

RECONSIDERING THE EU ENLARGEMENT PROCESS. ASSURANCE OF DUE PROCESS, CREDIBILITY OF PROSPECTS, EFFICIENCY OF OUTCOME

Jaroslaw Pietras, PhD

Wilfried Martens Centre for European Studies

Abstract

The paper describes the problems of the upcoming enlargement of the European Union. For some countries, negotiations have been going on for a long time, for others they have not yet started. It is expected that in the specific case of Ukraine, negotiations and accession may be accelerated. The documents states that the accession of each candidate should take place after a regular process of preparation and negotiation has been carried out. Otherwise, there may not be enough trust to complete the process successfully. The credibility of enlargement in the eyes of European public opinion depends on the preparation of the candidates. In the eyes of the public in candidate countries, the accession process can be credible when there are clear assurances about future membership. Therefore, accession should not be understood as a one-off event, but rather as a process that starts before the official date of entry into force and even ends well after that date. However, it should go hand in hand with the extension of the benefits of membership to candidate countries early in the process and be linked to the progress of their preparations before the official enlargement date.

Key words: Enlargement, accession, Ukraine, Western Balkans

The EU enlargement process has never been easy. It must satisfy many formal requirements and meet the expectations of all members of the group and of the candidate countries. This is a technically and legally complex exercise and obviously closely linked to the political process within the EU and to relations with the candidate countries. EU member states do not want enlargement to significantly change the internal rules of the EU, its arrangements and the way

it works. It is rather up to those who want to join to accept all these conditions. Therefore, acceding countries must be able to fulfill all EU requirements and obligations in order to receive the benefits of membership. In all previous cases, all acceding countries had to respect the treaties, the *acquis communautaire* and be able to adhere to EU policies. Today, the EU represents a much more complete, complex and advanced integration even compared to the time of the last major enlargement. Naturally, as the accession process also becomes more complicated, all the conditions laid down and formulated during the negotiations become more demanding for the candidate countries.

Over the decades, the enlargement process has been frequently interrupted by more or less long periods of pause which have contributed to the consolidation of the enlarged European Union. There have been recurring voices pointing out that the European Communities were established by only six countries, and that the acceptance of new members changes the nature of this group. It started with close cooperation between like-minded countries and has now moved to very formal and tightly regulated relationships that are less direct, open or friendly, and have become legally and procedurally complex relationships. This affects the nature of cooperation between members who now have a visibly different approach to many issues and a less common understanding of each other's points of view. These opinions were clearly expressed when the new candidate countries came from more remote regions with quite different political systems, being less integrated into the internal market and having a significantly lower level of development or different societal traditions.¹

In many past cases, the start of the enlargement process was linked to major political changes in the candidate countries or even to fundamental changes in the political scene in Europe. This was the case with Greece, then Spain and Portugal, and obviously and above all with the enlargement to the countries of Central, Eastern and Southern Europe after the fall of the communist systems. Therefore, in each case, the political context of the new events prevailed over a kind of „enlargement fatigue“ among the current EU members which, after each new accession, was visible among the members.

It is not different today. The „enlargement fatigue“ has been visible and this phenomenon effectively slowed down or even de facto stopped the progress in talks concerning the new accessions after adhesion of Croatia. Currently Europe faces the new geopolitical situation and the issue of enlargement becomes elevated to the upper levels of European agenda. As the EU commission has formulated it „in times of increasing global challenges and divisions, it remains more than ever a geostrategic investment in a stable, strong and united Europe. A credible accession perspective is the key incentive and driver of transformation in the region and thus enhances our collective security and prosperity. It is a key tool to promote democracy, rule of law and the respect for fundamental

¹ Bernard E.;(2022) *Geopolitics of the European Rule of Law - Lessons from Ukraine and the Western Balkans* Intereconomics, 57(4), p. 229-231

rights, which are also the main engines of economic integration and the essential anchor for fostering regional reconciliation and stability. Maintaining and enhancing this policy is thus indispensable for the EU's credibility, for the EU's success and for the EU's influence in the region and beyond - especially at times of heightened geopolitical competition.²

There is now clear understanding of the need to respond to the aspirations of countries of Western Balkans, Ukraine, Moldova and Georgia. The issue of EU new wave of enlargement became imminent and the process has de facto already started. Negotiations with some candidates, even if they have been slow in some cases, are already in place and positive political signals concerning future membership has been given to others. However, the is a difficult way forward and the process will inevitably encounter many thorny problems of political or practical nature. Besides many complications of the procedural or legal nature there are quite significant signs of political divergences concerning enlargement process, requirements, composition etc. among the EU member states. Not all the countries that now aspire to become member have been easily considered as natural candidates to join European Union. They are very diverse, having quite different backgrounds, involved in the past or currently in conflicts or disputes with some neighbors, including open war happening in the territory of Ukraine. This is not easy context. It is difficult for aspiring countries to get the process of adaptation to the EU framework efficiently running. It requires intensification of changes in the framework of closer and clearer prospects of membership. It is also problematic for some current members as they want to maintain and focus on the dynamics of very close and deep integration within the EU. There are enough difficult issues requiring intense and troubled negotiations within the existing EU already. New members inevitably will bring additional issues and change some elements of internal construction of the EU. Even if formally new members would be prepared to join the EU, the question remains whether politically it might be not too difficult to accept inevitable changes to the EU landscape and construction brought by the new members. New enlargement will have to be accepted by all the EU members and since the number of countries in the EU is large and everyone's sensitivities might play a role.

There is the question whether traditional approach to enlargement process can bring desired result. It seems that there is a need of reconsidering the enlargement process in order that it could become successful.³ The issue was even taken into deliberation between the EU member states who at the Council in November 2019 have expressed a common understanding of the usefulness of examining the effectiveness of the accession negotiation process.

² Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions, *Enhancing the accession process - A credible EU perspective for the Western Balkans*, Brussels, 5.2.2020 COM(2020) 57 final, p.1

³ Sapir A.; (2022) *Ukraine and the EU: Enlargement at a New Crossroads*, Intereconomics, 57(4), p. 213-217

Responding to that understanding the European Commission has formulated elements of new approach in relation to Western Balkans in 2020. It is including more structured elements of preparatory process and confidence building. This Commission approach has been published in 2020 well before the invasion of Russia into Ukraine and reaction of the EU members now considering seriously the scenario of accession of these countries to the EU. This new situation calls for looking again at the major challenges that the forthcoming enlargement might face⁴. The process of enlargement requires credibility for all that the new member states are considered for their merits. It should be credible for existing members in a sense that it assures that merits are fully respected and that they have been considered in the due process guarantying objectivity and undisputable preparedness to fulfill obligations of membership. It should be credible to all aspiring countries in a sense that they can be sure that their own efforts and preparations are giving entrenched chance of membership. It should also be credible in a sense that there are no countries who are offered special less demanding path to membership, as well as that the progress in preparedness of all aspiring countries are measured with the same yardstick. Consistency of approach, assessment and treatment is the key to having solid base for acceptance of the new members. But it should not be disregarded that when dealing with such a diverse group inevitably some difference will resurface and as likely result they could significantly affect or even derail this process. The EU member states might not be fully convinced that the candidate countries are prepared as it should be in their assessment and might continue to have opinions based on their long-term perception of the countries in question.

Therefore, the particular attention should be paid to politics of enlargement. The motive is different in the case of every country and have been changing every instance of enlargement. There were the moments that the reason to enlarge was the maintenance of dynamism of integration. Inclusion of like-minded and already economically integrated countries like, UK, Denmark, Austria, Finland and Sweden was quite natural step powered especially in the latter cases, by desire to complete formally what was already achieved de facto. But more recently the geopolitical reasons are taking prevalence. The economic arguments or the commonality of political values were overshadowed by the geopolitical reaction to changes happening in the candidate states. Greece, and few years later Spain and Portugal have abandoned dictatorial past and their accession was seen as a way to solidify democratic changes which have taken place not much long ago. Their economic systems, even market-based, were not densely linked to the rest of the European Community, but enlargement helped them to overcome it relatively quickly.

This geopolitical context was much stronger in the case of 2004 enlargement (Estonia, Lithuania, Latvia, Poland, Czech Republic, Slovakia, Hungary,

⁴ Demertzis M.; (2022) *Ukraine and what it means for European Union enlargement*, Bruegel, Comment 13; Brussels.

Slovenia, Cyprus, Malta) and any later accessions (Bulgaria, Romania and Croatia). Investment in stability of the fragile democracies having newly reestablished market economy was one of the major considerations.⁵ This was major focus of pre-accession aid and this aspect was the substantial argument in favor of letting in countries which until recently were not necessarily considered as friendly ones.

Looking forwards it is quite clear that the geopolitical context will play even increased role. Especially that among some older EU members there is some resentments towards new member states who have been politically, economically and socially very different and who were considered as not really well integrated before their accession. Some within the EU still consider that theirs has happened too early, and some intermediate steps should have in place in order to better prepare these candidates. This might play even greater role now, as it became clear that meeting formal obligations at the time of entry is not a guarantee that in the future this country as a member will be able and willing to follow all the rules of the bloc. It is also quite clear that once country is accepted and becomes member of the EU it weakens significantly the leverage to make sure that this new member continues to implement indispensable changes and to apply fully treaties and *acquis*. In this context the countries of the last enlargement make in some cases lip service as they not always are considered as being indisputably reliable partners well understanding all the rules of the game.

Again, the EU Commission in the document from 2020 has underlined that „it is also clear that the effectiveness of the overall accession process and of its implementation must be improved further. While the strategic direction of the policy remains more valid than ever, it must get much better traction on the ground. It is of major importance to build more trust among all stakeholders and to enhance the accession process and make it more effective. It has to become more predictable, more credible - based on objective criteria and rigorous positive and negative conditionality, and reversibility - more dynamic and subject to stronger political steering.“⁶

The enlargement process has a number of features and every aspect has its importance. There is a sequence of steps, which have been normally followed in order to condition further progress. The first condition is the consideration of the country as eligible to become a member. It is to say whether member states could potentially see such a country as a future member. Without this step progress cannot happen. It cannot be always assumed that it is a formal requirement as there has been at least one case where the EU have stated that the country cannot be eligible. The countries of Central and Eastern Europe have waited with sending

⁵ Dabrowski M., Radziwill A.; (2007) *Regional vs. Global Public Goods: The Case of Post-Communist Transition*; Warsaw.

⁶ Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions, *Enhancing the accession process - A credible EU perspective for the Western Balkans*, Brussels, 5.2.2020 COM(2020) 57 final, p.1

an application letter until the EU have agreed so called Copenhagen decision confirming that any of these countries if willing can become a member of the EU after making sure it meets the criteria for accession.

The next natural step is therefore an application letter by the candidate country opening the process leading to accession. After application the EU Commission is tasked to prepare opinion on the candidate country which should provide an answer to which extent and if at all the country fits the EU. Such an opinion can be done as one detailed document, which was the case of Central and Eastern European enlargement, or in two phases like in the case of Croatia. If it is based on two phases the first „avis“ is relatively short and general, but it can serve as basis for decision to further the process. It then is followed by more detailed part which underlines differences between the obligation of the EU member and the state of affair in the candidate country. Some of the Balkan states are already in the negotiation phase. In the case of Ukraine, the first avis has been prepared in a very short time, opening the way for further stages of process.⁷ The Commission document concerning Ukraine, Moldova and Georgia contains such an assessment. It includes the Commission recommendations whether and under which conditions the negotiations could start. Anyhow, at the later stage the EU member states have to decide unanimously to agree granting the candidate status, as well as to open accession negotiations. The Commission in such a case is required to prepare the draft of the negotiating framework, which also has to be accepted by all the actual members of the EU. Then the negotiations can start, they are run by the Commission but under quite careful scrutiny of member states.

The framework for negotiations is organised along the negotiating chapters (corresponding de facto the chapters of the acquis). In the case of negotiations held currently with some Balkan states, differently from earlier enlargements, negotiating chapters are grouped within clusters having close relationship. It might not be considered as important change, but in practice it brings significant novelties to the process. It allows to note some fundamental features of the organisation of candidate states, market economy and its ability to withstand competitive pressures, respect of the rule of law, country overall legal system and administrative capacity to cope with complicated tasks derived from the EU acquis. And looking at clusters rather than singled out chapters of negotiations, permits to consider linkages and interdependencies which conditions efficient adaptation across the whole area, not limited to specific legislation enlisted in the chapter. It also can allow to return to issues already assessed, discussed and agreed if it affects proper implementation of the EU acquis in the whole cluster. EU legislation was always the cornerstone of the negotiation process. Acquis and ability of its implementation has always been considered as a fundament for assessment of preparedness for membership. These fundamentals acquire

⁷ Emmerson M. et.al, (2022) *Opinion on Ukraine's application for membership of the European Union*, CEPS Policy Insights No 2022-16

additional importance in the context of more recent candidate countries as member states started to pay close attention to the capacity to cope with them in a satisfactory manner. The other criteria are now also under the consideration as, for example, EU members try to make sure that the incoming country is having stable democratic institutions, is consistently applying the rule of law or is able to effectively cope with corruption. It is not about having legal and institutional instruments to cope with these phenomena but rather how effective they are applied. As there is significant dose of qualitative judgments in this context it makes obtaining consent of all member states more difficult and less technical compared to earlier enlargements.⁸

The negotiations process is time consuming. It cannot be done quickly since sheer amount of legal, procedural and administrative solutions to review is enormous. Even with large teams of negotiators it cannot be much quicker. The most important is confidence building between all parties. Any doubt that the applicant might not be prepared in reality, or unable to apply the EU legislation, or even more importantly might be hiding important weaknesses can effectively block negotiation for long periods. In this context the political will of the applicant and the EU members plays incredibly important role. The applicant should make it politically clear that is credibly determined to address any outstanding issue, and the members should not try to claim that minor discrepancies make this process questionable. This political component of assessment might have the most significant impact on the speed and time needed to conclude negotiations.

The credibility of the engagement in the process is crucial⁹. From the point of view of candidates, the credibility of prospects of accession is of vital importance. The required scale of adaptations necessitates taking large, intensive and costly measures. Even if the most of it are objectively needed and could be helpful in modernisation of the candidate economy or legal and institutional system, there are still many that make full sense when a country destiny is within the EU. Political effort, administrative resources allocated to such adjustment process and determination can quickly diminish along with less clear and less immediate prospect of accession. The postponing of necessary adaptation might in addition make these prospects even less likely. For the candidate states it is related to the time frame of negotiations and certainty of prospects of accession. It is difficult to seriously engage in the process of profound adaptations in the final outcome is not certain. The scale of adaptations is very great and success of this process depends on the determination to make them happen. Some of them require significant effort and resources and they can be allocated if the outcome of negotiation is very close.

⁸ Sapir A.; (2022) *Ukraine and the EU: Enlargement at a New Crossroads*, Intereconomics, 57(4), p. 213-217

⁹ Khotenashvili M.; et.al (2022) *Harnessing the EU accession perspective for consolidating democracy in association trio countries*; TEPSA. Experts Debrief; Special Issue.

All these issues are correctly addressed in the Commission paper concerning enlargement process in the case of Western Balkans. But the content of it has more universal meaning. It has to be seen in current difficult geopolitical situation. The application of Ukraine to join the EU and political reaction of the member states to it creates significant change. This has created an expectation that at least in the case of Ukraine, immediately when the war will permit there will be swift process of negotiations followed by rapid accession. It makes other candidates putting a question whether this process is really based on merits and consistent application of the EU rules is precondition for accession. If political consideration give way to put blind eye on weaknesses other candidates will intensify political activity to get similar treatment. Rapid process of negotiation can encounter the most significant barrier, i.e. the insufficient confidence of other member states in effectiveness and stability of the institutions responsible in the candidate countries for implementation of the *acquis*. The trust can be built only over longer period in which all the doubts are discharged. In the case of rapid negotiations, the knowledge about candidate country and functioning of its institutions is not sufficiently widespread to ensure solid acceptance of the outcome of negotiations, free of doubts which could derail ratification in any of the EU member states.¹⁰

This is precisely why it has to be clear that the accession can only happen in the case of the country fulfilling all the criteria and after due process permitting to make sure that the applicant is profoundly prepared and that the EU integration will not be negatively affected. The due process means that all the steps within negotiations has been taken in the approved manner and that with all necessary assurances the whole process of accession can be considered as correctly and thoroughly carried out with no omission or hidden weaknesses. It is particularly important taking into account the scale of possible mistrust among current members of the EU which could be created by the lack of sufficient knowledge of candidate's ability to apply the EU rules, to adhere to the EU policies and to perform efficiently as a future member.

There is, however, legitimate expectation on behalf of candidate states that the accession process should not be prolonged for indefinite period. There is therefore an obvious need to provide both sides of the negotiating process with some assurances of the firmness of the process. For existing EU members, it means coping with their doubts and unfamiliarity of the situation of candidates. For countries willing to accede it is the assurance of non-delayed membership, it cannot be easily resolved. In an earlier enlargement some of the difficult problems were addressed by negotiation and application of transition periods allowing to delay some adaptations by candidate countries or permitting to limit possibilities of the new entrants to enjoy unrestricted privileges of membership. This time the recourse to transition periods might

¹⁰ Bourguignon J., Demertzis M., Sprenger E.; (2022); *EU Enlargement: Expanding the Union and Its Potential*, *Intereconomics*, 57(4), p. 205-208

not only be necessary but in some cases of lack of full alignment they might be wider and longer than before. The accession to the Schengen Agreement or joining the Eurozone has been delayed with continued process well after accession date of many countries already acceded to the EU.

On the other hand, it should be recognised that in many areas the candidates are already emulating the EU policies and applying the EU legal framework. In such a situation it should be possible to apply phasing-in into the EU system of benefits even before accession. It will be as recognition of the preparation made allowing to enjoy benefits of membership before it actually starts. It could be useful both for the candidates and the existing members to make sure that if some candidates are well prepared, the benefits of the EU membership are accorded even before their accession. For example, there is no reason to wait until the whole accession process is finalised to create custom union and eliminate trade controls, if candidate is ready for that. Some elements of free movement of persons can also be implemented and it could start with the system of recognition of qualifications and diplomas if the education system of candidate country has achieved the EU standards.

It also relates to financial flows from and to acceding countries. In the current wave all applicants have much lower level of development and they expect that the membership will help them in overcoming this gap. It was not the case of UK, or Austria, Sweden and Finland but later enlargements involved all less fortunate economies and the cohesion policy has played significant role after accession. At least in the case of Ukraine its accession will happen in contest of huge post-war reconstruction effort which could be supported by many other countries, not exclusively members of the EU. This effort will have to be made irrespective of the dynamics of the accession negotiations. And also, in this case the availability of the modernisation and cohesion finance and programs should not be made fully dependent on the accession date. They could be phased in before accession and scaled up after.

In this way candidate countries could see and experience benefits of membership before negotiations have ended. And it could allow current member states to adjust and familiarize with the new members before they become part of the EU. Enlargement in this sense would be not punctual event but a process culminating by formal date of accession and extending well after that date.

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