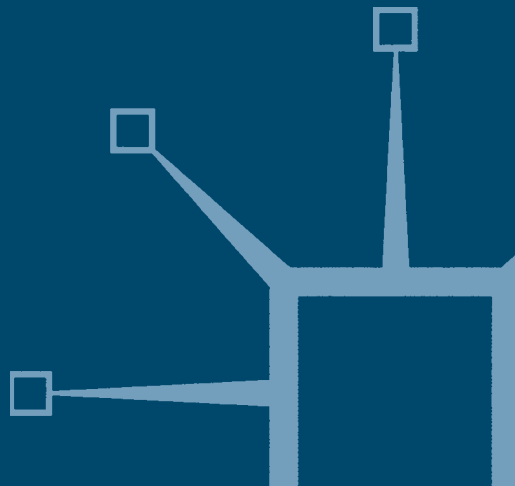


The EU's Transformative Power

Europeanization Through Conditionality
in Central and Eastern Europe

Heather Grabbe



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For my parents, Elizabeth and Lester

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Abstract

This book examines how the European Union (EU) uses its conditions for membership to influence the policy choices made by candidate countries. The author argues that the EU has enormous potential influence on public policy in candidate countries, but that its influence in Central and Eastern Europe did not fulfil this potential because of the inconsistency and lack of precision in the Union's membership criteria.

The EU had many specific routes of influence through which it could shape policies and institutions in candidate countries, as well as the general and powerful attraction of membership. To explore the way that EU influence worked in detail, the author presents case-studies of how the EU actively sought to shape policy-making on regulating the movement of persons. The EU did not use its full potential to shape outcomes effectively because its influence was diffuse – partly owing to the diversity of its current member-states – and because of the multiple kinds of uncertainty that characterised the accession process. However, the accession process had a long-term impact because it embedded 'Europeanisation' processes in the candidate countries.

About the Author

Dr Heather Grabbe is a member of the Cabinet of Olli Rehn, the European Commissioner for enlargement. When this book was written, she was Deputy Director of the Centre for European Reform, an independent think-tank based in London. She is also an Associate Fellow of the European Institute at the London School of Economics and member of the Senior Common Room of St Antony's College, Oxford University. She has worked extensively on EU enlargement and its implications, as well as on other European issues and questions of conditionality. Her publications include 'The Constellations of Europe: How Enlargement will Transform the EU' (2004, CER); 'Who's Ready for EU Enlargement?' (written jointly with Katinka Barysch, 2002, CER); 'Germany and Britain: An Alliance of Necessity' (written jointly with Wolfgang Münchau, 2002, CER), 'Profiting from EU Enlargement' (2001, CER) and 'Enlarging the EU Eastwards' (written jointly with Kirsty Hughes, 1998, RIIA/Continuum). She was previously Research Fellow at the Royal Institute of International Affairs and she has been a visiting fellow at the European University Institute (Florence), the European Union Institute for Security Studies (Paris) and the Centre for International Relations (Warsaw). She was educated at Oxford and Birmingham universities.

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Abbreviations

- AP – Accession Partnership
- CDU/CSU – Christian Democratic Union/Christian Socialist Union
- CEC – Commission of the European Communities
- CEE – Central and East European
- CFSP – Common Foreign and Security Policy
- CIS – Commonwealth of Independent States
- COMECON – Council for Mutual Economic Assistance
- COREPER – Committee of Permanent Representatives
- DCP – draft common position
- DG – Directorate-General
- EA – Europe Agreement
- EBRD – European Bank for Reconstruction and Development
- ECOFIN – Council of Economics and Finance Ministers
- ECOSOC – Economic and Social Committee of the European Union
- EFTA – European Free Trade Area
- EMU – Economic and Monetary Union
- EU – European Union
- FDI – foreign direct investment
- FMP – free movement of persons
- GDP – Gross Domestic Product
- IFI – international financial institution
- IGC – inter-governmental conference
- IMF – International Monetary Fund
- JHA – justice and home affairs
- MFA – Ministry of Foreign Affairs
- NATO – North Atlantic Treaty Organisation
- NGO – Non-Governmental Organisation
- NPAA – National Programme for Adoption of the *Acquis*
- OECD – Organisation for Economic Cooperation and Development
- SIS – Schengen Information System
- SMWP – Single Market White Paper

Chronology

<i>Events in EU</i>	<i>Events in Central and Eastern Europe</i>	<i>Development of EU accession policy</i>	<i>Development of policies on movement of persons</i>
1985			Schengen Accord signed between Belgium, France, Germany, Luxembourg and Netherlands
1989	Fall of the Berlin Wall, collapse of communist regimes across CEE	EU sets up Phare aid programme for CEE; European Commission starts coordinating aid to CEE from the G24	
1990			Schengen Accord becomes the Schengen Convention
1991	Independence of Estonia, Latvia and Lithuania from the Soviet Union; independence of Slovenia from Yugoslavia	EU starts to sign Europe Agreements bilaterally with CEE countries, starting with Hungary and Poland	
1992	Maastricht Treaty signed		
1993	Copenhagen European Council	'Velvet divorce' of the Czech Republic and Slovakia	
1994	Essen European Council	Hungary and Poland are the first CEE countries to apply for membership	
1995	Austria, Finland and Sweden join EU	EU sets conditions for membership for the first time EU establishes eastern accession policy	Abolition of controls at common frontiers between Schengen members
1996	Inter-governmental conference begins on institutional reforms for enlargement	Commission issues Single Market White Paper on sequencing of legislation to be adopted by applicants	

Chronology – continued

	<i>Events in EU</i>	<i>Events in Central and Eastern Europe</i>	<i>Development of EU accession policy</i>	<i>Development of policies on movement of persons</i>
1997	Amsterdam Treaty signed; Luxembourg European Council	Bulgarian Socialist Party voted out of office	Commission publishes 'opinions' on readiness for membership of 12 applicants, and 'Agenda 2000' pre-accession strategy; EU offers candidate status to 12 countries	
1998		Mečiar government voted out in Slovakia; EU cuts Phare assistance to Poland because of non-fulfilment of conditions	EU opens accession negotiations with Cyprus, Czech Republic, Estonia, Hungary, Poland and Slovenia; Commission issues first Regular Reports and Accession Partnerships; Catch-Up Facility established for Bulgaria and Romania	
1999	Single currency launched; Helsinki European Council; Lisbon European Council establishes 10-year economic reform programme	NATO bombs Serbia after Serbian troops enter Kosovo; Slovakia meets political conditions, opening the way to negotiations; candidates establish first national programmes for adoption of the <i>acquis</i>	EU offers candidate status to Turkey and accession negotiations to remaining applicants; start of 'twinning' programme	Schengen Convention incorporated into EU treaties; EU publishes Schengen <i>acquis</i> for first time
2000	Nice Treaty signed; new EU budget begins for 2000–2006; Lisbon process begins		EU opens accession negotiations with Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia	Commission puts forward initial draft common position on free movement of persons

Chronology – continued

<i>Events in EU</i>	<i>Events in Central and Eastern Europe</i>	<i>Development of EU accession policy</i>	<i>Development of policies on movement of persons</i>
2001 Gothenburg European Council		EU decides on 'big bang' enlargement to ten new members	Commission presents full draft common position on free movement of persons; Schengen members liberalise visa regime with Bulgaria
2002 Copenhagen European Council; Convention on the Future of Europe begins		EU concludes accession negotiations with ten candidates	Schengen members liberalise visa regime with Romania
2003 Draft constitution completed by European Convention	Accession treaties approved in referenda in nine candidate countries	All accession treaties ratified by national parliaments and European Parliament	
2004 Ten new members join EU on 1 May; European Parliament elections; inter-governmental conference approves constitution		EU concludes negotiations with Bulgaria and Romania; EU sets dates for Croatia and Turkey to begin accession negotiations	12 of the 15 member-states decide to restrict access to their labour markets for CEE workers

1

Introduction

This book is concerned with how the process of accession to the European Union (EU) shaped public policy-making in the Central and East European (CEE) candidate countries from 1989 to 2004. It analyses in detail how the EU used its accession conditions to exercise influence, and it investigates specifically how mechanisms of Europeanisation worked. The analysis is organised around case-studies of two policy areas concerned with regulating the movement of persons.

The case-studies seek to explain two puzzles: in 2001, the EU closed a key chapter in accession negotiations with several CEE applicants for membership. In doing so, it secured their agreement on a transition period of up to seven years before citizens of new member-states could work freely anywhere in the 15 existing member-states. This outcome was clearly against the interests of the CEE countries, and it also contradicted the EU's own single market policy on labour mobility. The second puzzle arose when the EU put forward a negotiating position on justice and home affairs (JHA) that required the applicants to implement its border policies prior to accession, but which did not make any reciprocal commitment that the existing member-states would remove frontier controls with the new members immediately after enlargement. In both cases, the candidates agreed to an EU position which explicitly denied them the benefits accorded to existing members on accession.

Why did the candidates accept an outcome which was blatantly against their interests? An obvious answer is that the applicants were in a weak position *vis-à-vis* the Union owing to their asymmetrical dependence on it. They wanted membership far more than the current member-states wanted to accept them. Indeed, the Union's own collective ambivalence about enlargement strengthened its

negotiating power. Moreover, EU accession was a package deal. The EU negotiators could put bargains on the table which were unattractive to the candidates, but which the CEE negotiators accepted because the overall attraction of joining the Union outweighed the disadvantages of parts of the deal. 'Ultimately, accession on any terms is better than no accession', as one Hungarian official remarked to the author in 1997.

The EU's relative power in negotiations and the nature of the accession conditionality are important parts of the explanation for this outcome. But these factors are insufficient to explain the applicants' behaviour in the domestic accession preparations running in parallel with negotiations. The CEE policy-makers knew at least several years in advance that the EU was likely to put forward such negotiating positions. Yet they responded positively to demands from the EU that they implement parts of the EU's policy agenda for regulating free movement, even though there would probably be no reciprocal benefits. Why did they comply? Why did they not use strongly what negotiating power they had, to argue that they would not prepare for policies from which they would not benefit immediately on accession? Why did they not stall or delay implementation, or try to mitigate the impact of these measures? This book seeks to answer these questions by exploring the process of Europeanisation in the CEE countries.

Studies on international negotiations suggest that negotiators can behave in ways that seem not to accord with their interests, but which are explicable through rationalist frameworks. A number of influential studies have sought to explain such cases: Robert Putnam (Putnam 1988 and Putnam *et al.* 1993) famously argued that parallel domestic political games shape outcomes in international negotiations – and *vice versa*. George Tsebelis (1990) created an elaborate framework to explain why political actors accept sub-optimal outcomes by analysing how different political games in multiple arenas affect one another. These kinds of rationalist frameworks can explain parts of the negotiating process. But this book argues that additional variables must be introduced to explain fully the behaviour of the applicant countries, and chief among them are processes of Europeanisation. Europeanisation can certainly include calculations of material interest, but it also involves changes in the logic of behaviour of domestic actors and institutions that are driven by the absorption of EU norms.

This book argues that EU accession preparations and negotiations are linked processes, but each is distinct and has its own logic. Negotiations are about 'us and them', a process in which each side seeks the

best possible deal. But accession preparations are about 'the future us', a process in which the candidates align with EU norms and try to become like member-states. Europeanisation involves both.

To investigate how Europeanisation works in practice in would-be members of the EU, this book presents two case-studies of the enlargement of the EU to CEE: free movement of persons in the single market; and control of movement of people across the external borders of the Union under the Schengen regime. These case-studies investigate why the applicants adopted EU policies even in areas where the EU's policy logic was contradictory and where the candidate countries had little immediate incentive to comply. Arguments based on material interests cannot fully explain why the candidates continued with processes of Europeanisation in their domestic institutions. The case-studies are concerned with the interface between two processes: the process of Europeanisation through accession preparations, and the process of negotiations. The two cases are of related policy areas in which the EU's negotiating position conflicted with the candidates' interests.

Based on an analysis of the accession conditionality and two case-studies, this book makes the following claims:

- The EU's exercise of influence in the CEE region since 1989 worked principally through the conditionality for accession, which provided a number of different methods of 'Europeanising' the candidates.
- The EU had enormous potential influence in CEE, but its impact was constrained by diffuseness and uncertainty.
- A power-politics explanation is inadequate to account for the outcome of negotiations in two policy areas: free movement of persons, and justice and home affairs. The case-studies present evidence of behaviour that was not based on material interests. In the EU, that behaviour comprised allowing trade-offs in other areas in the negotiations despite its enormous asymmetry of power. It suggests a diffuse norm of accommodating CEE interests was at work.
- For the CEE candidates, the puzzle lies in their continued implementation of EU policies despite the imposition of a transition period and despite high levels of uncertainty. The missing part of the explanation can be accounted for by examining how a logic of adapting to the EU became embedded in domestic policy-making in CEE. The applicants became locked into a process of Europeanisation which had a momentum and logic that existed independently of negotiations.

Their policy-makers became committed to the process because they had already invested considerable sunk costs and political capital into aligning with EU policies, so it became very expensive to withdraw. Moreover, the top-level actors in CEE also became part of the EU political space, which gave them incentives to behave as willing partners to the existing member-states, and socialised them in the political discourse of the Union.

1.1 Europeanisation

This book's approach to studying the EU's effects in the eastern applicant countries uses as its starting-point the growing literature on Europeanisation, but it is not confined to the frameworks developed for studying the EU. Europeanisation is an area of enquiry as much as a concept, and this study is about Europeanisation in the sense that it is concerned with how the EU influenced three particular nation-states – Bulgaria, Hungary and Poland. There are two very important determinants of how these countries reacted to adaptational pressures from the EU: their status as candidates and not full members, and their background as post-communist political systems and economies. The intention in this study is not to define the scope of the enquiry by reference to the existing literature, or to look simply for the same phenomena in Central and Eastern Europe as have been observed within the EU. Rather, it is to use concepts, ideas and methods from the Europeanisation literature.

This book argues that the literature on Europeanisation in the EU is relevant to studying the CEE candidates because they are affected by substantially the same independent variable as the member-states (i.e. the *acquis communautaire*). However, although Europeanisation is a relevant approach, specific features of the EU-CEE relationship must be taken into account, particularly power and uncertainty. Moreover, this study supplements the Europeanisation literature with concepts from elsewhere in political science to provide a full explanation.

'Europeanisation' is a useful term, but also a potentially misleading one. It is a term used in the literature on European integration to mean both the 'downloading' of EU policy into the national polity, and sometimes also the 'uploading' of national preferences to EU level (Börzel 1999). In the case of the CEE countries, the asymmetrical power relationship that they had with the Union as applicants for membership meant that they were mainly downloading policy, with few opportunities for uploading. In the context of post-communist transition, the term

'Europeanisation' is ambiguous, because it implies both the process of joining the EU and also the much wider process of the 'return to Europe' after the revolutions of 1989. This study confines itself to investigating the part of these processes that was driven by accession requirements. As others have observed, this might be more properly called 'EU-isation'. However, there was a very widespread perception in Central and Eastern Europe that the process of 'EU-isation' – meaning the meeting of accession requirements and the adoption of EU norms, policies and institutional models – was strongly connected to the wider processes of modernisation and post-communist transition. For many people in the region, EU-isation was part of, and even a pre-requisite for, the wider Europeanisation of their countries, which meant moving beyond communist legacies and regaining a full role in the European political and economic space. The ambiguity of the term 'Europeanisation' thus usefully captures an important ambiguity in the CEE candidates' attitudes towards alignment with EU norms. It is thus an appropriate concept to use as a starting-point in studying the candidates' relationships with the EU.

EU policies obviously penetrated political systems, but what were the effects of this process? Did the EU change domestic political structures and public policy? If so, what were the mechanisms of change? The literature on Europeanisation seeks to address these questions in the context of the existing EU, so it provides an ideal starting-point for investigating the candidates. There is a lively debate about the impact of 'Europe' on the EU member-states, and a body of empirical research on its effects. This book asks similar questions about the impact of 'Europe' on CEE.

1.2 The structure of this book

This book asks: What was the nature and extent of the accession conditionality for the CEE candidates? How did they respond to the incentives and constraints established by the accession process? How did the EU influence CEE policy and policy-making? What were the limits on this influence? We are concerned here with where conditionality operated, how it worked, and the conditions that determined its success in effecting changes in institutions and public policies in CEE. We are not aiming directly to explain the behaviour of the EU or the evolution of its eastern accession policy. Hence the reader should not expect a detailed analysis of the politics of enlargement among the EU's member-states, or of the policy-making processes by which the EU

arrived at its conditions for membership. Instead, this study focuses on what happened after the conditions had been set, analysing the process from the point of view of the applicant countries. However, the accession conditionality requires considerable explanation if its effects are to be understood, so it is analysed in detail from the candidates' perspective.

Chapter 2 provides an overview of eastern accession policy by examining the conditionality, in order to identify how the EU sought to change the CEE candidates. Chapter 3 sets out the analytical framework for the whole study, reviewing the literature on Europeanisation, and introduces the main explanatory concepts which will be used in the case-studies. Chapter 4 analyses the EU side in detail, discussing how the accession process provided the EU with potential routes of influence in CEE and the variables at work on the EU side. Chapter 5 sets out a framework for the case-studies and explains the variables on the CEE side, particularly the experience of post-communist transition and the candidates' strategies. Chapters 6 and 7 present case-studies of two policy areas, respectively free movement of persons under the single market, and regulating movement of persons through the Schengen *acquis*. The substance of the two policy areas covered the same issue (movement of persons in the enlarged EU), but they differed in their degree of political controversy, the policy agenda (both the substance of the agenda and the detail in which it was presented to CEE), and the routes of Europeanisation used. Chapter 8 compares the cases explicitly and explains how EU influence worked. Chapter 9 presents the conclusions.

2

Accession Conditionality and its Implications¹

The aim of this chapter is to define 'EU influence' as it was exerted through the conditions set by the EU for the CEE candidates. The evolving relationship between the EU and the CEE applicants for membership had three broad phases: the post-1989 trade and aid programmes; then the first pre-accession strategy that began with the Copenhagen commitment to enlargement and ended with the Commission's publication of its opinions (*avis*) on the applicants in 1997; and finally the Accession Partnerships and negotiations from 1998 to 2002. In this third phase, substantive negotiations began in November 1998 with five of the countries (Czech Republic, Estonia, Hungary, Poland and Slovenia), while the other five candidates (Bulgaria, Latvia, Lithuania, Romania and Slovakia) finally joined negotiations in March 2000. All the candidates also went through a process of 'screening' to assess the compatibility of their legislation with EU requirements. All of the CEE candidates finished negotiations in 2002.

However, membership conditionality is not the only way that the EU exerts influence on third countries, so Chapter 4 considers all the other Europeanisation mechanisms that the EU can employ.

2.1 The first phase of EU eastern accession policy 1989–97

1989–93: Trade and aid

In this first phase, relations moved from traditional third-country relations based on aid and trade conditions to the prospect of membership. The EU created the Phare² aid programme in 1989, as an aid programme intended to support post-communist transformation in CEE. The EU's initial focus was on economic transition rather than