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Lessons learned from governance reforms in East Central Europe**

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**The EU as a Transformation Agent.  
Lessons learned from governance reforms in East Central Europe**

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**ABSTRACT**

The paper analyzes the transformative impact of the European Union (EU) on good governance in East European new member countries. It argues that, since the transformation of these societies is still not fully accomplished and unfolds in parallel to their Europeanization the need emerges to bridge between broader political change theory and Europeanization theory. Quantitative assessments based on governance indicators produced by Freedom House and World Bank show rather modest improvements and often stagnation in the quality of governance over accession years. The illustrative examples ranging from ethnic power-sharing to anticorruption indicate that developments are missing when incentives for strategic actors are lacking. The article finds some evidence of backsliding after accession in some areas and countries. While enlargement remains a powerful incentive motivating change, the article argues that the companion of this political process, assistance policy, needs revisiting and adjustment with a view to further enlargements.

*Keywords:* European enlargement, EU accession, good governance, state-building, anticorruption.

### *Europeanization, transformation and reform*

The aim of this paper is to analyze the lessons learned from the transformative impact of the European Union (EU) in the field of state and nation-building in East Central Europe (ECE) during the last EU enlargement. State-building was defined by Francis Fukuyama as the creation of new governmental institutions and the strengthening of existing ones (2004a:17). In this respect, state building captures the developmental aspect of governance, defined as the manner in which the state acquires and exercises its authority to provide public goods and services. Nation-building, sometimes confusingly used as a synonymous term with state-building by some scholars, should in fact be seen as a prerequisite, the distinct process of creating one political community sharing a state; while state-building *presumes* the preexistence of a single political community or demos, divided only by political values or ideology, but committed to a common existence in a single political system.

The ECE transitions or ‘transformations’ are widely understood as complex processes of change from command economy to market economy, and from political systems with the Communist Party enjoying the monopoly of power to democratic pluralism and rule of law. Some authors emphasized particularly the institutional transformation involved in these two processes: ‘building the ship at sea’ meant reforming the state while simultaneously using it as the main agent of this transformation (Elster, Offe and Preuss 1998). Considerable state-building was thus involved in the process: in some new entities which had not previously existed as independent states, or in some multiethnic polities, nation-building was involved as well. The great influence of the European Union in this process is uncontested, though interpretations of the EU’s transformative power vary (Moravcsik and Vachudov’a 2003; Schimmelfennig and Sedelmeier 2004; Sadurski 2004; Pridham 2005; Vachudov´a 2005; Grabbe 2006;). Overall, the current division of former Communist Europe into successful (new EU member countries) and failed transitions seems to justify the label of ‘gravity model’, ‘according to which fast and deep democratization is explained to a significant degree by the proximity and possibility of anchorage and integration with a major world centre of democracy’ (Emerson and Noutcheva 2004). The process of ‘Europeanization’ of the East Central European (ECE) countries, defined in this paper as *domestic impact prompted by EU accession* (Börzel and Risse 2003; Schimmelfennig and Sedelmeier 2005)

remains however only one of the motors for public policy. As is the case with normal polities, East European countries embark also in various ideologically driven-reforms with little or no connection to EU integration: they reform their welfare or tax systems, for instance, sometimes taking paths quite divergent to the main EU practice (like the adoption of flat tax systems), as their main target remains development catch-up with Western European economies. Apart from Europeanization and reform, *transformation* has continued as well in many countries, especially those which had a late start. The speed and depth of this transformation is largely path dependent on the type of Communism a country experienced (Linz and Stepan 1996). However we can presume, in Tocquevillian terms, that the main motor for transformation remains revolutionary in essence, and it tends to continue as long as new emerging elites have not successfully dislodged the old Communist ones from the main positions of influence<sup>1</sup>. Revolution, Reform and Europeanization thus come together or conflict in the formulation of public policy in East Central European countries. If we adapt the classic comparison table between policymaking in industrial and post-industrial nations by Almond and adjust it to the ECE scene we can obtain a picture of the three interacting processes generating the dynamics of public policy. Transformation in my table below corresponds to ‘development’ in Almond’s theory, though it is more extended in scope and policies. ‘Reform’ pertains to the policy process of post-industrial nations described by Almond, consisting more in the fine tuning of policies or maintenance of systems already created, driven in the ECE more by the need to catch up than by ideology. ‘Europeanization’ is a total addition to the table: it includes special policies of integration and harmonization based on the EU model, a characteristic specific to Europe. Due to the complexity of these processes, accession of East European new member countries cannot be treated as just an appendix to the classic theoretical approaches of European studies, but needs to anchor itself in broader theories of social change.

*Table 1.* Simultaneous processes informing public policy in ECE

Policy Goals	Development		EU Integration
Policy problem	Transformation	Reform	Europeanization
State-building and governance			
<ul style="list-style-type: none"> <li>Government organization</li> </ul>	Scope limiting and functional redefinition	Human resource policies, etc.	Capacity building to achieve

			'administrative capacity'
• Rule of law reforms	<i>Creation</i> of rule of law	<i>Maintenance</i> and improvement	Compatibility of legal system with EU law
Nation-building	<i>Creation</i> of a single political community and identity		Management of sub-cultural and ethnic diversity
Participation and accountability	<i>Creation</i> of accountability systems and organizing participation	<i>Coping</i> with demands and feed-backs from these systems	
Economic development	Accumulating capital for development (infrastructure, education)	Maintenance and management of growth	Catch-up policies
Economic stability and restructuring	Achievement of economic stability after restructuring	Maintenance and control	Management in view of adherence to common currency
Welfare systems	<i>Creation of</i>	<i>Adjustment</i>	<i>Coordination</i>

Source: Adapted after Almond 1974

State-building and nation-building have become test cases for the developed world's ability to transfer strong institutions to developing countries. The EU's interest in these areas had two sources. The first originated with the Copenhagen political criteria which provided, though in rather general terms, for the fair treatment of minorities and good governance. The second is to be found in the concern of European Commission (EC) with state capacity of accession countries, defined as administrative capacity to implement the *acquis* in the 1997 *Opinions* (Dimitrova 2005: 80). This involved both government capacity (for instance for planning and reporting) as well as judicial capacity, and as such a vast state-building front was opened on the side of EU accession, which did not exist in previous enlargements. Here *Europeanization met transformation*, and often an unfinished one, and in order to proceed with harmonization and other more typical Europeanization processes the EU had to embark on the process of state-building, an area of development assistance. This proved ever broader,

as sketched in Table 1. If some countries leading the ‘regatta’ of would-be-members of the EU had seen very successful economic transitions, others were still struggling halfway. To help them achieve the status of ‘functional market economy’, the term used in the EC’s Agenda 2000 to designate accomplished economic transformation, the EU expanded the area of state-building across practically every field. For countries such as Lithuania, Romania, Slovakia, Latvia or Bulgaria, which were lagging behind in their transition when receiving the invitation to join in 1999, ‘Europeanization’ entailed building of market institutions, of administrative capacity and of rule of law.

Europeanization is generally measured in the literature by what policy scientists call ‘input indicators’, such as adoption of various European laws, regulations and conventions. To be sure, at the level of input indicators there are several signs of Europeanization. EU affairs departments have been set up in most ministries, EU legislation was adopted and translated and many exchanges have taken place between ECE practitioners and EU ones (Goetz and Margetts 1999; Grabbe 2006). But as this paper deals with the evolution in the quality of governance, I need to measure change incurred in the ‘real country’, not only in the ‘legal country’, and therefore I shall use impact indicators. Several Europeanization scholars have already distinguished between formal change (the legal transposition of rules) and behavioural change (implementation, application and enforcement) (for instance Hughes et al. 2004; Schimmelfennig and Sedelmeier 2005; Pridham 2005). Impact indicators should capture both. Discussing transposition and enforcement separately is not justified in this topic, because, as I will show, even a law adopted during accession can be (and frequently is) amended immediately after a country is in.

Most literature on enlargement describes the EU influence mechanisms (conditionality, persuasion, socialization in various combinations) to explain a country’s compliance with EU norms<sup>2</sup>. But norms are poorly standardized in the fields of good governance. The commitments that countries made during accession to improve the quality of their governance are not fully part of the formal legal *acquis*. The countries’ strategies, which were presented in order to close delicate chapters of negotiation, such as Home and Justice Affairs (this constituting one of the key chapters), or the benchmarks specified in the European Commission roadmaps for countries were presented as mandatory steps at the time, but after the signing of accession treaties they do not have the same legal power as the *acquis per se*. The three years ‘safeguard clause’, which can be activated if the behavior of a new



member threatens the common market, is the only mechanism the EU has to hold new members to their promises. It is however difficult to use for pure domestic infringements. A country cannot be sanctioned or sued at European Justice Court over breaching an anticorruption strategy agreed with the Commission during accession.

Assisting state-building in general, and development of good governance in particular, is a development policy. The economist William Easterly has recently argued that assistance for development policies are plagued by an ‘ideology of development’, which succeeded in re-instating planning, with its untested presumptions and overambitious goals over more modest, evidence- and incentive-based policymaking (Easterly 2006). While the whole accession process has some elements of ‘planning’ (with legislatures speedily adopting the mandatory *acquis* without any debate, and the closure of each negotiation chapter resulting in an implementation plan), its objectives remain nevertheless limited, as they aim to achieve integration, not development. Easterly’s criticisms apply well to the area of state-building, because here the objective was to reform the *modus operandi* of governments and judiciaries, for instance to narrow down the gap between the average in corruption scores of new members from old members. These clearly constitute transformative and development goals. Examining the cases in the area of nation- and state-building, we find that the presence/absence of incentives for key groups of transformers explains both success and failure in an overall ‘planning’ setting.

### *Case One: Nation-building*

Good governance is defined in many ways, but all the definitions agree on its universal character: the state must distribute public goods, ranging from equality before the law to health services, fairly and equally to all its citizens. A state operating under a good governance regime should therefore be ethnically neutral as well. While Yugoslavia was breaking up, the remaining countries of Central Europe and the Balkans were slowly “socialized” by the international community with a view to more fairness and inclusiveness of their ethnic minorities. This led to the adoption of best practice European and international laws on this matter in most accession countries, in most cases prior to receiving the invitation

to join the EU. The only exceptions remain the treatment of the Roma, a social and racial problem more than an ethnic one, and the problem of Russian minorities in Estonia and Latvia.

In June 1993 the Copenhagen Council (the 'Copenhagen criteria') borrowed from the existing OSCE norms on the need for democratic states to guarantee human rights and protect minorities. The EU treaties have not, however, opened the door to collective rights of minorities as a good governance principle, but stuck to the classic approach of individual rights (Hughes and Sasse 2003). By 1997, when the European Commission issued its opinion on each country's application for membership, it acknowledged that the minority issue was not an impediment to joining for any of the applicant countries. No new EU member country has any specific clauses in its accession treaty relating to minorities.

The result of this approach, combining strong normative pressure (Kelley 2004) with a restraint to giving in to minorities' demands to reorganize the state along ethnic lines is that all successful EU new members to date are unitary states which treat their minorities fairly, but did not make any concessions to them along the line of 'collective rights'. Citizenship is defined firmly on an individual, not collective basis, in all these countries. Although the EU brokered a power-sharing arrangement in Macedonia and subscribed to the Dayton agreement, those countries remain the most problematic cases where EU accession is concerned, and EU officials themselves acknowledge that the Dayton constitution is a major obstacle to Bosnia's EU accession (Hays and Crosby 2006).

Impact indicators on the status of minorities are revealing if we compare Central European countries versus Baltic ones. Romania, Bulgaria and Slovakia, the three ECE countries with important minorities experienced ethnic conflict and nationalism to a considerable degree by the beginning of transition. By the late nineties they had registered a very positive evolution. Ethnic minorities had become associated with government coalitions as nearly permanent members, coupled with the left and the right in turn, with little or no popular opposition to this development. By 2005, when Romania and Bulgaria signed their respective EU accession treaties, and Slovakia had already been a member for more than a year, minorities in these three countries had managed to get important positions at all levels of government, despite the absence of explicit demands of EU in this regard (see Table 2). Compared to the early nineties, when their mere right to exist was under question, minorities parties' gained significantly during the years of accession in terms of appointed political

positions in central government and administration. Furthermore, their incumbency in elected offices is in superior proportion to their demographic share. Even if minority parties might miss a government cycle in the future, their participation has gained full acceptance and become part of the usual rules of the game, a spectacular improvement of their previous condition. Moreover, the three ‘kingmaker’ ethnic minority parties managed to gain control of positions related to the distribution of EU funds.

Table 2. Political status of minorities’ parties

<i>Indicators</i>	<i>Romania</i>	<i>Bulgaria</i>	<i>Slovakia</i>
No. of years in central government of minority party by 2005 ( support pacts not included)	6	5	8
Top central government positions by 2005	4 Ministers, 8 deputy ministers, 1 in control of EU funds, 4 county prefects	3 Ministers, 2 in charge of EU funds, 16 deputy ministers, 5 district governors	11 key govt jobs, of which 4 in control of EU funds

Source: EUROREG project, [www.eliamep.gr](http://www.eliamep.gr)

In the Baltic states, the situation is different. The EU’s repeated interventions have not succeeded in franchising the Russian minority in Estonia and Latvia, where it exists in significant numbers (Kelley 2004). The fact that the Baltic Republics resisted EU pressure for any empowerment of their minorities shows that it was not the *direct* effect of EU conditionality which led to such positive developments in Romania and Slovakia. The European encouragement for inclusive politics in those countries empowered the politicians who were moderate and in favor of cooperation across ethnic lines both on the majority and the minority side, thus favoring the emergence of an organically grown, step-by-step negotiated power-sharing arrangement, which has proved sustainable through several electoral cycles (Brusis 2003). But domestic incentives also played an important role. In the electoral history of these countries anticommunists needed at some point the support of minority parties to form a government. When former Communists in Romania and Bulgaria eventually returned to government they also needed minority voters to get a majority of seats but saw an additional added value in preserving the cross-ethnic alliances in order to appease

EU fears that they might have preserved their earlier nationalistic ways. The only moment when EU had to really flex its muscle was when Vladimir Meciar's party threatened to return to government when it won the 2002 Slovak elections. As Meciar had insufficient votes to form a government, EU -and NATO- pressure isolated him and stimulated the creation of a counter-coalition.

The EU's influence therefore seems to work best only whenever it develops incentives for potential entrepreneurs or creatively uses those on the ground and not when applying normative pressure alone, especially in cases where powerful counter-incentives exist, as in the Baltic cases quoted<sup>3</sup>.

### Case Two: State-building

Although the new member states have undergone important reforms to reorganize their governments after Communism (Goetz and Margetts 1999), this was still largely an unfinished job by the beginning of EU negotiations. The ship 'built at sea' retained important elements of the old ship. After ten years of transition, a EBRD report (1999) found that '... the state in many transition countries has still not fully adapted to the functions and tasks necessary for a developed market system... Despite the considerable achievements of the transition over the first decade, the promise of good governance remains largely unfulfilled'. Later, a 2006 World Bank assessment of administrative performance of new member-states found that the considerable bureaucratic effort of EU accession has not achieved "soundly performing systems across the whole of government which will in the future ensure that in its day to day management the public sector meets the challenges it faces in an optimal fashion" (Verheijen 2006: iv)

During negotiations with the EU, reform of the judiciary, administration, policymaking structures and civil service were important issues. Despite the EU not having an *acquis per se* in these areas, the Commission, with the help of other international organizations, invested considerable amounts of assistance, monitoring and coaching in these areas. Conditionality was also strong, particularly for the 'laggards'. The main instrument of monitoring was the regular Commission report. Detailed roadmaps and recommendations were drawn up. OECD's SIGMA was brought in to assist with reform of central administration. The World Bank sent in experts to work on all governance and rule of law issues with a view to help EU

accession. Funds were also granted, from computerization of Courts to fees of foreign experts. In total, it was an unprecedented state-building effort, aimed not only at improving governance, but actually at radically reforming it. New laws had to be passed in these fields, sometimes even constitutional amendments. Numerous training programs were organized. New institutions were created, from those focusing on national administration to agencies which fight corruption. All this effort falls along the lines of Table 1, so it has no precedent in a previous accession. It was, in other words, a state-building effort parallel to the accession one.

We do have an idea of the impact of these efforts to-date, though not a very accurate one. The Commission monitoring reports used mostly qualitative ‘benchmarks’ and input indicators (for instance, creation of anticorruption agencies or passing of legislation) for evaluation of progress. Most existing governance indicators are impact indicators assessing the situation, not the process of changing it. We have several governance indicators developed in the last decade which cover the accession and post-accession years, though, regrettably, do not go back to the beginning of transition. Such ratings are mostly based on expert evaluations, and as such they have their contesters. Attempts to aggregate expert ratings in indexes by, for instance, World Bank or Transparency International have managed to show that ratings work, and that different sources tend to produce scores which correlate well.

*Table 3. State-building evaluation instruments during transition and accession years*

Proxies for...	World Bank	Freedom House	Heritage
Market institution-building	Regulatory quality		Property regime
State capacity	Government Effectiveness	NIT Governance	
Rule of law	Rule of law Control of Corruption	NIT Constitutional, Legislative and Judicial Framework	
Copenhagen criteria		FH Civil Liberty and Political Rights	

Several indicators exist therefore to help us trace the progress of state-building over transition and accession years (see Table 3). The Freedom House (FH) *Nations in Transit* (NIT) project developed an instrument of measuring democracy, not just in basic procedural terms, but also in its substantive part, dealing among others things with specific areas of governance, such as constitutional and legislative framework and central and local administration. Finally, the World Bank governance indicators, which include many individual sources like the ones quoted above, provide us with the useful categories of government effectiveness, control of corruption and rule of law. The methodology of these aggregated scores is explained at length by authors (Nations in Transit 2007; Kaufman et al 1999 a, b).

Table 4. Governance progress during the negotiations process with EU

Countries	NIT Score 1999-2000	NIT Score 2004-2005	Downgrades 1999-2007	General Change	Governance Progress	Rule of law Progress
Bulgaria	3.58	3.18	1	0.40	0.25	0.25
Czech Republic	2.08	2.33	2	-0.25	-0.25	-1.00
Estonia	2.25	1.92	1	0.32	0	0.50
Hungary	1.88	1.96	3	-0.08	-0.75	0
Latvia	2.29	2.17	0	0.12	0.25	0
Lithuania	2.29	2.13	1	0.16	0	0.25
Poland	1.58	1.75	5	-0.17	-0.25	0
Romania	3.54	3.89	3	-0.35	0.25	0.25
Slovakia	2.71	2.08	1	0.64	0.75	0.50
Slovenia	1.88	1.75	0	0.13	0.50	-0.25
Average change by category			1.7	0.092	-0.08	0.05

Source: *Freedom House Nations in Transit*, [www.freedomhouse.org/nit/](http://www.freedomhouse.org/nit/). Scores are non-standardized expert scores by NIT, ranging from 1 to 7, with 1 the best performance and 7 the worst. Change scores were reversed with more change in the positive to facilitate reading.

Table 4 traces the evolution through accession and post-accession times. Column 4 measures the number of downgrades to a country by Freedom House in the interval 1999-2007, in other words the number of times when the yearly score was cut back to indicate a

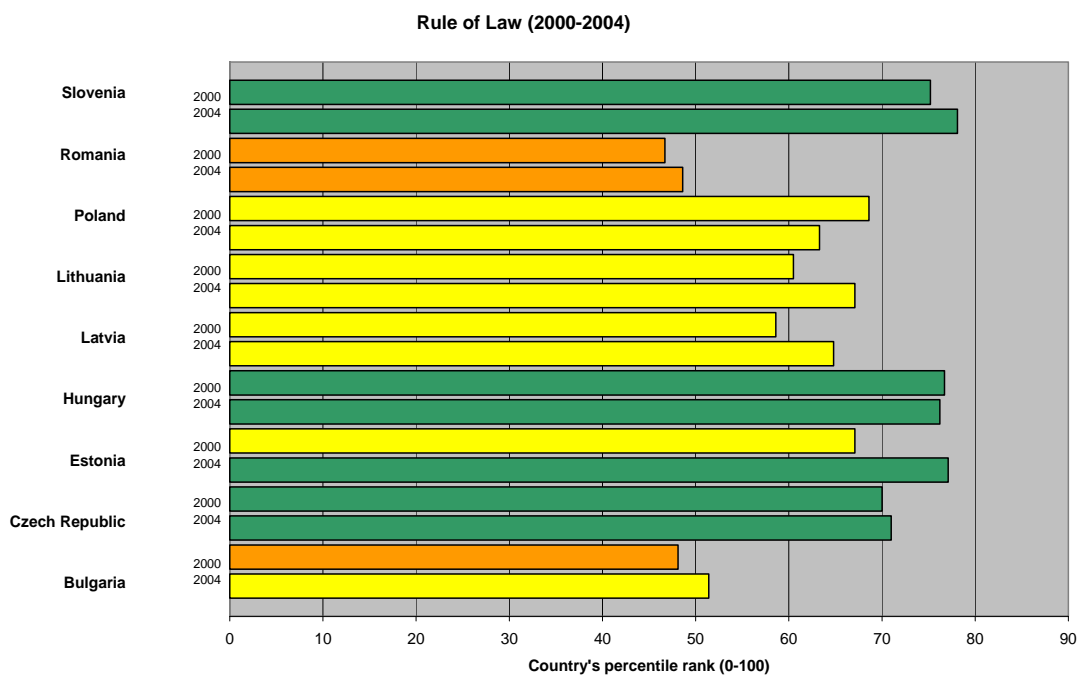
negative development in the country. The minimal unit of rating by experts is 0.25, and smaller scores result from averaging. Progress in the two separate fields of governance and justice reform are in the last two columns, and capture the difference in scores between the year a country embarked in the accession process and the year it concluded negotiations and signed accession treaty.

The NIT scores shown here indicate more stagnation than progress, with average change below the smallest unit of progress. The average on governance shows even a small regress, while on rule of law the progress is a non-significant 0.05. Slovakia recorded the largest progress in overall democracy scores, and the Czech Republic the biggest regress. However, in the sensitive fields of governance and justice progress is very low, despite the EU investment in these fields. For comparison with non-accession countries, Albania progressed with four units on justice from 1999 to 2007 (from 5 to 4), more than Romania and Bulgaria in the same interval, while Serbia progressed at a similar pace, despite not having an EU accession perspective. The two 'laggards', Bulgaria and Romania, are throughout in a lower class than the other countries (scores ranging from 3 to 4), and the Baltic States progress at a steadier pace compared to Central Europe states. A paired samples *t* test failed to reveal a statistically significant difference between the NIT 1999-2007 scores. The lack of significant evolution is also reflected in the aggregated rule of law indicator of the World Bank, based on far more sources than NIT (see Figure 1). A comparison of the scores from 2000 to 2004 shows only statistically insignificant changes, even for Estonia, which has recorded most progress. The same situation is reflected by the index Control of Corruption aggregated by the World Bank. The BEEPS firms survey by the World Bank<sup>4</sup> shows that between 2002-2005 petty corruption declined, (with non-accession Georgia recording the largest progress), but the NIT reports suggest in some countries that grand corruption increased in the same interval (for instance Romania and Latvia, NIT 2007).

Other governance scores also show insignificant progress, as, for instance, government effectiveness by World Bank or property rights by the Heritage Foundation. Despite half the countries scoring poorly, by 2004, the year of accession, the scores for Heritage property rights show no improvement compared to 2000. The regulatory quality aggregated index of the World Bank, which captures many sources, shows only one country with significant progress - Slovakia, and others actually sliding backwards. No governance indicators that we can find show significant progress on state building, and the evolution of

democracy scores in general remains mixed, with some countries progressing, but others, which had been best practice examples during transition, slightly sliding back.

Figure 1. Progress on Rule of Law World Bank Indicator



Source: World Bank, <http://info.worldbank.org/governance/wgi2007/home.htm>

The ratings of agencies like Freedom House or World Bank are rough estimates. But they are backed by nearly all qualitative reports on civil service or judiciary reform. Considerable input from donors, primarily the EU, does not seem to bring about significant impact so far. The better performance by some countries versus others is not due to EU assistance. Slovakia advanced the most because the incentive was at a maximum for Slovakia (she was invited to join together with Romania and Bulgaria, but had a 2004 time perspective) in a moment when a new government existed to take advantage of it. Domestic factors remain essential, at a uniform level of EU assistance and monitoring. If we judge by the superior performance of the Baltic States, especially of Estonia, in the two key areas of administration and justice reform, it seems that Revolution was the main factor behind success. Estonia closed down practically the judiciary inherited from Communist times and



reinvented it under a new Constitution: by end of 1994, the judicial corps had undergone a 67 per cent renewal in this country and judges had held office for an average of 3.7 years. Estonia's e-government performance is also domestically explained.

### *Some tentative explanations*

One can argue that it is still too early to see any positive evolution and the good governance policies would only work if given more time. This argument does not hold, as it seems it is not too early for some countries to display *negative* evolution of some practices. While during accession indicators show stagnation (as most energy goes into formal negotiations rather than substantive developments), after accession we see some negative developments and backsliding. The most problematic fields are anti-corruption (attempts to close down agencies required by EU during accession), public procurement, political control of public broadcasting and politicization of the administration, which had never really gone away before returning in force. While new entrants perform on most of the *acquis* better than most would have expected, in these delicate areas there is a tendency to slide back into old habits.

Unlike the normal, classic *acquis*-driven Europeanization, good governance reforms seem to have gone against the vested interests of the power establishment in some new member countries. The contributors to this post-accession disorder can be found in the parliaments as well as governments. Even during accession there was considerable resistance on the part of domestic bureaucracies and political elites ('coalition of the unwilling') to these reforms, even in the most advanced countries<sup>5</sup>. 'Revolution' or 'transformation' was also far from over in the judiciary and administration, where many old-timers still held important positions and represented the establishment, enabling them to thus block or sabotage the reforms. Once the EU loses its main levers as countries acceded, a part of the political establishment seems to return to profitable practices such as clientele-based distribution of spending budgets, control of public media and quite open political intervention to stop anti-corruption investigations. Reforms in these areas do not seem to have gained a sustainable commitment from strategic actors. A review of the status quo in the most significant area in the field of governance reforms seems to indicate indeed that

incentives were often wrong, confusing or absent, which might explain the lack of profound and sustainable positive developments.

### 1. Wrong incentives

The detailed requirements of the Commission in the field of governance and the related conditionality created a relationship where the EC became the sole principal (instead of domestic publics or their representatives) and the government its agent. Reforms were not driven by impact evaluations, but by the need to satisfy the pressing bureaucratic *reporting needs* for the EC regular monitoring reports. ‘One-off special efforts’ to reach certain EU deadlines and ‘islands of excellence’ units within administrative empowered in this respect prevailed while sound, system-building administrative reform was neglected. As the EC went quite far in suggesting concrete means to achieve targets (like creation of new government bodies) and governments needed positive ratings for their efforts in order to keep up the pace of the accession process, I would argue that a ‘prescription-based’ perverse incentive mechanism was created. On the basis of this mechanism, countries were rated not by the effectiveness of reforms, but by the number of ‘prescription pills’ taken (or benchmarks met). A country received a high rating if, like a willing and cooperative “patient”, it accepted advice, without any checking of ‘symptoms’ to follow. Predictably, reforms driven by such purely bureaucratic incentives could not have been either effective or sustainable. This is a good illustration of the ‘planning’ approach.

### 2. Confusing or conflicting incentives

Regional policy, an area with particularly strong conditionality and thin *acquis* is also worth examining. The Commission was itself divided over whether chapter twenty-one of the *acquis* entailed a ‘model of regionalisation’ and how it should be implemented by the ECE countries (Hughes et al. 2003). The issue was political as well as technical. All countries involved were unitary states, many of them with historical ethnic minorities. Was regionalization to be political or statistical? Originally the EC argued that countries must reorganize their administrative regional organization to increase absorption capacity. Some of these countries had already embarked on serious decentralization, but they all had their

own historical territorial divisions, and the passage providing a bridge from the old inherited structures to completely new ones was bound to be complicated. What drove regionalization was the EC technocrats' presumption that the effective absorption of regional funds is facilitated by a given structure, on the basis of their previous experience in other countries. After some countries managed to implement such reforms (for instance Poland), the realization of the high costs and uncertain benefits combined with the incentive to spend funds by an approaching deadline led the EC to abandon this policy. The consequence was that by early 2001 the Commission began to proactively stress a clear preference for the *centralized* management of structural funds in the candidate countries, realizing that capacity was superior at that level (Agh 2004; Hughes et al. 2004; Vass 2004).

The area of civil service reform is also illustrative in this respect. Despite overall compliance with EU requirements, most reviews find that reforms simply missed the substantial Europeanization (Dimitrova 2005). Recorded instances of progress seem to be related to local circumstances and not specific assistance efforts (Verheijen 2006). The attempt to build civil service management systems failed, and politicization endured (Meyer-Sahling 2004; 2006). As the latter was perceived as the key problem of administrative performance, EU-sponsored legislation granted tenure to all civil servants, thus removing a crucial incentive for linking career to performance without, however, eliminating incentives for politicization. The World Bank efforts to promote a reform more oriented towards New Public Management were therefore stalled. The Freedom of Information and transparency legislation, which proved good potential in improving governance (and can be credited for the reduction of petty administrative corruption in Eastern Balkans) was not requested by the EU originally, but arrived through international civil society channels using the conditionality framework of NATO enlargement<sup>6</sup>.

By and large, governance reforms seem not to have asked the fundamental question: why would those envisaged by these reforms struggle to change their ways? As reforms were entirely top-down oriented, outcomes proved limited to changes only in formal structures. Therefore low institutionalization resulted from accession-related rules and procedures. This massive import of legislation failed to affect the very substance of the governance process at the domestic level; and did not induce substantial changes to existing patterns of behavior there, being unsupported by respective bottom-up developments (Atanasova 2004) These did not follow because few incentives for change were created. Supportive constituencies were

reduced only to the general democracy-sensitive NGOs or civic-oriented media, while professionals directly concerned displayed considerable less enthusiasm.

### 3. No incentives at all.

Building sustainable and effective rule of law is generally considered to be a difficult task. A recent review by the Carnegie Endowment found few positive results in this trendy and flourishing sector of democracy promotion (Carothers 2006). Legal systems are medium- to low-specificity activities with high transaction volumes, and therefore difficult to reform (Fukuyama 2004b). Putting into place a reasonably performing system is one of the most complex administrative tasks, as it involves not just the adjustment of a legal system inherited from Communist times, but also of courts, judges, bars and enforcement mechanisms in a given country. By the time accession started, many ECE countries had already undertaken some steps on the basis of international advice, for instance granting tenure to all judges. The Regular Reports of the European Commission have been very important in determining the course of judicial reform in the accession states (Smilov 2005). Between 2001-2004, under pressure from the Commission, constitutional amendments were passed concerning the status of the judicial system in Slovakia and Bulgaria, Romania, and major legislation was adopted in Poland, Bulgaria, Slovakia, the Czech Republic, Estonia, and Slovenia. The lack of a coherent theory of judicial independence, and the difficulty to measure the performance of the judicial system (the area of statistics was where reform was first needed), led the Commission to endorse some projects for reform and reject others without clear objective grounds to do so. One of the most critical 2002 reports of the Commission concerning Latvia complains about the Ministry of Justice's influence over the career paths of judges, while a positive report – the one on the Czech Republic – contains almost identical language concerning the powers of the Ministry of Justice, and yet no criticism related to judicial independence (Smilov 2005).

The independence of the judiciary from political influence was seen as the key problem in all accession countries. Some countries had tried to solve the problem of independence by entrusting the powers of control to self-governing judiciaries, through the establishment of independent bodies known as Judicial Councils, a model encouraged by EC

for the accession ‘laggards’. But disillusionment set in fast. Curtailing the power of the Ministry of Justice over the judiciary, the EC reduced in fact its own influence, as the new Judicial Councils were not subjected to conditionality (as governments were), either directly or indirectly. They did not have constituencies which could hold them accountable for an eventual delay on accession, as governments did. Their constituents were the magistrates themselves, whose pay had already been increased to stimulate performance and prevent corruption. Attempts to make them accountable after they were independent proved far more difficult. Magistrates were promoters of changes as long as their independence from political intervention was at stake: after that, *esprit de corps* flourished and no incentives were left to pursue self-improvement.

Incentives were also lacking in the field of anti-corruption, another area stressed by the EC and pushed by concerns in some core EU member-states. ‘Corruption’ in postcommunist societies is systemic and goes beyond just bribing. It can be best defined as the discretionary distribution of public goods by the state to the benefit of particular groups or individuals. The approach of the Commission to make ‘grand corruption’ a priority was just. Corruption stems from the top in these societies. Inequality before the law remains a crucial component of post-communist corruption and distribution of public funds, including the new remarkable resources of EU money, persists in being particularistic, even after accession. Passing ‘special’ legislation to favor certain economic interests was another frequent occurrence during transition years and continued during accession. The EC, following SIGMA advice pressed for the creation of policy management units within governments to take charge of planning and impact evaluation of new legislation, in the hope that this will bring a more objective and transparent basis for policy formulation. Consultants working for foreign donors, however, noticed that many bills continued to go through informal channels like ministers’ cabinets, the management unit being frequently bypassed<sup>7</sup>.

Despite good objectives, the EC’s anti-corruption strategy was all ‘planning’. It consisted in incremental capacity building for law-enforcement agencies; corruption ‘awareness campaigns’ (despite evidence that awareness was very high); and the adoption of comprehensive anti-corruption legislation to be passed to provide ‘guarantees’ that new member countries will be able to implement EU *acquis* in front of considerable resistance to

implement even the old imperfect one. When domestic civil society had more engaging ideas (for instance, developing a competitive ranking of the quality of local governments or monitoring and publishing the profit politicians derive from a ‘conflict of interest’ situation) it was seldom funded by EU money, which had no interest in state-civil society designs but funded only state agencies. And so, once the accession pressure was lifted, the whole front of EU sponsored anti-corruption institutions came under assault from politicians. Slovenia’s Commission for the Prevention of Corruption, led by Drago Kos, who also happened to be the president of GRECO (“The Group of States against Corruption”), the Council of Europe’s principal anti-corruption program, has been the target of a sustained campaign to shut it down. In Romania, immediately after the 2007 accession Monica Macovei, a well-respected justice minister who took the lead taking on the country’s entrenched corruption, was driven from her post in an unprecedented no-confidence motion against an individual cabinet secretary. The accusing text was simply the list of bills passed in the previous two years at the express request of EU. Her successor, Tudor Chiuariu, tried to fire the anti-corruption prosecutor investigating his political sponsors. In the Czech Republic, the elite anti-corruption unit was dissolved in 2008 and many policemen permanently abandoned the unrewarding job of fighting grand corruption. In Latvia, former Prime Minister Aigars Kalvitis sought to oust Aleksejs Loskutovs, the chief of the country’s highly-regarded anti-corruption agency (KNAB), who had been looking into alleged irregularities involving campaign contributions to Mr. Kalvitis’ People’s Party. In areas directly touching the interest of political elites, conditionality does not seem to produce sustainable results in the absence of motivated, domestic agents of change. Once it ceases, its effects vanish as well. With the benefit of hindsight it seems that Europeanization of political elites was largely taken for granted by the EU. As demonstrated especially after accession, many former Communist politicians shared with their challengers a common view of politics as merely cronyism. While the incentive of accession turned even populists into pro-Europeans during accession, once the target was reached politicians returned to their old ways. A 2006 Gallup survey, ‘Voice of the People’ found impressive majorities in all these countries claiming that the governments do not express the will of the people. Indeed unhappiness with government in ECE after EU accession turned out to be the highest in the world<sup>8</sup>. Corruption was indicated as the number one cause. Dissatisfaction with the quality of governance

overshadows the good economic performance of the region. Polls show deep mistrust in politicians and politics, despite clear democratic attitudes from respondents.

*So what next?*

This paper deals with EU influence on good governance only. But the argument can also be expanded for other enlargement policies. It would be worth analyzing if the accomplishment of the status of ‘functional market economy’ was due to the prescription mechanism (a revisiting of EU-required specific actions during accession, for instance some privatizations, might show quite a mixed record<sup>9</sup>) or to the incentives for foreign direct investment (FDI) that the accession perspective creates for any economy. In ‘laggard’ Romania and Bulgaria, FDI only started growing after the Helsinki invitation to join, more than doubled during negotiations, and continued to grow strongly after 2005. Romania, Bulgaria and Croatia attracted about 16 billions euro in 2006 compared to only 4 billion in 2002, and this smoothed considerably the second part of their accession course.

This shows the power of Europe and European enlargement as an *incentive*. Transitions with a European perspective are certainly the best: they lead to democracy and prosperity faster and entail reduced uncertainties and risks. The companion of enlargement, assistance policy, needs however serious revisiting and adjustment with a view to further enlargements. Detailed policy delivery met indeed in this area the ‘incoherence and dysfunctionalities’ that Sedelmeier and Wallace had already found in the earlier process (2000). Lessons learned matter greatly for the success of forthcoming efforts. Most countries in the Western Balkans have not achieved their transformations yet. Advocates of enlargement for these countries argue that negotiations should start as soon as possible, presuming that this will unlock stalled reforms. Such proposals overstate the role of the process of negotiations as a development tool able to accelerate the course of a given country. We have evidence, however, that negotiations themselves do not have much transformative impact (Glenn 2004) and that EU policies work best only when they manage to create incentives to key groups, from investors to magistrates. If such incentives do not materialize, and domestic actors of change are not activated, conditionality has limited and

unsustainable effects. Enlargement is not a transformation tool in itself, and it was not designed to be, as it was simply carried over with minimal adjustment from previous enlargements seeking to accomplish integration, not transformation. The accession of countries like Macedonia or Ukraine need more than that. They cannot succeed without an additional set of policies meant to encourage their transformation.

To use enlargement further as a *transformation device*, the EU will have to choose between two paths. One choice is to reform its existing instruments in view of lessons learned. This would not only imply a radical overhaul of existing tools with a limited perspective of success. Huge planning-minded bureaucracies are unlikely to turn into flexible development agencies practicing evidence-based policymaking. The second choice is to keep the 'power', but delegate some competences. Commissioning various parts of the task to smaller agencies with proven excellence in limited fields should not be inconceivable. This would imply giving up the step-by-step 'roadmap' guidance of the countries and developing a system of monitoring based on measuring impact rather than just input. Smaller intermediate agencies (for instance, private foundations) would not face the same constraints on assistance and would be able to develop programs involving state and civil society together, this being the only way to improve state capacity. As future enlargements have a longer time perspective, a more substantial approach to reforms would only be to the reciprocal benefit of both EU and accession countries.

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<sup>1</sup> Alexis de Tocqueville's 'Memoirs' open with this remarkable definition of 'revolution', as watching the 1848 events unfolding he sees them only as one more episode of the 1789 Revolution.

<sup>2</sup> For an useful review, see Sedelmeier 2006.

<sup>3</sup> Counter-incentives were provided by the perceived threat to the state consolidation of Latvia and Estonia, for instance the fear that Riga might have had a Russian mayor had franchise been granted to all Russian settlers from Soviet Union times.

<sup>4</sup> For 'Business environment and enterprise performance survey' (BEEPS) 2005, see <http://www.ebrd.com/country/sector/econo/surveys/beeps.htm>

<sup>5</sup> Interview with former Czech negotiator, November 2007.

<sup>6</sup> As NATO required the passage of a classified information law to protect military secrets and did not want it used to further increase lack of transparency of the administration in these countries, the organization required as part of its political conditions the passage of a general Freedom of Information Act.

<sup>7</sup> Interview with SIGMA consultant, June 2005.

<sup>8</sup> For Gallup Int. survey 'Voice of the People' see <http://www.voice-of-the-people.net/>

<sup>9</sup> For instance, some energy companies privatized by the Romanian government to prove commitment to EU accession ended up immediately after being bought from the original buyers either by state companies, for instance the Kazakh state monopolistic gas company (Kaz Munai Gaz ) or partly shared (through buying of shares) by state-owned Russian Gazprom.

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