CER Bulletin

Issue 144 | June/July 2022

Will the EU rethink enlargement?
By Luigi Scazzieri

Can the UK keep up with Europe on digital competition?
By Zach Meyers

Europe needs a China strategy
By Ian Bond, François Godement, Hanns Maull and Volker Stanzel

Will the EU rethink enlargement?

by Luigi Scazzieri

Ukraine's EU membership application has revived the debates about enlargement and a muti-tier Europe. Reforming the enlargement process to make it more gradual could be the best place to start.

One effect of Russia's invasion of Ukraine in February was to prompt Ukraine, Georgia and Moldova to apply for EU membership, pushing enlargement to the top of the EU agenda. At their Versailles summit in March, EU leaders affirmed that Ukraine "belongs to our European family", tasking the European Commission with assessing the Georgian, Moldovan and Ukrainian applications. The three countries have completed 'application questionnaires', and EU leaders must decide how to respond.

Commission President Ursula von der Leyen has been one of the three countries' strongest allies and may push for the EU to grant them formal candidate status. Some member-states, like the Baltic states and Poland, would be in favour of doing so. While other member-states want to show support for the European aspirations of the three applicants, many think that formally granting them candidate status would raise unrealistic expectations about quick accession to the EU. Some opponents of granting candidate status worry that it may fuel eurosceptic sentiment in western Europe. Populist parties could stoke fears that inside the club this trio would be the source of many migrants and display a great thirst for EU funds. Other enlargement sceptics point out that the EU can continue sending financial and

military assistance and help the economies of the three countries by removing trade barriers like tariffs and quotas, without committing to enlargement. Closer integration outside the framework of EU membership is also a theoretical possibility, as in the case of the European Economic Area.

The emotional case for EU membership for the three applicants is so strong that the 27 will not want to rebuff their European aspirations completely. EU leaders may offer the three the status of 'potential candidate', currently held by Bosnia-Herzegovina and Kosovo. But even if EU leaders agreed to grant the three candidate status, membership would remain distant. Becoming a candidate does not entail the immediate start of accession negotiations, as member-states need to agree unanimously on a negotiating framework. And even if negotiations started, the accession process would be slow. First, there would be lots of opportunities for any member-state to delay or block progress. Second, the three candidates would have to undertake difficult reforms to adopt the EU's body of laws, the *acquis*. The three all face large challenges, particularly in terms of overcoming corruption, fostering transparency and strengthening judicial independence. The NGO Freedom House rated all three as 'partly free'

in 2021, with scores lower than Hungary, the poorest performing EU member.

A third set of challenges in accession negotiations relates to the EU's own 'enlargement fatigue'. EU leaders have been scarred by rule of law issues in countries like Bulgaria, Poland and Hungary. They want to ensure that reforms in candidates are solidly entrenched, and ideally also that the Union has effective tools to deal with unruly members before enlarging further. New members will make the EU's institutions even more unwieldy, and reforms, such as making more areas subject to majority voting or reducing the number of Commissioners, would probably be necessary. But some of these changes could only be made with the unanimous agreement of the European Council – which would be hard to secure – while others would need treaty changes, which many member-states oppose. Finally, many European countries will remain cautious of Georgia, Moldova and Ukraine joining the EU so long as they have unresolved disputes involving Russia, as all three do. According to the EU's mutual assistance clause, other members would have to aid a member in case of an attack, raising the possibility of a conflict with Russia.

These challenges mean that even if accession talks with Georgia, Moldova and Ukraine started, they could result in disappointment and sap momentum for domestic reform – as has happened with the Western Balkans countries' bids for membership.

The difficulties inherent in enlargement have led some European leaders to propose alternatives. The most recent is French President Emmanuel Macron, who has called for a new 'European political community'. This would include the EU and its democratic neighbours, including Ukraine and the UK. Macron did not go into much detail, but said the community would be a way for non-EU countries to be associated with the Union, and to have closer political dialogue and economic co-operation with it in areas like energy, transport, free movement of people, and investment. Other politicians and thinkers have put forward ideas similar to Macron's, ranging from European Council President Charles Michel's 'geopolitical community', to former MEP Andrew Duff's notion of 'associate membership'. Crucially, none of these proposals are intended to shut off the three candidates' route to EU membership. Instead, they are supposed to foster greater co-operation with the EU in parallel with the accession process. But any proposal of an alternative to membership will almost inevitably seem like a rebuff to applicants, who already have broad 'association agreements' with the EU and would suspect that any such

new institutions were a way of holding them at arm's length.

One alternative would be reforming the accession process so that candidate countries can be integrated into different EU policy areas gradually, rather than only when they become full members. For example, as candidates adopted the *acquis*, they would receive more funds from the EU, be gradually integrated into parts of the single market, take part in foreign policy discussions and see their citizens freer to travel to the EU. Some of these ideas are already reflected in the Commission's new accession methodology adopted in negotiations with Serbia and Montenegro. But the new methodology is not yet fully fleshed out: the EU needs to ensure that the benefits of a phased process are tangible. And the EU should offer candidates much closer political ties and some decision-shaping rights as they progress towards membership. For example, leaders from accession countries could be regularly invited to EU summits, while their officials could be seconded to EU institutions, hold dialogues with Council working parties, and participate in Commission expert groups.

Phased membership would not allow EU leaders to dodge the question of whether they wanted to admit new members or not. But a more gradual approach to enlargement could at least provide concrete short-term incentives for candidates to undertake the reforms required for EU membership. This would maximise momentum for reform in Georgia, Moldova and Ukraine, if they are declared candidates, and inject new energy into the Western Balkans' aspirations for membership. Sceptics of enlargement could be won over more easily if they saw candidate countries reform and got used to working with them prior to accession. The EU would reap political benefits too, in the form of greater influence in the accession candidates, and a more prosperous and stable neighbourhood. Finally, a phased accession process would further blur the distinction between membership and non-membership. Over the medium term, this could help persuade the member-states that the Union could closely integrate with neighbours that do not seek membership or cannot be members, paving the way for notions like associate membership.

The EU's relations with its neighbours have long been held back by the dysfunctional accession process and by the lack of appealing alternatives to membership. The war in Ukraine should finally spur the EU to reform the way it enlarges and embrace new models of integration. The Union and its neighbours would be stronger for it.

Luigi Scazzieri
Senior research fellow, CER @LScazzieri

Can the UK keep up with Europe on digital competition?

by Zach Meyers

As Brussels finalises world-leading digital competition rules, Prime Minister Boris Johnson has deferred similar reforms for Britain. But if UK authorities are bold, they can still help shape global tech markets.

EU law-makers are putting the finishing touches to the Digital Markets Act – a landmark law that will upend big tech firms' business models to improve competition online. In the UK, however, regulators, ministers and many law-makers are frustrated. The UK's Competition and Markets Authority (CMA) is convinced that dominant tech firms are overcharging users and stifling innovation. For years, experts have recommended new digital competition laws to better address the problem. But in this year's Queen's speech – which sets out the government's legislative priorities for the coming year – the government delayed tabling these new laws.

If the UK falls behind in tech regulation, UK tech start-ups may prefer to grow in the EU, where the Digital Markets Act will make their lives easier. The UK would also suffer a loss of global influence: if the US adopts digital competition reforms, those reforms are more likely to reflect the Digital Markets Act rather than the UK's proposals. However, if the UK's competition regulator acts quickly and boldly, these concerns may prove to be unfounded.

The CMA has one of the sharpest analyses of technology markets among Europe's competition regulators. The CMA's studies of digital advertising and mobile software

are world-leading, uncovering questionable market practices. The CMA is closely supervising Google's privacy reforms. And it has a growing number of ongoing competition law investigations against big tech firms. The CMA also forced Facebook to unwind its purchase of Giphy, a smaller tech firm – becoming the world's first competition authority to block an acquisition by a tech giant. But, by and large, the CMA is mostly still undertaking studies and investigations: to identify questionable practices and understand their impact on competition.

EU regulators have taken the lead on the next logical step: determining which practices are illegal. The EU's national competition regulators have already reached landmark antitrust decisions against big tech, in areas like advertising and e-commerce. The European Commission has fined Google multiple times for anti-competitive conduct. However, these decisions have taken years and were focused on very specific practices, rather than solving the underlying market problems, so they have not led to noticeable long-term improvements in competition.

The UK and EU must therefore implement broader reforms of digital markets to make them more competitive. Here, too, the EU is ahead: its

Digital Markets Act will prevent the biggest tech firms from engaging in certain practices deemed to be unfair, without regulators needing to prove harm to competition in practice. But the Act is also a very specific, relatively inflexible set of rules, focused mostly on addressing a motley collection of existing problems. Consequently, the Act risks both over-regulating and being unable to adapt to market developments.

The UK's reforms would take a different approach: they would allow the CMA to nudge big tech firms towards fairer practices by imposing a 'code of conduct' on each big firm. These principles-based codes will probably prove more enduring and future-proofed than the DMA. For example, they might require firms to be more transparent about their practices, and to consult users before making significant changes. The CMA could also impose more drastic changes to the market – for example to stop users becoming 'locked in' to one firm's services. But any such changes could be designed carefully, unlike the Digital Markets Act which makes all big platforms follow the same blunt rules.

Commentators are disappointed about the UK government's dithering in enacting these mostly sensible reforms. The delay gives the EU a lead in defining what open, competitive digital markets should look like. That lead is encouraging others to act: the Biden administration has now backed rules quite similar to those in the EU's Digital Markets Act. But if the CMA acts boldly and creatively, it can keep pace with the EU – without waiting for Westminster to pass new laws.

The CMA can use a dormant weapon in its arsenal to reform digital markets: a 'market investigation'. This is an in-depth study to identify whether competition is working in a particular market, rather than trying to condemn any particular firm for breaking the law. If the CMA finds problems, it can design tailored reforms to change how the market functions, without punishing firms for their past behaviour. The reforms can be profound. A market investigation led to the firm which owned Heathrow, Gatwick and Stansted airports being forced to sell Gatwick and Stansted so they would compete with Heathrow. Another market investigation forced UK banks to share their customer data with start-ups – helping give consumers more options. These types of interventions might also work well in digital markets.

The CMA has underplayed the usefulness of market investigations. For example, the CMA's chief executive, Andrea Coscelli, complains that market investigations only allow "one-off interventions". But in practice, the CMA has used them to create long-term, adaptive regulations for troublesome markets. The CMA's Open Banking reforms, for example, were enacted in 2016 as part of a market investigation and are still evolving today.

Ironically, the European Commission's initial proposal to regulate digital markets looked remarkably similar to the CMA's market investigation powers. Giving the Commission such broad-ranging powers proved too controversial for many stakeholders in the EU, so the Commission was forced to settle on the Digital Markets Act's static rules instead. But the irony is clear. The European Commission looks enviously at the CMA's power to conduct market investigations – even as the CMA refuses to use that power, and demands even more flexible tools instead.

The UK government has announced broad reforms to UK competition law, which could make future market investigations even more powerful and flexible. But the CMA should have learnt from its experience with digital markets not to be distracted by the glittering prospect of possible future powers. There are clear benefits in acting now. Market investigations normally take 18 months – one started now could finish by the end of 2023. In the EU, tech firms have until 2024 to comply with the Digital Markets Act. This fortuitous timing gives the CMA a window to launch market investigations into a few priority areas – such as digital advertising and mobile devices – and design market reforms at the same time as the European Commission is working out how to implement the Digital Markets Act. EU and UK regulators could engage closely, maximising the consistency between their two regimes. If the CMA's investigations went well, the need for new UK laws to tackle digital markets may then seem less pressing.

Boris Johnson has missed an opportunity to promote digital competition in the UK. If the CMA keeps waiting for Westminster to pass new laws, the UK will inevitably fall behind. Consumers and start-ups would then be left jealous onlookers as EU nationals secured a fairer deal from big tech. But if the CMA acts quickly, it can maintain the UK's global tech leadership and help to ensure sensible implementation of new tech rules across Europe.

Zach Meyers
Senior research fellow, CER @Zach_CER

Europe needs a China strategy

by Ian Bond, François Godement, Hanns Maull and Volker Stanzel

The attention of Europe's foreign and defence policy establishment is rightly focused on Russia's aggression against Ukraine. But it should not lose sight of the immense challenge that China poses.

In 2019, the EU described China as "a co-operation partner with whom the EU has closely aligned objectives, a negotiating partner with whom the EU needs to find a balance of interests, an economic competitor in the pursuit of technological leadership, and a systemic rival promoting alternative models of governance" – an analysis echoed by the 2022 EU Strategic Compass. In the last three years, however, the balance between partnership, competition and rivalry has shifted. Systemic rivalry is now at the core of Europe's interactions with China.

For many years, European countries – including the UK – and the EU have based their China policy on one correct and two false assumptions. The accurate assessment is that China is an economic juggernaut: its share of world GDP has risen in 40 years from less than 2 per cent to almost 18 per cent. The false assumptions are, first, that despite its economic importance, China is not politically influential in Europe; and second, that China is a distant country, far removed from European security issues. In fact, as China's support for Russia in its war against Ukraine has shown, Beijing has become an important actor in Europe's political and security landscape.

The EU was right to see China as a systemic rival in 2019, but slow to understand that Beijing saw Europe, and not just the US, in the same light.

Unlike the US, European governments do not view the rise of China per se as a threat: it is only Beijing's behaviour in specific instances. For the Chinese Communist Party (CCP), however, liberal democracy is a deadly threat to its own model of governance. While Europe treats areas for co-operation, such as the fight against climate change, and areas for competition, such as technological innovation, on their own merits, China's leaders see these spheres through the lens of systemic rivalry. Efforts to reduce carbon emissions, for example, also offer opportunities to master technologies such as those needed for photo-voltaic cells, and then to acquire leverage by dominating the global market for them. Europe is belatedly realising that it is competing for influence with China over the future of the international order and of democracy in Europe and third countries.

Whatever the difficulties, there are some areas in which European objectives can only be achieved if China co-operates. It accounts for about 30 per cent of global CO_2 emissions – twice America's share and close to three times Europe's. If the world is to be saved from catastrophic climate change, all three need to work together. Beijing has taken some positive steps, but needs to do more and do it faster.

When it comes to economic competition, China has become an essential part of transnational

supply chains and the number one trading partner of most countries in the world. European firms have seen it both as a market and as a source of manufactured goods. Beijing's efforts to reduce the role of foreign firms in its domestic economy, its increasing authoritarianism and its zero-COVID policy are making it a less attractive partner, however. Unlike European advocates of economic interdependence, the CCP leadership sees the wealth that globalisation has brought China primarily as a means to legitimise the Party's power, rather than to maximise the Chinese people's well-being.

Since Deng Xiaoping began to open China up to the world in 1978, it has become one of the main beneficiaries of the multilateral order built by the West after World War Two. Now China is seeking to dominate or replace the institutions that maintain that order, including (but not limited to) those that set technical standards for the world. At the same time, Beijing is increasing its military power, including its stocks of nuclear weapons. China is not seeking to overturn the international system entirely (unlike Russia), but its efforts to re-order it still threaten fundamental European interests.

European states and the EU must do everything possible to make Europe more resilient and to protect its identity as a continent of democracy, the welfare state, the rule of law, multilateralism and sustainable development. They must strengthen partnerships with democracies and like-minded countries elsewhere. And they must defend the institutions that have enabled globalisation and supported good governance and the rule of law internationally.

An effective strategy for dealing with China needs five strands. First, Europe needs to reduce and manage its vulnerabilities vis-à-vis Beijing. It must be able to protect itself and its democratic institutions against information operations and cyber-attacks. Europe must also be able to compete with China's economic influence on its own territory and in third countries, and to resist economic coercion when necessary. Without resorting to protectionism, the EU and European governments should help companies to identify supply chain vulnerabilities and support diversification away from dependency on Chinese suppliers. Europeans should make it harder for China to acquire their intellectual property, whether legally or illegally. They should scrutinise Chinese investments more closely and work with educational and research establishments to block state-sponsored technology acquisition efforts.

Second, Europe needs to enhance its leverage in its dealings with China, based on a deeper understanding of the sources of European power

– above all, its ability to regulate its huge market (including third countries that broadly follow EU rules and standards). The EU needs to prevent single member-states from blocking foreign and security policy decisions, and to co-ordinate policy with European non-members, including the UK. And it needs to show that its own models of democratic governance and the free market produce better outcomes than China's authoritarian system. The EU needs to develop its Global Gateway programme into an attractive alternative to China's Belt and Road Initiative, among other things as a means for third countries to finance sustainable, high-quality infrastructure investments.

Third, Europe needs to strengthen the United Nations and other international organisations against Chinese efforts to re-purpose them. China has successfully increased its influence in international bodies by ensuring the appointment of Chinese nationals or China-friendly individuals to senior posts, while democratic countries have often struggled to rally around a single alternative candidate. Europe should also be alert to Beijing's efforts to push through its own technical standards in specialised international agencies such as the International Telecommunication Union.

Fourth, Europe should continue to engage with China for mutual benefit and the promotion of global public goods – but only on the basis of strict reciprocity and respect for agreed norms of international behaviour. Europe should remain open to greater economic engagement with China, as long as China offers European firms a level playing field.

Finally, Europe needs to know much more about China. It needs a comprehensive picture of Chinese influence operations in Europe, and it needs to understand the links between ostensibly private Chinese companies and the policy objectives of the Chinese Communist Party. As Sun Tzu said, "If you know your enemy and you know yourself, you need not fear the outcome of a hundred battles". Europe today is a long way from that level of confidence.

Ian Bond
Director of foreign policy, CER @CER_IanBond

François Godement
Senior Adviser for Asia, Institut Montaigne @FGodement

Hanns Maull
Senior Distinguished Fellow with the Executive Board, SWP

Volker Stanzel
Senior Distinguished Fellow with the Executive Board, SWP @StvlL

This article is based on '<u>Rebooting Europe's China Strategy</u>', by the same authors, published by Stiftung Wissenschaft und Politik (SWP), Institut Montaigne and the Centre for European Reform.

CER in the press

The Independent
11th May
"The Russians will rattle plenty of sabres, demonstratively move weaponry around in Kaliningrad or send naval vessels out into the Baltic to cause problems," says Ian Bond of the **CER**. …. "Russia has its hands full with Ukraine at the moment," adds Bond.

The Economist
6th May
Charles Grant, director of the **CER**, recalls that Germany and France seriously feared that post-Brexit Britain would move towards a low-tax, low-regulation version of "Singapore-on-Thames", which is why they insisted on strong level-playing-field conditions in the trade deal. But in practice there has been little sign of such a shift.

Euronews
4th May
"I am sceptical that the Commission's proposals will reduce illegal migration, at least in the short term. There will always be people who don't neatly fit into a skill category but still want to migrate, or who are in the EU already but with an expiring visa and wish to stay but have no legal way to do so," said Luigi Scazzieri of the **CER**.

The Wall Street Journal
26th April
The EU's new legislation won't prevent Elon Musk from taking a more free-speech-oriented approach, said Zach Meyers, a senior research fellow with the **CER** think-tank. However, he said Twitter will still need to comply with rules on the removal of illegal content, which would likely require hiring more people to deal with content moderation and complaints.

Sky News
23rd April
"The big tech firms will heavily resist other countries adopting similar rules, and I cannot imagine the firms voluntarily applying these rules outside the EU," said Zach Meyers, a senior research fellow at the **CER**.

The Telegraph
13th April
As Ian Bond and John Springford have argued in an article for the **CER**, Le Pen's publicly stated "France-first" agenda would potentially cripple the EU from the inside, as well as profoundly weaken the transatlantic alliance.

Financial Times
8th April
"Before Putin's invasion of Ukraine, the EU had planned to expand its emissions trading system to transport and housing," wrote Elisabetta Cornago at the **CER.** The policy brief discusses how to make a higher and more comprehensive EU carbon price both effective and politically feasible.

The Guardian
3rd April
As Europe should stop spending up to €800m per day on purchasing Russian gas," a new paper by Ian Bond, Elisabetta Cornago and Zach Meyers at the **CER** argues. "In 2021 … Russia exported more than 49% of its oil and 74% of its gas to Europe." Halting all such purchases voluntarily, it said, might be the most effective sanction Europe could impose. "The political will to take such a radical step is still absent." And, sadly, likely to remain so.

The Washington Post
26th March
Camino Mortera-Martinez, of the **CER**, said she worries that the Ukraine crisis will effectively grant Poland a "get out of jail free pass." She believes the European Commission will unfreeze the money "not because Poland needs it, but because it does not want to risk the unity of the bloc at this moment."

Recent events

26 May
Seminar with the IMF on 'A greener labour market: Employment, policies, and economic transformation', Hybrid/London
Speaker: Niels-Jakob Hansen

5 May
CER discussion on 'Looking ahead to China's 20th National Party Congress', Hybrid/London Speaker: James Miles

29 April
CER/Open Society European Policy Institute launch of 'The EU emissions trading system after the energy price spike', Hybrid/Brussels

Speakers: Elisabetta Cornago and Beatriz Yordi

28 April
CER webinar on 'The French elections and what they mean for Europe'
Speakers: Benjamin Haddad, Pascal Lamy and Christine Ockrent

21 April
CER/Open Society European Policy Institute webinar to launch
'Boiling dry: How the EU can help prevent instability in the water-scarce Maghreb'
Speakers: Megan Ferrando, Bernd Gawlik, Kishan Khoday and Olivia Lazard

6 April
CER webinar on 'Can Europe live without Russian gas supplies? Can Russia live without European gas purchases?'
Speakers: Elisabetta Cornago, John Lough and Katja Yafimava

4 April
CER discussion on 'The impact of war on Ukraine's economy', Hybrid/London
Speakers: Anders Åslund, Vadym Prystaiko, Bob Seely, Maxim Timchenko and Kurt Volker

For further information please visit

www.cer.eu