

THE EUROPEAN UNION'S 5TH ENLARGEMENT – LESSONS LEARNED

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ABBREVIATIONS

CEFTA	Central European Free Trade Agreement
CVM	Cooperation and Verification Mechanism for Bulgaria and Romania
DG	Directorate General
EBRD	European Bank for Reconstruction and Development
EC	European Commission
EIB	European Investment Bank
EU	European Union
FDI	Foreign Direct Investments
MS	Member States of the European Union
NATO	North Atlantic Treaty Organization
NGO	Non Governmental Organization
OECD	Organization for Economic Co-operation and Development
ENP	European Neighborhood Policy

FOREWORD AND ACKNOWLEDGEMENTS

Many ideas in this paper are based on monitoring, annual reporting, and evaluations of the enlargement in the European Commission, especially in the Directorate General Enlargement, as well as on the lessons gained from seminars organized after the accession of Bulgaria and Romania. I have learned a great deal from my colleagues, and I owe special thanks to Helewise Elfferich and Vincent Rey, who have been in charge of the recent annual reporting on enlargement, as well as to Kristian Hedberg for numerous discussions politically assessing the monitoring results. The Evaluation Unit, with Goran Segerlund in the lead, has provided a considerable amount of excellent material that has been used in this paper. I also have benefited from observations, discussions, and interviews with a number of senior Bulgarian and Romanian government officials and politicians. I want to thank the Fellows of the Weatherhead Center for International Affairs at Harvard University for their constructive, but challenging, comments and Linnea Sundberg for her outstanding assistance. I am grateful to Sorin Moisa from the Oxford University for fresh ideas on the EU enlargement management.

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INTRODUCTION

Enlargement is one of the most powerful policy tools used by the European Union (EU) to serve its strategic interests in stability, security, conflict prevention, and increased economic prosperity.¹ The heart of the EU's enlargement policy is conditionality and it reflects the union's soft power.² The fifth enlargement was completed in January 2007, when Bulgaria and Romania acceded to the EU, after ten other countries joined in May 2004 as the first part of the same round.

The fifth enlargement has been considered a success story.³ The last-minute results and problems in the acceding countries, as well as the challenges Bulgaria and Romania faced in reforming their judicial systems and in fighting against corruption, however, emphasize the need to further improve the method, management, and safeguards related to the enlargement process. Post-accession monitoring, "the Mechanism for Cooperation and Verification (CVM)", applied to Bulgaria and Romania in the areas of judicial reform and the fight against corruption and organized crime should be seen as exceptional and not to be repeated in future enlargements.

This paper focuses on four points. The first is what the EU and the acceding countries sought to gain from the accession process and how clearly defined their targets and priorities were. The second is the management of the enlargement process. The third is what were the results and where and why did the EU and the acceding countries

¹ Milada Anna Vachudova, *Europe Undivided, Democracy, Leverage, & Integration after Communism*, Oxford University Press, 2005.

² Geoffrey Pridham, *Designing Democracy, EU Enlargement and Regime Change in Post Communist Europe*; Palgrave Macmillan, 2005. See also Joseph S. Nye Jr, *Soft Power – The means to success in World Politics, Public Affairs*, 2004, and CSIS Commission on Smart Power: *A smarter, more secure America*, Center for Strategic and International Studies, 2007.

³ *The Economist*, "Transformed, Survey: EU's Eastern Borders"; *The Economist*, June 2005.

succeed or fail. And the fourth is what was learned and how can the process be improved to produce even higher quality results in future enlargements. Some remarks on the EU's overall enlargement organization and division of labor have also been added for better understanding of the entire process.

Many observations and conclusions in this paper are based on the accession process of Bulgaria and Romania. This is justified because the two are not only the most recently acceded countries, but so far they have been the most challenging ones. In addition, some of the experience from the first wave of the fifth enlargement did already improve the management of the accession process with Bulgaria and Romania. Most of the points discussed, however, would be valid for the other ex-communist countries that were part of the fifth enlargement.⁴ The goal of this paper is not to provide an overarching analysis of the lessons learned, but to focus on some of the most important broader areas where improvement could lead to better quality management and results in future enlargements.⁵ In addition, some observations could be relevant for better management of the European Neighborhood Policies.⁶

⁴Cyprus and Malta were also part of the fifth enlargement round, but as small market-economy nations cannot be compared with the ten ex-communist countries.

⁵Examples of the policies excluded are agriculture and regional development (structural funds) as well as macroeconomic stability.

⁶There are similar objectives in the two policies. See "Communication from the Commission, A Strong European Neighborhood Policy," Brussels, 05/12/2007, COM(2007) 774 final.

CHAPTER 1

TARGET SETTING AND CRITERIA FOR THE ENLARGEMENT PROCESS

The overarching vision of a peaceful unification of the European continent has been the key driving force of the enlargement process. A deeper analysis, however, finds more precise objectives; some of them are shared fully between the EU and the candidate countries, while others are more important priorities for one or the other. The fall of the Berlin Wall and the collapse of the Soviet Union opened a window for Central and Eastern European, formerly communist countries to redefine their long-term security, as well as their political and economic ambitions. In addition, most of them had an overwhelming political and public opinion majority which supported reestablishing old historical links with the Western European family.

It was generally believed that the EU would be the first major institution to enlarge to the East.⁷ This thinking was based on the assumption that Russia would resist NATO, but accept EU enlargement. In actuality, however, the outcome was different. Security guarantees had a high, or in some cases clearly the highest, priority in the Central and Eastern European countries. Russia was struggling with internal political and economic problems and was weak in resisting the NATO ambitions of its former allies. NATO's membership criteria covered certain political and economic goals, but these were more flexible than the criteria and conditionality set by the EU. As a result, the first ex-communist countries joined NATO in 1999, and consequently, the targets of EU membership were seen in a wider context of long-term political and economic integration.

⁷Elizabeth Bomberg and Alexander Stubb (ed.), *The European Union: How Does It Work?*, Oxford University Press, 2003.

In accepting new members, the EU's main objectives are to improve political stability in the neighborhood, to extend the zone of peace, security and political stability, to achieve a stronger position in a globalized world, to attain higher economic growth, and to increase the size of the European internal market. On top of these general objectives, each member state (MS), region, and sector has its own more specific interests. For example, their own neighboring MSs are often key promoters and supporters of a candidate country for very selfish reasons. Political stability and subsequently increased economic dynamics, fairer competition, easier cross-border trade, better transport networks, and EU-funded regional programs are all very much in the interest of the neighboring countries already belonging to the EU. Business sectors benefit from easier access to the market as well as from the reduced red tape and better governance. And NGOs see new opportunities in cross-border cooperation funded by the EU.

A candidate country's objectives cover several levels, and the weight of each level varies not only country by country, but also during the accession process. At the very beginning, the overall national view on EU membership was often more emotional rather than based on a strict political and economic analysis and strategy. When applying for EU membership, ex-communist countries sought to flag their historical links to Western Europe and to be folded back into the West European family. After the fall of the Berlin Wall, they saw a window of opportunity and wanted to react immediately—not knowing how long the political atmosphere would remain favorable for them.

The real political and expert work between the ex-communist countries and the EU started in the early 1990s and so the pre-accession process of the fifth enlargement took,

on average, more than a decade. The Europe Agreements were signed in 1991-1996⁸, and the official applications for EU membership were presented in 1994-1996. During the ten-plus years that followed, the candidates had, in principle, time to work on their analysis and priorities in the transformation process. The overarching goal of wanting to join the EU as quickly as possible, however, dominated the governments' behavior, and more strategic work on policy priorities seldom got significant early attention. Whatever the fastest route to membership — i.e., to the “West European Club”—and access to the EU's structural and agricultural funding, was the major driving force.

The Europe Agreements, and later the accession negotiations, forced the candidates to thoroughly study all the key EU policies and offered an opportunity for a domestic debate. How far this opportunity was utilized varied considerably, but this is impossible to verify systematically. Many key experts responsible for the accession process on both sides share the impression that, in most cases, passing the threshold criteria was so challenging to the candidate country that other national priorities became secondary in importance. Understandably, their key focus was on issues directly related to gaining EU money, such as structural funds, agricultural subsidies, restructuring the economy in order to become functioning market economies, and financing updates of their infrastructure (roads, railroads, border crossings, etc.).

When the accession process was more advanced, the political parties in the candidate countries started to use EU issues for internal power games. They saw that the accession as such was not at stake when both opinion polls as well as the political majority in their parliaments had broad enough support to complete the negotiations. In

⁸ Karen E; Smith, *The making of EU Foreign Policy, the Case of Eastern Europe*, 2 ed., Palgrave Macmillan, 2004.

some cases, blocking or delaying accession-related legislation was used to defend vested interests in the power structures. In this regard, sensitive areas included judicial system reform and the fight against corruption and organized crime.

NGOs actively involved in the accession process were often encouraged by their European sister organizations and financed by the EU. Some of the NGOs were professional enough to contribute to setting priorities in their specific fields, such as the environment, judicial reform, corruption, minority issues, or child protection. For several NGOs the accession process contributed substantially to their professionalisation and expertise, and their role in society thus increased during the process.

Well organized agricultural and business lobbies ensured that their targets were communicated to the negotiators. European-level business associations eagerly adopted new member organizations from the candidate countries and helped them to integrate despite potentially conflicting business interests (e.g., agriculture, steel, shipyards). A high number of pairings (twinings) between regions and cities helped to improve the priority-setting at regional and local levels, an important but often underworked dimension in the accession context.

Target-setting on both sides—the EU as well as the potential candidate country—gives the starting background and the political atmosphere, but the Copenhagen criteria are decisive when granting candidate status to an applicant country. In the Commission's opinion each candidate should be assessed against the political Copenhagen criteria (the applicant country must have achieved stability of its institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities), economic criteria (it must have a functioning market economy, as well as the capacity to cope with

competitive pressure and market forces within the EU), and criteria for the adoption of the *acquis*⁹ (i.e. it must have the ability to take on the obligations related to membership, including adherence to aims of political, economic, and monetary union). In addition, the EU itself must have the capacity to absorb or integrate new members without endangering the momentum of European integration.¹⁰ This means that the EU needs to ensure that its institutions and decision-making process remain effective and accountable, for the sake of current MSs as well as in view of further enlargement. As it enlarges, the EU needs to continue developing and implementing common policies in all areas as well as financing its policies in a sustainable manner (e.g., regional policies and common agricultural policies). When all these conditions are sufficiently met, the European Council can decide to initiate membership negotiations with an applicant country. This is a political assessment based on the total picture.

In my view the political criteria must first be met in order to start negotiations, and during these negotiations, the country must work to meet the EU's economic and *acquis* criteria, so that upon accession all criteria are met.

⁹The total body of EU law accumulated thus far.

¹⁰A comprehensive analysis of the EU's integration capacity is found in "Communication from the Commission, Enlargement Strategy and Main Challenges 2006-2007," including an annexed special report on the EU's capacity to integrate new members, COM(2006) 649.

CHAPTER 2

MANAGING THE ENLARGEMENT PROCESS

In the early 1990s, the EU started developing methods to assist countries to reform, and the experience thus gained has benefited the EU as well as the countries seeking EU membership.¹¹ The entire pre-accession process for the ten ex-communist countries took, on average, more than a decade and included several steps.

The key interlocutors during the entire process are the MSs and the applicant country. On the EU side, the major decisions are taken at the highest level of the European Council, and preparatory work takes place in the Council and in its working groups under coordination of the EU presidency and the Commission services. Within the Commission, DG Enlargement is responsible for coordination of activities and regular reporting, working closely with the line directorate-generals as well as with the Council's relevant working groups. On the applicant country's side, the government usually nominates a minister to be responsible for the "EU accession project". This minister reports directly to the prime minister and is often placed in the prime minister's office, highlighting the overarching coordination role above the line ministers. In most cases, the coordination resources have been good both in quality and quantity. The real bottlenecks were in the line ministries, key governmental agencies, and at the regional level.

The EC delegation in the capital of an applicant country collected information, reported to the Commission headquarters, and shared information with local MS'

¹¹A compact presentation of the enlargement process and terminology can be found in Elizabeth Bomberg and Alexander Stubb (ed.), *The European Union: How does it work?*, Oxford University press, 2003, pp. 177-194.

embassies. The annual progress reports presented by the candidate countries covered a complete overview of the technical progress made. In Brussels, the embassy of an applicant country often had specialized sectoral resources and was in daily contact with the Commission and with the MSs. All in all, the coordination and the information flow went smoothly both in Brussels and in the capitals of the applicant countries.

The pre-accession machinery has benefited also from many other organizations, e.g., NGOs, the World Bank, the EBRD, the OECD, the Council of Europe, as well as from projects financed by the EU, MSs or the USA.

The policies and reforms, including institution-building, were supported by EU funding and experts from the Commission. Via several instruments, the applicant countries had access to short- and longer-term experts from the MSs.

For practical reasons, the accession negotiations were divided into 31 negotiation “chapters”, each of which covered a particular policy area.¹² In the monthly and annual monitoring, these areas were divided into subpolicies so that, in reality, in most cases, the follow-up covered more than 150 items. Based on this information, as well as on other sources, such as international organizations, NGOs and information from MSs, the Commission reported to the Council working group once or twice a week and prepared an extensive annual report. The applicant countries formulated a high number of sectoral strategies, action plans, and monitoring tables, including deadlines and benchmarks. The preparation of these documents utilized considerable amounts of resources in the applicant country, and, in some cases, the real implementation of EU legislation or other reforms did not get sufficient attention.

¹²When the fifth enlargement round was completed, the number of chapters was increased to 35 to add clarity.

CHAPTER 3

EVALUATION OF THE RESULTS OBTAINED

The thorough reforms each country went through during more than ten years were numerous, and some were extremely demanding when starting from the communist legacy. Both sides—the EU as well as the acceding countries—had their general ambitions in addition to the formal standards dictated by the Copenhagen criteria.

Evaluating the overall reform results which were achieved would be a challenging chore, but there have been a large number of evaluations of different sectoral policies and instruments used. The methods have differed so widely, however, that producing a systemic summary is not possible. In the following, I will first attempt to draw some general conclusions and then focus on the two most challenging areas — public administration and judicial system reforms, including the fight against corruption.

Too Many Priorities

The first challenge a candidate country faced was the high number of conditions, targets, and tasks to be tackled simultaneously. Each of the 31 negotiation chapters, together representing all EU legislation includes tens or hundreds of subtasks. The priority-setting was far from clear and senior experts working on this task often commented that, when they asked for clear EU guidance on priorities, the typical EU answer was that “they all are priorities”. The reaction from their own political leaders was often the same. Consequently, “everybody was working on everything and every task was a priority and thus nothing was a real priority”. In some cases, this led to a temptation to start with the quick fix technicalities in order to show, at least optically,

“progress”, instead of focusing on more demanding, difficult, and time-consuming political reforms.

Meeting the Acquis Criteria

Quantitatively, the major challenge has been to meet the acquis criteria.¹³ As a management exercise, the adoption of more than 90,000 pages of EU legislation is already an enormous task both for the line ministries as well as for the legislatures. The Commission experts, together with the specialists and consultants financed by the Phare program,¹⁴ MSs, or others, offered concrete, hands-on advice based on best practices learned. In each country, however, domestic needs had to be taken into account, and simply the training to deal with the new rules and procedures as well as the technicalities and translation of the texts take time and resources. Despite some delays and quality problems, the acquis criteria were met reasonably well in the fifth enlargement round, a conclusion shared by much academic literature¹⁵. However, the uneven enforcement of acquis remains an issue.

Economic Success

Economically, the fifth enlargement has been a success story for the “old” EU as well as for the new entrants¹⁶. By creating a larger, more integrated internal market, it has created the conditions for the entire European economy to become stronger and more

¹³ On the transformative importance of acquis see Amichai Magen, *Transformative Engagement Through Law: The Acquis Communautaire as an instrument of EU External Influence*, in *European Journal of Law Reform*, Vol. IX, n° 3, pp. 361-392.

¹⁴ The Phare program was the main channel for the EU’s financial and technical cooperation with the countries of Central and Eastern Europe.

¹⁵ See eg. Frank Schimmelfennig and Ulrich Sedelmeier (ed.) *The Europeanization and Central Eastern Europe*, *Cornell Studies in Political Economy*, Cornell University Press, 2005.

¹⁶ European Commission, “Communication on Enlargement, Two Years After – An Economic Success,” Brussels, 3 May 2006, COM(2006) 200 final.

dynamic, hence better equipped to face increased global competition. By fulfilling the Copenhagen economic criteria, the new MSs have undertaken extensive reforms to modernize into dynamic market economies. While the results have been good, there have been cases of serious localized pain due to the suspension of state aid, e.g. in industries such as steel and shipbuilding. Bank restructuring also advanced well thanks to the EBRD, the World Bank, and numerous West European banks that invested in the candidate countries, providing good modern management and corporate governance.

The stability provided by accession helped to multiply trade and investment opportunities between the EU-15 and the EU-10 as well as within the EU-10, creating a win-win situation for all involved: contributing to growth and employment in the EU-10, opening new opportunities for firms in the EU-15, and having a favorable impact across the EU on consumers, who have benefited from wider choice and increased competition. Economic growth has been on average faster in the new MSs than in the old. The resultant catching-up process has seen the EU-10 average income rise from 44 percent of the EU-15 level in 1997 to 50 percent in 2005 and this trend has continued since then.

The EU-10 are now open economies, with trade (exports plus imports) representing an average of 93 percent of their GDP compared with an EU-15 average of 55 percent. The new MSs have also substantially increased their share in world markets. As emerging economies, they have been running relatively large trade deficits, which have been easily financed by inward foreign direct investments (FDI). The stock of FDI reached € 190 billion in 2004 in the EU-10, comprising 40 percent of the local GDP. Old MSs, led by Germany, are the main investors.

Contrary to general expectations, after the abolition of visa requirements in the late

nineties and 2001 and 2002 by the Schengen countries, migratory flows from new MSs have, in general, been small, even towards countries with free movement of workers, and there have been no substantial disruptions of recipient (official) national labor markets. This is consistent with the experience of previous enlargements. Migration from third countries has been far greater than intra-EU mobility after accession. In 2005, in the two countries with the highest shares of non-nationals in the working-age population, namely Austria and Germany (at about 10 percent each), only a small share (1.5 percent and 0.6 percent, respectively) comes from the EU-10 (about 7 percent are non-EU nationals). The largest share of EU-10 nationals (about 2 percent against a total of 8 percent for all non-nationals) is in Ireland.

The employment rate in new MSs is substantially lower than in the EU-15, particularly for young and older workers. The unemployment rate in the new MSs is considerably above the EU-15 average. Relatively rapid economic growth has alleviated many problems during the pre-accession process and thereafter. A major challenge has been adaptability in labor markets and, in particular, skills and human resources development. Labor productivity is still below the EU 15 average. The European Social Fund contributes to support efforts in this respect. Strengthened social dialogue and reforms on social protection, including the pension system, support a positive overall assessment of the economic development in the new MSs. This is an ongoing process which is not finished yet.

Problems in Meeting Political Criteria

The pre-accession process has produced reasonably convincing results in meeting the *acquis* requirements as well as the economic criteria. However, meeting the political

criteria has been more difficult: the results in public administration and judicial reforms, as well as in the fight against corruption and organized crime, fell short of expectations in most of the countries, and especially, in Bulgaria and Romania. These political criteria are the most critical points of the entire accession process because shortcomings in these areas hamper sustainable improvements in practice in all the sectors of the society. The reason for this is that these areas have strong links to each country's history, existing power structures and vested interests, including the political elite and organized crime.

Public-administration reform is a huge task which requires open government, enhancing public-sector performance, modernizing accountability and control, using market-type mechanisms, and modernizing public employment. Broadly, these levers seek to change the behavior and culture of public servants and organizations by changing the rules, incentives, norms, values and organized structures, with the objective of transparent, reliable and accountable governance. Public-sector reform is not only part of wider governance structures, but it is also an element of a government-wide approach to capacity-building, including public expenditure management, revenue policy and administration, the fight against corruption, decentralization, legal and judicial reform, sectoral institution-building, and public enterprise reform.

While the "old" MSs may be far from perfect, many share principles of sound public administration including a set of common standards within their public administrations as defined by law and enforced through procedural and accountability mechanisms. Such standards are not part of the *acquis* as such, but might be considered a "soft *acquis*" since they are usually embedded in administrative legislation relating to administrative procedures, administrative disputes, freedom of information, and the

operation of the civil service¹⁷.

The reforming governments have access to best practices and experts offered by a number of donors, including the EU, MSs, the USA, the World Bank, the OECD, the EBRD, the Council of Europe, and NGOs such as Transparency International. Some evaluations show much of the support to horizontal public administration reform largely failed as it was supply-driven without sufficient consideration of the demand-side issues of political commitment, change management, and absorption capacity.¹⁸ Evaluation evidence points to the need for a broader approach to governance and public sector reform that is not solely focused on the central government reform, but also includes reform of regional and local government and public enterprises. It also involves enabling citizens and civil society to demand better public services and be able to respond to pressures from a competitive private sector.

Ex post evaluation of the Phare program identified several problems in supporting public administration reform,¹⁹ and it is likely that other donors faced largely similar challenges. Support to horizontal public administration reform was too narrow and began too late. The emphasis was on putting legislation in place and on building up central capacity. The priority focus was to provide acquis-related vertical support to institutional strengthening of ministries and agencies, such as those responsible for the civil service, customs, policing, the judiciary, and anti-corruption bodies, as well as organizations responsible for aspects of justice, liberty, and security and for public finance. Structured

¹⁷Antoaneta L. Dimitrova, "Europeanization and Civil Service Reform in Central and Eastern Europe", in *The Europeanization and Central and Eastern Europe*, ed. Frank Schimmelfennig and Ulrich Sedelmeier, *Cornell Studies in Political Economy*, Cornell University Press, 2005.

¹⁸"Supporting Enlargement – What Does Evaluation Show?" Consolidated Summary Report, April 2006, European Commission, Directorate-General Enlargement, Directorate E – Evaluation Unit.

¹⁹Ibid

support was very compartmentalized, and often did not analyze the more fundamental and wider implications of the political criteria, which should have formed the overarching conceptual framework for interrelated interventions which, in total, could have made a significant impact on the quality of governance. There was no guiding concept for broader public sector (as opposed to public administration) reform.

More systemic work was begun too late in the pre-accession process. The result of this was considerable over-programming of public-administration-reform-related interventions relative to absorptive capacities in the final years of pre-accession. Consequently, a number of interventions took place in a rather hasty manner under severe time and resource pressure, close to the accession date. In Bulgaria and Romania particularly, from 2004 onwards, substantial Phare resources were dedicated to public administration reform, including horizontal capacity-building. While these two nations did formulate broad and later more detailed strategies, on public administration reform, they were too late in providing any substantive guidance for the programming and implementing process before their accession date.

Managing public sector reforms presented other problems. There were several sectoral initiatives, but no systematic attempts at benchmarking key public administration reform objectives, no formal mechanism for disseminating good or best practices, and donor coordination often fell short of expectations. The OECD and also the Commission itself developed several means to measure progress in areas such as judicial reform and public administration. However, in general it is not easy to measure “good governance” or to substantiate a decrease in corruption. Ownership of the necessary reforms is weak in many countries, and the risk of reform reversal is real. In particular, judicial reforms are

tricky, because of the large autonomy this sector should have according to the trias politica. If the autonomy of this sector is ensured before transforming it from a communist regime towards a modern, transparent and reliable pillar of society, problems continue to exist. The NGOs could play a major role in encouraging the reforms to proceed after accession, but there are only limited sources of adequate funding within the new MSs when some donors, including the Commission, withdraw their financing and move towards the next countries in line.

A well-functioning judicial system is a key part of the Copenhagen political criteria. This is closely linked to public sector reform as well as to the fight against corruption and organized crime. Talking about “reforming” the judicial system may give an inaccurate and overly limited impression, as in many countries the task was setting up a new system covering more or less everything from a new national constitution to basic legislation and organizing professional resources and training. It takes not only calendar time, but also demands political courage and consensus to change the judicial and, more generally, the governance culture of a country especially when this goes against the vested interest of some power bases. Moreover, a judicial sector cannot take care of all checks and balances. Professional internal and external audit, inspection and complaint institutions, for example to control the work of border policemen and of veterinary institutions, are needed to provide “first line checks and balances”.

Reactions When Political Criteria Are Not Fully Met

Reforming the judicial system was a major challenge in all ex-communist countries, but especially in Bulgaria and Romania. In regular reports, the European Commission

pointed repeatedly to needed initiatives.²⁰ There were new strategies and actions plans, but real reforms and results remained and remain. Experts were offered by the EU, MSs, the USA, the Council of Europe, the World Bank, and several NGOs. Even the last Commission report just three months before the expected accession date showed several weaknesses.²¹

In principle, the Commission had two different ways to react to the non-completion of the reforms. One was to postpone the accession to the beginning of 2008 instead of 2007 giving the two countries more time to reform and show tangible results. The other was to let the countries into the EU in 2007, but apply safeguards to ensure that the needed reforms were completed. In the end, the Commission decided to recommend the latter option to the Council.

The overall assessment was that Bulgaria and Romania were “sufficiently prepared to meet the political, economic and acquis criteria by 1 January 2007”.²² This was based on positive, in some cases last-minute, developments in a number of sectoral issues that had been reported several months earlier. The Commission report also stated, however, that “there has been some progress in the areas of judicial reform and the fight against corruption, money-laundering and organized crime, but further tangible results are needed”.²³ The Commission report identified the issues requiring further work by Bulgaria and Romania and referred to provisions in the acquis and the Accession Treaty that were designed to safeguard the proper functioning of EU policies and institutions

²⁰ See, e.g., “Communication from the Commission,” Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, Brussels, 26.9.2006 COM(2006) 549 final.

²¹Ibid

²²Ibid

²³Ibid

following accession. In line with the findings of the last monitoring report that the Commission set up, after consulting the MSs, a “Mechanism for Cooperation and Verification of progress in the areas of judicial reform and the fight against corruption, money-laundering and organized crime (CVM)”. For this purpose, the Commission identified six benchmarks for Bulgaria²⁴ and four for Romania²⁵. Consequently both countries now report to the Commission, and the Commission reports twice a year to the European Parliament and the council on the progress made. This mechanism will continue until the benchmarks have been met.²⁶

This solution was exceptional, but the safeguards available were otherwise limited. This mechanism could potentially be politically helpful in motivating reform rather than dealing with the visible and embarrassing publicity caused by post-accession monitoring. The EU also offered substantial financial support and experts to facilitate the reforms. The first reports on the mechanism after the accession, however, have shown only limited progress²⁷.

²⁴Commission Decision establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organized crime. Brussels 13/XII/2006 C(2006) 6570.

²⁵Commission Decision establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption and organized crime. Brussels 13/XII/2006 C (2006) 6569.

²⁶Ibid

²⁷Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, 23.7.2008 COM (2008) 495; Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, Brussels, 23.7.2008, COM(2008) 494.

CHAPTER 4
HOW TO IMPROVE THE MANAGEMENT
OF THE ENLARGEMENT PROCESS

Build a Sustainable Reform Culture

The most recently completed enlargement round was an enormous political challenge as well as one of the biggest “hands-on” management processes in modern political history. In both cases, it has been considered a success story. As can be seen in the previous chapter, however, there is room for further improvement in managing the quality of the enlargement. The challenge is not only how to fully meet the strict accession criteria before joining the EU, but how to avoid backsliding after accession and to guarantee the sustainability of the reforms already achieved. Some reforms never stop, and so the continuation and deepening of positive processes and the creation of a reform culture of high-quality policymaking and administration would be the best reward the entire accession process can give to a new MS in the long term. In this chapter, some broader key elements of potential improvements are discussed.

No Pre-fixed Accession Date or “Packaging”

The political and economic environment is seldom ideal or optimal for difficult and major restructuring. There are pressures to speed up the process or, for example, to link a country’s progress with a neighboring country. This was the reality in the fifth enlargement, and the experiences were not always encouraging. Sustaining the maximum motivation to reform until the very end is possible only if the process is not forced to conclude by a pre-fixed date. The cases of Bulgaria and Romania, which had fixed

promised accession dates (2007 or 2008), resulted in delivery problems, and basically this was the principal reason why post-accession monitoring (CVM) became necessary. The “packaging” together of eight ex-communist candidates entering in May 2004 obviously helped some countries to get an easier ride in some sectors.²⁸ The conclusion is that, to guarantee the best results, no pre-fixed dates should be given, and each country’s entry should be based strictly on its own merits.

More Focus, Fewer Priorities

Rigorous conditionality is important in maintaining the EU’s credibility on enlargement. The Copenhagen criteria provide a good framework basis, and are flexible enough when dealing with different types of candidates or potential candidates, as for example, the countries of the Western Balkans. How to “open,” concretize, and organize the substance, though, is crucial to success in managing the enlargement. Experience has shown that too many tasks were simultaneously considered as important, but without clear priorities or focus amongst them. In the future, an improved focus with fewer priorities would help to better allocate political attention as well as scarce human resources. However, it will always remain difficult to make an objective analysis of whether a country sufficiently meets the political criteria. It should also be noted that when applying the criteria to the old EU 15, there would be remarks to make as well.

Start with the Most Difficult Overarching Reforms

When fewer and more clear priorities are focused upon, the sequencing of the working agenda becomes extremely important. Some reforms simply require more calendar and management time than others. In addition, some are politically sensitive and

²⁸This comment does not include Cyprus or Malta.

more difficult to address and their results more overarching in the entire reform culture. Based on experience to date, the reform of the judicial system at large, and public administration reform at all levels are critical. They should be the first priority and start at the earliest possible stage. Progress in these areas supports all other “technical” reforms, and particularly advances the fight against corruption and organized crime.

The increased focus on prioritization makes it possible to allocate resources to produce final results, rather than generate numerous strategies and action plans or their updates. Clearly set and agreed-upon benchmarks with clear responsibilities and target dates are likely to improve real results and are also easier to keep under political control. Benchmarks should however be used with caution since the "right" number is helpful whereas too many will dilute the focus. It should become standard practice that when a benchmark is achieved but a subsequent fallback occurs, the negotiations on this item should be reopened.

Mobilize the Middle Management at Large

One of the critical bottlenecks—understandably—has been the lack of human resources and professional capacity. Candidates' governments will have engaged (or at least have tried to engage) the best talent and experts, considering the fact that EU accession is viewed as the highest strategic national objective at that time. The top political leaders and senior officials (i.e. minister of EU affairs, chief negotiator, head of the EU secretariat, ambassador to the EU in Brussels along with heads of the key ministries, such as foreign, financial, agriculture, justice, interior, etc.) have, in most cases, been political heavyweights, well educated, highly motivated, and have a “European commitment”. They also see their own personal short-, medium- and long-

term interests linked to the success of the European project. Consequently, these people do their utmost to manage the reforms and to show results.

Besides a few political heavyweights who have a personal interest in maintaining the status quo, another key problem is the mid-level management in administering ministries and other organizations. The middle management in ministries, government agencies, regions, and the judicial system have not only to run the old machinery on a daily basis, but simultaneously undertake reforms and adapt to the new rules, terminology, organization, and culture. These may be very different from those they have worked with for years or even decades. Many of the middle managers find more uncertainty and downside for their own professional futures than an upside and positive challenges, sometimes causing them to tend to slow down or even to work actively against reforms. It is extremely important to keep middle managers well informed and motivated from the beginning. Their training should be started as early as possible and should have a funding priority at the earliest stages of the pre-accession process. Retraining of middle managers and increasing their motivation help increase their commitment and ownership of reforms. This is essential not only to maximize the positive reform results but also in order to minimize the risk of post-accession backsliding.

Increase Productivity and Salaries in the Public Sector

Another challenge in building up administrative resources is in keeping young and well-educated talent in the country and getting a fair share of such individuals to work for the public sector. The brain drain took a major toll in most ex-communist countries, and the remaining high-quality personnel often saw the private sector as more lucrative, at least insofar as salaries were concerned. It is in each government's national interest to

increase productivity and salaries in the public sector as early as possible so as to be able to compete for the young experts who are badly needed to advance and manage the reforms. Key posts for fighting corruption in particular should be sufficiently paid.

Improve Donor Coordination

Each candidate country government is responsible for implementing the reforms, but with strong support from the EU which provides the methods, experts, and funding. Such support, however, is not an EU monopoly. The EU establishes the accession criteria, but how to fulfill them is up to the government. In practice, the EU, MSs, the USA, international organizations (e.g., the OECD) and financial institutions (the EBRD, the EIB, the World Bank, the Bank of the Council of Europe), as well as many different kinds of NGOs, offer their assistance. As a result, the recipient country receives a wide variety of views and advice. To a certain extent, this improves the understanding of the different reform paths, as well as the pros and cons of the choices to be made. This is important to democracy and can produce better-quality reforms and stronger commitment. However, in some cases, donor activity and competition have gone too far producing overlapping consulting reports and increased, not reduced confusion. While a second opinions can be useful for decision making, too many opinions are counterproductive. Improving donor coordination has received a good deal of attention but there is still considerable room for improvement.

Invest More in Regional and Neighboring Cooperation

The pre-accession process stretches candidate country's resources to such an extent that there is only a certain capacity to invest in neighboring relations such as political contacts, cross-border cooperation, trade, transport, or energy networks. During the fifth

enlargement, the high visibility of political relations with Brussels decidedly dominated not only the national media, but also the time allocation of politicians and experts. The cross-border or regional programs financed by the EU were systematically relegated to second priority compared to the national programs. Benefiting from fluid regional cooperation in all sectors, however, is an important part of the EU's wider potential benefit. There was considerably more potential to cooperate among the ten ex-communist countries than actually materialized. In the Western Balkans, better regional cooperation can produce even more tangible and rapid results.²⁹

Inform better the European public

Public support for the EU enlargement is crucial. It is important for authorities in the MSs and EU Institutions to foster public understanding of the Union's interest in enlargement. The EU and, in particular, the MSs should be able to use simple language and messages to explain why negotiations with a candidate country will be opened, the strategic choices and criteria behind it, and the self interest of each MS. The EU's 5th enlargement experience has shown that much more is needed from the MS to inform media, labour unions, and different sectoral groups e.g. farmers, students, NGOs and political parties. People are interested in the impact on their every day life in areas such as economic growth potential, employment, immigration, wider choice of the products, flexible travel, and job and study opportunities. In the Candidate Countries the reporting in the media has been extensive during the entire accession process, but realistic criteria to be fulfilled as well as future reforms are needed to avoid a too rosy picture of the EU's

²⁹In the Balkans, the Stabilisation and Association Agreements and the new Central European Free Trade Agreement (CEFTA) create a framework conducive to trade and investments as was the case in Central and Eastern Europe in the 1990s. There are also other important fora for regional cooperation, as e.g. the Regional Cooperation Council. See "Communication from the Commission, Enlargement Strategy and Main Challenges 2007-2008," Brussels, 6.11.2007 COM (2007) 663, pp. 12-13.

membership's short term effects.

Build Strong Safeguards

Last but not least of the lessons learned is the case of a candidate country failing to deliver on key reforms and results. The accession process includes an element of trust-building between the partners and it is certainly customary that some “technical” results in the pipeline are finalized at the last moment. When negotiations are completed and the accession treaty is signed and sent for ratification, the understanding is that the agreed-upon reforms will be fully completed by the accession date. But the government may face political or other difficulties in fulfilling that responsibility, and the results may fall short. If the final accession date is left open—as it should be for as long as possible—the planned accession date can simply be postponed. In the cases of Bulgaria and Romania, the problem was that the two fixed accession dates had been decided by the Council well before some fundamental reforms were even close to completion.³⁰ In this kind of ultimate case, the robustness of the safeguards was tested.

Safeguards serve not only to maintain pressure on the acceding country to complete the agreed reforms but also provide a public message in the EU that the Commission will take all the necessary steps to ensure the best possible conditions for enlargement while managing specific risks and threats that may arise if the candidate country is not sufficiently prepared by its accession date.

In the fifth enlargement round, there were, in principle, several instruments available to push an acceding country to finalize the reforms, starting with the Europe Agreement and the non-EU international conventions, and continuing with the three EU

³⁰ In addition, the two dates were very close to each other (January 2007 and January 2008). The postponement discussion might have been different if the Accession Treaty had allowed more than one postponement or a longer postponement.

accession treaty safeguards³¹: *acquis* safeguards, courts, and infringement procedures. Where competent, the Commission can intervene directly in its capacity as the EU's executive authority, e.g., to order repayment of state aid used illegally. The Commission cannot make payments from the EU budget when the conditions for disbursement are not met and this can directly impact agriculture, rural development and structural funds. The Commission and the Council can also put pressure on the acceding country through public reports and conclusions that draw attention clearly and firmly to the outstanding problems and possible negative consequences. This kind of institutional and public diplomacy can produce results only if the acceding country is willing and able to cooperate. The conclusion is that, in future accession treaties, safeguard clauses should be robust enough that they can be successfully used as a last resort, to include blocking future EU

³¹The Accession Treaty contains three safeguard clauses available up to three years after accession. The first one, the general “economic safeguard clause,” can be used only after accession based on a request from an MS to deal with economic shocks resulting from enlargement, irrespective of their cause. The second safeguard clause, the “internal market safeguard,” is specifically designed to deal with the failure of a new MS to fulfill its commitments. The third safeguard clause is similar to the second one, but concerns mutual recognition in criminal and civil law matters. Although sometimes called the “justice and home affairs safeguard,” its scope of application covers only a limited part of this chapter. In addition to these safeguards, Articles 41 and 42 provide special powers to adopt “transitional measures” in the field of agriculture and food safety.

CONCLUSION

The EU enlargement process is going to continue, because the overall benefits of EU enlargement remain attractive: increased peace, democracy, stability and prosperity in Europe. Certain parameters are set by the outside world for this process, for example, the general political atmosphere and the rough timing, but high-quality efficient management of the enlargement process can make a major difference in candidate countries' reform results and their sustainability.

For the fifth enlargement round, the end of the cold war period offered a window of opportunity for a major reshuffling of the European political, security and institutional landscape. The high motivation of the applicant countries and a broad political consensus in the EU served not only to enlarge, but to support economically the future members. The “big bang” changed not only the new MSs, but also had a major impact on EU policies, forcing rethinking and reform on a broad scale.³²

There is not going to be a next “big bang”.³³ Each candidate country is unique, and future preparatory and negotiation steps will be taken in more tailor-made ways and—hopefully—without time pressure. On top of the three current candidate countries—Croatia, the former Yugoslav Republic of Macedonia, and Turkey—there are several potential candidate countries and others with European aspirations.³⁴ Some of these need little adaptation (e.g., Iceland, Norway), while others (e.g., countries in the Western Balkans, Ukraine, Moldova) would be equally or even more challenging than the

³²For a compact summary, see “Big Bang – Smaller Shocks, Enlargement 2004’s Impact on EU Policies and Process,” Burson-Marsteller.

³³For a discussion of the potential new members, see Olli Rehn, *Europe’s Next Frontiers*, Nomos, Baden-Baden 2006, and Graham Avery, “An Ever-wider Europe? Where Will the EU’s Borders End?” *Challenge Europe*, Issue 16, European Policy Center, Brussels, February 2007.

³⁴Avery.

countries of the fifth enlargement. The European Neighborhood policy (ENP) with its instruments supports the reforms necessary to prepare the countries and facilitate their possible accession process.³⁵

As shown in this paper, the management of the enlargement process can be improved. Based on the lessons learned, the Commission has already made numerous improvements³⁶ endorsed by the European Council, with others likely to follow. The quality of the process depends on all parties and on their seamless cooperation. Enlargement management should avoid last minute crisis management aspects which were experienced in some cases in the past. Using more calendar time for less numerous and more clearly designated priorities is likely to increase the quality of the results, in particular candidate country ownership and sustainability. This requires a realistic management of expectations by applicant countries' governments which are being offered a once-in-history opportunity that demands fundamental and difficult reforms. They have the opportunity of not having to bear all the negative political consequences alone, but putting part of the “blame” on the EU and its strict conditionalities. It is worth the effort.

³⁵“Communication from the Commission, A Strong European Neighborhood Policy,” Brussels, 05/12/2007, COM (2007) 774 final. See on the link between EU's enlargement experience and the European Neighborhood Policy in Amichai Magen, *The Shadow of Enlargement: Can the European Neighborhood Policy achieve compliance?*, in the Columbia Journal of European Law, Vol. 2, n°2, Spring 2006.

³⁶See. e.g.. “Communication from the Commission, Enlargement Strategy and Main Challenges 2007-2008,” Brussels, 6.11.2007 COM (2007) 663.