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Introduction: Post-accession compliance in the EU's new member states*

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1. Post-accession compliance: what's at stake?

In May 2004, ten new member states, mainly from Central and Eastern Europe (CEE), joined the European Union (EU), to be followed in January 2007 by Bulgaria and Romania. This completed not only the biggest but also the most complex and elaborate enlargement round in the history of the EU. Whereas accession always requires the candidate countries to adopt the entire *acquis communautaire* (with no more than temporary derogations), this process has never before been accompanied by such extensive programming, conditionality, and monitoring as in Eastern enlargement. To some extent, this resulted from the fact that the EU's *acquis* itself had become more complex and demanding than in earlier times. Above all, however, it reflects the situation that the CEE candidates for membership still had to grapple with their double and in some cases triple transformation from

- autocracy to democracy,
- planned economy to market economy, and
- multinational to independent statehood, when they embarked upon the path to EU membership. In this situation, the EU considered special attention to political conditions, additional requirements beyond the *acquis* (such as protection of national minorities or administrative reform), and detailed and continued monitoring imperative.

Five years after the 2004 enlargement, there are both practical and theoretical reasons for studying the new member states' compliance with EU rules. At a practical level, it would be useful to know whether the EU's efforts during the accession process have paid off. Have the new member states successfully adopted the *acquis communautaire*? Do they comply well with EU legislation? In particular, do they not only transpose EU legislation into national legislation correctly and on time but also apply and enforce EU rules in their domestic administrative

practice? This is all the more important as the functioning of the EU as a multi-level governance system with weak central administrative resources and implementation capacity relies strongly on effective national implementation. It is also a politically salient issue because of the widespread concern that at least some of the new member states might have been admitted before their administrative and judicial systems were ready.

At a theoretical level, the study of post-accession compliance is interesting because the literature on pre-accession compliance attributes the candidate countries' adoption of EU rules predominantly to credible EU accession conditionality (Grabbe 2006; Schimmelfennig and Sedelmeier 2004; 2005). More precisely, this literature explains pre-accession compliance by a rationalist bargaining model, which assumes actors to be rational utility-maximizers calculating the material as well as political costs and benefits of adopting and implementing new rules. In this view, sizable and credible external EU incentives are necessary in order to overcome opposition to EU rules by national governments or other domestic veto-players incurring costs from rule adoption.

During the accession process, these conditions for effective rule transfer were generally favorable. EU membership was highly attractive, even indispensable, for the CEE countries but much less so for the old member states. This constellation gave the EU the necessary bargaining power to dictate the terms of accession for the candidates and to enforce its conditionality. Selective invitations to accession negotiations in 1997 and 1999 also lent the EU's accession conditionality high credibility. They demonstrated that, whereas the EU was serious about Eastern enlargement, non-compliant applicants would not be considered. To the extent that EU rules were clear and determinate, and the EU signaled that adopting them was necessary to complete the accession negotiations, the EU was able to overcome potential domestic opposition and ensure pervasive rule adoption in the candidate countries (Schimmelfennig and Sedelmeier 2005). In this view, accession poses a major challenge to compliance: if pre-accession rule compliance was mainly motivated by external incentives that ended with membership, then domestic preferences, costs and veto-players might well trump in the post-accession period. The prospects for a successful implementation, and the sustainability of already adopted rules, thus appear rather bleak (Epstein and Sedelmeier 2008).

Initial empirical studies of the new member states' compliance record offer an ambivalent picture. On the one hand, the formal compliance record of the new member states, as conveyed in the Commission's infringement statistics, is on average better rather than worse than that of the old member states (Sedelmeier 2008: 811-816). This is true for the transposition of EU legislation as well as infringements of EU law. In addition, the new member states settle infringement cases faster than the old member states. Sedelmeier cautions, however, that the good compliance behavior could be a result of acquired habits and routines of the accession process and thus might disappear in the future. Moreover, because of undetected non-compliance, the Commission data might not give an accurate picture of the true situation in the new member states (Sedelmeier 2008: 818-822). This note of caution is supported by a comparative analysis of compliance with EU social policy (Falkner, Treib, and Holzleithner 2008), which expands an earlier study of the same issues in the old member states (Falkner et al. 2005). In this study, the new member states examined (the Czech Republic, Hungary, Slovakia, and Slovenia) end up in a "world of dead letters", in which decent transposition is followed by a neglect of practical implementation. Although this "world" also encompasses old member states such as Italy and Ireland, it is striking that all studied new member states, which include the frontrunners of transformation, have significant problems of implementation. The apparent gap between the strong formal and the weak practical compliance record of the new member states certainly needs to be studied further but, if confirmed, would constitute a major puzzle for research on post-accession compliance.

The generally pessimistic outlook needs to be further specified and nuanced at the theoretical level as well. On closer inspection, it rests on two questionable assumptions. First, weak post-accession compliance only follows from the external incentives model if we assume that accession conditionality has only had an extremely shallow impact on the candidate countries.

Since, however, the pre-accession period has been characterized by the creation of new actors and policy constituencies that benefit from and support the EU's rules, the disappearance of some controversial issues, or the weakening of non-conforming parties or interest groups, the pressure for policy reversal or non-compliance may be much weaker than suggested. The inertia of compliance-friendly pre-accession routines suggested by Sedelmeier (2008) also falls into this category of longer-term or indirect effects of accession conditionality.

Second, the pessimistic prediction does not take into account that other mechanisms could compensate for the absence of accession conditionality – even if pressure for policy reversal was high or would grow in the future. There are four main sources of compensation that may contribute to explaining why compliance has not suffered across the board (see also Epstein and Sedelmeier 2008; Schimmelfennig and Sedelmeier 2005).

1. We find post-accession conditionality in some areas of EU policy, e.g. monetary policy and movement of persons because EU membership did not automatically include participation in the EMU and Schengen regime. In these cases, we would assume continued relevance of the factors highlighted by the external incentives model: credibility and size of incentives as well as domestic costs.
2. Conditionality may be replaced by alternative external incentives. These include mainly the monitoring and sanctioning mechanisms that the EU has in place to ensure compliance among its member states, although it will probably take some time until these mechanisms are fully operational and generate compliance effects in the new member states. In policy areas in which EU competences are weak, other international organizations may fill the gap, e.g. the Council of Europe with its European Court of Human Rights in the field of human rights.
3. External incentives may be replaced by alternative external influences. During the accession negotiations, the attraction of membership and the threat of being excluded were bound to trump and overshadow alternative international influences. With short-term and massive conditionality receding into the background, these processes will have more room to thrive. First, financial and technical support for administrative and judicial capacity-building can prevent involuntary non-compliance and strengthen domestic compliance capacity. Second, more indirect and long-term processes such as transnational exchanges and social learning may lead to norm-conforming change in societal and governmental preferences in the new member states. As a result, external sanctioning would lose its relevance and non-compliance would be less likely to occur.
4. Even in the absence of alternative external influences, the external incentives model would not under all circumstances predict the complete formal reversal of externally induced rules. First, the revocation as well as the initial adoption of rules is strongly dependent on the domestic political constellation, i.e. the threat of a policy reversal would be imminent only in the case of political forces opposed to the rule forming a post-accession government. Second, conditionality may have induced institutional changes (e.g. constitutional provisions) that cannot be reversed by simple majorities and are upheld by domestic control mechanisms (e.g. a constitutional court) acting as veto players. Third, it may be less costly to uphold formal legislation or to keep institutions in place but then undermine implementation through cuts in funding or restrictive regulations.

Whether there are such longer-term conditionality effects and compensating mechanisms, and how and under what conditions they work, constitutes a second major set of research questions for studies of post-accession compliance. The contributions to this special issue seek to provide first answers to these questions.

2. An overview of the contributions

The authors address the issue of post-accession compliance in the EU's new member states from different angles. While some articles apply a broad research focus comparing several countries and/or policies (Dimitrova/Toshkov; Knill/Tosun; Schwellnus/Balázs/Mikalayev;

Sedelmeier), others provide for an in-depth analysis of the dynamics of post-accession compliance in only one (Krizsan, Maniokas) or two (Trauner) new member states. An additional comparative dimension concerns the research on compliance behavior over different time phases (pre-accession versus post-accession) (Schwellnus/Balázs/Mikalayev; Sedelmeier).

Comparative axes	Authors
Time-phases (pre- versus post-accession)	Schwellnus/Balázs/Mikalayeva; Sedelmeier
Policies	Dimitrova/Toshkov; Schwellnus/Balázs/Mikalayeva
Countries	Dimitrova/Toshkov; Knill/Tosun; Schwellnus/Balázs/Mikalayeva; Trauner; Sedelmeier
Single case studies	Krizsan; Maniokas;

Moreover, the individual articles provide a basis for comparing the compliance of the new member states at different stages of the implementation process: transposition, enforcement and application. While the transposition of EU law forms part of the research of all the contributions(1), some articles also deal with the later stages of enforcement and application (Krizsan; Maniokas; Sedelmeier; Trauner). In particular, these articles focus on how EU law is effectively put into practice on a day-to-day basis. The enforcement and application of EU law is a decentralized and complex process involving a range of societal, economic and political actors, although the government has the overall responsibility for properly implementing the law (Falkner et al. 2005: 5-6).

The implementation process	Authors
Transposition only	Dimitrova/Toshkov; Knill/Tosun; Schwellnus/Balázs/Mikalayeva
Transposition plus enforcement and application	Krizsan; Maniokas; Sedelmeier; Trauner

Explaining the transposition behavior of the new member states forms the research interest of Christoph Knill and Jale Tosun (2009). By looking at the transposition deficits measured by the number of letters of formal notice of all new member states, the authors identify a strong variation in the transposition behavior of the Central and Eastern European states. Transposition failures are seen to be mainly related to three explanatory variables: the extent of trade with the EU, bureaucratic capacity and the country's performance in terms of pre-accession policy alignment. The significance of the last variable points to the path-dependency between pre- and post-accession transposition performance and makes the authors highlight the relevance of structural factors in the process of implementing EU law.

Antoaneta Dimitrova and Dimiter Toshkov (2009) focus on the impact of administrative capacity, defined as the coordination capacity for EU affairs, and political salience on post-accession transposition of EU law. Applying a mixed method approach they demonstrate that there is a strong and robust connection between the EU coordination systems of the new member states and their transposition success. However, the strength of the domestic EU coordination structures is not a sufficient pre-condition for the transposition of EU measures of high political salience that meet considerable domestic opposition. The authors substantiate their argument by exploring the transposition of two EU directives of very distinct nature to four new member states, on the one hand the politicized racial equality directive and on the other hand the mainly technical vibration directive.

The importance of administrative capacity and of maintaining the pre-accession institutional infrastructure for achieving a good transposition record is also underlined in Klaudijus Maniokas' (2009) analysis of post-accession compliance in Lithuania. Although Lithuania performs well in terms of transposing EU law, the author argues that shifting the status from a

candidate country to a fully-fledged member state has made successive Lithuanian governments more sensitive to demands of powerful interest groups. The result has been the emergence of cases of voluntary non-compliance. Maniokas maintains, however, that these cases are limited in number, as the fear of sanctions and reputational damage has become a new driver of compliance in Lithuania, replacing the EU's pre-accession conditionality.

Florian Trauner (2009) provides a first analysis at what can be said with regard to post-accession compliance in Bulgaria and Romania, the two latecomers of the Eastern Enlargement. By taking stock of the academic literature and different official sources, the author identifies a likely gap between the transposition and the enforcement of EU law in these countries. While Bulgaria and Romania are good performers with regard to the transposition of EU law, they have not managed to overcome structural shortcomings of their law enforcement structures, pointing to problems at the later stages of the implementation process. The article is concluded by suggesting that the analysis of cross-sectoral variations and differences between Bulgaria and Romania are particularly promising avenues for further research.

In her research on the EU's repercussions on Hungary in the field of equality policy, Andrea Krizsan (2009) demonstrates that some EU mechanisms might succeed in tackling problems at the enforcement and application stage. Social learning and financial assistance based mechanisms are identified as the key factors that have helped improve the problems of law enforcement, in particular with regard to administrative capacity, norm resonance and civil society involvement. The author concludes with the optimistic outlook that these mechanisms have opened space for rule adaptation and behavioral change, leading to slow but steady improvements in Hungary's law enforcement record.

The article of Ulrich Sedelmeier (2009) also deals with EU gender equality legislation yet applies a research perspective different to Andrea Krizsan by comparing the compliance of four new member states across the pre-accession and post-accession period. Assessing the transposition of two directives in the field and the institutional strength of the national bodies created to enforce the gender equality rules, the argument is developed that there appears no evidence for significant differences between pre- and post-accession compliance. To explain the variations of compliance outcomes between the Czech Republic, Hungary, Lithuania and Slovenia, the author conducts a crisp-set Qualitative Comparative Analysis (QCA) and suggests that two causal paths lead to successful transposition and strong equality bodies. These are firstly the absence of high adjustment costs and secondly a combination of strong social democratic governments and NGOs specialized in EU gender equality legislation, although Sedelmeier stresses that neither condition suffices by itself.

A different angle on the issue of post-accession compliance in the EU's new member states is presented by Guido Schweltnus, Lilla Balázs and Liudmila Mikalayeva (2009) who explore the EU's impact on minority protection rules in Poland, Romania, Estonia and Latvia. Minority protection was an important EU political condition for the then applicant countries in Central and Eastern Europe yet it has only a weak foundation in the *acquis communautaire*. Against this background the authors examine the scope conditions under which minority protection rules are adopted, maintained or revoked. Their multi-value QCA of different time phases, issue areas and countries shows, among others, the importance of favorable domestic conditions for positive change, i.e. a pro-minority oriented governments and veto players in conjunction with small minorities. This path to positive change was empirically the most important one, complemented by a second which included external incentives as a necessary condition.

3. Conclusions

Which general conclusions can we draw from this set of studies on post-accession compliance in the EU's new member states? What do they tell us about the puzzles and problems outlined at the beginning of this introductory article?

On the one hand, the transposition behavior of the new member states is good overall and has not worsened after accession. There is no systematic backlash in formal, legal compliance with EU rules. Even in the most likely case of minority rights (Schwellnus, Balázs and Mikalayeva 2009), a formal revocation of EU-imposed rules has not taken place. There is, however, considerable variation in transposition behavior across countries and policies.

On the other hand, there is a significant gap between transposition, on the one hand, and law enforcement and application, on the other. Even countries with a very good transposition record (such as Lithuania; see Maniokas 2009) face serious application and enforcement problems. These results confirm previous analyses of post-accession transposition, enforcement, and application (Sedelmeier 2008; Falkner et al. 2008). As a consequence, they call even more strongly for an explanation of the double puzzle of post-accession compliance: why transposition has remained so good (in spite of the change in external incentives) and why enforcement and application are considerably weaker.

There is convergent evidence that the transposition record is correlated with bureaucratic capacity and that this capacity has a lot to do with the administrative structures put in place during the accession process. Trauner (2009) shows the challenges to improve the administrative structures post-accession, if they were not properly put in place in the pre-accession period. Knill and Tosun (2009) find that transposition shortcomings decrease as general bureaucratic capacity and pre-accession policy-alignment increase. More specifically, Dimitrova and Toshkov (2009) find a correlation between the strength of EU coordination systems from the accession period and post-accession compliance. Maniokas (2009) also attributes the good Lithuanian transposition to pre-accession administrative capacities remaining in place after accession.

To what extent even strong and EU-oriented bureaucracies are able to shape the implementation record of the new member states depends, however, on the constellation of domestic factors. In line with the theoretical expectations of the external incentives model of pre-accession compliance, these factors gain causal relevance in the post-accession period. In particular, domestic adjustment costs, norm resonance, political salience, and the orientation of domestic veto-players and NGOs were found to be important (Dimitrova and Toshkov 2009; Schwellnus, Balázs and Mikalayeva 2009; Sedelmeier 2009). Favorable conditions for compliance are low domestic adjustment costs, government ideologies that resonate with the rules in question, low issue salience, and supportive domestic veto-players and NGOs. These conditions apply to both pre-accession and post-accession periods. If they are present, the change in external incentives is not relevant but compliance will depend on administrative capacity.

The situation is different when adjustment costs and political salience are high and governments as well as strong domestic interest groups do not agree with the EU rules. Such constellations cause delays and failures in implementation – even if administrative structures are supportive and capable of compliance. In the pre-accession phase, EU accession conditionality could override these obstacles to compliance to some extent. But as Schwellnus, Balázs and Mikalayeva (2009) show in the case of minority rights, conditionality only worked in tandem with pro-minority governments. Other studies indicate that, under adverse domestic conditions, accession conditionality can be compensated by alternative EU incentives and influences. EU legal procedures and sanctions and social influence emanating from threats to a new member state's reputation within the EU appear to have a direct influence on government behavior (Maniokas 2009). By contrast, financial assistance and “teaching” activities work indirectly. Financial assistance strengthens administrative capacity, and social learning supports NGOs and increases resonance. Both will in turn improve compliance in the longer run (Krizsan 2009).

In sum, all contributions agree that the change in EU external incentives – in particular, the disappearance of accession conditionality – had a much less dramatic influence on the new member states' compliance than suggested by pessimistic accounts. It is true that law enforcement and application in the new member states is problematic and that domestic

opposition to EU rules has become more visible and relevant. But the impact of EU conditionality on enforcement and application had been weak even before accession, and its impact on rule transposition – at least in politically salient areas such as minority rights – had always depended on supportive governments and administrative structures in the candidate countries. In addition, the accession process has left its mark in the administration and in civil society organizations that continue to facilitate compliance in the post-accession period. Finally, alternative EU incentives and influences ranging from sanctions to social learning compensate for the more direct accession conditionality to some extent.

More research is needed, of course. Only time will tell whether the continuity of pre-accession and post-accession compliance has only temporary or enduring relevance and whether financial assistance and social learning will have the expected positive medium-term effects on implementation capacity and willingness. The papers assembled here also highlight the need for more comparative work on implementation and across issues. There is a clear imbalance between widespread cross-country analyses of transposition behavior and studies of implementation that are confined to single (or a few) countries and issues.

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Endnotes

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(1) The transposition phase concerns the adoption of relevant national law in order to comply with the EU directive. If appropriate national legislation is adopted and the European Commission notified in time, the EU directive is successfully transposed.