

Call for evidence on the Government's review of the balance of competences between the United Kingdom and the European Union

EU Enlargement

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The following evidence addresses a selection of the questions posed in the call for evidence. It draws on a number of arguments and observations included in a range of the author's existing analyses of EU enlargement.¹

1. How has the UK influenced the enlargement process?

The United Kingdom has been one of the most consistent advocates of EU enlargement and has used successive Council Presidencies to advance the process, notably in 2005 when it brokered the deal that allowed accession negotiations to be opened with Croatia and Turkey. Prior to this, Conservative and Labour governments in the 1990s and early 2000s were strong and vocal supporters of the principle at least of enlargement. While the rationales underpinning the support focused on the security and potential trade benefits and were in and of themselves well-argued and well-intentioned, successive governments were never able to dispel entirely the widely-held assumption that a key motive behind the United Kingdom championing enlargement was to weaken integration tendencies in the EU; a larger, more diverse EU would be less likely to reach agreement on further integration. The scope for the United Kingdom leading in influencing the speed and direction of enlargement was consequently limited.

The political desire to see the EU enlarge has not generally led to UK governments compromising on the formal criteria for accession. For the most part, successive UK governments have been focused on ensuring that criteria are met. Indeed, since eastern enlargement in 2004 and, especially, 2007, the United Kingdom has been one of the member states championing the development of more robust and effective conditionality and most insistent on criteria being fully and demonstrably met before progress towards and within accession negotiations is permitted. It has been among the steadfast member states in this respect with some candidates seemingly mystified by the contrast between UK rhetorical commitment to enlargement and its tough stance in negotiations.

Much of this toughness in the UK stance has been based on a principled insistence that criteria are met before accession can take place, the prevailing view being that the credibility of enlargement as

¹ See: İçener, E. and Phinnemore, D. 'Building on Experience? EU Enlargement and the Western Balkans', in Keil, S. and Arkan, Z. (eds) *The EU and Statebuilding: EU Member Statebuilding in the Western Balkans* (London: Routledge, forthcoming); Phinnemore, D. 'The Stabilization and Association Process: a Framework for European Union Enlargement?', in Elbasani, A. (ed) *European Integration and Transformation in the Western Balkans: Europeanization or Business as Usual?* (London: Routledge, 2013); İçener, E., Papadimitriou, D. and Phinnemore, D. 'Continuity and Change in the European Union's Approach to Enlargement: Central and Eastern Europe and Turkey compared', *Southeast European and Black Sea Studies*, 10 (2) 2010, 207-223; Phinnemore, D. 'And We'd Like to Thank...: Romania's Integration into the European Union, 1989-2007', *Journal of European Integration*, 32 (3) 2010, 291-308; Papadimitriou, D. and Phinnemore, D. *Romania and the European Union: From marginalization to membership* (London: Routledge, 2008).

a means of promoting political, economic and administrative reform needs to be enhanced if the *acquis* is to be upheld. This can be achieved by insisting that the accession criteria are demonstrably met before accession can take place. To date, successive governments have consistently upheld the view that enlargement is based on adoption of the full rights and obligations contained in *acquis*. There are indications, however, that the current government's support is becoming less principled in that it wishes to see the free movement rights of citizens of future member states limited.

3. How do 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?

The Treaty on European Union (Article 49) sets out the essential procedural and decision-making roles of the EU's member states and institutions in enlargement. Decisions on whether to admit an applicant require a unanimous decision of the member states in the Council. In addition, the treaty of accession requires ratification by each member state. Each member state therefore has a veto on enlargement (as does the European Parliament which must also give its consent to each enlargement). The Commission plays a central role in monitoring the progress of candidates in meeting the accession criteria and in proposing and implementing the EU's enlargement strategy, including recommending the opening and closing of negotiating chapters. Decision-making, however, remains firmly with the member states in the Council. This has become increasingly evident as the unanimity requirement for the opening and closing of chapters has moved from being implicit in the case of the 2004 enlargement to being stated explicitly in the frameworks for negotiations agreed since 2004. It has also obviously been used by Cyprus and France to block negotiations with Turkey, and by Slovenia to delay progress in the negotiations with Croatia. The maintenance of the unanimity requirement is therefore a double-edged sword: available to ensure that the UK government can veto developments that run counter to its interests, but equally available to other member states to veto a process which, formally and publically, the UK government supports.

4. How effectively have the member states and the EU institutions run the enlargement process? Have lessons drawn from previous enlargement rounds been applied?

The expansion of the *acquis* and the challenges associated with developing and implementing an accession process for the post-communist countries of Central and Eastern Europe as they were still undergoing processes of political and economic reform led to a dramatic increase in resources dedicated to enlargement from the mid-1990s onwards and the development of a more pro-active engagement of the EU in assisting applicants initially and later 'potential candidates' in developing strategies and support mechanisms for meeting the accession criteria. While the development of annual monitoring and programmes such as Twinning were well intentioned, the experiences gained from the 2004 enlargement and especially the enlargement of 2007 revealed that the mechanisms in place to promote reforms in candidate and potential candidate countries required refinement if not reform if they were to promote the necessary political and administrative capacity to take on the obligations of membership.

Consequently, significant changes have been introduced to the mechanics of accession in each case demonstrating that lessons have been drawn:

- Conditionality has moved centre stage with criteria being extended and made more explicit with the thresholds for compliance being raised and monitoring intensified. Benchmarks for opening and closing negotiating chapters and 'action plans' have become the norm, with 'interim benchmarks' also being introduced. No longer is the EU primarily interested in acceding states adopting and generally implementing the *acquis* at the time of accession: with candidates currently negotiating accession the emphasis is on establishing satisfactory

track records in implementation and enforcement *before* a negotiating chapter can be closed.²

- Administrative capacity to implement the *acquis* also enjoys much greater prominence, and there is an unprecedented emphasis on the need to uphold the rule of law through effective judicial capacity and the rooting out of corruption. This is reflected not least in the introduction of the ‘equilibrium clause’ making progress in all negotiating chapters contingent on progress in chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security). Where progress is deemed to be ‘significantly’ lagging behind, negotiations in all chapters may be suspended, and by a qualified majority vote of the member states, not unanimity.³
- In terms of the sequencing of negotiations, priority is now given to opening the more challenging and problematic chapters early so that issues can be addressed

In addition, the political narrative surrounding enlargement has changed dramatically. Whereas ‘eastern enlargement’ was presented very much as an historic opportunity to overcome the artificial Cold War division of Europe and to secure the ‘return to Europe’ of the countries of Central and Eastern Europe, no similarly compelling narrative exists to justify further enlargement. In the immediate aftermath of the Kosovo conflict of 1998-99, enlargement was presented as the key to promoting security and stability in the Western Balkans; only with the prospect of EU membership could peace and stability be re-established and flourish in the region. With relative stability in the Western Balkans any imperative to enlarge has receded, and the rhetoric has become somewhat muted. In the case of Turkey as well there is currently no compelling narrative justifying its admission; worse the rhetoric surrounding its accession bid is increasingly one that questions the desirability of admitting a formally secular state but a populous, large and culturally predominantly Muslim country bordering war-torn Syria and Iraq.

To date the lessons drawn have been applied and the new mechanisms implemented. Accession has become a more technically refined and less politically-driven process, and consequently more demanding. Greater assistance and guidance exists to support candidates and potential candidates, but such guidance in terms of benchmarks and action plans can also be exploited to increase requirements. The scope to ‘move the goalposts’ is ever present. Moreover, the process is more explicitly ‘open-ended’ according to the frameworks for negotiation; accession is not a foregone conclusion of the opening of negotiations. The EU now also eschews the setting of any timetables for the opening or closing of negotiations or for accession itself, except once negotiations are effectively closed. In agreeing notional dates for accession in the case of Bulgaria and Romania the EU effectively tied its hands politically to a particular timetable for enlargement and so lost leverage in the reform processes in those countries and arguably admitted the countries prematurely.

7. What challenges / opportunities might EU enlargement face in future?

Enlargement depends considerably on acceding states meeting an increasing array of demands to demonstrate their ability to assume the legal and political obligations of membership. The future of enlargement therefore depends on both continued demand and the ability of the applicants and potential candidates to maintain momentum in meeting the EU’s requirements for admission. Whereas demand is likely to continue to exist, at least among the less economically developed and politically stable European states,⁴ whether the reform momentum can be sustained in applicant and

² A clear intention here is to avoid the need to establish an ad hoc framework for post-negotiation monitoring as the EU did with the Cooperation and Verification Mechanism set up – and still in place – for Bulgaria and Romania.

³ A similar ‘equilibrium’ clause focused on ensuring progress in the normalization of relations with Kosovo has also been included in the framework for negotiations with Serbia.

⁴ It should be noted that Iceland has effectively withdrawn from the accession negotiations opened in 2010 and neither Switzerland nor Norway seems likely to renew efforts to join the EU.

potential candidate states in the light of the EU's increasing demands and weakening commitment to enlarge is open to question. The EU has referred in recent years to its own ill-defined 'enlargement fatigue' and used this as a partial justification to ratchet up the requirements for membership; it has paid less attention to the 'accession' and 'reform' fatigue that threatens progress towards membership in some states. Contributing to the fatigue are the evident and understandable concerns about the credibility of the membership perspective that the EU has granted these states. Both the perspective and the timetable for its achievement are vague.

On the perspective, it is striking that the European Council simply no longer deploys the language of Copenhagen that stated, subject to conditions being met: 'associated countries of Central and Eastern Europe that so desire *shall* become members' (emphasis added). Nor does the European Council, as it did at Luxembourg in 1997 for the Central and Eastern European applicants and at Helsinki for Turkey refer to the applicants and potential candidates as being 'destined to join' the EU. Instead the language is at best measured and at worst ambiguously non-committal. Referring to a state's 'European perspective' and avoiding references to 'membership' and 'accession' simply does not convey a credible sense of commitment to their accession and the desire of the EU to see them admitted. Also, politicizing and delaying the granting of 'candidate' status – a legally meaningless status invented and conferred almost unhesitatingly on all applicants in 1999 – only undermines further the sense that the EU lacks the commitment it has previously had to enlargement. Failing to open negotiations with Macedonia despite repeated recommendations from the Commission and struggling to progress with the opening and closing of individual negotiating chapters, especially in the case of Turkey, does not enhance the credibility of the membership perspective.

Overcoming its current comparatively weak commitment to further enlargement is a major challenge for the EU. A further challenge is the development of a compelling narrative or set of rationales justifying the process. While the EU consistently invokes arguments about creating stability through the promotion of prosperity and democratic reforms, these arguments do not resonate sufficiently among member states to generate a clear consensus on further enlargement to include all current candidates and potential candidates. A compelling narrative is needed to convince not only those member states unenthused by the prospect of further enlargement but also increasingly popular opinion.

As far as member state governments are concerned, it is striking how reticent many are to make the case for further enlargement. The absence of any significant debate at European Council level since the 'renewed consensus' of 2006 is striking. This reflects not only barely hidden opposition among some member state governments to further enlargement (at least to include Turkey), but also the absence of a vocal set of champions of the process. The situation in 2014 offers a vivid contrast to twenty years ago as the EU moved from Copenhagen commitment of 1993 to the publication of *Agenda 2000* in 1997. Voices can be heard today championing the cause of enlargement but they are neither loud nor powerful.

The absence of clear and prominent voices making the case for enlargement and in doing so offering an attractive and convincing rationale for admitting more states means that declining levels of popular support for the process continue to go essentially unchecked. Equally if not more worrying for its supporters is the evident rise in opposition to further enlargement, again at least where the possible admission of Turkey is concerned. Such opposition is not limited to smaller, generally eurosceptic parties, but is also evident in some larger more mainstream parties. The permissive consensus on enlargement which existed in the 1990s has essentially gone; the speed and direction if not necessarily the process *per se* have become contested. And in this new era, there is a lack of concerted leadership on the issue. Member state governments often not only fail to make the case for further enlargement, they also openly question aspects of the process. A number have also either provided for or hinted at holding referenda on future accessions. Deferring to a popular vote can be justified on democratic grounds, but it also reflects reluctance on the part of some member states governments to challenge opponents and make the case for enlargement. In the absence of a

concerted effort to communicate effectively the pros and cons of enlargement a rather skewed perception of the costs – often focusing on actual and potential migration flows, corruption and criminality – and to a lesser extent the benefits has emerged. Again, governments have generally done little to counter such perceptions and in some cases have shown a preference for exploiting for domestic political gain populist arguments about cultural and religious difference and claims of excessive migration and ‘benefit tourism’.

A further development of concern is the increasing willingness of member states to wield their vetoes in the enlargement process. There have been occasions where the refusal to support the progress of a state further towards membership has been principled and based on a broadly justifiable set of conditionality-related arguments which have subsequently been met. On other occasions, the veto has often been cast for narrow and often selfish national political reasons resulting in either a failure to open negotiations (Macedonia) or a temporary (Croatia) or longer-term (Turkey) deadlock in negotiations. There is an evident unwillingness among some member states to overcome deadlocks, to act on commitments made to the candidate, and to countenance a softening or withdrawal of their veto. Insufficient energies have been expended in recent years on overcoming such vetoes which threaten ultimately to derail the process.

This lack of energy is arguably symptomatic of the enlargement *fatigue* – possibly even enlargement *ennui* – that has characterised EU engagement for much of the last decade. It is striking, as noted, that the European Council has barely discussed enlargement during this period except to endorse the annual Council conclusions on the process. Pre-occupation with the Eurozone crisis provides an important explanation, but this has not prevented other issues from being on the agenda for meetings. The absence of detailed discussion at the European Council level reflects the fact that enlargement has moved from being a political priority of and imperative for the EU.

8. How might the EU’s approach to enlargement be improved in future?

Compared to the mid-1990s when it was contemplating the opening of negotiations with applicant countries from Central and Eastern Europe, the EU currently has a far more developed approach to enlargement. Conditionality, in itself a more refined and increasingly detailed process, is rightly at its core. Consequently the accession of candidates has become even more focused on technical issues. And the focus is very much on the candidates individually, so effectively ruling out the possibility of a substantial regional ‘south-eastern’ enlargement to follow the ‘big bang’ ‘eastern’ enlargement of 2004.

Enlargement nevertheless remains a political process. While much attention has been given to what requirements need to be and are made of applicants before they may join and how compliance should be determined, ensuring that enlargement is invested with sufficient political capital to secure its success has attracted far less attention as the slow progress of Macedonia and Turkey towards accession attest.

Following earlier comments, a range of issues should be addressed.

- A compelling narrative for enlargement needs to be developed and deployed to support the process.
- More effective communication of the rationales behind and the costs and benefits from enlargement is needed if public opinion is to at least accept if not actively support further enlargement.
- The credibility of the membership perspective in the eyes of actual and potential applicants and candidates needs to be enhanced if reform fatigue is to be countered.