Fordham International Law Journal

Volume 18, *Issue* 4 1994 *Article* 8

Implications of Widening the European Union

Bernhard Schloh*

*

Implications of Widening the European Union

Bernhard Schloh

Abstract

The article looks at the initial stated requirements for EU membership- that a Member State of the European Communities be "a European state"- and the implications of widening EU membership in light of additional requirements that have since been formalized. These include, 1) being a European state; 2) having a democratic form of government; 3) respecting fundamental rights; and 4) having something of a market economy structure. With respect to the fourth requirement, a state is not required to have a full market economy structure, however, it must be on the way towards it.

IMPLICATIONS OF WIDENING THE EUROPEAN UNION

*Bernhard Schloh**

From the 1950's onwards, the European Communities, and now the European Union, have made it clear that the European Communities were not something for the six founding states only, but for the European states that would qualify as members of that class. "Any European state" is the wording of the article that was in the Treaty of Rome,[1] and it has now been incorporated into the Treaty on European Union ("TEU"), also known as the Treaty of Maastricht.[2]

In the beginning, there was only the requirement that a Member State of the European Communities be "a European state." There were, however, also unwritten requirements that have since been formalized, so that today we speak of four conditions for membership: 1) being a European state; 2) having a democratic form of government; 3) respecting fundamental rights; and 4) having something of a market economy structure.[3]

---

* Legal Counsellor, Council of the European Communities of the European Union, retired June 30, 1994; Professor of Law, Emeritus, Vrije Universiteit Brussel, Brussels, Belgium. This Essay is adapted from the Author's presentation at International Law Weekend/94, sponsored by the International Law Association, on October 29, 1994, at the House of the Association of the Bar of the City of New York and is printed here with the consent of the ILA.

1. Treaty Establishing the European Economic Community, Mar. 25, 1957, art. 237, 298 U.N.T.S. 11, 92, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II) [hereinafter EEC Treaty], *as amended by* Single European Act, O.J. L 169/1 (1987), [1987] 2 C.M.L.R. 741 [hereinafter SEA], *in* TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES (EC Off'l Pub. Off. 1987).

2. Treaty on European Union, Feb. 7, 1992, O.J. C 224/01 (1992), [1992] 1 C.M.L.R. 719, 31 I.L.M. 247 (1992) (amending EEC Treaty, *supra* note 1) [hereinafter TEU]. Article O of the TEU states:

> *Any European state* may apply to become a Member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.
>
> The conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Id. art. O (emphasis added).

3. The second and the third condition are now expressly formulated in Article F of

With respect to the fourth requirement, a state is not required to have a full market economy structure, however, it must be on the way towards it.

While in English the word "widening" may be used to describe the addition of new Member States to the European Communities, Europeans are more likely to use the term "enlargement." The European Communities are actually in the fourth round of enlargement. There have been three rounds before, which brought the following members into the European Communities: Denmark, Ireland, and Great Britain in 1973, Greece in 1981, and Portugal and Spain in 1986.

An article on enlargement for the European Union exists in the TEU. In fact, each of the three constitutive treaties had an article addressing the enlargement of the European Communities that have been repealed.[4] The matter is currently regulated by Article O in the TEU.[5]

The first subparagraph of the TEU starts with the words "[a]ny European State may apply to become a Member of the Union." In the beginning of the second paragraph, we find the words "[t]he conditions of admission and the adjustments." Accordingly, it is necessary to come to terms with the conditions of admission, and to do so there will be and must be adjustments to the EC Treaty.

We will now turn our attention to Article B, which states: "The Union shall set itself the following objectives." In doing so, we will leave out all of the objectives and come to the last one, which is: "[T]o maintain in full the *acquis communautaire*." A French word in the English language version of an international treaty! *Acquis communautaire* roughly means "what you have

---

the TEU. *Id.* art. F. As to the fourth, and last, condition, Article 222 of the EC Treaty is often cited as leaving the property regime in the Member States unaffected, but a "common market" needs basically a "market economy system" even if it must not be fully identical in all Member States.

4. EEC Treaty, *supra* note 1, art. 237; Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, art. 205, 298 U.N.T.S. 167, 231, *as amended in* TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES (EC Off'l Pub. Off. 1987); Treaty Establishing the European Coal and Steel Community, Apr. 18, 1951, art. 98, 261 U.N.T.S. 140, 226, *as amended in* TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES (EC Off'l Pub. Off. 1987).

5. TEU, *supra* note 2, art. O. The articles of the TEU are not numbered in Roman or Arabic numerals. Rather, the articles are organized alphabetically, from Article A to Article S.

achieved as a Community shall be maintained." The objective is to maintain in full the *acquis communautaire* and build on it while considering the procedures referred to in paragraph 2 of Article N, the future revision article.

Paragraph 2 of Article N states that there will be a forthcoming inter-governmental revision conference in 1996.[6] The aim of the conference will be to revise the policies and forms of cooperation introduced by the TEU to the extent that they need to be revised so that the "effectiveness of the mechanism and institutions of the Community" are ensured.

The final paragraph of Article B states:

> The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community.[7]

What implications will come with the widening of the Union? We could first briefly look at the fourth round of enlargement, which is now in the process of "addition," or "adding to."

The European Council is the highest political body in which the heads of state and/or government meet every six months. It is described in Article D of the TEU. The European Council's task is to give the impetus and general political guidelines for the European Union. It decided over two years ago, in 1992, that negotiations could be opened with four European countries, Austria, Sweden, Finland, and Norway, in order to reach a treaty of accession. It also decided that this negotiation would be governed by the principle of "addition." This means that you add some new members to twelve members, which would bring you to sixteen Member States. (Because Norway did not ratify the Treaty of Accession since January 1, 1995, the European Union now has fifteen Member States instead of sixteen.)

The principle of addition not only means that there are more Member States, but also means that there will be more members in the institutions, in the European Parliament, in the

---

6. *Id.* art. N(2). "A conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided, in accordance with the objectives set out in Articles A and B." *Id.*

7. *Id.* art. B.

Council, in the Commission, in the Court of Justice, in the Court of Auditors, in the Economic and Social Committee, and in the Committee of the Regions.

There will also be two more languages: Finnish and Swedish. The Common Market is already the largest employer of translators and interpreters in the world. That means twelve (eleven) languages, spoken and written.

What about the implications of future enlargements? Paragraph 2 of Article N calls for a revision conference in 1996. This revision conference will be prepared by a committee of nineteen people. Why nineteen? A curious number. The European Council stated that the committee will be made up of the twelve Member States, plus four new Member States, plus the Commission representative, plus two representatives from the European Parliament. (Because Norway did not join, this group will now consist of eighteen persons.) They will work during 1995, as a "reflection group." It is too early to speculate on what they will discuss. Widening or enlargement? Both. The process of widening will go on. There is no justification for the Member States in the European Union to say: "That is it for us, and now we close the door." No, the name of the enterprise is the "European Union." And, it says "any European state."

The process of widening will continue until you come to the end of what we refer to as continental Europe. "Addition?" We are doubtful because I think that the simple adding of new members, and the consequences of that, will cause the other requirements not to be fulfilled. For example, one of the requirements is the "effectiveness of the mechanism of the institutions of the Community." The "addition" could mean that by the year 2000, or sometime after that, Europe will find itself in some form of organization, called Union or otherwise, that would include twenty, twenty-five, or even thirty countries. This Europe would not be manageable under the existing procedures. Adjustments, yes. There must be very serious adjustments. If you want to have it in French terms, speak of *acquis communautaire.* In other words, it must be useful and it must work.

We will now turn to some difficult questions. First, are all Member States equal? Can they all march at the same speed? I am starting up a dangerous path because, if I say "equal speed," you have all Member States in a status of equality and it is the

basic rule of international law or international relations that we are all equal. For example, in New York City there is the General Assembly of the United Nations. But, once you have said it, you will remember that there is not only a General Assembly, but also a Security Council.

The article of the EC Treaty that most specifically addresses equality, and the adjustment to the equality, is Article 148, which is concerned with voting in the Council. Under Article 148, where there is voting by unanimity, each Council member, acting as a representative for each Member State, has the same voting power. Similarly, if there is voting by simple majority, each Member State has the same voting power.

The Common Market, however, is known for its decision-making by "qualified majority." Qualified majority in the European understanding starts with weighing Member State votes. Here, you leave the principle of equality. You come to what I call a semi-equality. You have said that we basically are all equal, but there are some Members States that have more inhabitants than others and some Member States that have more economic power than others. Accordingly, France, Germany, Italy, and the United Kingdom each have ten votes, and so on. When Sweden enters, it will get four votes. Then you have a magic formula of "54 out of 76." That is, decisions are reached when 54 out of the possible 76 votes are in favor of the decision. On January 1, 1995, this formula was adjusted, but the principle remained intact. Under this voting procedure, one or more Member States may vote against, but they are nonetheless bound by the results.

Second, can and do the Member States want to go forward with the same speed? If not, then there is the idea of "Europe with two (or more) speeds." In the context of the Treaty of Maastricht, there is a Protocol on Social Policy and an Agreement on Social Policy that binds eleven of the twelve Member States. One Member State, the United Kingdom, did not go along with this and therefore is exempted from it. There is also the European Economic and Monetary Union as a project for the end of this decade. The United Kingdom has been similarly exempted from this project. Instead, the United Kingdom shall retain its power in the field of monetary policy, according to its national law. Denmark is also exempted. The economic development in Eastern and Central European countries is different than in the Western European countries. Because it is not the

same, adjustments are necessary. Whether we have the courage to call them "two speeds" or whether we say "adjustment plus," there is a difference. If we say "adjustments plus," there is a basic notion of equality to which an element of adjustment is immediately coupled. Two months ago, there was discussion in Germany in which some countries in the European Union were considered to be stronger and better able to advance than other countries. This discussion has been repeated in other Member States using the term "a common core" or "a central core." Now you see how difficult it is to say anything in substance.

In 1996, the revision conference will be held and it will discuss the future effect. There already exists a larger Europe, but it is less dense. I speak of the "Council of Europe," which is a European organization of inter-governmental cooperation, existing since 1949, seated in Strasbourg, France. The Council of Europe had twenty to twenty-two Member States ten years ago. It now has thirty-two, including countries like Estonia and Bulgaria, and it serves as an antechamber for the enlargement of the European Union.

This should be the end of my speculation, and I come back to safer ground with some concluding remarks, centered on two points. First, decision-making. More decisions must be reached by qualified majority. Relying on the unanimity principle in an organization with sixteen or twenty countries would enormously complicate decision-making and could mean that we will not make any decisions. So, decision-making will have to be scaled down further from unanimity into qualified majority, meaning that one single Member State will no longer be able to say "no" and thereby break the decision. There must be at least two or three opposed countries to hinder a decision.

Finally, with regard to languages, the "equality of languages" principle in the European Communities, for both working and official languages, dates back to 1958. We are now at nine languages and soon may be at twelve. To interpret a meeting of the Council in nine languages means seventy-two linguistic combinations for the interpreters. If you add three languages, it is not an addition of just a small number. Rather, the linguistic combinations go immediately from 72 to 132. Because the European Communities are empowered to produce directly applicable legislation, a regulation directly affects the individual. Thus, every citizen of the Communities of the Union must be able to read

legislation in his or her language. Thus, the legislation cannot merely be documented for the English or French speaker, but rather, in the case of the future accession of Finland to the Common Market, a Finnish citizen must be able to read all applicable law in the Finnish language.

Furthermore, it is exceedingly difficult to deal with so many languages effectively. It is impossible to have more interpretation booths in the Council chamber and more linguistic combinations. Thus, one day, a separation between the number of languages spoken in the deliberations of the Council and the number of languages in which the binding result, the regulation, is published must come about. The thorny problem that is behind the simple phrase "equality of languages" is just one of the many problems on the table for the Intergovernmental Revision Conference of 1996.