

The Treaty of Lisbon: New Signals for Future Enlargements?



By **Sonia Piedrafita***¹

The Lisbon Treaty was negotiated against the background of a new strategy on enlargement based on consolidation of existing commitments, better communication to citizens, stricter conditionality and the consideration of the EU's capacity to integrate new members. It has introduced some changes to Article 49 of the Treaty on European Union, which specifies the basic procedures for accession of new members. These relate to the promotion of the EU values, better information to both the national and the European parliaments and the explicit reference to conditions for entry laid down by the European Council. This contribution, on the one hand, reviews this new strategy on enlargement. On the other, it examines to which extent the new treaty provisions reflect the less favourable climate and whether they may represent any major change in practice.

Enlargement of the EU has figured prominently in recent public debates over the future of Europe. It was regarded as an important factor behind the negative result in the referendums on the Constitutional Treaty in France and the Netherlands, even though the reasons given by citizens for a negative vote were usually related to economic considerations, the lack of information or the threat to the national government.² Indeed, support for enlargement has been decreasing in the recent years in many old Member States,³ and only 29% of their citizens think that enlargement has a positive impact on the EU.⁴

At the EU level, decision-makers seem to prefer a pause in order to digest completely the last accessions and consolidate existing commitments. Caution about further enlargements is also fed by uncertainty about how enlargement is going to affect the future of the EU in terms of the manageability of its decision-making process, deeper integration or a single voice in the world. Inevitably, enlargement-related issues have been present in both the European Convention's debates and the intergovernmental negotiations leading to the Treaty of Lisbon.

This contribution will first review the policy background against which the recent Treaty reform has taken place, focusing on the new strategy on enlargement, and on the evolution from "absorption capacity" to "integration

capacity". It will then examine whether the new provisions introduced by the Treaty of Lisbon reflect this less favourable climate for enlargement and to which extent they are going to make a difference to common practice so far.

From absorption capacity to integration capacity

The climate for enlargement has become less favourable in the last decade, triggering a new strategy for enlargement based on stricter conditionality and on the capacity of the Union to integrate new members without hindering its goals and policies. Traditional concerns about the impact

of new members on the functioning of the Community institutions and policies turned into the notion of "absorption capacity" on the occasion of last enlargement, and "integration capacity" more recently.

Even though it was not until June 1993 that the Copenhagen European Council first formally stated that "the Union's capacity to absorb new members, while maintaining the momentum of European Integration" was an important consideration to take into account when considering a membership application, these

were already concerns in previous rounds of enlargement. One fear about the accession of Denmark, Ireland and the United Kingdom was that it could affect the capacity of the

The climate for enlargement has become less favourable in the last decade, triggering a new strategy for enlargement based on stricter conditionality and on the capacity of the Union to integrate new members.

Community to work efficiently and further complicate progress in Community policies (Deighton and Milward 1999). And when the Community was still digesting with some difficulties the absorption of these new members, the application of Greece again prompted voices of alarm about both the institutional capacity of the EC to work with more members and the consequences for the integration process (Verney 2007). The subsequent applications by Portugal and Spain further increased these concerns (Tsoukalis 1981).

The first response to the membership applications from the EFTA countries (Austria, Finland, Norway, Sweden), and to increasing pressure from the Central and Eastern European Countries (CEECs) for a clear “European perspective”, was the Commission’s report “Europe and the challenge of enlargement”, submitted to the Lisbon European Council in June 1992. The report outlined the challenges that the accession of the EFTA countries, and to a still greater extent the accession of the CEECs, could pose for the effectiveness of the Community, its institutions, and the development of the common policies (EC 1992).

Indeed, one of the main reasons for excluding from the Association Agreements with the CEECs a “membership clause”, such as had been included in similar agreements with Greece and Turkey in the past, had been the risk that their accession could pose for the “deepening” process taking place in 1991, when the terms of political and economic union were agreed.

The capacity to absorb new members was traditionally assessed through the Commission’s opinions on the applications for membership, examining on the one hand the candidates’ ability to assume the obligations of membership including their acceptance of EU policies and, on the other, the impact of accession on the Union, in areas such as the functioning of the rotating Council Presidency, estimates of net financial transfers based on existing common policies, or the addition of official EU languages. Given the special difficulties and challenges involved in the eastern enlargement, the possible consequences were the subject of a special Commission Communication in 1997: “Agenda 2000: For a stronger and wider Union”. In this case, the Commission not only delivered an opinion on the candidates’ applications but also examined the likely impact of the enlargement more generally, proposing EU budgetary and policy reforms (EC 1997). In the same vein, in parallel to the Regular Report on Turkey and its recommendation to open negotiations in October 2004, the Commission also presented a detailed Impact Study on “Issues raised by Turkey’s possible membership in the European Union”.⁵

A thorough preparation process by both the EU and the CEECs has helped ensure – so far – a smooth functioning of the EU institutions and a similar delivery of results after enlargement (Best *et al* 2008). However, the accession of ten new Member States in May 2004 and Bulgaria and Romania in January 2007 has also posed important

challenges for the manageability of the decision-making process, especially in view of the increased size and heterogeneity and the specific features of the newcomers. The accommodation or “absorption” of the new members may be regarded as a successful but still ongoing process, with neither they nor the Union having fully finalised the necessary adjustments. On the one hand, the EU institutional and treaty reform process has not been completed yet, and pressure for further change may still emerge in the future as the result of enlargement and other factors. On the other, the new Member States are still in the process of developing efficient mechanisms to participate in and

influence EU decision-making, improve their administrative capacity to implement the *acquis* and EU policies, and prepare their economies for full membership of the Economic and Monetary Union and the challenges of the Lisbon strategy.

The need to allocate time and resources to the goal of completing the process successfully, the increasing pressure for accession from candidate and potential candidate countries, the treaty-reform *fatigue* resulting from two decades of

intense widening and deepening, and the blame laid on enlargement for the failure of the ratification of the European Constitution, all triggered the development of a new strategy by the European Commission in 2005. “Consolidation, Conditionality, Communication: The strategy of the enlargement policy” was based on three lines of action: consolidation of existing commitments, better communication to citizens in order to improve the legitimacy of the process, and application of fair and rigorous conditionality to the candidate countries so that they are ready to fulfil their obligations as members and implement Community policies (EC 2005). The Commission stressed that future enlargement should depend on the candidate’s performance in meeting the standards in order to ensure the smooth absorption of the new members, and should also guarantee the capacity of the Union to act and decide according to a fair balance within its institutions.

Rigorous and fair conditionality implies first that the “Union has ‘to demand fulfilment of the accession criteria and duly reward countries that make progress’ and, second, that “accession negotiations at any stage in the accession process may be suspended if these criteria are not met.” Whereas the fulfilment of the enlargement criteria implied a single judgement as to whether an applicant met the minimal requirements for membership, the principle of conditionality involves continuous scrutiny by the EU of all spheres of the legal, political and economic reforms in the candidate countries (Kochenov 2005). Conditionality gives the Union guarantees that obligations are assumed by the applicants, and allows differentiation between complying and non-complying candidates. Conditionality indeed became a new principle of enlargement throughout the accession process of the CEECs. Membership was conditioned first to fulfilment of the Copenhagen criteria.

The accommodation or “absorption” of the new members may be regarded as a successful but still ongoing process, with neither they nor the Union having fully finalised the necessary adjustments.

The Luxembourg European Council of December 1997 agreed that, even though negotiations could be opened with those candidates that satisfied the political criteria, conclusion of the negotiations would be conditional on their fulfilment of the economic criteria and satisfactory adoption of the *acquis*. The Accession Partnerships went a step further and conditioned the reception of accession aid to the fulfilment of the criteria.

This new strategy was followed by discussions in the Council on whether to include the EU's capacity to integrate new members as a new criterion when considering an application, with the June 2006 European Council requesting the Commission to present a special report in this regard.⁶ In its report, the Commission stated that the EU's "integration capacity" (rather than "absorption capacity") depended on the development of the EU's policies and institutions, as well as on the transformation of applicants into well-prepared Member States (EC 2006). The capacity of would-be members to accede to the Union should be "rigorously assessed by the Commission on the basis of strict conditionality". "Integration capacity" also means assessing "whether the EU can take in new members at a given moment or in a given period, without jeopardizing the political and policy objectives established by the Treaties." In order to maintain the momentum of European integration "as it enlarges the Union needs to ensure that its institutions continue to act effectively, that its policies meet their goals, and that its budget is commensurate with its objectives and with its financial resources." The EU's integration capacity will be reviewed at all key stages of the accession process. In its opinions on applications for membership and in the course of accession negotiations, the Commission will provide impact assessments of accession on key policy areas.

In November 2006 the European Parliament adopted a Report drafted by Alexander Stubb on the institutional aspects of the Union's capacity to integrate new members. This acknowledged the EU's "difficulties to honour its commitments towards South-East European countries", and called for a series of institutional changes to improve the EU's "integration capacity". These changes included adoption of a new system of qualified-majority voting in the Council; a clear definition of the EU's values, objectives and competences; more transparency in Council's operations or increased powers of scrutiny for national parliaments, most of them already envisaged on the Constitutional Treaty. The Parliament welcomed the abandonment of the term "absorption capacity" since the "EU does not in any way absorb its members", but stressed that "integration capacity" should not be "a new criterion applicable to the candidate countries" and that responsibility for improving "integration capacity" lay within the Union itself.⁷ Although the December 2006 European Council did not include "integration capacity" as an additional criterion for the candidate countries, it did agree on a "renewed consensus on enlargement" based on the new enlargement strategy (consolidation, conditionality and communication) and the EU's capacity to integrate new members as proposed by the Commission.

Implications of the new Treaty

Against the background of this new strategy and increasing concerns about future accessions, the current treaty reform has introduced some changes regarding enlargement.

This section will examine to which extent the new provisions are reflecting the less favourable climate on the issue and what changes they might involve in practice.

The European Council in June 2007, in its Draft Mandate for the 2007 Intergovernmental Conference, tried to combine the consensus reached during the deliberations before signature of the Constitutional Treaty (which was more positive with regard to enlargement) with this new, less favourable climate. The resulting changes to Article 49 of the Treaty on European Union, which specifies the basic procedures for accession of new members, include the promotion of EU values as a condition to apply and the notification of the new applications to both the national and the European parliaments, as envisaged in the Constitutional Treaty. The Draft Mandate added the consideration of the conditions of eligibility decided by the European Council to the list, and dropped the article stating the open nature of the EU in the Constitutional Treaty.

The text as modified by the Treaty of Lisbon thus reads as follows:

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The respect and promotion of EU values

Before 1999, the only requirement for a state to apply for membership was to be European. The term "European" was considered to be a non-fixed, ever-changing concept that combined geographical, historical and cultural elements that constituted the "European identity" (EC 1992:11). After the entry into force of the Amsterdam Treaty, an applicant country also had to respect the principles of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law.⁸ The Amsterdam Treaty also introduced a procedure to allow the provisional suspension of certain membership rights in case of the breach of these principles by a Member State, which was further reinforced by the Treaty of Nice. Since then, the role of these principles as guidelines for EU decision-making has increased across many policy areas.

The European Convention added human dignity and equality to the list, dropping the fundamental freedoms, and stated that "these values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination." The 2003 IGC added that in this society "the principle of equality between women and men prevail" and emphasised "the rights of the persons belonging to minority groups" in the list of principles.

The Lisbon Treaty has maintained Article 2 of the Constitutional Treaty:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

However, the article of the Constitutional Treaty stating that the Union shall be open to all European states which respect the collective values and are committed to promote them (Article I-58), clearly stressing the “open” nature of the European project, has been dropped. The European Council’s Draft Mandate for the 2007 IGC decided to return to the old wording and to make clear that, even though only states that respect and promote these values may apply, the acceptance of the application still lies with the EU, which still can reject any future application on these grounds.

The role of the European and national parliaments

A second change introduced by the Lisbon Treaty is the obligation to inform the European Parliament and the national parliaments about any new membership application. So far, the role of the EP has been limited to

group to examine the role of the national parliaments (O’Brennan and Raunio 2007). It was the Constitutional Treaty that established that both the EP and national parliaments should be notified of any membership application (Art. I-58) and the Draft Mandate for the 2007 IGC maintained the clause in the revised article on enlargement.

This new provision could have a twofold effect. The decision to give a country the candidate status lies in the European Council, usually in accordance with the recommendation made by the Commission, which has traditionally played the role of securing the support of the most reluctant member governments for the accession of some candidates. Widening the public debate and bringing the decision-making closer to the national constituencies may contribute to increase the legitimacy of the process and improve the understanding by the citizens, but it could



Taking Europe into the 21st century
© European Communities, 1995-2008

giving the “assent” required for enlargement decisions. The role of the national parliaments has been limited to ratification of the accession treaties once they had been signed, according to the procedures established by the national law. The new change in the enlargement procedure echoes broader trends to increase the role of the EP in the EU decision-making process, and to improve the information and interaction with national legislative assemblies as a means to reduce the democratic deficit of the Union.

Two Declarations on national parliaments in the Treaty of Maastricht, further developed and included as Protocols in the Treaty of Amsterdam, already regulated better communication procedures with national parliaments and fostered inter-parliamentary cooperation.⁹ Declaration No. 23 of the Final Act of Nice listed the role of national parliaments in the European architecture as one of the four key questions which the next IGC should address. Indeed 56 (out of 102) members of the Convention represented national parliaments and there was a specific working

also make this consensus-searching task much more difficult. However, this new provision may not involve big changes compared to the past. In practice, the EP and national parliaments were already informed about membership applications, either through formal mechanisms such as hearings and reports from the executives, or informal mechanisms like intra-parties relationships.

The explicit reference to conditions laid down by the European Council

The Treaty of Lisbon has included the requirement to consider conditions of eligibility defined by the European Council when accepting or rejecting an application, which was not explicitly foreseen in the Constitutional Treaty. This has largely been intended as a reassuring response to public concerns about enlargement. However, it may not in fact represent any major change in practice.

It was the then European Assembly – subsequently the European Parliament – the first to set any membership

criteria. Only six years after its foundation, the 1962 Birkelbach Report stated the necessity to be a democratic state in order to become a member of the European Communities.¹⁰ This interpretation of Article 237 TEC was soon implemented when Franco's Minister of Foreign Affairs Castiella filed the Spanish application for membership on 9 February 1962. The request was merely acknowledged but the EC did not accept Spain as a candidate because it was not a democratic state. A similar approach was adopted in a declaration by the Council at its meeting in Copenhagen in 1978, again in close relation with the changes taking place in Southern Europe. In its Declaration on Democracy, the Council stated that "the

respect and maintenance of representative democracy and human rights in each member States are essential elements of membership in the European Communities."

The enumeration of specific criteria that candidates should meet in order to become members was first developed in the Commission's report "Europe and the Challenge of Enlargement", submitted in June 1992 to the Lisbon European Council. The Commission admitted that the Community had never been "a closed club and could not now refuse the historic challenge to assume its continental responsibilities and contribute to the development of a political and economic order for the whole of Europe", but also listed the conditions the candidate countries should meet in order to become a member, namely share the European values, be a democracy and respect the human rights, adopt the objectives of the EC, including the CFSP and all the *acquis*, and assume all the membership obligations. The latter was meant to avoid new opt-outs for newcomers. The Lisbon Council agreed then to open accession negotiations with the EFTA candidate countries – after approval of the financial perspectives and ratification of the Maastricht Treaty – and to further examine the enlargement Eastwards.

In October 1992 John Major and Jacques Delors met the Governments of Poland, Hungary, Czech Republic and Slovakia and agreed to prepare a list of admission criteria for the Edinburgh European Council in December. The Commission submitted its first draft of "Towards a Closer Association with the Countries of Central and Eastern Europe" to the European Council in December 1992 and again in June 1993, when the decision to give a clear membership perspective to the CEECs was taken.¹¹ Following the Commission's report, the Council specified the so-called Copenhagen criteria, namely: the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of a functioning market economy as well as the capacity to cope with 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 order to react to the specific challenges emerging from the

preparation of the CEECs for future accession, the European Council added to the list the administrative capacity to implement the *acquis* in its meeting in December 1995 in Madrid, and the actual application of the *acquis* beyond its mere adoption, in its meeting in December 1997 in Luxembourg.

However, fulfilment of the criteria which have been laid down since the early 1990s has not so far been a condition *sine qua non* to accept a candidate. Decisions have sometimes been taken for political reasons rather than as the result of a painstaking assessment of the candidates. Some candidate countries did not fully fulfil the criteria when the Commission proposed, and the European Council accepted, to open negotiations with 5+1 candidate countries in December 1997; neither did the other 5+1 when the Helsinki 1999 European Council decided to open up the negotiation process to them.¹² Bulgaria and Romania did not fulfil the criteria when the accession treaties were signed, and did not do so even when they became fully members of the Union, being granted some extra time to meet their commitments.

Although this new provision in the Treaty of Lisbon, together with the stricter conditionality envisaged in the new strategy for enlargement, is meant to avoid similar circumstances in the future, the final word will still lie with the European Council, and nothing prevents future decisions on enlargement from being taken according to the political preferences of the day.

Concluding remarks

Against the background of a new strategy on enlargement based on consolidation of existing commitments, better communication to citizens, stricter conditionality and the consideration of the EU's capacity to integrate new members, the current treaty reform has introduced some changes to Article 49 of the Treaty on European Union, which specifies the basic procedures for accession of new members. These relate to the promotion of the EU values, better information to both the national and the European parliaments and the explicit reference to conditions for entry laid down by the European Council. While the first two were already envisaged in the Constitutional Treaty, the last was added during the 2007 intergovernmental negotiations, which also dropped the article of the Constitutional Treaty which stated that the Union shall be open to all European states which respect the collective values and are committed to promote them. Only states that respect and promote these values may apply but the treaty makes it clear that the decision to accept any application lies in the EU.

The new provisions, as compared with the constitutional text, reflect to some extent the less favourable climate on enlargement. However, they may not represent any major change in practice. The provisions on the European and national parliaments and on the conditions set by the European Council can be regarded as a mere codification

The new provisions, as compared with the constitutional text, reflect to some extent the less favourable climate on enlargement. However, they may not represent any major change in practice.

of existing practice. Even if the addition of some values and the requirement not only to respect but also promote them in order to be eligible to apply may provide substantive grounds to discourage some applications, and even though the application of stricter conditionality may make future accession processes more difficult, EU enlargement will probably remain dependent on the politics of the day and the will of the European Council, as has always been the case.

Beyond this, we can venture that, even for those countries that have already acquired candidate status or the “European perspective”, the accession process is very likely to be long and strict. The main challenge for the EU, on the other hand, will now be to develop new ways to manage its relations with these countries, as well as with those that have not yet even been granted the European perspective, on the basis of the new article in the Treaty on European Union which provides for a special relationship with “neighbouring countries” – but without being able to offer so convincingly the perspective of accession which has so far been such an effective tool for the EU to wield “soft power” around its edges.

References

- Best, E., Christiansen, T. and Settembri, P. (eds.) (2008), *The Institutions of the Enlarged European Union: Continuity and Change*, Cheltenham: Edward Elgar.
- Deighton, A. and Milward, A. S. (eds) (1999), *Widening, Deepening and Acceleration: The European Economic Community 1957-1963*, Baden: Nomos Vlg.
- European Commission (EC) (1992), *Europe and the challenge of enlargement*, Bulletin of the European Communities, Supplement 3/92, Luxembourg: Office for Official Publications of the European Communities.
- European Commission (EC) (1997), *Agenda 2000 – For a stronger and wider Union*, Bulletin of the European Union, Supplement 5/97, COM(97) 2000 final, 13 July 1997 Luxembourg: Office for Official Publications of the European Communities.
- European Commission (EC) (2005), *Consolidation, Conditionality, Communication – The strategy of the enlargement policy*, Brussels, 9.11.2005, IP/051392.
- European Commission (EC) (2006), *Communication from the European Commission to the European Parliament and the Council “Enlargement Strategy and Main Challenges 2006 – 2007” Including annexed special report on the EU’s capacity to integrate new members*, Brussels, 8.11.2006, COM(2006) 649 final.
- Kochenov, D. (2005), “EU Enlargement Law: History and Recent Developments: Treaty-Custom Concubinage?” *European Integration Online Papers*, 9/6: <http://eiop.or.at/eiop/text/2005-006a.htm>.
- O’ Brennan, J. and Raunio, T. (2007) “Deparliamentarization and European Integration”, in *National Parliaments within the Enlarged European Union*, Abingdon: Routledge, 1-27.
- Tsoukalis, L. (1981), “Negotiations and Community Attitudes”, in *The European Community and its Mediterranean Enlargement*, London: George Allen & Unwin Ltd, 132-165.
- Verney, S. (2007), “The dynamics of EU accession: Turkish travails in comparative perspective” *Journal of Southern Europe and the Balkans*, 9/3: 307-322.

NOTES

- * Sonia Piedrafita, Researcher, Unit “European Decision-Making, EIPA.
- ¹ The author would like to thank Prof. Edward Best, Prof. Phedon Nicolaides and Dr. Thomas Christiansen for their valuable comments on this article.
- ² See http://ec.europa.eu/public_opinion/constitution_en.htm
- ³ See last Standard Eurobarometers http://ec.europa.eu/public_opinion/standard_en.htm
- ⁴ See Eurobarometer April-May 2007 http://ec.europa.eu/public_opinion/archives/eb/eb67/eb67_en.htm. For specific attitudes, see *Attitudes towards European Union Enlargement* July 2006 http://ec.europa.eu/public_opinion/archives/eb_special_en.htm
- ⁵ European Commission, *Issues Arising from Turkey’s Membership Perspective*, Commission Staff Document, Brussels 06.10.2004, SEC(2004) 1202, COM(2004) 656 final.
- ⁶ Other critical papers would follow suit, e.g. CEPS Policy brief “Just what is this absorption capacity of the European Union?” http://shop.ceps.eu/downfree.php?item_id=1381; EPC Policy brief “Absorption capacity: old wines in new bottles?” <http://www.epc.eu/en/pub.asp?TYP=TEWN&LV=187&see=y&t=&PG=TEWN/EN/detailpub&l=12&AI=542>
- ⁷ *The Report on the institutional aspects of the European Union’s capacity to integrate new Member States*, European Parliament, Final A6-0393/2006, was approved by the Parliament’s Committee on Constitutional Affairs on 13 Nov 2006, was adopted by the EP by 398 votes in favour, 99 against with 36 abstentions.
- ⁸ Article 49 and article 6(1) TEU.
- ⁹ On the contrary to Declarations, Protocols are legally binding for the relevant individual and institutions.
- ¹⁰ Assemblée Parlementaire Européenne (1962) “Rapport de la Commission politique de l’Assemblée Parlementaire Européenne sur les aspects politiques et institutionnels”, Document 122, Janvier 1962. Archives of the European Communities, 07.515:32;X3.075.15.
- ¹¹ “Towards a Closer Association with the Countries of Central and Eastern Europe”, SEC (92) 2301 f. 2 de diciembre de 1992; “Towards a Closer Association with the Countries of Central and Eastern Europe”, SEC (93) 648 f. 18 de mayo de 1993.
- ¹² The first group of 5+ 1 consisted of Poland, Hungary, Czech Republic, Slovenia, Estonia + Cyprus. Slovakia, Romania, Bulgaria, Latvia, Lithuania + Malta constituted the second group.