Membership of the European Union and admission of new members

URL:
http://www.cvce.eu/obj/membership_of_the_european_union_and_admission_of_new_members-en-c8b65b2e-f0da-448d-b567-85ba0a33e43f.html

Last updated: 08/07/2016

Membership of the European Union and admission of new members

Membership of the European Communities and of the European Union

Although, **before the European Union was established**, admission to the Communities required three different instruments of accession, and although the admission procedure provided for in the ECSC Treaty (see Article 98 thereof) was unlike the procedure provided for in the EEC and EAEC Treaties (see Articles 237 and 205 respectively thereof), applicant countries were required in practice to submit their respective applications for accession to the three Communities concurrently. Accordingly, by joining the main Community — the EEC — they also joined the other two Communities. Furthermore, through their membership of the Communities, the Member States in practice became involved in the mechanisms of political cooperation that were progressively developing (and being formalised) on the margins of the Community system.

The **Treaty of Maastricht of 7 February 1992** repealed Article 98 of the ECSC Treaty, Article 237 of the EEC Treaty and Article 205 of the EAEC Treaty and established a procedure for admission to the European Union. In principle, by virtue of their membership of the Union, the Member States became involved in all its component parts (the European Communities and the areas governed by intergovernmental cooperation). However, the Maastricht Treaty introduced opt-out clauses under which Member States could refrain from becoming involved in specific areas.

— Accordingly, in the context of Economic and Monetary Union (EMU), only those States which met the relevant criteria and had not requested ‘opt-out’ status took part in the single currency. On 1 January 1999, at the start of the third phase of EMU, only 11 of the 15 Member States of the European Union entered the euro zone. Greece did not join EMU until 1 January 2001. The United Kingdom and Denmark enjoyed opt-out status pursuant to the Protocols annexed to the EC Treaty which included opt-out clauses. Sweden and the new Member States, in accordance with the Accession Treaty, take part in Economic and Monetary Union as ‘Member States with a derogation’, as laid down in Article 122 of the EC Treaty. Slovenia, having fulfilled the convergence criteria, became the 13th Member State in the euro zone on 1 January 2007.

— A further protocol annexed to the Treaty of Maastricht authorised 11 Member States — the Twelve minus the United Kingdom — to implement, on the basis of the *acquis communautaire*, the Social Charter of 1989 subject to agreement on social policy.

The **Treaty of Amsterdam of 2 October 1997** (which also terminated the above opt-out from the Social Charter) also introduced the possibility of operating beyond the existing confines of the basic components of the Union but of doing so within the framework of the Treaties, by making use of the institutions and procedures of the European Union (EU): the Treaty provided for enhanced cooperation on condition that it was established between a majority of Member States in areas falling outside the exclusive competence of the European Community which did not concern citizenship of the Union. Furthermore, enhanced cooperation had to be open to all the Member States so that they might participate therein at any time. After the reform introduced by Amsterdam, enhanced cooperation was possible in the third pillar (police and judicial cooperation in criminal matters) but not in the second pillar (common foreign and security policy):

— The Schengen intergovernmental agreements on the gradual abolition of checks at common borders were signed in 1985 and 1990, on the margins of the Treaties, by an *avant-garde* of Member States of the Communities. A Protocol annexed to the Treaty of Amsterdam integrated the Schengen *acquis* into the European Union in the form of enhanced cooperation between 13 Member States (the Fifteen with the exception of Ireland and the United Kingdom and subject to derogations for Denmark) in the area of *visas, asylum, immigration and other policies related to free movement of persons* (Title IV of the EC Treaty, first

pillar) and in the area of *police and judicial cooperation in criminal matters* (Title VI of the EU Treaty, third pillar). Schengen cooperation, undertaken from then on within the legal and institutional framework of the EU, became an integral part of its *acquis* and, as such, had to be accepted in full by all countries applying for accession (see Article 8 of the Schengen Protocol). Accordingly, the 12 new Member States of the Union have, on occasion, taken part in this enhanced cooperation since their respective accessions (on 1 May 2004 or on 1 January 2007) and are preparing for full participation which can take place once their ability to control their external borders has been positively assessed. The Schengen area also incorporates Norway and Iceland as associate members.

The **Treaty of Nice of 26 February 2001** authorised enhanced cooperation in the area of the common foreign and security policy (Title V of the EU Treaty, second pillar). Although that Treaty relaxed the conditions for its establishment, EU Member States have not yet used the enhanced cooperation procedure, apart from within the scope of Schengen.

Terms for accession

— According to the original treaties, any **European State** may apply to become a member of the Communities (see Article 237 of the EEC Treaty, Article 98 of the ECSC Treaty and Article 205 of the EAEC Treaty), which means that the applicant must indeed be a ‘State’ and must be ‘European’. For a State to be regarded as European, its territory must be situated, at least in part, on the European continent. On that basis, the 1963 EEC-Turkey Association Agreement provided for the possibility of the accession of Turkey to the Community (see Article 28 of the Ankara Agreement) and applicant country status was granted to Turkey in 1999. Invoking that geographical criterion, the Council rejected in 1987 the application for accession that Morocco had submitted in 1985.

— The principle of **acceptance of the *acquis communautaire*** (primary and secondary law) was established as from the first enlargement and was reflected in the Commission’s preliminary opinion on the applications for accession submitted by the United Kingdom, Ireland, Denmark and Norway on 29 September 1967 as well as in its updated opinion of 1 October 1969. Applicant countries were thus required to accept the Treaties and their political objective along with every decision adopted since their entry into force, including the agreements concluded with third countries and the options taken in the area of development. The final communiqué of the meeting of the Heads of State or Government held in The Hague on 2 December 1969 also referred to that requirement. That was supplemented by the rule governing accession negotiations, whereby any adjustment problems that might arise had to be solved by the introduction of transitional measures and not by an amendment of the existing rules. The Copenhagen European Council of 21 and 22 June 1993, which determined the economic and political criteria for accession to the European Union, made it clear, moreover, that accession was subject to the applicant country’s ability to assume the necessary obligations and, in particular, to subscribe to the objectives of political, economic and monetary union.

— As early as the first enlargement, the existence of **economic criteria** was apparent (see the Commission opinion of 29 September 1967 concerning the applications for accession submitted by the United Kingdom, Ireland, Denmark and Norway) from the requirement imposed on the United Kingdom to restore a sustainable balance in the British economy and its balance of payments. The capacity to accept all the rules required for the proper functioning of the customs union, and, subsequently, of the Common Market and Economic and Monetary Union (convergence criteria set out in the EU Treaty), stemmed ultimately from the principle of acceptance of the *acquis communautaire*. Finally, in the light of the possible accession of the associated countries of Central and Eastern Europe, the 1993 Copenhagen European Council laid down the criterion of the existence of a functioning market economy as well as of the capacity to cope with the competitive pressure and market forces existing within the Union.

— Although observance of the principles of liberty, democracy and the rule of law and respect for human rights and fundamental freedoms had not been included in the Treaties as express conditions for accession

until 1997 and the advent of the Treaty of Amsterdam (see Article 49 thereof and Article 6 of the EU Treaty), respect for those fundamental principles was an essential condition as from the second enlargement and Greece's application, followed by that of Portugal and Spain. Thus, with a view to enlargement to include first Greece and, subsequently, Spain and Portugal, the Copenhagen European Council solemnly declared on 8 April 1978 that respect for and maintenance of representative democracy and human rights in each Member State were essential elements of membership of the European Communities. In anticipation of the drafting of the Treaty of Amsterdam, the Maastricht European Council held on 9 and 10 December 1991 sought to underline the fact that the Treaty on European Union provided that any European State whose system of government was founded on the principle of democracy could apply to become a member of the Union. Similarly, before that condition became enshrined in the Amsterdam Treaty, it was finally established, as a **political criterion** for accession, at the 1993 Copenhagen European Council that applicant countries had to have, as a pre-requisite for accession, stable institutions guaranteeing democracy, the primacy of law, human rights and respect for minorities and their protection.

— Moreover, the **criterion of strengthening** the Community was also laid down as from the first enlargement: new accessions had to allow the stability and momentum of the Community undertaking to be safeguarded without impairing its internal cohesion and dynamism. It was, therefore, imperative that enlargement of the Community did not result in its distortion or dilution. As early as 1967, in its preliminary opinion, the Commission concluded that the envisaged accession of four new members, 'whose political and economic structures and level of development are very close to those of the present Member States, could both strengthen the Community and afford it an opportunity for further progress, provided the new members accept the provisions of the Treaties and the decisions taken subsequently ... Their accession, although it would bring great changes with it, would not therefore be likely to modify the fundamental objectives and individual features of the European Communities or the methods they use.' The 1993 Copenhagen European Council defined that criterion, which met the general interest of the Union and of the applicant countries alike, as the 'Union's capacity to absorb new members, while maintaining the momentum of European integration.'

The accession procedure

The procedure for accession to the European Communities

Before the Union was created, and although the ECSC Treaty (see Article 98 thereof) provided that a Council decision, taking effect on the date of deposit of the instrument of accession, unilaterally laid down the terms of accession without the Member States' intervention, the EEC and EAEC Treaties (see Articles 237 and 205 respectively thereof) provided that the conditions of admission and the amendments to the Treaties were to be the subject of an agreement concluded between the Member States and the applicant country and subject to ratification. After the Single European Act (SEA) had entered into force in 1987, the EEC and EAEC Treaties stipulated that a prior decision of the Council, unanimously adopted as under the ECSC Treaty, was also required.

Thus, whilst the procedure was strictly Community-based in respect of the ECSC, two phases were established in theory in respect of the EEC and EAEC, namely a Community phase, focusing on the **decision by the Council**, and an intergovernmental phase comprising negotiation of the conditions of admission and of the amendments to the Treaties, as well as the signature and ratification of the **agreement**.

As for the involvement of the other institutions in the Community phase, under the original Treaties, the Commission was required to deliver a preliminary opinion, whereas the Assembly was not consulted. Following entry into force of the SEA, the assent of the European Parliament, acting by an absolute majority of its Members, was also required.

In practice, however, the admission procedure was essentially Community-based, rather than intergovernmental, with a view to avoiding separate negotiations between each of the Member States and the applicant country. Accordingly, from the viewpoint of negotiations with the United Kingdom, Ireland, Denmark and Norway, the Council, at its meeting of 8 and 9 June 1970, established a uniform negotiation

procedure for the Communities, based on the final communiqué of The Hague Summit held in December 1969 under which a *common basis for negotiation* was to be established.

In brief, negotiations started with a Commission opinion and ended with a Council decision, negotiations were chaired at all levels by the Council Presidency, in its role as spokesperson for the Communities, and the Commission was granted negotiating mandates which enabled it, in particular, to look into the study of and proposal for technical adjustments to secondary law and of transitional measures and temporary derogations.

In practical terms, the procedure was as follows:

— A representative of the government of the applicant country — usually the Minister for Foreign Affairs or the Prime Minister — submitted an application for accession to the President-in-Office of the Council of the Communities.

— Discussions and exchanges of views on the application for accession (exploratory talks) took place between representatives of the Community institutions (President-in-Office of the Council and members of the Commission) and members of the government of the applicant country as well as with representatives from its main political parties and socio-economic and regional circles.

— With regard to the preparatory work required for the Commission's opinion on the application for accession, it was essential to organise visits to the country concerned and sector-based meetings at a technical level between Commission staff and the government authorities of the applicant country.

— The Commission delivered a preliminary opinion which analysed the main problems raised by the enlargement and recommended that the Member States either open negotiations or wait for certain conditions to be met, or even refrain from opening negotiations (see Commission opinion of 1989 on Turkey's application for accession). At the Council's request, the Commission might deliver supplementary opinions.

— An initial Council decision, drawn up by the Committee of Permanent Representatives (COREPER), set the date for the opening of accession negotiations and defined the *common position of the Communities on all the issues raised by the negotiations*. The Council did not grant the Commission a negotiating mandate prior to the start of the negotiations but authorised it, during negotiations, to search, together with the applicant countries, for possible solutions to specific problems.

— The negotiating conference was organised on a sector-by-sector basis. The Commission staff and the delegation from the applicant country jointly considered the various chapters of secondary Community legislation. The Commission submitted its proposals for common positions to the Council. The Council, meeting in the form of an 'intergovernmental conference', adopted the common positions and decided to open the negotiating chapters. The negotiating sessions took place at ministerial level, or at the level of their deputies (ambassadors within COREPER). It fell to the Commission to draw up the accession instruments.

— Once the negotiating chapters had been successfully closed, the Commission delivered an opinion in favour of accession, and the Council adopted a final decision.

— The definitive text of the agreement was submitted for signature by the representatives of the Member States and of the applicant countries at a formal ceremony. In practice, the agreement took the form of a short **treaty** of accession to the EEC and EAEC, together with a lengthy **act** concerning the conditions of accession and the amendments to the Treaties which was, in turn, followed by annexes, protocols and declarations. If more than one applicant country was involved, a single agreement between all Member States and all the applicant countries was preferred to the conclusion of separate agreements, in which case it would be necessary to amend the institutional adjustment clauses if one of the applicant countries failed to ratify the agreement (Norway in 1972 and 1994).

— In addition, at the signing ceremony, the plenipotentiaries noted the Council's decision concerning accession to the ECSC.

— Upon signature of the accession agreement, the applicant countries became acceding countries. Pending completion of the ratification procedures, an interim period continued, until the entry into force of the accession agreement, during which the Community institutions took due account in their decision-making of the interests of the acceding countries as future Member States.

— For the agreement to enter into force, it had to be ratified by all the Member States and by the acceding country either at national parliament level or by referendum. Where an agreement concerned the accession of a number of countries simultaneously, one acceding country's failure to ratify the agreement did not prevent the accession of the others (see Norway's failure to ratify in 1972 and 1994).

The procedure for accession to the European Union

The Treaty on European Union signed in Maastricht in 1992 established a procedure for accession to the European Union in spite of the fact that the Union did not have legal personality. Since 1993, a single application for accession is required (instead of three separate applications for each of the three Communities) to start the procedure by which it is possible to establish, by common accord, the conditions of admission and the amendments to be made 'to the Treaties on which the Union is founded'.

The procedure whereby the assent of the European Parliament is required was used for the first time for the fourth enlargement (Austria, Finland and Sweden). On 4 May 1994, the European Parliament adopted four legislative resolutions by which it gave its assent to each applicant country's application for accession to the European Union. On the fifth enlargement, the European Parliament gave its assent on 9 April 2003 by way of 10 legislative resolutions on the accession applications submitted.

Since the fourth enlargement, the accession agreement has been signed in the form of a treaty of accession to the European Union, together with an act concerning the conditions of accession and the amendments to the Treaties on which the European Union is founded.

Accession of the countries of Central and Eastern Europe (CEECs)

Given the complexity and scale of the Union's enlargement to include the countries of Central and Eastern Europe (CEECs), the accession procedure acquired new dimensions, including an important preparatory phase during which the financial and technical support of the Union is paramount, as is the procedure for monitoring the adoption and application of the *acquis communautaire*.

Over the course of the various European Councils, a specific strategy was devised in relation to the CEECs, beginning with the conclusion of association agreements adapted to take account of the respective situation of each country. However, the first 'Europe Agreements', signed in 1991, were confined to stating the individual country's objective of acceding to the Community and avoided all references to legal or political undertakings on the part of the Community. By the same token, in its report to the Lisbon European Council held on 26 and 27 June 1992 entitled *Europe and the challenge of enlargement*, the Commission recommended, under the heading 'A new partnership', that a process of economic preparation be initiated for other European countries which had not applied for accession, referring to their future accession as no more than a possibility.

It was not until the Copenhagen European Council held on 21 and 22 June 1993 that it was agreed 'that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union.' According to the Presidency Conclusions, '[a]ccession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required', which the text then goes on to define.

Following the applications for accession submitted by Hungary and Poland, the Essen European Council held on 9 and 10 December 1994 set out a comprehensive strategy, based on the 'Europe Agreements' and structured relations with the Union's institutions, for preparing the associated countries of Central and Eastern Europe for accession.

The Madrid European Council held on 15 and 16 December 1995 confirmed the need to make appropriate preparations for enlargement on the basis of the criteria laid down in Copenhagen and as part of a **pre-accession strategy** that would have to be intensified in order to create the conditions for the gradual and harmonious integration of the applicant countries. The European Council also asked the Commission actively to prepare its opinions on the applications made and to embark on drafting a document concerning this new enlargement as a whole.

The Commission presented that document, entitled 'Agenda 2000', in the form of a communication in July 1997. In the paper it analysed, for example, the challenges of enlargement, its effects on Community policies, its financial implications and its objectives and *modus operandi*. The latter was underpinned by a **partnership for accession** and optimal use of the other existing procedures, primarily the **Europe Agreements**, which provided for a whole series of bodies pursuing bilateral cooperation, such as the Association Councils. It was established that the partnership for accession, which defined the specific commitments to be met by the applicant country and combined all the forms of assistance offered within a single framework, would be subject to stringent conditions and continuous monitoring and would include a **national programme for adopting the *acquis***. The Commission also proposed convening a **European conference** so as to bring together in a single forum the Member States of the European Union and all European countries which were prospective members and linked to the Union by association agreements.

'Agenda 2000' also included the Commission's opinions on the applications for accession. In its communication and in the conclusions of its opinions, the Commission — which had already delivered a favourable opinion on Cyprus's application for accession in July 1993 — recommended that negotiations be opened with five countries of Central and Eastern Europe (Estonia, Hungary, Poland, the Czech Republic and Slovenia).

Accepting the *modus operandi* proposed by the Commission (European Conference, pre-accession aid, accession partnerships, consideration of progress made in adopting the *acquis* in the Europe Agreement bodies and regular Commission reports to the Council), the Luxembourg European Council held on 12 and 13 December 1997 decided to initiate a comprehensive, inclusive and ongoing process of accession encompassing the 10 applicant countries of Central and Eastern Europe and Cyprus. It also decided to initiate accession negotiations in spring 1998 with the group of six countries proposed by the Commission (**the Luxembourg Group**).

It was not until its meeting on 10 and 11 December 1999 in Helsinki that the European Council decided to open accession negotiations with six other countries — five new countries of Central and Eastern Europe (Romania, Slovakia, Latvia, Lithuania and Bulgaria) and Malta (**the Helsinki Group**). In the negotiations, each applicant country was to be judged on its own merits (in accordance with the **principle of differentiation**) and was given the possibility of catching up within a reasonable period of time with the countries already in negotiations, provided that they had made sufficient progress in their preparations (in accordance with the**catch-up principle**).

Although accession negotiations with the six countries of the Luxembourg Group had begun on 31 March 1998 and, as late as 15 February 2000 with the six countries of the Helsinki Group, the application of those two principles meant that it was possible to complete negotiations in December 2002 with 10 of them (the six 'old ins' and the four 'new ins': Latvia, Lithuania, Malta and Slovakia). By contrast, negotiations with Bulgaria and Romania were not completed until two years later, in December 2004.

Before the various negotiating chapters (31 in total) were opened, the Commission carried out a chapter-by-chapter 'screening' exercise aimed at explaining the *acquis* to the applicant countries and assessing the difficulties with which each country would be faced in the adoption and implementation of the *acquis*.

Following adoption — on a proposal from the Commission — of the common positions by the Council, the negotiating chapters were opened at differing speeds, in line with the principle of differentiation. Decisions to close chapters provisionally were taken by the Intergovernmental Conference, acting unanimously. The chapters provisionally closed could be reopened if, during a ‘monitoring’ exercise, the Commission established that the applicant country had failed to meet the commitments given during the negotiations. The chapters could be closed definitively only if the Conference agreed to conclude all the negotiations in respect of the applicant country concerned.