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A Partnership for Accession?  
The Implications of EU Conditionality  
for the Central and East European Applicants

HEATHER GRABBE

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**Grabbe: *A Partnership for Accession?*  
*The Implications of EU Conditionality*  
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For the Central and East European Applicants**

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## Abstract

The 'Accession Partnerships' presented in 1998 to the ten central and east European (CEE) applicants mark a turning-point in the process of EU enlargement. These new instruments tighten the conditionality for membership and reduce the scope for accession negotiations by making a very wide range of policy areas conditional rather than negotiable.

This paper traces how the Accession Partnerships emerged and examines their implications for eastward enlargement. Over the past decade, the EU has progressively increased the scope of its political and economic conditions for CEE, moving from external relations based on trade and aid to areas at the heart of domestic policy-making. For the five applicants in negotiations, the EU has become the key external driver of policy reform. This paper argues that possible contradictions between accession requirements and CEE development goals need closer examination.

The Accession Partnerships imply greater control of accession policy by the European Commission and also a much wider role for the EU in CEE policy-making than is the case for the member states; this widening mandate might have feed-back effects on the enlarged EU. A number of reasons lie behind this outcome, including a lack of strategic leadership on enlargement in the EU, and a tendency on both sides to delegate policy decisions to technocrats.



## Introduction<sup>1</sup>

Ten central and east European (CEE) countries that have applied to join the European Union (EU) have been presented with an evolving set of conditions for membership in the 1990s.<sup>2</sup> These conditions have progressively been expanded to cover a wide range of policy outputs, and imply a role for the EU in policy-making in CEE beyond its mandate in the existing member states. Despite the unprecedented scope of this external influence on domestic policy processes, the conditions have rarely been analysed as a whole, and their implications for CEE and for the process of eastward enlargement have been little considered. This paper charts the emerging structure of accession conditionality since 1989, and analyses in detail the implications of its latest outcome, a new instrument called the 'Accession Partnership' (AP) that brings together all conditions for membership and aid from 1998 onwards.

The paper is structured in five parts:

1. Defining the rules of the game: how to interpret EU conditionality? The EU's relations with CEE involve two different goals: on the one hand, supporting post-communist transformation, and on the other, guiding CEE towards taking on the obligations of membership; these twin purposes are not always compatible, and the inherent tension between them is becoming more intense as the conditions become more detailed. From the CEE point of view, EU conditions are a moving target, given that the EU has interpreted its general conditions in stages. From the EU point of view, the effectiveness of conditionality is constrained by the fact that rewards come only at the end of a long process. (Section I).
2. The scope of EU conditions. The EU has progressively extended the scope of its demands on CEE to encompass most key outputs of public policy. The development of the conditions in three phases from 1989-98 is set out in Section II. The latest stage introduces the Accession Partnerships, which

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<sup>1</sup> The research for this paper was conducted during a fellowship attached to the Robert Schuman Centre project 'The Eastern Enlargement of the EU: the Case of the Czech Republic and Slovakia' directed by Professors Yves Mény and Jan Zielonka. For comment and discussion of earlier versions, the author is grateful to Roland Bank, Judy Batt, Michelle Egan, John Gould, Sandra Lavenex, Karen Smith, Ulrich Sedelmeier, Antje Wiener and two anonymous referees. All views and errors are the author's alone.

<sup>2</sup> The ten CEE applicants for membership are Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. An eleventh applicant, Cyprus, began negotiations in 1998 at the same time as five of the CEE countries (the Czech Republic, Estonia, Hungary, Poland and Slovenia).

tighten conditionality and focus aid exclusively on accession requirements they introduce conditions for areas that are currently outside the EU's own internal policy domain.

3. The implications of the emerging conditions. The APs reduce the scope for negotiations down to agreeing transitional periods by widening the scope of what is conditional rather than negotiable. They also increase the Commission's control of the accession process, and imply increased policy competences that might have feed-back effects on the enlarged EU (Section III).
4. Explaining the conditions as a political outcome. There is a complex set of explanations as to why accession policy has developed into such a wide set of conditions, involving both push factors from the EU side and pull factors in CEE. Two key explanations are the lack of EU political leadership on enlargement and the willingness of both sides to see policy choice as a technocratic rather than political issue. This latter tendency implies a deficit of democratic accountability in the whole process (Section IV).

If the EU is imposing an agenda on CEE, the next logical question to ask is what impact this has on policy-making in transition. This issue is beyond the scope of this paper, which is concerned with a subject that is a pre-requisite for such work: discerning the EU's implicit agenda for transition from its policy towards CEE. It examines *how* the EU has been able to affect policy, so that later research can look at *how much* it has in fact done so and in what ways. The impact of EU conditions on the process of post-communist transformation in CEE has so far been little studied; despite the growing body of literature on the effects of 'Europeanisation' in member states,<sup>3</sup> the effects on CEE applicants of integrating with the EU have been little examined. The aim of this paper is to provide a description of EU conditionality for CEE as an independent variable, so that future research can look at variables dependent on it, namely the impact of these conditions on different actors and structures in CEE. The question considered in this paper is 'What adaptational pressures does the EU put on CEE applicants?', so that future research can look at the responses in CEE.

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<sup>3</sup> Recent examples are Caporaso et al. (1998), Forder and Menon (1998), Kassim and Menon (1996), Mény et al. (1996) and Andersen and Eliassen (1993).

## Section I. Defining the rules of the game: how to interpret EU conditionality?

The EU applies both positive and negative forms of conditionality to third countries for benefits such as trade concessions, aid, cooperation agreements and political contacts, and since the late 1980s political conditions have increasingly been applied as well as economic ones. Both practical and ideological motivations lie behind the development of political conditionality, and protectionist politics have had an influence.<sup>4</sup> In its dealings with third countries, the EU has shown a preference for using 'carrots' rather than 'sticks', and conditionality is not always applied consistently.<sup>5</sup> The most detailed conditions to emerge were those for central and eastern Europe applied from 1988 onwards to aid, trade and political relations; conditionality has then developed much further following the EU's commitment in 1993 to allow post-communist CEE countries to join as member states.

The aspirations of post-communist CEE countries to membership resulted in much more comprehensive conditions for membership than had been set for any previous applicant.<sup>6</sup> Opposition from several member states to eastward enlargement was overcome by setting what were seen as basic conditions to ensure that the countries joining could be integrated relatively easily; the conditions set out at the Copenhagen European Council in 1993 (see Box 1) were designed to minimise the risk of new entrants becoming politically unstable and economically burdensome to the existing EU. The conditions were formulated as much to reassure reluctant member states as to guide CEE applicants, and this dual purpose to conditionality has continued to play an important role in the politics of accession within the EU. The fourth condition (quoted in Box 1) reflects anxieties among member states about the impact that enlargement might have on EU institutions and policies because of the increase in numbers and diversity, apart from the specific problems that CEE members might bring in; it is a condition for enlargement, whereas the others are conditions for entry.

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<sup>4</sup> See Weber (1995).

<sup>5</sup> Smith (1997).

<sup>6</sup> For the neutral EFTA countries, the Commission stated that the entire *acquis communautaire* had to be accepted, including the common foreign and security policy, but there were no democratic and market economy conditions as imposed on CEE accessions. See Michalski and Wallace (1992).

### Box 1: The Copenhagen Conditions

1. Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.
2. Membership requires the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
3. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.
4. The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.

The Copenhagen conditions are not a straightforward case of conditionality, and they are in several ways different from the traditional conditionality for benefits used by international financial institutions (IFIs) such as the development banks. In its simplest formulation, IFI conditionality links perceived benefits to the fulfilment of certain conditions; in the case of IMF and World Bank finance, conditionality is primarily linked to the implementation of specific economic policies, such as structural adjustment, and the main benefit is finance. It is a means of ensuring the execution of a contract, "a promise by one party to do something now in exchange for a promise by the other party to do something else in the future", as an analysis of World Bank conditionality puts it.<sup>7</sup> By contrast, EU demands on CEE are not just a set of conditions to receive defined benefits, but an evolving process that is highly politicised. Three questions about the nature of emergent EU conditionality are outlined below; Section III returns to them in discussing their implications for the enlargement process.

#### *1. The EU as a transnational actor: conditionality for what?*

The EU has played a twofold role in the process of post-communist transformation in CEE: on the one hand, the EU is an aid donor imposing conditions on relations with third countries that are intended to benefit them by supporting post-communist transformation of economies and societies. Yet on the other hand, it is guiding these countries towards membership, which requires creating incentives and judging progress in taking on specific EU models.

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<sup>7</sup> Mosley et al. (1991), 65.

How compatible are these goals? The assumption in much of the language used in official EU publications on enlargement is that accession and transition are part of the same process and that preparations to join the EU are coterminous with overall development goals. There are reasons to be sceptical about this assumption: EU policies and regulatory models were created to fit economies and societies at a very different level of development, and they contain anomalies that are the outcome of a bargaining process between different interests and traditions.<sup>8</sup> They were not designed for countries in transition, and often require a complex institutional structure for implementation that is little developed in CEE. EU models in at least some policy areas are sub-optimal for the applicants: already the appropriateness of the competition policy model implied by the EU's conditions for CEE has been questioned, given the forms of corporate governance emerging in the region.<sup>9</sup> Moreover, the EU's emphasis on regulatory alignment has potential contradictions with the process of economic restructuring, and CEE countries are unable to moderate the impact of European regulation on their political economies as existing EU members have done.<sup>10</sup>

The assumption that accession and development goals are synonymous has generally gone unquestioned because the overall neo-liberal orientation of the EU's agenda accords with the general consensus among western governments and advisers about what is good for transition. The EU agenda is mostly compatible with that of the IFIs, which has itself been criticised for being overly neo-liberal;<sup>11</sup> indeed, EU conditionality reinforces that of the IFIs: implementation of agreements with the development banks is part of Romania's Accession Partnership, for example, and the IMF's focus on macroeconomic stability is reinforced by AP priorities for maintaining internal and external balance.

Nevertheless, there are some exceptions in this general consensus about what is good for transition, at least from the World Bank's point of view. Although most World Bank objectives for CEE are similar to EU ones, there are tensions over prioritisation and costs. Three particular areas of friction have emerged: social policy, agriculture and the environment. The main issue concerning environmental policy is the costs of complying with environmental directives; unofficial figures suggest that costs for Slovakia could be several times the published estimate of 1.5% of GNP, for example. The timetable for phasing in EU legislation and the planning of investments to cover the

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<sup>8</sup> Héritier (1996).

<sup>9</sup> Wilks (1997).

<sup>10</sup> See McGowan and Wallace (1996).

<sup>11</sup> See, for example, Gowan (1992).

adjustment costs are thus a source of controversy with the multilateral development agencies, although such disputes over policy are rarely discussed publicly. For agriculture, taking on even a reformed CAP would run against World Bank priorities for rural development, and costs are again an issue. In social policy, the APs envisage a wider set of policy objectives than is strictly necessary under the EU's *acquis communautaire* (discussed below), and they are in tension with the type of advice on social policy flowing eastwards from the World Bank.<sup>12</sup> The appropriateness of some EU policy prescriptions for CEE is thus debatable. More generally, there is an inherent contradiction between the 'regulatory state' that the EU is moving towards and the 'developmental state' that might be more suitable to CEE.<sup>13</sup>

## 2. The moving target: how to interpret the conditions?

All three main Copenhagen conditions are very broad and open to considerable interpretation; elaboration of what constitutes meeting them has progressively widened the detailed criteria for membership, making the EU a moving target for applicants. There are no quantitative targets like the macroeconomic goals set by the IMF, for example, and benefits do not come in stages, but only at the end. As the arbiter of what constitutes meeting the conditions and when the benefit will be granted, the EU changes the rules of the game. This 'moving target problem' also has implications for relative strength in negotiating the terms of accession because the EU is a referee as well as a player in the accession process.

The first two Copenhagen conditions require definitions of what constitutes a 'democracy', a 'market economy' and 'the capacity to cope with competitive pressure and market forces', highly debatable and slippery concepts. The EU has never provided an explicit definition of these concepts, although implicit assumptions about their content were made in the Commission's opinions on readiness for membership (see Section II below). There is thus no published rationale for how various EU demands will bring applicants closer to west European political and economic norms.

The third condition is also open to interpretation. For the 1995 EFTA enlargement, the 'obligations of membership' were held to be taking on the *acquis communautaire* as it applies to present member states.<sup>14</sup> The term *acquis communautaire* has been used in previous accessions to refer to "the whole

<sup>12</sup> See Deacon (1997).

<sup>13</sup> See McGowan and Wallace (1996).

<sup>14</sup> Corfu European Council 1994, *O.J.* 1994, C 241/381.

body of EU rules, political principles and judicial decisions which new Member States must adhere to, in their entirety and from the beginning, when they become members of the Communities"<sup>15</sup>; similarly, the *acquis* has been defined for this enlargement as "all the real and potential rights and obligations of the EU system and its institutional framework"<sup>16</sup>. The total is some 80,000 pages of legislative texts already, but the *acquis* is not clearly defined and it implies an evolving set of demands.

The *acquis* is a dynamic concept because the body of legislation grows all the time through Treaty change, adoption of legislative measures (including resolutions, declaration and other measures under all three of the EU's 'pillars'), international agreements and the jurisprudence of the European Court of Justice. In addition, the edges of the *acquis* remain fuzzy in legal terms because parts of it are open to interpretation; moreover, the *acquis* is more than just its formal institutional framework; it develops as a result of processes that inform debates over policy substance and agenda-setting, such as policy practices.<sup>17</sup> The *acquis* is thus open to minimalist and maximalist interpretations, and these in turn affect the demands made on CEE applicants.

Presentation of the substance of the *acquis* is critical to defining the conditions for entry. In previous enlargements, the room for interpreting the *acquis* allowed a margin for negotiating what were effectively derogations, but not called as such.<sup>18</sup> It is not yet clear how far this technique will be used to solve problems for the CEE accessions, but so far the EU has presented a quite maximalist interpretation to the applicants. CEE countries have no possibility of negotiating opt-outs like those applying to some member states on Schengen and Stage 3 of monetary union. They also have to take on much of its 'soft law' of non-binding resolutions and recommendations; for example, most of the provisions adopted under the Justice and Home Affairs pillar at Maastricht are not legally binding for member states,<sup>19</sup> but they still have to be taken on by the applicants. The Commission has also argued that the social dialogue is part of the *acquis*.<sup>20</sup>

Interpretation of this third condition, like the others, has mostly been left to the Commission. However, there are some areas deemed too politically

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<sup>15</sup> Gialdino (1995), 1090.

<sup>16</sup> *Uniting Europe* 2, 13/4/98.

<sup>17</sup> Wiener (1998).

<sup>18</sup> Nicolaidis and Boean (1997).

<sup>19</sup> See Lavenex (1998a).

<sup>20</sup> *Uniting Europe* 9, 1/6/98.

sensitive by member states to be left to the Commission; for example, the Council of Ministers set up a working group in May 1998 to establish the accession *acquis* in the area of justice and home affairs,<sup>21</sup> keeping it out of the Commission's hands. This move illustrates the importance of determining the actual contents of the *acquis* in the politics of enlargement.

Insistence on maintaining the integrity of the *acquis* has made the EU a tough and unyielding negotiating partner for previous applicants,<sup>22</sup> and a widespread view among EU officials is that CEE applicants have to join the EU club on this same principle. Against this view is the question of whether this 'club membership' view of eastward enlargement is an adequate response by the EU to the unprecedented challenge of post-communist transition (a further dimension to the tension between EU goals in CEE discussed above).

Finally, the Copenhagen conditions suggest that applicants have to meet higher standards than do present member states; current members have not been judged on these conditions, and have been able to negotiate opt-outs from parts of the *acquis* which will not be available to CEE applicants. By contrast, CEE candidates are expected to meet the conditions fully, in advance, without opt-outs, and in the absence of reciprocal commitments from the EU to prepare for enlargement. This opening stance is a negotiating position, of course, intended to encourage compliance by CEE, and in practice both sides will want transitional periods on different issues. However, the EU's inflexible stance raises a question of double standards that has aroused resentment in CEE and is a complaint voiced in their domestic political debates about EU accession.

### **3. Constraints on the effectiveness of membership conditionality**

The effectiveness of EU conditionality in forcing the applicants to conform to its demands is constrained by the gap between the conditions and the reward; conditionality is a blunt instrument when it comes to persuading countries to change particular practices. Accession policy links interim benefits to specific policies to only a limited extent and different aspects of membership are not attached to specific conditions, rather accession is tied to overall readiness. During the accession process, the EU has some leverage through trade relations (governed by the provisions of the Europe Agreements) and granting of aid for particular projects. However, the EU's main incentive for CEE comes in one big step at the end of a very long and highly politicised process, giving applicants the sense that there is time to make up deficiencies. It is thus difficult to use EU

<sup>21</sup> *Agence Europe* 7232, 30/5/98.

<sup>22</sup> See Michalski and Wallace (1992).

membership conditionality as a scalpel to sculpt individual policies during the accession game; rather, it is a mallet that can be used only at certain points in the process.

This problem was most evident in relations with Slovakia until the election of September 1998. The gap between the conditions and the reward allowed the Meciar government to argue that, as a new nation, Slovakia should be forgiven its deficiencies in democracy, and that by the time other countries are ready for accession, so will Slovakia be. It is difficult to use the accession 'carrot' to persuade applicants to move in a specific direction when there are other intervening variables, such as changing conditions, and when the end result is so distant. Secondly, the very general nature of the Copenhagen conditions leaves room for argument about how close countries really are to meeting them; this means that rejection can be presented in domestic debates as the resulting from the EU not understanding an applicant's circumstances. The Slovak ruling elite under Meciar used the EU's failure to distinguish between different forms of democracy, even among the ones existing in the present member states, to argue that Slovakia was not in fact far from EU political norms. Moreover, EU pressure may not push domestic debate about sensitive issues in a particular direction; for example, the Meciar government was able to question the legitimacy of the EU's own minority policy, and the whole question of 'Europe' became a political football in domestic debates.<sup>23</sup>

## **Section II. The widening scope of EU conditions**

This section describes how the EU's demands on CEE have developed, analysing the conditionality set by the EU and the policy agenda it implicitly contains. It outlines three phases in which the EU has progressively extended its conditions for membership, both substantively (in what is demanded in terms of political and economic reforms) and also functionally (in what has become a condition rather than a subject for negotiations). It tracks how EU conditionality has evolved since 1989: the first phase primarily involved trade relations that need not have led to accession; the second moved on to regulatory alignment, aimed at extending the four freedoms of the Single Market to EU-CEE relations; a third phase has now started in which the EU aims to shape most policy areas covered by the state.

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<sup>23</sup> See Batt (1996) and Ucen (1998).

From the receiving end in CEE, these conditions now shape a huge range of domestic policy processes. The EU thus has a direct influence on policy-making in CEE, constraining it from the agenda-setting stage right through to monitoring of implementation and enforcement. This section maps out the policy processes covered by the conditions, as a prelude to examining their implications (Section III) and discussing the political dynamics shaping the evolving accession policy (Section IV).

### **1. From third countries to applicants, 1989-93**

The first phase of relations moved from aid and trade conditions to the prospect of membership. It started with the granting of preferential trade concessions to CEE, followed by different forms of association with the EU devised from the late 1980s, resulting in a hierarchy of new forms of partnership with the CEE countries.<sup>24</sup> Trade and cooperation agreements had been concluded with most CEE countries and the Soviet Union between 1988 and 1990, covering trade and commercial and economic cooperation. Their main importance was symbolic, removing historical trade discrimination, and the substance of the trade concessions and cooperation was limited.<sup>25</sup> The agreements bound CEE to progressive abolition of quantitative restrictions on import of EU goods, although they were already in the process of liberalising trade owing to GATT membership.

The main innovation in EU conditionality during this period was the addition of a suspension clause to all Europe Agreements concluded after May 1992 that linked trade and cooperation agreements to the achievement of democratic principles, human rights and a market economy. During this period the EU also created two key instruments to direct post-communist transformation in CEE: the Europe Agreements and the Phare aid programme. These were later incorporated into the 'pre-accession strategy' set out at the Essen European Council in 1994.

#### *Phare*

The Phare programme is the channel for EU aid to CEE. On its establishment in 1989, its primary instrument was direct grants, used to fund technical assistance in a very wide range of areas. Following revision of the pre-accession strategy in 1997, its focus was narrowed to funding accession preparations alone through

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<sup>24</sup> For analyses of the EU's association policy towards CEE up to 1993, see Sedelmeier (1994) and Torreblanca Payá (1997).

<sup>25</sup> Sedelmeier and Wallace (1996).

the Accession Partnerships. Initially, the EU used Phare funds to channel advice on economic transformation, with the Commission deliberately confining its conditionality to market-developing measures; however, from 1992 a budget line was built in for a democracy programme as well.<sup>26</sup> Conditionality for Phare funds and the technical assistance it provided reinforced the generally neo-liberal agenda that the EU put forward; however, the programme was fragmented as a result of its dependence on consultants under contract, and Phare's overall lack of coherence limited the extent to which it could be used to guide CEE consistently toward particular policy prescriptions.

In 1989, the European Commission was also given the task of coordinating aid from the G24 (including the OECD, World Bank, IMF and Paris Club), an unexpected extension of its mandate that it used actively.<sup>27</sup> The assistance provided included elimination of trade barriers and export promotion for CEE; the Commission also coordinated macroeconomic assistance from other institutions, including medium-term financial assistance for currency stabilisation and balance of payments assistance, and also debt relief (in cooperation with the Paris Club). Through the Commission's role in aid coordination, the EU was thus in a position to channel a wide range of policy advice about transition, both from its own resources and also the international financial institutions and other bodies. This was also the start of a larger role for the Commission than in previous enlargements, as it took responsibility for a major aid programme as well as accession preparations.

### *The Europe Agreements*

For the ten CEE countries which became applicants, the trade and cooperation agreements were superseded by 'Europe Agreements' (EAs) signed bilaterally from 1991 onwards, which provided a more comprehensive form of partnership than previous Association Agreements with Turkey, Malta and Cyprus. Eligibility for a Europe Agreement formally depended on five conditions: rule of law, human rights, a multi-party system, free and fair elections, and a market economy. EAs can be suspended if these standards conditions are not maintained, but no suspensions have occurred, even following the EU's démarches critical of undemocratic practices in Slovakia in 1994 and 1995, reflecting the fact that suspension is seen by the EU as a very last resort. The first real application of EU conditionality to the CEE-10 occurred in 1997, when publication of the Commission's 'opinions' (also called *avis*) was used to differentiate between the countries for starting negotiations.

<sup>26</sup> Sedelmeier and Wallace (1996).

<sup>27</sup> Sedelmeier and Wallace (1996).

### Box 2: Content of the Europe Agreements

1. political dialogue
2. ten-year timetable for liberalisation of trade in industrial goods, on an asymmetric basis and in two stages
3. complex rules for trade in agricultural products
4. titles on movement of workers, freedom of establishment, and supply of services
5. liberalisation of capital movements
6. competition policy
7. 'cooperation' on other economic issues, from energy to education to statistics (areas for technical assistance).

The content of the Europe Agreements is a set of formally structured trade relations, with a mixed content of both political and economic provisions (see Box 2). The EAs are intended to create a free trade area and to implement the four freedoms of the Single Market (free movement of goods, services, capital and labour) over a ten-year timetable, and they also provide a general framework for political and economic cooperation, including approximation of legislation; they thus started the process of introducing the *acquis* to the applicants. The liberalisation was asymmetric, with the EU opening markets for industrial goods within five years and the CEE countries within ten. The EAs make specific policy demands on CEE through the chapters on trade, on competition, on free movement of workers, and on establishment and supply of services. The trade chapters are the most comprehensive, with the annexes to the EAs giving schedules for removal of trade barriers, including special protocols on 'sensitive' sectors (textiles, iron, coal and steel) and complex restrictions on agricultural trade.

The agenda set by the Europe Agreements was thus generally liberalising, although agriculture remains subject to an extended period of managed trade. Their emphasis on free movement of factors essential for the operation of the Single Market was developed further in the Commission's Single Market White Paper published in 1995.

## 2. The first pre-accession strategy, 1994-97

The Copenhagen conditions were followed by the formal launch of a 'pre-accession strategy' at the Essen European Council in December 1994. The prospect of integrating so many and such different countries provoked a more comprehensive policy approach to enlargement than in previous accessions, although this was slow to evolve.<sup>28</sup> The strategy incorporated earlier agreements and commitments (through the Europe Agreements and Phare) and added some new elements (the Single Market White Paper and the Structured Dialogue). The first two elements set a general framework for adapting to EU requirements, while the latter two were intended to facilitate this process by providing aid and a forum for multilateral discussion.

The pre-accession strategy provides detailed legislative measures for the CEE countries to adopt, but in a limited range of policy areas. It began the process of elaborating the conditions for membership in terms of specific requirements, but in a selective fashion, putting forward only some of the *acquis communautaire* and dealing with the other Copenhagen conditions *ad hoc*. The strategy's content is primarily concerned with liberalisation of external economic relations and creating the conditions for free movement of industrial goods, services and, to some extent, capital; however, it leaves out the fourth factor of production, labour, and also agricultural policy. The other parts of the *acquis* which govern the Single Market are given less attention, and the timetable for taking them on was left unclear, introducing the principle of phased adoption of EU rules.

In providing specific demands and aid for changing legislation, the pre-accession strategy had specific effects on a range of policy processes in CEE. The speed with which different applicant countries have met the formal aspects of EU demands through the pre-accession strategy varied, and the extent of implementation is hard to gauge, but they set out a policy agenda of sorts for CEE. That agenda was then developed further with publication of the *avis* and refocusing of the pre-accession strategy.

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<sup>28</sup> For an account of how policy developed through different EC/EU enlargements, see Preston (1997).

## The Single Market White Paper

This document sets out the key legislation governing trade in goods and services in the EU's Internal Market. It took the EU's agenda a stage further on from the Europe Agreements by introducing measures in a large number of new policy areas. Again, the content sets a policy agenda that is generally liberalising (see

### Box 3: Contents of the Single Market White Paper

1. free movement of capital
2. free movement and safety of industrial products
3. social policy and action
4. agriculture
5. transport
6. audiovisual
7. environment
8. telecoms
9. taxation
10. free movement of persons
11. public procurement
12. financial services

Box 3), although some provisions have been criticised as sub-optimal for CEE countries in the process of liberalising their economies; for example, the competition policy provisions are more restrictive than some existing CEE policies.<sup>29</sup> In each sector, the White Paper divides the legislation into 'Stage 1' measures, which set out the basic policies essential to the functioning of the Single Market and the instruments required to implement them, and then the 'Stage 2' detailed implementing rules. The White Paper does not provide an overall prioritisation between sectors, although suggestions are made about sequencing; countries have had to make their own distinctions between measures that are required simply for

accession and those that are also of immediate benefit to their economies.

Unlike the EAs, the White Paper is not a legally binding agreement. Nevertheless, the regulatory alignment policy it outlines was a central concern of CEE policy-makers because it gave them a framework and set of concrete measures to implement. Moreover, progress in taking on the measures in the White Paper was judged in the Commission's *avis* as a key element in assessing ability to take on the obligations of membership. The White Paper thus became *de facto* a part of EU conditionality for the applicants, despite its status as a document for guidance rather than a legal framework for relations. The White Paper was also an important step in developing the EU's approach to regulatory harmonisation in CEE. The two-stage approach taken in the SMWP of allowing the CEE candidates to take on some parts of the regulatory framework before others is at odds with the internal market's 'policy paradigm' of alignment.<sup>30</sup> It leaves decisions about transitional periods after accession to negotiations, and so allows for the prospect of taking on aspects of the *acquis* selectively, and potentially after accession.

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<sup>29</sup> See Wilks (1997).

<sup>30</sup> See Sedelmeier (1998).

### 3. The Accession Partnerships and the reinforced pre-accession strategy, 1997 onwards

The brief overview of the original pre-accession strategy provided above indicates the main thrust of EU demands on applicants in the early years of transition: liberalisation and regulatory harmonisation. In July 1997 a new phase began when the Commission published its opinions (*avis*) on the applicants' progress in meeting the Copenhagen conditions, and put forward proposals for a 'reinforced' pre-accession strategy based on the Accession Partnerships in 'Agenda 2000', its blueprint for enlargement. The accession part of 'Agenda 2000' was largely endorsed at the Luxembourg European Council of December 1997; in the following year, EU demands became more explicit, and aid more closely focused on accession requirements rather than general development goals.

#### 3.1 The Commission's *avis*

The *avis* give an overview of the political and economic situations in the ten countries up to May 1997, and also an assessment of how close each might come to being ready to join in five years' time. These *avis* are thus unique in the history of EU enlargements in not merely judging applicants' readiness for membership now, but assessing whether they will be able to meet the conditions for membership within the timespan of negotiations. Each *avis* covers all of the Copenhagen conditions, so there are chapters on the political criteria, the economic criteria, adoption of the *acquis communautaire* and other aspects of the applicants' ability to 'assume the obligations of membership'. They are based on judgements by the Commission, with little argumentation or evidence presented for the conclusions about readiness.<sup>31</sup>

The *avis* were an important step forward in EU conditionality in two respects: both as a first active application of conditionality and also as an elaboration of the economic conditions to join. First, they provided the basis for the first active application of conditionality on involvement in the accession process, by providing assessments that allowed differentiation between the applicants according to how near they were to meeting the Copenhagen conditions. None of the applicants was judged to have met the economic criteria fully by 1997, but the Council concurred with the Commission's recommendation that negotiations should start with only five of the CEE candidates plus Cyprus. The Luxembourg European Council therefore provided

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<sup>31</sup> See Grabbe and Hughes (1998a), Chapter 4.

the first instance that benefits had been granted to or withdrawn from an applicant explicitly on the basis of the Copenhagen conditionality. Slovakia was the only country excluded on political grounds, although its economy was assessed relatively favourably; Bulgaria, Romania, Latvia and Lithuania were judged not to have met the economic conditions, although the problems of the first two countries were assessed as more serious than the latter two.

Secondly, the *avis* provided an interpretation of the Copenhagen conditions that elaborated the Commission's view (later endorsed by the Luxembourg European Council) of the requirements for becoming an EU member state. The *avis* judged candidates' progress in conforming to the pre-accession strategy set out by the EU so far, and also in meeting the Copenhagen conditions. In addition, the *avis* were the basis for the priorities elaborated in the APs, and hence the objectives for which the EU will grant aid; they were thus an important step in elaborating the EU's policy agenda for CEE.

### 3.2 The Accession Partnerships

The APs are intended to make conditionality stricter on both financial assistance through Phare, and ultimately on accession itself, by uniting all EU demands and assistance for meeting them in a single framework. They set priorities for policy reforms on a timetable of short and medium-term priorities. Applicants then prepared 'National Programmes for Adoption of the Acquis', which set timetables for achieving the priorities. The Commission will then submit regular reports (starting in November 1998) on candidates' preparations for accession.

The Commission manages the AP programmes and monitors implementation; however, member states insisted that (contrary to the original proposals in Agenda 2000) the Council rather than the Commission ultimately apply conditionality. The Council can at any time take "appropriate steps with regard to any pre-accession assistance granted to any applicant State", acting by qualified majority on a proposal from the Commission, where "the commitments contained in the Europe Agreements are not respected and/or the progress towards fulfilment of the Copenhagen criteria is insufficient ...".<sup>32</sup> On the EU side, application of conditionality is complicated by the APs' lack of a specific legal base in the Treaty.<sup>33</sup> The APs are not legally binding for applicant states, as they are unilateral EU measures, but they make the Copenhagen conditions a quasi-legal obligation by establishing a control procedure and system of

<sup>32</sup> Council Regulation 622/98, article 4.

<sup>33</sup> See Hillion (1998).

sanction,<sup>34</sup> and they have become the main instrument governing EU-CEE relations, making them a strong influence on CEE policy-makers.

The APs also change conditionality for the Phare programme: previously priorities were 'demand-driven' and conditionality depended on meeting very general economic and political objectives, whereas now Phare becomes much more explicitly driven by the Commission, with funds are geared specifically towards meeting the priorities set out in the APs. Aid is tied to conditions for accession, not more general transition and development goals; as a result, EU aid policy has moved towards privileging the third Copenhagen condition (the obligations of membership) over the first two (political and economic). Whereas the Phare programme was originally concerned with economic reform and democratisation, under the APs it is primarily concerned with taking on the *acquis communautaire*.

The APs leave the rules of the game uncertain for applicants: what exactly would count as a 'failure to respect the EAs' or to make progress in fulfilling the Copenhagen criteria? The EU is still left with a large margin in interpreting whether applicants meet the conditions and whether or not relations are satisfactory in the period prior to accession.

### ***Content of the APs***

The contents of the APs cover a huge range of policy areas, and set a very ambitious agenda for the applicant states, given their financial and administrative resources. They unite all the EU's demands, covering not only all of the *acquis* (as defined by the Commission), but also the other political and economic conditions. The breadth of the agenda set out for the CEE countries is indicated in Box 4, which lists just the economic reform priorities for the short-term (to be completed or taken forward in 1998); applicants also have to establish, review or update medium-term economic policy priorities within the framework of the Europe Agreement.

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<sup>34</sup> Hillion (1998).

#### Box 4: Economic reform priorities for the short term (1998)

Czech Republic	<input type="checkbox"/> implement policies to maintain internal and external balance <input type="checkbox"/> improve corporate governance by accelerating industrial and bank restructuring; implementing financial sector regulation; enforcing Securities and Exchange Commission supervision
Estonia	<input type="checkbox"/> sustain high growth rates, reduce inflation, increase level of national savings <input type="checkbox"/> accelerate land reform <input type="checkbox"/> start pension reform
Hungary	<input type="checkbox"/> advance structural reforms, particularly of health care
Poland	<input type="checkbox"/> adopt viable steel sector restructuring programme by 30 June and start implementation <input type="checkbox"/> restructure coal sector <input type="checkbox"/> accelerate privatisation/restructuring of state enterprises (including telecoms) <input type="checkbox"/> develop financial sector, including banking privatisation <input type="checkbox"/> improve bankruptcy proceedings
Slovenia	<input type="checkbox"/> act on market-driven restructuring in the enterprise, finance and banking sectors <input type="checkbox"/> prepare pension reform
Bulgaria	<input type="checkbox"/> privatise state enterprises and banks transparently <input type="checkbox"/> restructure industry, financial sector and agriculture <input type="checkbox"/> encourage increased foreign direct investment
Latvia	<input type="checkbox"/> accelerate market-based enterprise restructuring and complete privatisation <input type="checkbox"/> strengthen banking sector <input type="checkbox"/> modernise agriculture and establish a land and property register
Lithuania	<input type="checkbox"/> accelerate large-scale privatisation <input type="checkbox"/> restructure banking, energy and agri-food sectors <input type="checkbox"/> enforce financial discipline for enterprises
Romania	<input type="checkbox"/> privatise two banks <input type="checkbox"/> transform <i>régies autonomes</i> into commercial companies <input type="checkbox"/> implement foreign investment regime <input type="checkbox"/> restructure/privatise a number of large state-owned industrial and agricultural companies <input type="checkbox"/> implement agreements with international financial institutions
Slovakia	<input type="checkbox"/> tackle internal and external imbalances and sustain macroeconomic stability <input type="checkbox"/> progress on structural reforms <input type="checkbox"/> privatise and restructure enterprises, finance, banking and energy-intensive heavy industries

Source: Author's summary drawn from the individual countries' Accession Partnerships.

In addition to the economic priorities summarised in Box 4, there are objectives for the short and medium term in the following areas:

1. Political criteria. Short-term priorities are set here only for Slovakia (on elections, opposition party participation and minority languages) and Estonia and Latvia (integration of non-citizens and language training); all applicants have some medium-term objectives, such as improving the judicial system and prison conditions (Latvia), protection of individual liberties (Bulgaria) and integration of minorities.
2. Reinforcement of institutional and administrative capacity, including many areas of policy reform, from banking supervision to internal financial control.
3. Internal market. This objective continues many of the measures detailed in the Single Market White Paper, and pushes reform in areas such as liberalisation of capital movements (Poland and Slovenia), adoption of a competition law (Estonia) and adoption of anti-trust laws (Slovenia).
4. Justice and Home Affairs. A priority for all applicants is effective border management with their eastern neighbours.
5. Environment. All of the candidates have to continue transposition of legislation, and to commence detailed programmes for approximation of legislation to EU norms and implementation strategies.

Some candidates have further priorities set for industrial restructuring, agriculture, property rights, nuclear security and energy. For the medium term, there are additional priorities for fisheries, transport, employment and social affairs, and regional policy and cohesion. The priorities are similar, despite the applicants' different problems, raising the question of how precisely measures have been targeted to individual countries' circumstances.

Overall, the APs represent a large policy-making agenda that pushes some fundamental reforms relatively quickly. For most of the applicants, it means that the EU is taking over as the key external driver of reform. There is a widespread perception in CEE that the EU has not had much of an impact on approaches to fundamental areas of transition until 1997, in comparison with the IFIs and domestic factors; however, the more specific and wide-ranging agenda set out by the APs, and the closer conditionality of EU financing on these objectives, is likely to change this situation from 1998 onwards by increasing the EU's

influence on the process of reform in CEE. For the five applicants in negotiations, the IFIs' role is diminishing at the same time as the EU's role is growing. In any case, the IFIs have more limited policy aims such as macroeconomic stabilisation (in the case of the IMF) or development goals (World Bank) than does the EU; IFI policies generally restrain the redistributive functions of states, but they are not so concerned with regulatory functions, whereas the EU started with the latter and increasingly covers the former as well.

### *The EU's agenda for CEE*

The APs represent an extension of EU-level influence over policy-making that goes beyond the EU's role in the domestic policy processes of its member states. They cover EU-level policies that have not been adopted by all member states (such as Schengen and monetary union) and their content goes beyond the *acquis* owing to the first two Copenhagen conditions. Although only some policy domains have moved to supranational level in the EU,<sup>35</sup> in the agenda presented to CEE, the distinctions between Community and national competences that are so extensively debated within the EU are not acknowledged; indeed, the APs cover several areas where member states have long been very resistant to extending Community competence. The political criteria take the EU into areas such as judicial reform and prison conditions; the economic criteria are interpreted to include areas such as reform of pension and social security systems, and corporate governance; and the measures for 'administrative capacity to apply the *acquis*' brings EU conditions to civil service reform in CEE. The EU also has an impact on the applicants' foreign policies towards their eastern neighbours owing to the justice and home affairs measures in the APs and separate readmission agreements.<sup>36</sup>

Through the APs, the EU is influencing both regulation and redistribution, the classic policy outcomes of the state, although these elements are developed to different degrees. The pre-accession strategy as a whole (from the EAs to the Single Market White Paper to the APs) sets out a detailed regulatory agenda for CEE, reflecting the fact that the EU's own key governance function is regulating social and political risk rather than resource redistribution.<sup>37</sup> Policies for CEE are much less detailed in areas that lie outside regulation: the content consists of exhortations for 'major efforts' to improve or strengthen policies and institutions, without the means being specified. The emphasis at this stage is on having coherent policies and functioning institutions, rather than specific

<sup>35</sup> See Stone Sweet and Sandholtz (1997).

<sup>36</sup> See Lavenex (1998b).

<sup>37</sup> Hix (1998).

prescriptions for policy content. The detail was filled in by each country's National Programme for Adoption of the Acquis, putting the onus on the applicants to decide how to meet the specified objectives. However, EU preferences in policy content are emerging through which projects receive Phare funding and in the Commission's regular reports on each country's progress.

Despite the lack of detail, the APs do contain implicit policy models for CEE. This is most evident on the economic side, where the thrust of the agenda is neo-liberal, emphasising privatisation of the means of production, a reduction in state involvement in the economy (particularly industry), and further liberalisation of the means of exchange. Considering the variety of models of capitalism to be found among EU member states, the APs promote a remarkably uniform view of what a 'market economy' should look like. The socio-economic system they implicitly promote has a more 'Atlantic' than 'Rhenish' or 'Latin' flavour.<sup>38</sup> There is little attention to the role of networks between social partners in the economy, for example, or industrial policy. They are largely anti-interventionist, although the role of appropriate regulation is recognised in response to the inadequacies that have emerged over the past few years in CEE, particularly in corporate governance.

However, no explicit rationale is presented for this agenda, even though it covers so many functions of the modern state. The conditions have been presented as if they are self-evident, with no acknowledgement of the policy debates going on in the EU and outside about the appropriate role of the state in the economy and alternative models of corporate governance. It is possible to make convincing arguments as to why many of the AP measures are necessary in CEE; for example, the need to reduce the power of social networks to promote competition, and the problems caused by lack of appropriate regulation of the financial sector in several countries. However, no such rationale has been presented, despite the fact that this is such a wide agenda from such an important external influence. It is characteristic of the asymmetric power relationship between the EU and the applicants that no justification is presented for these demands beyond the fact that they come in the name of joining the EU.

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<sup>38</sup> To use Rhodes and Apeldoorn's characterisation of capitalist systems in Western Europe, developed from Albert (1991): see Rhodes and Apeldoorn (1998).

### Section III. Implications of the emergent conditions

#### 1. Implications for negotiations

Accession of new members to the EU has always been a mutually negotiated process; negotiations did not just concern "us and them", but the "future us."<sup>39</sup> Accession terms have been a bargained outcome for all previous applicants, and the history of EU enlargements has been of new members changing the EU, as well as the EU changing new members.<sup>40</sup> There was a reciprocal relationship in which applicants could demand concessions in return through negotiations. Previous enlargement negotiations resulted in special arrangements in areas such as external trade conditions<sup>41</sup> and aid to third countries<sup>42</sup>, with applicants such as the UK able to agree changes in EU policy frameworks in advance of accession. However, in this enlargement, the APs set detailed objectives for CEE in a huge range of policy areas that were a subject for inter-governmental bargaining in previous enlargements. Partly this is because of the expansion of the *acquis* to cover many more policy areas than in previous enlargements; however, it is also because of a different approach to CEE applicants.

The APs pre-judge accession terms in areas outside the *acquis* as well, reducing the scope of negotiations to agreeing transitional periods. Running the AP programmes in parallel with negotiations reduces flexibility in deciding what might be subject to compromise on both the CEE and EU sides; the APs present the conditions as a package which is likely to be difficult to take apart in negotiations. CEE applicants have little power to argue against EU demands, given that there is a pre-set EU agenda on which aid is already conditional. Although the APs are supposed to be 'partnerships' decided in collaboration with each applicant, in practice the process of consultation seems to have involved only cursory attention to CEE objections to either the content or sequencing of demands. Effectively, the APs add further and more specific conditions to the EU's list, and they give the EU an even stronger position in the event of a conflict of interests by adding sanctions to those already agreed.

The extent to which negotiations have been reduced in scope by the APs is acknowledged in a recent French parliament report:

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<sup>39</sup> Avery (1995).

<sup>40</sup> See Redmond and Rosenthal (1998).

<sup>41</sup> Hine (1985).

<sup>42</sup> Grilli (1993).

“Il ne s’agit pas de négociations traditionnelles pour arriver à un compromis entre des intérêts différents, mais de négociations d’adhésion pour que l’une des parties atteigne un objectif prédéterminé avec l’aide et sous la surveillance de l’autre ...”<sup>43</sup>

The argumentation presented in the French parliament’s report for why the CEE’s accession negotiations should be more limited in scope than those for previous enlargements is that the challenges are greater: “Evoquant les nombreuses incertitudes auxquelles était confrontée la stratégie d’élargissement ... [négociations d’adhésion] n’offrent aux parties qu’une marge de discussion limitée pour affronter des défis ...”<sup>44</sup> This reasoning runs against the applicants’ ability to argue that the challenges of enlargement can be met in ways other than those decided by the EU side; moreover, CEE interests are downgraded in relation to the EU interests because there is no expectation of compromise on the EU side.

Representatives of the Commission have also argued that negotiations are about the process of CEE preparations, not give and take; the EU’s chief negotiator has emphasised the Commission view that progress with economic reforms and the training of officials are more important than successful negotiations.<sup>45</sup> Agenda 2000 itself argues that most of the *acquis* is non-negotiable (as much as 99%, claim Commission officials), while the other Copenhagen conditions are already covered by the APs. Thus, what constitutes meeting the political and economic conditions will be defined by the priorities set by the APs and by the Commission’s judgements on progress in meeting them in its regular reports, rather than through the official accession negotiations running in parallel.

The wide scope of pre-accession conditionality for this enlargement seems likely to result in less favourable accession terms than those enjoyed by previous applicants. Greece, Portugal and Spain were allowed into the EU with the aim of helping them to consolidate democracy after entry, and after accession they were given large transfers after accession over a long period to aid economic development. The EU has already made it clear that such terms will not apply to CEE: applicants are expected to meet all the conditions prior to accession, and

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<sup>43</sup> “This is not a matter of traditional negotiations to find a compromise between different interests, but rather of accession negotiations to enable one of the parties to attain a predetermined objective with the aid and under the supervision of the other ...”, Assemblée Nationale (1998), p. 36.

<sup>44</sup> “Given the numerous uncertainties which confront the enlargement strategy ... accession negotiations offer only limited room for discussion to face the challenges ...”, Assemblée Nationale (1998), p. 53.

<sup>45</sup> *Financial Times*, 20 May 1998.

with transitional periods limited in time and accompanied by a precise plan for their abolition.<sup>46</sup> In any case, the scope for transitional periods on the CEE side is limited by the schedules to be agreed in parallel through the APs. It remains to be seen how far the applicants will be able to make demands in return for limits on the transitional periods that the EU wants to impose, particularly on free movement of CEE workers after accession.

## 2. Implications for the enlarged EU

Through the APs, member states are giving the EU competences in CEE that they have never accepted for themselves. Moreover, these competences are being extended without any of the justificatory and restraining principles that apply in the EU, such as subsidiarity, proportionality and competence. There is also little involvement of restraining institutions: the only monitoring function for accession policy during negotiations is performed by the Council, with no role for the European Court of Justice, for the European Parliament (until the assent procedure for the accession treaties under Article O of the Amsterdam Treaty) or national parliaments (until ratification of the accession treaties). There is thus very little accountability for the process until the point of veto after treaties have already been signed with CEE. This lack of accountability extends the existing 'democratic deficit' further into the accession process. This is partly because accession policy is still treated as an aspect of external relations with third countries, even though its effects in CEE are already much more like the EU's relationship with existing member states. There is a paradox in EU-CEE relations: applicants are treated like member states in the extent of their obligations under the APs, but as applicants they have no rights and little say in determining the substance of relations, leaving the EU as a hegemonic actor.

An interesting area for speculation is whether the extension of Community competence implied in CEE might have feed-back effects for the enlarged EU. At present, Community competence is circumscribed primarily by the areas in which the EU has already legislated<sup>48</sup>; wider competences in CEE do not imply legislative changes in the EU and there is no suggestion that accession conditionality might be applied (retrospectively) to present member states, so there is no formal mechanism for feed-back effects. However, there could be

<sup>46</sup> Commission's report to the Madrid European Council. See Agenda 2000: Commission of the European Communities (1997), 52.

<sup>47</sup> This primacy of the Council - and below it the Commission - reflects the extent to which accession is seen as a question of external relations, despite its long-term effects on internal EU policies.

<sup>48</sup> At least for the purposes of applying the subsidiarity principle: see Steiner (1994).

more intangible effects because of the way that the scope of EU governance increases incrementally through use of informal resources (such as debates about ideas, goals and concerns) and 'routinised practices' to build on the formal institutional framework of the *acquis*.<sup>49</sup>

Debates and changing perceptions of the appropriate balance between Community and shared competences are an important part of changing the political climate in European integration, and here the relationship with CEE prior to accession could have implications for the enlarged EU. Experience of a wider role in CEE could be instrumental in changing perceptions of the appropriate role of the EU in both new and old member states, given the importance of 'occupying the ground' in widening the scope of European integration - through debates about integration as much as in legal terms. In the pre-accession phase, the EU is penetrating deeply into domestic policy processes and structures in CEE; this penetration is establishing practices and institutionalising policy approaches, which could lead in time to widened scope of integration, following Wiener's argument that the *acquis* builds on such informal processes.<sup>50</sup> Might a greater role for Community resources in CEE reflect back on views about the desirable limits of Community competence in the EU itself? Might the applicants act as a testing-ground for extending new competences?

The area of justice and home affairs (the 'Third Pillar') already illustrates how a policy area can grow informally at first, building up pressure for its incorporation into the official framework later. The Schengen agreement began in this way and is now to be incorporated into the Amsterdam Treaty; a similar process can be seen at work in the proliferation of political declarations and parallel cooperation fora to deal with EU-CEE relations concerning internal security issues. Running in parallel with negotiations and adoption of the *acquis* are a 'Pre-Accession Pact against organised crime'<sup>51</sup> and proposals for CEE judicial cooperation with Europol.<sup>52</sup> The EU has applied further pressure through the inter-governmental 'Budapest Process'.<sup>53</sup> These parallel processes not only expand the scope of preparations for accession, but they could lead to a formalisation of cooperation after accession that affects policies within the EU, and could lead to a further increase in Community competence in the area of justice and home affairs.

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<sup>49</sup> See Wiener (1998).

<sup>50</sup> See Wiener (1998).

<sup>51</sup> *Uniting Europe* 4, 27/4/98.

<sup>52</sup> *Uniting Europe* 2, 13/4/98.

<sup>53</sup> Lavenex (1998a).

There are two key determinants of whether potential feed-back effects occur: the first is whether EU competences for the applicants retract after accession. The CEE countries are unlikely to be treated just like any other member state immediately after accession: there are likely to be long transitional periods on both sides, and although much is being done to incorporate CEE into EU structures and policies in advance of accession, many tasks will remain after accession, as happened with previous enlargements. The unprecedented nature of this enlargement could give grounds for arguing that Community competence needs to be extended in all member states, not just the new ones. There could also be functional spillovers as a result of EU involvement in the post-communist transformation process. The years leading up to accession will see a growth in the Commission's administrative capacities and expertise in dealing with policy areas in CEE that are currently outside the scope of its functions within the EU. These will increase the Commission's ability to argue that successful integration of new members requires it to extend its responsibilities into new policy areas within the enlarged EU. The alternative to such an adjustment in the EU's institutional balance would be to confine this increase in Community competence to the new member states alone, implying differentiated integration or 'flexibility' across the enlarged EU, perhaps working through the new Amsterdam Protocol on 'closer cooperation' or another mechanism. This is likely to imply the development of a new model of integration in the enlarged EU, shallower than the current one.<sup>54</sup>

The second factor influencing feed-back effects on the enlarged Union is whether the extended EU role in CEE is perceived to have been a success. Certainly, the new members will be used to a much larger EU presence in domestic policy processes than existing ones; however, this experience might not be a happy one. The applicants may perceive the EU as having been too interfering prior to accession, causing a backlash against losing sovereignty; there could be increasing Euroscepticism in CEE as accession approaches and the applicants may not all become strongly pro-integrationist member states, after all.<sup>55</sup> In addition, as democratisation proceeds, the same issues of legitimacy and democracy are likely to arise in CEE as are debated in the EU. Already, there is some appreciation in CEE of the irony that a democratically deficient body is telling them how to become functioning democracies.

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<sup>54</sup> See Wallace (1998).

<sup>55</sup> See Grabbe and Hughes (1998b).

### 3. The Role of the Commission in Enlargement

This widening scope of EU involvement has extended the European Commission's role in parallel. In previous enlargements, the Commission's most conspicuous contribution to the enlargement process has been in assessing the applicant's degree of readiness in an *avis* presented to the European Council, while it has also played a role during negotiations.<sup>56</sup> These functions have continued for this enlargement, but the large number of candidates, their state of political and economic development, and their distance from EU norms has necessitated a much more elaborate pre-accession strategy and a correspondingly greater role for the Commission.

The Commission has a twofold role in CEE that gives it a major influence over the whole process of enlargement. As with the member states, the Commission acts as 'guardian of the Treaties', ensuring correct application of EU legislation at national level; but at the same time, it is also acting as the EU's external representative in CEE, responsible for managing aid programmes and for monitoring progress in meeting membership conditions. It is responsible for all aspects of interpreting conditionality until the final, public stage of deciding whether or not conditions have been met: it elaborates the conditions, determines the detailed requirements, and recommends to the Council whether or not they are being met.

The APs extend the Commission's mandate in CEE further by giving it responsibility for setting the priorities, reviewing progress in meeting the objectives, and potentially recommending a reduction in aid. Although final decisions on applying conditionality (either on aid or accession) is left to the Council, it is the Commission that largely determines the agenda by overseeing the whole process. The Commission is the main source of advice to CEE on what needs to be done to get in, and it allocates aid for this purpose. On the EU side, it is a major influence on member states' perceptions of each applicant's readiness to join. Moreover, its responsibility for managing the aid programmes effectively puts financial conditionality in the Commission's hands; for example, in 1998 it was the Commission rather than the Council that decided to cut Phare assistance to Poland by 34 million ECU, having rejected proposed projects as not meeting the priorities set out in the AP.<sup>57</sup>

Member states did seek to maintain control over the accession process in two ways: they insisted that the Council rather than the Commission determine

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<sup>56</sup> See Dinan (1998).

<sup>57</sup> *Uniting Europe* 9, 1/6/98.

whether or not AP conditionality had been met, and they also tried to strengthen the Council's capacity to monitor the process. However, the oversight mechanism is vague, relying on *ad hoc* reports by the Commission to the Council. Moreover, the downgrading of negotiations consequent on increasing the scope of conditions reduces the inter-governmental component of EU-CEE relations, enhancing the role of the Commission vis-à-vis the Council. The parallel operation of the APs alongside negotiations gives the Commission a much larger influence over accession terms than was the case in previous enlargements. It also raises a principal-agent issue about who is really driving the whole accession process.

#### **IV. Explaining the Accession Partnerships as a policy outcome**

This section explores the reasons why the EU was able to extend its role in CEE to such a degree through the Accession Partnerships. The policy outcome runs against other trends, both on the EU side and the CEE side. There are two key questions, examined in the next two sub-sections:

- Why did member states endorse such an extension of the Commission's mandate in CEE, at a time when there was little enthusiasm among member states for a general extension of Community competence in the EU?
- Why did the CEE countries accept such an increase in the EU's role in policy-making?

An overview is given below of the political dynamics at work in 1997 and 1998 among the principal EU and CEE actors that affected accession policy. Interest-based interpretations offer a number of different possibilities, but a much more detailed investigation will be needed to establish precisely the relative importance of the different interests at work in the Commission and the member states, the interaction between them, and the factors that lie behind national preference formation. The dynamics in CEE also require further research, particularly as the effects of the APs are likely to be evident only in the medium term; at the time of writing, it is still too early to provide more than a speculative look at the processes at work.

##### **1. The enlargers: EU dynamics**

The APs were designed during a period of debate among EU member states that was not characterised by enthusiasm for a large increase in the policy areas covered by Community competence. The Inter-Governmental Conference of

1996-97 demonstrated the lack of consensus among member states over institutional reform as a whole, and the final phase of negotiations showed a decreasing willingness on the part of even traditionally integrationist member states to increase the powers of EU institutions.<sup>58</sup> Neither did the Amsterdam, Luxembourg or Cardiff European Councils indicate any increase in member states' willingness to give the Commission new powers; as one commentator on the Treaty put it, "The overall impression left by the Treaty is ... that the Commission is still not entirely trusted to observe the rules of the game."<sup>59</sup> At the same time, the Santer Commission has been less active than its predecessor in seeking to take on new responsibilities.

However, in policy towards CEE, member states continued to prefer that the Commission take the lead in formulating the pre-accession strategy. Why did the member states sanction such an increase in the Commission's mandate in this area? The outcome seems to have resulted from a combination of several factors, most of which relate to member states' interests in the enlargement process.

### *Ambivalence about enlargement*

From the beginning, there has been a lack of strategy and coherence in the EU's approach to eastward enlargement, largely because of the dearth of political leadership in the EU on how to deal with the aftermath of 1989.<sup>60</sup> The EU was slow to respond to the end of the Cold War and many member states were reluctant to commit themselves to the accession of post-communist CEE. There was an unwillingness to take political responsibility for enlargement and delegation of much of accession policy-making to the Commission, resulting in a highly technocratic approach.

During the IGC and after Amsterdam, several key member states became increasingly ambivalent about the social and economic effects of enlargement, and its implications for EU policies and institutions. Most importantly, the driver of the enlargement project in the early 1990s, Germany, saw increasing public debate about the potentially negative effects of enlargement on the German economy and labour markets. The federal election campaign of 1997-98 involved the issues of migration from CEE, wage competition, and the budgetary implications of enlargement; the response from the Kohl government was

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<sup>58</sup> Although the Amsterdam Treaty resulted in an extension of Community competence in justice and home affairs, and a slight increase in the European Parliament's role in decision-making: see Manin (1998).

<sup>59</sup> Ludlow (1997).

<sup>60</sup> See Grabbe and Hughes (1998a).

proposals to restrict movement of workers after accession, and further reassurances that enlargement should not result in an increase in German contributions to the Community budget. Similarly, the Austrian debate became increasingly preoccupied with the issues of migration and border control, and correspondingly more hostile towards enlargement.

There was a parallel debate about the impact of enlargement on the Community budget and EU institutions. Net recipients from EU policies also became more openly opposed to the prospect of losing budgetary transfers. Proposals for reform of the regional funds and the common agricultural policy in Agenda 2000 galvanised lobbying efforts and intensified debate about the costs of enlargement. At the same time, member state were reluctant to address institutional reform. Difficult decisions were postponed by adding a protocol to the Amsterdam Treaty requiring another IGC before the number of new member state exceeds five, although several member states (Belgium, France and Italy) have argued for further institutional reform as a prerequisite for even the first accessions.<sup>61</sup>

This reluctance to confront the challenges posed by enlargement favoured applying stricter conditionality to CEE. Arguing that that the CEE countries had to be ready to join put the emphasis on the applicants conforming to the EU rather than the EU reforming itself to fit new members. Fears of the consequences of enlargement also encouraged an approach based on reducing its social and economic impact by demanding full compliance by the applicants in advance of accession. This approach also implies that there is less to negotiate, if the priority is on minimising the implications for the EU rather than for CEE.

At the same time, there was a sense that there was no reason to hurry the process of enlargement. The alternative of a rapid accession process and long transitional arrangements had been rejected in the early 1990s, partly as a result of CEE insistence on full rather than partial membership, and the Commission's technocracy-oriented approach prevailed rather than one based on geo-strategic considerations. IGC deadlock encouraged contemplation of a longer timetable for the first accessions, to give the EU longer to prepare itself as well as CEE. As a result, the APs' emphasis on implementation of the whole *acquis communautaire* and strict conditionality did not meet opposition from EU members that wished to hurry the whole process along.

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<sup>61</sup> *Financial Times*, 16 September 1997.

## *Consensus on the agenda*

The extension of the Commission's role in setting such a wide political and economic agenda for CEE went unopposed for another reason: the content of the APs generally accords with member states' interests. There was no significant disagreement in the Council with the Commission's draft APs, although some minor adjustments to their content were made in the Council of Ministers. According to an account prepared by the French parliament,<sup>62</sup> seven member states approved the drafts submitted by the Commission. Germany, supported by France, proposed further provisions on the Third Pillar, while France, supported on some points by the Netherlands, argued for the sharpening a number of points in the draft APs, including a greater stress on measures to combat corruption and crime, on restructuring of metallurgy, coal and agriculture, and on respect for the constitution and independence of the media in Slovakia.<sup>63</sup> Overall, however, there were no strong objections to the contents, and proposed amendments were concerned with reinforcing rather than trimming demands.

The content of the APs coincided with member states' interests in three spheres: the first is the broad consensus about the desirable shape of political and economic systems in CEE. In so far as they speed transition, the APs accord with member state interests in increasing stability and prosperity in CEE. Throughout the pre-accession phase, member states have rarely disagreed with the Commission's interpretation of the Copenhagen conditions; in 1997, the European Council at Luxembourg accepted the Commission's recommendations to start negotiations with only five CEE applicants plus Cyprus. This agreement to differentiate between candidates in negotiations was not reached without controversy, notably the opposition of Denmark and Sweden to the exclusion of Latvia and Lithuania.<sup>64</sup> However, the Commission's overall ranking of the applicants' readiness to join was accepted by member states; it accorded both with the consensus about progress in transition and also with general geopolitical priorities among the applicants. Germany's priority to the accession of Poland, Hungary and the Czech Republic coincided with their perceived front-runner status in transition, while Estonia and Slovenia were seen as small and relatively uncomplicated to integrate.

The second interest is the desire to avoid long transitional periods on the CEE side. There has long been an emphasis from the EU that derogations or

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<sup>62</sup> Assemblée Nationale (1998).

<sup>63</sup> By contrast, Austria argued that the EU should not be harder on Slovakia than on the other applicants.

<sup>64</sup> See Grabbe and Hughes (1998a), Chapter 4.

long transition periods of the kind negotiated by the Mediterranean applicants will not be on offer. As the French parliament report put it on transitional periods, "... l'Union ... ne concédera pas dix-sept ans comme elle l'avait fait pour l'Espagne ... mais tout au plus cinq ans ... dans quelques secteurs bien délimités", and for this reason, "[les candidats] devront faire l'effort essentiel pendant la période de pré-adhésion ...".<sup>65</sup> This is an insufficient justification: why should CEE not receive the same latitude as previous applicants in taking on obligations after accession? The scale of the challenge that these applicants face in transition is a strong argument for them to be given additional concessions, not fewer than those enjoyed by previous joiners. Moreover, limiting the scope for CEE transitional periods prior to negotiations sets a double standard given the fact that the EU itself would like to impose long-lasting restrictions on free movement of CEE workers after accession.

Thirdly, a number of member states want faster movement in CEE addressing issues such as nuclear safety and border controls that affect their interests prior to as well as after accession. Increasing the pressure on CEE countries to act more rapidly in these areas is thus a welcome effect of stricter conditionality and a focus on EU priorities as far as member states across the border are concerned.

Interestingly, one area where the APs seem not to have been affected by member state interests is in the movement of applicants into negotiations. The rapid promotion of Latvia and Lithuania into formal negotiations in 1999 is strongly supported by Denmark and Sweden, but Scandinavian interests did not lead to pressure to alter the APs. The reason lies in the nature of AP conditionality: a decision joining negotiations is dependent on a Commission recommendation based on satisfactory progress in meeting the conditions as elaborated in the APs. It is not directly affected by the demands themselves because they are so vague and there is plenty of room to argue that 'sufficient' progress is being made. The fact that the process of moving into negotiations will be politically determined to a large extent, with no specific targets to meet, takes the focus away from the APs' content and redirects it towards the process of reviewing progress through regular reports.

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<sup>65</sup> "The EU ... will not grant 17 years as it did for Spain ... but at the very most five years ... in well-defined sectors" and for this reason "the applicants must make the necessary effort during the pre-accession period ...", Assemblée Nationale (1998), 36-37.

## *The Commission's argumentation*

The member states seem largely to have accepted the Commission's argumentation that functional reasons as well as institutional ones required a new approach to accession based on stricter conditionality and a closer linking of the different elements of the pre-accession strategy; the Commission remained at the centre of the growing enlargement process, resulting in a degree of 'mission creep'.

Similarly, the extension of the Commission's mandate through the APs can be interpreted as a functional response to the increasing complexity of the conditionality. The task of preparing these accessions presented an unprecedented technical challenge: it involved preparing five sets of negotiations and monitoring all the applicants' preparations, stretching Commission resources both in Brussels and in the delegations in the applicant countries. The solution to the problem of an increasingly diverse agenda was the linking together of the tasks of setting conditions, monitoring preparations and disbursement of aid, which itself favoured the concentrating responsibility for the whole process in a single agency.

A further factor favouring emergence of a single instrument was the need to remedy perceived weaknesses of the original pre-accession policy. There was support both within the Commission and among member states for re-focusing the pre-accession strategy. Criticism of the original pre-accession strategy, and particularly the Phare programme, from within the Union and from the applicants had led to calls for EU aid to be focused more carefully, with greater policy coherence and a more 'efficient' use of funds. A logical way to achieve this was to focus Phare more closely on accession issues, steering away from the previous problems of fragmentation and over-use of western consultants. The Commission found the solution in APs, which linked aid to accession conditions directly and set priorities at the EU end rather than through the 'demand-driven' process that had previously operated. Whether this will result in a more coherent programme and whether it is the most appropriate use of EU aid are both open to question,<sup>66</sup> however, it did provide a response to criticism of the original strategy's lack of focus.

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<sup>66</sup> See Grabbe and Hughes (1998a), Chapter 5.

## 2. The receiving end: CEE reactions

Throughout the development of the accession process, CEE preferences have been marginalised: starting with the Europe Agreements, CEE preferences influenced the content of EU policy instruments for enlargement only to a limited extent.<sup>67</sup> Conditionality has been developed largely in isolation from their interests, with the emphasis on making the new members acceptable to the EU, and no reciprocal commitments to CEE. Why have the applicants allowed such a strengthening of the EU's position? The outcome can be explained partly by a realist approach of power politics: the EU had the benefits to offer, and so it has been able to shape the rules of the game. Although political elites in Poland, conscious of their country's geo-political importance, have taken to stressing what they can offer the EU, most applicants are painfully aware that their desire to join is not matched by an equal willingness on the EU side to take them in. Only the most confident applicants feel they can afford to demand better terms.

However, this is not the whole story; this approach does not explain why CEE governments have not even tried to use their bargaining power more effectively. It also leaves out the interaction between domestic politics and relations with the EU: why have domestic interests not pressed CEE governments to resist EU demands more? It is still too early to judge reactions in CEE, but it is striking how little debate there has been in 1998 about the APs in CEE parliaments or the media, and little controversy even at Cabinet level in most countries. Poland has become increasingly assertive in its dealings with the EU, but most other applicants have largely accepted EU terms as presented in the APs.<sup>68</sup>

There are four main explanations. The first relates to the wide gap between foreign and domestic policy debates in CEE, with very few interest groups connecting the EU's demands with controversial reforms.<sup>69</sup> Even anticipatory adjustment by CEE policy-makers to conform with EU norms has only rarely caused interest groups to blame the EU publicly. The reasons for this passivity lie in a second explanation: the low level of knowledge of what the EU's demands are in CEE. Even political elites exhibit only limited awareness of how wide-ranging the Accession Partnerships are, and their implications for negotiations. There is little debate about EU demands because they are not widely understood and the technical nature of many of the activities needed for

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<sup>67</sup> Sedelmeier (1994).

<sup>68</sup> See Grabbe and Hughes (1998b).

<sup>69</sup> See Grabbe and Hughes (1998b).

regulatory alignment obscures the extent to which the EU might be influencing policy. Potential losers have remained passive about accession.<sup>70</sup>

The third concerns the nature of the agenda presented. Because the EU has presented a largely neo-liberal agenda that accords with the general international consensus about transition economics, there are few dissenting voices to criticise the policy prescriptions on offer. Even tensions with World Bank policy (discussed in Section I) are not a public debate in CEE, but the subject of behind-the-scenes discussions. The paucity of alternative policy advice puts CEE countries at a disadvantage in bargaining with the EU both over the APs and also the terms of their accession.

The fourth lies in the 'moving target' problem of developing conditions. Far from resisting EU demands, applicants have tended to ask for more detailed policies and clearer targets from the EU in order to pin down the conditions. From the start, CEE policy-makers have tended to ask for quantitative goals (like the Maastricht convergence criteria, for example) to remove the moving target problem.

The fifth explanation lies in the context of post-communist transition. Throughout the process of post-1989 transformation, there has been a tendency to look for models of democracy and economic order; the EU provides an obvious one, and the desire to join adds a further incentive to take on what are seen as successful EU political and economic norms. Particularly in the early years of transition, there was a vacuum of credible alternatives to EU policies; although CEE policy-makers have certainly been influenced by US models and IFI policy advice too, the EU has a very large potential role owing to its proximity and the political, economic and other ties that have grown since 1989.

The desire to take on EU models is compounded by the weak nature of the state in post-communist CEE. The inability to define for themselves what has to be done for transition has made many post-communist states very open to external influences; taking on EU policies is an example of the strategy of 'tying hands' that enables policy-makers to overcome domestic opposition.<sup>71</sup> In the case of CEE, external relations not only constrict the domestic win-set, but provide a model where few other credible policy options are on offer. In this sense, states are content with losing sovereignty in the face of EU demands, because they have often been looking for outsiders to tell them what to do.

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<sup>70</sup> See Gould (1999).

<sup>71</sup> Moravcsik (1993).

Applicants have thus pulled the EU into increasingly detailed conditions, in addition to the push-factors at work in the EU. The fragility of the state in CEE, policy-makers' lack of experience, the instability of some of the institutional framework and the unprecedented burdens of simultaneous transformation of the state, the economy and society all favour a welcoming response to the EU's stipulations. The extent to which the EU is needed to legitimate and substantiate reform efforts can be seen in the behaviour of Romania and Bulgaria; it seems puzzling that the countries furthest from membership should continue to accept EU demands, even though they are unlikely to join for many years. This paradox can be explained by reference to their even greater need than the front-runners for a sense of direction for reforms. They have been least successful at meeting EU conditions, yet demands like the APs are still felt to be needed as a prop for reform efforts, even if the demands remain unfulfilled.<sup>72</sup>

A final explanation lies in an unwitting collusion between two forms of elitist technocratism that favour a dictation of terms by the EU. On the CEE side, there are elitist and technocratic elements deeply embedded in (post-)communist culture that see policy-making as best left to the experts. This tendency not to debate policy options falls neatly in line with the EU's inclination to leave it to the Commission to work out the details following a decision at political level, owing to member states' unwillingness to take responsibility for enlargement policy. These characteristics are different in origin, but they both lie in a deep-rooted assumption that details can be left to the experts: leaders decide that a country should join the EU, and the technocrats can sort out the technicalities. The problem with treating something as wide-ranging as the APs as just a set of technical issues is that it runs against the idea that politics is about choosing between policy options that are alternative solutions to problems.

This technocratic approach to integration implies a democratic deficit in the whole accession process. Accountability is lacking on the EU side owing to

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<sup>72</sup> This is not to pre-judge the impact that the EU has actually had in CEE; the relative importance of different external and domestic influences on transition has not been the subject of sufficiently detailed empirical investigation yet, and the APs have not been in place for long enough to assess their effects. Moreover, there is the question of how much of the EU agenda has actually been implemented: a key concern highlighted in the *avis* is lack of implementation and enforcement of legislation formally adopted to meet EU conditions. A constant frustration in Brussels has been the willingness of CEE policy-makers to agree to EU demands, but then not act on them, which is another incentive to spell out detailed conditions. What is evident is the openness of CEE to EU influence (for the reasons cited above) and the breadth of the policy areas that EU conditionality has covered; how much of it has been taken on by CEE, particularly in the countries furthest from negotiations, is another question.

the Commission's control of so much of accession policy, but there is also little democratic participation on the CEE side. Because of the lack of debate about accession requirements, CEE policy-makers are often constrained more by EU conditions than by their domestic polities. To the extent that there is a 'two-level game' at work in bargaining with the EU, the domestic level is playing only a very limited role.

## Conclusions

This paper has analysed the development of the Accession Partnerships as part of a continuum of emerging EU conditionality for membership. The criteria applied to CEE have changed as the EU's very general Copenhagen conditions have been elaborated and interpreted in several stages, resulting in an increasingly detailed policy agenda for applicants. Conditionality for membership is complicated by the EU's role as both player and referee in the accession process.

The latest outcome of this process, the APs, has significant implications for both EU policy-making processes and for the EU's impact on the applicant countries. On the EU side, the European Commission has increased its control of the accession process in comparison with previous enlargements, despite member states' lack of willingness to increase its role in EU policy-making more generally. For the applicants, the APs both downgrade the status of accession negotiations and also increase the EU's ability to influence domestic policy-making.

Pull as well as push factors lie behind this policy outcome: the EU has taken a hegemonic role in CEE partly because the accession process coincided with a need to fill a vacuum in political leadership in CEE during post-communist transition. The EU has stepped into a policy-setting role for CEE because of the impoverishment of political debates on policy alternatives. On both sides, there has been little public discussion of the conditions, resulting in a deficit of democratic accountability in the accession process. This situation may change if political actors in CEE start to pay more attention to the details of EU conditions; for example, domestic interests may mobilise opposition to some EU demands as the contents of the APs and national programmes for adopting the *acquis* become more widely known.

The ever-greater role played by the EU in policy-making in CEE needs further investigation. The content of the APs goes considerably wider than the

*acquis communautaire* applied in member states, giving the EU a role in CEE affairs beyond the role it plays in the EU; moreover, the EU seems to be taking over from the IFIs as a key external influence on transition in most of the applicant countries. The implications of the APs explored in this paper suggest a large research agenda in examining the influence of the EU in CEE. Possible contradictions are arising between EU requirements and development goals that the current accession policy is ill-equipped to deal with, given its 'club membership' approach and emphasis on regulatory alignment.

The APs also raise a number of interesting questions about the impact of the enlargement process on the EU itself, particularly in changing its institutional balance and introducing the possibility of feed-back effects as a result of the Commission's expanded mandate in CEE. These implications have so far been little remarked upon or analysed, but they will play an important part in shaping the political dynamics of both the accession negotiations and the enlarged EU.

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