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EU Conditionality and Minority Rights:
Translating the Copenhagen Criterion into Policy

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In order to preserve a clear focus within this broad theme, the scope of the Forum was limited to four distinct but complementary themes, each of which had its own coordinator. Theme 1: 'The Idea and the Dynamics of the European Constitution' was coordinated by Professor Neil Walker; Theme 2: 'The 'East' Side of European Constitutionalism' was coordinated by Professor Wojciech Sadurski; Theme 3: 'The Constitutional Accommodation of Regional and Cultural Diversity' was coordinated by Professor Michael Keating; and Theme 4: 'The Market and Countervailing Social Values in the Constitution of Europe' was coordinated by Professor Martin Rhodes.

Abstract

Human and minority rights map an area in which the EU's external relations have pushed for a (partial) rethinking of the EU's internal values, objectives and policies. While minority issues have been at the forefront of the enlargement rhetoric and are often singled out as a prime example of the EU's positive stabilising impact in Central and Eastern Europe (CEE), the EU has in fact promoted norms which lack a basis in EU law and do not directly translate into the *acquis communautaire*. The analysis of EU conditionality presented in this paper will proceed in two steps. Firstly, the EU's minority criterion will be 'unpacked' both in terms of its inherent dilemmas and the way in which the EU translated it into an institutional process. Secondly, this paper locates the EU's minority criterion in the domestic political context of three accession countries (Hungary, Slovakia, Romania) in order to establish the balance between internal and external incentives for policy change and the effectiveness of EU conditionality. The empirical evidence suggests that, on balance, international actors and a vaguely defined European norm framed the debates and perceptions and affected the timing and nature of specific pieces of legislation, while the domestic political constellations and pressures ultimately had a more significant effect on the institutional and policy outcomes.

Keywords

EU conditionality, Copenhagen criteria, minority rights, EU monitoring, Regular Reports, Hungary, Slovakia, Romania.

Introduction¹

Minority rights have been a prominent and paradoxical issue during the EU's eastward enlargement. The first Copenhagen criterion of 1993, which spells out the political conditions of EU membership, enshrined 'the respect for and protection of national minorities' as a condition for accession, and the Commission has regularly monitored the compliance with this criterion. While minority issues have been at the forefront of the enlargement rhetoric and are often singled out as a prime example of the EU's positive stabilising impact in Central and Eastern Europe (CEE), the EU has in fact promoted norms which lack a basis in EU law and do not directly translate into the *acquis communautaire*. Minority rights fall outside the EC's and the EU's traditional catalogue of fundamental freedoms and competences. The gradual development of an EU 'rights agenda' has stayed clear of an explicit endorsement of minority rights, while at best opening up indirect avenues for the discussion and promotion of these rights. Therefore, the first Copenhagen condition marked a significant disjuncture through the explicit mention of minority protection.

The Treaty of Maastricht (1992) entrenched, for the first time in the history of the EU, specific provisions on fundamental rights and a vague recognition of the requirement that the Community shall respect 'national and regional diversity' within the Member States (then Articles F TEU and 128 TEC).² The European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights effectively established a link between membership of the Council of Europe and EU membership. While the ratification of the Convention is an explicit obligation for members of the Council of Europe, it is a *de facto* condition for EU membership. Moreover, the European Court of Justice uses the ECHR as a privileged source and a standard when reviewing EU acts and Member State laws adopted for the implementation of EU law. In addition to the 'burgeoning jurisprudence' on the issue of minority rights protection in the European Court of Human Rights,³ the European Parliament has performed a showcasing role for the EU, in particular during the early 1990s, by passing numerous resolutions on human rights and minority protection, thereby reinforcing the internal discourse swell on minority rights.

The EU's external relations provided the key momentum for the internalisation of an explicit commitment to human rights and a greater awareness of minority issues. Thus, human and minority rights map an area in which external relations have pushed for a (partial) rethinking of the EU's internal values, objectives and policies. The nexus between human rights and conditionality had been an integral part of the EU's external relations since the Luxembourg European Council of 1991.⁴ The EU's eastward enlargement increasingly blurred the distinction between the EU's internal policy and external relations, and an extension of this type of normative conditionality appears to have been a

1 This Working Paper is based on research conducted within the framework of a Leverhulme Research Fellowship. It has also been supported by an LSE STICERD grant and a Jean Monnet Fellowship at the EUI. Earlier versions of this paper were presented at the conference 'Minority Protection and the EU: The Way Forward', European Academy, Bolzano, 30-31 January 2004 and at the European Forum, Robert Schuman Centre, EUI, 15 April 2004.

2 Article F TEU stipulated that 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.' See <http://www.eurotreaties.com/maastrichtec.pdf>.

3 See Geoff Gilbert, 2002. 'The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights', *Human Rights Quarterly*, 24 (3), pp. 736-780.

4 For a reminder of the limits of this human rights conditionality, see Bruno de Witte and Gabriel N. Toggenburg, 2004. 'Human Rights and Membership of the European Union', in: Steve Peers and Angela Ward, (eds.), *The EU Charter of Fundamental Rights: Law Context and Policy*. Oxford: Hart, pp. 61-62. For a study of the inconsistencies of EU conditionality towards non-CEEC third countries see Karen Smith, 2001. 'The EU: Human Rights and Relations with Third Countries', in: Karen Smith and Margot Light, (eds.), *Ethics and Foreign Policy*. Cambridge: Cambridge University Press, pp. 185-203.

logical step in the EU's adaptation to a new political environment. The emphasis on minority rights in addition to human rights, however, cannot fully be explained by this logic. It was the post-Cold War, post-imperial and post-communist political environment that highlighted the salience of minority issues and the potential for ethno-regional conflict amidst multi-faceted transition processes. A mixture of humanitarian, 'hard' and 'soft' security concerns informed the push for a greater internationalisation of minority rights in the early 1990s. Minority issues have a significant historical resonance in CEE.⁵ The experience of genocide, expulsion, coercion or accommodation is intrinsic to the emergence and development of many of the states in the region. After 1989 most of the post-communist countries prioritised the strengthening of central state capacity and the position of the titular nationality, thereby running the risk of discriminating against, alienating and politicising minority groups. The violent disintegration of former Yugoslavia and a number of intractable post-Soviet conflicts as well as a perception of further conflict potential in view of sizeable minorities in many East European countries (in Latvia the titular nationality accounts for only 58.2% of the population; while countries like Slovakia, Romania and Bulgaria have to accommodate politically organised Hungarian and Turkish minorities of 7-10%) informed the EU's approach.

The EU's political conditions for accession took shape against the background of a widening pan-European normative and institutional framework. In turn, EU conditionality has increased the visibility and political salience of minority issues in the CEECs and contributed. The nexus between democracy and human rights had always been at the core of the Council of Europe's self-definition and membership criteria. The quick engagement of the Council of Europe in CEE—Hungary became a member as early as 1990, followed by the Czech Republic and Poland in 1991—turned it effectively into an institutional stepping stone towards the EU. According to the Statute of the Council of Europe, any European state accepting the rule of law, human rights and fundamental freedoms qualifies for membership. Institutionally, these two vague conditions translate into the ratification of the European Convention on Human Rights and Protocol 6, which requires members to abolish the death penalty.⁶ The agreements between the Council of Europe and a member state leave room for tailor-made commitments and recommendations. Both the Parliamentary Assembly of the Council of Europe and the Committee of Ministers monitor a member's compliance with these accession agreements, and in a serious case of non-compliance a member can be requested to withdraw, or its voting rights on the Committee or in the Parliamentary Assembly can be temporarily suspended. In practice, however, even the suspension of voting rights is a rare occurrence. The EU's first Copenhagen criterion bears the imprint of the rather amorphous democratic conditionality of the Council of Europe. A country's democratic credentials had been a prominent point of reference, though not an explicitly formulated condition during the EU's southern enlargement in the 1970s. After the EU Copenhagen criteria were formulated, but before the accession negotiations began, the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) of 1995 put in place a complex and legally binding pan-European instrument for the continuous assessment of minority issues. Thus, the democracy criterion of the Council of Europe was extended to include minority rights. Members (and non-members) of the Council of Europe can choose, however, whether or not they want to ratify the FCNM.

The CSCE/OSCE process from 1990 onwards further enhanced this normative basis by making explicit the link between democracy, human rights, conflict-prevention and minority protection.⁷ The CSCE Paris Charter of 1990 stipulated that 'peace, justice, stability and democracy, require that the

5 For a general history that is sensitive to the issue of minorities in Eastern Europe see R. J. Crampton, 1994. *Eastern Europe in the Twentieth Century—and After*. London: Routledge.

6 Pamela A. Jordan, 2000. 'Does Membership Have Its Privileges?: Entrance into the Council of Europe and Compliance with Human Rights Norms', *Human Rights Quarterly*, 25, pp. 662-663.

7 See Chapter 4 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 5-29 June 1990: <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>. The tension between advocates of a traditional concept of state sovereignty and those who favoured a reformulation of sovereignty to include an obligation of minority protection first surfaced at the CSCE Copenhagen meeting in 1990.

ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created.⁸ The OSCE General Recommendations of 1996, 1998 and 1999 subsequently attempted to refine a European standard of minority protection.⁹ The EU explicitly adopted the CSCE norms in the context of the Badinter Arbitration Committee. Its emphasis on the rights of ‘peoples and minorities’ was affirmed by the EU Foreign Ministers’ Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Soviet Union and the Declaration on Yugoslavia of 16 December 1991 which made recognition conditional upon, amongst other things: ‘guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE’.¹⁰ While the EU borrowed the link between democracy and human (and later) minority rights from the Council of Europe, the CSCE/OSCE provided the EU with the security-based rationale or justification for minority protection, a combination that resonated strongly with the Member States in the early 1990s.

In the absence of a ‘clean’ methodological take on conditionality and its presupposed causal effects,¹¹ the analysis presented in this paper will proceed in two steps. Firstly, the EU’s minority criterion will be ‘unpacked’ both in terms of its inherent dilemmas and the way in which the EU translated it into an institutional process. Where has the EU leverage been anchored and how has it been communicated during the accession process? A closer look at the EU’s monitoring mechanism, including the Commission’s Regular Reports and perceptions from within the Commission shortly before the Commission turnover and the dissolution of DG Enlargement,¹² highlight the scope and limits of EU conditionality in the area of minority rights. Secondly, this paper will locate the EU’s minority criterion in the domestic political context of three accession countries (Hungary, Slovakia, Romania): what is the balance between internal and external incentives for policy change? How effective has EU conditionality been? The conclusion will draw some lessons from the enlargement process for the post-accession period. The paper is located in the wider discussion about the ‘European legal space’ consisting of overlapping, interlocking and evolutionary legal and political regimes.¹³ Moreover, it is concerned with the domestic-international nexus between ‘norm-makers’ and ‘norm-takers’ and, thus, resonates with the debate between liberal or regime theorists and constructivists. For the former norms constrain behaviour and facilitate cooperation among rational, self-interested actors; for the latter norms have constitutive effects on interests and identities. As Checkel has argued convincingly, constructivists tend to overpredict international normative influence, underplay the role of domestic agency and social context and fail to specify the diffusion mechanism by which norms are

8 The text cited is in the ‘Human Dimension’ section; see <http://www.osce.org/docs/english/1990-1999/summits/paris90e.htm#Anchor-Huma-3228>

9 See the Hague Recommendations on the Education Rights of National Minorities (1996), the Oslo Recommendations on the Linguistic Rights of National Minorities (1998), and the Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999): <http://www.osce.org/hcnm/documents/recommendations/index.php3>

10 In its first opinion, the Badinter Committee advised that the successor states to Yugoslavia must abide by ‘the principles and rules of international law, with particular regard for human rights and the rights of peoples and minorities’. For the full text see Alain Pellet, 1992. ‘The Opinions of the Badinter Arbitration Committee: A Second Breadth for the Self-Determination of Peoples’; and *ibid.*, ‘Appendix: Opinions No. 1, 2 and 3 of the Arbitration Committee of the International Conference on Yugoslavia’, *European Journal of International Law*, 3 (1), pp. 178-185.

11 For a discussion of the methodological pitfalls in the study of conditionality, see James Hughes, Gwendolyn Sasse and Claire Gordon, 2004. *Europeanization and Regionalisation in Central and Eastern Europe during the EU’s Eastward Enlargement: The Myth of Conditionality*. New York: Palgrave, ch. 1.

12 Here the author’s interviews with 16 Commission officials (DG Enlargement, DG Justice and Home Affairs, DG External Relations, DG Employment and Social Affairs, Legal Service), conducted in Brussels on 12-13 January 2004 and 19-20 February 2004 have been a valuable source.

13 For a discussion of the concept of the ‘European legal space’ and the need to analyse the interaction between different European regimes, see Christopher Harding, 2000. ‘The Identity of European Law: Mapping Out the European Legal Space’, *European Law Journal*, 6 (2), pp. 128-147.

transmitted.¹⁴ Although it is not the aim of this paper to enter into the intricacies of this methodological and ideological debate, the combination of EU conditionality, the norm of minority protection and the context of post-communist transition make for a rich empirical testing ground for these issues.

Minority Rights: A Challenge for Conditionality and Compliance

Conditionality is widely seen as a primary means of ‘democracy promotion’ and ‘Europeanisation’ in CEE.¹⁵ The clear incentive structure for the candidate states and the power asymmetry characterising the interaction between the EU and the accession countries underpin the scope for the EU to shape the design of structures and policy processes in the accession countries. As yet few studies have systematically analysed the impact of conditionality on specific policy areas or countries and identified a more uneven and inconsistent EU impact than generally assumed.¹⁶ The issue of minority rights is a test for the very notion of conditionality. A consensus on norms and rules and their transmission within the EU and beyond, clear benchmarks and enforcement mechanisms ensuring credibility, consistency and continuity over time are at the centre of a meaningful definition of conditionality. The political Copenhagen criterion generally, but in particular the reference to national minorities, defies these basic principles of conditionality. ‘Europeanisation’ has been defined as ‘ways of doing things’ which are first defined and consolidated in the making of EU decisions and then incorporated into ‘the logic of domestic discourse, identities, political structures and public policies.’¹⁷ The issue of minority rights does not easily fit these conceptual boundaries either. Put another way, can the EU have an impact on minority issues without an internal consensus on the norms and practices in this field?¹⁸ The Treaty of Amsterdam (TEU) of 1997 illustrates the underlying ambiguity best: it incorporated all of the values set out by the EU in the first Copenhagen criterion in Article 6 (1) as ‘liberty, democracy, respect for human rights and fundamental freedoms and the rule of law’, but expressly excluded ‘respect for and protection of minorities’. That Article 6 (1) draws on the Copenhagen criteria is specifically alluded to in Article 49, which specifies that the principles laid out in Article 6 (1) are preconditions for any state applying for EU membership.¹⁹ This inconsistency was addressed in a footnote in the Commission’s Regular Reports of 2002. It states that ‘the political criteria defined at Copenhagen have been essentially enshrined as a constitutional principle in the

14 Jeffrey T. Checkel, 1999. ‘Norms, Institutions, and National Identity in Contemporary Europe’, *International Studies Quarterly*, 43, p. 85.

15 Karen Smith, 2001. ‘Western Actors and the Promotion of Democracy’, in: Jan Zielonka and Alex Pravda, (eds.), 2001. *Democratic Consolidation in Eastern Europe, Volume 2, International and Transnational Factors*. Oxford: Oxford University Press, p. 31; Jan Zielonka, ‘Conclusions: Foreign Made Democracy’, *ibid.*, p. 511. For a general discussion of EU conditionality, see Heather Grabbe, 2001. ‘How does Europeanisation Affect CEE Governance? Conditionality, Diffusion and Diversity’, *Journal of European Public Policy*, 8 (6), pp. 1013-1031.

16 See, for example, James Hughes, Gwendolyn Sasse and Claire Gordon, 2004. ‘Conditionality and Compliance in the EU’s Eastward Enlargement: Regional Policy and the Reform of Sub-national Governance’, *Journal of Common Market Studies*, 42 (3), pp. 523-551.

17 C. M. Radaelli, 2000. ‘Whither Europeanization: Concept Stretching and Substantive Change’, *European Integration online Paper (EioP)*, 4 (8), p. 3.

18 Starting from a similar premise, Alexandru Grigorescu has traced the unsuccessful transmission of the democratic norm of transparency in CEE to the lack of resonance of this norm within the international organisations promoting it. See Alexandru Grigorescu, 2002. ‘European Institutions and Unsuccessful Norm Transmission: The Case of Transparency’, *International Politics*, 39, pp. 467-489. Despite an otherwise instructive case study, his conclusion that the transmission of minority protection benefits from the fact that international organisations ‘cannot truly be accused of lack of such tolerance because there are no actual ‘minorities’ within International Organisations’ (p. 482), remains questionable.

19 http://europa.eu.int/eur-lex/en/treaties/dat/eu_cons_treaty_en.pdf.

Treaty on the European Union'.²⁰ The wording falls short of an explicit endorsement of the minority criterion, but it suggests that minority protection is subsumed under Article 6 (1).

Thus, the minority 'condition' posed several compliance problems during the accession process: firstly, it lacked a firm foundation in EU law and concise benchmarks. The practices of the current Member States range from elaborate constitutional and legal means for minority protection and political participation to constitutional unitarism and the outright denial that national minorities exist. Secondly, minority rights have never been an internal EU political priority. Thirdly, the question of what constitutes a 'national minority' and the nature of minority rights are deeply disputed in international politics and law. These dilemmas were further compounded by the fact that the first Copenhagen criterion had to be 'fulfilled' by the time the accession negotiations got underway, thereby limiting the EU's subsequent leverage in the political sphere. Moreover, the minority criterion did not figure prominently in the EU's pre-accession funding. PHARE has been the main instrument for the design and delivery of EU policy in CEE. Established as early as 1989, the programme was reoriented to address the accession priorities set by the EU in 1997. PHARE did not have a separate budget line for assistance in the policy area of minority protection, and the most closely related activity heading 'civil society and democratisation' accounted for only about one per cent of the total PHARE funds distributed.²¹

The EU's Monitoring Exercise

The Commission's annual Regular Reports, following on from the Opinions of 1997 and the Accession Partnerships, have been the EU's key instrument to monitor and evaluate the candidates' progress towards accession.²² The Reports have a formulaic structure, which broadly follows the Copenhagen criteria and thereby permits cross-country comparisons. The political Copenhagen criterion rests on generic concepts, such as 'democracy', the 'rule of law' and 'the respect for and the protection of national minorities', and, therefore, leaves a wide scope for interpretation. Moreover, it was not based on the *acquis* as such. The Commission had to find a different way to operationalise the political criteria. In the case of the minority criterion it based its monitoring exercise on a set of values and non-EU documents, namely the European Convention on Human Rights (which by now has become part of the *acquis*), the major OSCE documents of the early 1990s and the UN Declarations. Though not a source of inspiration and legitimacy at the outset of the accession process, over time the FCNM of 1995 became the Commission's primary instrument for translating the minority criterion into practice.²³ Accordingly, the Regular Reports frequently reminded the candidate states to sign and ratify the FCNM—despite the fact that several EU member states, such as Belgium, France, Greece, Luxembourg and the Netherlands, have not done so.

The explicitly stated objective of the Regular Reports is to review each candidate country according to 'the rate at which it is adopting the *acquis*.' This stipulation, laid down by the Luxembourg Council

20 See, for example, Footnote 3 in the 2002 Regular Report on Bulgaria's Progress Towards Accession, p. 18; http://europa.eu.int/comm/enlargement/report2002/bu_en.pdf

21 See http://europa.eu.int/comm/enlargement/pas/phare/statistics/commit_sector.pdf

22 For a more detailed review of the monitoring exercise, see James Hughes and Gwendolyn Sasse, 2003. 'Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs', *Journal on Ethnopolitics and Minority Issues in Europe*, 1, pp. 1-36. The bodies set up under the Europe Agreements, such as the annual meeting of the Association Committee and the Joint Parliamentary Committee provided a limited additional forum for the discussion of political issues (incl. minority protection).

23 Author's interviews with officials from the Country Desks in DG Enlargement, the Horizontal Co-Ordination Unit and the Legal Service, Brussels, 12-13 January 2004. The manual, which was prepared each year by the Horizontal Co-Ordination Unit for the Country Desks in advance of the drafting of the Regular Reports, listed the FCNM as an explicit point of reference.

of December 1997,²⁴ equates integration with the speedy adoption of the *acquis*. Thus, once the accession negotiations began the emphasis was not on the monitoring of the broadly stated normative conditions of the political Copenhagen criterion. The introduction to the first Reports of 1998 states that it is the EU's priority 'to maintain the enlargement process for the countries covered in the Luxembourg European Council conclusions'. This wording suggests that harsh criticism was to be avoided in order to sustain progress along the envisaged 'road map'. The Reports are a compendium of results compiled from a variety of sources, for example the candidate countries, the Council of Europe, the OSCE, International Financial Institutions and NGOs, as well as 'assessments made by Member States',²⁵ especially in the political sphere. It is difficult to measure the relative weight of these inputs and to assess the process by which they were filtered and evaluated, but it is clear that in the area of minority issues the Council of Europe and the OSCE were privileged sources of information. During the drafting stage, the Commission also scheduled a regular annual briefing session in Brussels with the Council of Europe (incl. the Chairman of Advisory Committee) and the OSCE (incl. the Director of the Office of the HCNM).²⁶ The involvement of the NGO sector in the preparation of the Reports is less apparent. Due to the more specific NGO agendas, the Commission had no official 'privileged relations' with any one of them, although groups like Transparency International or Human Rights Watch were regularly consulted. As a Commission official closely involved in the drafting process put it, 'we were dependent on solid information which had to be used in a careful manner. We used as many different sources as possible, provided we could double-check them.'²⁷ Issues would rather be left out if 'hard' evidence was missing: 'If a country had proven the Commission wrong on a single issue, the whole exercise would have suffered tremendously.'²⁸

The whole process, including cooperation between the Country Desks in DG Enlargement and the relevant line DGs, was overseen by a Horizontal Co-ordination Unit within DG Enlargement (about 25 people). Each year this Unit produced a manual listing the issues to be addressed by the Country Desks²⁹ and streamlined the draft reports in terms of substance and language in order to ensure consistency and comparability within and across reports. As one official pointed out, 'there has been a tendency for country teams to go native, both in terms of overly positive or negative assessments. It was our job to maintain the balance.'³⁰ A colleague from the same unit detected 'a tendency to tone down or neutralise the language, while not dropping issues completely'.³¹ Amidst a continuous flow of information from different organisations, the monthly updates and a draft report from the EU delegations in the candidate countries, contributions by the candidate countries' governments and the bullet-point reminder provided by the Horizontal Co-Ordination Unit marked the starting-point for each report. Over time, previous reports became a further point of reference, in particular their 'set

24 European Council, Luxembourg, 12-13 December 1997, Presidency Conclusions. <http://ue.eu.int/Newsroom/LoadDoc.asp?BID=76&DID=43659&from=&LANG=1>

25 The UK government apparently provided the most systematic contributions throughout the monitoring process; author's interviews with Commission officials, DG Enlargement, 12-13 January 2004. Though not an EU-member Russia regularly and forcefully addressed its criticism of the rights of the Russian-speakers in Estonia and Latvia to all the Member States, the Commission and the EU presidency.

26 'These meetings helped us to get a flavour of the wider process we were part of'; author's interview with a Commission official, formerly Horizontal Co-ordination Unit, DG Enlargement, 13 January 2004.

27 Author's interview with a Commission official, formerly DG Enlargement, 13 January 2004.

28 Ibid.

29 The check-list on minority issues in the Unit's handbook for 2002 included the following: ratification and implementation of the FCNM; the situation of the Roma, ethnic Russians and other minorities; citizenship legislation, rate of naturalisation, stateless children, non-citizens' passports; active policies to integrate minorities; language legislation/language training programmes; professional restrictions; minority rights ombudsman (if relevant).

30 Author's interview with a Commission official, formerly DG Enlargement, 13 January 2004.

31 Author's interview with a Commission official, Horizontal Co-ordination Unit, DG Enlargement, 13 January 2004.

phrases, such as the references to international or European standards'.³² The Commission officials involved in the actual drafting of the Reports generally emphasised that they did not feel bound or restricted by the previous reports or the Horizontal Unit's guidance when producing their first draft. Nevertheless, some admitted that over time the submissions by the EU delegations became 'relatively complete' and 'provided the jargon'.³³ The in-house drafting usually began around the end of June once all the different submissions had been received and the meetings with other international organisations had been held. Over the summer both the relevant line DGs and the Country Desks were involved in the revising of the drafts overseen by the Horizontal Unit. The texts were generally ready for consultation with the Legal Service in September.

The Reports were treated as confidential documents until their official release in October or November. 'The candidate countries were often trying to find the weakest link in the chain to obtain bits of the report in advance—and sometimes it worked.'³⁴ About six weeks before the publication of the Reports, high-level civil servants from the candidate countries (usually the chief negotiators) were briefed about the key findings by the Director General, the head of the Horizontal Co-ordination Unit and further Commission officials involved in the monitoring exercise. At this stage, the conclusions to the Reports had not been finalised yet, leaving the candidate countries a final chance to submit documentation regarding recent developments. In between the annual Reports—usually once per presidency—the Country Desks provided the Council with shorter updates along the lines of the Reports. The candidate countries and the EU delegations regularly provided follow-up information for these updates. For the first-wave accession countries, the Commission issued Comprehensive Monitoring Reports in the autumn of 2003, which dropped the political section and focused solely on the *acquis*. Minority-related issues were mentioned in the context of non-discrimination under chapter 13 (Social Policy), thereby reflecting a wider institutional development: over time the line DGs had started to build more direct contacts with the candidate countries, thereby gradually moving the emphasis away from DG Enlargement. DG Justice and Home Affairs, DG Employment and DG Regional Policy are now becoming the Commission's focal point for minority-related issues.

The Characteristics of the Reports

A comparative study of the Regular Reports 1998-2002 reveals their three key characteristics with regard to the minority criterion: a hierarchy of minority issues, ad hocery and inconsistencies resulting from the lack of clear benchmarks and a dilemma of implementation. Although most of the ten CEE candidate countries have significant minority populations, only two minority groups are consistently stressed in the Regular Reports: the Russophone minority in Estonia and Latvia, and the Roma minorities of Bulgaria, the Czech Republic, Hungary, Romania and Slovakia. In the first Reports on Bulgaria, Hungary, Romania and Slovakia, for example, the Roma are the only minority issue commented on at all, despite the fact that there are numerically greater minority groups in these countries. This 'hierarchy' of minority issues reflects the EU's interest in good relations with its most powerful neighbour and energy supplier Russia and its own soft security concerns linked to migration. Furthermore, a non-territorialised, internally diverse and marginalised minority like the Roma, is a politically less sensitive group to focus on, compared with territorialised and politically mobilised minorities, such as the Hungarians in Slovakia and Romania or the Turks in Bulgaria. Undoubtedly, the Roma face severe problems of systematic discrimination, political and social exclusion, segregation, and poverty, but this is by no means a specific feature of the candidate countries.³⁵

32 Author's interview with a Commission official, DG Enlargement, Brussels, 12 January 2004.

33 Author's interview with a Commission official, DG Enlargement, Brussels, 13 January 2004.

34 Author's interview with a Commission official, formerly Horizontal Co-Ordination Unit, DG Enlargement, 13 January 2004.

35 See Rachel Guglielmo, 2004. 'Minority Protection. Long-term Implications of the EU Accession Process', Paper presented at the conference *Minority Protection and the EU: The Way Forward*, European Academy, Bolzano, 30-31 January.

In essence, the Reports are a patchwork of formulaic codes encapsulating ‘progress’ on the road to membership. The general commitment of the candidate countries to improve minority protection is taken at face value and described positively as ‘continuing commitment to the protection of minority rights’, ‘a number of positive developments’, ‘significant progress’, ‘considerable efforts’, ‘considerable progress’, ‘consolidating and deepening [...] the respect for and protection of minorities’.³⁶ Some candidate countries earn generic praise, for example through the statement that minorities are ‘well integrated into Hungarian society’ or that Hungary has a ‘well-developed institutional framework protecting the interests of its minorities and promoting their cultural and educational autonomy’.³⁷ The Regular Reports are designed in a way that renders them a cumulative success story for each candidate country. Positive developments are recorded, even when the previous Reports had not specified any problems in these areas.

The Regular Reports illustrate the EU’s difficulties in measuring progress in the absence of clear benchmarks in the field of minority rights. The Reports track the adoption and amendment of laws on citizenship, naturalisation, language and elections, the establishment of institutions that manage minority issues within the executive or legislative structures, and the launch of government programmes to address minority needs. Trends are evaluated by numerical benchmarks, such as the number of minority members obtaining citizenship, the number of requests for naturalisation, the pass rate for language or citizenship tests, the number of school or classes taught in the state or minority languages, the number of teachers trained to teach in the state or minority languages and the extent of media broadcasting in minority languages.

The Reports make frequent general references to ‘international standards’ or ‘European standards’ and cross-reference the recommendations, activities and documents of the Council of Europe and the OSCE. This practice is most evident in the case of Latvia and Estonia, where the Europe Agreements included a reference to the need to comply ‘inter alia with the undertakings made within the context of the Conference on Security and Cooperation in Europe (CSCE) and the Organisation for Security and Cooperation in Europe (OSCE)—the rule of law and human rights, including the rights of persons belonging to minorities’.³⁸ The 1998 Report on Latvia, for example, states that the Commission based its evaluations of Latvia’s citizenship and naturalisation policies on the extent to which they complied with OSCE recommendations.³⁹ The 1999 Report on Latvia asserts that: ‘Latvia now fulfils all recommendations expressed by the OSCE in the area of naturalisation and citizenship’.⁴⁰ Yet, fresh concerns over the linguistic rights of the Russophone minority are expressed in the 2001 Report on Latvia, which broadly refers to the ‘joint efforts’ of the EU, the OSCE and the Council of Europe to establish guidelines for the new language law.⁴¹ The Reports indicate that the EU has also relied on the OSCE (and presumably also the Council of Europe) for some basic information and data gathering activities that are essential to professional monitoring. For example, the 1998 Report on Estonia quotes OSCE data on the number of minority members who gained citizenship. Alternatively, the unavailability of data is recorded, for example with regard to the implementation of language legislation in Slovakia in the 2000-2002 Reports.⁴²

36 Regular Report on Romania’s progress towards accession, 1998 (hereafter referred to as ‘Report on Romania, 1998 etc.’), p. 12; Report on Romania, 2001, p. 29; Report on Slovakia, 1999, p. 16; Report on Slovakia, 2002, p. 33; Report on Estonia, 2000, p. 20; Report on Estonia, 2001, p. 23.

37 Report on Hungary, 2001, p. 22; Report on Hungary, 2002, p. 30. The Reports are available at http://europa.eu.int/comm/enlargement/index_en.html.

38 See OJ L68 of 9.3.98, pp. 3-4 and OJ L26 of 2.2.98, pp. 3-4.

39 Report on Latvia, 1998, p. 11.

40 Report on Latvia, 1999, p. 17.

41 Report on Latvia, 2001, p. 26.

42 Report on Estonia, 1999, p. 13; *ibid.*, 2000, p. 18; Report on Slovakia, 2000, p. 20; *ibid.*, 2001, p. 23; *ibid.*, 2002, p. 32.

Ad hocery and the borrowing of different external ‘standards’ have given rise to ambiguity and internal inconsistencies. The 2002 Reports on Estonia and Latvia, for example, report on the one hand that the OSCE mission in these states closed in late 2001, including the official OSCE reasons for this decision, whereas on the other hand, highlighting the EU’s continued concerns. The Report on Latvia, for example, ‘urged’ the country to ratify the FCNM and noted EU and OSCE concerns regarding the naturalisation and effective political participation of minorities in the context of restrictive language laws, including a reference to the 2002 ruling of the European Court of Human Rights against Latvia’s narrow application of the language proficiency criterion in the national parliament. Despite the inherent contradiction, the Report concluded that ‘the country has made considerable progress in further consolidating and deepening [...] respect for and protection of minorities’.⁴³ As a Commission official put it: ‘Although the closure of the OSCE missions was not a formal condition, the Commission had a clear interest in it’.⁴⁴ The overall assessment of the Roma issue, in particular, hovers uncomfortably between the realisation that the socio-economic and political situation of the Roma has not improved and detailed lists of new activities and programmes targeting the needs of the Roma.⁴⁵ The fact that the Regular Reports harshly criticise the treatment of the Roma in the candidate countries, which are generally recognised as continuing ‘to fulfil the political Copenhagen criteria’, underlines that minority issues were not the EU’s priority during the accession process. As a Commission official in DG Enlargement put it: ‘There has been a constant inherent tension between the fulfilment of the political criteria and the criticism of the Roma treatment. We also lack benchmarks to determine when the issue would be considered sufficiently ‘resolved’. As long as the situation wasn’t getting any worse, we tried to be as consistent as possible by focusing on the direction of policy-making.’⁴⁶

Throughout the accession process the Commission’s emphasis has shifted gradually from the adoption of the *acquis* towards issues of ‘capacity’ and implementation. However, the Regular Reports demonstrate that the Commission is less equipped to monitor and follow-up on problems of implementation. In the area of minority policies these problems are dealt with in general terms, listing the lack of funding, weak administrative capacity, understaffing and the low levels of public awareness in the candidate countries as the main shortcomings. On the one hand, the ‘gap between policy formulation and implementation’ is addressed most explicitly with reference to the Roma, for example in the Reports on Slovakia in 2000 and 2001.⁴⁷ Similarly, the potential implications of weak policy implementation are referred to most explicitly in the 2002 Report on Bulgaria, which obliquely notes that there are ‘signs of increased tension between the Roma and ethnic Bulgarians’.⁴⁸ On the other hand, the EU and the candidate countries at times appear to be acting out a charade on Roma policy. For example, the 1999 Report on Bulgaria states: ‘Significant progress was achieved concerning further integration of Roma through the adoption of a Framework Programme for ‘Full Integration of the Roma Population into the Bulgarian Society’ and establishment of relevant institutions at central and regional level’.⁴⁹ By what measure this formal adoption of a programme marks ‘significant progress’ is not clear, and two years later, little of this programme had been implemented.⁵⁰

43 Report on Latvia, 2002, pp. 30-35.

44 Author’s interview with a Commission official, DG Enlargement, Brussels, 12 January 2004.

45 This inherent tension is particularly striking in the Reports on the Czech Republic, which refer to the construction of a wall in Ušti nad Lábem that physically separates Roma and non-Roma residents. See the Report on the Czech Republic, 1999, pp. 16-17; *ibid*, 2000, pp. 25-27.

46 Author’s interview with a Commission official, DG Enlargement, 13 January 2004.

47 Report on Slovakia, 2000, p. 22; *ibid*, 2000, p. 31.

48 Report on Bulgaria, 2002, p. 33. Without referring back to this alarmist scenario, the 2003 Report offers a much more optimistic assessment based on more realistic budgetary provisions for a government programme: ‘On the whole, initiatives have started to address the situation of the Roma minority’, see Report on Bulgaria, 2003, p. 26.

49 Report on Bulgaria, 1999, p. 75.

50 See Iavor Rangelov, 2001. ‘Bulgaria’s Struggle to Make Sense of EU Human Rights Criteria’, *EUMAP*, 1 October, available at: <http://www.eumap.org/articles/content/10>

It seems as if more lip service can be paid to the Roma issue by the candidate countries' governments without risking domestic political tensions or seriously straining the relations with the EU. Last but not least, EU-inspired policies can also have some counterproductive effects. In 2001 Romania adopted a package of policies targeting the Roma for which it gained praise in the Regular Report 2002. In Romania's 2003 Report the Commission notes progress, but also an overall 'uneven' implementation of the Roma Strategy of 2001.⁵¹ The package included the appointment of advisors who would advise the regional prefects on Roma-related issues. Though formally implemented, this measure has done little to change perceptions or policy outcomes.⁵² It has, however, separated 'Roma issues' from mainstream policy-making reinforces marginalisation and contributes to a growing frustration among the office holders, Roma activists and the wider Roma community. Moreover, there is a misfit between the political and civil rights promoted by the EU and other international organisations, which the Roma at large have not benefited from, and the need for tangible social and economic rights in a post-communist context of high Roma unemployment.

Views from 'Inside': The Perceptions of Policy-Makers

Judging by the author's interviews in the Commission,⁵³ the notion of a double standard now occupies a prominent position in the perceptions of policy-makers currently or previously involved in the EU's monitoring of minority rights in the accession countries. Not all of them accepted that such a double standard exists, but even those who argued against its existence or relevance brought up the issue without being prompted to do so, thereby illustrating an acute awareness of the grey zone in which the Commission has had to define the parameters of its monitoring exercise. There is widespread normative agreement that a double standard should not guide EU policy: 'there shouldn't be any double standards, in particular as the Commission doesn't have any competence in the area of minority rights'. In addition to references to the EU's lack of legal competence, Commission officials also compared the situation in the old and new Member States: 'one has to keep in mind the whole time that the situation isn't perfect inside the EU either, and we certainly can't expect more than in the current Member States, in particular given the new members' weak financial resources.' The reference to a 'virtual report' has become a standard phrase inside the Commission: 'if you took the worst case from the current Member States on every issue, this virtual candidate would not qualify for EU entry'. Put differently, a certain drive to 'create the perfect Member State' has inspired the EU's monitoring exercise. Commission officials involved in the drafting of the Reports have been aware of an inherent 'consistency problem', in particular in the sections which were not explicitly based on the *acquis*, most notably the political criteria. Moreover, some of them pointed out that 'the links as well as the distinctions between the political criteria and the other criteria were not always clear'. An awareness of the notion of a double standard is also reflected in 'the political decision not to comment on the political criteria any more in the 2003 Comprehensive Monitoring Report'. The Commission decided that it was against the logic of the accession process to monitor the political criteria again at the very end of the process, although some officials inside DG Enlargement had argued in favour of the inclusion of a political assessment in the final round of monitoring.

In the words of one Commission official, 'the Regular Reports marked the key moment in the accession process each year. They were carefully worded, and they were carefully studied.' At times there were 'long discussions about the wording' in specific sections of the Reports. In this context a

51 Report on Romania, 2003, p. 30.

52 István Pogány, 2003. 'The Impact of EU Enlargement on the Treatment of National and Ethnic Minorities in CEE', Paper given at the Workshop *Implications of Enlargement for the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, European University Institute, Florence, 28-29 November.

53 The following quotes, unless specifically footnoted, are taken from the author's interviews with 7 Commission officials from DG Enlargement (Country Desks and Horizontal Co-ordination Unit) which were conducted in Brussels on 12 and 13 January 2004.

Commission official admitted that ‘there is a lot of hidden meaning to the text’ of the Reports and that ‘the strange wording tends to reflect political compromises’. From the Commissions’ perspective the Reports are generally portrayed as being ‘pretty objective’. Behind this general consensus, however, there is some notable divergence in views: while one official from the Horizontal Co-ordination Unit described the result of the annual monitoring exercise simply as ‘a neutral report by a neutral body’, an official from the Legal Service was more critical: ‘the Reports are a far cry from an objective picture. They are too optimistic and lack in bite.’⁵⁴ In contrast to other Commission documents, DG Enlargement had a monopoly over the drafting process, thereby turning the Reports into ‘political documents of the Commissioner for Enlargement’. The Reports reflect the fact that ultimately the Commissioner had no interest in creating new obstacles, given that his main goal was to see the negotiations through to the end.⁵⁵ Despite this criticism, the official conceded that the 2003 Reports for Bulgaria, Romania and Turkey as well as the Comprehensive Monitoring Reports signalled an improvement in the structure, content and use of the monitoring exercise. Indeed, there was widespread agreement among Commission officials involved in the monitoring at different levels and stages of the process that the quality of the Reports had improved over time. The Comprehensive Monitoring Reports were strictly focused on the *acquis*, thereby allowing for an ‘all in all more pragmatic approach’ and making them ‘more objective’ than their predecessors.

In the view of some Commission officials involved in the monitoring, ‘the Regular Reports have increased the political relevance of the political criteria for the EU itself.’ As one Commission official from DG Justice and Home Affairs put it: ‘In many old Member States minorities have been a taboo. Now the Commission has given the issue a new emphasis, and at least we now recognise the need to address these issues.’ From here the official jumped to a very optimistic conclusion: ‘The new Member States will maintain this emphasis and help to overcome the fears of some old Member States. Their fears to open up a Pandora’s box of territorial and economic demands, for example by ratifying the FCNM, are bound to fade with the progress of European integration. France’s position will not be tenable for much longer, and Greece will follow.’⁵⁶ This rosy post-enlargement scenario did not resonate with the majority of the Commission officials interviewed by the author. Most of them simply referred to the fact that the process of European integration would have to take over from where the EU’s monitoring had left off. The view prevailed that the enlargement process had not had a ‘spill-over effect’ on the discussion about minority issues inside the Union, not even with regard to the Roma issue. The Commission officials spoke of a temporal coincidence between the enlargement process, the EU’s push for more comprehensive anti-discrimination legislation and the establishment of the Network of Independent Experts, which is funded by the Commission and began monitoring fundamental rights in the Member States in 2002. However, they did not identify a direct link between these developments.

Beyond some defensive and vociferous statements about the ‘success’ of the EU’s monitoring exercise, its actual impact has been described rather realistically in Commission circles. ‘In general’, one official said, ‘the Regular Reports were good for the EU to establish the candidates’ strengths and weaknesses, and they were good for the candidate countries because governments and civil society could refer to them to facilitate domestic policy changes.’⁵⁷ Another official described the impact of the Regular Reports as twofold: ‘their most immediate impact has been on legislation, but they have also influenced the mentality and public debate in each country. They have helped to redraw the line of political correctness, for example with regard to statements about the Roma. Implementation,

54 Author’s interview with an official from the Legal Service, Brussels, 13 January 2004.

55 Ibid. According to this official, the Hungarian Status Law (behind the scenes the Commission and the Legal Service were much more involved than the Reports suggest), the Sudeten Germans and the issue of German names in Poland were among the issues sidestepped by the Reports, while Russia’s concerns tended to be treated overly cautiously. The official also noted the overall absence of a critical engagement with the Reports in the European Parliament.

56 Author’s interview with a Commission official, DG Justice and Home Affairs, 12 January 2004.

57 Author’s interview with a Commission official, Horizontal Co-ordination Unit, DG Enlargement, 13 January 2004.

however, has only begun, and the momentum has to be kept alive.’ Last but not least, the impact of the EU’s monitoring exercise might be best understood as having a ‘lock-in effect’ and reinforcing existing trends. In the words of one Commission official, ‘we help them do what they are already doing anyway’. This balance and interaction between domestic and external incentives for policy change requires closer attention.

Domestic vs. External Incentives for Minority Rights

It is self-evident that domestic political will is required to generate sustainable policy outcomes inspired by external conditionality. The exact relationship between domestic political incentives and EU conditionality in the area of minority protection is difficult to pin down, and the interlocking conditions and recommendations of institutions like the EU, the OSCE and the Council of Europe make it impossible to disentangle their respective effects. Nevertheless, the timing of certain decisions, for example the adoption of international instruments or anti-discrimination legislation,⁵⁸ and the domestic political context of individual candidate countries provide insights into the effectiveness of EU conditionality and, more specifically, the conditions facilitating or limiting the EU’s impact.

Given the EU’s frequent references to external ‘standards’ of minority protection, in particular the FCNM, the ratification of this document by the candidate countries provides for a rough correlation between enlargement conditionality and a degree of commitment to minority policy in CEE. All ten CEE candidate countries signed the FCNM. Almost all of them signed up shortly after the document was opened for signature on 1 February 1995, though the process of ratification and implementation took longer. Only Latvia had still not ratified the document when joining the EU. The early commitment of the candidate countries to the FCNM contrasts with some of the old EU Member States that have still not ratified it.⁵⁹ Among the CEE countries, Bulgaria, Estonia, Poland and Slovenia added special declarations to the FCNM, a practice fairly evenly spread among EU Member States and candidate countries. The Bulgarian declaration, for example, cautiously refers to ‘the policy of protection of human rights and tolerance to persons belonging to minorities’ and stipulates that the ratification and implementation of the Framework Convention do not imply ‘any right to engage in any activity violating the territorial integrity and sovereignty of the unitary Bulgarian state, its internal and international security’.⁶⁰ Estonia’s declaration is concerned with specifying its own legal definition of ‘national minorities’, who are stated to be ‘citizens of Estonia who reside on the territory of Estonia; maintain longstanding, firm and lasting ties with Estonia; are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics; and are motivated by a concern to preserve together their cultural traditions, their religion or their language which constitute the basis of their common identity’.⁶¹ Similarly, Poland’s declaration affirms that it recognises as national minorities only those residing in the Republic of Poland who are Polish citizens. It also includes a reference to international agreements protecting ‘national minorities in Poland and minorities or groups of Poles in other States’.⁶² Slovenia’s declaration limits its definition of national minorities to ‘the autochthonous Italian and Hungarian national minorities’, but also states that the provisions also

58 Non-discrimination as an EU norm is rooted in the Treaties of Maastricht and Amsterdam, the Directives 2000/78/EC and 2000/43/EC and ECJ rulings. The adoption of the *acquis* involves anti-discrimination legislation and the implementation of the Race Equality Directive.

59 France has not even signed it; see <http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>

60 Bulgaria, Declaration of 7 May 1999.

61 Estonia, Declaration of 6 January 1997.

62 Poland, Declaration of 20 December 2000.

apply to ‘the members of the Roma community, who live in the Republic of Slovenia’, while excluding its numerically largest minority group, the Croatians.⁶³

The Council of Europe’s European Charter for Regional or Minority Languages (ECRML) was opened for signature as early as November 1992. It proved more controversial among candidate countries (and Member States), not least because of the specific obligations it imposes on the signatories, such as the establishment of a committee monitoring compliance. The Regular Reports record the ratification of the Charter by individual countries, but they do not use it as a standard point of reference comparable to the FCNM. By the end of March 2004 only three of the ten CEE candidates (Hungary, Slovakia and Slovenia) had ratified it.⁶⁴ All three countries ratified in the latter stages of the enlargement process, between 1998 and 2002, but they added specific, and rather complex declarations to it which tend to add to the ambiguity in defining the differences between a regional and a national language. Slovenia’s Declaration states that only the Hungarian and Italian languages ‘are considered as regional or minority languages’.⁶⁵ It also limits the number of provisions applied to the above-mentioned languages. Slovakia’s Declaration confers the status of regional or minority language to Bulgarian, Croatian, Czech, German, Hungarian, Polish, Roma, Ruthenian and Ukrainian. However, it also establishes a hierarchy of languages according to which Hungarian, followed by Ukrainian and Ruthenian, enjoy more far-reaching rights, for example the availability of pre-school education in a particular language as opposed to the right to apply for this type of education. The Slovakian Declaration also stipulates that it defines the ECRML’s term ‘territory in which the regional or minority language is used’ as that provided for by Slovak law as those ‘municipalities in which the citizens of the Slovak Republic belonging to national minorities form at least 20% of the population’.⁶⁶

In conjunction with the ratification of international instruments of minority protection, EU conditionality has also contributed to the salience of minority rights on the domestic political agendas in CEE⁶⁷ but a range of factors, such as the size of the minority, its location, resources and degree of political mobilisation, the relations between majority and minority groups, the involvement of kin states, the constitutional design of the new regime and its transition path, has interacted with external conditionality and produced varied policy outcomes. Hungary, Slovakia and Romania are instructive cases to demonstrate some of these similarities and differences.

Hungary: Minority Protection as a National Interest

Several countries legislated for minority protection, or were in the final stages of doing so, prior to the Copenhagen criteria. Some of these were inclusive measures, providing for autonomy arrangements and privileged quotas of representation in national parliaments. Hungary passed a law ‘On The Rights of National and Ethnic Minorities’ in 1993 that granted collective rights and cultural autonomy to 13 recognised minorities.⁶⁸ This law built on Article 68 in the amended Hungarian constitution of 1990, which had anchored the protection of ‘national and ethnic minorities’ as well as their collective participation in public life and representation through local and national government organisations.

63 Slovenia, Declaration of 25 March 1998. According to the 1991 census, there were 81,220 Serbo-Croat speakers, and 52,110 Croat speakers, but only 9,240 Hungarian speakers, 4,009 Italian speakers, and 2,847 Romani speakers. See http://www.ecmi.de/emap/slo_stat.html

64 Romania, the Czech Republic and Poland have signed, though not yet ratified the ECRML.

65 Slovenia, Declaration of 4 October 2000.

66 Slovakia, Declaration of 5 September 2001.

67 After the introduction of the Regular Reports all of the CEE candidates formally adopted government programmes to protect or integrate minority groups. According to EUMAP’s 2002 monitoring reports, Bulgaria, the Czech Republic, Hungary and Romania are committed to a comprehensive approach to minority protection, by policies to eliminate discrimination and actively promote minority identities. See EUMAP, 2002, p. 25.

68 http://www.riga.lv/minelres/NationalLegislation/Hungary/Hungary_Minorities_English.htm

Most of Hungary's minorities are quite small and not politically mobilised. On the whole, they had little impact on the 1993 Act. Instead, the historical resonance of the Treaty of Trianon (1920), which left large Hungarian territorialised minorities in neighbouring states (Slovakia, Romania, Serbia, Ukraine), has underpinned the political will in favour of minority protection both at home and abroad.

While the endogenous incentives for a far-reaching minority rights regime are easy to trace in the case of Hungary, the effects are more difficult to assess. In terms of intra-state relations, Hungary's policies have both encouraged bilateral agreements and provoked concern and angry responses from political groups in neighbouring countries. Even the 1993 law itself contained a dual agenda: the active strengthening of the cultural and linguistic identity of Hungary's minorities was bound to exert explicit and implicit pressure on the governments and minorities in neighbouring states. The implementation of the 1993 Act indicates further peculiarities: local governments receive payments to offset the costs of minority education, thereby creating an incentive to inflate the number of children requiring education in their own language. According to Hungarian government statistics of 1998, almost 45,000 primary-school children were enrolled in German-minority programmes, although the last census recorded only about 8,000 Germans living in Hungary.⁶⁹

Local minority self-governments (or councils) have mushroomed as a result of the simple procedure by which they are set up.⁷⁰ By 1999 there were already more than 1,400 registered across the country, half of which are Roma councils, followed by German councils as the second most represented group.⁷¹ These local councils, in turn, elect a council at the national level. In theory, the councils are supposed to have extensive consent and consultation rights with regard to laws impacting on minority issues, such as culture, education and the media. While there is evidence of such consultation between the national-level councils and the Hungarian parliament, the involvement of the local councils seems to be minimal. The main function of the councils, therefore, is to promote minority culture, but the limited funding at the local level has curbed their potential. While the national minority governments receive state funding according to the size of the minority, the local governments all receive a small flat sum. There is also evidence of local governments trying to shift responsibility for minority issues to the minority councils, especially in the case of the Roma. The election of the minority self-government councils takes place alongside the national elections in a two-ballot system. Anybody can vote for the members of self-governments irrespective of his/her nationality, which is not registered. The only restriction is that a vote can only be cast for one of the self-governments. It is hard to track voting patterns in these elections, but the emergence of a Serbian nationalist on a Croatian council or the popularity of German councils, which are associated with external funding and travel opportunities, suggest a range of voting motivations.⁷² The minority groups, in turn, are interested in high voter turnout to boost their national-level funding.

Most importantly, the progressive 1993 law represents only one of several elements of Hungary's minority policy. The highly controversial Hungarian 'Status Law' of 2001, giving rights and entitlements to Hungarians living in other countries, brings the primary rationale behind the 1993 Act to a logical conclusion but can hardly be seen to contribute to the consolidation of good-neighbourly relations and stability within neighbouring states.⁷³ Moreover, Hungary produced a draft anti-discrimination law in the second half of 2003, suggesting a slow uptake of minority-related issues

69 See Deets, p. 39.

70 Local self-governments are either set up by the local government or by the initiative of five minority members who gain the support of 100 people in the elections.

71 Deets., p. 49.

72 Ibid., p. 50.

73 For a detailed discussion of the 'Status Law' and its challenge to modern notions of territoriality and citizenship, see Brigid Fowler, 2002. *Fuzzing Citizenship, Nationalising Political Space: A Framework for Interpreting the Hungarian 'Status Law' as a New Form of Kin-State Policy in Central and Eastern Europe*. ESRC 'One Europe or Several?' Programme, Working Paper, 40/02.

inside the country.⁷⁴ Commission officials from DG Employment and DG Enlargement, however, emphasise that the anti-discrimination legislation represents a more comprehensive package than in some other candidate countries and is based on a wider process of consultation.⁷⁵

The case of Hungary demonstrates the overarching significance of domestic incentives for minority protection, the ambiguity and practical difficulties attached to the implementation of collective rights and a certain corrective effect of EU conditionality (underpinned by the Council of Europe and the OSCE High Commissioner on National Minorities) on potentially destabilising policies like the 'Status Law'. In the context of the discussions about the Status Law the Council of Europe's Venice Commission did not *per se* rule out co-ethnic socio-economic entitlements, provided they are available to other foreign citizens. The European Commission's emphasis on the Schengen agreement, the exclusion of Austria from Hungary's law and the repeated references to the need to amend the law to comply with EC law signalled the limited scope of the law after Hungary's accession to the EU.⁷⁶ The Commission reproduced the wording of the recommendations of the Venice Commission in its Reports, but restricted itself to urging Hungary to complete agreements with Romania and Slovakia on the implementation of the law. Behind the scenes the Commission, including the Legal Service, commented in detail on the Law and recommended changes which were not taken up by the Fidesz government, illustrating once again the lack of EU competence in this area and the importance of domestic political constellations. The EU, the OSCE and the Council of Europe paved the way for a new round of bilateral treaties under a new Hungarian government.⁷⁷ The Romanian-Hungarian Agreement of September 2003 and the Slovak-Hungarian Agreement of December 2003 effectively reduce the original law to a mutual declaration of support for cultural and linguistic activities for the Hungarians in Romania and Slovakia and the Romanians and Slovaks in Hungary.

Slovakia and Romania: Regime Change through Minority Participation

The presence of sizeable, politically mobilised Hungarian minorities in Slovakia and Romania allows for a comparison of their interaction with the respective majorities and sheds light on the dynamics between endogenous political developments and external interests and incentives—here represented by the Hungarian government and various European organisations. Romania adopted provisions for minority representation in parliament before the process of EU accession got under way.⁷⁸ Its progressive 1992 election law was not the result of active minority campaigning, but an early signal to the West and the EU—preceding the Copenhagen criteria—that the Romanian government protects its minorities. The law was also a good-will gesture to smaller minorities, but it failed to address the most pressing issues concerning the Hungarians and the Roma.⁷⁹

74 See Guido Schwellnus, 2003. 'Conditionality and its Misfits: Non-Discrimination and Minority Protection in the EU Enlargement Process', Paper given at the Workshop *The Europeanization of Eastern Europe: Evaluating the Conditionality Model*, European University Institute, Florence, 4-5 July.

75 Author's interview with a Commission official, DG Enlargement, 20 February 2004 and with a Commission official from the Unit Anti-Discrimination, Fundamental Social Rights and Civil Society, DG Employment and Social Affairs, 20 February 2004.

76 Report on Hungary, 2001, p. 91, and *ibid.*, 2002, p. 122.

77 According to a Commission official, then DG Enlargement, the EU and the OSCE were more important than the Council of Europe in this context due to their detailed legal recommendations and their contacts to the incoming socialist government; author's interview, Brussels, 20 February 2004.

78 Romania's 1992 election law enables minority organisations to field candidates and guarantees a seat in parliament for a minority failing to cross the three per cent threshold on the condition that they receive more than five per cent of the average vote needed to elect one representative. In the 1996 election this number was as low as 1,800 votes. See Deets, p. 46.

79 The fact that representatives of the state-funded minority organisations—the state funds one organisation per minority—dominate among the minority deputies in parliament and the low rates of ethnic voting of medium-sized minorities compared with a proliferation of very small minorities demonstrate the pitfalls of a policy which looks progressive at first glance. See *ibid.*, p. 48.

In Slovakia, four Hungarian parties emerged in the early transition phase, illustrating that the Hungarian minority did not represent a unified political force. A first ethnically inclusive government, involving a Hungarian party, collapsed quickly. The emergence of the sovereignty issue on the Czechoslovak political agenda ‘ethnicised’ statehood and the political process as a whole. The Slovak majority and the Hungarian minority favoured a common state with the Czechs, but the distance between the Slovak political elite and the Hungarian minority grew, especially when the Movement for a Democratic Slovakia (HZDS) formed a coalition with the Slovak National Party in 1992.⁸⁰ In Romania a single Hungarian party, the Democratic Alliance of Hungarians in Romania, emerged as early as 1989, but it combined within its own ranks a range of different viewpoints. Iliescu’s National Front initially proclaimed a commitment to collective minority rights in return for the Hungarian party’s support, but Iliescu—like Meciar—polarized ethnopolitical differences in their attempt to build nation-states. Iliescu’s regime lasted from 1990-1996, while Meciar stayed in power 1992-1998. In both cases Hungarian minority parties were represented in parliament, questioning their respective governments’ policies, especially institutional safeguards for minority representation, language and regional administration. In Romania, the Hungarian party countered the increasing centralisation and restrictive language legislation with calls for territorial autonomy. While national territorial autonomy did not emerge as the Hungarian parties’ priority in Slovakia, they went on collision course with Meciar’s plan to redraw regional administrative boundaries so as to break up the relatively compact Hungarian settlements.

The Hungarian minority elites formed part of the political opposition in both countries, but the majority-minority ethnic division did not become the only or predominant cleavage structure. Instead, three clusters of parties representing ‘majority nationalist, majority moderate and minority pluralist perspectives’ on state-building crystallised.⁸¹ Gradually, the Hungarian parties increased their cooperation with the Slovak and Romanian opposition parties, although these attempts were initially overshadowed by frictions. In 1994 the Slovak-Hungarian opposition managed to topple the Meciar government in a vote of no-confidence, but already six months later the HZDS was re-elected and, under Meciar’s leadership, managed to divide and suppress the opposition forces. Thus, the friendship treaty with Hungary, which clearly ruled out autonomy rights for minorities, was signed in 1995 and a number of laws was passed with the full or at least partial support of the Slovak opposition: the State Language Act of 1995, making Slovak the only official language, the act on the redrawing of the territorial administrative boundaries in 1996, trying to minimise the political strength of the Hungarian minority in areas where it constituted a numerical majority, amendments to the act on school administration, limiting the authority of local communities over schools, and a law on the elevation of a national Slovak organisation (*Matica slovenská*) to the highest national cultural, social and scientific organisation.⁸² On the basis of the political Copenhagen criterion, Slovakia was excluded from the first wave of candidates at the Luxembourg Council in 1997 and was sharply criticised in the Report of 1998.⁸³

The Hungarian parties’ demands for regional self-government proved the biggest stumbling bloc for the cooperation between Hungarian and Slovak opposition parties. Over time the Hungarian parties switched to an emphasis on decentralization and local government, thus allowing for a narrowing of the political divide within the opposition. The electoral law of 1998 led to the consolidation of one moderate Slovak opposition party (Slovak Democratic Coalition) and the Hungarian Coalition, made up of three Hungarian parties. In Romania, the Hungarian party and the Romanian political opposition encountered similar differences in defining more coherent positions and reaching a compromise. Shared conceptions regarding the nature of the postcommunist state and its relationship with other European democracies were at the heart of the political coalitions toppling Iliescu in 1996 and Meciar

80 Zsuzsa Csergő, 2002. ‘Beyond Ethnic Division: Majority-Minority Debate About the Postcommunist State in Romania and Slovakia’, *East European Politics and Societies*, 16 (1), pp. 4-5.

81 Csergő, p. 13.

82 *Ibid.*, pp. 17-18.

83 By 1998 Romania was already seen to fulfil the political Copenhagen criteria; see Report on Romania, 1998, p. 12.

in 1998. In Romania the resulting coalition governments struggled for a political compromise on amending restrictive laws on language use, education and administration and managed to forge a consensus in the end.⁸⁴ The regime change in Slovakia marked the beginning of new state policy on minorities, which quickly became an integral part of the attempt of Dzurinda's government to speed up economic reforms and integrate into Western security and political and economic structures. In a direct response to the earlier criticisms of the EU and the OSCE High Commissioner on National Minorities it prioritised the adoption of a new language law in advance of the Commission meeting of July 1999, which was scheduled to review Slovakia's accession prospects.⁸⁵ The new language law came to symbolize the regime change and placed Slovakia into the first wave of the candidate countries. The language law allows the use of minority languages in local public administration subject to a minority population threshold of 20 per cent in a given area.⁸⁶ The Commission's 1999 Report declared that the requisite 'significant progress' in this policy area had been delivered, despite the fact that the final text of the law was adopted without the support of the governing Hungarian parties. Definitional ambiguities in the text and a problem of legal precedence with regard to the more restrictive provisions of the constitution of 1992 further overshadowed the implementation of the law.⁸⁷ In its Opinion on Slovakia, adopted on 22 September 2000, the Advisory Committee on the FCNM noted on the one hand that the implementation of the 1995 State Language Law 'has not, to date, had a widespread negative impact on minority languages', while stressing on the other hand 'that the State Language Law is lacking in clarity' and could at the very least 'produce a 'chilling effect' extending to legitimate activities of minorities'. Moreover, it asked for the relationship between the Law on the Use of National Minority Languages of 1999 and the State Language Law to be clarified.⁸⁸

Slovakia and Romania are instructive cases in several respects: firstly, they demonstrate how the incentive of EU membership, tied to a bundle of political criteria, can help to galvanise domestic political forces in favour of a democratic regime change. In both cases minority parties, which already existed as organised opposition forces, played a crucial and active role in this process. Furthermore, the EU's critique of the 1995 Slovak language law is a rare example of an explicit EU stance on a specific piece of minority-sensitive legislation. Secondly, the predominant political conflicts in Romania and Slovakia did not hinge on ethnic divisions. In the early transition period the main political majority embarked on centralised nation-state building. The Hungarian parties fairly consistently represented the ethnic and political minority in opposition to the ruling party. Over time they built a joint electoral platform with the moderate Slovak and Romanian forces, thereby cutting across ethnic divisions and forging a new political majority. These coalitions proved essential for state consolidation and democratisation. Thirdly, the EU contributed to the creation of the domestic political space for minority participation, but it did not intervene in the internal disputes over the appropriate institutional responses to minority demands, as seen in the case of the new Slovak language law of 1999. Moreover, the democratisation and Europeanisation processes neither put an end to the domestic disputes over minority issues, nor did they guarantee a smooth political and economic reform process, as the case of Romania demonstrates.

84 Ibid., p. 23.

85 The coalition also agreed to sign the European Charter on Regional and Minority Languages and the FCNM.

86 See Slovakia's Law on the Use of Minority Languages (11 July 1999), Art. 2(1), 51; http://www.riga.lv/minelres/NationalLegislation/Slovakia/Slovakia_MinorLang_English.htm
The Romanian Law on Local Public Administration (23 April 2001) envisages the same threshold; see: http://www.riga.lv/minelres/NationalLegislation/Romania/Romania_LocAdm2001_excerpts_English.htm

87 For a discussion of the interaction of Slovakia's laws and EU pressures, see Farimah Daftary and Kinga Gál, 2000. *The New Slovak Language Law: Internal or External Politics*. ECMI Working Paper No. 8, September: 1-71, available at: http://www.ecmi.de/doc/download/working_paper_8.pdf

88 GVT/COM/INF/OP/I(2001)001 E Slovakia; points 33-36.

Conclusion: Evaluating the ‘Minority Momentum’ of EU Enlargement

The empirical evidence suggests that, on balance, international actors and a vaguely defined European norm framed the debates and perceptions and affected the timing and nature of specific pieces of legislation, while the domestic political constellations and pressures ultimately had a more significant effect on the institutional and policy outcomes. The EU has had an impact if its vague conditions in the field of minority protection fit the domestic political agenda and could be empowered by it, in particular during the early stages of the accession process. EU conditionality in the area of minority protection is, thus, best understood as the cumulative effect of different international institutions. The actual policy leverage of the EU in minority protection has been anchored in the instruments and recommendations of the Council of Europe and the OSCE, and a range of other actors, including NGOs, have translated them into the domestic political context. The changes to the citizenship and naturalisation provisions in Estonia and Latvia, in particular, demonstrate to what extent the EU has drawn on the recommendations of the OSCE, especially the High Commissioner on National Minorities, and the Council of Europe. The policy domain of minority protection not only questions the notion of EU conditionality *per se* and widens the notion of ‘Europeanisation’ by highlighting the need to investigate the links (and gaps) between different international institutions and tools, it also decouples ethnic minorities and majorities from political minorities and majorities in the study of transition politics. The states and societies in CEE are ‘divided’ in different and cross-cutting ways. Minority rights form an integral part of the political process and, consequently, need to be continuously monitored and adjusted, preferably through a combination of domestic and external mechanisms.

The decision calculus of the ruling elites in the candidate countries over whether to comply with EU conditionality has been shaped not only by their perceptions of how a particular decision may affect the accession process of their country, but also by the degree of domestic mobilisation among majority or minority groups, the elites’ definition of ‘national interests’⁸⁹ and personal concerns about power and political risks. EU conditionality has anchored minority protection in the political agenda of the candidate states, but the EU had little to offer in terms of substantive guidance, as the lack of benchmarks, inconsistencies and the limited scope for follow-up on implementation in the Regular Reports demonstrate. The Hungarian case illustrates best how the domestic political will in favour of minority protection is critically shaped by national interests, namely the concern for the sizeable Hungarian minorities located in neighbouring countries. Here the EU has acted as one of the brakes on the controversial Hungarian Status Law. In general, it is easier to trace the EU’s impact on specific laws or regulations. The adoption of Slovakia’s language law of July 1999 is one of the best examples of a close link to the EU accession process, as reflected in the Regular Reports. The cases of Slovakia and Romania confirm that the EU’s political leverage is greatest in the early phase of the accession process and, in the presence of organised minority interests, helps to legitimise and anchor these actors in the domestic political scene.

One of the main achievements of the EU’s normative overstretch has been to implant the value and objective of minority protection in ‘EU speak’, which could be a first step towards internalisation, institutional change and modified political behaviour. It is too early to tell what the outcome of the interaction between West and East European models of minority protection will be in the post-enlargement period. Rather than reinforcing the distinction between new and old Member States, the issue of minority rights cuts across geographical and historical boundaries. Two major scenarios are feasible: on the one hand a form of ‘reverse conditionality’, emanating from the new Member States, could infuse the EU with a new commitment to minority rights; on the other hand, a new tacit policy consensus on inaction may emerge within an enlarged EU. In the new Member States, a contraction in this domain could have a more immediate destabilizing effect. The potential for conflict involving the Roma has already been identified by the EU itself. For the time being, a combination of both scenarios

89 Csergö, p. 2.

appears to be the most likely outcome: minority rights will make for one of several issue dimensions for coalition-building across old and new Member States. As long as the EU remains committed to further enlargement—to include Bulgaria, Romania, Turkey, Croatia and other South-East European states—the ‘respect for and protection of national minorities’ will remain an integral part of the rhetoric of accession. In the case of Croatia, which gained candidate status in June 2004, the Copenhagen criteria were supplemented by the Stabilisation and Association Process of 1997 to include, *inter alia*, full cooperation with the ICTY, ‘real opportunities for displaced persons’, the return of refugees to their places of origin, non-discrimination and good-neighbourly relations.⁹⁰ Though unlikely to become an internal EU policy priority, this momentum tied to future enlargement may promote awareness inside the EU and bolster the profile of related instruments, most importantly the FCNM and its complex and dynamic monitoring mechanism.

A couple of initiatives point to the continued relevance of the monitoring of rights inside the EU. The Network of Independent Experts, which was set up upon a request by the European Parliament in connection with Art. 7 TEU and is funded by the Commission, marks a step in this direction. Its task is to monitor fundamental rights in the Member States, and its first two reports adopt a wide definition of fundamental rights, explicitly including minority issues.⁹¹ However, these annual reports of independent experts will only have political clout if they become mandatory items on the agenda of all the main EU institutions.⁹² Moreover, the re-design of the remit of the European Centre on Racism and Xenophobia is currently under discussion.⁹³ The widening of the remit to include a human rights dimension could allow for more systematic minority-relevant research.

Despite the link between the EU’s eastward enlargement and the ongoing constitution-making process at the European level, minority rights did not emerge as a prominent issue during the Convention on the Future of Europe. The resulting Draft Constitutional Treaty was void of any mention of minorities. The values and principles stipulated in the preamble, Part I and the preamble and the text of the Charter of Fundamental Rights provide indirect avenues for minority rights protection.⁹⁴ The wording of Article 2 of the Draft Constitutional Treaty, stipulating the Union’s values, avoided the ambiguity of its predecessor (Article 6 TEU), which had copied the language of

90 See http://www.europa.eu.int/comm/external_relations/see/docs/conditionality_29_april_97.htm

91 The Network presents its annual reports as a follow-up to the EU’s Regular Reports, in particular in the area of minority rights and non-discrimination; see EU Network of Independent Experts in Fundamental Rights, 2003. *Report on the Situation of Fundamental Rights in the European Union and its Member States in 2002*. Luxembourg: European Communities, p. 21. Moreover, the experts advance the problematic claim that a general lack of EU competence in the area does ‘not in any way call into question the legitimacy of monitoring the policy followed by Member States in the field of human rights’; see *ibid.*, p. 19. Despite the wide parameters within which the Network places its mandate, a Commission official from the Fundamental Rights Unit in DG Justice and Home Affairs, which prepared the ground for the Network to be established in response to a request from the European Parliament, described the 2002 report as ‘too mild’ in an interview with the author, Brussels, 12 January 2004.

92 As an official from DG External Relations phrased it: ‘At the moment the whole exercise is just Mr X’s Report, that’s all’; author’s interview with a Commission official, Unit Human Rights and Democratization, DG External Relations, 20 February 2004.

93 The Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2002, agreed to extend its mandate to become a Human Rights Agency; see http://www.ueitalia2003.it/NR/rdonlyres/7FAB788D-1686-4A44-B977-974CCB70F69B/0/1205_location_EN.pdf According to a Commission official, this Council decision ‘came as a complete surprise to the Commission’ and forms part of a ‘late-night political deal’; author’s interview with a Commission official, DG External Relations, 20 February 2004.

94 The preamble is potentially contradictory in its claim that the Union respects the ‘diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States [...]’; see <http://ue.eu.int/df/default.asp?lang=en>. For a discussion of the legal and political norms that inform the Charter see Guido Schweltnus, 2001. *‘Much Ado About Nothing’: Minority Protection and the EU Charter of Fundamental Rights*. ConWEB No 5/2001; available at: <http://www.les1.man.ac.uk/conweb/papers/conweb5-2001.pdf>

the first Copenhagen criterion but left out the minority criterion.⁹⁵ During the IGC, which initially failed to generate an agreement, Hungary took a lead in a last-minute attempt to enshrine explicit minority rights in the final version. Hungary's proposal triggered an instant negative response from the Slovak and Latvian governments but the final amendments, tabled by the Italian Presidency, included a prominent reference to the 'respect for human rights, including the rights of persons belonging to minority groups'.⁹⁶ When the negotiations resumed, this amendment remained unchanged and now forms part of Article I-2 of the Constitutional Treaty for Europe, which was adopted at the European Council meeting in Brussels on 18 June 2004.⁹⁷ In the text 'the rights of persons belonging to minorities' are clearly characterised as a sub-category of human rights, and an explicit reference to 'national' minorities is missing. Nevertheless, political and societal actors are bound to legitimise their demands with a reference to the newly declared 'values' of the European Union, and the new treaty formulation establishes greater coherence with the political Copenhagen criterion.

The Race Discrimination Directive 2000/43/EC, once fully transposed into domestic legislation in all Member States, legally embeds the norm of 'equal treatment between persons irrespective of racial or ethnic origin'.⁹⁸ It arguably represents the EU's furthest reaching 'constitutional resource' for minority-sensitive policies.⁹⁹ Together with the Employment Directive of 2000 it forms part of the *acquis*. Therefore, its transposition into national legislation falls under the third Copenhagen criterion, which focuses on a country's capacity to take on the obligations of the *acquis*. The transposition of the directives has been a gradual process in both old and new Member States, and to date the record of implementation has been mixed.¹⁰⁰ Moreover, Article 21 of the Charter of Fundamental Rights, now incorporated as Part 2 in the Constitutional Treaty, explicitly singles out 'membership of a national minority' among the grounds of discrimination to be prohibited. As the related Article 22, stipulating the Union's respect for 'cultural, religious and linguistic diversity', it would apply to any action of the EU institutions and the Member States when implementing EU law if the Charter becomes legally binding.

At least three basic lessons can be drawn from the first wave of the EU's eastward enlargement with a view to sustaining and reinforcing the momentum for minority rights inside the EU: first, despite—or because of—its evident shortcomings, the Commission's monitoring exercise has underscored the importance of a regular and systematic review of minority issues. The anti-discrimination *acquis*, the European Parliament's annual human rights reports, the Network of Independent Experts and a revamped Monitoring Centre in Vienna provide parallel avenues in this context. Secondly, the fact that the EU extensively drew on the Council of Europe and the OSCE during the accession monitoring demonstrates the need for more effective cooperation between these three actors.¹⁰¹ The aim should be

95 'The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination'.

96 See the text of Article I-2 proposed by the Italian Presidency on 25 November 2003, CIG 52/03; see <http://www.euitaly2003.it/EN/ConferenzaIntergovernativa/DocCIG2.htm>

97 CIG 73/04 (Annex 1), Brussels, 29 April 2004, and CIG 85/04, Brussels, 18 June 2004.

98 See http://europa.eu.int/eur-lex/en/treaties/dat/ec_cons_treaty_en.pdf; Council Directive 2000/43/EC of 29 June 2000: OJ L 180, 19.07.2000.

99 For a systematic discussion see Bruno de Witte, forthcoming. 'The Constitutional Resources for an EU Minority Protection Policy', in: Gabriel N. Toggenburg, (ed.), *The Protection of Minorities and the Enlarged Union. The Way Forward*, Budapest: LGI Books. For a related discussion of the future of minority protection in a supranational context see also Gabriel von Toggenburg's introduction to the same volume.

100 For a case-by-case overview of the gradual adoption of anti-discrimination norms and legislation by the accession countries, see European Commission, DG Employment and Social Affairs Unit D.4, 2003. *Equality, Diversity and Enlargement. Report on Measures to Combat Discrimination in Acceding and Candidate Countries*, Luxembourg: European Communities.

101 Closer cooperation simultaneously raises the question of whether the EU is encroaching on the other two organisations. The OSCE faces the challenge to reinvent itself in view of a changing political and security environment, financial

to avoid the duplication of tasks and build on the respective strengths and expertise of each institution. The EU with its lack of a track record in the area of minority rights could provide the meeting-place for the other institutions (incl. NGOs). A 'joint venture' between the EU, the Council of Europe and the OSCE could pool and streamline the expertise in monitoring and legal or practical advice.¹⁰² Thirdly, and most generally, the enlarged EU will be confronted with an even greater political, economic and cultural diversity. Public and political awareness of this diversity is a basis for a wider domestic and international debate about the objectives of the EU, the nature of European values, and the relationship between the accommodation of diversity and minority rights.

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difficulties and commitment problems among some of its members. From 1 May 2004 onwards the majority of Council of Europe members are EU Member States. This overlap in membership confirms the image and role of the Council of Europe as a stepping-stone towards EU membership, but it also blurs the distinctions between both organisations. In the words of a Commission official, 'we are like an elephant in the organisation, and it will be hard not to put our foot on others [...]'; Author's interview with a Commission official, DG External Relations, 19 February 2004.

102 For further recommendations along these lines, see the Bolzano Declaration on the Protection of Minorities in the Enlarged European Union, Bolzano: European Academy and LGI, 1 May 2004.