Briefing No 20

DEMOCRACY
AND RESPECT FOR HUMAN RIGHTS
IN THE ENLARGEMENT PROCESS
OF THE EUROPEAN UNION

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PE 167.582
BRIEFING
ON
DEMOCRACY AND RESPECT FOR HUMAN RIGHTS
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INTRODUCTION

In the Treaty on European Union, the Member States undertook to uphold the principles of democracy and respect for human rights. As a consequence thereof, all new applicant countries must fulfil these conditions right from the opening of accession negotiations. In the light of the applications for accession it had received, the 1993 Copenhagen European Council laid down the political criteria to be met by the associated countries of Central and Eastern Europe which wished to accede.

The setting in motion of the enlargement process followed these principles. The Council took its decision on the basis of the assessment carried out by the Commission to ascertain whether the applicant countries did indeed fulfil the political criteria laid down in Copenhagen. The Commission came to the conclusion that all the countries involved - except for Slovakia - basically fulfilled the political conditions for the opening of accession negotiations.

Even after the Council decision to open accession negotiations with a few of the applicant countries and to intensify the pre-accession strategy for others, the political conditions remain preeminent, in respect of both the progress and moment of conclusion of the negotiations proper and of the pre-accession strategy for the applicant countries. Each accession partnership therefore includes a corresponding conditionality clause, to be applied in the event of an applicant country's breaching the principles of democracy and human rights.

Accordingly, efficient monitoring of the human rights situation and of the stability of the democratic institutions is important; it is precisely because of that that Parliament has made corresponding demands in its opinions.

I. CONDITIONS FOR ACCESSION

A. Common provisions of the TEU and principles of the EC Treaty

The Treaty of Amsterdam enshrines the following as a constitutional principle: 'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States’ (new Article 6(1)).

Accordingly, the Intergovernmental Conference decided to amend Article O (new Article 49) in such a way that membership of the European Union was expressly conditional upon respect for the principles set out in Article 6(1).

Respect for fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 6(2) and 46) also falls within the scope of the constitutional provisions.

For the first time, equality between men and women is included among the principles of the Community (Article 2 of the EC Treaty). The Community is to aim to eliminate inequalities, and promote equality, between men and women, and the Council may take appropriate action to that end (Articles 3 and 13 of the EC Treaty).
A declaration annexed to the Final Act calls for the abolition of the death penalty.

B. The Copenhagen criteria

At its meeting in Copenhagen in June 1993, the European Council laid down the economic and political criteria to be fulfilled by the associated countries of Central and Eastern Europe seeking to become Members of the European Union. Among the binding political criteria it laid down the achievement of institutional stability as a guarantee of democratic order and the rule of law and for ensuring respect for human rights, as well as respect for and the protection of minorities.

II. SETTING THE ENLARGEMENT PROCESS IN MOTION

A. Opinion of the Commission

Once the European Council, meeting in Amsterdam in June 1997, had noted the successful conclusion of the Intergovernmental Conference, the road was clear for the enlargement process to be set in motion. In accordance with the conclusions of the European Council meeting in Madrid in December 1995, the requisite decisions were to be taken within six months of the successful conclusion of the Intergovernmental Conference. The Commission acted on the Council’s instructions by publishing its communication entitled ‘Agenda 2000 - for a stronger and wider Union’ which also sets out the conclusions of its opinions on the applications for accession submitted by the countries of Central and Eastern Europe (Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, the Czech Republic, Romania, Slovenia and Slovakia) as well as the Commission’s views on the setting in motion of the enlargement process.

On the basis of an objective analysis carried out in the light of the Copenhagen criteria, the Commission came to the conclusion that none of the countries fully satisfied all the criteria at the present time. However, nine countries - the exception being Slovakia - satisfied the political conditions, while certain countries had made sufficient progress towards satisfying the economic conditions and those related to the other obligations of membership. According to the Commission, Hungary, Poland, Estonia, the Czech Republic and Slovenia could be in a position to satisfy all the conditions of membership in the medium term if they maintained and strongly sustained their efforts of preparation. Accordingly, the Commission recommended to the Council that negotiations with those countries be opened.

B. Decisions taken by the Luxembourg European Council

The European Council, meeting in Luxembourg on 12/13 December 1997, confirmed once again: ‘Compliance with the Copenhagen political criteria is a prerequisite for the opening of any accession negotiations’. It endorsed the Commission’s conclusions and decided to convene bilateral intergovernmental conferences in the spring of 1998 to begin negotiations with Cyprus, Hungary, Poland, Estonia, the Czech Republic and Slovenia ... At the same time as the above, the

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3 Conclusions of the European Council, PE 167.145, paragraph 25.
preparation of negotiations with Romania, Slovakia, Latvia, Lithuania and Bulgaria will be speeded up ... 1. The European Council also took the requisite decisions with regard to the entire enlargement process in order to underpin a more intensive pre-accession strategy for the applicant countries.

C. Opinion of the European Parliament2

In its resolution on 'Agenda 2000', the European Parliament took the view that 'all the applicant countries which do at present meet the criterion of a stable democratic order, respect for human rights and the protection of minorities laid down at Copenhagen, have the right to open the reinforced accession and negotiating process at the same time' (paragraph 3), but that 'the intensity of the negotiations and the timetable for their conclusion will depend upon the extent to which each applicant country fulfills the requirements for accession' (paragraph 5). Despite 'noting some factual inaccuracies', the EP therefore supported the Commission's evaluations of which countries had made the most progress and with which, therefore, intensive negotiations should begin on an individual basis (paragraph 6).

With regard to preparations for accession, the EP ascribed great importance in particular to progress in the following areas:

- the ratification and implementation of legal human rights standards,
- the legal accountability of police, military and secret services,
- respect for the rights of minorities
- the right to free speech, and the freedom of the media,
- the abolition of capital punishment, where applicable,
- the eradication of torture and ill-treatment,
- the acceptance of the principle of conscientious objection to military service,
- the acceptance and encouragement of the non-profit-making sector as an important partner in the task of continually improving respect for human rights;' (paragraph 9).

It stated that 'only a country which has abolished the death penalty can become of member of the European Union'; (paragraph 10).

It emphasized that 'an efficient and trustworthy public administration is a vital element ... to strengthen the rule of law' (paragraph 12) and stressed that 'the independence of the judiciary is one of the pillars upholding the rule of law and fundamental to the effective protection of fundamental rights and civil liberties' (paragraph 81).

The EP insisted that 'the political criteria for accession must explicitly include respect for the freedoms and fundamental rights of women' (paragraph 66) and that the acceptance of 'the acquis communautaire on equal opportunities for men and women ... must be one of the criteria for assessing the ... state of preparation for accession' (paragraph 64).

III. ENHANCED PRE-ACCESSION STRATEGY

1 Ibid, paragraph 27.
2 Resolution in the Oostlander report, A4-0368/97, adopted on 4 December 1997 (PE 264,945).
In addition to the Europe Agreements, which are and will remain the basis for the Union’s relations with the applicant countries, the enhanced pre-accession strategy determined by the Council consists of the new central element of bilateral accession partnerships and increased pre-accession aid. It is accompanied by an analytical study of the Union acquis (screening).

A. Accession partnership and pre-accession aid

Accession partnership as a uniform overall concept is designed to secure better consistency between preparations for accession and the negotiations proper. An overarching legal framework covers all forms of support for the respective applicant countries. Agreements are concluded between the European Commission and the individual applicant country in which EU aid is scheduled and, after priorities have been established, made conditional on undertakings given by the applicant countries that they will carry out specific substantive reforms within a specific time frame. The short- and medium-term priorities are based directly on the Commission’s opinion on the applications for accession.

In accordance with the conclusions of the Luxembourg European Council, the Council took a decision on 15 March 1998 on the principles, priorities, intermediate objectives and conditions contained in the accession partnerships.

In its resolution on the relevant Commission proposals, the European Parliament noted that ‘priorities as concerns the political criteria in the short term are lacking for many of the countries, despite the fact that problems with human and civil rights persist in all the applicant countries, including the ones that are judged by the Commission to meet both the political and economic criteria in the medium term’ (Recital D). In addition to a corresponding review of the partnership agreements, Parliament called on the Commission to develop a strategy for human rights in each country and set both short- and medium-term targets (paragraph 5). Parliament laid specific emphasis, inter alia, on the workings of the legal system (paragraph 7), the abolition of the death penalty (paragraph 4) and the development and implementation of a fair policy regarding minorities (paragraph 11).

B. Conditionality

The accession partnerships, including EU pre-accession financial aid, are conditional upon compliance with the requirement of respect for democratic principles: Where a component essential to the continuance of pre-accession assistance is missing, where the principles of democracy, the rule of law, respect for human rights or the protection of minorities are violated, the Council ... may take appropriate steps with regard to any pre-accession assistance granted to an applicant country.

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1 Conclusions of the European Council, PE 167.145, paragraph 13.
In its amendments to the Commission proposals, the EP emphasized once again that respect for the political criteria was essential for the progress of the accession process (Article 1), as was compliance with the obligations pursuant to the Europe Agreements as a condition for the granting of pre-accession aid.

It repeated its demand in its resolution on the priority proposals when it stated that 'the partnerships [could] not be fully implemented unless the partners [respected] democratic principles, the rule of law, human rights and the protection of minorities and [that] a partnership would have to be suspended if the country concerned failed to make continuous progress towards the fulfilment of any one of the above conditions'.

Accordingly, every accession partnership includes a corresponding conditionality clause.

C. Monitoring and assessment of progress

In its report to the Luxembourg European Council, the General Affairs Council, meeting on 9 December 1997, came to the conclusion that 'the individual progress of each applicant country in preparing for accession will contribute ... to the advancement of the negotiations, taking into account the Copenhagen and Madrid criteria which require of the applicant country stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.

Accordingly, the Luxembourg European Council came to the following conclusion: 'The decision to enter into negotiations does not imply that they will be successfully concluded at the same time. Their conclusion and the subsequent accession of the different applicant States will depend on the extent to which each complies with the Copenhagen criteria ...'.

From the end of 1998, the Commission will submit to the Council regular reports reviewing the current state of implementation of the accession partnerships and recording the progress made by the applicant countries towards accession in the light of the Copenhagen criteria.
The Commission’s reports will serve as a basis for the taking, in the Council context, of the necessary decisions on the conduct of the accession negotiations or their extension to other applicants.

In its resolution on ‘Agenda 2000’, the European Parliament called for ‘the progress of the candidate countries in human rights protection [to] be regularly monitored and included in the annual assessments that the Commission intends to issue’ (paragraph 8(f)).

To that end, the European Parliament called for the establishment of appropriate monitoring mechanisms by the EU institutions to keep under review the human rights situation in applicant

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1 Amendment to Article 2, A4-0081/98, PE 267.866, adopted on 11 March 1998 (Oostlander report). The proposal for a regulation is the only legislative act for the establishment of the accession partnerships; the EP was consulted by the Council pursuant to Article 235 of the EC Treaty.
5 Ibid, paragraph 29.
6 A4-0368/97, PE 264.945, adopted on 4 December 1997 (Oostlander report).
countries, taking into account the standards set by the Council of Europe and the UN and utilizing the results of the work of the Council of Europe and the OSCE’ (paragraph 40).

The Council and Commission will keep Parliament informed about the most important aspects and developments of the partnerships and the accession negotiations. In particular, the Council gave an undertaking that, before it took a decision, it would inform Parliament about, and give it an opportunity to deliver its opinion on, amendments to the principles, priorities and objectives of the accession partnerships1.

IV. ASSESSMENT OF THE APPLICATIONS FOR ACCESSION MEASURED AGAINST THE POLITICAL CRITERIA LAID DOWN IN COPENHAGEN

A. Overall assessment

On the basis of the Copenhagen criteria, when it assessed the applications for accession, the Commission undertook a review of the current situation which went beyond a formal description of political institutions and assessed how democracy actually worked in practice, with the result that the assessment also covered the ability of the country’s administrative and judicial systems to implement the principles of democracy.

The Commission assesses the situation as follows:

Democracy and the rule of law

'On the whole, the applicant countries’ constitutions guarantee democratic freedoms, including political pluralism, the freedom of expression and the freedom of religion. They have set up democratic institutions and independent judicial and constitutional authorities, which permit different state authorities to function normally, have held free and fair elections, permitting the alternation of different political parties in power and, in general, recognize the role of the opposition.

Some of the applicant countries ... do not have stability of institutions enabling the public authorities to function properly and democracy to be consolidated. All the applicant countries have flaws in the rule of law ... . There is a lack of suitably qualified judges and guarantees of their independence. Police forces are poorly paid and require better training and discipline. The autonomy of local government also requires a firmer legal basis in several cases.

1 Statement made by the Council Presidency before the EP on 11 March 1998.
Human rights

Respect for fundamental rights is in principle guaranteed in most of the applicant countries. All have acceded to the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocol allowing citizens to take cases to the European Court of Human Rights.

Freedom of expression and of association is assured in all applicant countries, but the independence of radio and television needs to be strengthened in some cases.

Respect for minorities

Many of the applicant countries have minority populations, whose satisfactory integration into society is a condition for democratic stability. The Framework Convention for the Protection of National Minorities ... safeguards the individual rights of persons belonging to minority groups. Bulgaria has not yet signed the Framework Convention; the Czech Republic, Latvia, Lithuania, Poland and Slovenia ... have not yet ratified it.

Except for the situation of the Roma minority in a number of applicants, which gives cause for concern, the integration of minorities in their societies is, in general, satisfactory.'

The Commission comes to the following conclusion:

'Even though progress has still to be made in a number of applicant countries as regards actually practising democracy and protecting minorities, only one applicant state - Slovakia - does not satisfy the political conditions laid down by the European Council in Copenhagen.'

B. Assessments of individual countries

In its opinions on the individual applicant countries, the Commission comes to the conclusion that Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovenia and Hungary 'present the characteristics of a democracy, with stable institutions guaranteeing the rule of law, human rights and respect for and protection of minorities.'

With regard to Bulgaria and Romania, the Commission believes that 'the current improvement, following the arrival in power of a new government, indicates that Bulgaria and Romania are on their way to satisfy the political criteria. Both countries have democratic institutions whose stability now seems secure. They need to be reinforced by fuller respect in practice for the rule of law at all levels of public administration.'

All the applicant countries must continue with their efforts to improve the operation of the judicial system and to intensify the fight against corruption.

Estonia: Estonia needs to take measures to accelerate naturalization procedures to enable the Russian-speaking non-citizens to become better integrated into Estonian society.

\[1^{1}\]Idem, Vol. III.
**Hungary:** The rights of minorities are guaranteed and protected. Although certain improvements are needed in protection for the Roma (gypsies), the measures recently taken by the government constitute progress.

**Poland:** There are certain limitations to freedom of the press. Particular attention will need to be paid to the way in which a new law limiting access to public service for certain categories of persons is implemented. Poland needs to complete procedures for compensating those whose property was seized by the Nazis or Communists.

**Czech Republic:** There are some weaknesses in laws governing freedom of the press. Particular attention will have to be paid to the conditions governing any further extension of a law excluding from public service members of the former security services and active members of the Communist regime. There is a problem of discrimination affecting the Roma, notably through the operation of the citizenship law.

**Slovenia:** Some improvements are still needed in restoring property to former owners dispossessed under the Communist regime.

**Latvia:** Latvia needs to take measures to accelerate naturalization procedures to enable the Russian-speaking non-citizens to become better integrated into Latvian society. It should also pursue its efforts to ensure equality of treatment for non-citizens and minorities, in particular for access to professions and participation in the democratic process.

**Lithuania:** There are no major problems as regards fulfilment of the political criteria laid down in Copenhagen.

**Bulgaria:** Some gaps remain as regards respect for fundamental rights, though the new government elected in April 1997 has announced a series of positive reforms. The Turkish minority seems to be well integrated, but this is not so for the Roma (gypsies). Considerable efforts are needed to protect individual liberties in the face of too frequent abuses by the police and secret services.

**Romania:** A number of gaps remain as regards respect for fundamental rights, even if the measures adopted and the undertakings given by the Romanian authorities since November 1996 constitute progress. Considerable efforts are still needed to improve the protection of individual rights against the activities of the police and secret services as well as during the operation of the penal system. If the Hungarian minority seems well integrated in the light of recent improvements in their situation, this does not seem to be the case for the Roma (gypsies), who constitute a significant minority in the country. Reforms undertaken for the protection of children placed in orphanages constitute significant progress but still need to achieve their full results.

**Slovakia:** Slovakia does not fulfil in a satisfying manner the political conditions set out by the European Council in Copenhagen because of the instability of its institutions, their lack of rootedness in political life and the shortcomings in the functioning of its democracy.

The government does not sufficiently respect the powers devolved by the constitution to other bodies and too often disregards the rights of the opposition. Examples of this are the constant tension between the government and the President of the Republic and the way in which the government recently ignored the decisions of the Constitutional Court and the Central Referendum Committee on the occasion of the vote on 23/24 May 1997. The use made by the government of the police and
the secret services is worrying. Substantial efforts need to be made to ensure fuller independence of the judicial system and an improvement in its working conditions.

The treatment of the Hungarian minority needs to be improved, in particular through the adoption of a law on the use of minority languages. The Slovak authorities have given an undertaking that they will do so, and the constitution provides for such a law. The situation of the Roma similarly needs attention from the authorities.

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