

**CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW OF  
THE BALANCE OF COMPETENCES BETWEEN  
THE UNITED KINGDOM AND THE EUROPEAN UNION**

**EU ENLARGEMENT**

**Open date:** 27 March 2014

**Closing date:** 30 June 2014

**Introduction**

The Foreign Secretary launched the Balance of Competences Review in Parliament on 12 July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the European Union. The review will provide an analysis of what the UK's membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. It will not be tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.

The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review is led by Government but will also involve non-governmental experts, organisations and other individuals who wish to feed in their views. Foreign governments, including our EU partners and the EU institutions, are also being invited to contribute. The process will be comprehensive, evidence-based and analytical. The progress of the review will be transparent, including in respect of the contributions submitted to it.

This report is being led by the Foreign and Commonwealth Office (FCO), in collaboration with other Whitehall departments including the Home Office, Ministry of Justice, Department for Business, Innovation & Skills, Department for Work and Pensions, HM Treasury, HM Revenue & Customs, Department for International Development and the Cabinet Office.

This report will focus on the issue of EU enlargement policy and the balance of competences in line with existing Treaty provisions and through an examination of practice to date. Under future challenges and opportunities, we will consider how EU enlargement policy might develop in future. Our review will not, however, consider issues that fall within the terms of other balance of competences reviews. Nor will it consider EU reform unrelated to enlargement. EU issues related to the independence referendum in Scotland also fall outside the scope of this review.

## **What is competence?**

For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the member states without needing any further action by the EU institutions.

The EU's competences are set out in the EU Treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the member states.

There are different types of competence: exclusive, shared and supporting. Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy. In areas of shared competence, such as the single market, environment and energy, either the EU or the member states may act, but the member states may be prevented from acting once the EU has done so. In areas of supporting competence, such as culture, tourism and education, both the EU and the member states may act, but action by the EU does not prevent the member states from taking action of their own.

However, in the context of enlargement, the EU, as a legal entity, does not itself have competence to determine who is to be a member of the EU. Equally, individual member states cannot unilaterally determine who is to be a member of the Union. Rather, accession is ultimately achieved by way of intergovernmental treaty after following the process set out in Article 49 of the Treaty on European Union (TEU) (discussed further below). "Competence" in this area is not, and cannot therefore be described as, exclusive, shared or supporting as for other areas of EU action. However, as set out in Article 49, each of the institutions and the member states have various roles, responsibilities and competences in the accession process.

### **A brief history of the EU treaties**

The first European Community was created by the Treaty on the European Coal and Steel Community, signed in Paris on 18 April 1951. The Treaty on the European Economic Community (EEC) was signed in Rome on 25 March 1957 – along with the Treaty establishing the European Atomic Energy Community (Euratom) – and entered into force on 1 January 1958. The EEC Treaty had a number of economic objectives, including establishing a European common market. Since 1957 there has been a series of treaties extending the objectives of what is now the European Union beyond the economic sphere. The amending treaties (with the dates on which they came into force) are: the Single European Act (1 July 1987), which provided for the completion of the single market by 1992; the Treaty on European Union – the Maastricht Treaty (1 November 1993), which covered matters such as justice and home affairs, foreign and security policy, and economic and monetary union; and the Treaty of Amsterdam (1 May 1999), the Treaty of Nice (1 February 2003) and the Treaty of Lisbon (1 December 2009), which made a number of changes to the institutional structure of the EU.

Following these changes, there are now two main treaties which together set out the competences of the European Union:

- The Treaty on European Union (TEU);
- The Treaty on the Functioning of the European Union (TFEU).

### **Call for evidence**

This public call for evidence sets out the scope of the review of the balance of competences in the area of EU enlargement. We request input from anyone with relevant knowledge, expertise or experience. This is your opportunity to express your views.

Please send your evidence either:

1) By email to: [BOC.enlargement@fco.gov.uk](mailto:BOC.enlargement@fco.gov.uk)

2) By post to:

Balance of Competences (Enlargement) Report  
Western Balkans and Enlargement Department (WH.1.201)  
Foreign and Commonwealth Office  
King Charles Street  
SW1A 2AH

Your evidence should be objective, factual information about the impact or effect of the competence in your area of expertise. We will expect to publish your response and the name

of your organisation unless you ask us not to (but please note that, even if you ask us to keep your contribution confidential, we might have to release it in response to a request under the Freedom of Information Act). We will not publish your own name unless you wish it included. Please base your response on answers to the questions set out near the end of this document.

### **Policy Context**

From the very inception of the EU (or the European Communities as they then were), any European state has been able to apply for membership. Each of the founding treaties provided for the possibility of enlargement. The main provision on EU enlargement is now found in Article 49 TEU. Membership is open to “any European state which respects the values” of the EU and is committed to promoting them. The EU’s values, set out in Article 2 TEU, are “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities” in societies in which “pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”. Whether an applicant country falls within this definition is decided by member states in the Council.

EU membership has proven to be an attractive strategic goal for most European countries. The EU has enlarged seven times since it was founded in 1957, from 6 to 28 member states.

#### EU Enlargement to date

- 1957 – Belgium, France, Italy, Luxembourg, Netherlands, Federal Republic of Germany (founding members)
- 1973 – Denmark, Ireland, United Kingdom
- 1981 – Greece
- 1986 – Portugal, Spain
- 1995 – Austria, Finland, Sweden
- 2004 – Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia
- 2007 – Bulgaria, Romania
- 2013 – Croatia

Eight further countries are recognised by the EU as being potential future member states, of whom three are currently in accession negotiations. Iceland chose to suspend its negotiations in 2013 following the election of a new government.

Official Candidate Countries

- Montenegro, Serbia, Turkey – in accession negotiations
- Macedonia – not yet in accession negotiations
- Iceland – accession negotiations suspended

Potential Candidate Countries

- Albania, Bosnia and Herzegovina, Kosovo

The UK also supports the Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Moldova, Georgia, Ukraine) as possible EU members in future, should they wish to apply and providing they meet the necessary criteria. However there is no consensus on their potential candidacy among EU member states and these countries are, in any case, many years away from meeting the criteria for membership.

EU accession should also be considered in the context of wider Euro-Atlantic integration. In some cases, progress towards EU membership has proceeded in parallel with progress towards accession to NATO. Albania has already joined longstanding members Iceland and Turkey in NATO. Bosnia and Herzegovina, Macedonia and Montenegro have – with Georgia – applied to join. Serbia and Kosovo have not.

*The process*

Article 49 of the Treaty on European Union (TEU)

*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 conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the member states and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.*

Article 49 TEU sets out the process for joining the EU but in high-level terms only. The detail of the accession procedures are not set down in law but instead based on European Council conclusions (texts agreed by the Heads of State and Government) and practice.

A country wishing to join the EU must submit an application to the Council. The European Parliament and all national Parliaments must be notified of the application. After consulting the Commission, the Council of Ministers decides by unanimity whether to grant the applicant country Candidate Status and, subsequently, whether to open accession negotiations (although the convention is that the European Council – summit meetings of Heads of State and Government - invariably takes this decision). Under the direction of the Council as set out in a negotiating mandate, the Commission engages with the candidate country throughout the long process of opening, negotiating and closing all 35 areas or “Chapters” of the EU’s accumulated policies and laws (the ‘*acquis*’) and its broader enlargement conditionality requirements. The Commission reports back regularly to the member states in Council working groups and publishes annual progress reports on each of the candidate countries and potential candidate countries.

Once negotiations are completed, and the European Parliament has given its consent, the entire package is incorporated into an Accession Treaty to be agreed between and ratified by the member states and the candidate country. This includes the necessary adjustments to the existing treaties to take account of the enlargement.

In terms of UK ratification, under UK constitutional requirements as laid down in the European Union Act 2001, an Accession Treaty must be approved and incorporated into domestic law through an Act of Parliament. The European Union (Croatian Accession and Irish Protocol) Act 2013 is a recent example.

Other countries must comply with their own constitutional requirements. Austria and France have, for example, said they will hold referendums on whether Turkey should accede.

From start to finish, the process can take many years. Croatia’s accession, for example, took 10 years from its application for membership, while Bulgaria and Romania both took 12 years.

Croatia’s EU accession process

2003 – application for membership submitted

2004 – awarded Candidate Status

2005 – opened accession negotiations

2011 – completed accession negotiations

2013 – Accession Treaty ratification completed

2013 – joined the EU

The process does not end, however, when a country accedes formally to the EU. The Accession Treaty may include transitional measures. In some areas (eg, free movement of workers), there are transitional periods during which not all areas of the ‘*acquis*’ may apply to a new member state, either to allow the new member state a period of time to adjust or conversely to allow the existing member states time to adjust to an enlarged EU. Similarly, while all new member states are required to join the Euro, they do so only when they meet the necessary criteria - which can be many years later. The same applies to participation in the Schengen free-movement area.

### *Policy objectives*

Enlargement has had a major impact on all areas of EU activity. The EU itself has transformed as it has moved from being a Community of 6 member states to a Union of 28 member states with a population of over 500 million.

Through enlargement, the EU has sought to:

- Extend peace, stability and democracy across the continent

Born in the aftermath of successive European conflicts culminating in World War Two, the European Coal & Steel Community and subsequently the European Economic Community sought to bring reconciliation to and make war inconceivable between its members. In the 1980s, the European Community went on to help entrench democracy in post-authoritarian Greece, Portugal and Spain. Following the end of the Cold War, the EU succeeded – in its largest ever enlargement – in reuniting much of the continent and extending stability and democracy to the former Communist Bloc countries of central and eastern Europe. The EU’s role in support of Europe’s democracy and stability continues today through its efforts to bring Turkey closer and, following the post-Yugoslav wars of the 1990s, to bring the countries of the western Balkans into its European framework. This focus on stability includes an increasing role in ensuring that the rule of law and fundamental rights are guaranteed, and that governance threats such as organised crime and corruption are tackled.

- Extend prosperity and the market economy across Europe

From its beginnings as the European Coal & Steel Community, the EU has always had a strong economic focus. It sought to rebuild Europe’s post-war economy, promote cross-border trade and drive prosperity. With the fall of the Berlin Wall, it has helped the formerly centrally-planned economies of central and eastern Europe to evolve and thrive as market-based economies which are now part of the EU’s Single Market. As a result of successive enlargements, the Single Market is the world’s largest economic area, with a combined GDP larger than the United States or China and a major player in international trade negotiations. In the wake of the global economic and Euro crisis, strengthening economic governance is a growing priority in the accession process and is recognised as necessary to underpin wider reforms.

### *Institutional change*

As the EU has grown from 6 to 28 member states, enlargement has required institutional reforms to ensure that the EU and its institutions can continue to function effectively. Each new member state has also brought its own perspectives and interests to the EU. Following enlargement, the European Commission has many more Commissioners and the European Parliament many more MEPs. In the Council of Ministers, Qualified Majority Voting (under which larger member states have more votes) is now the norm. Greater flexibility in participation has also followed enlargement in order to allow the EU to adapt to its larger and more diverse membership. Not all member states, for example, participate in the Euro, in Schengen area free-movement or the Unified Patent Court.

### *Conditionality*

The EU's approach to enlargement has developed very considerably over recent decades. In particular, following the fall of the Berlin Wall and the decision by the former Communist Bloc countries of central and eastern Europe to seek to join the EU, there has been a particular focus on developing and ensuring respect for conditionality (ie, the standards and criteria required by the EU and its member states for a new country to join) and to ensure that new member states respected the EU's values, are able to cope with the economic pressures of the Single Market and will implement its rules.

Agreed by the European Council in 1993, the EU's Copenhagen Criteria were the first written statement of the conditions necessary for EU membership, requiring all new members to adhere to its political and economic norms and comply with the accumulated '*acquis*' to date. They also established the principle that the capacity of the EU to absorb new member states is an important consideration.

#### The Copenhagen Criteria

- i. political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- ii. economic: existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
- iii. acceptance of the Community '*acquis*': ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

It was further agreed by the European Council in 1997 that, while compliance with the political criteria would be sufficient to open negotiations, they could only be concluded on



condition the applicant state fulfilled the required economic criteria and adopted satisfactorily the ‘*acquis*’

The Copenhagen Criteria were a major focus of the accession negotiations with the countries which joined the EU in 2004 and 2007, with a particular focus on guaranteeing democracy, human rights and the protection of minorities. Conditionality has since developed further, in order to apply lessons from previous enlargements and to address new challenges that have emerged.

For example, in the wake of the 2004 enlargement and approaching the 2007 enlargement, there was a belief that further challenges remained for some new or prospective member states with regard to the rule of law and action against organised crime and corruption. A “Renewed Consensus” on enlargement was endorsed by the European Council in December 2006, providing for more rigorous conditionality and greater emphasis in accession negotiations on the EU’s ability to absorb new members.

The accession process was further modified in 2012, under the so-called “New Approach”, to ensure that the conditionality set out in Chapter 23 on judiciary and fundamental rights and Chapter 24 on justice, freedom and security is now front-loaded and must be tackled by candidate countries from the start of the negotiation process. This aims to embed rule of law reforms by maximising the time candidate countries have to address these fundamental issues, both through legislation and developing a strong track record of implementation before negotiations close. Montenegro is the first candidate country following the “New Approach”.

The Commission’s latest round of annual enlargement progress reports, published in October 2013, also placed a greater emphasis on the importance of strong economic governance. The global economic crisis and the Euro crisis laid bare some of the challenges facing the EU’s member states, including several newly-acceded ones. We can expect strengthened conditionality around economic governance to develop in future years. Greater Eurozone integration will also increase economic and monetary conditionality placed upon candidate countries and new member states as they move towards Euro membership (a requirement for all member states in due course, apart from the UK which has a formal opt out).

#### *Pre-accession assistance*

Since the 1990s, the EU and individual member states have provided candidate countries with significant sums of financial and technical assistance to help reforms and assist the governments prepare for EU membership.

For the EU, the Commission, tasked by member states, has delivered very substantial financial and technical support to candidate countries through the PHARE, CARDS and Instrument for Pre-Accession (IPA) programmes, designed to assist preparations to join the EU. The competence to provide such funding and technical assistance is set out in Article 212

of the Treaty on the Functioning of the European Union (TFEU). This assistance was worth nearly €16 billion between 2000-2006, and €11.5 billion between 2007-2013. IPA II, running between 2014-2020, is expected to provide an additional €11 billion of support to the western Balkans countries and Turkey.

An independent review of IPA assistance published in 2013 by ECORYS<sup>1</sup> determined that, while overall delivery was good, impact could have been improved. The best results were seen where assistance was driven by a clear need to comply with EU standards and requirements, and where there was strong political and national ownership within the beneficiary country. There will be an increased focus on results under IPA II, which will reward progress and efficient implementation more actively.

### *The UK's approach*

The UK has been historically a driving force within the EU behind enlargement. Successive UK Governments have championed enlargement over recent decades. They have consistently highlighted the strategic benefits for the UK in terms of security and prosperity, and welcomed the more open, diverse and flexible EU that has resulted.

The UK has enjoyed influence as a strong supporter of enlargement among new member states and candidate countries. While the numerical influence of any single member state diminishes as the number of countries in the EU increases, the UK has in practice remained a key player and found new allies among new members on many of its priorities. Enlargement has increasingly highlighted, however, the UK's distinct position in the EU and areas where it does not participate fully alongside other members, new and old (eg, the Euro, border controls, some areas of justice and policing). While the UK enjoys permanent opt-outs in these areas, the current enlargement model is built on the presumption that new member states will ultimately join all areas of the 'acquis'.

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<sup>1</sup> [http://ec.europa.eu/enlargement/pdf/financial\\_assistance/phare/evaluation/2013/ipa\\_interim\\_meta\\_evaluation\\_report.pdf](http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/2013/ipa_interim_meta_evaluation_report.pdf)

## **Questions**

- **Impact on the national interest**

1. What has been the impact of EU enlargement on UK interests? How has the UK influenced the enlargement process?
2. What effect has EU enlargement had on UK interests in specific policy areas? What advantages and disadvantages has the UK experienced as a result? Please give examples.
3. How do you consider the balance between the roles of member states and of the EU institutions in the process? Might UK interests be served by any changes to the balance of competences in this area?

- **Exercise of competence**

4. How effectively have the member states and the EU institutions run the enlargement process? Have lessons drawn from previous enlargement rounds been applied?
5. How do you assess the EU's use of conditionality (eg, the Copenhagen Criteria, the 'New Approach' on rule-of-law issues)? Has conditionality been effective in ensuring candidate countries implement reforms necessary for EU membership? Please give examples.
6. How effective has EU financial and technical assistance been in helping candidate countries prepare for EU membership? Please give examples.

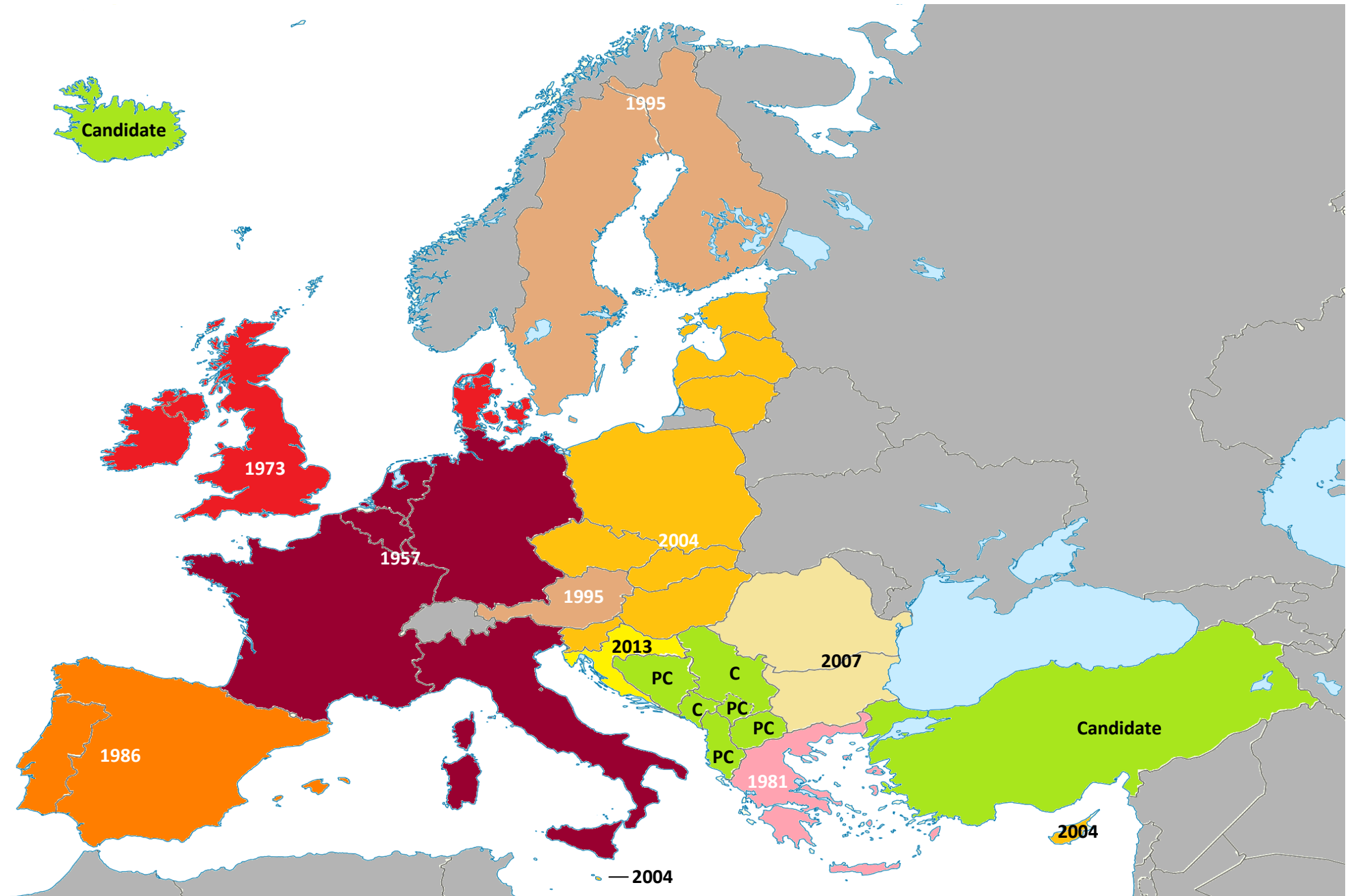
- **Future options and challenges**

7. What challenges / opportunities might EU enlargement face in future?
8. How might the EU's approach to enlargement be improved in future?
9. What future impact might EU enlargement have on UK interests? How might any positive impacts be enhanced or disadvantageous impacts be addressed?

- **General**

10. Are there any further points you wish to make which are not captured above?

# EU 28 and Aspirant Countries – Dates of Accession



C – Candidate Country  
PC – Potential Candidate Country

**EU Enlargement by Population**  
**EU 28 (blue) and Aspirant Countries (Green)**

**1957 – France Germany Italy Netherlands  
Belgium Luxembourg**

**1973 – Denmark Ireland UK**

1981 - Greece

**1986 – Portugal Spain**

**1995 – Austria  
Finland Sweden**

**2004 – Cyprus Czech Rep. Estonia Hungary  
Latvia Lithuania Malta Poland Slovakia  
Slovenia**

**2007 – Bulgaria Romania**

2013 - Croatia

**Serbia – 7.2m**

Albania  
2.8m<sup>2011</sup>

Bosnia &  
Herzegovina  
3.8m<sup>p</sup>

Kosovo  
1.8m

Macedonia  
2.1m

Iceland  
320,000

Montenegro  
620,000

**Turkey – 75.6m**

All proportions in graphic above based on relative populations of EU MS and aspirant countries as recorded at March 2014  
 All data – 2013 figures, source: Eurostat (<http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>) March 2014

Albania – most recent data available 2011, Bosnia & Herzegovina – provisional data

