

Making a success of EU enlargement: three proposals

EU leaders have asserted that enlargement is an investment 'in peace, security, stability and prosperity'. However, for such an investment to pay off, the promise of EU membership must be credible, writes **Christophe Hillion** (Professor, University of Oslo and College of Europe).

EU membership presupposes a state's respect for the rule of law, democracy, and human rights, as well as its loyal co-operation to secure the Union's fulfilment of its tasks.

In the years preceding Russia's full-scale invasion of Ukraine, the prospect of additional states joining the EU had faded.¹ The Union's deliberate downgrading of its enlargement policy after the 2004–2007 admissions, and its increased capture by some Member States' domestic interests, contributed to slowing down the applicants' already sluggish membership preparations. The EU capacity to transform candidates into full-fledge members thus weakened, in turn deepening scepticism towards enlargement within the Union.²

To break the vicious circle and make a success of an enlargement which they now frame as a 'geo-strategic investment in peace, security, stability and prosperity',³ the EU and its Member States ought actively to engage at three levels.⁴ First, the fundamentals of membership must be restored and defended. Second, persistent impediments to the effective implementation of the enlargement policy must be addressed. Third, able candidates must be firmly anchored in the EU governance, *prior* to their accession.

The EU must defend the fundamentals of its membership

EU membership presupposes a state's respect for the rule of law, democracy, and human rights, as well as its loyal cooperation to secure the Union's fulfilment of its tasks. Commitment to these fundamentals has however been regressing severely in several Member States, hampering the Union's functioning and corroding the very meaning of membership.

More concerning even is the failure by EU institutions (and other Member States) to stop, let alone reverse that regression, and thus safeguard the EU's integrity the way they are mandated to do. Their prevarication undermines the Union's authority to uphold those fundamentals towards the candidates for membership. It also affects EU citizens' trust in the institutions and specifically in their ability to protect what the

¹ See in this respect: European Commission, Enhancing the accession process – A credible EU perspective for the Western Balkans, COM(2020)57, 5 February 2020.

² See e.g. Mirel, P. (2022), 'In support of a new approach with the Western Balkans: Staged accession with a consolidation phase'. Fondation Robert Schuman Policy Paper. European issues no 633.

³ See the Granada Declaration of 6 October 2023: <https://www.consilium.europa.eu/en/press/press-releases/2023/10/06/granada-declaration/>

⁴ This paper is based on Editorial comments in *Common Market Law Review* 61; 1–14, 2024, as well as a speech at SIEPS' conference 'Making enlargement work, again' on 27 September 2024.

The internal regression from the commitments inherent of EU membership thus directly impedes the Union's ability to welcome new members, and in turn the credibility of its promise to enlarge.

Union stands for. This could in turn further damage their support for EU enlargement, which is already fragile given the latter's likely implications in policy and financial terms. Such support is essential,⁵ not least since the ratification of future accession treaties involves a referendum in at least one Member State.⁶

The internal regression from the commitments inherent to EU membership thus directly impedes the Union's ability to welcome new members, and in turn the credibility of its promise to enlarge. Resolute engagement to repair and safeguard the integrity of membership is therefore essential to demonstrate that the Union can continue to operate, and that it will cope effectively with the consequences of another enlargement. It is critical to boost support for the latter internally and reinvigorate accession preparations among the candidates.

But defending the fundamentals of membership is also a precondition to any institutional reform to improve the functioning of the Union, which incidentally could be introduced through future accession treaties. Increasing instances of qualified majority voting in EU law-making procedures will not in and of itself secure the Union's capacity to integrate if some Member States keep on flouting EU decisions, including those of the European Court of Justice.

As confronting regressive Member States is indispensable to enable the EU to enlarge, both its institutions and other Member States must then make a more determined and coherent use of the toolbox they already have at their disposal. Article 7 TEU has hitherto been mismanaged, while conditionality and infringement mechanisms have been activated too haphazardly, contributing to further damaging EU membership and enlargement readiness. Such practices need to be changed, before the Treaties.

The EU must address the weaknesses of its enlargement policy

If EU enlargement is geo-strategically critical for the security and prosperity of Europe, all EU protagonists will have to engage to make a success of it. This means that they should stop impeding the process they have activated.

First, Member States and institutions should be consistent in the application of the accession conditionality which is the basic method to prepare candidates for membership. Lack of such consistency over the last years has hindered the EU transformational capacity. It has also fuelled distrust in the EU enlargement policy more generally, both among the candidates and within the Union. Member States and institutions should therefore restore the fairness and rigour of the accession conditionality, on which they recurrently insist. They must acknowledge and reward each candidate's actual progress in fulfilling the requirements of membership and,

⁵ See in this respect, Dimitrova, A. (2024). 'Dilemmas of EU Enlargement: Geopolitics, Conditionality, and Citizens' Concerns', post no 7 in this series (Forum Fit for 35), 24 September. Stockholm, SIEPS.

⁶ According to Article 88-5 of France's Constitution, 'Any Government Bill authorizing the ratification of a treaty pertaining to the accession of a state to the European Union shall be submitted to referendum by the President of the Republic. Notwithstanding the foregoing, by passing a motion adopted in identical terms in each House by a three-fifths majority, Parliament may authorize the passing of the Bill according to the procedure provided for in paragraph three of article 89'. The latter provision foresees that the 'Government Bill ... shall not be submitted to referendum where the President of the Republic decides to submit it to Parliament convened in Congress; the Government Bill shall then be approved only if it is passed by a three-fifths majority of the votes cast'.

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conversely, sanction regression whenever it occurs. One way to do this would be to suspend the accession process, following the procedure they have themselves established in the negotiating framework for each candidate.⁷

Second, Member States must stop capturing the EU enlargement process for domestic gains.⁸ What has amounted to a 'nationalisation' of the enlargement policy should be resolutely addressed to repair its effectiveness. Admittedly, Member States are expected to play a key role in any EU enlargement.⁹ Since the accession wave of 2004/2007 however, they have significantly tightened their grip on the process. Instances of unanimous decision-making have thus proliferated, prompting an inflation of veto opportunities which, coupled with the increased number of Member States involved, has mechanically multiplied hurdles in the implementation of the EU enlargement policy. Some Member States have (ab)used their veto power deliberately to slow down (some) candidates' accession.¹⁰ Some have also instrumentalised the policy to obtain from candidates—or from other Member States—concessions whose connection with preparation for membership, and/or with the tenets of European integration more generally, was questionable.

If enlargement is a 'geostrategic investment',¹¹ it is debatable whether it should be subject to dozens of unanimous decisions of Member States, and an equal number of possible vetoes. It is worth recalling that Article 49 TEU foresees only two procedural points at which Member States have a decisive say. First, they must decide whether to *initiate* the Union's enlargement to an applicant state, and then they have to *accept the 'conditions of admission and the adjustments to the [EU] Treaties'* which they have negotiated with that state, for its admission to take place.

At that initial point, Member States do enjoy a wide political discretion—as typified by France's double veto over the UK's membership application in the 1960s. However, such a discretion diminishes once the fundamental political decision to activate the enlargement procedure is taken, and particularly as the latter proceeds to its *implementation* phase, namely the negotiations of the terms of accession governed by the second subparagraph of Article 49 TEU. Provided the candidate otherwise meets the conditions of membership, the initial political decision prompts an obligation for the Member States to take 'any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union' (Article 4(3) TEU). In particular, they are bound to support and implement the EU policy they have activated, and deliver on its objective, not only in the application of accession conditionality, but also in the conduct of accession negotiations, and later in the process of ratification of the accession treaty. A similar obligation of sincere cooperation does apply to EU institutions, including the European Council and the Commission, as foreseen in Article 13(2) TEU.

⁷ See e.g. points 16 and 17 of the EU negotiating framework for Ukraine: <https://www.consilium.europa.eu/media/hzmfw1ji/public-ad00009en24.pdf>

⁸ See e.g. Mirel, P. (2022), op. cit; Hillion, C. (2010), *The Creeping Nationalisation of the EU enlargement policy*, SIEPS Report 6/2010: https://www.sieps.se/en/publications/2010/the-creeping-nationalisation-of-the-eu-enlargement-policy-20106/Sieps_2010_6.pdf

⁹ See e.g. Hillion, C. (2011), 'EU enlargement' in Craig, P. and de Búrca, G. (eds.) (2011), *The Evolution of EU Law* (OUP), pp. 187–216.

¹⁰ See e.g. Fouéré, E. 'EU enlargement and the resolution of bilateral disputes in the Western Balkans', <https://www.ceps.eu/ceps-publications/eu-enlargement-and-the-resolution-of-bilateral-disputes-in-the-western-balkans/>

¹¹ As recalled in the Conclusions of the European Council, 19 December 2024, pt. 20.

Therefore, the more the enlargement process advances, the less room the policy allows for obstructive postures and *vetocracy*. Thus, a Member State's negative stance—e.g. in relation to the opening or closing of a particular chapter of the accession negotiations—must not be permitted to hold up the process *unless* that stance is adequately justified. Such justification entails that the Member State concerned compellingly establish that a fundamental EU interest is being affected as a result of a contentious behaviour of the candidate at hand,¹² and the demonstration that suspending the negotiation process would be the proportionate means to address the issue, i.e., that there is no other, less disruptive, method available to safeguard that interest.¹³

The EU must facilitate accession preparations by anchoring the candidates in its governance

Not only should Member States and institutions refrain from hampering the enlargement process they have activated, but they should also facilitate its success. One way would be to foster the progressive inclusion of each candidate country in the *EU governance structures* prior to its full-fledged membership. This incremental institutional integration would further contribute to consolidate the candidate's preparations, by training its authorities to operate as if the state were a member, while giving a tangible perception of integration to its population, ultimately contributing to forging mutual trust. It would follow and build on the well-established legal parameters of association to the EU (as articulated by the European Court of Justice's case law), while not impinging on the EU principle of autonomy. It could take at least two forms, both of which have already been tested.

Such an earlier institutional inclusion would give a new vigour to the conditionality that structures the enlargement process.

First, a candidate ought to be included in the EU governance and policy discussions (as is partly the case for EEA/EFTA states with respect to the Single Market and the Schengen area) on the basis of—and as reward commensurate to—their genuine progress in meeting membership obligations, particularly with respect to the 'fundamentals'. The progressive inclusion ought to take place policy by policy. Hence upon the closure of a particular accession chapter, testifying the fulfilment of the related conditions, the candidate should be able to participate in the EU policy-shaping relating to that chapter. Its representative(s) would thus be included in the relevant expert/working groups in the Commission, the Council, and/or in the EP committees, as observer(s) at an earlier stage than it is presently the case, namely before the Treaty of Accession is signed rather than after. The European Economic and Social Committee has inaugurated the practice and so have various EU agencies.¹⁴

Such an earlier institutional inclusion would give a new vigour to the conditionality that structures the enlargement process. It would offer intermediate, tangible, tailored but reversible rewards to each candidate state in exchange for genuine efforts to prepare membership. In turn, it would stimulate the internal articulation of its policy position, which would itself require a consolidation of its administrative and competence structures. An incremental participation in the EU governance would increase the

¹² In line with the conditions for the suspension mechanism envisaged in the EU negotiating framework for e.g. Ukraine at pts 16-17: <https://www.consilium.europa.eu/media/hzmfw1ji/public-ad00009en24.pdf>

¹³ See, in this regard, Zweers, Ioannides, Nechev and Dimitrov (2024), 'Streamlining decision making in enlargement: Qualified majority voting as a way forward', Clingendael/DGAP/Eliamep, <https://www.clingendael.org/publication/unblocking-decision-making-eu-enlargement>

¹⁴ EESC, 'Enlargement Candidate Members' Initiative', <https://www.eesc.europa.eu/en/initiatives/enlargement-candidate-members-initiative>

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sense of shared ownership of the EU's future. At the same time, it would allow EU institutions and Member States to lock the candidate in, further to keep it in check and, in case of regression, to reverse its involvement. It would thus help entrench its membership preparation and ascertain that it is ready to take part as a fully operational Member State.

Second, candidates should be included in the conversation on further EU (institutional) reforms, the way candidates from Central and Eastern Europe were invited to participate in the Convention on the Future of Europe that drafted the defunct Constitutional Treaty. Contrary to what has been suggested, EU enlargement and reforms should not unfold 'in parallel' (worlds); the two processes should instead intersect through a degree of participation of candidates in the future design of the Union, as indeed foreseen by Article 49 TEU. While the European Political Community is a useful forum for European states to meet, it falls short of providing the adequate structured conversation between existing and future Member States about their shared constitutional future.

Conclusion: a matter of survival

In their Granada Declaration, the 'Leaders of the European Union' asserted that

Enlargement is a geo-strategic investment in peace, security, stability and prosperity. It is a driver for improving the economic and social conditions of European citizens, reducing disparities between countries, and must foster the values on which the Union is founded. Looking ahead to the prospect of a further enlarged Union, both the EU and future Member States need to be ready.'

To be ready, and thus able to reap the benefits of such an investment, the EU must first repair the fundamentals of its membership, and decisively confront those Member States that have been dilapidating it. The EU's capacity to restore its credibility vis-à-vis the candidates depends on that decisiveness. So does its trustworthiness in the eyes of citizens, and, ultimately, its very survival.



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Fit for 35 Forum aims at contributing to the discussion on enlargement and reform of the EU. The Forum is set up by SIEPS, initiated and managed by Göran von Sydow (Director) and Valentin Kreilinger (Senior Researcher in Political Science) and edited by Patricia Wadensjö (Editor).