

*THE COPENHAGEN CRITERIA: ARE THEY HELPING OR HURTING THE EUROPEAN UNION?**By Paulina Rezler****I. Introduction**

The European continent is made up of a number of small, independent nations; each with its own currency, laws, policies, culture and traditions and in some cases even languages. Each country was responsible for its own well being until the European Union was created. Now European countries, and even some countries that are not technically considered a part of Europe, seek to be part of Europe and the European Union. They seek to unify some of those independent characteristics such as their currency and their laws with those that are uniform in the European Union.

The European Union was created by the Treaty on the European Union which became effective in November of 1993.¹ This treaty endeavored to facilitate a European integration which would help to strengthen and assimilate the economies of each sovereign in a way that would create economic and monetary union between them.² The Union sought to create a “super nation” of sorts which would be united in its currency and which would allow for the creation of a common citizenship, as well as the free movement of all citizens between member countries. This common citizenship would create a vast nation of Europeans spanning over the borders of individual member nations.

* © 2010 Paulina Rezler. J.D. Candidate Touro College, Jacob D. Fuchsberg Law Center, expected May 2011.

¹ 1992 O.J. (C 191) 1, 31 I.L.M. 247, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF> [hereinafter “*EU Treaty*”].

² See *EU Treaty*.

Currently, there are twenty-seven member countries in the European Union.³ These countries have transferred some of their lawmaking authority to the Union.⁴ Still other countries strive to become members of this vast “super nation.”⁵ The European Union spans over 4 million square kilometers which is less than half the surface area of the United States.⁶ Even though it is less than half the size of the United States, the population is more than 50% larger than that of the United States.⁷ In fact, the population of the European Union is the third largest worldwide, falling short of the populations of only China and India.⁸ Its population is made up of people of different cultural, religious and economic backgrounds. This makes the Union a diverse environment to live and work in and one with a myriad of different opportunities to offer its citizens. It is no surprise that so many countries still strive to become members of the European Union.

The Copenhagen Criteria are the conditions candidate countries must meet before they can become members of the European Union. Part II of this article will list the criteria and discuss each of them in turn. Part III will use Poland as an example to evaluate the efficacy of the Copenhagen criteria. It will discuss the Treaty of Accession with Poland, and discuss two separate reasons why this author believes that the Copenhagen Criteria are ineffective. Part IV will discuss the countries that are candidates and potential candidates and their progress in

³ *The Member Countries of the European Union*, EUROPEAN UNION, available at http://europa.eu/about-eu/member-countries/index_en.htm (member countries include: Austria, Belgium, Cyprus, Denmark, Estonia, Finland, Germany, Hungary, Italy, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, and the United Kingdom) [hereinafter “*Member Countries*”].

⁴ *Id.*

⁵ *Id.* At the moment Croatia, Turkey, Iceland and The former Yugoslav Republic of Macedonia are candidate countries. Potential candidate countries are: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, and Serbia.

⁶ *Key Facts and Figure about Europe and the Europeans*, EUROPEAN UNION, 5-6, http://ec.europa.eu/publications/booklets/eu_glance/66/en.pdf [hereinafter “*Key Facts and Figures about Europe*”].

⁷ *Id.* at 5.

⁸ *Id.*

becoming members of the European Union. Part V will recommend steps that the European Union should take in order to make the Copenhagen Criteria more effective.

II. The Copenhagen Criteria

The Copenhagen Criteria are the membership criteria that must be satisfied by a country that wants to become a member of the European Union prior to accession.⁹ The European Council has stated that “[a]ccession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required.”¹⁰ Enlargement of the Union was discussed at the Copenhagen European Council in 1993 and the Madrid European Council in 1995. Between these two councils, the membership criteria were created. In order to become a member of the European Union the candidate country must have achieved

- Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities
- The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union
- The ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union.¹¹

The Madrid European Council in 1995 also added the requirement that the conditions for accession must have been created through the adjustment of administrative structures.¹² The reason for this requirement is to give acceding countries the internal mechanisms needed in order

⁹ *Accession Criteria*, EUROPEAN UNION, http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm [hereinafter “*Accession Criteria*”].

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

to implement legislation that is uniform throughout all the members of the Union.¹³ By adding this requirement the Council addressed its concern that candidate countries would act to meet the requirements to meet the goal of acceding and leave themselves without a mechanism for further success within the Union. The Union seeks member countries that can add to their dynamic and not problematic nations that will then require constant support from the rest of the member countries. In the Madrid European Council meeting in December of 1995, the Council stated that

[e]nlargement is both a political necessity and a historic opportunity for Europe. It will ensure the stability and security of the continent and will thus offer both the applicant States and the current members of the Union new prospects for economic growth and general well-being. Enlargement must serve to strengthen the building of Europe in observance of the *acquis communautaire* which includes the common policies.¹⁴

The European Community closely monitors the progress of countries that have applied for accession into the European Union. Pre-accession instruments have been implemented by Agenda 2000 which provides assistance to countries in the process of complying with accession criteria.¹⁵ The European Commission, through Regular Reports, identifies the problems which need to be given priority in each country interested in accession.¹⁶

The pre-accession programs available as of the year 2000 were PHARE, ISPA and SAPARD.¹⁷ The PHARE program finances institution building measures and investment in

¹³ *Id.*

¹⁴ Roger J. Goebel, *Joining the European Union: The Accession Procedure for the Central European and Mediterranean States*, 1 LOY. U. CHI. INT'L L. REV. 15, 16 (2004-2005) (quoting European Union Bull. 12/95, at 18 (1995)).

¹⁵ *Enlargement of the European Union: An Historic Opportunity*, EUROPEAN COMMISSION, 12-14 available at http://ec.europa.eu/enlargement/archives/pdf/press_corner/publications/corpus_en.pdf [hereinafter "*Enlargement of the European Union*"].

¹⁶ *Id.* at 12-13 (for example, the priority for Bulgaria was economic criteria, for Hungary the priorities were justice and home affairs as well as improving data and telecommunication infrastructure and for Poland the priority was industrial restructuring).

¹⁷ *Id.* at 14-15.

fields not covered by ISPA and SAPARD.¹⁸ ISPA finances environmental and transportation infrastructure projects.¹⁹ SAPARD finances agricultural and rural development.²⁰

Institution building involves “strengthening and adapting democratic institutions, public administration and organizations that have a responsibility in implementing and enforcing Community legislation.”²¹ The Community is concerned not just with the introduction of legislation but most importantly with its efficient and effective implementation by all member nations.²² This includes the development of structures, including administrative ones as mentioned in the Madrid European Council meeting, as well human resources and development of management skills.²³ Institutional building “means designing management systems and training and equipping a wide range of civil servants, public officials, professionals and relevant private sector actors: from judges and financial controllers to environmental inspectors and statisticians.”²⁴

Twinning is the principal instrument for accomplishing institution building.²⁵ Twinning helps candidate nations develop the same structures already in place in the member nations of the European Union.²⁶ Each Twinning project is led by an official from the candidate country with the help Pre-Accession Advisers assigned to the project.²⁷ An example of a Twinning project is the involvement in Poland in creating reinforcement in the Ministry of Internal Affairs as well as

¹⁸ *Id.* PHARE’s annual budget totals € 1,560 million.

¹⁹ *Id.* ISPA’s annual budget totals € 1,040 million.

²⁰ *Id.* SAPARD’s annual budget totals € 520 million.

²¹ *Enlargement of the European Union, supra* note 15, at 15.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Enlargement of the European Union, supra* note 15, at 15. From 1998-2001, 475 Twinning projects were endorsed by the European Union in a variety of fields including agriculture, public finance and justice.

the Ministry of Justice in fighting against organized crime.²⁸ The program focuses on the training of scientific prosecutors, scientific police and forensic police in the treatment of fingerprints and criminal analysis.²⁹

The *acquis* or *acquis communautaire* refers to the rules and policies of the European Union.³⁰ It includes the entirety of the European Community legislation, the founding Treaty of Rome, all the directives passed by the Council of Ministers as well as all judgments made by the European Court of Justice.³¹ The adoption of the *acquis* is focused on in PHARE's second objective of investment.³² Candidate countries must adapt their enterprises and infrastructures to respect Community norms and standards.³³ PHARE's investment in these countries helps them to adopt the *acquis* more quickly so as to move their accession into the European Union along.³⁴ European Community programs are open to candidate countries to facilitate their familiarization with Community policies.³⁵ This is because an integral part of membership in the European Union is the cooperation of member nations in certain policy areas such as those regarding health and the environment.

Although many programs have been instituted to foster cooperation between member nations and facilitate the accession of candidate countries, the criteria which must be met by each candidate countries are still not specifically defined. It seems as though the criteria are applied on a case by case basis. Progress is examined by the Council and problem areas are identified and addressed in Regular Reports as the accession process continues. Yet, there is no clear definition of what the criteria actually are, such as what constitutes "stability of institutions" or a

²⁸ *Id.* at 17.

²⁹ *Id.*

³⁰ *Id.* at 32.

³¹ *Id.*

³² *Id.* at 18.

³³ *Enlargement of the European Union, supra* note 15, at 18.

³⁴ *Id.*

³⁵ *Id.* at 20.

“functioning market economy.” This may be problematic and may account for the reasons why countries of such different levels of development and different levels of sophistication in governance have been allowed to become members of the European Union. This is because without any clear definition of the material terms in the Copenhagen Criteria, the European Union can interpret the terms inconsistently each time they want to accept a county into the European Union. The goal of the European Union should be to accept nations which have substantially complied with the Copenhagen Criteria and which are capable of full compliance in a reasonable time. This goal is difficult to achieve if each time a nation is considered the criteria are interpreted differently, and the result has been the acceptance of countries like Poland which were not in compliance at the time of accession and are still not in compliance years after that accession.

III. Using Poland as an Example to Evaluate the Copenhagen Criteria

a. Background on Poland

In Central Europe, lies a country bordered by Germany to west, the Czech Republic and Slovakia to the South, Ukraine, Belarus and Lithuania to the east, and the Baltic Sea and Kaliningrad to the north.³⁶ This country is Poland.³⁷ It has a total area of approximately 312,000 square kilometers, which makes it a less than 5% the size of the United States.³⁸ It has a population of approximately thirty eight million people, compared to the United States’ 310

³⁶ The World Factbook, *Poland*, Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/pl.html> [hereinafter “*Poland*”].

³⁷ *Id.*

³⁸ *Id.*; *Key Facts and Figures about Europe*, *supra* note 6, at 5-6.

million.³⁹ Poland is made up of sixteen provinces⁴⁰, while the United States is made up of fifty states.⁴¹

It is interesting to note that like the United States, Poland's legislative branch is made up of a bicameral legislature.⁴² This legislature is composed of 100 Senators in the Senate and 460 Representatives in the "Sejm."⁴³ The United States on the other hand, has 100 Senators in the Senates and 435 Representatives in the House of Representatives.⁴⁴ One may wonder why a country that is less than 5% the size of the United States, and with a population that is only about 10% the size of the United States, needs a legislative branch that is larger than that of the vast United States. It seems that a country that has that many politicians trying to make decisions on behalf of the citizens cannot realistically have a stable institution which guarantees democracy. Yet, this is a criterion that must be met before a country can successfully become a member of the European Union, and Poland is such a member. This section will try to reconcile those two facts.

b. The Treaty of Accession with Poland

The Treaty of Accession with Poland was signed on April 16, 2003 and after its ratification Poland was set to become a member of the European Union on May 1, 2004.⁴⁵ In the 2002 Regular Report the Commission concluded that "Poland is a functioning market

³⁹ *Poland*, *supra* note 36; The World Factbook, *United States*, Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> [hereinafter "*United States*"].

⁴⁰ *Poland*, *supra* note 36.

⁴¹ *United States*, *supra* note 39.

⁴² *Poland*, *supra* note 36.

⁴³ *Id.*

⁴⁴ *United States*, *supra* note 39.

⁴⁵ Comprehensive Monitoring Report on Poland's Preparations for Membership (2003), EUROPEAN COMMISSION, 3, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_pl_final_en.pdf [hereinafter "*Poland's Preparation for Membership (2003)*"].

economy.”⁴⁶ The Commission also listed areas in which improvements could be made.⁴⁷ Areas that needed improvement included bankruptcy procedures, the land registry, restructuring and privatization of industry, as well as energy distribution.⁴⁸ The Report went on to discuss areas which were not making sufficient progress such as the improvement of the labor market situation which was so moderate that it was not expected to have a significant effect on Poland’s high rate of unemployment.⁴⁹ The Report also stated that the pace of privatization in “the first months of this year has been disappointing.”⁵⁰ Other problems included Polish officials’ reluctance to implement a fiscal adjustment which would include a reduction of public spending.⁵¹ These are just some of the problems listed with economic aspects of the Copenhagen criteria.

In terms of meeting requirements arising from accession negotiations the Commission was of the opinion that “Poland is generally meeting its commitments.”⁵² This language suggests that a year before the planned accession date, Poland still had not met all its requirements, and judging from the economic aspects alone, it may not have been able to meet the requirements by the deadline of May 1, 2004. More concerning is that the Commission also concluded that “[t]here continues to be some disparity between progress in the adoption of legislation and the reinforcement of administrative capacity.”⁵³ Commission services also wrote letters to Poland expressing concern over certain areas such as: free movement of goods and services, agriculture, as well as social policy.⁵⁴

⁴⁶ *Id.* at 5.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 5-6.

⁵⁰ *Id.* at 6.

⁵¹ *Poland’s Preparation for Membership (2003)*, *supra* note 45, at 7.

⁵² *Id.* at 10.

⁵³ *Id.*

⁵⁴ *Id.* at 11.

The Commission Report from 2003 is replete with issues that Poland still needs to address and requirements that still need to be met before the accession date. With so many issues just a year before accession it is a wonder that Poland was able to accede to membership at all. The report went as far as to conclude that since 2002 the reform path had nearly come to a stand still in Poland.⁵⁵ This should have raised more serious concerns to the European Commission than it did. The report also referred to local resistance to make the necessary changes in Poland, and this too should have concerned the Commission but it did not.

As of September 2004, just four months after its accession, Poland had failed to adopt and implement two hundred fifty seven of the European Union directives regulating the single market.⁵⁶ The directives that Poland failed to implement were in a broad spectrum of areas including value added tax (VAT) laws, telecommunications and foreign business, and Poland's ban on the advertisement of alcohol violates articles 14 and 28 of the European Union Treaty.⁵⁷ The Commission Reports cite to the Strategy Paper "Towards the Enlarged Union," which accompanied the 2002 Regular Reports which monitored preparations for membership. In its Strategy Paper the Commission stated:

Acceding countries need to implement the *acquis* by the date of accession, except in cases where transitional arrangements have been agreed. Commitments undertaken in the negotiations must be fully met before accession. The Regular Reports point to a number of areas where further improvements need to be made in the context of the political and economic criteria and in relationship to the adoption, implementation and enforcement of the *acquis*. These should be vigorously pursued.⁵⁸

⁵⁵ *Id.* at 62.

⁵⁶ Katherine Krause, *European Union Directives and Poland: A Case Study*, 27 U. PA. J. INT'L ECON. L. 155, 164-65 (2006). This constitutes one-sixth of the total European Union directives.

⁵⁷ *Id.* at 165.

⁵⁸ *Poland's Preparation for Membership (2003)*, *supra* note 45, at 3.

Thus the European Commission emphasizes the importance of implementing all acquis by the date of accession. Yet, its words are rendered meaningless when the accession dates are not pushed back, and countries like Poland are not held accountable for their indiscretions.

c. Problems with Implementations and How it Relates to the Efficacy of the Copenhagen Criteria

The Copenhagen criteria are ineffective for two reasons: because of the European Union's lack of response to candidate countries' failures to meet all requirements before accession, and because of their vagueness.

1. European Union's Lack of Response to Candidate Country Failures

Failure to implement a directive is considered a breach of the treaty.⁵⁹ Such breaches could result in lawsuits against Poland in the European Court of Justice.⁶⁰ Even though it was known in 2004 that Poland had failed to implement a large number of European Union directives, it was not until December 2005 that the European Commission announced it would be suing Poland for its failure to implement a specific directive regarding telecommunications.⁶¹ It seems as though the European Union is desperate to expand its borders. The problem seems to be a lack of accountability, or with the recent accession that increased European Union members from fifteen to twenty-five, an overwhelming amount of problems that need to be addressed, with insufficient resources to do so.⁶²

It is important to note that

⁵⁹ Krause, *supra* note 56, at 65.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 156.

[t]he new EU entrants are significantly poorer than existing members, with average GDP per person at only half that of existing members states. According to World Bank reports, it could take more than twenty years for the Central-Eastern European countries, including Poland, to reach the EU's average level of 1994 GDP per capita. These economic and social shortcomings have raised considerable concerns among existing and new members about the manner in which integration into the Union should proceed. As a single market based on free circulation and integrated activity, the EU is particularly vulnerable to the lingering problems that characterize its new members.⁶³

These drastic changes between the old and new members of the European members raise many concerns. The European Union has created many programs in its Agenda 2000 and has invested and continues to invest a tremendous amount of money into the new members in order to help them implement and adopt all European Union directives.⁶⁴

Yet all the money that the European Union is investing in its new members is still not enough. One of the foremost reasons for Poland's failure to implement all orders, apart from resistance from Polish locals and politicians, is "fiscal incapacity and budgetary overburdening."⁶⁵ This is most certainly true not just in Poland's case, but also in the cases of the other Central-Eastern European members that have acceded to the European Union recently. Implementation of many of the directives is costly. A Polish government official, Danuta Hubner, has estimated that adopting the worker-protection rules could cost two to three percent of the GDP per year, and that improving environmental conditions to comply with European Union standards could cost another two percent over the next ten to fifteen years.⁶⁶ There are

⁶³ *Id.* at 156-57.

⁶⁴ *Enlargement of the European Union*, *supra* note 15, at 14-15.

⁶⁵ Krause, *supra* note 56, at 167.

⁶⁶ *Id.*

also other considerations, such as the fact that Polish non-compliance with the European Union directive on power plant emission standards would give it a competitive edge.⁶⁷

The 2003 European Commission Report on Polish progress towards accession identified a multitude of problems area in which Poland had not yet complied with accession requirements, and which Poland would not be able to meet by its accession deadline. Even though these concerns were raised, the accession date was not pushed back, and the European Union accepted Poland with open arms. Poland did not adopt many of the European Union directives, and to date is still lagging in its privatization efforts.

Western European members are also concerned that the cheap exports from countries like Poland will adversely affect their economies.⁶⁸ Specifically, Western European members are concerned that “cheap Polish exports could undercut local products in price, that financial flows to new member states could absorb much-needed investment capital, and that the mass-migration low-wage workers from [Central-Eastern European] countries could raise EU unemployment.”⁶⁹ Poland has been the interest of foreign investors because of its qualified personnel and low wage costs.⁷⁰ This makes it a threat to its Western European counterparts which have been contributing greatly to the European Union for many years.⁷¹ Despite Poland’s many shortcomings with regards to implementing European Union directives it receives €993 million more than it contributes to the European Union.⁷²

The European Union may believe that Poland is a good investment, but its slow progress, and its resistance to implement all European Union directives should be worrisome. It is already

⁶⁷ *Id.*

⁶⁸ *Id.* at 173.

⁶⁹ *Id.* at 174 [alteration to original].

⁷⁰ *Id.*

⁷¹ Krause, *supra* note 56, at 173.

⁷² *Id.*

worrisome to Western European members of the European Union. It will be interesting to see if the European Union will be able to benefit from its investments any time in the close future.

Poland's myriad of problems should be enough for the European Union to take action against it, and yet it took the European Union over a year to even declare that it plans to sue Poland in the European Court of Justice for its failure to implement a European Union directive. This suit regarded just one directive, one may wonder why the Union has not chosen to sue regarding more of the two hundred fifty seven directives that Poland has failed to implement. The European Union's nonchalance is a primary reason why the Copenhagen criteria are ineffective. The European Union does not take great enough care to make sure that the criteria are satisfied before accepting new members and this has led to its inheritance of the problems that its new members have.

The European Union, through its addition of ten new members, has increased its land mass by nineteen percent and its overall population by twenty percent.⁷³ The addition of such a large population is most certainly beneficial to the European Union because its market reach has increased by that many inhabitants. In the end, the European Union has inherited many problems along with its new acquisitions, and has caused some Western European members to be uneasy because of the effects that these additions could potentially have on their economies. It is the opinion of this author that the European Union should have been more careful to heed the wellbeing of its old members than to add new members with many problems. These considerations should be taken into account when evaluating the efficacy of the Copenhagen criteria.

2. Vagueness of the Copenhagen Criteria

⁷³ *Id.* at 204 n. 2.

To reiterate in order to become a member of the European Union the candidate country must have achieved

- Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities
- The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union
- The ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union.⁷⁴

This is all that is said about the criteria. A reading of the Copenhagen European Council report does not provide any insight as the Council does not endeavor to specifically define what exactly it means by a “functioning market economy” or how it defines “democracy” for its purposes.⁷⁵

It is important to mention that over time the European Union, through treaties, legislation and policies, has developed a series of *acquis* that must be satisfied by each candidate country before accession. However, these *acquis*, are also vague as they relate to very broad and general areas of concern to the European Union. Some examples of the chapters of *acquis* are: free movement of goods, persons, and capital, agriculture, taxation, social policy and employment, science and research, environment, and external relations.⁷⁶

One author has pointed out that a first impression after looking at the Copenhagen Criteria is “one of critical vagueness.”⁷⁷ This author goes on to say

[i]t is not obvious what much of this really means; concepts such as democracy or the rule of law or market forces are notoriously vague. And neither is there any sense of which matter most. For some, including British Prime Minister Tony Blair, speaking in 2000, it is the economic criteria that matter. Economic credibility

⁷⁴ *Accession Criteria*, *supra* note 9; *Enlargement of the European Union*, *supra* note 15, at 8.

⁷⁵ *European Council in Copenhagen, 21-22 June 1993: Conclusions of the Presidency*, European Council, 13, available at http://ec.europa.eu/bulgaria/documents/abc/72921_en.pdf.

⁷⁶ See generally *Poland's Preparation for Membership (2003)*, *supra* note 43, at 2; Croatia 2010 Progress Report, EUROPEAN COMMISSION, 2-3, available at http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/hr_rapport_2010_en.pdf [hereinafter “*Croatia Progress Report*”]. A full list of the “Chapter of Acquis” are available in the Table of Contents of any Commission Progress Report concerning a candidate country’s preparations for accession.

⁷⁷ Ian Ward, *The Culture of Enlargement*, 12 COLUM. J. EUR. L. 199, 203 (2006).

he pronounced, is 'the only entry ticket.' Yet, the political and legal criteria are, for many, just as important.⁷⁸

Due to the uninspiring performance of countries such as Poland, and their failure to implement all directives before accession, and the significant difference between the old members and the new members in terms of economic, social and political characteristics, the European Union has come to realize that the recent acceptance of new members present not only economic pressures but political and institutional ones as well.⁷⁹

A closer examination of the progress reports focusing on the accession of different candidate nations leads to a conclusion that the criteria are applied inconsistently and that the more specific definitions of integral terms are made on a case by case basis.⁸⁰ This means that these definitions are inconsistent and left up to the interpretation of the officials who happen to be reviewing the progress of a given country at a given time.

At least partially the existence of these new pressures on the European Union has to be attributed to the ineffectiveness of the Copenhagen criteria. Leaving behind the point of the European Union's failure to enforce their own requirements, the vagueness of the criteria as well as the disagreement between members and officials on which criterion, if any, should take priority over others, has made it difficult for candidate countries to comply with these requirements. There is no absolute certainty as to what the criteria actually mean and it is difficult to plan to or prepare to satisfy requirements which one does not understand.

⁷⁸ *Id.*

⁷⁹ *Id.* at 204.

⁸⁰ See generally Comprehensive Monitoring Report on the Czech Republic's Preparations for Membership (2003), EUROPEAN COMMISSION, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_cz_final_en.pdf; Comprehensive Monitoring Report on Hungary's Preparations for Membership (2003), EUROPEAN COMMISSION, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_hu_final_en.pdf; Comprehensive Monitoring Report on Malta's Preparations for Membership (2003), EUROPEAN COMMISSION, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_mt_final_en.pdf. For the progress reports of other countries that acceded on May 1, 2004 see http://ec.europa.eu/enlargement/archives/key_documents/reports_2003_en.htm.

d. A Look at Other Failing Members in the European Union

Although this paper has mainly focused on the problems with Polish membership in the European Union other problematic nations also deserve a mention. If the European Union's only problem was Poland and other countries in Central and Eastern Europe, the European Union would be in a much better state. However, this is not the case. In the last decade the European Union has taken steps to accept new countries and yet it has not dealt with problems in countries that were already members.

Many member nations have been suffering economically. Greece is suffering from a severe budget crisis.⁸¹ It is reporting a deficit that is four times the allowable limit of the European Union.⁸² Rampant tax evasion among Greek citizens is a contributing factor, as it is estimated that as much as one-third of the Greek population does not declare its income.⁸³ Like in Poland there is much resistance. Many Greek citizens and workers are resisting the plans of the government to stabilize the economy in Greece.⁸⁴

Greece is just one example. Other member nations such as Ireland, Italy, Portugal and Spain also have ever growing economic debts.⁸⁵ Greece and Ireland's economic performance in the year 2010 left them in such bad shape that they were forced to accept the help of the European Union through a bailout.⁸⁶ Spain and Portugal were also very close to being forced to accept bailouts as their ability to "service their national debts."⁸⁷ Belgium and Italy are also

⁸¹ Sylvia Poggioli, *Economic Problems Threaten Greece's Place in EU*, NPR (Feb. 2, 2010), <http://www.npr.org/templates/story/story.php?storyId=123234869>.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Nigel Cassidy, *Europe's Economic Problems to Persist into 2011*, BBC NEWS (Jan. 3, 2011), <http://www.bbc.co.uk/news/business-12038968>.

⁸⁷ *Id.*

accumulating insurmountable debts.⁸⁸ Some economists say that the reason for the European Union's economic problems stems from their unified currency.⁸⁹

IV. Looking Forward at Countries Still Trying to Join the European Union

The European Union may be looking to enlarge even further, and this is coming before it has addressed all the issues with its past enlargement. It seems as though it may be set on stretching its borders further and further before fully recovering from recent accessions by numerous nations. The countries that have been named candidates for accession are Croatia, Iceland, the Former Yugoslav Republic of Macedonia, and Turkey.⁹⁰

Croatia has recently entered what was termed by a Commission Report, the "final phase" of accession negotiations.⁹¹ As of December 2009 a Treaty of Accession with Croatia has been in the drafting stages.⁹² The report identified both areas in which Croatia has satisfied European Union requirements, and areas on which progress must still be made.⁹³ Since no treaty has been signed between the European Union and Croatia, and no date of accession officially set, identifying extensive problems areas is desirable. One can only hope that all these requirements are satisfied by the time of the accession date, and that if Croatia fails to satisfy all the European Union's requirements by the date of accession, that this date will be pushed back.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Enlargement Strategy and Progress Reports 2010, EUROPEAN COMMISSION, http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm [hereinafter "2010 Reports"].

⁹¹ *Croatia Progress Report*, *supra* note 76, at 5.

⁹² *Id.*

⁹³ *Id.* at 5-6.

Iceland has not progressed as far as Croatia in its preparations for accession. Iceland only made an application for membership in the European Union in July of 2009.⁹⁴ In February of 2010 the Commission concluded that Iceland meets the political criteria and that it is also considered a functioning market economy.⁹⁵ The Commission was of the opinion that Iceland is already well prepared to take on the obligations that come with being a European Union member, but named areas of concern where efforts would have to be made to satisfy membership requirements.⁹⁶ What is unique about Iceland's progress report is the Commission's opinion that "Iceland's accession would have a limited overall impact on the European Union and would not affect the Union's capacity to maintain and deepen its own development."⁹⁷ With such a lack of enthusiasm from the beginning, it will be interesting to see how accession negotiations progress over the next few years, and whether Iceland ever actually becomes a member.

The Former Yugoslav Republic of Macedonia has been progressing slowly through the accession process. The Stabilization and Association Agreement between the republic and the European Union was signed in 2001 and went into effect in 2004.⁹⁸ Currently it is participating in the Stabilization and Association Process but no Treaty for Accession has yet been signed.⁹⁹ The slow progress of this candidate country can be explained in two ways. Either this candidate is in need of greater reform or development than other candidate countries, or the European Union is being thorough with monitoring its progress so that they can better enforce the Copenhagen Criteria. It would be encouraging if it were the latter, as that would mean that it is

⁹⁴ Iceland 2010 Progress Report, EUROPEAN COMMISSION, 4, available at http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/is_rapport_2010_en.pdf.

⁹⁵ *Id.*

⁹⁶ *Id.* at 5.

⁹⁷ *Id.*

⁹⁸ The Former Yugoslav Republic of Macedonia 2010 Progress Report, EUROPEAN COMMISSION, 4-5, available at http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mk_rapport_2010_en.pdf.

⁹⁹ *Id.*

possible that the European Union has realized that it may be taking on more than it can handle with the accession of such a large number of countries in the last decade.

Like the Former Yugoslav Republic of Macedonia, Turkey's progress through the accession process has been slow. Turkey was granted "candidate country" status in December of 1999.¹⁰⁰ Accession negotiations with Turkey began in October of 2005 and these negotiations continue until the present day.¹⁰¹ The slow progress is encouraging as it must be recognized that the extensive reform that is required in a country before it can satisfy the Copenhagen Criteria must take time to be developed and implemented if it is to be effective.

At this time there are a few potential candidate countries whose progress the European Union is actively observing. These countries are: Albania, Bosnia and Herzegovina, Serbia and Kosovo.¹⁰² These countries are at the beginning of the process for accession to the European Union.

V. Recommendations for Improving the Effectiveness of the Copenhagen Criteria

Part III discusses the two main reasons why the Copenhagen Criteria are ineffective. To reiterate, the reasons are: the European Union's lack of enforcement of the Copenhagen Criteria, and the vagueness of the criteria.¹⁰³ In the last decade the European Union has accepted twelve new member nations, increasing its size from fifteen members to twenty seven.¹⁰⁴ This

¹⁰⁰ Turkey 2010 Progress Report, EUROPEAN COMMISSION, 4, available at http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf.

¹⁰¹ *Id.* at 4-5.

¹⁰² 2010 Reports, *supra* note 89.

¹⁰³ *See supra* discussion Part III(c).

¹⁰⁴ *See Member Countries*, *supra* note 3.

enlargement came in two phases: the first in 2004, which added ten new member nations to the European Union, the second in 2007 adding Bulgaria and Romania as members.¹⁰⁵

As already discussed, the European Union is experiencing many economic problems from the likes of its older member nations such as Greece and Portugal.¹⁰⁶ The prudent action to take would have been for the European Union to deal with these economic problems and help these already member nations before accepting new members and adding more problems for the Union to deal with. All the new member nations are putting an even larger strain on the European Union.

The member nations that have been accepted in the last decade have added certain political and economic pressures to the European Union.¹⁰⁷ In many of the 2003 Progress Reports for countries whose accession date had been set at May 1, 2004, problems and concerns that could not be resolved before accession were identified.¹⁰⁸ The European Union should have been more patient and more diligent in their efforts to make sure that all requirements were satisfied before accession. Having identified so many problems and concerns with many of the countries, the European Union should have pushed back the accession date to give those countries more time to comply instead of accepting them. By doing so, the European Union's credibility suffered, and the European Union sent an implicit message to the world that even though they demand that the Copenhagen Criteria be satisfied before accession they do not actually enforce their own demands.

The European Union should allow the countries more time to satisfy the criteria, and also not award those countries who have not fulfilled their duties by the accession date. The European

¹⁰⁵ *Id.*

¹⁰⁶ *See supra* discussion Part III (d).

¹⁰⁷ *See supra* discussion Part III (c)(1).

¹⁰⁸ *Id.*

Union and its relations with Turkey have been developing slowly for over a decade.¹⁰⁹ Relations with more countries should be conducted in this manner so that countries have enough time to satisfy all requirements, and so that they are not rewarded if they do not comply.

Vagueness of the Copenhagen Criteria is the other reason why the criteria are so ineffective. The European Union should work to rewrite the criteria to make them less vague, or at least to define all integral terms specifically so that they are clearer and so that these terms are not left up to interpretation. One author pointed out that it is also not clear which criteria are most important as different members consider different criteria a priority.¹¹⁰ It would be helpful for the European Union to officially state which criteria, if any, should priority over the others, so that there is no confusion.

VI. Conclusion

If the European Union makes some of the changes proposed the Copenhagen Criteria should become more effective. With more effective criteria the European Union will be less likely to continue to inherit the problems of its new member nations. Enforcement is an important consideration as a law or policy is only worth the paper it is written on if enforcement mechanisms are lacking. The purpose of the European Union was to great a group of countries that benefit from their close relationships with each other and from the unity of policies and legislation that they share. This purpose cannot be effectively realized, and thus nations cannot optimally benefit from their membership, unless changes are made to the Copenhagen Criteria.

¹⁰⁹ *See supra* discussion Part IV.

¹¹⁰ *See supra* discussion Part III(c)(2).