

Submission to the Government's Review of the Balance of Competences Between the United Kingdom and the European Union

EU Enlargement

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List of Participants at the University of Birmingham Seminar:

Avery, Graham (European Commission/European Policy Centre/University of Oxford)
Bailey, David (University of Birmingham)
Cengiz, Firat (University of Liverpool)
Copsey, Nathaniel (Aston University)
Dragneva-Lewers, Rilka (University of Birmingham)
Haughton, Tim (University of Birmingham)
Juncos Garcia, Ana (University of Bristol)
Kostandinova, Valentina (University of Buckingham)
Novotna, Tereza (Universite Libre de Bruxelles)
Phinnemore, David (Queen's University Belfast)
Roberts, Michael (former HMA to Slovakia)
Wolff, Stefan (University of Birmingham)

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 United Kingdom has benefited from enlargement of the European Union. Central to the UK's interests have been concerns for markets, security and influence. The successive waves of enlargement of the EU have delivered a considerably larger market, improved security and increased the UK's influence, although, as will be mentioned below, this influence has diminished in recent times due to the United Kingdom's actions and policies.

The UK was a vocal champion of the most recent waves of enlargement (2004, 2007 and 2013) playing a key role in ensuring enlargement of the EU to the former Communist states of Central and Eastern Europe and was a strong advocate of enlargement to Turkey. The UK's position was driven by a mixture of self-interest (access to new markets etc.) and less self-interested motivations, particularly with regards to a desire to promote democracy and the rule of law. In

more recent times, the UK's position has become more discerning, with a far greater emphasis on conditionality. In light of the problems associated with Bulgarian and Romanian accession and the need to ensure improvements to the judicial systems in future member states, the UK has placed particular emphasis on chapters 23 and 24.

Despite some on-going problems with corruption, the rule of law and treatment of minorities, thanks to the process of EU accession (often combined with the influence of other international/outside actors), the states of Central and Eastern Europe are more prosperous, better governed and a source of stability on the European continent. In the 2004-12 period (even though a number of the new member states such as Latvia were hit harder than most other economies in the world by the 2008-9 Great Recession), GDP rose by 46.8% in Estonia, 62.4% in Latvia, 64.9% in Lithuania, 56.9% in Poland, 22.5% in the Czech Republic, 57.7% in Slovakia, 25.0% in Hungary and 14.4% in Slovenia.¹ All but the last of these is significantly higher than the figure for the EU-15 (13.9%).

Thanks to successive waves of enlargement the European Union of today is wider, more liberal and more Anglophone than it has ever been. The last of these points should not be ignored. Primarily as a consequence of the 1995 and 2004 enlargements, English is the main language of communication in EU institutions, structures the way actors behave at the EU level and is a source of potential great influence for the United Kingdom.

Whilst the newer member states have tended to be more pro-market, they have not tended to be opponents of further integration and have not acted as a break on ever closer union; indeed these states have tended to be positive about further integration, for instance, supporting the Lisbon Treaty and the Fiscal Compact. Where there has been resistance to these developments it has tended to have been politicians of a particular political hue, such as Vaclav Klaus's opposition to the Lisbon Treaty and the Czech Prime Minister Petr Necas's refusal to sign the Fiscal Compact. The successors to both these politicians (Milos Zeman and Bohuslav Sobotka) have changed their country's stance and rhetoric on European integration.

On the whole, the 2004 entrants, however, were instinctively more pro-British (and pro-US and pro-NATO). Through a number of programmes such as the Chevening scholarships, the UK forged links with a number of rising stars and future leaders from the soon-to-be member states. These programmes helped inculcate British ways of thinking about the EU and "doing" EU politics. Unfortunately, as soon as enlargement happened, the UK discontinued these programmes and allowed other member states, most notably France, to step into the void and start promoting their thinking and ways of doing things. British influence with the new member states was also negatively affected by the manner in which Britain has played its hand under both Labour and Conservative-Liberal Democrat governments. Under Tony Blair, the debates and deals surrounding the Multi-Annual Financial Framework, alienated a number of potential allies such as Poland. More recently, David Cameron's referendum pledge has diminished influence as some of the new member states question how beneficial it is to ally themselves with a state which may leave in the not too distant future.

¹ Statistics taken from the World Bank (<http://data.worldbank.org/>)

All, however, is not lost. Many of the 2004 entrants would welcome British leadership in the European Union. One of the UK's challenges for the coming few years is to convert latent into real support by galvanizing the new member states into supporting British positions.

2. What effect has EU enlargement had on UK interests in specific policy areas? What advantages and disadvantages has the UK experienced as a result? Please give examples.

The impact of EU enlargement, particularly the 2004/2007/2013 wave, has been broadly positive for the United Kingdom. The main benefits of the post-communist accession wave have been felt in economic terms, most notably in opportunities for trade and investment for British companies. British trade with Central Europe is growing at 14% per annum compared to 4% elsewhere in the world.²

The states of Central and Eastern Europe have tended to align with more pro-market stances advocated by the United Kingdom and have been a positive addition to the internal market. Nonetheless, the impact has not been unambiguously positive in economic terms. In discussions over the budget, for instance, as relatively poor the newer member states have tended to be advocates for more spending. Indeed, there is now a smaller percentage of states in favour of British restraint when it comes to the budget. Moreover, an opportunity to reform radically the Common Agricultural Policy was lost on the eve of the 2004 enlargement. Thanks to the fact they benefit from CAP payments many of the new member states, most notably Poland and Romania, are now amongst the states most resistant to CAP reform.

Perhaps the most toxic political issue has been migration. The UK government massively underestimated the number of citizens who would use free movement of labour to come to the United Kingdom. In GDP terms, the UK benefited from this considerable flow of labour, but there were social consequences, particularly in towns such as Peterborough, Slough and Southampton unused to large levels of immigration. The mistakes of the UK government, however, lie less in the decision to open the labour markets, but rather in the failure to persuade the overwhelming majority of other member states to resist the temptation to opt for seven year transitional arrangements. Moreover, the government failed to respond to the large influx of migrant labour by using the additional revenue generated by taxation to support and improve public services in places when migration levels were particularly high.

In terms of foreign and security policy, the newer member states have been strong advocates of the transatlantic alliance and NATO, but they have tended to become a little less US-focused in more recent times. Since Donald Tusk came to power, Poland, in particular, seems keener on a much more coherent European approach. Recent events in Ukraine have shown the need for a strong transatlantic voice. Britain remains well-placed to act as a bridge between the United States and other EU Member States, but Britain's impact has been diminished in recent times by the talk of a possible Brexit. It is worth underlining that in the field of defence, largely due to their significantly larger military capability and the low level of defence spending in many other member states, only two states have real clout in the European Union: Britain and France.

² Statistic quoted by one of the participants at the seminar.

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?

As one of the participants at the University of Birmingham seminar put it, ‘enlargement is the last bastion of intergovernmentalism’. Accession negotiations are conducted in an intergovernmental conference with the Commission playing a technical, expert and advising role, especially through the Regular Reports. The European Parliament has to provide assent to any accession treaty, but has also fed into discussions through reports produced by rapporteurs such as those on orphanages in Romania. Ultimately the decision to enlarge is taken by member states by unanimity with every state able to exercise a veto at any stage.

Although it is tempting to consider that the veto is a valuable safeguard for every member state’s interests, there is an argument that the unanimity lock has not worked to the best advantage of the United Kingdom. Not only were Britain’s applications in 1963 and 1967 vetoed by Charles de Gaulle, but the ability of Greece to use the threat of veto over the possible exclusion of Cyprus from what was to become the 2004 enlargement ensured the European Union took in a member state with an unresolved conflict over its status. Although ultimately less problematic, Slovenia’s blocking of accession negotiations with Croatia highlighted how even a small – and broadly enthusiastic advocate of European integration – can dig in its heels when it considers issues central to its national interests are at stake. In light of these experiences one of the participants at the University of Birmingham seminar suggested unanimity minus one might be a better way of proceeding.

Exercise of competence

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 big bang enlargement of 2004 was an astonishing success story. The Union transcended the Cold War division of Europe and the EU did not, as predicted by some doom-mongers, grind to a halt. The EU works as well – or some might say as badly – post-2004 as it did prior to that enlargement.

The process of enlargement has been based on individual applicant states meeting the Copenhagen criteria and conducting intergovernmental accession negotiations on a series of policy areas (the chapters) with the Commission providing expert advice and monitoring of progress. The effectiveness of this process links in to the discussion under question 5 about the power of conditionality. Nonetheless, it is worth stressing here that decisions on enlargement and/or moving a state along to the next stage have not always been based solely on the progress made by the state in question. Indeed, as the cases of the opening of accession negotiations with Estonia in 1997 and Bulgaria and Romania in 1999 attest, decisions were arguably made much more on the basis of broader geopolitical considerations than actual progress shown by the

states.³ In all three of these cases whilst it may have sent a signal elsewhere that the door to the EU was not shut which increased the power of conditionality, the decision to open accession negotiations diminished the pressure on Estonia to improve its policies towards Russian-speaking minorities and on Romania and Bulgaria to improve governance and the rule of law. Despite the benefits which can be accrued from the sending of signals, the power of conditionality, the EU's credibility and the longer-term interests of the Union are best served when a meritocratic approach is taken i.e. when progress is determined on the basis of an applicant state's performance in meeting the requirements for membership. It is worth remembering that what became the Big Bang enlargement of 2004 was not always intended to be such a large expansion. There was much discussion in the early 2000s about states joining individually or in small groups. Perhaps there was a much stronger logic in the past to go for a 'Big Bang', but in terms of future enlargement it is much better to aim for meritocracy (and the perception of meritocracy) as this ensures conditionality is a more efficacious tool.

The 2004/7 enlargement taught us a number of lessons, most of which have been applied:

1. **It is important not to rely just on the promises of applicant states, but to see evidence of genuine delivery.** Some reforms, particularly in the field of judicial reforms, anti-corruption and the treatment of minorities can be of the Potemkin variety i.e. designed largely for show. There is evidence that the desire to see delivery is now much stronger amongst the Council and in the Commission Regular Reports. As one participant at the Birmingham seminar noted, an official remarked that whilst enlargement used to be based on a credit card, it is now based on cash.
2. **Never allow in a country with an unresolved conflict over its status.** Allowing a divided Cyprus in 2004 to join not only caused 'myriad problems for the rest of the EU'⁴, but thwarted an excellent opportunity to resolve the conflict on the island. The EU's approach to the Serbia/Kosovo issue suggests that lessons have been learnt.
3. **Open the harder chapters near the beginning of the accession negotiations.** The 2004 enlargement began by opening some of the easier chapters to allow them to be provisionally closed early providing the candidate state the chance to build up some momentum and to signal progress. An important lesson learnt, however, was this positive impact of starting with the early chapters was outweighed by the disadvantage of not tackling the thorny issues early on. Delivering widespread and sustainable judicial reform, anti-corruption measures etc. requires time and political will and is best started soon after a state has been given the green light for accession. The EU's shift post-2004 to start negotiations with these trickier chapters was a very sensible decision and will reap rewards in the longer term. That is not to suggest that none of the *easier* chapters should be opened at the beginning, indeed a blend of the harder and easier chapters could offer both the advantages of momentum and the benefits of extra time working on the more challenging areas.

³ David Phinnemore, 'And We'd Like to Thank ... Romania's Integration into the European Union, 1989-2007', *Journal of European Integration*, Vol. 32, No. 3, (2010), pp. 291 – 308

⁴ Heather Grabbe, 'Six Lessons of enlargement Ten Years on: the EU's Transformative Power in Retrospect and Prospect', *Journal of Common Market Studies*, Vol. 52 s1, (2014) pp. 40-56

4. **Avoid setting a date.** One of the main mistakes associated with Bulgarian and Romanian accession was the decision to set a date for accession. Setting dates tends to diminish the power of conditionality, especially as the date gets closer. Any decision (or even attempt) then to put back the accession date becomes politically charged. Wisely there have not been promises of particular dates made to countries currently at the various stages of enlargement. Every effort should be resisted to set dates until accession negotiations are very close to conclusion.

5. How do you assess the EU's use of conditionality (e.g., the Copenhagen Criteria, the "New Approach" on rule-of-law issues)? Has conditionality been effective in ensuring candidate countries implement reforms necessary for EU membership? Please give examples.

The EU's use of conditionality and its power has generated a large debate in the academic literature.⁵ There are several lessons which can be learnt from the experience of the 2004/7 enlargements in particular about the use, power and effectiveness of conditionality.

Firstly, during the process of accession compliance with the conditions was largely driven by rational, instrumental reasons. Although such motivations can be effective in enacting change they do not always provide the basis for long-term, meaningful and sustainable change. What is required is a change in attitudes and behaviour. This is perhaps most starkly observed in policies towards ethnic minorities.

If the process of accession is more 'transplantation' than 'adaptation'⁶, then it is a recipe for superficial, instrumental change. 'Adaptation' is much more sustainable, but requires the active involvement of local actors. Indeed, it is worth stressing here that conditionality has been at its most effective when alliances have been formed between EU actors and local politicians keen to press ahead with reform. Judicial reform in Romania is a good case in point, where Justice Minister Monica Macovei pushed through some very unpopular reforms thanks to her ability to link the reforms to the requirements of EU accession. Emboldened by the strong messages of support from the Commission, keen to ensure Romania entered the Union in 2007 and much to the chagrin of many bureaucrats, judges and politicians living in feathered nests in Bucharest, Macovei drove through reforms including a completely new managerial team for the Anti-Corruption Department within the General Prosecutor's Office, amendments to the law on the funding of political parties, strengthening of transparency in public procurement procedure and new mechanisms regulating the laws on templates for declarations of wealth and interests of high officials.

⁵ For discussions of the academic debate see Tim Haughton 'When Does the EU Make a Difference? Conditionality and the Accession Process in Central and Eastern Europe', *Political Studies Review*, 5 (2), (2007), pp. 233-246 and Tim Haughton 'Half Full But Also Half Empty: Conditionality, Compliance and the Quality of Democracy in Central and Eastern Europe', *Political Studies Review*, 9 (3), (2011), pp. 323-333.

⁶ Tereza Novotna, 'The Transplantation and Adaptation Types of Political Integration: Examples of the German Unification in Parallel with the Eastern Enlargement of the EU' *Perspectives: The Central European Review of International Affairs*, 16 (2), (2008), pp. 77-102.

Secondly, money matters. Linking in to the point above, a significant slice of a state's motivation to comply with conditionality is tied to the access to funds which membership and the accession process can bring. Although the accession process does unambiguously improve the quality of governance, it does not always promote good governance because accession and membership offer access to EU funds which can become a source of corruption. It might be wise to consider a stronger role for the Commission (or Council) in naming, shaming and punishing accession and member states where politicians, officials and institutions in those states are found to have engaged in corrupt activities.

Thirdly, the 2004 enlargement suggested the power of the EU to encourage change is strongest at the "decision" phase i.e. the point at which a decision is made to open accession negotiations or not. The exclusion of some states from the group who were invited to begin accession negotiations at the Luxembourg European Council in 1997 provoked changes in the excluded states. Enlargement now involves many more stages. Rather than diluting the potential impact of EU conditionality more stages allows more gate-keeping and can enhance conditionality.

Fourthly, the Copenhagen criteria are rather vague. Given the variety of different democratic institutions, practices and economic models at work across the EU it would be hard to be more precise, but the broad categories gave power at different stages to both applicants and EU institutions. It is difficult to judge objectively, for example, what exactly 'a fully functioning market economy able to withstand competitive pressures of the single market' looks like. Nonetheless, the wording of the criteria and indeed the other messages of conditionality highlight the wider point that the power and effectiveness of the EU side in exerting pressure is determined by whether the EU institutions and its members states sing in unison, harmony or discordantly. Where accession states receive mixed signals they tend to opt for the most domestically palatable. This is not to underestimate the power of conditionality and the EU's impact. As Heather Grabbe noted, enlargement has an effect more like a screwdriver than a nail: 'it does not force change by hitting hard and suddenly; rather, it slowly but surely works deeply into the wood through consistent pressure. Once the screw is deeply embedded, it hold better than a nail'.⁷ As Grabbe herself, notes, this kind of force depends on consistent pressure. If the EU keeps changing direction during the accession process, conditionality does not hold.

Fifthly, the process of EU enlargement with such steps at the Stabilization and Association Agreements and accession negotiations have one major advantage for countries and regions with complex histories: they can help turn insoluble political questions into manageable technical issues. This impact should not be underestimated.

⁷ H. Grabbe, 'Six Lessons of enlargement Ten Years on', p. 49

Future options and challenges

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

There are both generic and country-specific challenges and opportunities associated with any future enlargement of the European Union. In terms of the former category enlargement of the Union offers an increase in the size of the internal market, expands the area of free movement of goods, services, people and capital, and requires some institutional adaptation. With the exception of two possible future member states, Turkey and Ukraine, it is worth stressing that the majority of states at various stages in the process of joining are small states. Moreover, in contrast to the Big Bang enlargement of 2004 it is likely that any future enlargement will occur with each country joining separately. The enlargement of 2013 may, therefore, be a better guide. The accession of a state with four million citizens proved unproblematic in institutional terms. Adding additional states on a one-by-one basis to a Union of nearly thirty poses relatively small adjustment costs.

In terms of the specific cases, any enlargement likely to take place in the coming decade will be to the Western Balkans. The accession of Slovenia in 2004, but more significantly Croatia in 2013, shows clearly the EU door is open. Despite the common challenges faced in the region (state-building, judicial reform, tackling corruption, coming to terms with the past etc.), significant progress has been made, most notably in Montenegro and Serbia, but also in recent times in Albania. The major challenge will be to keep up the pressure to continue the reform process. This requires the EU to maintain an approach based on meritocracy and credibility i.e. states will make progress if they meet the conditions and the EU maintains the message that membership is a genuine possibility.

Beyond that overarching challenge it is worth stressing some specifics. Firstly, Serbian-Kosovan relations have improved thanks in no small part to the efforts of Catherine Ashton and the European External Action Service, but the tensions will persist thanks to deep-seated historical, territorial and ethnic reasons. Secondly, the Greek decision to block Macedonia's accession on the name issue has not just halted the process of reform in Macedonia, but led to backsliding. Macedonian politicians currently see no chance of accession, hence any attempt to exercise conditionality lacks credibility. Thirdly, Bosnia-Herzegovina faces major challenges related to state capacity and functioning. The Dayton Agreement of 1995 delivered peace for Bosnia, but saddled the country with a cumbersome and ineffective structure of governance. The recent riots highlighted the country faces major economic (and resultant social) problems. The EU can play an influential role in Bosnia, but its attention would be better spent on just trying to help the country forge the structures needed for effective governance and advice in boosting economic activity.

Iceland, Norway and Switzerland, remain possible future EU entrants, although Iceland's enthusiasm for membership was fuelled largely by the consequences of the financial crisis and is unlikely to return. If Iceland were to join, it would offer a challenge to the UK's interests in the field of fisheries, but would be likely to be an ally for the EU in resisting greater integration in a number of areas. As long as Norway and Switzerland have access to the single market, they are likely to remain content outside of the Union.

Successive British governments used to be enthusiastic about Turkey's accession. Indeed, the decision to open negotiations with Turkey following the European Council in December 2005 owed much to British pressure. Nonetheless, enthusiasm for Turkish accession has waned. The accession of Turkey would have significant demographic consequences given Turkey's population (indeed on current demographic trends it would be the largest EU member state if it were to join in the coming years) and significant border implications given Turkey's neighbours to the south and East. Both of these challenges can be interpreted positively. The EU faces a demographic time-bomb, which the Turkish labour force could help to counterbalance and having Turkey – a NATO member state - inside the EU could help soft security, particularly combatting drug and people smuggling. Nonetheless, the current Turkish government seems less enamored of the EU and there is a growing belief that both the country will never join. The more illiberal acts and rhetoric of Prime Minister Recep Erdogan in recent years seem only to underline this point. The potential benefits of Turkish accession, however, remain large and significant. A concerted effort, however, is needed to get it back on track.

Relations with the countries of the Eastern Partnership changed profoundly following the November 2013 summit in Vilnius and the subsequent events in Ukraine, especially Crimea. Enlargement to the countries of the Eastern Partnership highlights the challenges of enlarging into what Russia sees as its backyard and where it has not only sought to develop its own rival institutions such as the Eurasian Economic Union, but has been willing to violate international law to maintain its sphere of influence in the name of protecting ethnic Russian citizens. It is worth recalling that it was the dry, legal wording of the Association Agreement which provoked Vladimir Putin into pressurizing Ukrainian President Yanukovych not to sign at the Vilnius summit. The wording of Association Agreements and Deep and Comprehensive Free Trade Agreements should not be determined by what a third party thinks, but the EU needs to be aware of how any third party may react and be prepared for that reaction.

Even with a benign wind behind them the Eastern Partnership countries would struggle to be ready to join the EU for at least a decade. The challenge lies more in the signals to send to countries like Ukraine. One of the major mistakes of the West's response to the Orange Revolution was not to offer the genuine prospect of membership to Ukraine. That is not to say the country could, or would, join in five or ten years time, but rather that as with the Thessaloniki summit declaration in 1999, which stated clearly the EU saw the future of the Western Balkans in the EU, a message should be conveyed that if the countries of the Eastern Partnership fulfill all of the criteria they would be able to join the European Union.

Enlargement raises one of the biggest questions of all: what is the purpose of the European Union? This does not necessarily mean we need a final and definitive answer to that question, but the speed, enthusiasm and priority given to enlargement should be seriously considered and a narrative needs to be constructed as to why the Union should enlarge. The flying of EU flags on the Maidan in Kyiv highlights the attraction and appeal of the EU to those outside. Whatever internal struggles and disagreements beset the EU, all inside the EU institutions and member states should be cognizant of this power of attraction and that for some states and citizens beyond the 28 member states the EU remains a beacon of hope.