

THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

SUBMISSION OF EVIDENCE

EU ENLARGEMENT

Impact on the national interest

1. Assessing the impact of enlargement on the UK's interests is not easy as it depends on how one interprets 'interest'. As the *Call for Evidence* document makes clear, historically the UK has seen itself (and has been seen) as a leading advocate of enlargement. Cynics might argue this was because a 'wider' Europe would militate against a 'deeper' Europe (i.e. would act as a brake on integration), whereas supporters of enlargement see the process as a major contribution to the creation of a zone of peace and security on a continent not known for these qualities. There is no doubt that the support of successive governments for the principle of enlargement, including Turkey's eventual accession (which remains controversial in several Member States and which has been damaged by recent events in Turkey), has been an important element the UK's EU policy. The key drivers for this support for enlargement have been *economic* (the expansion of the Single Market), *political* (the expansion of liberal, free-market democracy) and *geo-political* (the creation of a cohesive Western-oriented bloc).
2. First and foremost, it is important to remember that enlargement is a quintessentially *political* process and was seen as likely from the very earliest days of the EEC. Enlargement is an *inter-governmental process* sealed by treaty after following Article 49 of the Treaty on European Union (TEU). Article 2 defines 'European' values as 'respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities' but these are, of course, not exclusively European values and they give little direction as to the conduct or detailed content of the enlargement process. Whether or not a country is defined as 'European' is determined by the European Council, composed of Member States. It is important to note that accession procedures are not a matter of law but determined by Council decisions and by incremental change to practice. Again we see the political nature of the process.
3. In terms of this *Review*, therefore, 'competence' is not wholly captured by the exclusive, shared, or supporting notions of competence. The TEU Article 49 states any European country may apply for membership if it respects the democratic values of the EU and is committed to their promotion. The first step is for the country to meet the criteria for accession defined at the European Council in Copenhagen (1993) and must possess: stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the capacity to cope with competition and market forces in the EU; and the ability to take on and implement effectively the obligations of membership, including political, economic and monetary union. There are special provisions for the Western Balkans (WB). The EU also has to take into account the integration (or 'absorption') of new members.

4. It would take too long to trawl through specific policy areas but it is perhaps worth suggesting that enlargement is of clear benefit when addressing cross-border/transnational issues. Obvious policies here are, for example, the environment, the movement of capital and investment, border control, and so on. However, as is the case with several other EU members, enlargement has become inextricably entwined with problems associated with the free movement of labour within the borders of the EU. There is no need to spell out the consequences here as they can be seen in the domestic politics of EU Member States and the recent European elections. As the candidates for enlargement are poor the inevitable assumption is that these countries, although small (with the exception of Turkey), will adversely impact receiving on states ('the Polish plumber' syndrome). Further enlargement *will* have domestic political consequences and these are unlikely to be regarded as positive.
5. A further complication in the UK's position is the changing effect of enlargement on internal EU governance and its political dynamics. One illustration of this is Poland. In many respects Poland should be (and in many respects, is) something of a natural ally of the UK in its desire to promote deregulation, free-market liberalism, human rights, etc but this relationship is complicated by Poland's history which (understandably) makes it a keen advocate of a strong, coherent Europe to guarantee Polish integration into the West. The enlargements of 2004 and 2007, in the context of the French and Danish rejection of the constitution, complicated further an already complex internal EU politics and this complexity has been amplified by the creation of the Euro-zone. The cumulative effect, therefore, is the growth of differential integration that will continue and accelerate. It is worth recalling that all accession countries are required (when the time is judged right) to adopt the Euro and, as a result, the consequent increase in supra-national governance whilst not directly affecting the UK will impact on EU governance and thereby on the UK.
6. In terms of the balance of competences (as defined in the *Guidance* document) the role of EU institutions – notably the Commission (EC) – is critical in enlargement. However, Member States determine the criteria under which enlargement as a process takes place but the process is supervised and monitored by the Commission. This process of monitoring has become increasingly complex over time with the development of conditionality (and now elements of post-accession conditionality) with each iteration of the accession policy being amended in the light of the previous instance. Thus, the process applying to the Western Balkans reflects the perceived weaknesses of the process in Central and Eastern Europe (CEE) and reflects the fact that in the WB the EU's role was far more complex: post-conflict state building as the essential precursor to Member State building. It is quite hard to see how the UK's interests could significantly served better by changes in the balance of competences. The EC has far more experience than any Member State in this field and the Member States set the parameters under which it operates; and, in the final analysis, all accession have to be approved by all Member States so the UK retains an effective veto over enlargement.

Exercise of competence

1. Assessing the effectiveness of Member States and EU institutions in running the enlargement process is hard to capture briefly. Overall, however, one would have to judge the process as highly successful despite adverse cases such as Bulgaria and Romania. At this time it is perhaps difficult to recall the state of Europe in the late-1980s and early-1990s in the aftermath of the end of the Cold War and the fall of the Soviet empire in CEE. A uniting feature throughout CEE was the desire to 'rejoin the West' and many Western institutions, including the EU, found themselves in a rhetorical trap: having declared this was where the CEE countries belonged, they now had to deliver. Equally, however, these states were undertaking a complex political (establishing liberal democracy) and economic (creating free-market economies in place of centrally-planned economies) transitions and so these states could not be simply absorbed without major restructuring. The EC (and other institutions) and the Member States handled this unprecedented situation well: they developed aid programmes, monitoring schemes, mutual aid schemes, and so on as well as distinct normative and value requirements that applicant states were obliged to comply. Was this process flawless? Of course not, as Bulgaria and Romania testify but would the Euro-zone crisis have been as severe if, for example, Greece had been subject to a comparable programme of surveillance and discipline as the CEE states? Moreover, lessons were learned.
2. The enlargement into the WB reflected this learning process but also reflected the fact that the WB, as a result of the collapse of Yugoslavia and the consequent blood-letting was a much harder nut to crack. In the first instance the EU determined there would be no more 'big bang' enlargements, states would join the EU when the EU (which in this case means the EC and Member States) were convinced that they were ready to undertake the duties and obligations of membership. Critics in the region condemned this as slowing the process but this was precisely what was intended to both ensure transition in the region and secure acceptance from and EU suffering from a degree of enlargement and absorption fatigue. Moreover, the break-up of Yugoslavia and the consequent slaughter created a wholly new situation in which the EU had, virtually simultaneously to engage in conflict resolution, state building and Member State building. There was inevitably hubris and mistakes were made, in some cases change has been slow to come, but overall one has to judge the EU's interventions as positive.
3. There is a substantial, indeed vast, academic and policy literature on the question of conditionality and the debates are hard to capture. Taking enlargement as a whole (both in CEE and WB) there is no doubt that states who are now EU members or who are seeking membership saw EU membership (along with NATO membership) as *the* national goal. The reasons for this are obvious: the EU reflected an alternative future of freedom and prosperity that was the antithesis of their recent history. This aspiration therefore gave the EU tremendous transformative potential. We must also remember that these states had no other model on which to draw and there was a tremendous national energy behind the creation of a free-market economy and liberal-democratic polity. It could be argued that in terms of the basic transitions the EU was a null actor, liberal-democracy and free-markets would have been

created even if the EU had not existed. The EU did exist and membership was a vital national goal so the EU acted as a direct influence on the direction and content of that transition through aid programmes, conditionality, and monitoring.

4. Treaty provisions and documents such as the Copenhagen Criteria are undoubtedly of great significance as they declare the EU's self-image but they are, however, useless as a road-map for accession and, to be fair, they were not intended to be so. They are broad declarations of principles, often reflecting universal values, to which EU members and aspirants must subscribe but the devil is, as ever, in the detail. The basic contours of enlargement have remained largely unchanged but have been progressively amended and amplified over the years to take into account the weaknesses of the prior instances of enlargement.
5. The Copenhagen Criteria (1993) and the European Council (1997), and the processes established represented the first phase of enlargement that culminated in the 2004 and 2007 enlargements. This was revised and augmented during and after the enlargement process. The European Council in December 2006 instituted the *Renewed Consensus* which improved the rigour of conditionality and emphasised absorption. This approach governed the enlargement process in the WB and the accession of Croatia but experience dictated a further evolution, *The New Approach*, that institutionalised the primacy of Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security) as the '*acquis of the acquis*' and which must be addressed at the very start of the negotiation process (Montenegro and Serbia will be the first to follow this path). This reflects the EU's experience, influenced particularly by the problems associated with Bulgaria and Romania, and has three significant effects: first, the rule of law is prioritised; second, it enshrines the importance of change over time; and third, it gives the EU an important disciplinary tool when assessing the applicant's track-record. The point here is to emphasise that enlargement as a policy has consciously evolved in response to the concerns of the Commission (which is responsible for the process and the conduct of relations with Member States) and Member States concerned about the impact of enlargement.
6. Membership negotiations cannot start until there is a unanimous decision of the EU Council on a mandate for negotiations. Negotiations under each of *acquis* chapters are based on, first, the Commission and the candidate carrying out a detailed examination (Screening) of each chapter to establish the country's preparations. Findings by chapter are reported by the Commission to the Member States in a screening report. This report contains a Commission recommendation to open negotiations directly or to require that opening benchmarks should first be met. Prior to the opening of negotiations, the candidate must submit its negotiating position on which the EU must adopt a common position. For most *acquis* chapters the EU sets closing benchmarks which must be met by the Candidate before chapter negotiations are closed. For Chapters 23 and 24 the Commission has proposed that post-Croatia's accession these chapters be opened *via* action plans, with interim benchmarks based on their implementation before closing benchmarks are set. Negotiations depend on the speed of reform and alignment with EU laws in each

country. So, the duration of negotiations varies and starting at the same time as another country is no guarantee of finishing at the same time.

7. No chapter negotiations are closed until *every* EU government is satisfied with the candidate's progress, as analysed by the Commission. The entire negotiation is concluded definitively only when *every* chapter has been closed. The Accession treaty establishes the country's membership and contains the detailed terms and conditions, transitional arrangements and deadlines, financial arrangements and safeguard clauses (if any). It is important to note that the treaty is neither final nor binding until it has been endorsed by the EU Council, the Commission, and the European Parliament, signed by the candidate and representatives of all existing EU countries, and is ratified by the candidate and every individual EU member under their constitutional rules. Once the treaty is signed the candidate country becomes an acceding country whereby it will become a full member on the date laid down in the treaty, as long as the treaty has been ratified as above. Prior to this the acceding country accesses special arrangements (for example, commenting on draft proposals, communications, recommendations, and taking advantage of 'active observer status' in EU institutions (i.e. speaking but not voting).
8. Any honest observer must acknowledge the extensive nature of this process and concede that the EC takes its obligations to countries seeking admission and also to those who are already members extremely seriously. Whether the EU's use of conditionality has been effective is a matter of debate. The fact of accession shows that formally the process has worked and there is no doubt that the negotiation over the implementation of the *acquis* has brought about extensive change. Similarly, EU financial and technical assistance (via programmes such as PHARE, CARDS, TAIEX, ISPA, IPA, etc.) have been of great importance in building the capacities and capabilities necessary to undertake the obligations of EU membership and, indeed, operate as modern, effective states. Similarly, the long-term engagement of these states with EU Member States in joint programmes has encouraged social learning, familiarising (for example) civil servants and civil society bodies with the EU's values and 'ways of doing things'.
9. This can be seen in the experience of the EU's latest member, Croatia, which has been effectively restructured as a state by engagement with the EU. An even more spectacular case is Macedonia, where the EU effectively insisted on the reconstruction of the political system from the bottom-up. Critics of the process can cite the examples of Bulgaria and Romania, studies of public administration (for example) in the 2004 accession states conducted by OECD/PUMA have noted a tendency in some states for traits (such as an overly politicised civil service) to re-emerge, whilst the pressures of domestic politics at a time of economic crisis and austerity has lead to the re-emergence of less than attractive nationalist and even authoritarian traits (for instance, in Hungary).
10. Speaking generally, the critical question in the literature is the difference between *compliance* (the degree to which states are able to transpose EU requirements) and *implementation* (the extent to which these requirements are put into operation and have the predicted effects) and many would argue the greatest gains have been in compliance rather than implementation, which implies significant limits on the long-

term impact of conditionality to transform the realities of domestic politics. This process, which is usually referred to in the academic literature as Europeanization (or less frequently, EU-ization) is complex and is addressing deeply embedded historical influences and therefore confirms the view that Europeanization, or even EU membership, is not a destination but a journey. The effectiveness of conditionality should be judged not just by the degree to which the misfit between these and established Member States have narrowed but also by the distance covered by states during their engagement with the EU.

Future options and challenges

1. As the *Briefing Document* argues 'The UK's has been historically a driving force within the EU behind enlargement. Successive UK Governments have championed enlargement over recent decades. They have consistently highlighted the strategic benefits for the UK in terms of security and prosperity, and welcomed the more open, diverse and flexible EU that has resulted'.
2. There is no doubt that enlargement has extended peace, stability and democracy, extending the rule of law and fundamental rights, promoted cross-border trade, and created the world's largest economic area and these are gains that should not be dismissed lightly given Europe's recent history. The problem is, however, that these may not be sufficient to justify further enlargement.
3. In strategic and geo-political terms the EU is coming close to the point at which enlargement stops. Beyond the states and entities of the WB – Albania, Serbia, Macedonia, Montenegro, Bosnia and Herzegovina, and Kosovo – there is Turkey and beyond Turkey the even more contentious case of the Eastern Partnership states, notably the Ukraine. Assuming that at some unspecified point the WB states become EU members, and they have been assured numerous times since 2000 that they all have a realistic membership perspective, where does the EU go then? Where are the EU's borders? This is, however, not a question of enlargement but is a matter of the highest of high politics and a question that can only be resolved by the Member States and the European Council.
4. The cases in the WB are difficult ones when compared to the states of CEE but the problems they pose for the EU pale when compared to that of Turkey. Britain has consistently argued in favour of Turkey's membership and Turkey has been subject to EU influence for many years and has undertaken many reforms at the EU's behest. However, whatever the geo-strategic reasons for Turkey's inclusion in the EU this is not going to happen anytime time soon. This is because many states are deeply hostile to Turkey's membership (for example, Austria and, for a different set of reasons, Cyprus) and would most likely veto; second, recent actions by Prime Minister Erdogan and the AKP government have raised questions about Turkey's compliance with EU governance norms and degree of compliance with EU inspired rules; third, on accession Turkey would become the second-largest EU state after Germany and this could not but have a significant effect on the EU's governance; fourth, despite Turkey's spectacular economic growth in recent years (which has led some in Turkey to question whether Turkey really needs to join the EU) Turkey's population remains significantly more agricultural and less prosperous than the EU

average, which raises the possibility of a high level of migration into Western Europe (most likely into Germany); and finally, Turkey is an Islamic country and critics of Turkish accession argue that its membership of the EU would fundamentally change the nature of the EU. Turkey's size and culture represent an absorption and integration task far greater than anything hitherto confronted by the EU in previous enlargements and despite recent EC attempts to 're-boot' relations with Turkey, relations are stalled.

5. There seems little point in disputing the fact that the Commission are the experts in the process of enlargement and so there is little point in arguing for reforming the process by giving the Member States a greater share of the relevant competences. For one thing, the Member States determine the process followed by the Commission and they retain the right of veto. Enlargement is a process that would be best left to the Commission with Member states retaining sufficient resources as Members, to influence the process. Of course, if a country is not an EU member it cannot really expect to influence enlargement.
6. In general, the future impact of enlargement on the UK's interests really depends on the UK's relationship with EU. If the EU withdraws from the UK, its influence over enlargement policy goes with its membership. If the UK re-negotiates its relationship, then the UK's influence over enlargement would depend on the specific content of that relationship but if the UK's relationship with the EU was confined to that of a free-trade area would that include enlargement? Perhaps it would, given the importance of the single-market to the UK but would the EU give the UK a veto as now over future enlargement? I think not. Only by remaining a full member of the EU would the UK retain the full range of resources open to it now. However, remaining a full member means the UK would remain subject to treaty commitments concerning the free-movement of labour within Europe which is a hot-button issue in contemporary politics. This issue could, of course, be addressed by negotiations within EU institutions (and there are other Member States concerned about the migration implications of enlargement) but it is hard to see how it could be done short of a treaty change. In current conditions, with all its attendant uncertainties, the only secure way to influence enlargement is to remain in the EU but this brings in its train serious political difficulties.
7. In the current national and European political climate it is hard to identify major advantages to further enlargement. It would be peculiar, however, for the process not to continue in the case of the WB but the complexities of this region means accessions will take place over an extended period of time. In historical perspective the enlargement of the EU since 2004 is a major triumph, dramatically expanding the zone of peace and prosperity on the European continent, enlargement has shortcomings but that is no reason for it not to continue.