

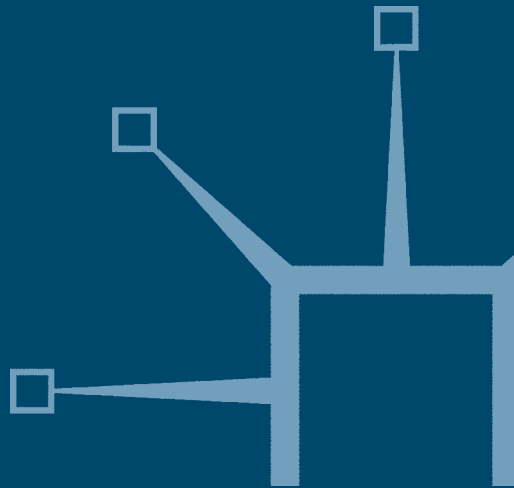
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# The EU's Transformative Power

Europeanization Through Conditionality  
in Central and Eastern Europe

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Heather Grabbe



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## Chronology

	<i>Events in EU</i>	<i>Events in Central and Eastern Europe</i>	<i>Development of EU accession policy</i>	<i>Development of policies on movement of persons</i>	
				Schengen Accord signed between Belgium, France, Germany, Luxembourg and Netherlands	
		Fall of the Berlin Wall, collapse of communist regimes across CEE	EU sets up Phare aid programme for CEE; European Commission starts coordinating aid to CEE from the G24		
				Schengen Accord becomes the Schengen Convention	
XX	1991	Completion of programme to create the single market	Independence of Estonia, Latvia and Lithuania from the Soviet Union; independence of Slovenia from Yugoslavia	EU starts to sign Europe Agreements bilaterally with CEE countries, starting with Hungary and Poland	
	1992	Maastricht Treaty signed			
	1993	Copenhagen European Council	'Velvet divorce' of the Czech Republic and Slovakia	EU sets conditions for membership for the first time	
	1994	Essen European Council	Hungary and Poland are the first CEE countries to apply for membership	EU establishes eastern accession policy	
	1995	Austria, Finland and Sweden join EU		Commission issues Single Market White Paper on sequencing of legislation to be adopted by applicants	Abolition of controls at common frontiers between Schengen members
	1996	Inter-governmental conference begins on institutional reforms for enlargement			

## Chronology – continued

	<i>Events in EU</i>	<i>Events in Central and Eastern Europe</i>	<i>Development of EU accession policy</i>	<i>Development of policies on movement of persons</i>
1997	Amsterdam Treaty signed; Luxembourg European Council	Bulgarian Socialist Party voted out of office	Commission publishes 'opinions' on readiness for membership of 12 applicants, and 'Agenda 2000' pre-accession strategy; EU offers candidate status to 12 countries	
1998		Mečiar government voted out in Slovakia; EU cuts Phare assistance to Poland because of non-fulfilment of conditions	EU opens accession negotiations with Cyprus, Czech Republic, Estonia, Hungary, Poland and Slovenia; Commission issues first Regular Reports and Accession Partnerships; Catch-Up Facility established for Bulgaria and Romania	
1999	Single currency launched; Helsinki European Council; Lisbon European Council establishes 10-year economic reform programme	NATO bombs Serbia after Serbian troops enter Kosovo; Slovakia meets political conditions, opening the way to negotiations; candidates establish first national programmes for adoption of the <i>acquis</i>	EU offers candidate status to Turkey and accession negotiations to remaining applicants; start of 'twinning' programme	Schengen Convention incorporated into EU treaties; EU publishes Schengen <i>acquis</i> for first time
2000	Nice Treaty signed; new EU budget begins for 2000–2006; Lisbon process begins		EU opens accession negotiations with Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia	Commission puts forward initial draft common position on free movement of persons

## Chronology – *continued*

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	<i>Events in EU</i>	<i>Events in Central and Eastern Europe</i>	<i>Development of EU accession policy</i>	<i>Development of policies on movement of persons</i>
2001	Gothenburg European Council		EU decides on ‘big bang’ enlargement to ten new members	Commission presents full draft common position on free movement of persons; Schengen members liberalise visa regime with Bulgaria
2002	Copenhagen European Council; Convention on the Future of Europe begins		EU concludes accession negotiations with ten candidates	Schengen members liberalise visa regime with Romania
2003	Draft constitution completed by European Convention	Accession treaties approved in referenda in nine candidate countries	All accession treaties ratified by national parliaments and European Parliament	
2004	Ten new members join EU on 1 May; European Parliament elections; inter-governmental conference approves constitution		EU concludes negotiations with Bulgaria and Romania; EU sets dates for Croatia and Turkey to begin accession negotiations	12 of the 15 member-states decide to restrict access to their labour markets for CEE workers

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# 1

## Introduction

This book is concerned with how the process of accession to the European Union (EU) shaped public policy-making in the Central and East European (CEE) candidate countries from 1989 to 2004. It analyses in detail how the EU used its accession conditions to exercise influence, and it investigates specifically how mechanisms of Europeanisation worked. The analysis is organised around case-studies of two policy areas concerned with regulating the movement of persons.

The case-studies seek to explain two puzzles: in 2001, the EU closed a key chapter in accession negotiations with several CEE applicants for membership. In doing so, it secured their agreement on a transition period of up to seven years before citizens of new member-states could work freely anywhere in the 15 existing member-states. This outcome was clearly against the interests of the CEE countries, and it also contradicted the EU's own single market policy on labour mobility. The second puzzle arose when the EU put forward a negotiating position on justice and home affairs (JHA) that required the applicants to implement its border policies prior to accession, but which did not make any reciprocal commitment that the existing member-states would remove frontier controls with the new members immediately after enlargement. In both cases, the candidates agreed to an EU position which explicitly denied them the benefits accorded to existing members on accession.

Why did the candidates accept an outcome which was blatantly against their interests? An obvious answer is that the applicants were in a weak position *vis-à-vis* the Union owing to their asymmetrical dependence on it. They wanted membership far more than the current member-states wanted to accept them. Indeed, the Union's own collective ambivalence about enlargement strengthened its

negotiating power. Moreover, EU accession was a package deal. The EU negotiators could put bargains on the table which were unattractive to the candidates, but which the CEE negotiators accepted because the overall attraction of joining the Union outweighed the disadvantages of parts of the deal. 'Ultimately, accession on any terms is better than no accession', as one Hungarian official remarked to the author in 1997.

The EU's relative power in negotiations and the nature of the accession conditionality are important parts of the explanation for this outcome. But these factors are insufficient to explain the applicants' behaviour in the domestic accession preparations running in parallel with negotiations. The CEE policy-makers knew at least several years in advance that the EU was likely to put forward such negotiating positions. Yet they responded positively to demands from the EU that they implement parts of the EU's policy agenda for regulating free movement, even though there would probably be no reciprocal benefits. Why did they comply? Why did they not use strongly what negotiating power they had, to argue that they would not prepare for policies from which they would not benefit immediately on accession? Why did they not stall or delay implementation, or try to mitigate the impact of these measures? This book seeks to answer these questions by exploring the process of Europeanisation in the CEE countries.

Studies on international negotiations suggest that negotiators can behave in ways that seem not to accord with their interests, but which are explicable through rationalist frameworks. A number of influential studies have sought to explain such cases: Robert Putnam (Putnam 1988 and Putnam *et al.* 1993) famously argued that parallel domestic political games shape outcomes in international negotiations – and *vice versa*. George Tsebelis (1990) created an elaborate framework to explain why political actors accept sub-optimal outcomes by analysing how different political games in multiple arenas affect one another. These kinds of rationalist frameworks can explain parts of the negotiating process. But this book argues that additional variables must be introduced to explain fully the behaviour of the applicant countries, and chief among them are processes of Europeanisation. Europeanisation can certainly include calculations of material interest, but it also involves changes in the logic of behaviour of domestic actors and institutions that are driven by the absorption of EU norms.

This book argues that EU accession preparations and negotiations are linked processes, but each is distinct and has its own logic. Negotiations are about 'us and them', a process in which each side seeks the

best possible deal. But accession preparations are about 'the future us', a process in which the candidates align with EU norms and try to become like member-states. Europeanisation involves both.

To investigate how Europeanisation works in practice in would-be members of the EU, this book presents two case-studies of the enlargement of the EU to CEE: free movement of persons in the single market; and control of movement of people across the external borders of the Union under the Schengen regime. These case-studies investigate why the applicants adopted EU policies even in areas where the EU's policy logic was contradictory and where the candidate countries had little immediate incentive to comply. Arguments based on material interests cannot fully explain why the candidates continued with processes of Europeanisation in their domestic institutions. The case-studies are concerned with the interface between two processes: the process of Europeanisation through accession preparations, and the process of negotiations. The two cases are of related policy areas in which the EU's negotiating position conflicted with the candidates' interests.

Based on an analysis of the accession conditionality and two case-studies, this book makes the following claims:

- The EU's exercise of influence in the CEE region since 1989 worked principally through the conditionality for accession, which provided a number of different methods of 'Europeanising' the candidates.
- The EU had enormous potential influence in CEE, but its impact was constrained by diffuseness and uncertainty.
- A power-politics explanation is inadequate to account for the outcome of negotiations in two policy areas: free movement of persons, and justice and home affairs. The case-studies present evidence of behaviour that was not based on material interests. In the EU, that behaviour comprised allowing trade-offs in other areas in the negotiations despite its enormous asymmetry of power. It suggests a diffuse norm of accommodating CEE interests was at work.
- For the CEE candidates, the puzzle lies in their continued implementation of EU policies despite the imposition of a transition period and despite high levels of uncertainty. The missing part of the explanation can be accounted for by examining how a logic of adapting to the EU became embedded in domestic policy-making in CEE. The applicants became locked into a process of Europeanisation which had a momentum and logic that existed independently of negotiations.

Their policy-makers became committed to the process because they had already invested considerable sunk costs and political capital into aligning with EU policies, so it became very expensive to withdraw. Moreover, the top-level actors in CEE also became part of the EU political space, which gave them incentives to behave as willing partners to the existing member-states, and socialised them in the political discourse of the Union.

## 1.1 Europeanisation

This book's approach to studying the EU's effects in the eastern applicant countries uses as its starting-point the growing literature on Europeanisation, but it is not confined to the frameworks developed for studying the EU. Europeanisation is an area of enquiry as much as a concept, and this study is about Europeanisation in the sense that it is concerned with how the EU influenced three particular nation-states – Bulgaria, Hungary and Poland. There are two very important determinants of how these countries reacted to adaptational pressures from the EU: their status as candidates and not full members, and their background as post-communist political systems and economies. The intention in this study is not to define the scope of the enquiry by reference to the existing literature, or to look simply for the same phenomena in Central and Eastern Europe as have been observed within the EU. Rather, it is to use concepts, ideas and methods from the Europeanisation literature.

This book argues that the literature on Europeanisation in the EU is relevant to studying the CEE candidates because they are affected by substantially the same independent variable as the member-states (i.e. the *acquis communautaire*). However, although Europeanisation is a relevant approach, specific features of the EU-CEE relationship must be taken into account, particularly power and uncertainty. Moreover, this study supplements the Europeanisation literature with concepts from elsewhere in political science to provide a full explanation.

'Europeanisation' is a useful term, but also a potentially misleading one. It is a term used in the literature on European integration to mean both the 'downloading' of EU policy into the national polity, and sometimes also the 'uploading' of national preferences to EU level (Börzel 1999). In the case of the CEE countries, the asymmetrical power relationship that they had with the Union as applicants for membership meant that they were mainly downloading policy, with few opportunities for uploading. In the context of post-communist transition, the term

'Europeanisation' is ambiguous, because it implies both the process of joining the EU and also the much wider process of the 'return to Europe' after the revolutions of 1989. This study confines itself to investigating the part of these processes that was driven by accession requirements. As others have observed, this might be more properly called 'EU-isation'. However, there was a very widespread perception in Central and Eastern Europe that the process of 'EU-isation' – meaning the meeting of accession requirements and the adoption of EU norms, policies and institutional models – was strongly connected to the wider processes of modernisation and post-communist transition. For many people in the region, EU-isation was part of, and even a pre-requisite for, the wider Europeanisation of their countries, which meant moving beyond communist legacies and regaining a full role in the European political and economic space. The ambiguity of the term 'Europeanisation' thus usefully captures an important ambiguity in the CEE candidates' attitudes towards alignment with EU norms. It is thus an appropriate concept to use as a starting-point in studying the candidates' relationships with the EU.

EU policies obviously penetrated political systems, but what were the effects of this process? Did the EU change domestic political structures and public policy? If so, what were the mechanisms of change? The literature on Europeanisation seeks to address these questions in the context of the existing EU, so it provides an ideal starting-point for investigating the candidates. There is a lively debate about the impact of 'Europe' on the EU member-states, and a body of empirical research on its effects. This book asks similar questions about the impact of 'Europe' on CEE.

## 1.2 The structure of this book

This book asks: What was the nature and extent of the accession conditionality for the CEE candidates? How did they respond to the incentives and constraints established by the accession process? How did the EU influence CEE policy and policy-making? What were the limits on this influence? We are concerned here with where conditionality operated, how it worked, and the conditions that determined its success in effecting changes in institutions and public policies in CEE. We are not aiming directly to explain the behaviour of the EU or the evolution of its eastern accession policy. Hence the reader should not expect a detailed analysis of the politics of enlargement among the EU's member-states, or of the policy-making processes by which the EU

arrived at its conditions for membership. Instead, this study focuses on what happened after the conditions had been set, analysing the process from the point of view of the applicant countries. However, the accession conditionality requires considerable explanation if its effects are to be understood, so it is analysed in detail from the candidates' perspective.

Chapter 2 provides an overview of eastern accession policy by examining the conditionality, in order to identify how the EU sought to change the CEE candidates. Chapter 3 sets out the analytical framework for the whole study, reviewing the literature on Europeanisation, and introduces the main explanatory concepts which will be used in the case-studies. Chapter 4 analyses the EU side in detail, discussing how the accession process provided the EU with potential routes of influence in CEE and the variables at work on the EU side. Chapter 5 sets out a framework for the case-studies and explains the variables on the CEE side, particularly the experience of post-communist transition and the candidates' strategies. Chapters 6 and 7 present case-studies of two policy areas, respectively free movement of persons under the single market, and regulating movement of persons through the Schengen *acquis*. The substance of the two policy areas covered the same issue (movement of persons in the enlarged EU), but they differed in their degree of political controversy, the policy agenda (both the substance of the agenda and the detail in which it was presented to CEE), and the routes of Europeanisation used. Chapter 8 compares the cases explicitly and explains how EU influence worked. Chapter 9 presents the conclusions.

# 2

## Accession Conditionality and its Implications<sup>1</sup>

The aim of this chapter is to define 'EU influence' as it was exerted through the conditions set by the EU for the CEE candidates. The evolving relationship between the EU and the CEE applicants for membership had three broad phases: the post-1989 trade and aid programmes; then the first pre-accession strategy that began with the Copenhagen commitment to enlargement and ended with the Commission's publication of its opinions (*avis*) on the applicants in 1997; and finally the Accession Partnerships and negotiations from 1998 to 2002. In this third phase, substantive negotiations began in November 1998 with five of the countries (Czech Republic, Estonia, Hungary, Poland and Slovenia), while the other five candidates (Bulgaria, Latvia, Lithuania, Romania and Slovakia) finally joined negotiations in March 2000. All the candidates also went through a process of 'screening' to assess the compatibility of their legislation with EU requirements. All of the CEE candidates finished negotiations in 2002.

However, membership conditionality is not the only way that the EU exerts influence on third countries, so Chapter 4 considers all the other Europeanisation mechanisms that the EU can employ.

### 2.1 The first phase of EU eastern accession policy 1989–97

#### 1989–93: Trade and aid

In this first phase, relations moved from traditional third-country relations based on aid and trade conditions to the prospect of membership. The EU created the Phare<sup>2</sup> aid programme in 1989, as an aid programme intended to support post-communist transformation in CEE. The EU's initial focus was on economic transition rather than

political development. On its establishment in 1989, Phare's primary instrument was direct grants, used to fund technical assistance in a very wide range of areas. Following revision of the pre-accession strategy in 1997, its focus was narrowed to funding accession preparations alone. Initially, the EU used Phare funds to channel advice on economic transformation, with the Commission deliberately confining its conditionality to market-developing measures; however, from 1992 to 1997 a budget line was built in for a democracy programme as well. Conditionality for Phare funds and the technical assistance it provided reinforced the generally neo-liberal agenda that the EU put forward; however, the programme was fragmented as a result of its dependence on consultants under contract, and Phare's overall lack of coherence limited the extent to which it could be used to guide CEE consistently toward particular policy prescriptions.

In 1989, the European Commission was also given the task of coordinating aid from the G24 (including the OECD, World Bank, IMF and Paris Club), an unexpected extension of its mandate that it used actively (Sedelmeier and Wallace 1996). The assistance provided included elimination of trade barriers and export promotion for CEE; the Commission also coordinated macroeconomic assistance from other institutions, including medium-term financial assistance for currency stabilisation and balance of payments assistance, and also debt relief (in cooperation with the Paris Club). Through the Commission's role in aid coordination, the EU was thus in a position to channel a wide range of policy advice about transition, both from its own resources and also the international financial institutions and other bodies. This was also the start of a larger role for the Commission than in previous enlargements, as it took responsibility for a major aid programme as well as accession preparations.

The trade side started with the granting of preferential concessions to CEE, followed by different forms of association with the EU devised from the late 1980s, resulting in a hierarchy of new forms of partnership with the CEE countries.<sup>3</sup> Trade and cooperation agreements had been concluded with most CEE countries and the Soviet Union between 1988 and 1990, covering trade and commercial and economic cooperation. Their main importance was symbolic, in removing historical trade discrimination, and the substance of the trade concessions and cooperation was limited (Sedelmeier and Wallace 1996). The agreements bound the CEE countries to progressive abolition of quantitative restrictions on import of EU goods, although they were already in the process of liberalising trade owing to membership of the General Agreement on Tariffs



and Trade (GATT, later the World Trade Organisation). For the applicants for membership, these agreements were superseded by the 'Europe Agreements' signed bilaterally from 1991 onwards, which provided a more comprehensive form of partnership than the Association Agreements previously signed with Turkey, Malta and Cyprus.

The main innovation in EU conditionality during this period was the addition of a suspension clause to all Europe Agreements concluded after May 1992 that linked trade and cooperation agreements to five conditions: rule of law, human rights, a multi-party system, free and fair elections, and a market economy. Europe Agreements can be suspended if these conditions are not maintained, but no suspensions have occurred, even after the EU publicly criticised undemocratic practices in Slovakia in 1994 and 1995, reflecting the fact that suspension is seen by the EU as a very last resort.

The content of the Europe Agreements was a set of formally structured trade relations, with a mixed content of both political and economic provisions (see Box 2.1). The Europe Agreements 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 ten-year timetable, and they also provided a general framework for political and economic cooperation, including approximation of legislation; they thus started the process of introducing the EU's legislation and policies to the applicants. The liberalisation was asymmetric, with the EU opening markets for industrial goods within five years and the CEE countries within ten. The Europe Agreements made specific policy demands on CEE through the chapters on trade, on competition, on free movement of workers, and on establishment and supply of services. The trade chapters were the most comprehensive,

### **Box 2.1 Content of the Europe Agreements**

1. political dialogue
2. 10-year timetable for liberalisation of trade in industrial goods, on an asymmetric basis and in two stages
3. complex rules for trade in agricultural products
4. titles on movement of workers, freedom of establishment, and supply of services
5. liberalisation of capital movements
6. competition policy
7. 'cooperation' on other economic issues, from energy to education to statistics (areas for technical assistance).<sup>4</sup>

with the annexes to the Europe Agreements giving schedules for removal of trade barriers, including special protocols on 'sensitive' sectors (textiles, iron, coal and steel) and complex restrictions on agricultural trade.

The agenda set by the Europe Agreements was thus generally liberalising, although EU agriculture markets remained protected until accession. The emphasis of the agreements on free movement of the factors essential for the operation of the single market was developed further in the Commission's Single Market White Paper, published in 1995.

### **1993–97: The Copenhagen conditions and the first pre-accession strategy**

The conditions set out at the Copenhagen European Council in 1993 (see Box 2.2) were designed to minimise the risk of new entrants becoming politically unstable and economically burdensome to the existing EU. The conditions were formulated as much to reassure reluctant member-states as to guide CEE, and this dual purpose to conditionality continued to play an important role in the politics of accession within the EU. The fourth condition (quoted in Box 2.2) reflected member-state anxieties about the impact that enlargement might have on EU institutions and policies because of the increase in numbers and diversity, apart from the specific problems that CEE members might bring in; it was a condition for enlargement, whereas the others were conditions for entry.

#### **Box 2.2 The Copenhagen conditions**

'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,
- ▶ the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
- ▶ Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.
- ▶ The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.'

The Copenhagen conditions were followed by the formal launch of a 'pre-accession strategy' at the Essen European Council in December 1994. The prospect of integrating so many and such different countries provoked a more comprehensive policy approach to enlargement than in previous accessions, although this was slow to evolve.<sup>5</sup> The strategy incorporated earlier agreements and commitments (through the Europe Agreements and Phare) and added some new elements (the Single Market White Paper and the Structured Dialogue). The first two elements set a general framework for adapting to EU requirements, while the latter two were intended to facilitate this process by providing aid and a forum for multilateral discussion.

The pre-accession strategy provided detailed legislative measures for the CEE countries to adopt, but in a limited range of policy areas. It began the process of elaborating the conditions for membership in terms of specific requirements, but in a selective fashion, putting forward only some of the EU's body of law and dealing with the other Copenhagen conditions *ad hoc*. The strategy's content was primarily concerned with liberalisation of external economic relations and creating the conditions for free movement of industrial goods, services and, to some extent, capital; however, it left out the fourth factor of production, labour, and also agricultural policy. The other parts of the legislation which governs the single market were given less attention, and the timetable for taking them on was left unclear, introducing the principle of phased adoption of EU rules. This was a new approach in the EU's history, because the *acquis communautaire* for the single market had previously been regarded as indivisible.<sup>6</sup>

In providing specific demands and aid for changing legislation, the pre-accession strategy had a strong impact on a range of policy processes in CEE. The speed with which different applicant countries met the formal aspects of EU demands through the pre-accession strategy varied, and the extent of implementation was hard to gauge, but the demands set out a policy agenda of sorts for CEE. That agenda was then developed further with publication of the Commission's Opinions on readiness for membership in 1997, and the refocusing of the pre-accession strategy following the publication of 'Agenda 2000' – the Commission's framework from accession policy from 1997 onwards.

The 1995 Single Market White Paper set out the key legislation governing trade in goods and services in the EU's Internal Market. It took the EU's agenda a stage further than the Europe Agreements by introducing measures in a large number of new policy areas. Again, the content set a policy agenda that was generally liberalising

(see Box 2.3), although some provisions have been criticised as sub-optimal for CEE countries in the process of liberalising their economies; for example, the competition policy provisions are more restrictive than some existing CEE policies (Wilks 1997). In each sector, the White Paper divided the legislation into 'Stage 1' measures, which set out the basic policies essential to the functioning of the single market and the instruments required to implement them, and then 'Stage 2' detailed the implementing rules. The White Paper did not provide an overall prioritisation between sectors, although it made suggestions about sequencing; countries had to make their own distinctions between measures that were required simply for accession and those that were also of immediate benefit to their economies.

Unlike the Europe Agreements, the White Paper was not a legally binding agreement. Nevertheless, the regulatory alignment policy it outlined was a central concern of CEE policy-makers because it gave them a framework and set of concrete measures to implement. Moreover, progress in taking on the measures in the White Paper was judged in the Commission's Opinion as a key element in assessing ability to take on the obligations of membership. The White Paper thus became *de facto* a part of EU conditionality for the applicants, despite its status as a document for guidance rather than a legal framework for relations. The White Paper was also an important step in developing the EU's approach to regulatory harmonisation in CEE. The two-stage approach taken in the White Paper – of allowing the CEE candidates to take on some parts of the regulatory framework before others – was at odds with the internal market's 'policy paradigm' of alignment

### **Box 2.3 Content of the Single Market White Paper**

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

(Sedelmeier 2001). It left decisions about transition periods after accession to negotiations, and so allowed countries to take on aspects of the single market regulation selectively, and potentially after accession.

### **1997–98: A reinforced pre-accession strategy and the start of negotiations**

The brief overview of the original pre-accession strategy provided above indicates the main thrust of EU demands on applicants in the early years of transition: liberalisation and regulatory harmonisation. In July 1997, a new phase began when the Commission published its Opinions (or *avis* in French) on the applicants' progress in meeting the Copenhagen conditions, and put forward proposals for a 'reinforced' pre-accession strategy based on the Accession Partnerships in 'Agenda 2000', its blueprint for enlargement. The accession part of 'Agenda 2000' was largely endorsed at the Luxembourg European Council of December 1997, although the Community budget proposals were later changed as part of the overall budget negotiations in 1998–99.

The Commission's Opinions gave an overview of the political and economic situations in the ten countries up to May 1997, and also an assessment of how close each might come to being ready to join in five years' time. These Opinions were thus unique in the history of EU enlargements in not merely judging applicants' readiness for membership at that moment, but assessing whether they would be able to meet the conditions for membership within the timespan of negotiations. Each Opinion covered all of the Copenhagen conditions, so there were chapters on the political criteria, the economic criteria, adoption of EU legislation and other aspects of the applicants' ability to 'assume the obligations of membership'. They were based on judgements by the Commission, with little argumentation or evidence presented for the conclusions about readiness.

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

Cyprus. The 1997 Luxembourg European Council therefore provided the first instance that benefits were granted to or withdrawn from an applicant country explicitly on the basis of the Copenhagen conditionality. Slovakia was the only country excluded on political grounds, although its economy was assessed relatively favourably; Bulgaria, Romania, Latvia and Lithuania were judged not to have met the economic conditions, although the problems of the first two countries were assessed as more serious than the latter two.

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

## 2.2 Tightened conditionality 1998–2002

The previous section has shown how EU conditionality for the CEE candidates changed after it was first set in 1993, in both nature and scope. The Copenhagen conditions set in 1993 were very general and open to interpretation, and they were then made progressively more specific and explicit through the pre-accession strategy. The main actor shaping these conditions and defining the requirements in detail was the Commission rather than member-states.

The EU set out its most explicit list of tasks to be undertaken by the candidates in the Accession Partnerships. These resolved a number of questions about what the applicants had to do to make themselves acceptable to the EU, but they also raised further questions. Most important in considering their impact on CEE is the way that the Accession Partnerships limited the scope of negotiations by making a number of potentially negotiable areas part of the conditions, and how they increased the scope of EU involvement in domestic policy-making both relative to the EU's previous role in CEE and also relative to its role in the existing member-states.

The first Accession Partnerships were presented to the applicants in March 1998. New Accession Partnerships were then published in 1999, which were subsequently updated in 2000 and 2001. These documents made the EU's requirements more explicit, and focused aid

more closely on accession requirements rather than general development goals. The Accession Partnerships were intended to make conditionality stricter, both on financial assistance through Phare and ultimately on accession itself, by uniting all EU demands and assistance for meeting them in a single framework. They set priorities for policy reforms on a timetable of short- and medium-term priorities. Applicants then prepared 'National Programmes for Adoption of the *Acquis*', which set timetables for achieving the priorities. The Commission subsequently published annual Regular Reports on each candidate's preparations for accession.

The Commission managed the Accession Partnership programmes and monitored implementation; however, member-states insisted that (contrary to the original proposals in Agenda 2000) the Council rather than the Commission should ultimately decide on the application of conditionality. The Council could at any time take 'appropriate steps with regard to any pre-accession assistance granted to any applicant State', acting by qualified majority on a proposal from the Commission, where 'the commitments contained in the Europe Agreements are not respected and/or the progress towards fulfilment of the Copenhagen criteria is insufficient ...'.<sup>7</sup> On the EU side, application of conditionality was complicated by the Accession Partnerships' lack of a specific legal base in the Treaty. The Accession Partnerships were not legally binding for applicant states, as they were unilateral EU measures. However, they made the Copenhagen conditions a quasi-legal obligation by establishing a control procedure and system of sanctions (Hillion 1998), and they rapidly became the main instrument governing EU-CEE relations, making them a strong influence on CEE policy-makers.

The Accession Partnerships also changed conditionality for the Phare programme: before 1998, priorities had been 'demand-driven' and conditionality depended on meeting very general economic and political objectives. However, with the Accession Partnerships, Phare became much more explicitly driven by the Commission, with funds geared specifically towards meeting the priorities set out in the Accession Partnerships. Aid was tied to conditions for accession, not more general transition and development goals; as a result, EU aid policy for CEE moved towards privileging the third Copenhagen condition (the obligations of membership) over the first two (political and economic). Whereas the Phare programme was originally concerned with economic reform and democratisation, under the Accession Partnerships it became primarily concerned with taking on EU legislation and policies.

The Accession Partnerships left the rules of the game uncertain for applicants: what exactly would count as a 'failure to respect the Europe Agreements' or to make progress in fulfilling the Copenhagen criteria? The EU was still left with a large margin in interpreting whether applicants had met the conditions and whether or not relations were satisfactory in the period prior to accession.

The Accession Partnerships also changed the scope of the accession conditionality. Their contents covered a huge range of policy areas, and set a very ambitious agenda for the applicant states, given their financial and administrative resources. They united all the EU's demands, covering not only all of the EU's legislation (as defined by the Commission), but also the other political and economic conditions. The breadth of the agenda set out for the CEE countries is illustrated in Table 2.1, which lists just a small part of the priorities: the economic reform tasks set in the 1998 Accession Partnerships for the short term (to be completed or taken forward in the same year). In addition, applicants had to establish, review or update medium-term economic policy priorities within the framework of the Europe Agreements.<sup>8</sup>

In addition to these economic priorities, there were objectives for the short and medium term in the following areas in 1998:

1. Political criteria. Short-term priorities were set here only for Slovakia (on elections, opposition party participation and minority languages) and Estonia and Latvia (integration of non-citizens and language training); all applicants had some medium-term objectives, such as improving the judicial system and prison conditions (Latvia), protection of individual liberties (Bulgaria) and integration of minorities.
2. Reinforcement of institutional and administrative capacity, including many areas of policy reform, from banking supervision to internal financial control.
3. Internal market. This objective continued many of the measures detailed in the Single Market White Paper, and pushed reform in areas such as liberalisation of capital movements (Poland and Slovenia), adoption of a competition law (Estonia), and adoption of anti-trust laws (Slovenia).
4. Justice and Home Affairs. A priority for all applicants was effective border management with their eastern neighbours, but there were few specific tasks until the 1999 Accession Partnerships (as discussed in Chapter 7).



**Table 2.1 Economic reform priorities for the short term**


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Bulgaria	<ul style="list-style-type: none"> <li>• privatise state enterprises and banks transparently</li> <li>• restructure industry, financial sector and agriculture</li> <li>• encourage increased foreign direct investment</li> </ul>
Czech Republic	<ul style="list-style-type: none"> <li>• implement policies to maintain internal and external balance</li> <li>• improve corporate governance by accelerating industrial and bank restructuring; implementing financial sector regulation; enforcing Securities and Exchange Commission supervision</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>• sustain high growth rates, reduce inflation, increase level of national savings</li> <li>• accelerate land reform</li> <li>• start pension reform</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• advance structural reforms, particularly of health care</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>• accelerate market-based enterprise restructuring and complete privatisation</li> <li>• strengthen banking sector</li> <li>• modernise agriculture and establish a land and property register</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>• accelerate large-scale privatisation</li> <li>• restructure banking, energy and agri-food sectors</li> <li>• enforce financial discipline for enterprises</li> </ul>
Poland	<ul style="list-style-type: none"> <li>• adopt viable steel sector restructuring programme by 30 June and start implementation</li> <li>• restructure coal sector</li> <li>• accelerate privatization/restructuring of state enterprises (including telecoms)</li> <li>• develop financial sector, including banking privatisation</li> <li>• improve bankruptcy proceedings</li> </ul>
Romania	<ul style="list-style-type: none"> <li>• privatise two banks</li> <li>• transform <i>régies autonomes</i> into commercial companies</li> <li>• implement foreign investment regime</li> <li>• restructure/privatise a number of large state-owned industrial and agricultural companies</li> <li>• implement agreements with international financial institutions</li> </ul>
Slovakia	<ul style="list-style-type: none"> <li>• tackle internal and external imbalances and sustain macroeconomic stability</li> <li>• make progress on structural reforms</li> <li>• privatise and restructure enterprises, finance, banking and energy-intensive heavy industries</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>• act on market-driven restructuring in the enterprise, finance and banking sectors</li> <li>• prepare pension reform</li> </ul>

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5. Environment. All of the candidates had to continue transposition of legislation, and to commence detailed approximation programmes and implementation strategies.

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

### 2.3 Negotiations 1998–2002

Eight of the ten eastern applicants completed accession negotiations at the Copenhagen European Council in December 2002; Bulgaria and Romania completed their negotiations in 2004. The five countries that began in 1998 (Czech Republic, Estonia, Hungary, Poland and Slovenia) made solid progress from the start, forming a 'front-runner group' in the accession marathon. The European Council in Helsinki (December 1999) then decided that the EU should open negotiations with all of the remaining candidates in 2000. This was a surprising outcome, because only Latvia, Lithuania and Slovakia were considered to be making solid progress by the Commission in its Regular Reports of the time.

One reason why the EU was motivated to start negotiations with the second group was in order to reward countries for their support of the NATO operation in Kosovo in Spring 1999. That explanation makes sense in a foreign policy perspective: the coalition of western countries that supported the bombing of Serbia that year needed to reward Bulgaria and Romania for their support of the Kosovo military operations in April 1999, including use of their airspace for bombing raids. This argument was used by some EU politicians as a reason why the two countries at the bottom of the list should be invited to join negotiations. Officials and commentators pointed to the sacrifices that the Bulgarian government had made, particularly maintenance of the economic sanctions and oil embargo on the Federal Republic of Yugoslavia, which had a serious impact on the Bulgarian economy. The Bulgarian government continued its support even in the face of anti-NATO demonstrations in Sofia and widespread public opposition to the bombing campaign. The argument was that Bulgaria should be rewarded, not just through increased levels of international aid, but also politically through the start

of accession negotiations. This argument was also used for Slovakia, whose government had been more politically supportive of the Kosovo operations than the Czech Republic, even though the latter was a new NATO member.

It is difficult to assess the counter-factual to this explanation – that is, the question of when the rest of the applicants might have joined negotiations if the bombing of Yugoslavia had not happened. However, the view of many policy-makers involved (and interviewed by the author at the time) was that it tipped the balance in favour of starting negotiations with the remaining candidates. Whatever its overall significance in the accession process, the ‘Kosovo reward’ factor was certainly important in ensuring that Bulgaria in particular was invited to join negotiations in 2000.

It was unusual for the EU to use accession policy strategically to achieve a foreign policy goal. Moreover, by 2000, the EU’s accession policy was already firmly set, owing to the structure of the negotiations and the rules governing Phare and other aid funds. It is generally difficult for the EU to use progress in negotiations or aid strategically to encourage or reward countries for reasons that are not directly related to accession. The Regular Reports in 1999 and 2000 used encouraging language about Bulgaria, and Bulgaria’s prospects were improving owing to greater macroeconomic stability, so it was possible for the Commission to argue that Bulgaria had made sufficient progress to warrant negotiations. Romania had made very little progress, and its economy was getting worse, but the Union found it politically difficult to leave only one candidate out of negotiations. Romania’s economic and political situation was worsening, but its government was still promising progress. Moreover, the Romanian opposition parties looked even worse in the eyes of EU member-states, which were therefore unwilling to use the gate-keeping sanction against the Romanian government, and hence isolate it.

However, the EU did stick to its principles of readiness, in that it set extra conditions to be met before Bulgaria and Romania could start negotiation: Bulgaria had to set a date for closing down the Kozloduy nuclear power plant, while Romania had to reform its state childcare institutions and improve its macroeconomic situation. The decision to let the two most lagging countries into negotiations was thus partly motivated by political considerations that were not related directly to the accession process, but the EU did use its conditionality to pressure these two candidates to make specific changes to remedy the most pressing problems that had kept them outside.

### **Readiness for accession by 2002**

By 1999, all ten central European candidates had been judged to have met the first political conditions – which were then set as an explicit pre-requisite for starting negotiations at the Helsinki European Council that year. Some of the candidate countries had also made quick progress towards meeting the economic and *acquis* conditions. By 2000, the European Commission's annual 'Regular Reports' on the candidate countries showed that eight out of the ten east European countries were making steady progress towards meeting the economic conditions. In particular, all five countries that started negotiations in 1998 had become functioning market economies and were close to becoming competitive in the single market.

The EU was able to conclude negotiations at the end of 2002 because Latvia, Lithuania and Slovakia caught up fairly quickly with the front-runners, despite starting negotiations two years later. However, Bulgaria and Romania lagged behind, although the Sofia government made better progress than its counterpart in Bucharest. The final two years of negotiations were slowed by hold-ups over the free movement of persons and the allocation of regional funds. Moreover, the member-states started discussing the budgetary costs of enlargement in earnest in Spring 2001 – even though this was not officially on the agenda until the following year. The Commission had previously been left to manage the accession process, but from mid-2001 onwards the member-states started to declare their positions and defend key interests. Once the member-states started entering the end-game of negotiations, the negotiating process became much more unpredictable and subject to domestic politics.

The 31 chapters in negotiations are set out in Table 2.2. However, the chapters were not opened for negotiation in the order listed. Instead, negotiations started with the easiest chapters (such as science and research) and worked up to the most difficult. The five front-runner countries reached the really difficult points in the accession negotiations only in 2001. In the relatively easy chapters completed in 1998–2000, there were many technical issues to be resolved, but no major stumbling-blocks emerged. However, issues such as competition policy, free movement of services, energy and transport all posed problems. Moreover, as previous enlargements had shown – even the relatively smooth accession negotiations with Austria, Finland and Sweden – unexpected difficulties were bound to arise even in seemingly uncontroversial areas.

Table 2.2 The 31 chapters in negotiations

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1. Free movement of goods	13. Social policy and employment	23. Consumer and health protection
2. Free movement of persons	14. Energy	24. Justice and home affairs
3. Freedom to provide services	15. Industrial policy	25. Customs union
4. Free movement of capital	16. Small and medium-sized enterprises	26. External relations
5. Company law	17. Science and research	27. Common foreign and security policy
6. Competition and state aids	18. Education, training and youth	28. Financial control
7. Agriculture	19. Telecommunications and information technologies	29. Financial and budgetary provisions
8. Fisheries	20. Culture and audiovisual policy	30. Institutions (of the Union)
9. Transport policy	21. Regional policy and coordination of structural instruments	31. Other
10. Taxation	22. Environment	
11. Economic and monetary union		
12. Statistics		

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At the Nice European Council in December 2000, the EU's member-states expressed the hope that the first accessions could take place in time for new members to participate in the next European Parliament elections in June 2004. But this was not a firm commitment to a target-date, as German and French policy-makers were quick to point out: a protocol to the Treaty on European Union allowed applicants to take part in European elections before accession. The Gothenburg European Council in June 2001 removed this ambiguity and potential excuse for delay, stating the EU's 'objective' that some candidates participate in the 2004 elections 'as members'. The Gothenburg conclusions also re-affirmed the goal of concluding negotiations with the best-prepared candidates in 2002. The Swedish Presidency had to fight hard at Gothenburg to overcome German and French opposition to setting a firmer target-date. Both countries were facing elections in 2002, and were nervous about declining public support for enlargement. The German government was also concerned about the impact of a firmer date on Poland's prospects for early membership. The Gothenburg conclusions officially re-affirmed the principle of 'differentiation', whereby each applicant country should proceed at its own pace. But a number of senior German policy-makers were concerned that Poland should not be left behind in the first accessions as a result of such differentiation. A large majority of the other member-states supported the firmer date commitment, partly because they were rattled by the negative

**Table 2.3** Referendum results (per cent of valid votes cast)

	Yes	No	Turnout (per cent of electorate)
Malta	54	46	91
Slovenia	90	10	60
Hungary	84	16	46
Lithuania	91	9	63
Slovakia	93	7	52
Poland	77	23	59
Czech Republic	77	23	55
Estonia	67	33	64
Latvia	67	33	73
Cyprus	No referendum on membership		

result of the Irish referendum on the Treaty of Nice. The re-affirmation of the timetable and the clearer target-date were an attempt by the member-states to keep up the momentum of the accession process.

However, the timing of enlargement remained uncertain even after the EU set a date for the first accessions: 1 May 2004. After the successful completion of negotiations, every member-state parliament and the European Parliament had to approve each accession treaty. The whole process could have been blocked by just one member-state's parliament if it threw out the accession treaty. In the event, all of the member-states ratified the accession treaties for the ten countries which entered in 2004.

The candidates had to approve the accession treaty as well, and all of them except Cyprus decided to have a referendum on EU membership. However, the rejection of membership by one candidate country's public would not have stopped the process; it would just have ruled out that country's participation in the 2004 enlargement. This fact made for a major asymmetry of power between the electorates of the candidate countries and member-states. In the event, all of the candidate countries passed their accession treaties in the referenda of 2003 – with only Malta doing so by a small margin (as shown in Table 2.3).

## 2.4 Deconstructing the EU's accession agenda

The Accession Partnerships opened up a large policy-making agenda that pushed through some fundamental reforms relatively quickly. For most of the applicants, their introduction meant that the EU started taking over as the key external driver of reform. Until 1997, there had

been a widespread perception in CEE that the EU was not having much of an impact on fundamental parts of the transition process – such as privatisation and budgetary consolidation – in comparison with the international financial institutions (IFIs – principally the World Bank and International Monetary Fund) and domestic factors. However, the more specific and wide-ranging agenda set out by the Accession Partnerships, and the closer conditionality of EU financing on these objectives, changed this situation from 1998 onwards by increasing the EU's influence on the process of institutional and policy reform in CEE. For the first five CEE applicants that started negotiations in 1998, the IFIs' role was diminishing at the same time as the EU's role started growing. In any case, the IFIs had more limited policy aims for post-communist countries, such as macroeconomic stabilisation (in the case of the IMF) or development goals (in the case of the World Bank) than did the EU. IFI policies generally restrain the redistributive functions of states, but they are not so concerned with regulatory functions; by contrast the EU started with the latter and rapidly began to cover the former as well.

The Accession Partnerships extended EU-level influence over policy-making to an extent that went beyond the EU's role in the domestic policy processes of its member-states. These documents covered EU-level policies that had not been adopted by all member-states (such as Schengen and monetary union) and their content went beyond the *acquis*, because they also included the first two Copenhagen conditions (political and macro-economic). Although only some policy domains have moved to supranational level in the EU (Stone Sweet and Sandholtz 1997), in the agenda presented to CEE the distinctions between Community and national competences that are constantly debated within the EU were not acknowledged. Indeed, the Accession Partnerships covered several areas where member-states had long been very resistant to extending Community competence. The political criteria took the EU into areas such as judicial reform and prison conditions; the economic criteria were interpreted to include areas such as reform of pension, taxation and social security systems, and corporate governance; and the measures for 'administrative capacity to apply the *acquis*' brought EU conditions to civil service reform in CEE. The EU also had an impact on the applicants' foreign policies – especially towards their eastern neighbours – owing to the justice and home affairs measures in the Accession Partnerships and separate readmission agreements (as discussed in Chapter 7).

Through the Accession Partnerships, the EU started influencing both regulation and redistribution, which are normally policy preserves of the nation-state. However, it covered the first far more than the second. The pre-accession strategy as a whole (from the Europe Agreements to the Single Market White Paper to the Accession Partnerships) set out a detailed regulatory agenda for CEE, reflecting the fact that the EU's own key governance function is regulating social and political risk rather than resource redistribution (Hix 1998). The CEE accession policies were much less detailed in areas that lie outside regulatory policy; for example, the content frequently comprised exhortations for 'major efforts' to improve or strengthen policies and institutions, without the means being specified. The emphasis at this stage was on having coherent policies and functioning institutions, rather than the EU specifying prescriptions for policy content. The detail was then filled in by each country's authorities in the 'National Programme for Adoption of the *Acquis*' which it prepared; this method put the onus on the applicants to decide how to meet the objectives specified by the EU. However, the EU's preferences in policy content did emerge through which projects received Phare funding and in the Commission's annual Regular Reports on each country's progress.

Despite their lack of detail, however, the Accession Partnerships did contain implicit policy models for CEE. This was most evident on the economic side, where the thrust of the agenda was neo-liberal, emphasising privatisation of the means of production, a reduction in state involvement in the economy (particularly industry), and further liberalisation of the means of exchange. Considering the variety of models of capitalism to be found among EU member-states, the Accession Partnerships promoted a remarkably uniform view of what a 'market economy' should look like. The socio-economic system they implicitly endorsed had a more 'Anglo-Saxon' flavour than the 'Rhenish' social market economies of France or Germany or the 'Latin' economic systems in the southern EU.<sup>9</sup> There was little attention to the role of networks between social partners in the economy or to industrial policy, for example. The priorities were largely anti-interventionist, although the role of appropriate regulation was recognised in response to the inadequacies that had emerged over the previous few years in CEE, particularly in corporate governance.

However, no explicit rationale was presented for this agenda, even though it covered so many functions of the modern state. The conditions were presented as if they were self-evident, with no acknowledgement of the policy debates going on in the EU and outside about



the appropriate role of the state in the economy and alternative models of corporate governance. It would have been possible to make convincing arguments as to why many of the Accession Partnership measures were necessary in CEE; for example, the need to reduce the power of social networks to promote competition, and the problems caused by lack of appropriate regulation of the financial sector in several countries. However, no such rationale was presented publicly. Even though this was such a wide agenda from such an important external influence, there was no detailed justification for these demands beyond the fact that they came in the name of joining the EU.

## **2.5 The political context for accession policy in the EU**

This section gives an overview of the political dynamics at work in the late 1990s among the principal EU actors involved in accession policy. More detailed analyses of the development of eastern accession policy in the 1990s are provided by Mayhew (1998), Sedelmeier (1998), Sedelmeier and Wallace (2000) and Sedelmeier (2000).

The more detailed accession conditions that emerged after 1997 were designed during a period of debate among EU member-states that was not characterised by enthusiasm for a large increase in the policy areas covered by Community competence. The Inter-governmental Conference (IGC) of 1996–97 was intended to decide on institutional reforms to prepare the Union for enlargement; however, its deliberations demonstrated the lack of consensus among member-states over institutional reform as a whole, and the final phase of negotiations showed a decreasing willingness on the part of even traditionally integrationist member-states to increase the powers of EU institutions.<sup>10</sup> The subsequent European Councils did not indicate any increase in member-states' willingness to give the Commission new powers. As one commentator on the Amsterdam Treaty put it, 'The overall impression left by the Treaty is ... that the Commission is still not entirely trusted to observe the rules of the game.' (Ludlow 1997).

However, in policy towards CEE candidates, member-states continued to prefer that the Commission take the lead in formulating the pre-accession strategy even after 1997, with the important exception of the most sensitive area of justice and home affairs. The rotating presidency of the Union continued to set the priorities for the Union every six months – including in enlargement policy – but the day-to-day management of the accession process was largely left to the

European Commission. The member-states played a role in the process sporadically, and they took an increasing interest in it in the last two years of the accession negotiations. However, for seven years or so, the principal agent in accession policy was the Commission, and it had a wide margin for interpreting the very general conditions set by the European Council through the pre-accession conditionality. From 2001 onwards, however, the member-states came back into the process because the negotiations reached the most politically sensitive areas for the EU, such as free movement of labour and common policies with budgetary implications (particularly the Common Agricultural Policy).

Why did the member-states sanction such an increase in the Commission's mandate in this area? This section explores the various factors which led to this outcome, most of which relate to the member-states' interests in the enlargement process.

### **The Commission's role in the accession process**

An important innovation in eastern enlargement policy was the degree to which the EU developed a pre-accession strategy well before the negotiations began. In previous enlargements, the main focus of preparations for membership was the accession negotiations themselves. However, in the case of the eastward enlargement, the large number of candidates, their state of political and economic development, and their distance from EU norms necessitated a much more elaborate pre-accession strategy than in previous enlargements, and this meant a correspondingly greater role for the Commission. The Commission was the actor which mainly devised and managed the pre-accession policies that preceded and ran in tandem with the formal negotiations.

In accession negotiations, the Commission has no formal role in legal terms. A bilateral Inter-governmental Conference between the member-states and a candidate country carries out the accession negotiations. The member-states ask the Commission only to facilitate the negotiations, particularly by submitting draft common positions (DCPs) to the Council Working Group on Enlargement; the member-states then define EU Common Positions based on these draft positions from the Commission. Normally, the DCPs are drafted by DG Enlargement, based on input from the relevant line DG(s). The Commission services typically have close informal contacts with both the candidate country and the member-states. The Commission is duty-bound to protect the Community interest, but it also looks for solutions that take due account of the specific

circumstances of the candidate country. This is the most concrete aspect of the Commission's facilitation role.

The Commission has no formal power to withdraw its proposal or to stop the member-states from adopting a position with which the Commission disagrees. The Commission only has the 'soft power' of its technical expertise and knowledge of the candidate countries. To preserve this power, the Commission has to win over the member-states time and again, by demonstrating its expertise is superior to that of the member-states. During the eastward enlargement process, the Commission succeeded in demonstrating its added value, and the member-states did not adopt positions to which the Commission was opposed. Moreover, the Commission managed to gain a vastly increased role in the accession conditionality through its management of the pre-accession strategy, again because it demonstrated its greater knowledge of the candidate countries.

### **The Commission's functional argumentation**

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

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

A further factor favouring the emergence of a single coordinating instrument was the need to remedy perceived weaknesses of the original pre-accession policy. There was support both within the Commission and among member-states for re-focusing the pre-accession strategy. Criticism of the original pre-accession strategy, and particularly the Phare programme, from within the Union and from the applicants had led to calls for EU aid to be focused more

carefully, with greater policy coherence and a more 'efficient' use of funds. A logical way to achieve this was to focus Phare more closely on accession issues, steering away from the previous problems of fragmentation and dependence on western consultants. The Commission found the solution in the Accession Partnerships, which linked aid to accession conditions directly and set priorities at the EU end rather than through the 'demand-driven' process that had previously operated.

The Accession Partnerships extended the Commission's mandate further by giving it responsibility for setting priorities, reviewing the applicants' progress in meeting objectives, and recommending whether candidates should be in negotiations or not. Although final decisions on applying conditionality (either on aid or accession) were left to the Council, the Commission largely determined the agenda by overseeing the whole process and managing the programmes. Responsibility for aid programmes effectively put at least some of the conditionality in the Commission's hands; for example, in 1998 the Commission decided to cut Phare assistance to Poland by 34 million euro, having rejected proposed projects as not meeting the priorities set out in the Accession Partnership for Poland.<sup>11</sup> In this way, the parallel operation of the Accession Partnerships alongside negotiations gave the Commission a much larger influence over accession terms than had been the case in previous enlargements. Partly because the Commission was largely responsible for managing the enlargement process, accession policy became increasingly technical in nature – focused on meeting EU norms and standards. As discussed in the next chapter, this approach affected the 'goodness of fit' between EU policies and pre-existing CEE policies and institutions, and therefore the effects of Europeanisation in different policy areas.

### **Ambivalence about enlargement**

From the beginning of eastern accession policy, there was a lack of strategy and coherence in the EU's approach, largely because of the dearth of political leadership in the EU on how to deal with the aftermath of 1989. The EU was slow to respond to the end of the Cold War and many member-states were reluctant to commit themselves to the accession of post-communist CEE. This unwillingness to take political responsibility for enlargement led the member-states to delegate much of accession policy-making to the Commission in practice.

During the IGC and after Amsterdam, several key member-states became increasingly ambivalent about the social and economic effects

of enlargement, and the impact on EU policies and institutions. Most importantly, the driver of the enlargement project in the early 1990s, Germany, saw increasing public debate about the potentially negative effects of enlargement on the German economy, labour markets and agriculture. The federal election campaign of 1997–98 included the issues of migration from CEE, wage competition, and the budgetary implications of enlargement. The response from the Kohl government was proposals to restrict movement of workers after accession, and further reassurances that enlargement should not result in an increase in German contributions to the Community budget (see Bulmer, Jeffery and Paterson 2000). Similarly, the Austrian debate became increasingly preoccupied with the issues of migration and border control, and correspondingly more hostile towards enlargement.

There was a parallel debate about the impact of enlargement on the Community budget and EU institutions. Net recipients from EU policies also became more openly opposed to the prospect of losing budgetary transfers. Proposals for reform of the regional funds and the common agricultural policy in Agenda 2000 galvanised lobbying efforts and intensified debate about the costs of enlargement. At the same time, member-states were reluctant to address institutional reform. Difficult decisions were postponed by adding a protocol to the Amsterdam Treaty requiring another IGC before the number of new member-states exceeded five, although several member-states (Belgium, France and Italy) immediately argued for further institutional reform as a prerequisite for even the first accessions.<sup>12</sup>

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

At the same time, there was a sense that there was no reason to hurry the process of enlargement. The alternative of a rapid accession process and long transitional arrangements had been rejected in the early 1990s, partly as a result of CEE insistence on full rather than partial membership, and the Commission's technocratic approach prevailed rather than one based on geo-strategic considerations. The difficult

negotiations on institutional reform at the end of the IGC in 1997 encouraged member-states to plan a longer timetable for the first accessions, to give the EU longer to prepare itself. As a result, when the Commission put forward Accession Partnerships which emphasised implementation of the whole *acquis communautaire* and strict conditionality, it did not meet with opposition from the member-states that wished to hurry the whole process along.

### **Consensus on the agenda for the candidates**

The extension of the Commission's role in setting such a wide political and economic agenda for CEE went unopposed for another reason: the content of the Accession Partnerships generally accorded with the member-states' interests. There was no significant disagreement in the Council with the Commission's draft Accession Partnerships, although some minor adjustments to their content were made in the Council of Ministers. According to an account prepared by the French parliament (*Assemblée Nationale* 1998), seven of the then 15 member-states approved the drafts submitted by the Commission. Germany (supported by France) proposed further provisions on justice and home affairs cooperation. Likewise, France (supported on some points by the Netherlands) argued in favour of sharpening a number of points in the draft Accession Partnerships, including a greater stress on measures to combat corruption and crime, on restructuring of metallurgy, coal and agriculture, and on respect for the constitution and independence of the media in Slovakia. Overall, however, there were no strong objections to the contents, and amendments proposed by the member-states tended to reinforce rather than ease demands on the candidates.

The content of key documents like the Accession Partnerships coincided with the member-states' interests in three spheres: the first was the broad consensus about the desirable shape of political and economic systems in CEE. In so far as they speeded transition, the Accession Partnerships accorded with the goal of increasing stability and prosperity in CEE. Throughout the pre-accession phase, member-states rarely disagreed with the Commission's interpretation of the Copenhagen conditions; for example, in 1997, the European Council at Luxembourg accepted the Commission's recommendations to start negotiations with only five CEE applicants plus Cyprus. This agreement to differentiate between candidates in negotiations was not reached without controversy – for example, Denmark and Sweden opposed the exclusion of Latvia and Lithuania from the first group to start negotiations. However, the Commission's overall ranking of

the applicants' readiness to join was accepted by member-states; it accorded both with the consensus about progress in transition and also with general geo-political priorities among the applicants. Germany's priority to the accession of Poland, Hungary and the Czech Republic coincided with their perceived front-runner status in transition, while Estonia and Slovenia were seen as small and relatively uncomplicated to integrate.

The second interest was the desire to avoid long transition periods on the CEE side. A widespread view was that derogations or long transition periods of the kind negotiated by the Mediterranean applicants should not be on offer. As the French parliament report put it on transition periods, '... l'Union ... ne concédera pas dix-sept ans comme elle l'avait fait pour l'Espagne ... mais tout au plus cinq ans ... dans quelques secteurs bien délimités', and for this reason, '[les candidats] devront faire l'effort essentiel pendant la période de pré-adhésion ...'.<sup>13</sup> This was a common view among EU policy-makers, but it was not a sufficient justification in itself. Why should CEE candidates not receive the same latitude as previous applicants in taking on obligations after accession? The scale of the challenge that these applicants faced in transition provided an argument that they should be given additional concessions, not fewer than those enjoyed by previous joiners.

Thirdly, a number of member-states wanted faster movement from the CEE candidates in addressing issues such as nuclear safety and border controls – which caused concern in member-states bordering the candidates, such as Austria. Some member-states thus welcomed the chance to increase pressure on the CEE countries to act more rapidly in these areas; in turn, that raised the support for stricter conditionality and a focus on EU priorities rather than the overall economic transition of the region.

## **2.6 Analytical difficulties in interpreting the EU's accession conditionality**

### **The moving target problem: what exactly do applicants have to do before they can join?**

The Copenhagen conditions were not a straightforward case of conditionality, and they differed from the traditional conditionality used by IFIs such as the development banks. In its simplest formulation, IFI conditionality links perceived benefits to the fulfilment of certain conditions. In the case of IMF and World Bank finance, conditionality is primarily linked to the implementation of specific economic policies,

such as structural adjustment, and the main benefit is financial. 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 *et al.* 1991, p. 65). By contrast, the EU's demands on the CEE applicants were not just a set of conditions to receive defined benefits, but an evolving process. The linkage between fulfilling particular tasks and receiving particular benefits was much less clear than in IFI conditionality because the tasks were complex and many of them were not amenable to quantitative targets that showed explicitly when they had been fulfilled. This added to the uncertainties inherent in the accession process, discussed in Chapter 4.

The moving target problem existed in all the Copenhagen conditions for entry. The first two required definitions of what constituted a 'democracy', a 'market economy' and 'the capacity to cope with competitive pressure and market forces' – all highly debatable and slippery concepts. The EU never provided an explicit definition of these concepts, although there were implicit assumptions about their content in the Commission's formal 'Opinions' on each candidate's readiness for membership (published in 1997) and annual reports on their progress. There was thus no published rationale for how various EU demands would bring applicants closer to West European political and economic norms. The third condition on the 'obligations of membership' was problematic because of the question of what exactly the form and content of the accession *acquis* would be in the final stages of negotiations – as discussed below. Formal alignment with the *acquis* in legal and institutional terms was the most measurable dimension of the accession process, because observers could count how many laws had been rewritten or introduced. Likewise, they could see how many chapters had been opened, provisionally closed, or 'set aside' for later consideration. The media, particularly in the candidate countries, often focused on these measurable dimensions of the process in their coverage as a result. This focus reinforced the candidate countries' efforts on getting chapters provisionally closed, and opening new ones, in order to demonstrate their progress – even though closing chapters did not guarantee an earlier date for accession, and provisionally closed chapters could be re-opened later in negotiations.

The EU influenced policy-making at different levels of government through multiple channels, and it was far from being a unitary actor in the CEE countries. Different parts of the EU – both its institutions and member-states – gave different advice and signals, and different actors



even in the same institution did so as well (for example, individual directorates-general within the European Commission stressed different tasks). At the same time, CEE policy-makers were dealing with pre-accession advisors from national administrations, Commission officials, national experts from the Council, and civil servants and politicians from individual member-states, plus a range of joint parliamentary committees, and representatives from the European Parliament and the Economic and Social Committee. It was thus hardly surprising that they were often unsure exactly what the EU's requirements were and who really spoke for the Union.

### **What is the accession *acquis*?**

Even the supposedly firm *acquis* attached to the third condition, on the 'obligations of membership', was open to interpretation. In previous enlargements, the obligations of membership were solely the implementation of the existing '*acquis communautaire*.' For the 1995 EFTA enlargement, the 'obligations of membership' were to take on the *acquis communautaire* as it applied to the present member-states.<sup>14</sup> The term '*acquis communautaire*' had been used in previous accessions to refer to 'the whole body of EU rules, political principles and judicial decisions which new Member-states must adhere to, in their entirety and from the beginning, when they become members of the Communities' (Gialdino 1995, p. 1090). Similarly, the *acquis* had been defined for this enlargement by the Commission as 'all the real and potential rights and obligations of the EU system and its institutional framework'.<sup>15</sup> The total was more than 80,000 pages of legislative texts, but the *acquis* was not clearly defined and it implied an evolving set of demands.

This policy became known as 'the *acquis*, the whole *acquis* and nothing but the *acquis*' among policy-makers; but it was never really credible. François Lamoureux, a senior Commission official, was widely reported to have commented in 1993 that no member-state had implemented more than 80% of the *acquis*. This statistic was often quoted by CEE policy-makers, many of whom asked 'How can the EU ask us for 100% compliance prior to accession, when the much richer member-states have not managed it?'

Moreover, the *acquis* is a dynamic concept because the body of legislation grows all the time through Treaty change, adoption of legislative measures (including resolutions, declarations and other measures, including inter-governmental agreements), international agreements and the jurisprudence of the European Court of Justice. In addition,

the edges of the *acquis* remain fuzzy in legal terms because parts of it are open to interpretation. It is more than just its formal institutional framework; it develops as a result of processes that inform debates over policy substance and agenda-setting, such as policy practices (Wiener 1998). It is thus open to minimalist and maximalist interpretations, and these in turn affected the demands made on CEE applicants.

Presentation of the substance of the *acquis* was critical to defining the conditions for entry. In previous enlargements, the room for interpreting the *acquis* allowed a margin for negotiating what were effectively derogations, but not called as such (Nicolaidis and Boean 1997). The EU presented a maximalist interpretation to the applicants. For example, the Commission argued that the social dialogue was part of the *acquis* for the applicants, even though not all member-states accept it.<sup>16</sup> The candidates also had to take on the EU's 'soft law' of non-binding resolutions and recommendations. Moreover, CEE countries had no possibility of negotiating opt-outs such as those which applied to some member-states on Schengen and Stage 3 of monetary union.

Interpretation of this third condition, like the others, was mostly left to the Commission. However, there were some areas deemed too politically sensitive by the member-states to be left to the Commission; for example, the Council of Ministers set up its own working group to establish the accession *acquis* in the area of justice and home affairs (discussed further in Chapter 7).

Insistence on maintaining the integrity of the *acquis* had made the EU a tough and unyielding negotiating partner for previous applicants (Michalski and Wallace 1992), and a widespread view among EU officials was that CEE applicants had to join the EU club on this same principle. But in policy debates in the 1990s, others argued that this 'club membership' view of eastward enlargement was an inadequate response by the EU to the unprecedented challenge of post-communist transition, because the CEE candidates needed more help than previous joiners.

However, the Copenhagen conditions implied that applicants had to meet higher standards than did present member-states. Current members had not been judged on these conditions, and they had been able to negotiate opt-outs from parts of the *acquis* which were not available to CEE applicants. By contrast, CEE candidates were expected to meet the conditions fully, in advance, without opt-outs, and in the absence of reciprocal commitments from the EU to prepare for enlargement. This opening stance was a negotiating position, of course, intended to encourage compliance by CEE, and in practice

both sides wanted transition periods on different issues. However, the EU's inflexible stance raised a question of double standards that aroused resentment in CEE, and later played a role in their domestic political debates about EU accession in the early 2000s.

### **The EU's twofold role in CEE: aid donor and club owner**

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

How compatible were these goals? The assumption in much of the language used in official EU publications on enlargement was that accession and transition were part of the same process and that preparations to join the EU were 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. They were not designed for countries in transition, and they often require a complex institutional structure for implementation that was little developed in CEE. EU models in at least some policy areas were sub-optimal for the applicants; for example, the competition policy model implied by the EU's conditions for CEE was probably not appropriate for post-communist countries, given the forms of corporate governance emerging in the region (Wilks 1997). Moreover, the EU's emphasis on regulatory alignment had potential contradictions with the process of economic restructuring. Politically, the EU was moving in the 1990s towards taking regulation of the single market as its primary role, and relying on coordination in most other areas (McGowan and Wallace 1996). It thus lacked the wide experience of a development agency role that would have been more suitable to guiding CEE transition.

### **Implications of the Accession Partnerships for negotiations**

The Accession Partnerships were the first list of specific demands that the EU put forward for the accession of the CEE candidates, and also for interim benefits in the accession process such as aid and participation in negotiations. They therefore provided an elaboration and

clarification of the conditions for membership; however, they also affected interpretation of the accession conditions and negotiations.

The first issue is the impact of the Accession Partnerships on the process of negotiations and the relative bargaining power of the EU and the applicants. Because their implementation ran in parallel with the screening and negotiating processes, they downgraded the status of bilateral negotiations. Having an annual programme running in parallel reduced the negotiators' flexibility in deciding what might be subject to compromise on both the CEE and EU sides, because the Accession Partnerships presented the conditions as a package which was difficult to take apart in negotiations. The CEE applicants had little power to argue against EU demands, because there was a pre-set EU agenda on which aid was already conditional. Although the Accession Partnerships were supposed to be 'partnerships', decided in collaboration with each applicant, in practice the process of consultation involved only cursory attention to CEE objections to either the content or sequencing of demands. Effectively, the Accession Partnerships added further and more specific conditions to the EU's list of demands, and they gave the EU an even stronger position in the event of a conflict of interests by adding sanctions in the form of withdrawal of aid funds.

In previous enlargements, accession terms had been a bargained outcome, and negotiations resulted in special arrangements in areas such as external trade conditions and aid to third countries (Redmond and Rosenthal 1998). But in the eastward enlargement, the Accession Partnerships set detailed objectives for CEE that pre-judged the negotiations. Partly this was because of the expansion of the *acquis* to cover many more policy areas than in previous enlargements; however, the Accession Partnerships pre-judged the accession terms in areas outside the *acquis* as well, reducing the scope of negotiations to agreeing transition periods.

The second issue is the scope of EU policy. Through the Accession Partnerships, member-states gave the Commission competences in CEE that they had never accepted for themselves, as discussed above. Moreover, these competences were extended without any of the justificatory and restraining principles that apply in the EU, such as subsidiarity, proportionality and competence, or the involvement of restraining institutions. The only monitoring function for accession policy during negotiations was performed by the Council, with no role for the European Court of Justice, very little for the European Parliament (until the assent procedure for the accession treaties) or

national parliaments (until ratification of the treaties). Despite the EU's insistence that applicants must be democracies, the EU itself had very little democratic accountability built into the accession process until after treaties had already been signed with CEE – at which point parliaments had a right of veto. Accession policy was still treated as an aspect of external relations with third countries, even though its effects in CEE were much more like the EU's relationship with existing member-states. There was thus a paradox in EU-CEE relations: applicants were treated like member-states in the extent of their obligations under the Accession Partnerships, but as applicants they had no rights and little say in determining the substance of relations, leaving the EU as an increasingly hegemonic actor in the region.

## **Conclusions**

This chapter has investigated and analysed the EU's policy agenda for CEE, in order to define the pressures for Europeanisation created through the accession process. The EU's policy agenda for CEE was innovative in the history of European integration in that it went further than the agenda for any previous applicant. However, its development was an iterated process whereby the conditions were changed and reshaped over the pre-accession period. It was an often ambiguous conditionality, because the EU is a complex constellation of actors who often maintain ambiguity to gain agreement among themselves. For these two reasons, the conditionality was difficult to interpret for the applicants, and the researcher has to go to some lengths to 'deconstruct' the EU's agenda for the candidates before trying to analyse its impact.

The conditions for joining the EU looked deceptively straightforward: an aspirant member had to be a stable democracy and competitive market economy, and demonstrate it was willing and able to take on all EU policies, both present and future. These conditions might seem self-evident, a set of 'motherhood and apple pie' criteria to which no European could object. But it was evident that one of their aims was to reassure EU states that the eastern candidates would look like familiar, West European countries, not bringing instability, authoritarianism or economic collapse into the Union.

The independent variable described in this chapter is a complex one, because the accession *acquis* was defined broadly, and its implications for conditionality and the scope of EU influence in CEE raise a number of questions for investigation in the case-studies. In addition to the

implications for the accession process discussed above, there is the question of what room for manoeuvre the applicants had in implementing the Accession Partnerships. Although the priorities were listed and the timetable for implementing the short-term ones was set clearly, the EU still had considerable scope for interpretation in deciding whether or not they had been fulfilled.

On the CEE side, there was also scope for countries to vary the speed with which they acted on some of the priorities. For example, in 1998, Romania was told to 'privatise two banks' by the end of that year (so it was fairly straightforward to judge how much progress had been made), but the Czech Republic was told to 'improve corporate governance' (progress was much harder to gauge, and clearly 1998 could only be the start of a longer-term process). Hence the level of detail at which the EU specifies its agenda is an important determinant of the extent of EU influence.

# 9

## Conclusion

This book has examined EU influence in the CEE candidate countries, focusing on what the EU actively sought to change and the routes of Europeanisation that were established by the accession process. The EU had an enormous potential influence on public policy in CEE because between 1989 and 2004 every government in every applicant country claimed that EU membership was its first foreign policy priority. Moreover, beyond the attraction of membership, the EU had specific routes of influence through which it could shape political choices, in particular gate-keeping, benchmarking, models, money and advice.

However, the EU did not use its full potential to shape public policy because of the diffuseness of its influence – partly owing to the diversity of its current member-states – and the uncertainties of the accession process. Moreover, the EU's influence interacted with other processes of change in CEE, including the political salience of European issues and the institutional capacity of the country to respond to EU demands.

The EU's power in negotiations and its influence through Europeanisation had different effects in the candidate countries. In the CEE candidate countries, Europeanisation was a process that began prior to the accession negotiations and was distinct from them. Negotiations were an important way of exerting influence, and the outcome of negotiations – the accession treaty – was one of the few legally binding parts of the accession process. However, they were only one part of the accession process (as shown in Chapter 2), and they provided only one of the EU's many routes of influence in CEE (as shown in Chapter 3). Negotiations and Europeanisation were parallel and interactive, but they were distinct processes. For this reason, a framework of analysis based on international bargaining would be inadequate to study the

EU's influence in CEE. The power that the EU was able to exert in negotiations was different from the way it influenced the candidates through Europeanisation. The outcome of negotiations had a direct and targeted effect on a given policy area, but that impact was not necessarily long-lasting if the candidate country lacked the political will or administrative capacity to implement what its negotiators had agreed with the EU. By contrast, Europeanisation had more diffuse and patchy effects, but these were long-lasting where the EU maintained consistent pressure.

The relationship between the EU and the CEE countries as applicants for membership can be and has been characterised in several different theoretical frameworks (Schimmelfennig 1998, Fierke and Wiener 1999). The negotiating process could be researched as a form of 'two-level game' (Putnam 1988) played between the EU and CEE, given the evident interaction between the domestic and international levels. There is clearly room for more empirical work on the negotiations themselves (as shown by Friis 1997 and 1998). However, this book concludes that the negotiations are just part of the story.

The case-studies result in the following broad conclusions:

1. The EU's influence is potentially colossal, but it was not used to the full in Central and Eastern Europe. Through the accession process, the EU can directly affect policy, institutional development, and the capacity of the state. The EU's influence is most readily identifiable where it advocates particular policy and institutional preferences. However, it can also stimulate far-reaching changes simply by moving an issue up the government's decision-agenda, that is, by attracting more political attention to it.

The EU's influence is constrained, however, by diffuseness and uncertainty. These two constraints are largely the result of the structure of the EU's accession policies and its own nature as a multilateral body that has to achieve complex bargains among its constituent members. When the EU's agenda is ambiguous and/or incomplete, it cannot make full use of its potential influence. However, individual EU actors can take advantage of this absence of clearly specified criteria to advance policy solutions of their own.

The case-studies have shown how the EU used its routes of influence in CEE to promote the Europeanisation of public policy. It had multiple points of contact with the candidate countries and its approbation or disapprobation played a key role in CEE domestic politics. However, the complexity of actor constellations



within the EU made its influence diffuse. The Union as a whole coordinated its accession policy to shape public policy effectively only where it already had a clear set of rules or an institutional model. Where it did not, the diversity of the EU itself undermined the export of models to CEE. The EU's aggregate impact on CEE public policy was great, but it was blunt rather than precise. That diffuseness was increased where the policy paradigms underlying the EU's legislative and institutional models were different or even competing, as was the case in regulating the movement of persons.

2. Negotiating power matters. There is a strongly asymmetrical interdependence between the EU and candidate countries while they remain outside the EU. That power relationship has strong explanatory value for the CEE candidates' strategies in adaptation to the EU and also for the outcome of the accession negotiations.

In the case of free movement of persons, the EU managed to achieve its central goals despite having to override strongly principled objections from the candidates and contradictions with its own policy paradigms. In the Schengen case, the EU managed to effect dramatic changes in the candidates' border and visa policies despite a serious misfit with other important policy objectives. The attraction of accession proved to be more powerful than other goals.

Even when the EU is divided internally, it can still have strong negotiating power. In the case of FMP, many member-states had misgivings about the transition period on labour mobility. However, the strong preference of a few member-states for the transition period allowed the negotiators to tell the candidates that some member-states would not allow them to join without a transition period on labour mobility. However, the lack of consensus between member-states did lead to trade-offs that accommodated the candidates' interests in other areas.

3. Europeanisation can explain seemingly perverse political outcomes. The power relationship is, however, inadequate to explain all the outcomes in these policy areas. The two case-studies presented here show that the candidates did not just respond to the material incentives provided by the EU's exercise of power. They did not follow wholly rational strategies, and their adaptational strategies were distinct from their negotiating strategies.

Even though the candidates were explicitly denied the benefits of free movement of labour and the lifting of internal border controls immediately on accession, they continued implementation at

domestic level. Partly this was the outcome of a fear that otherwise their accession might be vetoed, but this threat was less credible once the deal on both negotiating chapters had been agreed. Interview evidence suggested that a parallel process was at work: CEE policy-makers had bought into the logic of Europeanisation, and were using EU policies and standards as their primary reference-point in framing domestic policies. The outcome of negotiations might have had some effect where policies were very controversial or expensive to implement, but on the whole Europeanisation continued regardless of the negotiations.

There are other variables determining the impact of EU requirements on public policy as well. The most important identified in the case-studies are the domestic political setting, the structure and consistency of the EU's agenda in a given policy area, goodness-of-fit and uncertainty.

4. Europeanisation becomes embedded in domestic policies and institutions long before accession. The EU's influence became embedded in CEE through processes of Europeanisation akin to those observed in the existing member-states. These processes can explain why the outcomes of negotiations did not cause expected changes in accession preparations. Indeed, the case of FMP reveals a disjuncture between the candidates' expectations of accession terms and the approach they took to implementation of the *acquis*.

Priority-setting at domestic level involves some strategic choice, but processes of Europeanisation tend to develop a logic and momentum of their own which do not depend wholly on top-down direction from government. Instead, EU tasks are written into the work-programmes of national ministries and a layer of officials becomes 'Europeanised' through contact with the EU and through training courses and participation in EU programmes. The routinisation of EU practices has a long-term effect.

In most CEE countries and in many policy areas, Europeanisation began several years before negotiations began, through adaptation guided by EU legislative and institutional templates. In the cases presented here, the extremes are Hungary and Bulgaria. For Hungary, some regulatory alignment started even under communism in the 1980s, but Bulgaria started alignment in earnest only around 1997. We can thus expect Europeanisation to have been more rapid and to have gone further in Hungary, and this is evident in both of the case-studies. However, although the *acquis* for the first case on FMP was presented much earlier than for the second on JHA, both were

implemented quickly in the CEE countries, for different reasons. Negotiating strategies were thus separate from – although parallel with – Europeanisation processes.

5. Credibility is a key intervening variable, one which was not expected at the start of the study. All three candidates studied here promised to implement the JHA *acquis* vigorously, because their officials knew it was a potential veto-point in negotiations. However, their commitments carried different levels of credibility. Hungary had both the capacity and the political will to meet its promises, because of its relatively sound public administration and high degree of political consensus on EU accession. Poland mostly had the capacity to implement the *acquis* – although the EU was unconvinced about some of its border protection infrastructure – but its political class was less united about EU accession preparations, so its promises had less credibility than Hungary's. Bulgaria had strong political will, but lacked the capacity for enforcement of the *acquis* and had not transposed legislation quickly, so its promises had low credibility with the EU.
6. Domestic politics matter. Poland embarked on negotiating strategy that was unlikely to bring gains owing to domestic political pressures. However, in the longer term, the EU's victory in negotiations may prove to be Pyrrhic if the treatment of the candidates in negotiations has a long-term effect on their future behaviour as member-states. Poland's negotiations resulted in deals that fuelled anti-EU movements in its domestic politics. In its first set of EU negotiations as a full partner, Poland took a hardline stance which resulted in the stalling of the EU's Inter-governmental Conference on the draft constitutional treaty in December 2003 (see Grabbe 2004b). That could be a sign of Poland's future behaviour as a member-state.

## 9.1 Implications for the study of Europeanisation

'Europeanisation' was defined in Chapter 3 as a set of processes whereby rules and procedures are constructed and defined in the EU policy process and then incorporated into the logic of domestic discourse, identities, political structures and public policies. Europeanisation in the CEE countries involved many other processes, such as policy transfer, regime transfer and institutional isomorphism (or mimicry). The specificity of Europeanisation lies in the fact that the processes all involved the influence of European integration, and the interaction between nation-states and EU institutions. In the case of applicant

countries, there was an additional dimension to Europeanisation because the conditionality for membership gave the Union significant leverage in transferring its principles, norms and rules, as well as in shaping institutional and administrative structures. This conditionality had two distinctive features which proved to be important to understanding the way the EU influenced policy-making in the CEE candidate countries: power and uncertainty. These two variables resulted from the nature of the EU and its policies, so they may be useful concepts for the study of Europeanisation within the Union, not just in candidate countries.

The study of Europeanisation is post-ontological, investigating not the nature of the beast but the beast's effects on others in its environment. It is obvious that the EU mattered in CEE; the question is how, that is, where exactly in CEE structures and policy processes and with what effects? Processes of Europeanisation were at work in CEE well before accession, and the EU's influence was wider in terms of the policy areas covered than in the current member-states, despite the much shorter timescale. However, it is important not to pre-judge how deeply it has penetrated the applicants' political institutions now, just after they have joined the Union. Europeanisation of public administration and governance structures may have been shallow because direct contact with the EU was confined to a small elite during the accession process. Ministries of foreign affairs might have spoken the language of the EU and had regular contact with officials in Brussels and the member-states. However, in other ministries, these contacts were often limited to a small administrative unit that was specialised in EU issues.

But even political actors who had little direct contact with the EU themselves may nonetheless have implemented EU-inspired policies, because these were written into national work-programmes without necessarily being identified as 'EU policies'. Indeed, one of the most important aspects of Europeanisation is the way in which EU policies, procedures and norms become embedded in national policy frameworks, policy-making structures and discourse. It is when people stop referring to 'EU policies' that they have become truly Europeanised.

This study has not sought to measure the extent of Europeanisation systematically in the CEE countries. There are general methodological problems in finding an appropriate scale for studying Europeanisation (first discussed in Goetz 2000), and this study offers some insights into the analytical difficulties of investigating mechanisms of Europeanisation in would-be members of the EU. First, it is vital to distinguish

between mechanisms that are used instrumentally by EU actors to effect change and the processes that are largely spontaneous or are initiated by candidate-country actors in the name of the EU. For example, anticipatory adjustment may occur, whereby actors make changes in the expectation that these adjustments will be needed at some point in the accession process or after accession, even though they are not formally required by the EU until a later stage or at all. Similarly, candidate country actors may use supposed EU models as a justification for institutional or policy choices even though the EU does not explicitly state they are needed for accession.

Secondly, indirect influence and pressure from EU institutions and member-states (for example, bilateral contacts) undoubtedly have a variety of effects, but such mechanisms work over time and are not necessarily coordinated at EU level – so they are very difficult to track systematically. In the case of the CEE countries, the EU's geographical proximity and plethora of contacts, along with policy learning and the provision of models, undoubtedly had a major impact. It is difficult to separate analytically the effects of the mechanisms that the EU sought to use actively, and those which happened unintentionally. However, this book has presented two case-studies in which the processes of Europeanisation have been traced closely, providing the basis for conclusions about the conditions under which EU influence is most effective.

### **Conditions which affect the extent of Europeanisation**

The scope of the Europeanisation effects in would-be members is determined by two conditions:

- The precision and certitude of EU demands. The EU has its greatest influence where it has a detailed policy to be transferred, it gives consistent advice, its actors speak with one voice, and it sets clear and certain requirements. It has its least impact where a policy area lacks these elements, and tends towards diffuseness and uncertainty.
- The degree of political will and institutional capacity to implement a given policy in CEE. Europeanisation effects go furthest where would-be members have strong political will to implement a policy owing to domestic consensus about the goal of implementation, and where they have the institutional capacity required to achieve that goal.

In the case-studies presented here, single market requirements were transferred most easily and completely because there was an established

*acquis* ready to be transferred, and its requirements were accepted by most EU actors. By contrast, the Schengen requirements for external border control were poorly articulated, kept changing, and were subject to widely varying interpretation by EU actors for several years. The main reason why they were implemented by the candidates was the high political priority attached to them by the EU. However, the extent and direction of Europeanisation varied across the two policy areas studied, because strong political will could not overcome a diffuse and uncertain *acquis*, and lack of institutional capacity to implement it in the candidate countries. The impact of the EU's conditionality was thus blunted by the uncertainties involved in determining the tasks to be undertaken, the standards to be met, and the administrative structures required.

## 9.2 What implications for democracy?

The first group of CEE countries joined the EU only in 2004, so it is still too early to see how far the Union has affected their long-term political development, in comparison with other exogenous and endogenous influences. However, this study has revealed that the EU's efforts to promote democratic development were at odds with the incentives created by the accession process, where the EU gave priority to efficiency over legitimacy.

The stability of democratic institutions is one of the three general conditions for accession, and the EU promoted the involvement of political institutions beyond the executive to implement and enforce the *acquis*. Yet, at the same time, the incentives and constraints created by the accession process supported the emergence of a core national executive at the expense of other branches and levels of government – including the legislature and regional actors. The accession process encouraged the emergence of a strong, central team to manage the accession process, reinforcing the tendency towards a 'core executive'. The conditionality was based on implementing a vast array of legislation and procedural rules in order to comply with EU standards, which in turn depended on reporting from the centre of government to Brussels. In addition, although the EU constantly promoted the strengthening of administrative capacity for implementation and enforcement, it rarely prescribed how to do this in terms of precise institutional solutions.

The case-studies have highlighted an 'executive bias' inherent in the whole accession process, because of the structure of negotiations and the fact that EU actors mostly saw the process of adopting EU norms

as an administrative exercise. This view exacerbated statist tendencies in CEE, which were already evident owing to the previous decades of state socialism. Negotiations between bureaucracies do not necessarily contribute to the development of shared values as a basis for new governance structures.<sup>79</sup> Europeanisation was frequently used as a means of legitimising institutional frameworks in CEE, but the administrative bias of the accession process impeded the development of a wide debate on governance in applicant countries. EU approbation was used to legitimate political choices between models of governance, but that did not necessarily encourage the development of democratic pluralism in CEE.

Looking into the longer term, the shortcomings of the accession process could affect debates about democratic accountability in the enlarged Union. The danger for democracy is that only the top layer of central state officials in CEE becomes 'Europeanised', while the public remains largely distant from European integration – reducing the prospects for a pan-European *demos* to emerge and exacerbating the Union's democratic deficit.