



# **EU-Enlargement**

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## **A Success Story?**

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# 1 Introduction

Since its creation, the EU has seen various enlargements. In 1973, Denmark, Ireland and the United Kingdom joined the European Union. In 1981, Greece became a Member, followed by Spain and Portugal in 1986. Austria, Finland and Sweden followed in 1995. 10 Middle European and Eastern European countries became full EU members in May 2004. This last enlargement round, often dubbed the big bang expansion, constitutes the largest in the history of the EU.

Bulgaria and Romania are scheduled to accede to the EU on 1 January 2007, provided that the conditions for accession are met. Accession negotiations started with Croatia and Turkey in October 2005. In December 2005, the European Council granted Macedonia the status of a candidate country but with no promise of when negotiations would start. Talks on the Stabilisation and Association Agreements (SAA) are underway with Bosnia and Herzegovina and are nearing conclusion with Albania. SAA negotiations with Serbia and Montenegro have also started but were suspended in early May 2006. Other neighbouring countries, such as Ukraine and Moldavia, have signalled their interest in membership.

While these negotiations have started, it is clear that an enlargement resembling the 2004 big bang is not in view. Accession negotiations with Turkey are expected to last 10-15 years, with no accession guaranteed. Concerning the Balkan countries or other neighbouring countries, it is evident that membership is also a long-term prospect. The EU has underlined its “determination to fully and effectively support the European perspective of the Western Balkan countries, once they meet the established criteria” (European Council of Thessaloniki). Austria’s Foreign Minister Plassnik has stressed in her capacity as President of the Council that the goal is EU membership for the countries of the Western Balkans.<sup>1</sup>

Though there is consensus among all actors that there will not be another big bang expansion, the issue of enlargement is the subject of an intense debate throughout Europe. For some stakeholders, the boundaries of the EU will be reached with the accession of Bulgaria, Romania and the Western Balkans, and for all other countries there has to be an effective instrument within the neighbourhood policy. Enlargement Commissioner Rehn argues in contrast that “it would be utterly irresponsible to disrupt a valuable process that is helping to build stable and effective partnerships in the most unstable parts of Europe.”<sup>2</sup> For others, the EU must remain open to new members but the existing Nice Treaty is regarded as an inadequate basis for further EU enlargement.

Though important stakeholders support further enlargement, it seems that the political debate begins to centre around the Union’s capacity to absorb new members and not – as to date – around the applicant countries’ readiness and ability to comply with the well-known political, economic and acquis Copenhagen criteria. Under the heading “consolidation” – the

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<sup>1</sup> [http://www.eu2006.at/en/News/Press\\_Releases/March/1103plassnik.html](http://www.eu2006.at/en/News/Press_Releases/March/1103plassnik.html)

<sup>2</sup> [activ.com/Article?tcaturi=tcm:29-153426-16&type=News&Ref=mail](http://activ.com/Article?tcaturi=tcm:29-153426-16&type=News&Ref=mail)

official term in Euro-speak – this debate starts to focus on the “absorption capacity” of the EU, which is also one of the Copenhagen criteria, though often not discussed as such in the public. Other forms of co-operation beyond full membership, such as “a privileged partnership”, are becoming important elements of the debate. In contrast to previous enlargements, the accession of the current candidate countries, particularly Turkey, will be a more controversial theme and is likely to face strong resistance.

Given the importance of the EU for the daily life of every citizen, this debate should be high on the political agenda. It should be kept in mind that the legal order of the European Union centres around the Union’s citizens and grants – unlike other international organisations – each citizen legally enforceable rights, such as the free movement of goods, the free movement of persons, the free movement of workers, the freedom of establishment, the free movement of services, the free movement of capital and payments, as well as the principle of non-discrimination. In addition, the EU constitutes a privileged framework for the settling of conflicts, making the avoidance of war<sup>3</sup> probably the most important, however often forgotten, aspect of European integration.

To support and structure the current discussions on EU-enlargement, this paper intends to highlight some key arguments of the debate. It will discuss the lessons from the 2004 enlargement round with the aim to provide input on the discussions of feasibility concerning the accession of additional European countries. In this respect, the paper will also take stock of the developments between 1989 and 2004 in the new Member States (NMS) as well as trends after accession in 2004. In light of the complexity of the discussion, this paper will not provide an exhaustive analysis of all relevant aspects.

## 2 The last enlargement round

Even though the EC was initially a community of only six countries, the founding treaty from the first day intended this union not as an exclusive club of a few European countries, but rather embraced the **vision of a united Europe**. In line with this, the first preamble consideration of the EC Treaty lays “the foundations of an ever closer union among the peoples of Europe”. This stipulates a binding commitment to deepen the European integration process, as reflected by the words “an ever closer union”. At the same time, the definite plural – “among *the peoples* of Europe”, instead of the indefinite form of the plural (e.g. “among (some) European peoples”) – clearly indicates that the union shall be open to *all* peoples of Europe. The second preamble consideration of the EU Treaty recalls “the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe”. Arguably, these provisions establish the constitutional **principle of enlargement**.

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<sup>3</sup> Cf. to the last preamble consideration of the EC Treaty.

This principle of enlargement is viewed as the basis for **extending and implementing the objectives** of the EU, namely that of peace, prosperity, and stability.<sup>4</sup> With the foundation of the European Communities, it was clear that peace and stability in Europe can only be secured in a continental setting that does not leave neighbouring countries in conflict and instability. Given the importance of economic prosperity for peace, the Union objectives include to foster economic and social prosperity and to strive for an improvement of the living and working conditions for the population. As the key instrument to promote economic growth, the EU has worked to establish the common markets and a legal order, which grants each citizen individual, legally enforceable rights.<sup>5</sup>

## 2.1 Implications of the 2004 Enlargement on the new and old Member States

In light of the potential role of enlargement in implementing the Union's objectives, the following chapter discusses in brief the implications of the 2004 enlargement on the new and old Member States. The following section highlights some key implications on security, economy, employment, migration and environment.

### 2.1.1 Stability and security

- The NMS have **developed into stable democracies** over the last decade, which is a very remarkable achievement after decades of communist rule. The NMS have seen many changes in governments over the last 15 years. Though some elections were marred by irregularities, none of these irregularities were of a size able to falsify the will of the voters. Elections were generally held in accordance with the respective country's electoral provisions and international standards. Governments in office did not attempt to rig elections in a systematic manner. Ruling parties have been ready to admit electoral defeat. The development of stable democracies in the NMS is a remarkable achievement in itself with great benefits for Europe's stability as a whole.
- The **Balkan wars** in the 1990s have forcefully shown the implications of instability in neighbouring countries for the EU. Besides the humanitarian dimension of these wars, the rise of organised crime with its trans-boundary activities in the aftermath of these wars and the great number of refugees from these countries, notably in Germany, have underlined the significance of stability in Europe for the EU Member States.
- There were concerns that enlargement would lead to more **crime** as borders open up. At the same time, it was repeatedly argued that enlargement enables the EU to extend its police and justice co-operation to the NMS, thus making the fight against crime and terrorism more effective. However, it is unlikely that enlargement has an immediate effect

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<sup>4</sup> Consequently, Art. 49 EU, the provision regulating the accession of new member states, determines that any European state which respects the principles set out in Art.6 (1) EU, i.e. the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, may apply to become a full member of the Union.

<sup>5</sup> EuGH, Urteil vom 5.2.1963, Rs. 26/62, Van Gend & Loos, Slg. 1963, 1.

on the crime situation, because most Schengen provisions are yet not in force and border controls between the EU-15 and the NMS will remain in place for some time.<sup>6</sup>

### 2.1.2 Economy

- After a sharp economic decline in the early 1990s, **NMS's economies** were generally characterised by robust growth. The NMS had an average 3.75% economic growth rate between 1997 and 2005 compared with 2.5% of the EU-15. Growth benefited from substantial foreign investment in the NMS. Foreign direct investment increased to 20 % of the GDP of the NMS in 2002 and reached a new record high in 2005.<sup>7</sup> Foreign direct investment in the EU-10 totalled 191 billion € in 2004, or 40 % of their total GDP, while it was virtually non-existent some ten years earlier.
- These FDI flows, however, amount only to 4% of the EU-25 overall investment, compared to 53% for outflows to the EU-15 and 12% to the US.<sup>8</sup> As a consequence, a **mere 1-1.5% of the annual job turnover** can be attributed to relocation, and only a part concerns relocation to the NMS. In the case of Germany and Austria, for example, such investment has led over the past fifteen years to lower employment creation, in cumulative terms, in the range of only 0.3-0.7%. In fact, outsourcing to the new Member States has allowed firms in the EU-15 to strengthen their competitive position with a net favourable impact on employment. However, it must be kept in mind that the impact of relocation can be substantial in certain industries or regions and can have, as a consequence, an important impact on public opinion.<sup>9</sup>
- **Economic growth was further boosted by EU membership**, with Latvia and Estonia posting 10 % GDP growth in 2004. NMS economies have caught up with the EU-15 in some aspects and the EU-10 average income has risen from 44% of the EU-15 level in 1997 to 50% in 2005.<sup>10</sup> However, weaknesses remain in the capacities of relevant administrations and R&D spending which is considerably lower than in the EU-15.<sup>11</sup>
- **Trade between the NMS and the EU-15** has grown dramatically since the collapse of the communist block. Exports from the EU into the NMS increased 6.5 fold; imports from the NMS into the EU-15 grew 4.5 fold. This increase in trade created growth and jobs in all countries involved, notably in **Germany** which accounts for 50 % of the trade between the NMS and the old EU Member States. Germany's exports to the 8 NMS in central and eastern Europe grew by 34 % from 2000-2004, compared with 25 % to the EU-15. The

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<sup>6</sup> Council of Europe: Organised Crime Report 2004

<sup>7</sup> Ognian N. Hishov: Economic Effects of EU Eastern Enlargement, SWP Research Paper, July 2004

<sup>8</sup> Press Release: Enlargement, two years on: all win as new Member States get richer, IP/06/557, 3 May 2006

<sup>9</sup> Communication from the Commission to the Council and the European Parliament: Enlargement, Two Years After - An Economic Success, COM (2006) yyy final, 3 May 2006

<sup>10</sup> Communication from the Commission to the Council and the European Parliament: Enlargement, Two Years After - An Economic Success, COM (2006) yyy final, 3 May 2006

<sup>11</sup> [http://wiiw66.wsr.ac.at/cgi-bin/t3cgi.exe/publ/lastpubl.taf?\\_function=detail&BERICHTLAND\\_uid1=RR325&rabatt=&\\_UserReference=4008BF6208BF1A3E4444C852](http://wiiw66.wsr.ac.at/cgi-bin/t3cgi.exe/publ/lastpubl.taf?_function=detail&BERICHTLAND_uid1=RR325&rabatt=&_UserReference=4008BF6208BF1A3E4444C852)

EU-15 share of total EU-10 trade increased from about 56 % in 1993 to 62 % in 2005.<sup>12</sup> The EU-15 generated a trade surplus with the NMS of about 125 billion €.

- Concerning **public finances**, six of the new Member States joined the EU with government deficits in excess of the 3% of GDP threshold set by the Treaty, but most of them have made progress toward the correction of the excessive deficit situation. Currently, public debt in most of the EU-10 is well below that of the EU-15,<sup>13</sup> but Hungary reported a budget deficit of 6.9 %, the highest in the EU, and fails also on all other criteria for taking part in the currency union.

### 2.1.3 Unemployment and Migration

- Wide variations can be observed across the NMS with **unemployment** rates in 2005 ranging from about 6% in Cyprus and Slovenia to more than 16% in Slovakia and almost 18% in Poland. The average EU-10 unemployment rate is 13.4% compared to 7.9% in the EU-15.<sup>14</sup> At the same time, some industries in the NMS deplore a lack of qualified staff and consider this as an impediment to growth. In response, there is some migration of workers from the EU-15 to the NMS, in particular in the automobile and IT sectors. Average income is still considerably lower than in the EU-15, although wages are increasing in some key industries.
- The recent economic development has not ended strong **regional disparities** in the NMS. The NMS have thriving cities, notably their capitals, and rural areas that lag behind, in particular further East. There are signs that this urban-rural divide will widen in the near future. In the NMS, a much higher percentage of the population live in rural areas than in the EU-15.
- Despite this, there has been **no large migration** from the NMS to the old EU-15 since May 2004. This is consistent with the experience of previous enlargements. While the share of insured staff from the NMS has doubled since 2003, it remained at a low 0.4 % of the workforce. Remarkably, the share of workers from the NMS in Sweden, a country with no restrictions on immigration, remained at a low 0.2 %, while it grew in Austria from 0.7 % to 1.4 %, which has not lifted immigration restrictions. It is widely expected that migration from the NMS into the old member States will be moderate.<sup>15</sup> In light of this level of immigration, level of wages and employment in the EU-15 did not suffer from enlargement. In fact, Britain, Ireland, Sweden, Portugal, Spain, Finland and France have either not imposed restrictions for workers at all or have announced the lifting of the measures from 1 May 2006. A recent report of the European Parliament confirms that Britain, Ireland and Sweden have drawn economic benefit from unrestricted migration. This report also states that the other old member states have not gained from the exclusion but aggravated some problems, such as higher levels of illegal work and sham

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<sup>12</sup> Press Release: Enlargement, two years on: all win as new Member States get richer, IP/06/557, 3 May 2006

<sup>13</sup> Communication from the Commission to the Council and the European Parliament: Enlargement, Two Years After - An Economic Success, COM (2006) yyy final, 3 May 2006

<sup>14</sup> Communication from the Commission to the Council and the European Parliament: Enlargement, Two Years After - An Economic Success, COM (2006) yyy final, 3 May 2006

<sup>15</sup> Michael Kreile: Die Osterweiterung der EU, 2005



self-employment, unfair working conditions and exploitation of migrant workers.<sup>16</sup> Even unqualified workers, a group deemed particularly vulnerable to migration from the NMS, will probably not benefit from immigration restriction as these restrictions close the main entrance but keep the backdoor open for illegal immigration and labour.

#### 2.1.4 Environmental Protection

- Compliance with the environmental acquis poses a significant challenge for the NMS, but also **great opportunities**. For example, full implementation of the EU Directives related to air quality can lead to between 15.000 and 34.000 fewer cases of premature deaths from exposure to air pollution, and between 43.000 and 180.000 fewer cases of chronic bronchitis. In sum, the annual value of all relevant benefits are estimated to amount between 12 and 69 billion €. Over the time period until 2020, cumulative benefits could amount to between 134 and 681 billion €.<sup>17</sup>
- Given the trans-boundary effects of environmental pollution, the benefits of implementing the EU legislation do not only accrue to the candidate countries but will yield significant trans-boundary **benefits in neighbouring countries, including in the EU-15**. According to an ECOTEC study, total benefits from actions by the candidate countries for other countries could amount to 16 billion € per year. The EU Member States benefit from 6.5 billion €, and other countries, notably the Ukraine, Belarus and Russia, some 9.5 billion EUR a year.<sup>18</sup>
- However, the example of greenhouse gas emissions underlines that enlargement and economic growth also has **potential downsides**. While most NMS are on track to meet their current commitments under the Kyoto Protocol, quite often with large surpluses, it is projected that NMS may repeat the patterns seen for Greece, Ireland, Portugal and Spain in which high economic growth brought with it strong increase in the transport sector and hence in greenhouse gas emissions. As a consequence, emissions aggregated from all NMS (excluding Cyprus and Malta for which data were not available) are projected to increase after 2003 but will still be 19 % below the base-year level by 2010. Only the Czech Republic and Estonia projects were successful in decreasing emissions between 2003 and 2010. In Hungary and Poland, greenhouse gas emissions in 2010 are projected to be significantly above 2003 emission levels.

## 2.2 Implications of enlargement on the EU

At the eve of the 2004 enlargement, various actors have voiced concerns about negative implications of the accession on the EU. The section below discusses some relevant developments after 2004:

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<sup>16</sup> Report on the transitional arrangements restricting the free movement of workers on EU labour markets (2006/2036(INI)) Committee on Employment and Social Affairs, FINAL A6-0069/2006, 22 March 2006

<sup>17</sup> ECOTEC: The Benefits of Compliance with the Environmental Acquis for the Candidate Countries

<sup>18</sup> ECOTEC: The Benefits of Compliance with the Environmental Acquis for the Candidate Countries



- Within the EU decision making process, the **NMS have not acted as a uniform block** in the pursuit of certain interests. They have taken common position towards specific issues with particular effects on the NMS *per se*, such as a stringent evaluation of their border regime with the objective to join the Schengen area by the end of 2007. However, the NMS have not lacked the will to compromise but rather have taken a responsible approach towards community interests. In fact, recent statistics from the Council indicate a disproportionately low number of negative votes or abstentions among the NMS in the years 2004-2005. It appears that NMS have been in a phase of intensive learning, a pattern also valid for previous enlargements.<sup>19</sup>
- In line with this, the NMS played a constructive role in the negotiations over the **financial perspective 2007-2013**, which were burdensome and for many a *déjà vu* of the problems which occurred with the Agenda 2000. NMS were interested in a timely compromise, fearing that payments would otherwise be postponed. There was a general view that a compromise agreement was better than no agreement at all.<sup>20</sup>
- NMS have made **remarkable progress in transposing the acquis**. According to the last Internal Market Scoreboard (No 14 of December 2005), the transposition deficit of the new Member States is 1.2%, compared to 1.9% for the old Member States. Out of 8 Member States that have not reached the 1.5% target, 7 are old Member States. However, the increase in infringement cases in all NMS and the high number of infringement cases against Poland, Malta, and the Czech Republic indicate an **implementation deficit**. As a consequence, there is wide-spread concern over the weak level of administrative capacities in the NMS, but there has been no discussion that the Commission should invoke the safeguard clauses under the accession treaty. NMS have transposed the entire *acquis communautaire*. Only around 300 transitional measures were accepted. Given the size of the *acquis*, it is evident that transposition is a major achievement with profound implications for the societies, economies and environment of the NMS.
- Since accession, NMS have further improved their **ability to absorb EU funds**. It is predicted that most NMS will be able to absorb the same share of cohesion and structural funds as Spain and Portugal 8 years after accession.<sup>21</sup> Estonia is expected to receive funding worth 3.5 % of its GNP, Poland 2.8 %. As companies in particular from the old Member States benefit from an improved infrastructure, the increased absorption is likely to bring positive effects across the European economies.
- The **election to the European Parliament** in 2004 showed a very low turnout in the NMS. The 38.5 % voter turnout in Hungary, 28.3 % in the Czech Republic, 20.9 % in Poland, and only 17 % in Slovakia was considerably lower than in the EU-15.

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<sup>19</sup> Sebastian Kurpas, Justus Schönlein: Deadlock avoided, but sense of mission lost? CEPS Policy Briefs No. 92/February 2006

<sup>20</sup> Institut für Europäische Politik: EU-25 Watch No 2, January 2006

<sup>21</sup> Kai-Olaf Lang: Ostmitteleuropa nach dem Beitritt, SWP, February 2006

### 3 Feasibility of Further Enlargement

Many concerns have been voiced that the Accession Countries (AC) and Candidate Countries (CC) are not or will never be ready to accede. This debate has become more intense, and is sometimes overshadowed by stereotypes and irrationalities. The section below attempts to inform the discussion with facts. It will focus – like the political debate – on the implementation of the Copenhagen criteria, the decisive benchmark for accession. In light of the controversy around the accession of Turkey, the respective chapter also analyses the negotiation frame pertaining to Turkey.

#### 3.1 Bulgaria and Romania

The **accession negotiations** with Bulgaria and Romania were concluded in December 2004.<sup>22</sup> The Treaty of Accession was signed on 25 April 2005 and is currently being ratified by the EU Member States. As of April 2006, 14 Member States have ratified the treaty. The accession treaties contain safeguard clauses which may be invoked to postpone accession by one year to 1 January 2008. In the latest monitoring report of 16 May 2006, the Commission stated that EU entry for both countries was feasible in January 2007, provided that they address a number of outstanding reform-related issues. A postponement of accession until 2008 also remains an option. The final recommendation of the Commission is due in early October 2006. On this basis the European Council will take a final decision.

In its latest monitoring report, the **Commission** has concluded that Bulgaria and Romania fulfil the **political criteria**. Nevertheless, the Commission has requested further improvements “in a number of areas”. According to the May 2006 monitoring report, **Bulgaria** has reduced the 16 areas of “serious concern” (in 2005) to six such areas which require “urgent attention”, e.g. clearer evidence of results in investigating and prosecuting organised crime networks (Chapter 24), more effective and efficient implementation of laws for the fight against fraud and corruption (Chapter 24), intensified enforcement of anti-money laundering provisions (Chapter 24), and strengthened financial control for the future use of structural and cohesion funds (Chapter 28). Pursuant to the May 2006 monitoring report, **Romania** also fulfils the political criteria for membership to the EU. In October 2005, 14 areas gave rise to “serious concern.” Today, the Commission identifies four areas that require “urgent attention”, e.g. a proper integrated administration and control system in agriculture (Chapter 7), and tax administration IT systems ready for inter-operability with those of the rest of the Union (Chapter 10).

**Other observers** generally agree with these findings. Concerning **Bulgaria**, the 2005 Transparency International Global Corruption Barometer - with the worst scoring being 5 – rates political parties with 4,3 and Parliament 4,2. According to a new report by the Centre for the Study of Democracy (CSD), the number of known corruption cases in Bulgaria is

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<sup>22</sup> The European Parliament voted with 522 respectively 497 votes for accession. Bulgaria's accession has initially enjoyed wider support throughout the EU than the accession of Romania, echoed by the super-safeguard clause which pertains only to Romania and which the Council applies by qualified majority (unlike unanimously in the case of Bulgaria).

increasing, and most of these cases go unpunished. In addition, while in the 1990s corruption occurred mainly in the context of privatisation deals, the current cases are often found in public tender management, EU fund distribution and VAT fraud.<sup>23</sup> For some observers, the political turmoil after the last Parliamentary Elections in Bulgaria questioned the political maturity of the country and ultimately the ability to accede in January 2007.<sup>24</sup> Commissioner Rehn has recently stated that Bulgaria is losing time in carrying out required reforms.

Concerning **Romania**, the 2005 Transparency International Global Corruption Barometer rates political parties with 3,8 and Parliament 3,6. The corruption trails against former Prime Minister Nastase could mark the beginning of a promising trend, though it also highlights the dimension of the problem. Romania is also ahead of schedule to implement the Schengen border regime and expects to join the Schengen agreement by 2010.<sup>25</sup> Commissioner Rehn has recently praised Romania's judicial reforms and its crackdown on corruption. The Foreign Committee of the European Parliament found that the country violated the political criteria. This allegation stands in contrast to the findings of the Commission.

Concerning the **functioning market economy** criterion, the Commission has concluded that both countries have complied. Regarding the ability to cope with competitive pressure and market forces within the Union, the Commission concluded that, for Bulgaria, 'the continuation of its current reform path' and that, for Romania, 'vigorous implementation of its structural reform programme' should allow them to do so.<sup>26</sup> With a growth rate of 5,6 %, Bulgaria has managed to reduce unemployment to 12,7 % and to produce a budget surplus of 1,7 % of the GDP for 2004 (with a growing tendency in 2005). From 2000 to 2005, Romania enjoyed economic growth rates of above 5 % (8,4 % in 2004), reduced inflation from an unacceptable high 40 % to 9,3 %, and reduced unemployment from 10,2 % to 6 %. Despite a good deal of macroeconomic stability, poverty rate and unofficial unemployment remain high. Average income in both countries is also significantly lower than in the old Member States.

In 2005, the Commission expected Romania and Bulgaria to **fulfil the acquis criteria** and be ready for membership by January 2007. This assessment is based on the assumption that the level of progress can be maintained throughout 2006.<sup>27</sup> In its 2005 monitoring report, the Commission assesses deficits in the areas of public procurement, taxes, property, environment and agriculture. The Commission will continue to monitor the situation in Bulgaria and Romania.

The state of the **environment** has improved in some areas. However, various problems persist or have been aggravated. The integration of environmental aspects into other policy areas poses a great challenge to these countries. Generally, environmental concerns lack

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<sup>23</sup> On the Eve of EU Accession: Anti-Corruption Reforms in Bulgaria; Centre for the Study of Democracy, March 2006

<sup>24</sup> Barbara Lippert, Bulgarien: Jahrbuch der Europäischen Integration, 2005

<sup>25</sup> Frankfurter Allgemeine Zeitung, 5 April 2006: Ein Blödsinn, die Schutzklausel anzuwenden

<sup>26</sup> Communication from the Commission: Comprehensive monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, 25 October 2005

<sup>27</sup> Communication from the Commission: Comprehensive monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, 25 October 2005

the political weight to be adequately implemented in case of conflicts with other interests, notably road traffic, agriculture, and industry. In addition, horizontal environmental legislation is not yet completed in either country.

## 3.2 Turkey

### 3.2.1 Negotiating Framework

Turkey has been an associate member of the EU since 1963 and an official candidate since 1999. On 3 October 2005, **membership negotiations** were opened with Turkey. The accession negotiations start with a screening process by the Commission – scheduled to take up to 6 months - to assess Turkey's progress in harmonising its laws with those of the Union.

For the accession negotiation with Turkey, the Commission presented a **negotiating framework**, which Turkey accepted after intense negotiations with the EU-25's foreign ministers. Under this negotiating framework, the shared objective of the negotiations is exclusively accession, and no other model of co-operation, such as a privileged partnership. However, accession negotiations with Turkey are an open-ended process, with full membership not automatically guaranteed. Like previous accessions, the negotiations will be based on Turkey's own merits and their pace will depend on Turkey's progress in meeting the Copenhagen criteria. In addition, the achievement of a comprehensive settlement of the Cyprus problem within the UN framework and the fulfilment of the obligations under the customs union will be required. Furthermore, the negotiations can only be concluded after the establishment of the financial framework for the period from 2014 together with possible consequential financial reforms, and any arrangements should ensure that the financial burdens are fairly shared between all Member States.

Accession negotiations may be **suspended** in case of serious and persistent breach by Turkey on the principles of liberty, democracy, respect for human rights, other fundamental freedoms, and the rule of law. The Commission, on its own initiative or on the request of one third of the Member States, may recommend the suspension of negotiations and propose the conditions for eventual resumption. After having heard Turkey, the Council decides by qualified majority on such a recommendation.

**Transitional measures** requested by Turkey can be granted if they are limited in time and scope, and accompanied by a plan for implementation. Safeguard clauses in areas such as the freedom of movement of persons, structural policies, or agriculture may be considered, including permanent safeguard clauses.

Parallel to accession negotiations, the EU intends to engage with Turkey in an **intensive political and civil society dialogue**. The aim of the inclusive civil society dialogue will be to enhance mutual understanding by bringing people together.

### 3.2.2 Status quo in Turkey

The Commission has assessed that political transition is ongoing in Turkey and the country continues to sufficiently fulfil the **Copenhagen political criteria to an extent that permits opening of accession negotiations**. According to the Commission, though important legislative reforms have now entered into force, the pace of change has slowed in 2005 and implementation of the reforms remains uneven. The Commission has also assessed that human rights violations are diminishing, although they continue to occur. The Commission calls for significant further efforts to improve fundamental freedoms and human rights, particularly freedom of expression, women's rights, religious freedoms, trade union rights, cultural rights and the further strengthening of the fight against torture and ill-treatment.<sup>28</sup> At the same time, the Commission assesses that **the reformed Penal Code**, adopted on 1 June 2005, generally complies with modern European standards and is in line with criminal law in many European countries. In addition, the new Code of Criminal Procedure represents a major step forward. It introduces, for example, the concept of cross examination of witnesses during trials, which did not previously exist in the Turkish legal system. It must also be noted that Turkey has abolished the death penalty in war time, a remarkable achievement given the debate around these legislative reforms and recent Turkish history.

However, **violence in Turkey's South East** is currently on the rise again. In March 2006 police killed demonstrators in Diyarbakir during a rally of PKK supporters. Following skirmishes between police and PKK supporters, with numerous deaths, were probably the most violent in the last 10 years and raised the spectre of war. Partly in response, the Turkish government was talking of toughening anti-terror legislation which had previously been viewed as an obstacle to Turkey's EU membership. This legislation would, among other things, deny access of suspects to lawyers for the first 24 hours of detention and allow security forces to shoot suspects if they do not surrender on first command. This stance is a far cry from recent Turkish policies which was ready to accept mistakes in its dealings with the Kurds.

In addition, **human rights developments** in Turkey were mixed during 2005. Human Rights Watch assessed, among others, sustained progress in combating torture but little progress toward guaranteeing language freedoms and freedom of expression.<sup>29</sup> In line with this, the government is considering to reintroduce jail sentences for journalists accused of "propagating terrorism", a provision used to imprison hundreds of writers in the 1990s. Furthermore, relations with **Cyprus** remain a serious problem in order to fulfil the political Copenhagen criteria. Turkey is obliged to open its harbours and airports for Cyprus but has ruled out taking this step unless the EU embargo against Northern Cyprus is eased. As a consequence, Commissioner Rehn has warned that relations with Turkey could head for a "train crash" over Cyprus by the end of the year.<sup>30</sup>

The Commission assesses that Turkey has made fundamental progress in the **economic** field and may now be regarded as a functioning market economy. Turkey should also be able

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<sup>28</sup> Communication from the Commission 2005 enlargement strategy paper, 9 November 2005

<sup>29</sup> <http://hrw.org/english/docs/2006/01/18/turkey12220.htm>

<sup>30</sup> Economist, 1 April 2006, A crescent that could also wane

to cope with competitive pressure and market forces within the Union in the medium term. The Commission bases these assessments on the assumption that Turkey firmly maintains its stabilisation policy and takes further decisive steps towards structural reforms.<sup>31</sup> The World Bank also recognises Ankara's reform efforts and economic performance, though it notes the high level of unemployment, poverty, and regional disparities.<sup>32</sup> Since October 4, the date of the formal opening of talks, Turkey has seen FDI grow to 8 billion € in 2005. Turkey is the fastest and largest emerging market in and around Europe.<sup>33</sup>

Despite robust economic growth (9 % in 2004) and tamed inflation, **unemployment** in Turkey remains high at above 11 % and has declined only by 0.2 %. At the same time, informal employment has grown from 51,7 to 53,0 %. While productivity of the Turkish industry has recovered from the 2001 crisis, wages have remained at the level of the crisis.<sup>34</sup> Public debt remains high (for 2005 at estimated 6 % of the GDP).

Regarding the **adoption and implementation of the acquis**, the Commission assesses that Turkey's alignment has progressed in several areas but remains at an early stage in most areas. The Commission notes that administrative and judicial capacity must be reinforced to apply EU rules.<sup>35</sup>

Some observers have noted that Turkish membership is not as controversial as previously.<sup>36</sup> However, the majority of the **European public** perceive full membership of Turkey as problematic, an important difference to previous enlargement rounds which were not opposed by a significant share of the public. Support for EU membership from the **Turkish public** has also declined. Opinion polls show that public support in Turkey slipped from 74 % to 58 % in March 2006. Disillusionment with EU membership is also supported by the widely spread impression that the EU is hiding behind the Cyprus issue to sabotage Turkish membership.<sup>37</sup>

### 3.2.3 Conclusions on Turkey

- Enlargement negotiations will be **particularly challenging**. They will be opposed by significant stakeholders and a considerable part of the public. Essentially, Turkey will only be admitted if it is perceived as a normal European country,<sup>38</sup> a blurred concept which will be very difficult to convey.
- **Recent reforms in Turkey** were not only adopted in pursuit of foreign investment, EU funding or freedom of movement, but also of a domestic aim for peace. Various stakeholders, such as the Kurds, unions, industry or religious groups, have high

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<sup>31</sup> Communication from the Commission:2005 enlargement strategy paper, 9 November 2005

<sup>32</sup> World Bank: Turkey: Country economic memorandum 2006

<sup>33</sup> Turkish Industrialists' & Business Association: <http://www.euractiv.com/en/enlargement/commission-enlargement-proved-economic-worth/article-154930>

<sup>34</sup> Günter Seufert, Jahrbuch der Europäischen Integration 2005: Türkei

<sup>35</sup> Communication from the Commission 2005 enlargement strategy paper, 9 November 2005

<sup>36</sup> Institut für Europäische Politik: EU-25 Watch No 2, January 2006:

<sup>37</sup> Economist, 1 April 2006, A crescent that could also wane

<sup>38</sup> Heinz Kramer: EU – Türkei: Vor schwierigen Beitrittsverhandlungen, SWP, May 2005



expectations for membership. They believe that integrating Turkey into the EU would result in more Kurdish autonomy, improved working conditions, reduced Turkish bureaucracy and religious freedoms.<sup>39</sup> In this respect, the **prospect of EU membership has been the main engine for reform**. On the other side of the same coin, groups opposing these reforms will benefit from a gloomy forecast for EU membership. There are rumours, for example, that parts of the Turkish army and bureaucracy provoke open Kurdish violence, aiming to force the government to scrap EU-inspired reforms. Similarly the PKK is expected to recover lost political ground through violence.<sup>40</sup>

- For the first time in the history of EU enlargement, the EU stresses the **open character** of accession negotiations, strict monitoring, and the nexus between membership and the financial perspective 2014.
- Recent years of **economic** and **political** stability are starting to look vulnerable.

### 3.3 Croatia

According to the Commission, Croatia faces no major difficulties in meeting the **political requirements** for membership. There has been progress in most areas but important efforts are still needed to reform the judicial system, including the unbiased prosecution of war crimes, to fight corruption, to improve the situation of minorities, and to facilitate refugees' return. There has been good progress on regional co-operation, both in terms of bilateral relations with neighbouring countries and in terms of regional initiatives. The lack of full co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) prevented the EU from opening accession negotiations as envisaged in March 2005; full co-operation has now been established and must be maintained. Observers expect that co-operation with the ICTY will not pose a problem for accession negotiations with Croatia in the future.

Regarding the **economic criteria**, the Commission considers Croatia a functioning market economy, which should be able to cope with competitive pressure and market forces within the Union in the medium term. However, it must be noted that - despite substantial economic growth - unemployment and budget deficit in Croatia remain high.

According to the Commission, Croatia has made some progress on the adoption and implementation of the **acquis**, mainly in terms of legislative alignment. As of early 2005, the Sabor has passed 500 laws and other legal acts, aligning nearly 50 % of Croatia's legislation with the acquis. However, in many cases, enforcement is weak and administrative capacity remains uneven.<sup>41</sup> Commentators have agreed with the Commission's overall assessment, making the issue of Croatia's accession less controversial.

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<sup>39</sup> Günter Seufert, Jahrbuch der Europäischen Integration 2005: Türkei

<sup>40</sup> Economist, 1 April 2006, A crescent that could also wane; and 15 April 2006: Fighting On

<sup>41</sup> Communication from the Commission 2005 enlargement strategy paper, 9 November 2005



### 3.4 Macedonia

According to the Commission, Macedonia has displayed a strong commitment to the implementation of the Ohrid Framework Agreement and has made important progress since 2001, strengthening the country's stability. Strengthening the rule of law, reforming the electoral process, the judicial system and the police, and upgrading the fight against corruption are key challenges for the country. The weak capacities of the public administration to implement the *acquis* is another main concern.

Regarding the **economy**, the first years of transition saw a sharp decline in economic activity. By 1994, economic activity had declined to about three-quarters of the production level before independence. The following years were then characterised by relative economic stability. The crisis in 2001, when the country was at the brink of civil war, led again to a period of increased economic uncertainty and GDP declined by 4.5% in the same year. Since then, real GDP growth accelerated to 4.1% (2004 and 2005). The employment rate has basically remained static at an extremely low level with fewer than 35% of persons at working age registered as employed. Unemployment is still very high with 38 % in 2005. Average income is drastically lower in Macedonia than in the old EU. In sum, the economy suffers from various institutional and structural weaknesses that deter investment and employment, although the economy has achieved a high degree of macroeconomic stability and economic integration with the EU.

Despite these shortcomings, development over the last 5 years has been remarkable, in particular in light of the fact that the country was at the brink of civil war in 2001.

### 3.5 Potential Candidate Countries: Albania, Bosnia-Herzegovina, Serbia-Montenegro

The Commission assesses that the overall **political situation** in the Western Balkans is improving but considerable challenges remain.

**Albania's** political stability has recently improved, as demonstrated by the smooth transition to a new government in July/August 2005; however, governance still needs to improve significantly.

According to the Commission, **Bosnia and Herzegovina** has made significant progress in co-operation with the ICTY, with many transfers of indicted to the Hague, but they still need to achieve full co-operation. In addition, Bosnia has met the conditions for joining the NATO's Partnership for Peace (PFP) programme, and the country is awaiting the PFP green light. Defence reforms continue, with the goal of securing NATO membership by 2008. Bosnia has made considerable progress in implementing the priorities in the Feasibility Study, but its complex constitutional structures often lead to blockages and inefficiency in decision-making. The recent rejection of the constitutional reform, widely deemed as essential to stabilise the fragile institutional setting of the country, is a major setback in Bosnia's bid for EU membership.

According to the Commission's findings, **Serbia and Montenegro** suffer from structural weaknesses and co-ordination difficulties, particularly in areas where competencies are

shared between the State Union and the republics. Concerning co-operation with the ICTY, the Commission initially noted improved co-operation with the ICTY, but on 3 May 2006 the Commission suspended SAA talks with Serbia and Montenegro over the failure to capture war crimes suspect Ratko Mladic. The negotiations could resume once Serbia was seen to be fully co-operating with the ICTY. In addition, recent opinion polls indicate that the Serbian Radical Party is the most favoured political group in the country, with current ratings of 38 %. The situation has changed following the vote for independence by Montenegro on 21 May 2006, and accession prospects of Montenegro might be reconsidered.

The Commission assessment concludes that **democratic institutions as well as the judicial systems** are generally improving in the Western Balkans, but are vulnerable to political interference and suffer from weak administrative and implementation capacities. The countries of the Western Balkans also need to develop a highly qualified and independent civil service to manage the European integration process. Reform of police services needs to continue, to ensure that they operate without political interference and that they are organised according to technical and professional criteria. Organised crime and corruption remain a serious problem in the entire region. The number of people still registered as refugees or internally displaced persons has decreased.

According to the Commission, **macroeconomic stability** has strengthened overall. This contributed to sustained growth rates and moderate inflation. As landmark reforms, Bosnia established a single economic space, a single customs entity (instead of two departments), and a state-level sales tax law. However, high current account deficits as well as unemployment remain at unacceptable high levels. To aggravate the problem, unemployment has increased from 2004 to 2005 (with Albania being the exception), i.e. from 43.9 to 46 % in Bosnia, 18.5 to 20 % in Serbia, and 27,7 to 28 % in Montenegro. Enforcement of property rights and contracts is still difficult. The large informal sector remained a source of uneven competition and tax evasion.<sup>42</sup>

#### **4 Institutional Feasibility: Can the EU-Institutions Cope With Further Enlargement?**

The core question regarding the feasibility of further enlargements is whether an enlarged Union remains able to act or will become dysfunctional. The Union's ability to act depends on the existence of an adequate legal framework. In this context, the relevant provisions of the Treaty of Nice and of the Treaty on a Constitution for Europe will be analysed, i.e. to what extent the probability of successful decision-making in the relevant institutional setting is retained.<sup>43</sup>

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<sup>42</sup> Communication from the Commission 2005 enlargement strategy paper, 9 November 2005

<sup>43</sup> See Wolfgang Wessels, Die institutionelle Architektur der EU nach der Europäischen Verfassung: Höhere Entscheidungsdynamik – neue Koalitionen?, in: *Integration* 2004, 161 (169).

## 4.1 Legal framework and the institutional feasibility of further enlargements

The existing Constitutional framework of European Union law is prepared, to a certain extent, towards upcoming enlargement rounds. The main legal preparations for an enlarged Union are contained in the **Protocol on the Enlargement of the European Union**, annexed to the Treaty of Nice of 2001.<sup>44</sup> In the past years, several initiatives were launched to solve institutional and constitutional challenges. The most prominent was certainly the draft of a **Treaty on a Constitution for Europe (TCE)**. Even though the continuation of the ratification process of the TCE is not assured, the institutional reform propositions of the Constitutional Treaty shall be analysed as to whether they will permit a successful preparation of the Union for further enlargements.

### 4.1.1 European Parliament

With regard to the provisions concerning the number of representatives in the European Parliament, the **Protocol on the Enlargement of the European Union** determines that the total number of representatives in the European Parliament for the 2004-2009 term shall be the sum of the representatives from the EU-15 plus the number of representatives of the NMS, i.e. a maximum of 732. In case of admittance of additional countries, Art. 2 (4) 1 of the Protocol states that the number of members of the European Parliament may temporarily exceed 732 for the period for which that decision applies. For the following election term, the number of representatives elected in each member state would then be the **subject of new negotiations**.

**Art. I-20 TCE**, in contrast, limits the number of Members of Parliament to 750. This provision stipulates that representation shall be proportional with a minimum threshold of six members per Member State and a maximum of 96. Art. I-20 (2) subparagraph 2 TCE leaves the concrete composition of Parliament, i.e. the determination of the number of Members of Parliament representing the voters of a Member State, to a unanimous decision taken by the European Council on the initiative and with the consent of the European Parliament. In fact, this leaves the difficult task of determining the concrete composition of the Parliament to a political decision of the European Council, and removes it from the constitutional process. Whether it will be easier to find a consensus in a political process involving Parliament and European Council, as compared to finding a consensus among Member States, remains to be seen. However, a maximum of 750 members of Parliament does not undermine the effectiveness of this institution, as Parliament functions currently with more than 730 members.<sup>45</sup>

In **conclusion**, Art. I-20 TCE constitutes a provision that ascertains the institutional ability of the European Parliament to function properly. Further enlargement is thus possible under this provision. Moreover, the regular law-making procedure is applied more than twice as often as the current co-decision procedure<sup>46</sup>, thus strengthening Parliament's role in the law

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<sup>44</sup> Referred to as „the Protocol“ (2001/C 80/01, OJ Nr. C 80, 10.3.2001, p. 1).

<sup>45</sup> For Wessels, the ability of Parliament to work remains to be proven, cf. Wolfgang Wessels, Die institutionelle Architektur der EU nach der Europäischen Verfassung: Höhere Entscheidungsdynamik – neue Koalitionen?, in: *integration* 2004, 161 (164).

<sup>46</sup> Wolfgang Wessels, Die Die institutionelle Architektur der EU nach der Europäischen Verfassung: Höhere Entscheidungsdynamik – neue Koalitionen?, in: *integration* 2004, 161 (163).

making process. In consequence, it can be expected that an enlarged Parliament constituted according to Art. I-20 TCE will not only be well-functioning, but will be even more powerful than today's EP.

#### 4.1.2 Council of Ministers

Art. 205 EC and Art. 118 EA in the version of **Art. 3 of the Protocol**<sup>47</sup> contain a complicated weighing system to determine qualified majorities in the Council of Ministers. Under this weighing system, Member States each have a different number of votes. Acts of the Council are adopted if at least 169 votes are cast in its favour by a majority of the members. As an additional requirement, a member of the Council may request verification that the Member States constituting a qualified majority represent at least 62 % of the total population of the Union. A decision of the Council is not adopted if this quorum is not met. This system reduces the risk to be outvoted in the Council and diminishes the possibility to reach agreement. Under the Nice system, the **statistical probability** for the Council to adopt a decision, for the EU-25, amounts to 3.6%. For the EU-27, this probability, hypothetically, decreases to 2.1%, thus resulting in a 42% decrease of the probability of the Council of Ministers making decisions.<sup>48</sup> If these provisions remain unchanged, every new Member State further reduces the statistical probability to come to a decision.<sup>49</sup> The normative setting under the Treaty of Nice, thus, carries the **risk of a blockade** of the Council of Ministers if the enlargement process is continued without a reform of qualified majority voting.

Art. I-23 (2) of the TCE determines that the Council shall consist of a representative of each Member State at ministerial level, who may cast its vote. While Art. 205 (1) EC states that the Council shall act by majority, unless otherwise provided by the Treaty, in practise, this provision is generally not applied.<sup>50</sup> In contrast, Art. I-23 (3) TCE establishes Council action by a **qualified majority** as the rule; the requirement of unanimity becomes a genuine exception. Under the TCE, a qualified majority applies to additional 44 areas, although politically sensitive subjects, such as taxes, foreign and defence policies, remain in the scope of unanimous voting.<sup>51</sup> The term "qualified majority" is defined in Art. I-25 TCE. Art. I-25 TCE requires, for a qualified majority, at least 55% of the members of the Council, comprising at least fifteen of them, and representing Member States with at least 65% of the population of the Union (**double majority system**). A blocking minority must include at least four Council members. The ratio fixed in Art. I-25 TCE is a compromise between smaller and bigger Member States and acknowledges the demographic weight of bigger Member States.

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<sup>47</sup> Art. 3 of the Protocol has been incorporated into Art. 205 EC and Art. 118 EA since January 2005.

<sup>48</sup> Wolfgang Wessels, Die institutionelle Architektur der EU nach der Europäischen Verfassung: Höhere Entscheidungsdynamik – neue Koalitionen?, in: *integration* 2004, 161 (168, diagram 3, citing Baldwin / Widgrén, Council voting in the Constitutional Treaty, p. 5).

<sup>49</sup> Wolfgang Wessels, Die institutionelle Architektur der EU nach der Europäischen Verfassung: Höhere Entscheidungsdynamik – neue Koalitionen?, in: *integration* 2004, 161 (168, diagram 3, citing Baldwin / Widgrén, Council voting in the Constitutional Treaty, p. 5).

<sup>50</sup> Cf. the Luxemburg Compromise, and the Protocol of Ioannina. See Werner Weidenfeld / Wolfgang Wessels, *Europa von A bis Z*, p. 409, and European Parliament, *Weißbuch zur Regierungskonferenz 1996*, para 2.2: Rat der Europäischen Union vom 29. März 1994 und Vereinbarung von Ioannina.

<sup>51</sup> Nils Meyer-Ohlendorf: *Institutionelle Architektur der EU nach dem Vertrag über eine Verfassung für Europa*, ZUR 5/2005, p. 227

These provisions of the **TCE drastically increase the decision-making ability** of the Council.<sup>52</sup> The statistical probability of the Council coming to a decision, for the EU-25, increases from 3.6% under the Treaty of Nice to 10.1% under the TCE; for the EU-27, from 2.1% under a hypothetical Treaty of Nice setting, to 12.9% under the TCE; and for an EU-28, including Turkey or Croatia, to 11.2%. Thus, the new qualified majority rule would significantly increase the efficacy of the Council.<sup>53</sup> However, it must be kept in mind that the TCE did not move particular sensitive issues from unanimity to qualified majority. It must also be noted that the decision making ability of the Council largely depends on the tradition of consensus building, which will be effected by the TCE only to a rather limited extent.<sup>54</sup>

Art. I-24 TCE regulates the **different configurations** of the Council of Ministers and introduces the principle of **meeting in public** when the Council deliberates and votes on draft legislation. This reduces in principle the possibilities for shady horse trading during the drafting of Union legislative acts, and increases transparency to enable Union citizens to follow the law-making process.

In consequence, the provisions of the Constitutional Treaty create conditions for more effective and democratically controlled law-making by the Council. They create the normative framework to prepare the Union for further enlargements. Although an enlarged Council of Ministers technically remains in working conditions if the terms of the EC Treaty stay in force, the risk of political blockades and shady horse trading in the Council increases proportionally with the number of representatives of Member States. To ensure the manageability of the law-making process in an enlarged Union, the reforms proposed by the Constitutional Treaty, with regards to the Council of Ministers, are **highly recommendable**.

#### 4.1.3 European Commission

With regard to the representation of nationals of Member States in the European Commission, Art. 213 (1) EC and Art. 126 (1) EA in the version of **Art. 4 of the Protocol** determine that “the Commission shall include one national of each of the Member States”. The Protocol also stipulates that - when the Union consists of 27 members - the number of Commission Members will be less than the number of Member States. In this case, the Commission Members will be chosen according to a rotation system based on the principle of equality. The arrangements for implementing this system shall be determined by unanimous Council decision. If the Council does not adopt such a decision, any new Member State is entitled to have one Member in the Commission.

The reform of the composition of the European Commission proposed by **Art. I-26 (5) TCE** determines that the first Commission appointed under the Constitution shall consist of one

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<sup>52</sup> Wolfgang Wessels, Die institutionelle Architektur der EU nach der Europäischen Verfassung: Höhere Entscheidungsdynamik – neue Koalitionen?, in: integration 2004, 161 (168, diagram 3, citing Baldwin / Widgrén, Council voting in the Constitutional Treaty, p. 5). As the Treaty of Nice is not prepared for the accession of a 28<sup>th</sup> Member State, Wessels gives no corresponding data.

<sup>53</sup> Wolfgang Wessels, Die institutionelle Architektur der EU nach der Europäischen Verfassung: Höhere Entscheidungsdynamik – neue Koalitionen?, in: integration 2004, 161 (168, diagram 3, citing Baldwin / Widgrén, Council voting in the Constitutional Treaty, p. 5).

<sup>54</sup> Sebastian Kurpas, Justus Schönlein: Deadlock avoided, but sense of mission lost? CEPS Policy Briefs No. 92/February 2006

national of each Member State, including the President of the Commission, and the Union Minister of Foreign Affairs. The following Commissions shall consist of a number of members, including its President and the Union Minister for Foreign Affairs, corresponding to two thirds of the number of Member States, unless the European Council, deciding unanimously, decides to alter this number. The number of members of the Commission would then be significantly reduced.

**Art. I-26 TCE (2)** states that the members of the Commission shall be selected from among the nationals of the Member States on the basis of a rotation system reflecting the principles of equal treatment of the Member States, and a satisfactory representation of the Member States' demographic and geographic range . A unanimous decision by the European Council is required for this to occur. It is doubtful that the European Council will come to this – albeit necessary – decision easily.

Nevertheless, **Art. I-26 TCE successfully prepares** the Union for further enlargement. It greatly facilitates the further enlargement process, as the Commission, once created, is a more compact body. Compared to larger bodies – such as a Commission composed of 30 Commissioners from the 30 Member States – a smaller body tends to be more flexible and more efficient in making decisions. One of the main arguments for the necessity of institutional reforms is the legitimate concern that a collegial body, such as the Commission, would be paralysed if it is composed of too many members. To some observers, these concerns have recently gained weight by the allegedly weak performance of the Barroso Commission which is deemed to suffer from – among other things – a lack of coordination due to the diversity of views in the college of 25 Commissioners.<sup>55</sup> Given the importance of a functioning Commission for the institutional balance of the EU, a weak Commission, the guardian of the “Community Interest”, could lead to greater strengthening of intergovernmental cooperation and could further reduce the capacity of the EU to deliver. Arguably, a timid Commission would be reluctant to table necessary initiatives, leading to invisible deadlock, i.e. initiatives get stuck before they are fed into the legislative process. Though the likelihood of such paralysis and imbalance could be diminished by Art. I-26 TCE, it must be noted that this provision will enter into force only in 2014, if at all (compared to the Treaty of Nice which provides for the possibility to reduce the number of Commissioners already in 2008).

However, Art. I-26 TCE creates **problems for the political process** with regards to the composition of the Commission. This field was, up to now, problem-free, since every Member State had the right to be represented in the Commission. In consequence, the constitutional reforms proposed by the TCE concerning the composition of the Commission help facilitate the enlargement process, but may not facilitate the political process.<sup>56</sup> An entirely new field for shady horse-trading in the European political arena could be opened. If the TCE is not ratified, and a different reform project focuses on the composition of the Commission, it is

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<sup>55</sup> Sebastian Kurpas, Justus Schönlein: Deadlock avoided, but sense of mission lost? CEPS Policy Briefs No. 92/February 2006

<sup>56</sup> Wolfgang Wessels, Die institutionelle Architektur der EU nach der Europäischen Verfassung: Höhere Entscheidungsdynamik – neue Koalitionen?, in: *integration* 2004, 161 (171) thus expects this provision to be amended before it is applied in practice. According to him, it will be brought back to the „one Member State – one Commissioner“ rule.



advisable to specify the rotation system in the normative text in order to avoid this foreseeable regular blockade.

## 4.2 Conclusion

- The accession of a 28th Member State will require a **reform of the constitutional framework** of the EU before this accession can take place. The Treaty of Nice only offers provisions, concerning the institutional setting, for a Union of up to 27 Member States. The **admission** of a 28<sup>th</sup> Member State will thus **not be feasible without amendment** under the Treaty of Nice Constitutional framework. The concrete composition of the European Commission, the weighing of votes in the Council, as well as the composition of the European Parliament will have to be the object of renegotiations.
- Therefore, **unanimous action of the Member States is required**. Keeping in mind the difficulties during the negotiations leading up to the Treaty of Nice in 2004, a **substantial burden** is placed on the enlargement process. This is especially relevant as the accession of the 27<sup>th</sup> Member State, Bulgaria or Romania, is already scheduled.
- The reform proposed by the **TCE addresses all necessary aspects** to keep the simultaneous process of deepening and widening the Union manageable. Its **ratification** would be the most **desirable** political option to facilitate the further enlargement of the EU; its reforms would help energise the integration process of an enlarged Union. It appears that reforms under the TCE are particularly needed to balance community and intergovernmental dimensions of the EU. The Commission, as the guardian of the Community Interest, seems to require the amendments of the TCE, if only to maintain its ability to set the EU agenda . Some scientific voices even suggest that ratification of the Constitutional Treaty is a condition required to allow the Union to act before further enlargements can take place.<sup>57</sup>
- As shown, the **institutional reforms are necessary**. However, they **can be realised as well in a smaller treaty reform**. A non-ratification of the Constitutional Treaty need not and must not be the end of the enlargement process. To successfully enlarge the Union, and simultaneously assure further integration, not all of the reforms proposed by the TCE are absolutely necessary. For constitutional and political reasons, the enlargement process must not stop with halted ratification of the TCE. **Halting the enlargement process would contradict the political promises** given to transitional countries, particularly those in the Balkans. It would undermine determination towards enlargement resulting from the preambles of the EC and EU Treaties, endanger the balance of countries in the Western Balkans, and put into question those ideals for which the Union seeks to instil. The Union therefore has a duty to pass the necessary treaty reforms to continue the enlargement and integration processes. In case of non-ratification of the TCE, the necessary treaty reforms can also be achieved through the process of regular

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57 Christine Langenfeld, Erweiterung ad infinitum? – Zur Finalität der Europäischen Union, ZRP 2005, p. 73 (73).



revision, starting, at the latest, after the admittance of the 27<sup>th</sup> Member State to the Union.

## 5 Financial Feasibility: Can We Afford Further Enlargement?

After the 2004 enlargement, the redistribution of resources across Member States has been gaining in significance since relatively poor countries joined the EU. The gap in average per capita GNI has widened substantially and will continue to widen with the accession of Bulgaria and Romania. To fulfil this redistribution task, the **financial perspective for 2007-2013** "provides the financial means necessary to address effectively and equitably future internal and external challenges, including those resulting from disparities in the levels of development in an enlarged Union". The financial perspectives cover a European Union comprising 27 member states, "on the working assumption that Bulgaria and Romania will join the Union in 2007". The perspective sets maximum spending under this heading at € 6.2 billion in 2007, rising steadily through to € 8.07 billion in 2013, in total € 50.01 billion.

The deal raised the 2007-2013 budget to € 862.3 billion, or **1.045 % of EU Gross National Income**. Compared to the 1.03 % in the latest UK proposal, it adds € 13 billion. Compared to the Luxembourg June 2005 compromise, it is still a decrease of € 22 billion. Following a compromise between the Parliament and the Austrian Presidency, the overall budget is now at € 864.4 billion, which is € 2 billion more than the Summit deal of December 2005.

In light of this framework, it becomes apparent that the 2004 enlargement round was **financially manageable**. The overall contribution of 1.045 % of EU Gross National Income remained very close to the 1 % requested by the net-paying countries. Although the disbursements to the new Member States represent 6.9% of the EU budget (data based on the 2004 budgetary execution), which is more than those States' GDP share in the EU (4.7%), the financial contribution by old Member States related to enlargement remains limited as it represents only 0.1% of their GDP.<sup>58</sup> The Commission has calculated that the EU-15 paid 26 € per capita for enlargement into the EU budget between 2004 and 2006. The NMS have paid in contrast 58 € per capita. For example, Germany's contribution is relatively small given the size of growth generated by the last enlargement round.

As demonstrated by the size of the 2004 enlargement round, it is plausible that **future enlargement rounds are affordable**, although future accession countries are currently substantially poorer than the NMS. However, the exact impact of further enlargement on the EU budget in the period from 2013 onwards depends on whether and to what extent the budget and other relevant policies, notably common agricultural politics, structural and cohesion funds, are reformed. The financial burden of further enlargement is uncertain, but is manageable as its exact dimension is subject to political decisions of the EU Member States.

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<sup>58</sup> Communication from the Commission to the Council and the European Parliament: Enlargement, Two Years After - An Economic Success, COM (2006) yyy final, 3 May 2006

In addition, enlargement provides an opportunity to further shift the emphasis of agricultural support towards wider aspects of economic development in rural areas.<sup>59</sup>

## 6 Societal acceptance and further enlargement

According to the latest Euro-Barometer, **public opinion** about further enlargement continues to be volatile and to vary significantly from country to country, with highest support levels obtained in Greece (74%), Slovenia (74%) and Poland (72%). This contrasts sharply with the reluctance, if not outright opposition to further enlargement in Austria, Luxembourg, France, and Germany, where approximately 6 out of 10 respondents are against further enlargement. However, since spring 2005, public opinion in the NMS has become significantly more negative to further enlargement. In addition, a clear majority of citizens is opposed to membership of Turkey (55%) or Albania (50%). In the accession and candidate countries, around 7 out of 10 persons interviewed support further enlargement, with the exception of Turkey, where support levels dropped from 66% in spring 2005 to 52% in autumn 2005. It is evident that the indifferent or at times negative attitude of many European citizens is one of the most significant impediments to further enlargement. After the recent adoption of the rigid negotiation frame and EU discussions in Turkey, **Turkish public opinion** is generally against full membership in an increasingly integrated EU.<sup>60</sup>

Similarly important, 43 % of those questioned tend not to trust **EU institutions**. At the same time, citizens expect something from the EU which the EU is unable to deliver, mostly due to limited competencies. Recent Euro-Barometer findings show, for example, that 54 % of those questioned view unemployment and social exclusion as the most important task of the EU, obviously areas in which the EU has very limited competency.<sup>61</sup> In Germany, for example, 84 % consider the EU responsible for the loss of jobs in their country. Consequently, public opinion is generally more sceptical and status quo oriented than along political class. Suddenly, the EU is considered by a growing minority as a source of anxiety more than security.<sup>62</sup>

In this context, the **referenda on the TCE in France and the Netherlands** were certainly landmark developments. Opinion polls have shown that the TCE was rejected for various reasons. It has been argued that the TCE was rejected partly in view of the enlargement round of 2004, which was sometimes viewed as too abrupt, fuelling fears of rising unemployment, uncontrolled migration, increasing environmental pollution and growing crime. However, opinion polls have not confirmed this view and there are various indications that the TCE was often rejected for **discontent with the current political situation** in the respective country, rather than the provisions of the treaty or fear of further enlargement.

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<sup>59</sup> Kok-Report on Enlargement, March 2003

<sup>60</sup> Günter Seufert, Jahrbuch der Europäischen Integration 2005: Türkei

<sup>61</sup> Institut für Europäische Politik: EU-25 Watch No 2, January 2006

<sup>62</sup> Quentin Peel: Enlargement an unsung success, FT 8 February 2006

It is evident that the public debate on further enlargement is often not very well informed and **many misconceptions** persist. An **intense dialogue** on all aspects of further enlargement, in particular Turkish membership, is essential to increase understanding and knowledge, a prerequisite for successful enlargement negotiations. This dialogue must reach Europe's citizens at local and national levels; an abstract discourse in Brussels will not help. This dialogue must highlight above all the potential benefits of further enlargement, such as economic and social benefits and improved security. Europe's citizens must also be convinced that further members would not obstruct decision making in the EU. In this respect, business can play a particularly important role by showing that investment in Eastern Europe actually helped secure jobs in the EU-15 and that enlargement is a great business opportunity and much more than a source of cheap labour.

However, it should be kept in mind that greater acceptance of further enlargement is inseparably linked to **improved acceptance of the EU**. Consequently, measures to improve acceptance of enlargement must also take into account the various proposals for improving public perception of the EU:

- It is a fundamental precondition of successful political communication that issues are linked to personalities. Political discourse at the national level underlines the importance of personalities for conveying a political message.
- Relevant actors, notably politicians and EU representatives, should better explain the benefits of involving the EU or transferring competencies to the EU in a given policy field. This is even more important as citizens have growing expectations what Europe should do. The Commission stated rightly that Member States must bear their responsibility to explain and defend the policies they have agreed unanimously.
- The EU must better explain their role and competencies. Currently, key players in the EU policies have predominately a national agenda.
- European political parties with a European programme and European candidates would offer a political debate to spark the interest of citizens.<sup>63</sup>

Ultimately, genuine involvement of European citizens depends more on a politicised and partly personalised debate than an additional civil society dialogue, as envisaged by the Commission. In light of the limited impact of the numerous previous civil society dialogues on improved citizens' involvement in EU affairs, more radical measures seem to have become appropriate. Instead, a debate is needed that would touch upon the very roots of the EU and the role of Member States in the Union.

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Daniela Schwarzer: Lehren aus den gescheiterten Verfassungsreferenden, SWP Comments, June 2005

## 7 Conclusions

### 7.1 Conclusions from the 2004 enlargement round

- After the latest enlargement, **25 Member States were integrated and are now participating fully in the EU institutions**. In contrast to numerous predictions, enlargement has not provoked serious problems, such as institutional deadlock and massive flows of migrant workers from the NMS to the EU-15. In fact, the EU has made various controversial decisions since 2004, dispelling fears that the EU-25 would be taken hostage by a uniform block of new Member States, unified in their common interests to liberalise their economies, or to make the most out of EU spending (cohesion and structural funds). NMS have taken a unified approach to EU policies on a few occasions but were open to make compromises. The extent of public attention and political debate with regards to the integration of NMS is limited, signalling that no major frictions and disruptions have occurred.
- The prospect of EU membership was a **main driver for change**. In particular, transposition of the acquis was an indispensable reform engine. Despite an implementation deficit, the NMS have managed remarkably well in transposing the acquis. They have proven that the preparation of EU membership is manageable, although it puts stress on the countries concerned. The **transition periods** and terms of accession seem to work and have not produced frictions, for example, in the functioning of the internal market.
- All NMS have developed into **stable and open democratic societies**. The prospect of EU membership was an essential tool to support a smooth transition from one-party rule to a pluralistic democracy.
- The Journey of the NMS towards membership is thus a value in itself. The NMS have been able to **reform their societies drastically** since 1989. NMS have transposed the entire acquis communautaire. Only around 300 transitional measures were accepted. Given the size of the acquis, it is evident that the transposition is a major achievement with profound implications for the societies, economies and environment of the NMS.
- Concerning the **economies**, NMS have successfully managed the accession to the EU and gained the ability to grow fast despite the anaemic performance of the old EU. In 2005 most of the NMS performed even better than in 2004. In addition, higher EU transfers by 2007 should allow for further investment.
- None of the **EU's current problems**, such as the impasse over the TCE or diminishing public support, would have been resolved if further enlargement had stopped. In fact, previous enlargement rounds demonstrate that deeper integration and further enlargement do not impede each other but are rather mutually supportive concepts. Since 1973 the EU has enlarged five times to absorb 19 new countries, while at the same time developing the Single Market, creating the Schengen area of passport-free travel, adopting the Euro, and developing new policies, such as internal security and a stronger foreign policy.
- Given the drastic changes in the NMS since the enlargement debate started in the early 1990s, it must be noted that **today's perception** of the situation in the AC or CC will not

be valid by accession as these countries will develop throughout their journey to membership.

## 7.2 Conclusions from the current state of the debate

- The success of enlargement **does not currently produce political momentum** to continue this line. Rather, the absorption capacity of the EU is becoming a main issue of the debate. Public opinion seems to be critical of further enlargement of the old EU, among the six original members in particular. “Enlargement fatigue” is stronger in these countries than in the NMS. As a consequence, privileged partnership with candidate countries, a concept not clearly defined yet, has become a more important theme in the debate. However, it must be noted that **opinion polls** are sometimes unreliable, often volatile, and never a sufficient basis for far-reaching political decisions.
- There is no movement inside the EU for shutting the door to others forever. However, somewhat in contrast to the 2004 enlargement, further enlargement is likely to meet a more **sceptical response** from Member States. In addition, there are various political parties wary of further enlargement. Some of these parties certainly have the potential to create a stronger movement against further enlargement. As a consequence, enlargement will probably require full justification.
- There is no proof that the rejection of the TCE was in part due to a rejection of further enlargement. In fact, only 3 % on the French voters rejecting the TCE referred to further enlargement as a motivation.

## 7.3 Conclusions on institutional and financial feasibility

- From a Constitutional point of view, the EC Treaty, as well as the EU Treaty, established the **principle of enlargement** as a Constitutional principle of European law, of equal importance to the principle of integration. The European project focuses on the promotion of peace and liberty, and is, in principle, open to all the peoples of Europe.
- The accession of the 28<sup>th</sup> Member State will require **reform of the EU Constitutional framework** as the Treaty of Nice only offers provisions concerning the institutional setting up for 27 Member States.
- Although the current institutions of the EU have generally coped well with enlargement up to now, this positive evaluation might not necessarily hold true for the future. To be well equipped to handle a more controversial atmosphere in an enlarged EU in the future, the target of successfully enlarging the Union requires **institutional reforms**. In particular, the composition of the Commission needs to be adapted to give the Commission more flexibility and political leverage. Enlargement would be further facilitated by a reform of the Council decision-making procedures. Such procedures would be towards a clear, publicly controlled procedure with an increased statistical probability of finding a

consensus. Moreover, the size and composition of the European Parliament should be targeted.

- In a **scenario of non-ratification** of the TCE, these institutional reform demands must be raised by a new treaty amendment procedure, as foreseen by the Protocol on the Enlargement of the European Union. The institutional changes can be realised as well in a smaller treaty reform.
- The overall contribution of 1.045 % of EU Gross National Income is close to the 1 % requested by the net-paying countries, which clearly indicates that the 2004 enlargement round is **financially manageable**. Given the size of the 2004 enlargement round, it is plausible that future enlargement rounds will also be affordable. Furthermore, the financial burden dimension of further enlargement is subject to the political decisions of EU Member States.

## 8 Recommendations for the road ahead

- If the EU is to keep its appeal and attraction, the **prospect of membership must be clear and definite**. Otherwise, candidate countries would be less likely to go through the process of preparing for membership, which entails painful reforms and requires enormous efforts. It would also be very difficult to secure further reforms if the main motor – the prospect of EU membership – fails.
- The EU **neighbourhood policy** does not provide, in contrast to the prospect of membership, such powerful incentive to undergo substantial reform. The EU neighbourhood policy lacks a clear vision and is not perceived as an attractive alternative. The EU neighbourhood policy lumps together those countries with no prospect of membership, such as Algeria or Morocco, and countries that view themselves as European, such as Ukraine. The EU neighbourhood policy raises the question as to why countries like Ukraine should be perceived as neighbours when they are already part of Europe.
- Accession must be based on full compliance with the Copenhagen criteria. **Conditionality** is at the heart of enlargement, and works only if it is credible. In other words, candidate countries must be reasonably certain that they will be admitted if they comply with the accession criteria, i.e. they must be assured that the EU lives up to its commitments. On the other hand, conditionality can also help to reassure the public in the current Member States of the fact that countries will join only if they fulfil the criteria, i.e. if they are ready for membership.
- It is essential that NMS build the required **capacities to implement the acquis and to actively participate in formulating EU policies**. These capacities are prerequisite for active membership, allowing NMS to actively participate in the EU and enjoy all membership benefits. In the opposite case, NMS may be more passive members, but be particularly vocal in their pursuit of funding. It is vital for the EU that the NMS are active and full Members.



- The opportunity for enlargement is inseparably linked to the **potential of the EU to deliver**. If the EU fails to deliver its objectives, e.g. the Lisbon objectives, it will be difficult to consolidate current enlargement and consequently more difficult to absorb more members. Essentially, Europe's citizens will support further enlargement if they clearly understand the benefits of the EU for themselves and the continent.
- While experience so far suggests that optimism is in order, lessons from the EU's 2004 enlargement round and its conclusions do not apply **directly** to any future enlargement.
- The history of the EU proves that **there is no contradiction between widening the Union and deepening its integration**. Since 1973 the EU has enlarged five times to take in altogether 19 new countries, while at the same time developing the Single Market, creating the Schengen area of passport-free travel, adopting the Euro, and developing new policies, such as internal security and a stronger foreign policy.
- As negative public opinion towards enlargement is likely to be one of the main impediments, enlargement should be communicated as what it is – one of the EU's greatest success stories. Such **communication should clearly spell out the benefits** for the old member States as well, which include for example reducing the number of refugees, reducing crime rate through international co-operation of police and other services, and enhancing economic growth which helps secure top jobs in the old MS. Communication should take seriously existing fears of enlargement, caused - for example - by the famous Polish plumber, who is allegedly ready to work for nothing and endangers jobs, or the dislocation of companies with a long industrial tradition, such as the very controversial dislocation of the AEG production in Nürnberg to Poland and Italy.