

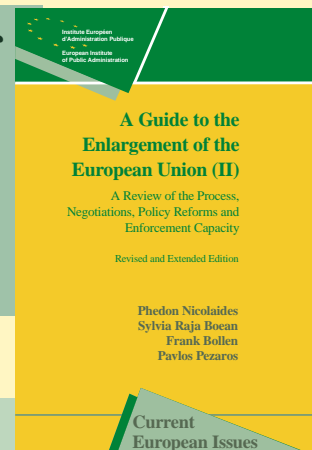
- (Presidency Note, *IGC 2000 – Weighting of Votes*, CONFER 4754/00. Brussels, 3 July 2000 p. 2)
- ⁵ As Madison observed when defending the equality of State representation in the US Senate: “as the larger States will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser States, and as the facility and excess of lawmaking seem to be the diseases to which our governments are most liable, it is not impossible that this part of the Constitution may be more convenient in practice than it appears to many in contemplation”. James Madison, Alexander Hamilton and John Jay, *The Federalist Papers*. (Harmondsworth: Penguin, 1788/1987) No. LXII p. 366.
- ⁶ The Presidency Note of 3 July 2000 stresses this distinction, emphasising that, in the second case “the correction must be limited to only those Member States referred to in the Protocol” – i.e. those which give up a second Commissioner.
- ⁷ See Annex 3.7 to the Portuguese Presidency’s Report to the Feira European Council, CONFER 4750/00, 14 June 2000.

- ⁸ In August, the French Presidency proposed a total list of 43 points, of which 35 could be considered for transition in their entirety. Note de la Présidence, *CIG 2000 – Extension du vote à la majorité qualifiée*. CONFER 4767/00 Bruxelles, le 29 août 2000.
- ⁹ Presidency’s Report, Feira, pp. 52-53.
- ¹⁰ Michel Petite, “The IGC and the European Commission” in Edward Best, Mark Gray and Alexander Stubb (eds.), *Rethinking the European Union. IGC 2000 and Beyond*. (Maastricht: EIPA, 2000) p.64.
- ¹¹ See Edward Best, “The Debate over the Weighting of Votes” in Best et al. *Rethinking the European Union*.
- ¹² John A. Usher, *EC Institutions and Legislation*. (London & New York: Longman: 1998) p.23.
- ¹³ EU 27 = the present 15 plus the 12 applicants recognised at Helsinki in December 1999.
- ¹⁴ According to *Eurobarometer 53* published on 24 July 2000, and based on surveys in April and May, the EU average of respondents saying that membership of the EU was a “good thing” was 49%. The figure for France was also 49%; for Germany 41%; and for the UK only 25%. □

The Feira European Council and the Process of Enlargement of the European Union¹

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Abstract

Although one of the main issues which is being discussed by the EU and the candidate countries is the request of the latter for a date for their accession to the Union, this article argues that, in a rather paradoxical way, the process of enlargement would be facilitated if the EU and the candidates were less concerned about the date itself and more keen to focus their efforts on identifying arrangements that would ensure that the benefits of enlargement are spread widely so that all Member States support the accession of new members.

It is also argued in this article that there are other issues which can have a significant impact on the process of enlargement. The candidates should decide what they want fixed above all: the date of entry, the derogations they wish to have at the negotiations or the entry criteria? The analysis in this article suggests that they should aim for the latter because vague criteria have a much greater potential to stall the enlargement process on both sides. For its part, the EU should begin identifying the pre-commitments that can be made by the Member States now in order to smooth the process of enlargement later on. The Feira European Council, therefore, has served to reveal where the problem really lies in that process.

The request to fix the date of the next enlargement

Unlike several of its recent predecessors, the Feira European Council of June 2000 appeared to be of little significance to the process of enlargement of the European Union because it did not resolve a key issue in that process. For several months before the Feira Council, the countries that had applied for membership of the Union asked EU leaders to fix a date for their accession to the EU. In the end, no such date was fixed at Feira. The response of the EU was terse. It was not possible to fix a date before the candidate countries

could demonstrate that they were fully prepared to assume all the obligations of membership.³

The purpose of this article is to explain why, in a rather paradoxical way, the process of enlargement would be facilitated if the EU and the candidates were less concerned about the date itself and more keen to focus their efforts on identifying arrangements that would ensure that the benefits of enlargement are spread so that all Member States support it. The preoccupation with the date of the next enlargement has diverted attention from other, potentially more serious problems.

In order to understand those problems, it is instructive to begin by examining why the candidates asked for a date.

There are apparently four reasons for that request. First, the candidates (mostly through statements made by their Ministers of Foreign Affairs and the Chief Negotiators) seem to believe that the EU is deliberately slowing down the process of the accession negotiations because it is assigning higher priority to other issues. It is indeed true that the EU is currently preoccupied with the intergovernmental conference for reform of the Union institutions and their decision-making procedures. But, of course, it was already well known that enlargement could not proceed before the IGC has been concluded.

Second, the negotiations have allegedly been conducted at a slower pace because, according to some of the candidates, the EU is getting cold on the idea of admitting new members in the near future. In its opinions on the membership applications and in other related documents published in July 1997 (i.e. the "Agenda 2000"), the Commission assumed that the first enlargement would take place in 2002. When the negotiations started in March 1998, the "working hypothesis" was that the first new members would accede in 2003. The Helsinki European Council in December 1999 concluded that the Union ought to be ready to make the necessary decisions to accept new members in 2002, which means that because of the delay introduced by the ratification process of the accession treaties, entry into the EU would not be feasible before 2004. Now, in the margins of the negotiating conferences, 2005 is mentioned as a more "realistic" date.

The date has been slipping farther into the future partly because, according to the EU, the candidates have not been making sufficient progress in tackling old problems and partly because they have been discovering new problems in the process of adopting and implementing EU rules. But the candidates also argue that no country has ever been 100% ready before acceding to the EU and that it is probably impossible to be 100% ready before being immersed fully into the EU system. Naturally, the candidates focus less on their weaknesses and more on the perceived slowness of the EU to move the negotiations forward.

Third, the success of the front-running candidates in persuading the EU at the Helsinki European Council in December 1999 to adopt the "principle of differentiation" has not proved to be the panacea they expected.

Differentiation means that those countries that are capable of moving faster in the negotiations will be allowed to do so and to complete them in less time than the rest. With the benefit of hindsight, what appeared in December to be a concession, now seems to have been a brilliant, even if unintentional, move by the EU. It diffused the complaints of the candidates that their progress was not rewarded while making them "work harder". The front runners are now under more pressure not to take any tough negotiating stance. In fact they

have realised that not only they have not moved faster, but even worse, their completion of the negotiations and their acceptance to close all the chapters without any requests for derogations does not guarantee faster entry into the EU. This is because no date for the next enlargement has been set.

The fourth reason is that public opinion appears to be turning against enlargement both within the EU and

the candidates themselves.⁴ Even when discounting the rising anti-enlargement feeling within the EU (the "Haider" factor), the candidates are worried that for the past five or so years they have been "selling" painful reforms to their domestic audience on the promise that they are necessary for their entry into the "promised land" of the EU. That land, however, seems now more distant than ever. They need a date to keep public opinion on their side.

Collective versus individual interests

Assuming that the EU Member States have not hatched a secret plan to postpone enlargement (which is rather unlikely, despite the various conspiracy theories that appear regularly on the conference circuit), how valid are those four reasons outlined above? They probably do have some validity. But they cannot be the whole story. If the problem, for example, is the current IGC, why has the EU not stated that the date of the next enlargement will take place, say, a year or two after the ratification of the results of the IGC? It did something similar in 1995 when it promised Cyprus that it would launch accession negotiations six months after the completion of the 1996 IGC that led to the Treaty of Amsterdam. In addition, during the negotiations with Austria, Finland, Norway and Sweden, the EU did indeed fix a date before talks were concluded. If, on the other hand, the problem is the readiness of the candidates, why has the EU not specified that candidates could accede, for example, one year after they complete the negotiations and fulfil all criteria of membership?

Bargaining among the Member States

is hardly avoidable because any concessions that are made to the candidates or any derogations that are granted to them are likely to affect Member States in very different ways.

Therefore, one is led to the conclusion that the reason why the EU has not yet fixed a date reflects other concerns and deeper problems. To unravel this conundrum let us begin with the assumption that enlargement will benefit the EU as a whole. Both politically and economically, this is not an unreasonable assumption. Enlargement will bring stability, consolidate democracy in most of the continent of Europe and will create the largest single market the world has ever known. This does not mean that there will be no costs. It only means that overall the benefits will outweigh the costs.

So why are the Member States not more enthusiastic about enlargement? Just because enlargement will take place in the future does not mean that Member States are myopic about the benefits it will bring. They simply know that the net benefits are not evenly distributed. The crux of the issue here is not, as has often been claimed in the popular press, that some Member States stand to lose more than others (or gain less than others). If those who would gain more (or less), also bore a proportionate larger (or smaller) share of the costs, there would be no problem. Rather, the issue is that the benefits are distributed differently from the costs across Member States.⁵

But even if we acknowledge that some of them stand to be net losers, this cannot be the end of the story. As long as the EU as a whole gains, then it is, at least in theory, possible for the winners to compensate the losers. The sum of the net national gains must exceed the sum of the net national costs. Member States have not yet agreed on a date for the next enlargement because they still have to negotiate the size of those compensatory "side payments" among themselves.

Negotiations among Member States are unavoidable

Both the total costs of enlargement and their distribution will partly be determined by the demands that the candidates make in the accession negotiations. So far, they have not made any, but so far they have been dealing with relatively easy chapters. The tough bargaining is expected to start in the autumn or early next year when the negotiations on more problematic issues such as agriculture and the Structural Funds start. The compromises reached, or not reached, on those issues will determine the outcome of the negotiations, which in turn will partly determine the internal bargaining in the EU that is most likely to ensue among the Member States. Bargaining among the Member States is hardly avoidable because any concessions that are made to the candidates or any derogations that are granted to them are likely to affect Member States in very different ways. If, for example, candidates are integrated immediately into the milk regime of the common agricultural policy the main impact will be felt mostly by northern dairy producers. If, by contrast, the candidates succeed in obtaining a larger share of the Structural Funds the main impact will be felt mostly by southern countries.

Even if the candidates declared that they would

accept fully all of the *acquis* and that they would not ask for a cent more than what has already been provisionally allocated to them, existing Member States would still have to negotiate among themselves. Their integration into the EU, without any special treatment, would still have an uneven impact on the Member States. A case in point is the exercise of the right of movement by the citizens of the east European candidates and the large immigration into Germany that is expected to ensue in the first years after enlargement.

It can be concluded, therefore, that part of the problem is that in addition to the negotiations between the EU and the candidates, Member States will also have to negotiate among themselves. In this respect, they can be part of the solution, but so far there has been no sign of any serious discussion taking place among the Member States. The candidates are not far off the mark when they claim that Member States are reluctant to deal with the tough issues. It is reported, for example, that on some issues, such as agriculture, opinions among the Member States are so divided that the Commission has left blank significant parts of the text of the draft common position it submitted to the Member States. On the other hand, the candidates have not helped matters by asking the EU to enter into "meaningful" negotiations the outcome of which is naturally unknown and, ironically, as a result, worsens the prospect of internal negotiations among the Member States.

The need for pre-commitments and "unbundling"

The realisation that there are unknowns in the enlargement process is neither new, nor unusual. After all this is the essence of any negotiation. What is more worrisome is that the EU, by not making any pre-commitment now, may lead itself into a dead end where the Member States will find it impossible to reach consensus. In situations where agreement depends on the distribution of future outcomes but where that distribution is unknown, a typical way out of the potential impasse is to make pre-commitments so as to even out the eventual distribution or to undertake to compensate those that turn out to be net losers. The EU has so far avoided making any meaningful pre-commitments and, as a result, it risks finding itself in a situation where it will be very difficult for Member States to reach satisfactory bargains (an exception is the "ring-fencing" of future expenditure that was agreed in March 1999 at the Berlin European Council that dealt with the financial perspective of the Union for the period 2000-06).

What kind of pre-commitments are possible at this stage? Naturally, it is not yet feasible to quantify with any precision the relative benefits and costs. What is feasible is to agree on a framework of principles such as that "all Member States will be expected to share the costs". One may even go as far as defining a "cohesion principle of enlargement".

Another way out of the potential impasse that may develop is to "unbundle" the various negotiating issues (by contrast, pre-commitments on compensation and

side-payments are like “bundling” or packaging different issues together so that everyone is guaranteed to gain something). What is there to unbundle? To answer this question it is necessary to digress briefly. One of the reasons why the candidates have suspected the EU of deliberately slowing down the enlargement process is that the EU has been subtly raising the entry barriers by defining stricter and more detailed criteria of performance and compliance by the candidates. It has also been constantly asking for additional information from the candidates about their internal administrative, political and economic reforms and appears to be finding new questions to ask and issues to clarify. To make matters worse, the messages and the answers the EU itself sends through its various services to the candidates are sometimes perceived by the latter as being inconsistent.⁶

It is not difficult to show that the various criteria of membership defined at successive European Councils have been raising the standards that the candidates are expected to meet. In the eyes of the candidates this amounts to shifting the goal posts and moving them farther away. For example, the often-quoted criteria defined at Copenhagen European Council (June 1993) required “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; [and] the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union”. The Madrid European Council (December 1995) introduced the condition for appropriate “adjustment of administrative structures”. The Luxembourg European Council (December 1997) went further by specifying that the “incorporation of the *acquis* into legislation is necessary, but is not in itself sufficient; it will also be necessary to ensure that it is actually applied”. At the Helsinki European Council (December 1999) the candidates were told that “progress in the negotiations must go hand in hand with progress in incorporating the *acquis* into legislation and actually implementing and enforcing it”. Most recently, the Feira European Council (June 2000) declared that “in addition to finding solutions to the negotiating issues, progress in the negotiations depends on the incorporation by the candidate states of the *acquis* in their national legislation and especially on their capacity to effectively

implement and enforce it”. So the candidates were initially asked to accept the *acquis*, then apply it, then demonstrate progress in enforcing it and lastly (but probably not finally) implement it effectively before they even complete the negotiations.

Ambiguous entry criteria

On the one hand, one may argue that it is very natural for the EU to raise the standards of admission simply because it keeps discovering new structural weaknesses in the candidate countries. On the other hand, however, the candidates complain that the EU is unfair because it does not apply the same standards to its own members. Careful reading of the conclusions of the European Councils quoted above reveals that the standards have not been merely elaborated. They have also been made stricter, brought forward in time and have proliferated.

Irrespective of whether that constitutes unfair treatment or not, the issue remains that the EU has no developed criteria, benchmarks or process by which to judge the administrative capacity of its existing or prospective members. By not defining them more precisely and by largely innovating as it goes along, the EU makes the negotiations unnecessarily more

complicated, sends inconclusive (and confusing) messages to the candidates and risks holding itself hostage to Member States that could in the end decide to be obstructive on the pretext that the candidates have not conclusively proven that they have the capacity to apply the *acquis* effectively.

It is in the EU’s interest to avoid this eventuality. It can avoid it by de-linking the definition of clear and unambiguous criteria of

membership from the process of assessment of whether they have been fully satisfied. There is nothing intrinsically wrong with the EU’s wish to set high standards of entry. But the EU has gone beyond that. At the same time it has been assessing fulfilment of existing criteria by the candidates, it has been adding new and tougher ones.

It is also quite unclear how it expects candidates to prove that they have indeed built sufficient capacity to implement the *acquis*. In relation to the existing Member States, evaluation of the quality/capacity of implementation of Community law is often a legal question. Who will answer that question in relation to the candidates? The many vested interests on both sides of the accession negotiations cast serious doubt on whether

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the impartiality that is indispensable in legal processes exists at all.

To repeat, the core of the problem is that the vagueness of the criterion about the implementation of the *acquis* can be exploited by any member state that wants to obstruct enlargement, even when it would be in the collective EU interest to admit new members.

Moreover, even if the candidates will in the end be compelled to commit large amounts of human and financial resources to bolster their administrative capacity in visible ways that will satisfy the EU, there can be no guarantee that they will maintain those resources after they enter the EU. One also wonders how the new members will behave towards the old members after the former gain entry into the EU. Will they try to extract some kind of revenge or will they have concluded after the treatment they receive in the pre-accession period that they should behave as selfishly as possible. The point here is that the EU may lose out in the longer run by pushing the candidates too hard now.

The present negotiating positions of each side depend on their expectations about future outcomes. Given the fact that most of those outcomes are still unknown, it is disingenuous and probably futile for the candidates to ask the EU to fix the date for the next enlargement. More importantly, even if the candidates succeed in having a date fixed, something else will certainly become vague or indeterminate (because not everything can be fixed before the accession negotiations are over and before the Member States carry out their internal bargaining to determine side payments).

Taking into account the need to manage those uncertainties (i.e. minimise risk), one possible way of de-linking the date of accession from the assessment of whether the candidates have sufficient implementing capacity (or, administrative capacity) is to agree on the general principle of a transitional period for the adjustment of the administrative structures of the candidates. During the transitional period they would not be able to exercise those rights of membership that critically depend on the functioning of an effective administrative structure. Even though entry into the EU will be fairly assured, the benefits that come with it will not be forthcoming unless EU rules can be applied and enforced.

Within this general framework of assured entry once the general criteria are satisfied, the purpose of the negotiations would be, *inter alia*, to define the sectors or areas to be subject to that special but transitional regime. In this way, the candidates will obtain political equality and the political benefits of membership (they will be assured of a place around the table so that their voice will be heard) without being able to exercise all the rights of membership until their administrative structures are truly capable of implementing EU rules effectively.

The economic “cold douche” of EU membership has been much discussed. Perhaps it is time to discuss the “administrative shock” of membership, whereby the administrations of the candidates are brought up to scratch by their immersion in the vast network of committees and working groups of the EU. Now they are expected to become “European” while being outside that network. One wonders how efficient this approach is.

Conclusion: prioritising problems

The fact that the EU and the candidate countries cannot avoid all unknowns of the accession negotiations and the enlargement does not mean that there is nothing for the EU or candidate countries to do at the present time. On their part, the candidates should decide what they want fixed above all: the date of entry, the derogations they wish to have at the negotiations or the entry criteria? On the basis of the analysis above, it seems that they should aim for the latter because vague criteria have a much greater potential to stall the enlargement process on both sides. For its part, the EU should begin identifying the pre-commitments that can be made now to smooth the process of enlargement later on. The Feira European Council, therefore, has served to reveal where the problem really lies in that process.

NOTES

- ¹ I would like to acknowledge the helpful comments I have received from Edward Best, Rita Beuter and Tom Casier. The responsibility for the contents of the paper rests solely with the author.
- ² Professor and Head of the Unit on EC Policies and the Internal Market at the European Institute of Public Administration. The views expressed in this paper are purely personal.
- ³ The sources of information used in this article are all in the public domain. They can be found on two web sites: (a) the web site of the Commission Director-General for Enlargement: “europa.eu.int/comm/enlargement” and (b) the website of the daily information service “euractiv.com”. Links to press articles and press-releases on the views of the candidate countries can be found in the latter site.
- ⁴ See the regular public opinion surveys published on the web site of the Commission Directorate-General for Enlargement.
- ⁵ We can add another layer of complexity by examining how benefits and costs are distributed within, rather than across, Member States. A member state may oppose enlargement, even in the case that as a whole gains from it, when its overall stance is determined by the lobbying pressure of those groups that stand to lose out.
- ⁶ Comments made personally to the author by officials from several candidate countries. □