
EU MEMBERSHIP CRITERIA IN THE AREA OF JUSTICE, FREEDOM AND SECURITY: LESSONS LEARNED FROM THE FIFTH ENLARGEMENT – PREPARING FOR THE SIXTH ENLARGEMENT

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It is indeed a unique and historic moment, now that Bulgaria successfully concluded accession negotiations with the European Union and signed the Accession Treaty.

The conclusion of negotiations clearly signaled that Bulgaria belongs to the **EU family**. This has called substantial economic and political reforms, demanding from the country until the day of accession enormous efforts: building out of past structures a modern democracy enforcing the rule of law and a modern administration; transposing and implementing a vast body of new legislation and last but not least putting in place an independent, efficient and reliable judicial system.

The signature of the **Accession Treaty** in Luxembourg on 25 April 2005 brings the fifth enlargement to completion, following on the heels of the ‘big bang’ of 1 May 2004. This fifth enlargement – of which Bulgaria and Romania are an integrated part – has in many aspects been a **historical process**. Never before so many countries joined at once. This has forced the EU to also thoroughly reflect upon and take measures to improve its internal organization and decision making procedures. If there is one lesson to be learned from that, it is that beyond any doubt, the EU needs **to continue to engage in evolutions** to take the best advantage of this enlargement and to be ready for the next enlargement. The EU will need to further reinforce its institutions and policies in order to ensure Europe’s capacity to act and function efficiently. The Constitutional Treaty is therefore an important step in the right direction.

All this is indispensable as enlargement is and should remain a **win-win situation** where both interests of the citizens of candidate countries and of EU and its citizens should be fully respected. In order to guarantee this, there is a constant need to monitor and improve structures and mechanisms in place. Another reason for doing so is the ongoing evolution of the EU *acquis* and in particular the *acquis* in the area of Justice, Freedom and Security.

Indeed, the focus of Vice President Frattini, as Commissioner responsible for Justice, Freedom and Security, and of my services is to take forward the building of a European area of freedom, security and justice. With the ongoing fifth enlargement round with 12 new member states and the sixth enlargement currently being prepared, this objective has taken on an even greater resonance. The accession of ten plus two mainly Central and Eastern European Countries as well as future enlargement rounds bring along a number of challenges, not only because of the variety of law enforcement structures that will enrich the EU as an area of freedom, security and justice, but also because the new members will allow the EU to put even more weight in the ongoing global security debate.

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This being said, the revised principles governing the negotiations for the sixth enlargement **do not** mean that the actual criteria for membership have drastically changed. The negotiations will still be based on own merits and the pace will depend on **the candidate's** progress in meeting **the requirements for membership**. Also **as it was in the past**, negotiations are opened on the basis that a candidate meets the political criteria set by the Copenhagen European Council in 1993, later essentially enshrined in Article 6(1) of the Treaty on European Union and proclaimed in the Charter of Fundamental Rights. The Union **will continue** to expect candidates to continue to fulfill the political criteria by working towards constant improvement of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. **As it was in the past** the Council may, on the basis of a recommendation from the Commission and after having heard the candidate country concerned, suspend the negotiations in the case of a serious and persistent breach by the candidate of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded.

The most important **novelty**, however, is in the increased number of chapters to be negotiated and in particular in the fact that a new chapter entitled *Judiciary and Fundamental Rights* is being added to the list of chapters to be negotiated. This is reflecting the fact that the **Charter of Fundamental Rights** will become an integrated part of the **Constitutional Treaty** once the latter will be agreed upon by all member states. The Constitutional Treaty covers the institutional architecture of the Union and aims at bringing the EU closer to citizens through, in particular the integration of the Charter of Fundamental Rights.

As such, the Charter of Fundamental Rights is **not** listing new *acquis*. It is a codification of existing fundamental rights which have been part of the EU *acquis*. These rights apply in the case of implementation of EU *acquis*. For example: the charter lists the prohibition of torture. If an EU citizen exercises his right of free movement and ends up in a prison of another EU member state, then in case this citizen is badly treated by the police, he can invoke a breach of the EU *acquis*, namely the prohibition of torture. As such the European Court in Luxembourg would be in a position to condemn the member state in which this incident happened. The fact that these rights are now put in a charter which is to become an integrated part of the EU Constitution if approved, gives an additional moral weight to existing *acquis*. It will beyond any doubt put additional pressure to candidate countries to start reforms in these areas **well in time before accession**.

Hence, another lesson learned from the fifth enlargement is that fundamental and structural reforms touching upon the efficiency and accountability of a democracy and the full respect of the rule of law cannot be left to the very end of the pre-accession process. It is a fact of life that the EU has become a more and more integrated community of states. The quality of the functioning of the EU and of implementing the *acquis* across the EU will in the end depend on its weakest link and that link we want to be as strong as possible.

In practice, the negotiations in this new chapter *Justice and Fundamental Rights* will deal with **the judiciary, anti-corruption policy, fundamental rights and citizens' rights**. As far as the judiciary is concerned, the negotiations will be dealing with questions of independence, quality and efficiency of the judiciary, the right to an effective remedy, right to a fair and public trial, right to be judged

in a reasonable time, right to a legal aid, presumption of innocence, rights of defense etc.

The section dealing with anti-corruption policy will, just like it was before in the old chapter 24, deal with aspects of legislation, implementation measures and international instruments.

The most substantial part of this new chapter will be the part dealing with actual fundamental rights, such as: right to life, perspectives for a general abolition of the death penalty, right to the integrity of the person which includes, prohibition of torture and inhuman or degrading treatment or punishment, respect of private and family life and communications, protection of personal data, freedom of thought, conscience and religion including the right to conscientious objection, freedom of expression including freedom and pluralism of the media, freedom of assembly and association including freedom to form political parties, rights of the children, etc.

The smaller part of this chapter will deal with so called EU citizens' rights which entails right to vote and stand as a candidate at elections to the European Parliament, right to vote and stand as a candidate in municipal elections, right to petition to the European Parliament and freedom of movement and residence and diplomatic and consular protection.

The fact that all this is formally to be negotiated and monitored will not be an easy ride, neither for the EU, nor for the candidates concerned. However, it also means that as of its accession to the EU, Bulgaria will need to be in a position to implement all this, as it exists already in the current EU legal framework. This brings us back to Bulgaria's preparation for accession and the time it has left to meet all commitments it agreed upon.

Bulgaria is at a turning point on its way towards accession and that significant and visible progress has to be delivered without delay. Bulgaria needs to demonstrate that it is sharing the values of the EU. In order to achieve in particular the reforms in the judicial system, Bulgaria needs cross party unity and a clear and long-term vision of how one of the corner stones of the democracy should function. Reforming the pre-trial phase in line with EU requirements will require hard work in a short period of time. It will be crucial in this respect that corporatist interests be overcome.

But I am confident that Bulgaria will succeed as it is indeed our shared ambition to ensure Bulgaria's accession to the EU as a full-fledged Member State in January 2007.