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Abstract

After the dust cleared in the early 1990s, the institutional framework for realizing the peaceful unification of Europe was laid down at the Copenhagen European Council in June 1993. The statement by the EU at Copenhagen that it was ready to accept new members that fulfill certain criteria led to applications from ten countries of Central and Eastern Europe. As laid down in the Treaties, it fell to the Commission to provide advice on these applications to the Member States of the EU, which it did in July of 1997 in its ambitious program of reform, known as Agenda 2000. Agenda 2000 sought to look at the prospect of enlargement not as a simple addition to the existing EU, but as a process that would have an impact on the way in which it should be governed and funded at what was already a time of massive change. Agenda 2000 also took a close look at the future of the main EU policies, particularly those of agriculture and regional policy, which were already in a process of reform, and which would be strongly affected by the arrival of new members. Agenda 2000 was accompanied by a set of Opinions from the European Commission on the applications for membership that had been received by ten countries of Central and Eastern Europe that enjoyed association agreements with the EU. The Opinions were able to conclude that a number of the candidates were already in a position to begin negotiating their membership in the EU. However, the Commission was conscious of the need to avoid the appearance of new divisions in Europe, this time between those candidates whose recent progress in economic and political reform had brought them to the negotiating table, and those who had started from more difficult positions, such as Romania and Bulgaria, or who had, like Slovakia, not yet convinced the EU of their commitment to functioning democratic practices. The Commission therefore proposed an inclusive system, whereby we would revisit the progress made with the Copenhagen criteria every year, both for those who were not yet negotiating, and for those who were. The combination of strict application of the objective criteria and readiness to welcome progress along the way will result in a well-prepared enlargement of the EU. Now, in autumn 2002, the end of the road is in sight, at least for the best-prepared candidates. This essay outlines how the negotiations that began in 1998 have brought us to this point. They have been a test for all concerned, but a test that demonstrates clearly the ability of the EU to act in an area of decisive interest.

ESSAYS

THE FIFTH ENLARGEMENT OF THE EUROPEAN UNION: THE POWER OF EXAMPLE

*Eneko Landaburu**

The heady days of autumn 1989 signalled that the peaceful unification of Europe that was foreseen by the fathers of the present-day European Union ("EU" or "Union") was not a dream: if we were able to muster sufficient determination, it was a real possibility.

After the dust cleared in the early 1990s, the institutional framework for realizing that possibility was laid down at the Copenhagen European Council in June 1993.[1] The criteria agreed on in Copenhagen set down in concrete terms the common values that a Candidate Country must respect in order to become a member of the EU. These values concern democracy, rule of law, economic stability, and the ability to take on the EU legislation.[2] By one of those quirks of history, it is in Copenhagen, at the end of this year, that we hope to put the first seal on the process after nine years of hard work.

The statement by the EU at Copenhagen that it was ready to accept new members that fulfill these criteria led to applications from ten countries of Central and Eastern Europe.[3] As laid down in the Treaties, it fell to the Commission to provide advice on these applications to the Member States of the EU, which it did in July of 1997 in its ambitious program of reform, known as *Agenda 2000*.[4]

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1. *See* Copenhagen European Council, Presidency conclusions, E.C. BULL., no.6, at 7 (1993), *available at* http://www.europarl.eu.int/enlargement/ec/cop_en.htm.

2. *Id.* at 13.

3. *See* European Commission, *Agenda 2000: For a Stronger and Wider Europe*, E.U. BULL., no. 7/8, at 7 (1997), *available at* http://europa.eu.int/comm/enlargement/intro/ag2000_opinions.htm [hereinafter *For a Stronger and Wider Europe*]. The statements made at Copenhagen led to the eventual applications from Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia.

4. *Id.*

Agenda 2000 sought to look at the prospect of enlargement not as a simple addition to the existing EU, but as a process that would have an impact on the way in which it should be governed and funded at what was already a time of massive change. The plan for Economic and Monetary Union ("EMU") was on course, as was the development of a common foreign and security policy ("CFSP"), although it was still somewhat running behind events, as the tragic recent history of Yugoslavia shows.[5] *Agenda 2000* also took a close look at the future of the main EU policies, particularly those of agriculture and regional policy, which were already in a process of reform, and which would be strongly affected by the arrival of new members.

Agenda 2000 was accompanied by a set of Opinions[6] from the European Commission on the applications for membership that had been received by ten countries of Central and Eastern Europe that enjoyed association agreements with the EU.[7] These agreements had already begun to bear fruit, as the accelerated opening of the European Community ("EC") market led to rapid economic growth in the Candidate Countries. The Opinions were therefore able to conclude that a number of the candidates were already in a position to begin negotiating their membership in the EU.[8]

However, the Commission was conscious of the need to avoid the appearance of new divisions in Europe, this time between those candidates whose recent progress in economic and political reform had brought them to the negotiating table, and those who had started from more difficult positions, such as Romania and Bulgaria, or who had, like Slovakia, not yet convinced the EU of their commitment to functioning democratic practices.[9]

The Commission therefore proposed an inclusive system,

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5. *See, e.g.*, Roger J. Goebel, *Legal Framework: European Economic and European Union: Will the EMU Ever Fly?*, 4 COLUM. J. EUR. L. 219 (1998).

6. *See* European Commission, *Agenda 2000 and the European Commission's Opinions, available at* http://europa.eu.int/comm/enlargement/intro/ag2000_opinions.htm# Opinions.

7. *See For a Stronger and Wider Europe, supra* n.3, at 91-96.

8. *See id.* These opinions concluded that negotiations for accession should be opened with the Czech Republic, Estonia, Hungary, Poland, and Slovenia.

9. *See id.* Latvia and Lithuania were the other two countries whose applications were to be revisited "as soon as [they] had made sufficient progress in satisfying the conditions of membership defined by the European Council in Copenhagen." *Id.*

whereby we would revisit the progress made with the Copenhagen criteria every year, both for those who were not yet negotiating, and for those who were.[10] On the basis of its annual examination in its now famous "Regular Reports," the Commission would recommend to the Member States whether or not to begin negotiations with one candidate or another.[11] The combination of strict application of the objective criteria and readiness to welcome progress along the way will result in a well-prepared enlargement of the EU. The Candidate Countries are more closely involved in some areas of day-to-day business than any previous candidates for membership. Their Heads of State or government regularly attend EU Summits; their representatives are sitting alongside those of the current Member States in the Convention on the Future of Europe, the constitutional assembly that will prepare the next round of constitutional revision in 2004; and they manage EU funds in a more decentralized way than other partners of the EU.[12]

Now, in autumn 2002, the end of the road is in sight, at least for the best-prepared candidates. The enlargement negotiations made substantial progress in the last eighteen months. The objectives of the Commission's "roadmap" have been met, inasmuch as the discussion on the individual chapters of the negotiations has begun on schedule, and been closed on the vast majority of the outstanding issues. The intention to conclude negotiations with most countries by the end of this year was reaffirmed at the Seville European Council in June 2002.[13]

In this Essay, I outline how the negotiations that began in 1998 have brought us to this point. They have been a test for all concerned, but I would argue, a test that demonstrates clearly the ability of the EU to act in an area of decisive interest.

The procedure for the negotiations aims at ensuring an effective negotiation, in which the Member States and Candidate Countries can take decisions that not only reflect the desire of

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10. *Id.*

11. For all the Regular Reports 1998 - 2000, *see* http://europa.eu.int/comm/enlargement/report2002/.

12. *See* Laeken European Council, Presidency conclusions, E.U. BULL., no. 12, at 7 (2001), *available at* http://europa.eu.int/council/off/conclu/.

13. *See* Seville European Council, Presidency conclusions, Sec. II, para. 18 *et.seq.* (2002), *available at* http://europa.eu.int/council/off/conclu/ [hereinafter Seville Presidency conclusions].

the candidates to join the Union, but that are also realizable, and visibly so.

The roles of all concerned are clearly defined.[14] Each Candidate Country draws up its position on each of the thirty-one chapters of the EU *acquis,* to engage in negotiations.[15] Each has a chief negotiator, usually at the level of deputy foreign minister, supported by a team of experts from the important line ministries who have to help define their country's position on each of the chapters. On the side of the Union, the fifteen Member States are the parties to the accession negotiations. The Presidency of the Council of Ministers, which rotates among the Member States every six months, presents the negotiating positions agreed on by the Council and chairs negotiating sessions at the level of ministers or their deputies.[16]

The Commission proposes the draft negotiating positions to the Member States, first at the level of the relevant working group, which meets regularly, usually twice weekly, and then at the level of deputies, and up to the ministerial level, and at the European Council. The Commission maintains close contact with the Candidate Countries in order to seek solutions to problems arising during the negotiations. Within the Commission, the work is coordinated by the Directorate General for Enlargement. The General Secretariat of the Council provides the secretariat for the negotiations.[17]

The European Parliament, which must give its assent to the resulting accession treaty, is kept informed of the progress of the negotiations throughout.[18] In addition, and since each Member

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14. *See* Treaty of Amsterdam *amending* the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Oct. 2 1997, O.J. C 340/1 (1997) [hereinafter Treaty of Amsterdam](amending Treaty on European Union ("TEU"), Treaty establishing the European Community ("EC Treaty"), Treaty establishing the European Coal and Steel Community ("ECSC Treaty"), and Treaty establishing the European Atomic Energy Community ("Euratom Treaty") and renumbering articles of TEU and EC Treaty).

15. *See* European Commission, *Negotiations, at* http://europa.eu.int/comm/enlargement/negotiations/index.htm.

16. *See* Treaty of Amsterdam, *supra* n.14.

17. *Id.* art. 2 (39), O.J. C 340/1, at 43 (1997) (replacing art. 151 of Treaty establishing the European Community ("EC Treaty")).

18. Treaty establishing the European Community, Feb. 7, 1992 art. 158 O.J. C 224/1, at 59 (1992), [1992] 1 C.M.L.R. 573, 683 [hereinafter EC Treaty], *incorporating changes made by* Treaty on European Union, Feb. 7, 1992, O.J. C 224/1 (1992), [1992] 1 C.M.L.R. 719 [hereinafter TEU]. The TEU amended the Treaty establishing the Euro-

State will need to ratify the treaty of accession, usually through an act of Parliament, the Member States' governments inform their Parliaments in accordance with their own domestic procedures. In the Candidate Countries, the process of ratification is likely to involve a popular referendum.

While the word "negotiations" may bring to mind to those familiar with the United States the Strategic Arms Limitations talks ("SALT") or other such international negotiations, the accession negotiations are a unique process. On joining the Union, applicants are expected to accept the entire *acquis communautaire*, i.e. the detailed laws and rules adopted on the basis of the EU's founding treaties, mainly the Treaties of Rome,[19] Maastricht,[20] and Amsterdam.[21] The negotiations themselves focus on the terms under which the candidates will adopt, implement, and enforce the *acquis* and, notably, the granting of possible transitional arrangements, which must be limited in scope and duration. Under similar arrangements, in previous accession negotiations, new Member States have been able to phase in their compliance with certain laws and rules by a date agreed upon during the negotiations.

After the Council in Luxembourg in December 1997 approved the Commission's *Agenda 2000* proposal to open accession negotiations with some candidates,[22] the negotiations began on March 31, 1998 with six Candidate Countries, namely Cyprus, the Czech Republic, Estonia, Hungary, Poland, and Slovenia.[23] On October 13, 1999, the Commission recommended Member States to open negotiations with Bulgaria, Latvia, Lithuania, Malta, Romania, and Slovakia.[24]

The first step of the negotiations was a process known as

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pean Economic Community, Mar. 25 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty], *as amended by* Single European Act, O.J. L 169/1 (1987) 2 C.M.L.R. 741 [hereinafter SEA]. The EC Treaty was amended by the Treaty of Amsterdam, *supra* n.14. These amendments were incorporated into the EC Treaty, and the articles of the EC Treaty were renumbered in the Consolidated version of the Treaty establishing the European Community, O.J. C 340/3 (1997), 37 I.L.M. 79, *incorporating changes made by* Treaty of Amsterdam, *supra* n.14 [hereinafter Consolidated TEU].

19. EEC Treaty, *supra* n.18.

20. TEU, *supra* n.18.

21. Treaty of Amsterdam, *supra* n.14.

22. *See* Luxembourg European Council, Presidency conclusions, E.U. BULL., no. 12, at 8 (1997), *available at* http://europa.eu.int/council/off/conclu/.

23. *See Agenda 2000*, E.U. BULL., no. 3, at 83 (1998).

24. *See Agenda 2000*, E.U. BULL., no. 10, at 55-57 (1999).

"screening", whereby the Commission and the Candidate Country examined the compatibility of the candidate's legislation with regard to existing EU law. The screening process is designed to identify issues with regard to legal compatibility or with regard to institutional ability to actually implement the law that should be addressed in the negotiations.

Conscious of the need to ensure that the negotiations followed a predictable and transparent path, the Commission proposed in 2000 to the European Council at Nice a so-called "road map".[25] This laid down a calendar for beginning discussion on each chapter of the *acquis* with each country. The road map was also the answer to those who considered this unprecedented enlargement to be an administrative task of such complexity, that it was bound to lead to delays and allow prevarication by any reluctant players.

The road map foresaw the opening of negotiations with less complex chapters of the *acquis* such as the small- and medium-sized enterprises ("SME") policy, or the cultural and audio-visual policy, which do not involve a large body of EU law (cultural policy is largely a matter of Member States' competence), or do not involve politically difficult choices. This allowed the Candidate Countries' negotiating teams to become integrated into the process over time, and develop the kind of administrative mechanisms that are required in their home countries, where they frequently consult or inform parliamentary committees, meet with the social partners, and so on.

The road map presented by the Commission and endorsed by the Nice European Council has turned out to work extremely well. It has proved possible to solve difficult issues in most cases in accordance with the timetable. The latest example is the Spanish Presidency, where substantial progress has been made on all outstanding issues.[26] More than eighty percent of the negotiating chapters have been provisionally closed by the end of June.[27]

While the EU has always rejected the idea of offering an accession date to any individual candidate, since accession can

25. *See* Nice European Council, Presidency conclusions, E.U. BULL., no. 12, at 103 (2000), *available at* http://europa.eu.int/council/off/conclu/.

26. *See* Seville Presidency conclusions, *supra* n.13.

27. *See id.*

only take place at a time and according to a schedule appropriate to each candidate, the progress of the negotiations nevertheless allowed us to see, at a certain point, that there would be the light at the end of the tunnel. Therefore, at the European Council in Göteborg in June 2001, it was agreed that the end of 2002 could see the conclusion of the negotiations with those Candidate Countries that were ready.[28] As the negotiations proceeded on schedule, this schedule has been maintained, and the Seville European Council in June 2002 stated:

> If the present rate of progress in negotiations and reforms is maintained, the European Union is determined to conclude the negotiations with Cyprus, Malta, Hungary, Poland, the Slovak Republic, Lithuania, Latvia, Estonia, the Czech Republic and Slovenia by the end of 2002, if those countries are ready [in order that] these countries should participate in the elections for the European Parliament in 2004 as full members.[29]

In the coming months the negotiations will, to a large extent, focus on the financial package relating to the enlargement. It concerns issues such as how the new Member States shall be integrated into the Common Agricultural Policy; the extent of the regional aid; and how to ensure that the Candidate Countries will not be worse off in budgetary terms by joining the EU. These are issues sensitive to present Member States and to the Candidate Countries.

The Commission has presented proposals for EU positions on all these aspects and they are presently being negotiated with the Member States. In our proposals we have kept to three principles.

First, that the global budgetary ceilings agreed upon by the Member States at the European Council in Berlin in 1999[30] must be respected. Alongside the funds set aside for the EU budget itself, these budgetary ceilings foresee a specific amount of money available both for the Candidate Countries and for these same countries after they become members.

Second, that the new Member States shall take part in all

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28. *See* Göteborg European Council, Presidency conclusions (2001), *available at* http://europa.eu.int/council/off/conclu/.

29. *See* Seville Presidency conclusions, *supra* n.13, at 6.

30. *See* Berlin European Council, Presidency conclusions, E.U. BULL., no. 3, at 7 (1999), *available at* http://europa.eu.int/council/off/conclu/.

common policies, even though in some areas there will be a need for a phasing-in period.

Third, that negotiations shall be without prejudice to future reforms of agriculture and regional policies. The enlargement negotiations and the reform debate are two separate issues.

In the regular reports published on October 9, 2002, the Commission recommended that ten Candidate Countries are ready for accession and consequently, are ready to conclude the negotiations by the end of this year.[31] On this basis, the European Council in Brussels in the end of October[32] launched the final phase of the negotiations.

The European Council in Copenhagen in December would then be the occasion to conclude the negotiations. It would also be the occasion to set out a road map for the further negotiations with those Candidate Countries that will not form part of the first accession.

The European vocation of Turkey was confirmed at the European Council in Helsinki.[33] In its 2002 Regular Report on the progress of Turkey towards the EU,[34] the Commission welcomed the progress made, both, in terms of economic reform, where the International Monetary Fund ("IMF") support has been vital during a difficult period, and in political terms. Here, the EU has said clearly what it hopes to see achievement before it can consider moving to a next step in Turkey's application for membership. The elections in Turkey will be a key indicator for these decisions.

I have described the process of negotiations itself. However, this process of negotiation in Brussels reflects an enormous amount of preparation carried out in the Candidate Countries. These preparations involve political reform, economic reform, and also, most importantly as far as the negotiations themselves are concerned, legal and administrative reform.

New members join a community of law. They need to meet their obligations for membership in full. That is why the adop-

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31. *See* European Commission, *Towards the Enlarged Union*, *at* htpp://europa.eu.int/comm/enlargement/report2002/.

32. *See* Brussels European Council, *at* htpp://europa.eu.int/comm/brussels_council_20021024/index_en.html.

33. *See* Helsinki European Council, Presidency conclusions, E.U. BULL., no. 12, at 8 (1999), *available at* http://europa.eu.int/council/off/conclu/.

34. *See Towards the Enlarged Union*, *supra* n.31.

tion of legislation for aligning with the *acquis* is so important. But equally important is the progress in setting up and strengthening the institutions required for implementing and enforcing the legislation. A modern, well-functioning public administration and the necessary institutions are indispensable for any member of the EU. Just as important is a well-trained judiciary versed in Community law and able to apply and interpret it effectively.

The Union has developed a detailed and sophisticated system of instruments to help Candidate Countries in their preparations for membership. At the same time, these instruments serve as a safeguard for the Union that new members can meet their obligations as members. Among the various instruments, one could highlight the following:

- The Commission keeps track of the implementation of commitments made by candidates in the negotiations and compiles for the Member States a monitoring report for each country. These reports set out commitments fulfilled, and those issues requiring close attention in terms of implementation of the *acquis*.[35]
- Action Plans for Administrative Capacity are agreed with each of the Candidate Countries. They identify for each, the next steps that are required to achieve an adequate level of administrative and judicial capacity by the time of accession. They also identify in which areas Candidate Countries need target assistance to complete their preparations.
- Under a system of peer reviews, experts from Member States and the Commission in charge of implementing and enforcing the *acquis* in a certain policy area evaluate the level of preparation of, and formulate advice for their counterparts, in the negotiating countries. Ongoing reviews cover areas such as food-safety, justice and home affairs, financial services, and nuclear safety.

An impressive amount of political capital has been invested in the reform process under way in the Candidate Countries. It must be recognized that this reform has exposed the societies of

35. *See* Commission of the European Communities, *Towards the Enlarged Union: Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries*, COM (2002) 700 Final, 24 (Oct. 2002), *available at* http://europa.eu.int/comm./enlargement/report2002/strategy_en.pdf.

the Candidate Countries to enormous pressure. They have had to make the transition from Communist rule and centrally planned economies to democracy and market economy. At the same time, they have had to adapt to the highly developed system of European integration.

It is therefore understandable that the people need to see where they are going, and what is waiting for them when they arrive. In addition, the citizens of the Member States see that enlargement is approaching and they expect to be informed.

The benefits of enlargement are clear on the macro-level, in terms of a larger single market for EU business and consumers, the consolidation of democracy for a large region of our continent, and so on. But there are also a number of other concerns that have been raised on the consequences of enlargement both, in the Member States and in the Candidate Countries. Cheap labor influxes will "destroy" the employment in the EU, according to some. Real estate prices will soar in the Candidate Countries, according to others. Still others fear that the enlargement may lead to opportunities for international crime and increases in corruption and fraud.

The Commission takes these concerns seriously. In fact many of them are reflected closely in specific issues in the negotiations. In our effort to explain to our citizens that EU enlargement is not the problem, but that it is part of the solution, we draw on a number of premises.

First, experience from previous accession negotiation shows that most of the fears are exaggerated. For instance, in Sweden there was a widespread fear of the consequences on enlargement on the market of secondary residence. In retrospect, it is clear that the fears were exaggerated. Similarly, there were widespread fears over the consequences on the labor market of the Spanish and Portuguese accession. But there was no invasion of cheap labor and the transitional arrangement agreed was therefore also shortened.

Second, the negotiations have shown that when concerns are well founded, reasonable solutions can be found. We have, for instance, found a compromise concerning the free movement of labor and we have found compromises on the acquisition of land in the Candidate Countries.

Third, many of the underlying threats fuelling the fears and

concerns are here irrespective of enlargement. We have, for instance, to face the threat of a sophisticated and ruthless international criminality already today, be it in trafficking of human beings, or in drugs. The enlargement process can and should contribute to making us better equipped to meet such threats. The enhanced co-operation will strengthen the necessary law enforcement institutions in the Candidate Countries. The accession negotiations will accelerate the ongoing reform process of the judiciary. And with the prospect of membership, the Candidate Countries will be part of the future common measures in this field.

Fourth, public opinion[36] faced with the challenges of enlargement is, of course, subject to a feeling of uncertainty. Surveys in the Member States and the Candidate Countries give a varying picture. Undoubtedly, there is a need for information and discussion on the consequences of enlargement both in the Candidate Countries and in the Member States. It is clear to me that it is a challenge, which must be met on local and national levels. It is a responsibility not only for politicians, but also for decision-makers in industry and in other sectors of society.

Enlargement is a vast, complex, and difficult task. It must not be underestimated. Although we have come a long way, there are major challenges in front of us. The window of opportunity for enlarging the Union is now open. Our objective is to bring together the circle "from Copenhagen to Copenhagen."

36. *See* European Commission, *Public Opinion*, *at* http://europa.eu.int/comm/enlargement/opinion/index.htm.