade Association (CEFTA) for regional free trade. Moreover, the European Bank for Reconstruction and Development (EBRD) and the European Commission have worked with national central banks in the region to build better accounting and regulatory standards. These are tied to regulations in the EU accession acquis's financial chapters. All measures related to pre-accession have worked towards the development of better trade regulation and practices although actual immediate effects have been difficult to measure uniformly.

What we know is that before the current financial downturn between the years 2002 and 2006, GDP growth in South Eastern Europe rose while unemployment rates dropped. Croatia (an EU candidate state since 2004) and Serbia (an EU candidate state since 2012) exhibited increases even over 5 percent in GDP then annually. Direct foreign investment rose and helped to pay for large deficits caused by heavy borrowing. This helped Serbia and Croatia both to reduce deficits in state budgets and tax reform was achieved. Unemployment declined. Yet, the growth of the first half of the 2000 decade came under review as inflow of foreign capital has tapered since the onset of the economic downturn. Currently, business and consumer confidence in South Eastern Europe as elsewhere globally is low. Domestic demand for consumer goods and markets has reduced rapidly. Earlier high consumer spending was based on lending. Majority of consumer loans in Croatia require payment equivalent to the value in Euros. The Croatian Kuna's exchange rate depreciated by close to 4 percent in 2008 relative to the Euro making many of the consumer loans more expensive already in the first year of global economic crises. In Serbia that has a floating exchange rate, its currency has depreciated several times since 2008 in a volatile manner. These developments are likely to have an impact on confidence in society in general. They also make it difficult to adjust and account for the otherwise positive effects of pre-accession programs that were interrupted by the global economic crises.

In the Croatian case the economic benefits of recent 2013 EU accession have thus far been limited. They have been constrained by domestic economic structural challenges which were not completely solved during the accession process, political constraints to economic reforms and the negative external economic environment discussed extensively above. As has been the trend in many of regional neighboring South East European states, foreign direct investment in Croatia has declined from 6%-8% of GDP prior to 2008 to 2%-3%. Croatia is experiencing in 2014 its sixth consecutive year in recession. The Croatian National Bank expects that investments in 2014 could grow by 3.5% depending on the state's ability to reduce the budget, the capacity of administration to support investment and economic activity abroad.

EU accession is an important opportunity for small European states to address key growth, competitiveness, and productivity challenges and the Croatian government has since 2013 announced privatizations of state assets, labor law amendments, and pension reforms. Structural reforms since accession have included the Investment Promotion Act. Reforms that have been started since 2013 have sometimes failed partly because of incompetence, and partly because they are unpopular and not possible due to the lack of any political or social consensus. The government in Croatia, as many current European governments has struggled to carry out its duties in creating a favorable business and investment climate. However, EU membership should help it with increased tools and communication at this task instead of hindering it.

The Croatian National Bank has acted to maintain conditions of low inflation, stable exchange rates and low interest rates. The bank has supported the use of structural funds for loan guarantees for SMEs to stimulate growth over low interest credit only. The excessive debt procedure (EDP) was activated for Croatia in 2013 as Croatia's deficit to GDP ratio, and debt to GDP ratio exceeded those prescribed in the Maastricht Treaty. This procedure should help to bring Croatia's economic reforms ahead some and is beneficial for all states wishing to do business with Croatia.

Along the direction of pre-accession programs and liberalization of tariff rates EU candidate state Serbia bordering member states Croatia and Hungary also abolished customs duties for products originating from the EU at the end of 2013 (with the exemption of under customs protection remain some agricultural products including fresh tomatoes, peppers, live animals, frozen meat and some dairy products). The EU accession process has overall served to liberalize access to and unify the economic space of South East Europe. That has served British trade interest that are not particularly differential to one particular country across this area.

### **3 .How would you consider the balance between the roles of member states and of the EU institutions in the process? Might UK interests be served by any changes to the balance of competences in this area?**

As the introduction to this call of evidence outlines, EU enlargement is not an exclusive, shared or a supporting competence. Enlargement is decided rather by an intergovernmental treaty set out in Article 49 of the TEU. Although the content and the process of membership negotiations is achieved by many EU institutions including the Commission, making the decision to accept another member state and finishing the negotiations is concluded by EU member states.

Although, EU institutions have many competencies and important roles in the process of EU accession, each individual member state holds the key to membership as admission of a new member is not possible without each state's endorsement. Although the role of the Council Presidency has changed after the Lisbon Treaty, the presidency still sets much of the political agenda of the EU. Communication with the UK's permanent representative at the COREPER is important as well as knowledge of the work of the body. It is not clear for example if the British parliament and its committees which engage with European and foreign affairs (European



Scrutiny Committee, the Foreign Affairs Committee and the EU Select Committee) currently get all the reports of the COREPER directly from Brussels. The UK's interests would be served among other measures by making sure that information transfer from the COREPER meetings is swift to the parliamentary committees, the FCO and the cabinet at least as it is very informative on the whole of the most important function and legislation of the EU.

## **8. How might the EU's approach to enlargement be improved in future?**

### *Union-Wide Public Information and Awareness*

One of the fundamental questions in European politics in general today is: how many Europeans know about the EU and how deep is their knowledge? To make informed choices and to participate in the process of democratic governance citizens across the EU should have an informed opinion of not only their national governments, but also of what the European Union is, and how it functions. People who in a democracy occupy the center stage should be able to ask and receive answers to any questions they may have about the EU. Public information has an important role to play here especially because the EU's framework of institutions is very complex and is not well known unlike national structures that are in older democracies better recognized from the past. The ideal would be to reach as many people as possible and to deepen the understanding about the evolving Union.

As an Assistant Professor teaching university courses in EU studies, and a Senior Area Expert for South East Europe I have personally had easy access to and help from officials of the Council of the European Union and the EEAS in answering any fair questions I have had regarding EU accession processes. Transparency in my own experience as an academic has not been a problem within EU institutions. Instead, the Council Secretariat and EEAS staffs have been capable and accessible to my questions; Information was efficient and fast. Higher education is also generally not the problem as many member states house premier universities with informative EU studies programs. However, public information in easy to understand basic language concerning enlargement processes is less available. It is mostly stored in the confines of the EU information centers located at EU institutions, in public documents on the internet, and EU depository libraries across member states. Not a large part of even the most educated citizenry has the idea and the initiative outside university classes to access informational booklets across these media. Without alternative civic education how many people living in the EU for example can explain why if multiculturalism is the basic ethos of the EU, the institution also stands in favor of maintaining 24 official languages spoken in separate nation states? Terminology is also a problem: how many citizens outside civil service professions know the meaning of basic terms such as accession for example? Some of the Youtube video commercials by the European Commission providing information about EU social policies for example are in a more

accessible formats (see for example, <https://www.youtube.com/watch?v=VkrCylE-P5U>.) However, they in general have communicated single and simple issues.

Crucial improvements are needed in public information and civic education because the European project currently encounters resistance ‘from below’ (most recently expressed in the course of the European elections in May 2014) which stems in part from a lack of public awareness about the EU. Unawareness is present in new and old member states to various degrees. There are of course many other reasons for today’s dissent in addition to unawareness. The EU initially grew into the euroatlantic cocoon when security issues were resolved by the United States and NATO in Western Europe after the Second World War. The post-Second World War need for reconciliation made the Franco-German alliance a heart of the European project until the end of Communism. Today, European security challenges are however different and often located domestically within member states of which there are more than half as many now. Young people in these diverse states have different historical experiences than the post-war generations, and their problems which include mass unemployment, austerity and immigration create new opportunities for an anti-integrationist politics. There is a feeling among many young people that the Union does not serve the interests of its citizens, but works for states, governments, businesses and some individuals instead. Better public information for which both EU institutions and national government are responsible for could solve some of the problem of generational gaps and inertia. This strategy applies equally to public awareness of enlargement as well. Like any ship, the Euro-ship needs to be cleaned off from much of ballast by solving such problems.

### *Special Attention to Referendum Information Campaigns*

The latest EU member state Croatia held its referendum on the EU membership 22 January 2012. The turnout for the EU referendum was 43% of eligible voters of whom 66% voted for EU membership. The low voter turn-out is typical for the EU referendums in the last two decades and similar to those of Lithuania and Slovakia for example. Simultaneously, the voter turnout in the Croatian parliamentary elections in December 2011 was significantly higher close to 62%.

The Croatian information campaign for the EU referendum sponsored by the state begun only 3 January 2012 some nineteen days before the set referendum date. Heavy campaigning took place ten days before the vote. The campaign is memorable for short, clearly stated video messages of the President of the Republic, the Prime Minister and other key minister of the government which discussed what was at stake and encouraged citizens to vote. The campaign was also striking for some more pivoted political messages including a radio interview with the Foreign and EU Affairs Minister who told that Croatian pensioners would not in effect receive their pensions afterward the referendum if Croatia voted no and did not enter the EU. The information campaigns of other states such as Finland in 1994 lasted in comparison a period of six months prior to the vote. In Croatia the state sponsored only a yes campaign for EU membership while in

Finland the state sponsored for both yes and no campaigns led by civic organizations; each organization that applied for funding received it. In general, European officials had been invited to take part in the information campaigns and had often visited the country before the referendum. In Croatia in 2012 the EU officials and even the diplomatic corps were invited engage in the short campaign to somewhat smaller extent.

An informed debate requires both funding as well as a sufficiently long period of time for civic engagement. Although, the public information campaigns for example have been the purview of the candidate states thus far in the accession process, the EU's approach to enlargement could be improved in the future by paying more attention to this aspect of accession. The EU from its side could place more requirements for public and civic information concerning the accession and the EU's institutions over all before concluding negotiations. The EU could require lengthier and more balanced information campaign that would serve the public interest.