

EDITORIAL COMMENTS

Towards accession

1. On 13 November 2001, the Commission issued its annual reports on the progress made by the candidate countries, together with an accompanying Strategy Paper. The Commission takes the view that of the twelve negotiating countries, ten have target dates for accession compatible with the timeframe laid down by the European Council meeting in Gothenburg on 14 June 2001.¹ This means that those countries which are ready should be able to conclude the accession negotiations by the end of 2002 and participate as EU Members in the European Parliament elections of 2004. Subject to overcoming certain obstacles, we could be facing the “Big Bang” – the accession of ten new Member States – by 2004, creating a Community of 25.²

As is to be expected at this stage, the Commission takes a very up-beat tone despite the fact that some notable problems remain. It must be said, the progress is striking and the Commission’s optimism largely justified. Most negotiating countries have now closed twenty or more of the 31 chapters into which the negotiations have been broken down. At the time of writing, nearly all countries have opened 29 chapters (two further chapters, one on institutions, and another catchall “miscellaneous” chapter, have still not been opened by any of the candidates).³ The “roadmap” for the negotiations endorsed by the European Council in Nice in December 2000 appears, broadly speaking, to be working. Negotiation is taking place in accordance with two basic principles: “own merits” i.e. the efforts and achievements of the candidate countries to meet the accession criteria, and “catching-up”, i.e. the possibility

1. The negotiating countries are Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.

2. This was confirmed by the European Council meeting at Laeken, 14–15 Dec. 2001.

3. At the time of writing, Malta had opened 28 chapters (agriculture remained to be opened, although Malta had submitted its position), Bulgaria had opened 26 (and submitted its positions on agriculture, EMU and industrial policy), and Romania had opened 17 (having submitted positions on EMU, energy, industrial policy, environment and financial control, and yet to submit its positions on free movement of goods, free movement of persons, freedom to provide services, agriculture, regional policy, justice and home affairs, and financial and budgetary provisions).

for those who started negotiations later to catch up with the other candidates. The latter is particularly impressive if one considers that, until recently, it was only an accession of six new Member States which was envisaged

2. Before going into the details of the Reports and Strategy Paper and what remains to be achieved, it may be worthwhile to sketch the overall picture and the context. To start with, it appears that Bulgaria and Romania will not be among the first entrants. Second, it is clear, as a political point at any rate, that (for different reasons) the accessions will not go ahead unless Poland and Cyprus are included in the initial entrants. Third, the position of Turkey, not a negotiating State, needs further impetus.

3. All of this is occurring against the background of the negative result of the Irish referendum on the Nice Treaty. It is important to stress that in principle this result will not be able effectively to block accession. Even in the absence of a new Irish referendum approving the Nice Treaty, it appears that it is nevertheless possible under Irish law to include the accession-related parts of the Nice Treaty in the Acts of Accession. Ratification of the Acts of Accession does not apparently require approval by referendum under current Irish law (although it is conceivable that there may be a challenge in the courts to prevent the Irish Government from ratifying the Acts of Accession, as occurred in the case of the Single European Act).

There is also an interesting point of EU law which arises. If the technique used to avoid the Irish result were to place the accession-related issues in the Acts of Accession, the question arises whether this would satisfy the criteria laid down by the Court of Justice in its first EEA Opinion suggesting that fundamental changes to the Treaty should not be made by way of Act of Accession but by the Treaty amendment procedure. This is arguably the case as regards the new population criterion, but also as regards changes in the composition of the Institutions etc.

The Irish authorities are coming under increasing pressure to take the necessary steps to have a second referendum on the matter, and to ensure a positive outcome with the support of the leading political parties. This may not be easy. Despite the recent visit of the then President of the Council to Dublin underlining the political and economic repercussions which Ireland may face in the event of non-approval of the Nice Treaty, the fact remains that the Treaty as it stands seems unlikely to win popular support in Ireland. It seems generally accepted that the other Member States will have to make concessions as regards the Irish positions on neutrality and abortion – the latter is once again a major domestic political issue. The focus here will be to ensure that EC law cannot be used in the future to justify abortion (as in *Grogan*). Moreover, pending the expected general election in Ireland in 2002, none of the major political parties appears to have an immediate interest in promoting ratification. Strangely, in the country which has refused the Nice

Treaty, the topic does not appear to be a current major issue. Nevertheless, it seems likely that the major political parties will, at some point, be sufficiently persuaded by international opinion to support approval of an appropriately modified Nice Treaty.

The issue of majority voting will be discussed at the next intergovernmental conference in 2004, but it seems frankly unlikely that the Irish example of one small country holding back the others will change matters: too many countries are aware that they too may have their sticking points on issues which have special domestic implications, and will probably want to retain ultimate control so that they cannot be outvoted on such issues.

4. In the meantime, the accession negotiations will continue, hopefully leading to positive assessments of “readiness” of the ten candidate countries currently seen as being on track. According to the Commission Strategy Paper accompanying the Regular Reports for 2001, the EU will not create new conditions for accession. This means that on all forthcoming issues, in particular those with important financial implications like agriculture, regional policy and budget, due to be addressed in the first half of 2002, the Commission will make negotiation proposals based on the existing “acquis” and budgetary framework. The Commission considers the latter as sufficient to accommodate up to ten new Member States. According to the Commission, negotiations can therefore be concluded independently of decisions for financing the EU after 2006, and of other reforms in agriculture, regional policy or the future of Europe.

As is to be expected, given the insistence of the Madrid European Council in 1995 on this point, the Commission places particular importance on the proper implementation and enforcement of the *acquis communautaire*, which will require further efforts to strengthen administrative structures and to reform judicial systems in the candidate countries. The Commission proposes an “action plan” aimed to help candidate countries reinforce their administrative capacity. The action plan will use established mechanisms (expert assistance, networking, training, investment plans) and release additional financial assistance from the PHARE programme of up to euro 250 million in 2002, in addition to the euro 750 million already foreseen, taking the total EU contribution to strengthen the administrative and judicial capacities of the candidate countries to euro 1 billion in 2002. If needed, this effort could be repeated in 2003, for instance to finance additional training. In the next Regular Reports, in 2002, the Commission will examine whether the candidate countries will have, by accession, adequate capacity to implement and enforce the *acquis* properly.

Given the current pace of negotiations and the progress made so far, the Commission should be able to make recommendations as to which candidate countries are ready for accession on the basis of its 2002 Regular Reports.

Among the twelve negotiating countries, the Commission considers that ten have target dates for accession compatible with the Gothenburg timeframe. One's impression is that the pace of progress as regards the non-financial chapters is picking up. As an example, a further 12 chapters were provisionally closed when the EU and eleven of the candidate countries held negotiations in Brussels on 28 November last. Hungary closed the chapter on justice and home affairs – the first candidate country to do so. At the same negotiations, the company law chapter was closed with all twelve of the candidates, following negotiations with Poland and Romania.⁴ The Commission proposes that in its 2002 Enlargement Strategy Paper, it should set out an updated “roadmap”, and, if need be, a revised pre-accession strategy for candidate countries that will not be able to conclude negotiations in 2002. Opening, but not concluding, all remaining chapters for negotiations is envisaged as being possible in the course of 2002.

5. The most important remaining chapters in the negotiations concern agriculture, as was to be expected, and the financial considerations which will arise in negotiations over the regional policy chapter and the financial and budgetary provisions. The regional policy issue is particularly serious, as the current framework only goes as far as 2006.

Some notable compromises have been made in the course of the negotiations, of which the free movement of persons is a good example. There, in what was considered to be a sticking point for Poland, a seven-year transition period has been agreed, with biennial reviews. This means that the transition period can be presented, at least politically, as not being written in stone, but rather as a more flexible arrangement. This is important for countries such as Poland, but also for internal policy reasons in a number of existing Member States. Such a compromise has already been accepted by other negotiating States.

An agreement is also being mooted (although still under discussion) over the acquisition of land by EU nationals. This is a particularly serious issue for some candidate countries (Romania, Czech Republic, Poland and Slovenia) and has historically-linked political implications. An initial 18-year transitional period was met by a counteroffer from the Commission of seven years: a 10–12 year period is now regarded as the most likely outcome.

An example of how the accession negotiations exert effects can be seen in the field of competition. The competition chapter is still open, as the Union wishes to see adequate institutional frameworks for the enforcement

4. The agreements from these talks – held at deputy level, with EU ambassadors and candidates' negotiators – remained to be confirmed at the ministerial negotiations on 11 Dec. 2001.

of competition law established in every negotiating State, and to have evidence of their functioning and capability to implement Competition law.

6. The Commission's country-by-country reports and overall assessment are all based on the accession criteria defined by the European Council in 1993 in Copenhagen and subsequent European Councils, according to which membership requires that each candidate country ensures

- the stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities;
- the existence of a functioning market economy and the capacity to withstand competitive pressure and market forces within the Union; and
- the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

In addition, the Commission takes account of the importance, highlighted by the European Council in Madrid in 1995, not only of incorporating the "acquis" into national legislation, but also of ensuring its effective application through appropriate administrative and judicial structures. On this basis, the Commission Reports are encouraging. Moreover, they take account only of legislation which has been adopted, not draft legislation, and measures which have actually been implemented.

7. The Commission considers that all candidate countries meet the political criteria, since the relevant structures are in place to ensure the stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities; this is with the exception of Turkey (although the Commission concedes that Turkey is beginning to make progress, as demonstrated by recent important constitutional reforms). It sees further positive developments in the negotiating countries, and the overall record has improved. However, some issues of concern remain, including the reform and strengthening of the judiciary, corruption, the trafficking of women and children, and the situation of the Roma.

8. As for the economic criteria, the Commission acknowledges the rapidly deteriorating global economic conditions, but notes that in 2000, and the first half of 2001, growth in the candidate countries was relatively strong. Overall, on the two economic criteria (functioning market economy and the capacity to withstand competitive pressure and market forces within the Union) the Commission concludes that Cyprus and Malta meet the criteria. The other eight front-runners (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) are considered to be functioning market economies and although there are considerable economic differences among these countries, provided they meet the targets measures contained in the respective national reports, they should be able to cope with competitive pressure and market forces within the Union in the near term. The Commission concludes that Bulgaria is close to being a functioning market economy and if it con-

tinues to implement reforms and intensifies the effort to eliminate persistent difficulties, it should be able to cope with competitive pressure and market forces within the Union in the medium term. Only Romania, according to the Commission, does not yet meet either criterion, but it has made substantial progress in this direction.

The Commission also discusses the EMU and the euro. It notes that “some time after accession”, new Member States will be expected to join the ERM II (Exchange Rate Mechanism). It rules out any unilateral adoption of the euro; the Commission considers that this must take place as part of a structured convergence process within a multilateral framework. It is to be hoped, however, that the Union will not adopt an unduly rigid posture and that individual countries should be allowed to join the euro when they are ready, without waiting for all the others.

9. As regards the third accession criterion, concerning the ability to take on the obligations of membership, this is essentially an assessment of the adoption, implementation, and enforcement of the *acquis communautaire*. As noted, the Commission focuses particularly on the establishment of adequate administrative and judicial structures. Whereas continued progress has generally been made in terms of the adoption of legislation, and the Commission recognizes that there has also been progress in developing the administrative capacity required to implement the “acquis”, it stresses that this remains the area in which most work is still required in virtually all of the candidate countries. The particular substantive areas which are identified as being affected by inadequate administrative capacity include the internal market, sustainable living conditions, overall protection of citizens and the management of EU funds – an impressive list.

10. The Commission also analyses the situation of Turkey, which is not a negotiating country. It proposes a new stage, based on a more detailed preparation for EU membership requirements. Turkey is encouraged to intensify and accelerate the process of political and economic reform in line with the accession criteria and the priorities set in the “Accession Partnership” for Turkey adopted by the EU in 2001. The Commission also requests that Turkey should be “forthcoming” in working towards a solution of the Cyprus problem and the differences over European Security and Defence Policy. The Commission proposes a detailed scrutiny of Turkey’s legislation and its timetable for alignment with the “acquis”, and the capacity of the Turkish administration to implement and enforce the “acquis” effectively.

The Commission also examines Turkey’s position as regards the accession criteria and finds that Turkey does not fulfil those concerning human rights while progress towards achieving a functioning market economy is stalled even though considerable parts of its economy are, however, already competing in the EU market, under the framework of the customs union. The analysis

is, as one might expect, objective; the political reality however needs to be addressed. The strategic importance of Turkey has never been greater since the tragic events of 11 September 2001, and no-one can seriously doubt that Turkey's future must be in the Union. What is needed is a political undertaking on both sides: on the Turkish side to recognize that the EU is more than an economic Union and has certain democratic, human rights and other legitimacy criteria which all Member States must fulfil; on the EU side, there must be a recognition of the special difficulties which Turkey faces and the enormous potential it offers.

11. The position of Cyprus is also addressed: although hoping for an engagement of Turkish Cypriot leaders, it seems probable that a decision on accession will be taken without a prior settlement of the Cyprus question. Recent events in Cyprus give some hope that a settlement may be possible, as accession of Cyprus without a prior settlement would be likely to set the division of that island in stone and prejudice the question of Turkish accession.

12. Finally, the Commission sets enlargement in the context of neighbouring countries, showing the synergy between accession and the Community's various external programmes (the Stabilization and Association process for the Western Balkans, the Partnership and Co-operation framework for Russia, Ukraine and the other NIS, and the Barcelona process for the Mediterranean region), together with the implications for the EEA (which all the acceding countries will also need to join).

13. In the Strategy Paper accompanying the Reports, the Commission stresses briefly the benefits of enlargement which it categorizes as geo-political (a safer Europe; conflict prevention), and enriching the political, economic, cultural, historical and geographical heritage of Europe as a whole. The Commission commits itself to working together with the European Parliament in backing up the efforts of the national political leaders in explaining to the public the issues involved. Although the Commission promises an information campaign, what is needed most of all is a campaign to explain the benefits of enlargement, and not simply information. Accession is an enormous challenge. Without a campaign to engage citizens in supporting the process, the yawning gap between the institutions and citizens will grow even larger.

14. As said earlier, the Commission is up-beat, but not without reason. Progress is substantial. Moreover, the prospect of the date, 2004, fixed by the Gothenburg summit, which now appears to be within reach, must be a powerful spur for the negotiating countries. Their frustration, and the consequent decline in enthusiasm for EU membership which has been registered in many of the candidate countries is understandable, given that most of them have been waiting for this moment for well over a decade. But this adjustment period was necessary economically and in some respects politically. Moreover, it

is essential that the structures be in place to ensure the implementation of the *acquis communautaire*.

It would be a mistake to paint too rosy a picture. Some of the most problematic issues still have to be tackled in the negotiations. The Commission has given the benefit of the doubt in many areas as regards preparation. Thus, although the overall picture is encouraging, very serious issues of preparation remain, as the assessments for both political and economic criteria show. The strong sense of optimism engendered by progress, must be tempered by the realization that the conditions have not yet been met. It is still quite possible that there may be a slippage in the time-frame, or that not all ten States may accede at the same time.

The accession seems near, furthering the aim set out in the recital to the EEC Treaty in which the original treaty-makers, with the goal of preserving and strengthening peace and liberty, called "upon the other peoples of Europe who share their ideal to join in their efforts". That heroic aspiration fulfilled, the Europe of 25 or 27 or more will have to take the necessary steps to create a European framework which is more democratic and nearer its citizens.