

European Union Conditionality and the *Acquis Communautaire*

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ABSTRACT. The EU's conditions for the central and east European applicants look deceptively straightforward: they comprise stable democracy, a competitive market economy, and the capacity to implement EU laws and policies (the so called *acquis communautaire*). However, they are very general and not amenable to quantitative assessment, leaving ambiguity about exactly when they have been met. This ambiguity increases the EU's power in accession negotiations, but the accompanying uncertainty diffuses its influence in shaping institutional and policy choices. This article examines the EU's accession conditionality levers and the constraints on their use. It concludes that readiness for membership depends not only on technical progress in negotiations, but also on when the current member-states are politically ready for enlargement.

Keywords: • Central Europe • Conditionality • Eastern Europe • European Union

Introduction

The conditions for joining the European Union (EU) look deceptively straightforward: an aspirant member has to be a stable democracy and competitive market economy, and demonstrate that it is willing and able to take on all EU policies, both present and future. These conditions seem self-evident, a set of “motherhood and apple pie” criteria to which no self-respecting European could object. They are also essential to reassure EU states that the Central and Eastern European countries (CEE)¹ will—if they become members—look like familiar, west European countries, not bringing instability, authoritarianism, or economic collapse into the Union.

On closer inspection, however, the membership conditions are more confusing,

and “readiness to join” lies in the eye of the beholder. The conditions are very general: they do not, for example, define what constitutes a market economy or a stable democracy. Do new member states need a German economy, British civil service, Swedish welfare state, and French electoral system? Or how about a Greek economy, Belgian civil service, Austrian industrial relations, and Italian electoral system? The European Union does not present a uniform model of democracy or capitalism, and neither has it tried to define one. Diversity is a key feature of the Union, and the principle of integration while respecting difference remains important.

But how far does the principle of respecting diversity apply to applicant countries? What exactly are the minimum standards of political institutions, public administration, implementation of legislation, and economic performance that are essential to join the Union, and what are merely desirable? It is not self-evident what kind of economies and political systems would meet the Copenhagen criteria. It is even hard to say whether all the current member states are “ready to join,” as they have never been judged on the Copenhagen conditions. For example, Belgium’s public administration, France’s industrial policy, and Germany’s state aids might be unacceptable if they were applicants. Some Commission officials claim that no current member state fully implements more than 80 percent of EU regulations: so is it fair to demand 95 percent adherence from the East Europeans? The question of double standards remains open.

This article is about the complexity of EU conditionality and the puzzles it contains for political scientists. Although the conditions seem straightforward, analyzing them is problematic because their interpretation is complex and what would count as meeting them is opaque. The first section of this article sets out the main elements of EU conditionality and some of the central questions surrounding them. The next section sets out the course of negotiations so far, followed by a section discussing the conditionality levers available to the Union to effect institutional and policy change in CEE, while the following section points to some of the constraints on their effectiveness. The final section considers when the candidates will be ready to join.

How European Union Conditionality Works

EU conditionality is not limited to enlargement. The Union applies both positive and negative forms of conditionality to third countries for benefits such as trade concessions, aid, cooperation agreements, and political contacts. Since the late 1980s, political conditions have increasingly been applied, as well as economic ones. Both practical and ideological motivations lie behind the development of political conditionality, and protectionist politics have had an influence (Weber, 1995). In its dealings with third countries, the Union has shown a preference for using “carrots” rather than “sticks,” and its conditionality is not always applied consistently.

The conditions for accession set for the CEE countries were the most detailed and comprehensive ever formulated. The European Union attached conditions to aid, trade, and political relations from 1988 onwards (Smith, 1997). Formal democratic and market economy conditions were then imposed in 1993 to overcome opposition from several member states to eastward enlargement. For the neutral EFTA countries which joined in 1995, the Commission had stated that the entire *acquis communautaire* had to be accepted, including the common foreign

and security policy, but there were no democratic and market economy conditions. These were imposed for the first time on the CEE applicants (Michalski and Wallace, 1992).

The conditions set out at the Copenhagen European Council were designed to minimize the risk of new entrants becoming politically unstable and economically burdensome to the existing Union, and to ensure that the countries joining were ready to meet all the EU rules, with only minimal and temporary exceptions. The conditions were formulated to reassure reluctant member states that disruption risks would be minimal, as well as to guide CEE applicants. This dual purpose of the conditionality has continued to play an important role in the politics of enlargement within the Union. The third condition quoted below reflects anxieties among member states about the impact that enlargement might have on EU institutions and policies because of the increase in numbers and diversity, as well as the specific problems that CEE members might bring in. It is a condition for enlargement, whereas the others are conditions for entry, and it gives the EU's member states a "pocket veto" over the accessions.

The Copenhagen Conditions were set in 1993. They read:

1. Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.
2. Membership requires the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
3. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union (European Council, 1993).

All three main Copenhagen conditions are very broad and open to considerable interpretation; elaboration of what constitutes meeting them has progressively widened the detailed criteria for membership, making the Union a moving target for applicants. The conditions are not fixed and definite, and new conditions have been added and old ones redefined at the biannual summits of EU leaders. Moreover, the benefits do not come in stages, but only at the end. As the arbiter of what constitutes meeting the conditions and when the benefit will be granted, the Union changes the rules of the game. This "moving target problem" also has implications for relative strength in negotiating the terms of accession, because the Union is a referee as well as a player in the accession process (Grabbe, 1999).

The first two Copenhagen conditions require definitions of what constitutes a "democracy," a "market economy," and "the capacity to cope with competitive pressure and market forces," all highly debatable and slippery concepts. The Union has never provided an explicit definition of these concepts, although there are implicit assumptions about their content in the Commission's formal "opinions" on each candidate's readiness for membership (published in 1997) and the subsequent annual reports on their progress. There is thus no published rationale for how various EU demands will bring applicants closer to west European political and economic norms.

This third condition is concerned with the *acquis communautaire*, the whole body of EU rules, political principles, and judicial decisions. This set of texts is the basis for the "chapters" on which the applicant countries have been negotiating with

the Union (five of the CEE countries have been in negotiation since 1998, the rest since February 2000). The *acquis* is divided into 31 different “chapters” for the purposes of negotiation. This dimension of the accession process is the most measurable because countries can show how many chapters have been opened, and provisionally closed. Candidate countries have focused much effort on getting chapters provisionally closed, and opening new ones, in order to demonstrate their progress—even though closing chapters does not guarantee an earlier date for accession, and provisionally closed chapters can be reopened later in negotiations. Because it is one of the few clearly measurable parts of the process, this aspect of negotiations has received much political attention in CEE.

The Moving Target Problem: What Do Applicants Have to Do before They Can Join?

The Copenhagen conditions are not a straightforward case of conditionality, and they are in several ways different from the traditional conditionality for benefits used by international financial institutions (IFIs) such as the development banks. In its simplest formulation, IFI conditionality links perceived benefits to the fulfilment of certain conditions; in the case of IMF and World Bank finance, conditionality is primarily linked to the implementation of specific economic policies, such as those aimed at structural adjustment, and the main benefit is finance. It is a means of ensuring the execution of a contract, “a promise by one party to do something now in exchange for a promise by the other party to do something else in the future,” as an analysis of World Bank conditionality puts it (Mosley, Harrigan, and Teye, 1991: 65). By contrast, EU demands on CEE are not just a set of conditions to receive defined benefits, but an evolving process that is highly politicized, especially on the EU side. The linkage between fulfilling particular tasks and receiving particular benefits is much less clear than in IFI conditionality because the tasks are complex, and many of them are not amenable to quantitative targets that show explicitly when they have been fulfilled.

The impact of EU conditionality on postcommunist transition is analytically problematic because the accession conditions are themselves so general and vague, and because the European Union is not a unitary actor in CEE. Neither the agenda set by the Union nor the channels by which it influences different levels of government are immediately apparent. Detailed assessment of the effects (and effectiveness) of the conditionality will require deconstruction of the agenda and examination of the multiple points of contact between the EU and CEE.

The thrust of the EU’s economic agenda for CEE is neoliberal, emphasizing privatization of the means of production, a reduction in state involvement in the economy (particularly industry), and further liberalization of the means of exchange. Considering the variety of models of capitalism to be found among EU member states, the accession policy documents (particularly the Accession Partnerships discussed below) promote a remarkably uniform view of what a “market economy” should look like. The socio-economic system they implicitly promote has a more “Anglo-Saxon” flavour than the “Rhenish” social market economies of France or Germany or the “Latin” economic systems in the southern EU.²

The third condition, on the “obligations of membership,” is also open to interpretation. In previous enlargements, these obligations were held to lie solely in the implementation of the *acquis communautaire*, which amounts to 80 000 pages

of legislative texts already, but it keeps growing as the Union develops new policies and issues new directives, declarations, and jurisprudence. For this enlargement, the *acquis* has been defined more broadly as “all the real and potential rights and obligations of the EU system and its institutional framework” (Gialdino, 1995).

Such a formulation is open to minimalist and maximalist interpretations, and these in turn affect the demands made on CEE applicants. So far, the Union has presented a quite maximalist interpretation to applicants. CEE countries have no possibility of negotiating opt-outs like those applying to some member states on Schengen and Stage 3 of monetary union. For example, the Commission has argued that the social dialogue is part of the *acquis* for applicants, even though not all member states accept it. The candidates also have to take on the EU’s “soft law” of non-binding resolutions and recommendations.

The Union’s Twofold Role: Aid Donor and Club Owner

Insistence on maintaining the integrity of the body of law contained in the *acquis* has made the Union a tough and unyielding negotiating partner for previous applicants, and a widespread view among EU officials is that CEE applicants have to join the EU club on the same principle of accepting and implementing all the rules. However, others have argued against this view, raising the question of whether this “club membership” approach to eastward enlargement is an adequate response by the Union to the unprecedented challenge of postcommunist transition and the obvious development needs of CEE.

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

How compatible are these goals? The assumption in much of the language used in official EU publications on enlargement is that accession and transition are part of the same process and that preparations to join the Union are coterminous with overall development goals. There are reasons to be sceptical about this assumption: EU policies and regulatory models were created to fit economies and societies at a very different level of development, and they contain anomalies that are the outcome of a bargaining process between different interests and traditions (Héritier, 1996). They were not designed for countries in transition, and often require a complex institutional structure for implementation that is little developed in CEE. EU models in at least some policy areas are suboptimal for the applicants: already the appropriateness of the competition policy model implied by the EU’s conditions for CEE has been questioned, given the forms of corporate governance emerging in the region. The appropriateness of some EU policy prescriptions for CEE is thus debatable. More generally, there is an inherent contradiction between the “regulatory state” that the Union is moving towards and the “developmental state” that might be more suitable to CEE.³ The Union lacks wide experience in a development agency role that would be more suitable to guiding CEE transition.

The Course of Accession Negotiations, 1998–2001

The dynamics of EU accession preparations were altered in 2000 after the Helsinki European Council (December 1999) endorsed a change in accession conditionality. Countries now move at different speeds within the negotiations process, no longer opening the same negotiating “chapters” at around the same time; rather, chapters are opened only once the Commission has judged a particular country’s preparation to be sufficient. This principle of “differentiation” means that the better-prepared countries can move faster in getting through the chapters of the *acquis* than their slower neighbours: the countries that start negotiations later can even overtake candidates in the first group that fall behind. Nevertheless, CEE preparations are a necessary but insufficient condition for joining, because dates for the first accessions will depend on the shifting politics of enlargement among EU member states.

Joining negotiations does not necessarily imply rapid progress in aligning with EU standards, especially for the countries furthest behind. Bulgaria and Romania have joined the negotiating process, but they may not actually negotiate much of substance for several years. The new “differentiated” approach essentially means moving from one waiting room to another, rather than a fast track to accession. Moreover, negotiating chapters that have been provisionally closed will be reopened to include newly adopted legislation, making the EU conditions a perpetually moving target. Applicants will have to keep running to close the gap with the ever-growing body of EU law.

At Helsinki the Union used the prospect of opening negotiations as a lever to get Bulgaria and Romania to respond to key EU concerns by setting additional conditions for lagging applicants. Predicting progress remains difficult, as previous negotiations for membership (most recently those with Austria, Finland, and Sweden) reached unforeseen impasses over initially uncontroversial issues. Entering negotiations has given greater impetus to accession preparations and the candidates have moved through negotiations much more quickly than the EU expected. However, the extent of their preparations varies across the policy areas and unexpected technical problems are likely to arise as each candidate nears the end of its negotiations. The three most difficult issues are:

Agriculture. Enlargement is not the only question involved in reforming the Common Agricultural Policy (CAP). World trade negotiations, the expense of dealing with the mad cow disease (BSE) crisis, and consumer opposition to intensive farming will all affect the deal on the CAP for the applicants, as well as the cost of extending agricultural subsidies to the new members.

Regional Aid. This area is largely a matter of negotiation among the current member states. The net recipients from the budget are fighting hard to maintain the EU subsidies to their poorer regions. They are led by Spain, which is due to receive nearly two-thirds of all available structural and cohesion funds under the current EU budget framework for 2000–06. The accession of poorer countries is due to result in all the Spanish regions except for two losing their funding. Under current EU rules, the lion’s share of the structural funds is only available to regions which have an average GDP per head below 75 percent of the EU average. After accession, virtually all the regions that fulfil this criteria will be in central and eastern Europe because the entry of poorer countries will lower EU average GDP to a point below that of the currently poorest regions. Prior to the Gothenburg

summit in June 2001, the Spanish government tried to trade off the German position on transitional periods for central European workers against its own regional aid demands. These two negotiating chapters are linked only by member-state power politics. But there will be further such stand-offs where budget demands are linked to difficult areas in negotiations.

Justice and Home Affairs. This area has a relatively small body of legislation, but it is highly controversial owing to the security implications of imposing EU border regimes that will divide the candidates politically from their eastern neighbours and minority populations. The Union would like full compliance with its border policies well in advance of accession, whereas CEE negotiators want to avoid visas—particularly for Ukraine—until the last possible moment. However, EU member states currently bordering eastern Europe (such as Germany and Austria) are very keen to avoid transit across the new member states into the Schengen zone by third-country nationals (particularly from the former Soviet Union and Asia). Moreover, the EU's visa regime is not officially negotiable because it is part of the "first pillar" of the Union. Justice and home affairs is largely a matter of confidence rather than technical compliance: member states want to ensure impervious eastern borders for the enlarged Union. Assessment of the candidates' readiness for membership of the Schengen zone will therefore depend on member states' confidence in CEE border controls.

What is the scope for negotiations now? Compared with previous enlargements, the scope is much more limited because the conditions are more detailed, making fewer issues negotiable. Accession of new members to the Union has always been a mutually agreed process; negotiations did not just concern "us and them," but also the "future us." The history of EU enlargements has been of new members changing the Union, as well as the Union changing new members. There was a reciprocal relationship in which applicants could demand concessions; previous enlargement negotiations resulted in special arrangements in areas such as external trade policies and aid to third countries; for example, the United Kingdom was able to agree changes in EU policy frameworks to benefit the Commonwealth and EFTA in advance of its accession in 1973 (Swann, 1992). However, in this enlargement, the Accession Partnerships and other policy documents set detailed objectives for CEE across policy areas that were a subject for intergovernmental bargaining in previous enlargements. Partly this is because of the expansion of the *acquis* to cover many more policy areas than in previous enlargements, but it is also because of the more clientelistic approach taken towards postcommunist applicants.

By setting lists of priorities for the applicants each year, the Accession Partnerships (issued since 1998) prejudice accession terms in areas outside the *acquis*, because they cover the market economy and democracy criteria as well. This procedure reduces the scope of negotiations to agreeing transitional periods because it narrows flexibility in deciding what might be subject to compromise on both the CEE and EU sides; the Accession Partnerships present the conditions as a package which is difficult to take apart in negotiations. CEE applicants have little power to argue against EU demands, given that there is a pre-set EU agenda on which aid is already conditional and to which sanctions apply.

The wide scope of pre-accession conditionality for this enlargement seems likely to result in less favourable accession terms than those enjoyed by previous applicants. Greece, Portugal, and Spain were allowed into the Union with the aim

of helping them consolidate democracy after entry, and they were given large financial transfers after accession over a long period to aid economic development. The Union has already made it clear that such terms will not apply to CEE: applicants are officially expected to meet all the conditions prior to accession, with very limited financial transfers. Moreover, transitional periods have to be limited in time and accompanied by a precise plan for their abolition. The applicants have found it difficult to make demands in return for the transitional periods that the Union wants to impose, particularly on free movement of CEE workers and access to CAP funds after accession.

Accession Conditionality Levers of the Union

The Union uses a wide range of techniques to effect institutional and policy transformation in CEE. The most important mechanism is the EU's gatekeeping role in determining when each candidate can progress to the next stage towards accession. However, there are also many flanking measures which directly or indirectly shape institutional reform and increase the institutional capacity of CEE administrators. Indirect influence and pressure (for example, bilateral contact with member states) can also be effective, but such mechanisms work over time and are not necessarily coordinated at EU level. The EU's geographical proximity to CEE and the plethora of contacts between the two regions, along with policy learning and the provision of models of best practices, have undoubtedly had a major impact as well.

The levers provided by the accession process can be categorized as: (1) Access to negotiations and further stages in the accession process; (2) provision of legislative and institutional templates; (3) aid and technical assistance; (4) policy advice and twinning projects; and (5) monitoring, démarches, and public criticism.

(1) Access to Negotiations and Further Stages in the Accession Process

The EU's most effective conditionality tool so far has been access to candidate status, negotiations, and different stages in the accession process. Aid, trade, and other benefits can also be used to promote domestic policy changes, but they have not had such direct and evident consequences. It has taken a decade for the Union to evolve an explicit use of conditionality in a gatekeeping role, where hurdles in the accession process are related to meeting specific conditions; for several years after the conditions were first set in 1993, it was not clear exactly which elements of the political and economic conditions had to be fulfilled for an applicant to be admitted to which benefits. By 2000, it had become clear that if a European country has good relations with the Union it will receive aid and trade concessions, but its government has to be politically acceptable and strongly oriented to the west to become a candidate for membership, and it has to meet the democracy and human rights conditions to start negotiations.

The Helsinki European Council (December 1999) made an explicit linkage between access to negotiations and the democracy condition for the first time, stating that to start negotiating, an applicant has to have achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities. In December 1999, only Turkey was judged not to have met this condition, whereas all the CEE applicants now do. Meanwhile, the Union is now developing more transparent and explicit ways of measuring

compliance with the conditions prior to membership, so by the first accessions, the EU will have a much more focused and clear ranking of conditions for new members.

The first explicit use of conditionality to exclude a country occurred in 1997, when Slovakia was not allowed to join the first round of negotiations, as the only candidate judged not to meet the democracy criteria (following a change of government in 1998, Slovakia was allowed into negotiations in 2000). In general, the Union has been very reluctant to isolate any applicant once it is part of the process, although the EU finds it easier to keep countries from joining the process: it refused throughout the 1990s to sign a Europe Agreement with Croatia or the Federal Republic of Yugoslavia on political grounds, for example. The other four applicants excluded from negotiations in 1998 (Bulgaria, Latvia, Lithuania, and Romania) were judged not to meet the economic conditions. Not meeting parts of the *acquis* has not been used as an exclusionary condition (whereas both the political and economic conditions have), but the Commission is paying much greater attention to effective implementation and enforcement of the *acquis* as the candidates approach accession.

A further conditionality lever was added at the start of CEE negotiations in 1998, when the Union introduced the "Accession Partnerships." This new instrument provided a direct lever on policy-making in CEE by setting out a list of policy "priorities" that have to be implemented within the year or in the medium term (defined as five years). The European Commission then reports on the applicants' progress in meeting each priority in the autumn of the year, and publishes revised Accession Partnerships that stress the areas which the Union regards as particularly important for progress in the following year.

Access to negotiations and other stages in the accession process is the EU's strongest conditionality lever, and hence its most powerful political tool for institutional change. However, it is not a precise instrument that ensures complex changes in policy or institutional frameworks. Rather, it is a blunt weapon that is used for priority areas only.

(2) Provision of Legislative and Institutional Templates

Legal transposition of the *acquis* and harmonization with EU laws are essential to becoming a member state, and they have so far been the central focus of the accession process and preparations by the candidates. The Union promotes both the strengthening of existing institutions and the establishment of new ones, although EU influence on the design of institutions is hard to document because there are so many different foreign and domestic influences. Priorities for institutional reform and development are presented in the Accession Partnerships each year.

Legislative adaptation to EU norms was initiated by the Europe Agreements, treaties covering trade relations that had a major impact on liberalization of CEE trade, and investment policies in the 1990s (Winters, 1995). They were signed bilaterally with each applicant from 1991 onwards. Eligibility for a Europe Agreement formally depended on five conditions: rule of law, human rights, a multi-party system, free and fair elections, and a market economy. A Europe Agreement can be suspended if these standards are not maintained, but no suspensions have occurred, even following the EU's *démarches* critical of undemocratic practices in Slovakia in 1994 and 1995, reflecting the fact that suspension is seen by the Union as a very last resort. The first real application of EU

conditionality to the CEE-10 occurred in 1997, when the Commission's judgments on their readiness for membership (published in its "opinions") were used to choose the countries that could start negotiations in 1998.

The Europe Agreements are a set of formally structured trade relations, containing both political and economic provisions. They were intended to create a free trade area and to implement the four freedoms of the Single Market (free movement of goods, services, capital, and labour) over a 10-year timetable, and they also provide a general framework for political and economic cooperation, including approximation of legislation; they thus started the process of introducing the *acquis* to the applicants, and are still the only legally binding set of relations between the EU and CEE. The main legislation to transpose was given in the Single Market White Paper (1995), which presented the *acquis* related to regulation of the Single Market, divided into primary and secondary legislation. Legislative gaps and institutional weaknesses were also identified by the screening process that took place with each applicant prior to negotiations on each subject (there are 31 negotiating "chapters" in all). The European Commission used the screening process to identify the main areas where applicants' legislation was not compliant with the *acquis communautaire*, and the results of screening were used to formulate EU negotiating positions and to establish priorities in the Accession Partnerships.

(3) *Aid and Technical Assistance*

The European Union is the largest external source of aid for CEE, providing funds administered by the European Commission and also bilateral programs from individual member states (the largest of which is from Germany). The Phare⁴ aid program covers the ten countries which have applied for membership, and also the non-applicant Balkan countries for which the Union has taken special responsibility following the Kosovo crisis (including Albania, former Yugoslav Republic of Macedonia, and Bosnia and Herzegovina).

Until 1997, EU aid policy was oriented towards a broad range of goals connected with transition towards pluralist democracy and market economics, largely through technical assistance from EU officials and western consultants. Phare was demand-driven, allowing CEE governments to formulate their own requests in the fields of institutional reform and infrastructure development. Projects were awarded to consultants under a competitive tendering process, but without a policy framework, so there was little opportunity for consistent and persistent policy influence from the Union. Phare was turned into an explicit instrument of pre-accession policy, with all aid focused on preparations for accession, following the EU's Luxembourg summit in December 1997. All instruments were then more closely focused on detailed preparations for accession, even for those countries that did not start negotiations until later. The two main priorities were institution-building, with a stress on training of public servants (30 percent of funds) and development of infrastructure (70 percent), concentrating on transport and environmental projects.

In the period 2000–06, Phare will provide 1.5 billion euros a year to the ten applicants—an increase from around 1.3 billion euros annually over 1995–99.

The core priorities of Phare activities are now institution-building (receiving around 30 percent of Phare resources) and investment (around 70 percent). The stress in institution-building is to develop the applicants' capacity to implement EU

TABLE 1. *Phare Sectoral Allocations: By Main Sectors 1990–93 and 1994–96*
(% of total Phare commitments).

Sector	1990–93	1994–96
Humanitarian, food, critical aid	10.3	5.3
Agricultural restructuring	12.0	2.6
Private sector (restructuring, privatization, SMEs*, financial sector, regional)	26.7	18.2
Education, training, research	13.1	13.2
Social development, employment, health	6.5	3.2
Environment (and nuclear safety)	9.9	6.4
Infrastructure	8.5	36.1
Administration, public institutions, legislation	5.0	8.2
Civil society and democratization	1.0	2.0
Other	7.0	4.7

*Small and medium size enterprises.

Source: European Commission, *The Phare Programme: An Interim Evaluation*, June 1997.

legislation and prepare for participation in EU policies. The funds for this area are mainly given through secondment of officials from member states (see the discussion on twinning below). Support is also available to public authorities and NGOs to help fulfil the requirements of the first Copenhagen criterion (related to democracy). The Commission identifies priorities in order to approximate the *acquis*, which national governments have to follow in their applications for Phare funds.

From 2000 to 2006, the Union is also transferring funds to CEE from its Common Agricultural Policy budget (500 million euros per year) and Structural

TABLE 2. *Total Phare Commitments, Contracts and Payments, 1990–98* (in m euros).

Sector	Commitments	Contracts	Payments
Administration & public institutions	761.23	395.35	291.58
Agricultural restructuring	562.60	459.01	438.57
Civil society and democratization	104.84	79.79	64.95
Education, training, research	1012.09	959.93	867.51
Environment (and nuclear safety)	753.12	544.62	447.19
Financial sector	268.68	257.82	248.76
Humanitarian, food, critical aid	533.02	521.07	501.52
Infrastructure (energy, transport, telecoms)	2145.59	1298.24	958.04
Approximation of legislation	84.07	73.81	19.66
Consumer protection	12.91	12.63	8.97
Private sector, privatization, restructuring, SMEs	1156.02	924.98	815.81
Integrated regional measures	340.15	124.91	83.34
Social development, employment	272.84	233.64	202.37
Public health	105.57	98.92	88.46
Other (multidisciplinary, general technical assistance, etc.)	778.15	712.59	552.39
Total	8890.88	6697.30	5589.10

*Small and medium size enterprises.

Source: European Commission, *The Phare Programme: Annual Report 1998*.

TABLE 3. *Spending on the Applicants/New Members* (1999 prices in m euros)

	2000	2001	2002	2003	2004	2005	2006
Pre-accession							
Phare	1,560	1,560	1,560	1,560	1,560	1,560	1,560
SAPARD	520	520	520	520	520	520	520
ISPA	1,040	1,040	1,040	1,040	1,040	1,040	1,040
Total pre-accession funds	3,120	3,120	3,120	3,120	3,120	3,120	3,120
Enlargement (EU-21)							
Appropriations for payments	—	—	4,140	6,710	8,890	11,440	14,210
Appropriations for commitments, of which:	—	—	6,450	9,030	11,610	14,200	16,780
agriculture	—	—	1,600	2,030	2,450	2,930	3,400
structural operations	—	—	3,750	5,830	7,920	10,000	12,080
Other	—	—	1,100	1,170	1,240	1,270	1,300
Total (maximum) pre-accession and enlargement spending	3,120	3,120	7,260	9,830	12,010	14,560	17,330

Note. The budget was calculated on the “working assumption” that six countries would join in 2002.

Source: Berlin European Council 1999, *Presidency Conclusions*.

Funds (1 billion euros annually), making a total of 21 billion ecu available in pre-accession aid over the period 2000–06.

After they join, new members will be eligible for considerable additional funds from the structural funds and agriculture budgets, and these pre-accession funds are designed to develop their institutional capacity to handle such large transfers and increase their familiarity with EU procedures. The annual maximum total of pre- and post-accession spending for CEE is planned to rise to 17.3 billion euros (at 1999 prices) by 2006. However, CEE countries will only get this amount if some countries join during that period and so become eligible for structural and agricultural funds. Otherwise, the annual limit will be the 3.12 billion euros allocated as pre-accession funds for all the candidates.

The pre-accession funds are distributed through the ISPA⁵ and SAPARD⁶ programs. ISPA provides structural funds money to contribute to accession preparations. Measures have to comply with EU law and the Accession Partnership objectives, and there is a scale requirement that each project should have a significant impact and not cost less than 5 million euros. SAPARD funds (from the CAP budget) contribute to the implementation of the *acquis* concerning the common agricultural policy and related policies, and also to solve specific problems for the sustainable adaptation of the agricultural sector and rural areas in each candidate country.

The Union's agricultural policies are more controversial than the structural measures because the EU's agricultural policy is based on a system of managed prices and large subsidies to farmers that runs against the free-market reforms promoted in postcommunist CEE economies. The applicants are not being encouraged by the Union to replicate this system—both from doctrinal and financial motives—but they have to prepare their administrations to deal with CAP funds. Decisions on how to spend the SAPARD money for agricultural development are largely in the hands of national agriculture ministries (subject to broad

guidelines set by the EU), whereas ISPA funds are much more closely controlled by the Commission, which has to approve each individual project proposed by CEE authorities.

(4) Policy Advice and Twinning Projects

The Union has provided a wide range of policy advice to CEE through the technical assistance offered by the Phare program from 1989 to 1997, and through the twinning program that started in 1999. "Twinning" is aimed at helping CEE countries to adapt their administrative and democratic institutions to comply with membership requirements by learning from member state experiences of framing the legislation and building the organizational capacity necessary to implement the existing legislation and policies of the EU (the *acquis*). It involves the secondment of officials from EU member states to work in CEE ministries and other parts of the public administration (institutions, professional organizations, agencies, and European and regional bodies); only civil servants can be seconded, not independent consultants as under the first phase of Phare. It is paid for by the Phare program, and managed by the European Commission. CEE governments put forward twinning projects (in areas where they would like assistance from a member state official)—which are subject to approval by the Commission—and member states bid for the contracts to supply the officials, either individually or (more commonly) in consortia.

Twinning projects provide a civil servant from an EU member state to advise a candidate agency on how to implement EU policies at the national level. Most "Pre-Accession Advisors" (the title of the twinning agents) are therefore concerned with standards and technical issues rather than overall policy direction. There is little central control of the advice and expertise offered by the twinning agents, so the impact on individual policies is likely to be very diffuse rather than reflect any consistent European model. Indeed, one of the main principles of the programs is that the present member states implement the EU's legislation by different means, so they can help the candidate countries do the same without imposing any particular system. The advice offered on how to transform institutions is consequently somewhat random in that it depends on the judgment, experience, and assumptions of the individual pre-accession advisor. There is no specific test of institutional change.

As with the first phase of Phare, the quality and consistency of the policy advice provided is difficult to assess. Pre-accession advisors largely set their own agenda in collaboration with the host CEE government, and their advice reflects their own assumptions, national backgrounds, and professional experience in their home EU ministries. Whether an advisor is French, Greek, British, or Swedish could make a considerable difference to the policy advice he or she offers on approaches to policy challenges, because these countries have very different traditions.

(5) Monitoring, Démarches, and Public Criticism

Because of the salience of EU accession in CEE political debates, the Union can influence policy by "soft implementation" means such as ranking of the applicants' overall progress, benchmarking in particular policy areas, and providing examples of best practice that the applicants should seek to emulate. A key mechanism for this part of conditionality is the regular assessments of how

prepared each CEE applicant is in different fields, published by the European Commission every year. The EU has also made exceptional criticisms of undemocratic practices in particular countries in “démarches”⁷ intended to embarrass CEE governments and help opposition politicians. Criticisms of CEE governments made in EU reports are politically influential in CEE and can have a powerful impact on domestic debates about public policy and the government’s performance. They are therefore an effective part of conditionality, although their precise effects are difficult to track systematically across the ten countries.

The Commission’s “Regular Reports” contain assessments of the candidates’ progress in meeting different parts of the accession conditionality, including the Accession Partnerships. The reports use a variety of sources, and do not state explicitly what measurement techniques and indicators are used to assess either absolute or relative states of compliance with EU conditions. Four Commission assessments of progress have so far been made. The Commission’s “Opinions” on readiness for membership were published in June 1997, along with the recommendation that five of the applicants start negotiations. The Regular Reports published from 1998 to 2001 contained general assessments of progress in meeting the Copenhagen conditions, and also specific sections on how far each applicant had fulfilled its Accession Partnership tasks in the preceding year.

The Regular Reports can be used by the European Council to decide whether to admit each country to further stages in the accession process, so they are a powerful tool in EU conditionality. For example, the Regular Reports issued in October 1999 recommended that the remaining five applicants should start negotiations in 2000, but access for Romania and Bulgaria was subject to their meeting additional conditions first. This recommendation was accepted by the member states (at the Helsinki European Council in December), forcing Bulgaria to set a date for closing down its Kozloduy nuclear power station, while Romania had to improve conditions in its state childcare institutions and show some progress in its macroeconomic performance. Both countries made considerable efforts, and both were admitted to negotiations in March 2000. This was an innovative move for the Union in making such an explicit linkage between a benefit and specific tasks for applicants.

Constraints on the Effectiveness of Membership Conditionality

In sum, the Union has powerful tools to shape institutions in CEE. The extent of its success in using the instruments analyzed above is evident if we consider how CEE might have looked without EU influences. The institutional models that have been adopted by CEE countries are not necessarily the ones that would have been chosen by CEE policy-makers in the absence of EU influence. In particular, they might have looked more widely—for example at American and other institutional models—in their search for solutions to the problems of transition. Policy-makers often choose EU models because of the incentives and constraints imposed by the EU accession process. By definition, these choices may be suboptimal because EU policies were not designed for CEE.

Union-driven institutional change has two key benefits that may outweigh any suboptimal choices, at least for the countries that are likely to gain membership first:

- *Union membership as a focal point:* the EU’s conditionality (particularly the

Accession Partnerships) can provide a framework to work towards, helping to overcome inertia and avoiding a lengthy search for a domestic political consensus on institutional models in some areas.

- *The Union as a commitment device:* the accession process provides a set of incentives for rapid institutional change that entrenches reforms and can help to protect them from sectoral lobbying and backsliding.

However, the effectiveness of EU conditionality is constrained by several factors. First, the ultimate reward of accession is far removed from the moment at which adaptation costs are incurred; hence conditionality is a blunt instrument when it comes to persuading countries to change particular practices. There are, of course, intermediate rewards, such as aid and trade liberalization. But in the end, accession is tied to overall readiness, and membership benefits are not disaggregated to reward partial readiness. Since the accession reward comes in one big step—and at the end of a very long and highly politicized process—CEE policy-makers may believe there is time to make up deficiencies closer to the accession date. It is thus difficult to use EU membership conditionality as a scalpel to sculpt individual policies during the accession process; rather, it is a mallet that can be used only at certain points in the process to enforce a few conditions at a time.

Second, until 1998 (when the first Accession Partnership was issued) the Union did not provide a clear ranking to guide allocation of CEE resources, both human and financial, in applying the Copenhagen conditions. Conditionality was blunted by the sheer number and scale of requirements, making it difficult for CEE governments to overcome domestic resistance to the more unpopular tasks demanded by the Union. The European Commission first sought to remedy this situation in the White Paper on the Single Market, where it indicated primary and secondary tasks, and it has since gradually provided a hierarchy of the great number of tasks implied by its conditions.

Third, effectiveness is reduced by the inconsistencies in the EU's advice to applicants. For example, at a general level, applicants are encouraged to maintain fiscal and monetary discipline, and the Union stresses the need to control budget deficits while undertaking systemic reforms (such as pensions, healthcare, and industrial restructuring). But at the same time, the Union also demands major investments in infrastructure, environmental protection, agricultural reform, and a whole range of other sectors. The room for additional public spending on implementing the *acquis* is reduced if it is to be accompanied by tight fiscal and monetary policies aimed at macroeconomic stability. This creates an inconsistency in the EU's recommendations that would only be resolved by massive external funding (foreign or private), of which the Union is willing to provide only a very small proportion. It is up to the applicants to set clear objectives for implementation of legislation that relate the speed of implementation to cost and financial capacity, and to the size and timing of the benefits expected from taking the measures.

When Will the Candidates Be Ready to Join?

It is very difficult to pinpoint exactly when the criteria for each of the CEE candidates have been met. The conditions established by the Union at Copenhagen in 1993 do not provide a checklist of clear objectives; neither do they

specify the means to achieve stated goals. They are general goals, and what the applicants have to do to meet them involves a series of tasks that has been defined incrementally during the accession process. The EU's agenda gets more detailed and more demanding owing to the development of new policy areas within the Union. For example, the rules for border policies under the Schengen agreement were published several years after the accession process began (in July 1999), and the Union will be developing new migration and asylum regimes in the years before the first applicants join.

Readiness is a political question on the EU side. In previous enlargements of the Union, "readiness to join" was something determined by negotiation, which decided when a country was ready and willing to accept the conditions on offer. When the poorer Mediterranean countries applied, the Union had only a relatively limited *acquis communautaire*. The eastern candidates have a much bigger set of rules and regulations to implement, everything from a more complex Single Market to a single currency, the Schengen *acquis*, and an emerging external security policy. The applicants are starting from a lower position as well: average income per head is between one-third and two-thirds of the EU average.

The CEE candidates are expected to become like the Union in certain areas viewed as essential to the future functioning of the Union. Regulatory alignment with the Single Market is non-negotiable: the applicants must remove all trade barriers and meet EU product and process standards. Similarly, the candidates cannot have opt-outs on monetary union, Schengen, or the emerging European security and defence policy. Would-be members have to sign up to everything, even if it remains unclear which conditions must be met in their entirety before accession, and which elements can be adopted gradually after accession, perhaps with more help from the EU budget.

There are double standards, and some of the rules are more equal than others. There has to be free movement of goods, services, and capital in central and eastern Europe, but the Union is not going to allow free movement of people from east to west immediately (even though free movement of workers is one of the four freedoms of the Single Market). State aids have to be limited according to EU rules, without the laxity that has been allowed to German *Länder* or declining industries throughout the Union. National subsidies to agriculture must be reduced, but east European farmers are not guaranteed access to the major CAP funds.

Ultimately, the applicants will be ready to join when member states can be convinced that the European Union can cope with this enlargement. There are also some pet concerns of particular member states that require reassurance: Germany and Austria about cross-border crime and migration, the Scandinavian countries and Austria about environmental protection and nuclear safety, all the member states about corruption and the quality of public administration. It is clear that the candidates have to show a certain style of operation that looks familiar to member states if they are to be acceptable. New members will have to move towards German-style border controls, British-model civil servants, and a Nordic concern for environmental standards. Even if CEE countries don't have to conform to a particular model of capitalism, they have to demonstrate euro-zone fiscal discipline, ECB-style central banks, and American-looking unfettered markets. They also have to show a capacity to implement legislation effectively: this is an increasingly important part of meeting the conditions.

Perceptions of the candidates' readiness are conditioned by the European

Commission's Regular Reports issued in the autumn of each year. These provide a general indication of the candidates' progress in preparing for membership, although the wording used is often vague and the substance technical because they cover all areas of the conditions. The Commission's assessment of candidates' progress is divided into sections on the political and economic conditions, and "other obligations of membership," the last meaning implementation of EU legislation and preparations to join EU structures such as monetary union and the Schengen agreement (now incorporated into the EU's "first pillar"). A country may receive a favourable overall assessment, but be criticized in any one of these sections, and vice versa.

Of the first five countries in negotiations since 1998 (the Czech Republic, Estonia, Hungary, Poland, and Slovakia), Hungary has consistently come out top on most of the conditions, particularly approximation of legislation. Estonia ties for the most favourable overall assessment, but the Commission points to continued problems in meeting the political criteria fully on the linguistic rights of minorities. Of all the candidates, only Cyprus and Malta meet the economic conditions as yet, although Hungary and Poland are closest of the eastern applicants. Poland and the Czech Republic have both suffered over the years from coalition in-fighting that has hampered the development of effective coordination between the many government bodies needed to implement EU legislation. They have both been criticized in past years for the sluggish pace of their legislative work, despite praise in other areas.

Of the remaining five CEE candidates Bulgaria, Latvia, Lithuania, Romania, and Slovakia, Latvia is considered to be a functioning market economy by the Commission, and Slovakia and Lithuania are close to achieving that status. Slovakia is expected to meet the market economy criterion shortly, and to be competitive in the medium term. Lithuania's progress was held back by its government's response to the Russian crisis, but it is not far from the rest of this group. By contrast, Bulgaria and Romania are years behind the other candidates, and neither country comes near to meeting either the market-economy or the competitiveness conditions.

The assessment of candidates' progress does not fall only along economic lines, however. Countries can score differently across the three main conditions. For example, Slovenia is judged to be slow on implementing the *acquis*, but it scores highly on economic readiness, while Latvia receives the opposite judgment: trying hard on the *acquis*, but the competitiveness of its economy is still seen as uncertain. In adopting EU legislation, Latvia and Bulgaria are placed with Hungary in maintaining a good pace. The main issues in the political conditions for the eastern applicants are treatment of minorities (particularly in Estonia, although the Union sees improvements in Slovakia and Latvia), treatment of children in state care (Romania), and treatment of the Roma (gypsy) minorities across the region. Nuclear safety has become an increasingly sensitive issue: Bulgaria, Lithuania, and Slovakia have come under pressure from the Union to set dates for closure of particular nuclear power plants.

Conclusion: Equal Partners?

The CEE countries will be ready to join the Union when the Union is ready for enlargement. It is not the Commission but ultimately the member states who will decide when each applicant country is ready. This decision is not just a question of

technical capacity or having adopted enough legislation; rather, it is a question of confidence that these states can be brought into the Union as equal partners. At present, the candidates are far from being treated as equal partners, having the status of client states, with no say in decision-making and only an observer role in EU foreign policies. Moreover, it is clear to them that the Union is stalling for time while trying to work out how to deal with a qualitatively different kind of enlargement.

At the Gothenburg European Council in June 2001, the Union set the objectives of concluding negotiations with some countries by the end of 2002, and of achieving the first accessions in 2004. Latvia, Lithuania, and Slovakia are expected by the European Commission to catch up with the current front-runners on that timetable, so that eight CEE countries—the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia—(plus Malta and Cyprus) could join together. The question is whether the European Union is politically prepared for such a big enlargement.

By contrast, Bulgaria and Romania might have 10–15 years of negotiations before they join, raising questions about the opportunity cost of EU negotiations. For countries with very limited human and financial resources, EU accession preparations are highly complex and expensive, and are only partly offset by the aid and technical assistance provided by the Union. When the demands of EU accession divert resources from more basic needs, the aim of accession can conflict with basic development goals—for example, improving primary healthcare and education. For the countries at the back of the queue, making enormous efforts to meet EU product and process standards may be inappropriate in the context of the pressing needs of transition and their lack of spare administrative and financial capacity. For this reason, it will be important for the Union to tailor its demands more carefully for Bulgaria and Romania.

What kind of EU member states will the east European countries be? Their policy preferences in different aspects of European integration are not uniform, and they do not conform obviously to the profiles of current member states, so the new members will join a variety of coalitions on different issues (Hughes, Grabbe, and Smith, 1999). All will clearly favour more transfers to assist poor member states, but not necessarily a larger EU budget overall; they also have differentiated views on the scope for developing the second and third pillars (respectively, common foreign and security policies, and justice and home affairs). East European views on federalism and the role of the state are conditioned by the experience of only just having regained democratic sovereignty (Hungary and Poland) or independence after forced incorporation into a federal structure (the Baltic states, the Czech Republic, Slovakia, and Slovenia). Euroscepticism is growing in the leading candidate countries (particularly Poland) as accession approaches, and the applicants will not necessarily all become strongly pro-integration as member states. In addition, as democratization proceeds, the same issues of legitimacy that are debated in the Union are arising further east. Many east Europeans appreciate the irony that a democratically deficient body is telling them how to become functioning democracies.

The relationships that the Union is developing with the CEE countries now will affect their behaviour later as member states. Attitudes towards European integration are becoming more clearly defined and more effectively articulated at political and popular levels, and these views are tinged with increasing frustration at the slowness of the EU's own preparations and the obvious politicization of the

process of determining when they will be ready. If it wants to build trust in them as equal partners, the European Union needs to develop a more consistent and legitimate set of conditions for membership that applies to all member states, both old and new.

Notes

1. There are ten CEE applicants for membership, plus Cyprus, Malta, and Turkey. Six of the applicants (the Czech Republic, Estonia, Hungary, Poland, and Slovenia, plus Cyprus) began accession negotiations with the EU in March 1998, and three of them (the Czech Republic, Hungary, and Poland) joined NATO in 1999. Bulgaria, Latvia, Lithuania, Romania, and Slovakia (plus Malta) opened EU accession negotiations on 15 February 2000, but Turkey has not been invited to join negotiations. This article is concerned with the postcommunist CEE applicants and does not discuss the Mediterranean ones in detail, but the same conditions formally apply to them and any country that seeks to join the EU in future.
2. This characterization of capitalist systems in Western Europe is developed in Rhodes and van Apeldoorn (1998) from Albert (1991).
3. For a discussion, see McGowan and Wallace (1996).
4. Meaning "lighthouse" in French, the acronym stands for "Poland and Hungary Assistance for the Reconstruction of the Economy," but the program was extended to cover all ten applicants for membership plus several former Yugoslav republics and Albania. TACIS is a separate aid program for the CIS countries.
5. ISPA = Instrument for Structural Policies for Pre-Accession.
6. SAPARD = Special Accession Programme for Agriculture and Rural Development.
7. Démarches are serious public criticisms, issued as part of EU foreign policy by unanimous intergovernmental agreement between the member states.

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