



## Vade Mecum for the Next Enlargements of the European Union

Michael Emerson

The European Council meeting on 16-17 December took many decisions that will set the course for the European Union's continuing enlargement process. These decisions concern in the first place Bulgaria, Romania, Croatia and Turkey, but they also contain some pointers for the nature of the process ahead that will concern other possible candidates, from the Balkans to Ukraine. New language and concepts have been introduced.

**Bulgaria and Romania** received almost identical treatment. For both it was acknowledged that the formal negotiations had been completed on 14 December 2004, that the Treaties of Accession should be signed in April 2005, and that full accession would take place in January 2007.

However, there are still some 'ifs' and 'buts'. The decisions assume explicitly that reform efforts will be continued, especially in the area of justice and home affairs for both candidates, and also in the areas of competition and environment policies for Romania.

More generally, for both Bulgaria and Romania ...

*"safeguard clauses will provide for measures to address serious problems that may arise before accession or in the three years after accession."*

In practice this means that for domains such as the internal market and justice and home affairs the EU would be able to take protective measures if the acceding state does not fully implement its obligations. This does not amount to very much.

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More importantly, it is widely considered that Romania has been treated leniently with regard to the political Copenhagen criteria, and that serious weaknesses in the quality of public governance, which gave rise to critical reports from the European Parliament over the last year, have hardly been made good in a matter of months. The Romanian case will no doubt be cited in future by other candidate states with relatively weak standards of public governance, for example from the Balkans, with the argument "we are up to Romanian standards, are we not?". Others may say that the bar has been lowered. Nonetheless the very recent presidential election can be considered to be to Romania's credit. Although criticisms of electoral fraud in the first round were quite serious, in the second round on 12 December the opposition candidate – Traian Basescu, the mayor of Bucharest – achieved a surprising victory, which was immediately and elegantly recognized by the outgoing President Ion Iliescu. A smooth and democratic transfer of power to the opposition, an acid test for new democracies, has been fairly accomplished.

**Croatia** got the date of 17 March 2005 for the opening of negotiations, but on the very explicit condition that it will ...

*"take the necessary steps for full cooperation with the ICTY and ... that the remaining indictee must be located and transferred to the Hague as soon as possible."*

The remaining indictee is General Gotovina, wanted for war crimes. He is surely the most wanted man in Croatia and also one of its best-known faces. But is he actually in Croatia, within the jurisdiction of the Croatian government? There are rumours that he is in France, where his residence may be facilitated by the report I have heard from unofficial Croatian journalistic sources that he also has a French passport and citizenship, due to his service in earlier years in the French Foreign Legion. If this is the case, perhaps France could take over the dossier.

**Turkey** was the major agenda item. The session turned out to be one of the European Council's classic cliff-hangers. At the outset of the meeting the preferred positions still diverged considerably among the member states and between the EU and Turkey. Continuous negotiation had been going on for at least a month beforehand, with drafts of the Presidency's conclusions being revised many times.

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The most important point for Turkey is that it got a date – 3 October 2005 – for the opening of accession negotiations. France in particular had sought delay until its May 2005 referendum on the European Constitution would be well passed.

But the opening of negotiations is still subject to conditions to be fulfilled before then. The European Council had judged that Turkey “sufficiently fulfils the Copenhagen criteria” to open accession negotiations, provided that it brings into force six specific pieces of legislation, which are:

1. the law on associations
2. the new penal code
3. the law on intermediate courts of appeal
4. the code on criminal procedure
5. legislation to establish the judicial police
6. the law on execution of punishments

The other pre-condition concerns Cyprus, which brought the negotiations with Prime Minister Erdogan close to breakdown on 17 December. The EU sought Turkey’s agreement to sign a Protocol concerning extension of the existing EU-Turkish customs union to the new member states, including of course the Republic of Cyprus. This would amount to implicit recognition of the Republic of Cyprus, which Turkey has refused to do in the absence of an agreement for re-unifying the island. The outcome was that:

*“the Turkish Government confirms that it is ready to sign the Protocol on the adaptation of the Ankara Agreement prior to the actual start of accession negotiations ... ”.*

But there is a lot more small print in the European Council conclusions, which sets out possible conditions for the conclusion of the negotiations, and which are bound to surface in due course as and when the negotiations reach an advanced stage. All of these conditions are reflecting either the unease in public opinion in several member states over the prospect of admitting such a big and different country, or their outright opposition in some cases such as Austria. These conditions may be grouped under three headings:

- Conditions for possible suspension of negotiations
- Conditions for transitional arrangements or derogations after accession
- Conditions for alternative solutions if the negotiations fail.

The suspension clause could be activated by the Council acting by qualified majority decision in the event of a serious and persistent breach of the principles of democracy, human rights, fundamental freedom and the rule of law. This clause may be considered to be hardly controversial or unreasonable.

The transitional and derogation material is far more questionable, both legally and politically. This long paragraph is therefore quoted here in full:

*“Long transition periods, derogations, specific arrangements or permanent safeguard clauses, i.e. clauses which are permanently available as a basis for safeguard measures, may be considered. The Commission will include these, as appropriate, in its proposals for each framework, for areas such as freedom of movement, structural policies or agriculture. Furthermore, the decision-taking process regarding the eventual establishment of freedom of movement of persons should allow for a maximum role of individual Member States. Transitional arrangements or safeguards should be reviewed regarding their impact on competition or the functioning of the internal market”.*

These provisions amount to the member states having decided to insert a considerable Trojan horse behind the defences of the EU’s own law and political principles that guarantee equality of all member states. It has been a key item of EU doctrine in accession negotiations up until now that there should be no permanent derogations from EU law, and no opting out provisions for new member states. Of course the European Council is here deciding nothing, only that such matters ‘may be considered’. A benign interpretation is that these are mere political precautions that are necessary today to reassure public opinion in the EU that is anxious about an uncertain future. For example for the movement of persons it is possible that Turkey will tend to follow the Spanish model, namely that of a country that experienced a long period of structural emigration, but saw this cease and even go into reverse as a result of the rising prosperity associated with EU accession. Moreover the demographics of the EU over the next decades are going to make the case for immigration stronger. In any case the time horizon for decisions over permanent safeguards are a long way off, if one assumes a ten year period from now to accession and another ten to fifteen years of transitional arrangements of the kind agreed with previous newly acceding states.

Less benign, it appears that the door is opened politically by the EU for the rightly dreaded ‘second-class membership’. This seems to be the implication of the language about the possibility of special provisions (transitions, derogations, safeguards etc.) for the movement of persons, the structural funds and agriculture. In spite of the dubious legality of such ideas, the language of ‘permanent safeguard clauses’ was retained. Moreover current EU policies for the new member states require transitional periods and conditions for full accession to the Schengen and Euro areas until years after accession (these are asymmetric arrangements in the sense that the new member state has no opt-out option, but its admission to Schengen and Euro areas is still conditional and subject to fresh decisions by the full members years after accession of the newcomer).

This leads on indeed to the question of alternative solutions, should negotiations fail. Again the text needs to be recorded in full:

*“The shared objective of the negotiations is accession. These negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand. While taking account of all Copenhagen criteria, if the Candidate States is not in a position to assume in full all the obligations of membership it must be ensured that the Candidate State concerned is fully anchored in the European structures through the strongest possible bond”.*

For the text to say that the process is open-ended, without a guaranteed outcome, is obviously true to the point of being banal. However the remaining text is less banal. It seems to be the result of negotiations between member states in the European Council over what some parties are calling the ‘privileged partnership’ alternative to full membership. If the European Council had retained this language explicitly, it would almost certainly have meant their crossing a red line for Prime Minister Erdogan. The text avoids mention of different preferences of various member states, with Austria for example openly advocating the privileged partnership idea. It only raises the hypothesis that Turkey might not full respect all the Copenhagen criteria, in which unfortunate case there should still be devised a highly positive outcome. Discounting the obviously diplomatic ambiguity of the drafting, the text seems to be inviting reflection on alternative outcomes.

Overall for Turkey this result is surely a case of the glass that is either half full or half empty. This reflects some basic realities. For Turkey’s full accession to come about, in say a decade’s time, several things have to happen. The maturing of Turkey’s readiness has to happen, from the mindsets of the elite down to grass root level. Perceptions in the EU have to change too, both of Turkey as candidate state, and of the EU’s own capacity to function institutionally at the level of 30 or more member states, and of society within in EU member states in relation to multiculturalism and immigration.

**Ukraine** was also subject of a declaration by the European Council. Complements were paid to the Ukrainian leaders and people for peaceful resolution to the political crisis. The European Council went on to choose carefully its language on what could lie ahead. This came just a few days after Mr Yushchenko had sketched his European vision, in four stages: first to achieve recognition of market economy status, second to accede to the WTO, third to become associate member of the EU, and fourth in the long run to become full member state.

The European Council for its part did not go beyond the phraseology of ‘key neighbour and partner’, looking forward to making full use of the European Neighbourhood Policy and the Action Plan for Ukraine recently adopted by the Commission. Yet in an attempt to open the way for something new and positive after the 26 December re-run of the Presidential election, it invited Mr Solana to come up with concrete proposals to strengthen cooperation with Ukraine. The EU leaders were no doubt relieved that they can wait for the 26 December elections and then formation

of a new government before having to respond more substantively to the ‘orange revolution’. EU discourse seems to have shifted a bit in the wake of the orange revolution. While earlier there freely flowed explicitly negative remarks about the new neighbours having no membership perspectives, now the discourse seems to be cutting out the negatives, saying that while accession is not on the agenda, no doors are closed for the future. In the meantime the conditions now set for negotiations with Turkey lay out some markers for those in Ukraine who seriously wish to develop a European Union perspective.

The coincidence in timing and form between the Ukrainian and Romanian presidential elections has been striking. Maybe a critical margin of Romanian voters were to a degree inspired by the achievements of Yushchenko’s supporters in Kiev. Indeed maybe there is going to be a new domino game of regime change underway, after the Georgian rose and Ukrainian orange revolutions. Europe does tend to do this from time to time – 1848, 1989-91 etc. Who might be next? Maybe Armenia or Moldova, both of whom are making more explicit their European aspirations, before Russia or Belarus whose leaderships look the other way. Mr Saakashvili, writing in the Financial Times on 20 December, senses a third wave of democratic liberation in Europe:

*“The call initiated by Georgia’s Rose Revolution and multiplied by Ukraine’s Orange Revolution will spread – as demonstrators chanted in Kiev, freedom cannot be stopped. Today, events are unfolding rapidly. ... Reforms can be expected throughout the whole post-Soviet space and they will lead to the completion of the third and final wave of European liberation”.*

This is the scenario that is one and the same time the European Union’s dream and nightmare. The EU is constantly trying to organize alternatives to full membership for its neighbours, ever since Jacques Delors offered the European Economic Area to the EFTA states, which failed to satisfy. The EU tried not to recognize the three Baltic states’ aspirations for EU membership some ten years ago, but this became a brilliantly successful ‘failure’. The European Neighbourhood Policy follows in this line. Now the European Council hints at the alternative for candidate states to be ‘fully anchored in the European structures through the strongest possible bond’. The plot may further thicken if the UK fails to ratify the Constitution. A still enlarging European Union, yet one with increasingly finely graduated frontiers both inside and outside, seems to be on the horizon for decades to come.

## About CEPS

Founded in 1983, the Centre for European Policy Studies is an independent policy research institute dedicated to producing sound policy research leading to constructive solutions to the challenges facing Europe today. Funding is obtained from membership fees, contributions from official institutions (European Commission, other international and multilateral institutions, and national bodies), foundation grants, project research, conferences fees and publication sales.

### Goals

- To achieve high standards of academic excellence and maintain unqualified independence.
- To provide a forum for discussion among all stakeholders in the European policy process.
- To build collaborative networks of researchers, policy-makers and business across the whole of Europe.
- To disseminate our findings and views through a regular flow of publications and public events.

## About Stratagen

### *Strategic Agenda for the Greater European Neighbourhood*

*A Programme of the Centre for European Policy Studies (CEPS), for 2005-2010*

### Stratagen mission statement

- To define a vision for a Wider European order and the relationship between the enlarged EU and its Arab/Muslim neighbourhood;
- To develop these proposals in-depth and in policy-operational terms;
- To combine in-house research capacity with networks of individuals from leading research institutes in the EU and the neighbourhood, and to disseminate and advocate proposals throughout the region;
- To work independently from the EU institutions but in close interaction with them; and
- To decide on the sequencing and selection of priority topics with core stakeholders.

The **Stratagen** programme is organised under the following broad geographic areas:

- Northern neighbourhood policy, covering CIS states targeted by EU neighbourhood policy
- EU-Russian relations
- Southern neighbourhood policy, covering Mediterranean states, but reaching also into what is now officially called the Broader Middle East and North Africa (BMENA)
- Implications for transatlantic relations will be considered for all three regions above.

The analytical methodology will be multi-disciplinary: political science, international relations and European studies, economics and law.

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