

Europe after the Eastern Enlargement of the European Union: 2004-2014

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Introduction

On 1 May 2014, the European Union (EU) celebrated the 10th anniversary of its first enlargement to include post-communist states in East Central Europe.¹ Some of the statements made on the occasion reflect a particular understanding of the significance of eastern enlargement, namely in terms of the re-unification of the European continent. For example, European Council President Herman Van Rompuy claimed that “finally Europe had become ‘Europe’ again”.² This understanding of the EU’s eastern enlargement also underpins its inclusion in this web dossier as one of the most important European remembrance dates in 2014.

Moreover, such an interpretation resonates with the academic debate about the EU’s motivation for its eastern enlargement.³ This debate suggests that although calculations of the costs and benefits of enlargement played an important role both for the EU members and the then applicant countries, this is not the whole story. Material cost-benefit calculations determined Member State preferences towards enlargement; and the costs for the incumbents explain why the enlargement process took so long and why the accession treaties were rather unfavourable to the new Member States.⁴ Yet the EU’s collective decision to enlarge eastwards despite the costs involved for some of the Member States – each of which has the power to veto enlargement – can only be fully understood when taking account of the EU’s self-ascribed identity as a pan-European community of democracies.

¹ On 1 May 2004, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia joined the EU alongside Malta and Cyprus.

² *Agence Europe*, 1 May 2014.

³ Frank Schimmelfennig and Ulrich Sedelmeier (2005) ‘The Politics of EU Enlargement: Theoretical and Comparative Perspectives’, in Frank Schimmelfennig and Ulrich Sedelmeier (eds) *The Politics of European Union Enlargement: Theoretical Approaches* (Routledge), pp. 3-29.

⁴ Most notably, the new members had to agree to long transitional periods until they could enjoy the full benefits of membership with regard to agricultural subsidies or the free movement of labour; and their receipts through structural funds were capped.

However, 10 years after the first eastern enlargement⁵ that was so strongly associated with ending the division of Europe, attitudes towards further enlargement are distinctly negative, both among EU citizens and Member State governments. Is this increasing opposition the result of the impact that these earlier eastern enlargements had on the EU? Did a negative impact of enlargement on the EU undermine the continued integration of the continent through further enlargement? And even if EU enlargement without doubt contributes to the integration of the two halves of the continent, to what extent has enlargement helped to overcome the division of the continent - specifically with regard to the spread of democracy?

This paper first turns to the question of the EU's impact on democracy in would-be and new Member States and whether it has helped to overcome the division of the continent. The EU's ability to trigger liberal democratic reforms in candidate countries should not be overestimated, especially when it faces illiberal and authoritarian governments. In addition, EU institutions are highly constrained in sanctioning democratic 'backsliding' in Member States after they have completed their accession to the EU. Nonetheless, there is no general deterioration of democracy in new member states and, albeit more limited, the EU's continued ability to influence domestic political changes in candidate countries through conditionality remains maybe surprisingly durable.

The paper then turns to the question how the EU's attitude to enlargement has changed since 2004. There are clear signs of an 'enlargement fatigue' as Member State governments have become generally more reluctant to accept additional candidate countries. I explore whether these negative attitudes stem from the impact that eastern enlargement had on the EU in two key areas: the EU's decision-making capacity and the rule of law inside the enlarged EU with regard to the new Member States' compliance with EU law. This review suggests that instead of the impact of earlier enlargements, the current aversion to enlargement is partly a government response to perceived cultural threats and anti-immigration sentiments in public opinion. Partly opposition is also due to structural difficulties in the current candidates that make it more challenging to meet the requirements for EU accession. At the same time, reforms continue across most candidate countries and, albeit incrementally, they have moved closer to EU membership and enlargement remains a key issue on the EU's agenda.

The impact of enlargement on democracy in new members and candidate countries

The EU's impact on domestic change in candidates for accession has been unprecedented in the context of the countries that joined in 2004/2007. The EU's accession conditionality – tying the reward of membership to candidate countries' compliance with conditions set by the EU – played a key role in this process.⁶ At the same time, this impact has been generally much more pervasive with regard to economic policy – the alignment with EU legislation – in countries that already largely met the EU's political conditions. With regard to political conditions, especially concerning liberal democratic principles, the EU's ability to affect domestic changes has been more limited.

⁵ Further eastern enlargements included Romania and Bulgaria in January 2007 and Croatia in July 2013.

⁶ Frank Schimmelfennig and Ulrich Sedelmeier (eds) (2005) *The Europeanization of Central and Eastern Europe* (Ithaca, NY: Cornell University Press).

The democratic front-runners among the post-communist countries democratised without much influence of the EU. At the other end of the spectrum, the EU was fairly powerless in countries with illiberal governments. In these countries, compliance with the EU's political conditions, such as democracy and human rights, threatened prohibitively high domestic adjustment costs for the ruling elites. Political conditionality has therefore been ineffective in Belarus, or in Slovakia under Vladimir Mečiar, and Croatia under Franjo Tudjman.

The EU's influence on democracy arguably rested primarily on its ability to contribute to a lock-in of democratic change once illiberal parties lost elections to coalitions of liberal democratic parties.⁷ In Slovakia or Croatia, the EU did not cause the electoral victories of liberal opposition parties. But once the new governments carried out political reforms that brought the country closer to accession, these reforms were maintained even if the previous governing parties returned to power. Such parties usually had to moderate their electoral platforms to appeal to voters; and once elected, as they also had to fear an electoral backlash if they endangered the progress that had been made towards EU accession through reversing democratic reforms.

The EU's impact on the countries that joined since 2004 has therefore relied on favourable domestic conditions in these countries. Moreover, the EU's ability to sanction backsliding in new members after accession is much weaker than prior to accession. Article 7 of the Treaty on European Union allows the European Council to take measures against Member States that violate the EU's liberal democratic principle seriously and persistently. However, the majority requirements in the European Council and the European Parliament to use Article 7 are extremely demanding.

However, despite the decline in the leverage of EU institutions towards illiberal practices in the Member States after accession, a first comprehensive study undertaken five years after eastern enlargement found no systematic evidence of a backsliding in the post-communist new member states.⁸ Although political instability has somewhat increased, there is no general reversal of political reforms, but at best a slowdown in certain areas. The importance of the EU in the process is underlined by the finding that the EU's new Member States outperform other post-communist countries precisely in those areas targeted by EU conditionality. This maybe surprising durability of reforms is attributed to increased exposure to the west for both elites and citizens through greater work and travel opportunities that lead to higher expectations of their own governments' performance.

A more recent review of the state of democracy in the EU's new members and candidate countries, drawing on a wide range of indicators, finds a somewhat less positive picture.⁹ First of all, there continues to be a significant divide in democratic

⁷ Milada Vachudova (2005). *Europe Undivided: Democracy, Leverage and Integration after Communism* (Oxford: Oxford University Press).

⁸ Philipp Levitz, and Grigore Pop-Eleches (2010) 'Why No Backsliding? The European Union's Impact on Democracy and Governance before and after Accession', *Comparative Political Studies* 43(4): 457-85.

⁹ Tanja Börzel (2014) 'Coming Together or Drifting Apart? Political Change in New Member States, Accession Candidates, and Eastern Neighbourhood Countries', *MAXCAP Working Paper Series*, No. 3, May 2014. 'Maximizing the

quality between the west European old Member States and the post-communist new Member States. And although democracy in the post-communist member states has clearly improved since the end of communism, in the absence of a clear counterfactual argument how democracy in these countries would have evolved without the EU, it is difficult to assess how much of this improvement is due to the EU's influence. Finally, there has been some deterioration in the quality of democracy in four of the ten post-communist new members,¹⁰ namely in Latvia, Romania, Bulgaria, and Hungary. Backsliding is most pronounced in Latvia and Bulgaria, where democracy quality has declined persistently since 2006 and 2007 respectively, while in Romania (which had been already lagging behind the other Member States) and Hungary, the deterioration is a more recent dip.

These drops in democratic quality in Hungary (since 2010) and Romania (in 2012) can be directly attributed to specific behaviour of their governments, which in turn amounted to a crucial challenge for EU institutions to rein in breaches of liberal democratic values in the Member States. In Hungary, the centre-right Alliance of Young Democrats (Fidesz) won 52.7 percent of the vote in the 2010 parliamentary election, giving it a two-third majority in parliament. This supermajority has enabled Prime Minister Viktor Orbán's government to pass a new constitution and numerous statutes and constitutional amendments. Through these constitutional changes, the government has concentrated and entrenched its power in ways that contravene the principles of liberal democracy without, however, formally violating the rule of law. For example, it weakened the constitutional court, seized control of key public institutions (by packing them with party loyalists and extending mandates much beyond the term of parliament), changed the electoral law, and requires two-thirds majorities to change some of its policies. In Romania, the breaches of democracy were less subtle. In May 2012 a new centre-left parliamentary majority suspended the centre-right president. It used emergency ordinances to remove constitutional checks on the impeachment procedure, including a weakening of the constitutional court and a lifting of the 50 percent participation quorum for the referendum required to validate the impeachment.

The EU's qualified success with regard to Romania and its failure in Hungary illustrate well the scope and limits of the ability of EU institutions to counteract democratic backsliding in the Member States.¹¹ In Hungary, the EU's influence was rather weak. Centre-right governments and party groups in the European Parliament made it clear that they were opposed to using Article 7 against the Hungarian government. Without this threat, the EU was unable to challenge the broader underlying problems. The Commission was merely able to bring about some incremental changes on isolated issues that had a separate basis in EU law and made it possible to use infringement procedures to obtain compliance. By contrast, the Romanian government complied fairly swiftly and comprehensively with the demands of EU institutions to redress the breaches of democratic principles. The EU's qualified success in Romania suggests that it is not necessarily powerless when faced with democratic backsliding in Member States. However, it might depend on a fairly demanding constellation of favourable conditions that make it possible both to use social pressure effectively and to make material threats. In contrast to

integration capacity of the European Union: Lessons of and prospects for enlargement and beyond' (MACAP).

¹⁰ The data do not extend to the accession of Croatia.

¹¹ Ulrich Sedelmeier (2014) 'Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession', *Journal of Common Market Studies* 52(1): 105-21.

Hungarian Prime Minister Viktor Orban, Romanian Prime Minister Victor Ponta's much more positive attitude towards the EU made him more susceptible to EU criticism. Moreover, some Member States hinted that they would continue to veto Romania's accession to the Schengen Free Travel Area (which they had so far justified, similarly to the case of Bulgaria, with Romania's limited progress with corruption control, reform of the judiciary and the fight against organised crime).

In sum, EU enlargement – including the EU's accession conditionality – has contributed to closing the gap in democratic quality between the two halves of the continent, although progress among the post-communist countries remains uneven. The EU's influence rests primarily on contributing to a lock-in of democratic reforms, rather than an ability to force them on illiberal governments. The EU's ability to counteract breaches of liberal democratic principles is much more limited after a country has joined the EU, but there is neither evidence of systematic backsliding, nor are EU institutions entirely powerless if backsliding occurs – especially if they confront Europhile governments that engage in illiberal practices.

EU attitudes towards enlargement, ten years on

Ten years after the first eastern enlargement, attitudes in the EU towards further enlargement – both among publics and among Member State governments – have become noticeably more negative. Of course it should not be forgotten that the incumbent Member States were also rather reluctant about the 2004 enlargement. The EU's reluctance to commit to the goal of enlargement was a longstanding source of frustration for the post-communist applicant countries. The Member States did not acknowledge enlargement as a shared objective until 1993; it took until 1998 to start accession negotiations with the first post-communist countries; and, as mentioned above, the accession treaties were distinctly unfavourable to the new members. Even in Member States, where the government was among the strongest supporters of enlargement, such as Germany or Austria, public opinion was distinctly negative. Nonetheless, public opinion has become noticeably more negative about enlargement since 2004.

A recent review of the literature on public opinion towards enlargement in the EU reveals increasing hostility among EU citizens.¹² As of 2012, EU-wide representative surveys show a net negative opinion towards enlargement. And even when earlier surveys still indicted net support, underneath the aggregate support there was considerable, and growing, opposition in many of the old Member States, most notably France, Germany and Austria. In these countries, public opposition to enlargement remains strongest. There also seems to be an east-west divide in attitudes towards further enlargements: in all old Member States, except for Spain, a majority of the population opposes further enlargement, while in the post-communist Member States – except for the Czech Republic and Slovakia – the majority supports enlargement.

¹² [10] Dimiter Toshkov, Elitsa Kortenska, Antoaneta Dimitrova, and Adam Fagan (2014): The 'Old' and the 'New' Europeans: Analyses of Public Opinion on EU Enlargement in Review, *MAXCAP Working Paper Series*, No. 02, April 2014, 'Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond' (MAXCAP). http://maxcap-project.eu/system/files/maxcap_wp_02.pdf

Although there is still a gap between the attitudes of elites and public opinion, the position of Member State governments towards further enlargements has become more openly hostile, partly in response to public opinion. Just as public opinion is most opposed to the accession of Turkey and Albania, these two countries also are the main focus of open opposition from Member State governments.

In France, changes to the constitution since 2005 make it compulsory to hold a referendum on further EU enlargements, unless the two houses of parliament, meeting in congress, endorse it with a demanding 3/5 majority. This constitutional change was a response to perceived public opposition and evidence that the failed ratification of the draft Constitutional Treaty in France was partly due to hostility to opposition to enlargement (even if the treaty had no link to enlargement). Politicians in Germany and Austria in particular have openly questioned whether the accession negotiations with Turkey should lead to accession, and suggested instead a vaguely defined 'privileged partnership' (which ignores that Turkey already enjoys such a privileged partnership with the EU and it is difficult to identify measures, short of accession, to make the relationship closer).

More generally, a sense of 'enlargement fatigue' has characterised Member State government attitudes especially since the accession of Romania and Bulgaria in 2007. The uncertainty surrounding ratification of the Treaty of Lisbon after the failure of the Constitutional Treaty, combined with the economic and financial crisis from 2008, made the member states and the Commission reluctant to accelerate the ongoing enlargement processes. For example, when Montenegro and Albania submitted their formal applications for membership in December 2008 and April 2009 respectively, several Member States, led by Germany and The Netherlands, took the unprecedented step to block the Council's request for the Commission's opinions on these applications (which had hitherto been considered an automatic, technical act) for several months. Moreover, although the Commission recommended granting the status of an official candidate country to Albania, a number of Member States in the Council have so far – as of May 2014 – opposed even such a symbolic step.

At the same time, the negative impact of hostility to enlargement on the prospect of further enlargements should not be overstated. There has been much progress towards membership across the would-be members in South-East Europe, maybe with the exceptions of Bosnia-Herzegovina, where progress remains limited, and Turkey, with which accession negotiations (opened in 2005) have stalled (at least partly due to the failure of the Turkish government to recognise the Republic of Cyprus as well as recent restrictions on civil liberties by the AKP government). Otherwise, however, Croatia joined in July 2013. Montenegro and Serbia have started accession negotiations. (The Former Yugoslav Republic of) Macedonia has obtained candidate status and the only obstacle to the opening of accession negotiations is a veto by Greece while the dispute over the country's name remains unresolved. Kosovo – although not recognised by five member states – has concluded the negotiations for a Stabilisation and Association Agreement.

Such progress notwithstanding, the clearest indication of a prevailing 'enlargement fatigue' in the EU is the success of opponents of enlargement in introducing a renewed emphasis on the EU's 'absorption capacity' as a key requirement for further enlargement. The condition that the EU could only enlarge if it was able to absorb new members without jeopardising the momentum of European integration had been one of the criteria listed by the Copenhagen European Council in 1993. It had been controversial for being a condition that was outside the control of the candidate countries and could therefore become an instrument for reluctant member state governments to stall enlargement. In the event, the notion of the EU's absorption

capacity did not play a major role in the 2004 enlargement. In 2006, the Commission made an attempt to define in clearer and more functional terms what this notion entailed: the impact of enlargement on the EU's budget and its ability to implement common policies, and on effective and accountable decision-making.

The impact of eastern enlargement on decision-making in the enlarged EU

To a large extent, the slower progress towards EU membership of the candidate countries in south-eastern Europe can be attributed to their specific characteristics that made the starting conditions for meeting the demands for EU accession more challenging. Without doubt, the domestic conditions in the current candidate countries are less favourable than they were in the post-communist countries that joined in 2004. The state of democracy, economic development and state capacity were and still are generally more problematic, not least due to legacies of the violent break-up of Yugoslavia. But is the slow progress of their accession processes entirely due to these structural differences, or have attitudes in the EU also changed as a result of negative experiences with previous eastern enlargements? Did these enlargements have an adverse effect on the EU's 'absorption capacity'? Did eastern enlargement have a negative impact on the effectiveness of EU decision-making and on the implementation of common policies and rules?

One of the concerns about eastern enlargement was how the dramatic increase in the number of Member States – from 15 to 25 in 2004, 27 in 2007 and 28 in July 2013 – would affect the functioning of the EU. A much larger membership could be expected to have a negative impact on the legislative capacity of the Council of Ministers. The increase in numbers and increasing heterogeneity of Member State preferences threatened to thwart effective decision-making not only in areas that explicitly required unanimous agreement. The threat of gridlock also applied to other areas, due to the Council's longstanding practice to aim for consensus decisions even if formal rules allow qualified majority voting.

In addition to the challenge of enlargement for decision-making in the Council, there were also concerns that the need to accommodate representatives of the new members in other EU institutions. Notably for the Commission and the European Parliament, enlargement could lead to indigestion. Adding more Commissioners and Members of the European Parliament from new Member States to these institutions – originally conceived for six member states – could impede effective internal working and efficient allocation of tasks.

The existing academic literature on the impact of enlargement on the decision-making capacity of the EU finds no evidence that the decision-making machinery has become paralysed.¹³ Enlargement has neither crippled the EU's potential to devise new policies, nor its conflict-solving capacity. The functioning of the EU after enlargement is characterised by gradual adaptation rather than complete

¹³ See the overviews in Helen Wallace (2007) 'Adapting to Enlargement of the European Union: Institutional Practice since May 2004', *TEPSA Working Paper*, Brussels; Mark Pollack (2009) 'Europe United? The Impact of the EU's Eastern Enlargement, Five Years On,' *European View*, 8(2): 239-54; Bailer, Stefanie, Robin Hertz, and Dirk Leuffen. (2009) 'Oligarchization, Formalization, Adaptation? Linking Sociological Theory and EU Enlargement Research', *Journal of European Public Policy* 16(1): 162-74; Dimiter Toshkov (2013) 'Deadlocked? Researching the effects of enlargement on decision-making in the enlarged EU', presentation at the MAXCAP conference, FU Berlin, 30 May-1 June 2013.

transformation. The adaptation has been more far-reaching in the Council and with regards to the negotiation mode and culture, rather than to the output of the process as such.

A general challenge in assessing the impact of enlargement on decision-making is that it is difficult to establish a clear counterfactual argument: in the absence of enlargement, should we have expected legislative output to remain at the same level as prior to enlargement, or would idiosyncratic factors have led to an increase, or even a decrease? These difficulties notwithstanding, studies of decision-making after enlargement generally find that the EU's legislative output has remained stable.¹⁴ Although output decreased immediately after May 2004, this drop resulted from the unusually high legislative activity just prior to enlargement as the Council endeavoured to pass a large amount of legislation in anticipation of possible disruptions not only through enlargement but a new European Parliament taking office in 2004. Still, it might have been expected that more participants in Council negotiations would at least lead to a decrease in the speed of decision-making even if the quantity of the output remained constant. Yet although a longer perspective on the impact of the various EU enlargements between 1976 and 2006 suggests that enlargement indeed reduces the speed of decision-making,¹⁵ studies of eastern enlargement in particular demonstrate that on the contrary, the speed even increased slightly.¹⁶

Notwithstanding the continuity in the quantity of legislative output, there are indications that the nature and quality of decision-making has changed after eastern enlargement. There appears to have been a drop in the proportion of salient or innovative legislation, with less debate in the Council and the Commission and more negotiations in closed-door meetings between the Council and the EP.¹⁷ At the same time, other concerns about the changing nature of decision-making appear unfounded. The diversity in the Member States' preferences could have been expected to increase after the accession of a large number of smaller, poorer, and more agricultural post-communist countries. However, Council decision-making is neither characterised by a new east-west divide, nor have votes become more contested than prior to enlargement.¹⁸

¹⁴ See e.g. the contributions in Edward Best, Thomas Christiansen, and Pierpaolo Settembri (eds) (2008) *The Institutions of the European Union: Continuity and Change* (Cheltenham: Edward Elgar) and Daniel Naurin and Helen Wallace (eds) (2008) *Unveiling the Council: Games Governments Play in Brussels* (Basingstoke: Palgrave).

¹⁵ Robin Hertz and Dirk Leuffen (2011) 'Too big to run? Analysing the impact of enlargement on the speed of EU decision-making', *European Union Politics* 12(2): 193-215.

¹⁶ See e.g. Edward Best and Pierpaolo Settembri (2008) 'Legislative Output after Enlargement: Similar Number, Shifting Nature', in Best, Christiansen, and Settembri (eds) (2008) *The Institutions of the European Union: Continuity and Change* (Cheltenham: Edward Elgar), 183-204.

¹⁷ Pierpaolo Settembri (2007) 'The Surgery Succeeded. Has the Patient Died? The Impact of Enlargement on the European Union', *Jean Monnet Working Paper* 04/07, New York University School of Law.

¹⁸ See e.g. the various contributions to Daniel Naurin and Helen Wallace (eds) (2008) *Unveiling the Council: Games Governments Play in Brussels* (Basingstoke: Palgrave).

The impact of eastern enlargement on compliance with EU law in the enlarged EU

Another area in which a negative impact of the 2004 enlargement might have caused greater reluctance towards further enlargements concerns the new members' compliance with EU law. Indeed, concerns about the ability of the post-communist countries to apply the large body of EU law, the *acquis communautaire*, were a main reason for scepticism about the desirability of eastern enlargement. In response, the European Commission carried out extensive monitoring on an unprecedented scale of the then candidate countries' progress with their alignment with EU law. In turn, the EU made progress towards accession conditional on progress with alignment. Most analyses find that the EU's accession conditionality was highly effective in bringing about domestic alignment in the post-communist countries, if the membership incentive was credible and the EU's political conditions (relating e.g. to liberal democracy, human rights and minority rights) did not impose prohibitively high adjustment costs on the governments of candidate countries.¹⁹

At the same time, a key finding of these studies raises concerns about the durability of compliance after accession. The EU's impact on domestic change in candidate countries relied on the power of material incentives – the prospect of EU membership – rather than on processes of persuasion and internalisation of the normative appropriateness of the EU's rules. This finding implies that there might be a temporal limit for EU conditionality to sustain domestic reforms once accession changes the incentive structure for the governments of the new member states.²⁰ The main instrument for EU institutions to sanction non-compliance with EU law after accession is the threat of financial penalties through the European Court of Justice. Such leverage is obviously much weaker than the threat of withholding membership altogether. Even if conditionality was effective in prompting pre-accession legislative alignment, does the EU now face an 'eastern problem' concerning compliance with EU law?

10 years after accession, such concerns appear largely unfounded.²¹ On the contrary, in many ways, the new Member States appear to outperform the old Member States. Data on infringements of EU law by the European Commission suggest that the new Member States perform not only better on average than the old Member States. Most of the new Member States have a better compliance record

¹⁹ See e.g. Frank Schimmelfennig, and Ulrich Sedelmeier (2004) 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe', *Journal of European Public Policy* 11(4): 661-79; and the contributions to F. Schimmelfennig and U. Sedelmeier (eds) (2005) *The Europeanization of Central and Eastern Europe* (Ithaca, NY: Cornell University Press).

²⁰ Rachel Epstein and Ulrich Sedelmeier (2008) 'Beyond Conditionality: International Institutions in Postcommunist Europe after Enlargement', *Journal of European Public Policy* 15(6):795-805.

²¹ Ulrich Sedelmeier (2008) 'After Conditionality: Post-Accession Compliance with EU Law in East Central Europe', *Journal of European Public Policy* 15(6): 806-25; Ulrich Sedelmeier (2012) 'Is Europeanisation through Conditionality Sustainable? Lock-in of Institutional Change after EU Accession', *West European Politics* 35(1): 20-38; Dimiter Toshkov (2012) 'Compliance with EU Law in Central and Eastern Europe: The Disaster That Didn't Happen (yet)', *L'Europe en Formation* 2(364): 91-109.

than almost all of the old Member States. The Czech Republic and Poland lag somewhat behind the other new Member States, and Denmark is the only old Member State among the top performers in the EU. Nor are there signs of a significant deterioration of the new members' compliance record over time, with the exception of Poland. The new members also correct incidents of detected non-compliance cases faster than the old members, and are significantly less likely to be referred to the ECJ by the Commission for continued non-compliance.

A more sceptical interpretation of these findings is that the good record of the new members relies primarily on good formal transposition of EU law into national law, but that it contrasts with serious problems when it comes to the practical application of EU law on the ground.²² The weaknesses of domestic institutions in charge of enforcing legislation in the post-communist countries leads to a 'world of dead letters': a decoupling of good formal compliance and deficient application and enforcement of both EU and national legislation. These insights rightly caution against overstating the conclusions drawn from the Commission's infringement statistics. By the same token, however, another study of practical implementation in a somewhat larger number of policy areas and Member States cautions against generalising from the area of social policy about compliance in the post-communist member states. It concludes that while practical implementation in post-communist members is prone to more shortcomings than formal transposition, these problems are not of a different nature and on a different scale than the ones encountered in western and southern Europe.²³

Corruption control and labour migration

While the new members' compliance with EU law is therefore hardly a reason to be sceptical about further enlargement, there is a widespread impression in the EU that in particular accession of Romania and Bulgaria in 2007 was premature. These two countries' slower progress with aligning with EU legislation delayed their accession until 2007, but their post-accession compliance record is fairly positive. Instead, the negative impression about the preparedness of the two countries for membership is mainly based on their lack of progress with regard to issues that the EU continues to monitor regularly through the so-called Cooperation and Verification Mechanism (CVM).

The EU created the CVM specifically in the context of the accession of these two countries. It entails annual monitoring by the Commission of progress with regard to the reform of the judiciary, the fight against corruption, and against organized crime. However, these issues are not as such part of EU law;²⁴ the Commission does not monitor them in the other (older) Member States and decided against proposing the

²² Gerda Falkner and Oliver Treib (2008) 'Three Worlds of Compliance or Four? The EU-15 Compared to New Member States', *Journal of Common Market Studies* 46(2): 293-313.

²³ Dimiter Toshkov (2012) 'Compliance with EU Law in Central and Eastern Europe: The Disaster That Didn't Happen (yet)', *L'Europe en Formation* 2(364): 91-109.

²⁴ The main sanction of the CVM is the stigma attached to continued monitoring; otherwise it envisages only the non-recognition of the decisions by Bulgarian and Romanian courts in other member states. The Commission's decisions in July and November 2008 to freeze a total of €520 million in aid for Bulgaria were for suspected fraud, rather than a sanction through CMV.

use of CMV when Croatia joined.²⁵ To be sure, problems with corruption or reform of the judiciary are widely perceived to be more severe in Bulgaria and Romania than in most other Member States and they are even worse in the remaining candidate countries in the Western Balkans.²⁶ At the same time, it is problematic to make assessments about whether EU membership of these countries is premature on this basis, as long as there is no general EU competence and EU-wide monitoring in this area.

Another sense in which the earlier eastern enlargement might have negatively affected current attitudes towards further enlargement is through immigration. Concerns about labour migration from poorer eastern Member States (not dissimilar to concerns in the original EEC about migration from Italy to the other five members) led the incumbent Member States to reserve the right in the accession treaties to suspend the free movement of workers for up to seven years after accession.

The case of the UK is instructive in this respect. The UK was one of the few Member States that chose against limiting the free movement of workers after the 2004 enlargement. Immigration from the new Member States to the UK, in particular from Poland, was much higher than the government had anticipated.²⁷ At the same time, labour migration from (new) EU Member States arguably also contributed much to the UK's economic growth in the mid-2000s. Nonetheless, the UK government chose to close its labour market for the maximum seven years when Bulgaria and Romania joined in 2007 in reaction to perceived public hostility. The success of the Eurosceptic UK Independence Party in the elections to the European Parliament in May 2014 can be at least partly attributed to its successful appeal to public concerns about immigration from (new) EU Member States. Indeed, negative public opinion towards (further) eastern enlargement in the EU more generally appears to be driven by perceived cultural threats and anti-immigration attitudes, which are in turn framed by the media and populist politicians.²⁸

In sum however, the main effects of eastern enlargement on the EU – in terms of the functioning of decision-making and compliance with EU law – have not been negative, although concerns about problems with corruption in new members and current candidates, and about migration from new members have certainly become much more salient since the 2004 enlargement.

²⁵ This decision arguably reflects not so much the lack of problems in these areas in Croatia, than concerns that using the CVM would be perceived by the member states as an indication that the country's accession was premature.

²⁶ Aneta Spendzharova and Milada Vachudova (2012) 'Catching Up? Consolidating Liberal Democracy in Bulgaria and Romania after EU Accession', *West European Politics* 35(1): 39-58.

²⁷ For the 2004-2012 period, immigration from the eight post-communist member states joining in 2004 was 713,000 and total net migration from these countries was 423,000 (see Carlo Varga-Silva (2014) 'Migration Flows of A8 and other EU Migrants to and from the UK', Migration Observatory Briefing, COMPAS, University of Oxford, UK, April 2014, p. 4).

²⁸ Dimiter Toshkov, Elitsa Kortenska, Antoaneta Dimitrova, and Adam Fagan (2014): The 'Old' and the 'New' Europeans: Analyses of Public Opinion on EU Enlargement in Review, *MAXCAP Working Paper Series*, No. 02, April 2014, 'Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond' (MAXCAP). http://maxcap-project.eu/system/files/maxcap_wp_02.pdf

There is more open opposition among governments to enlargement than prior to the 2004 enlargement, especially towards Turkey. A serious deterioration of public approval has led to a hardening of government attitudes, even if elites remain more positive. Nonetheless, it does not currently appear that a more fundamental change in government attitudes towards enlargement has taken place; certainly not as a result of the experience with eastern enlargement. The more incremental and slower process of accession in many of the current candidate countries appears instead related to the structural problems in the countries concerned.

Conclusions

EU discourse has strongly associated the 2004 enlargement with overcoming the division of the continent. The enlargement process made a positive contribution to reducing the east-west gap in democracy, even if the role that the EU can play beyond locking in endogenous democratic reforms should not be overstated. EU institutions are even more constrained in sanctioning democratic backsliding in member states after accession, but 10 years after enlargement, there is no general deterioration of democracy in new Member States.

Ten years after the first eastern enlargement, attitudes towards further enlargement have become more negative. However, these changing attitudes cannot be attributed to the impact that enlargement had on the functioning of the EU, either with regard to decision-making or the implementation of common policies. Instead, signs of an 'enlargement fatigue' are partly due to structural difficulties in the current candidates that make it more challenging to meet the requirements for EU accession. More worryingly, they are also partly government responses to perceived cultural threats and anti-immigration sentiments in public opinion.



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