Enlargement Governance and Institution Building in Central and Eastern Europe: The case of the European Union’s administrative capacity requirement

Abstract
This paper examines the administrative conditions set by the EU in its Eastern enlargement through the prism of the governance by enlargement concept. Based on a definition of enlargement governance as institution building and conditionality as the style of governance, the paper attempts to identify the conditions under which the administrative reforms promoted through the EU governance will be successfully established. It is argued that EU governance has varying chances of creating stable institutions in the candidates, based on 1) whether they are based on common rules (i.e. the 'acquis'), 2) whether they are based on common norms and 3) how they fit with domestic preferences on institution building. The paper then examines the case of the EU’s administrative capacity criterion in the light of these propositions. The absence of common European Union rules and common norms, and the variation of domestic preferences on administrative reform are expected to lead to varying degrees of success in establishing reformed administrative systems in the candidates.

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Introduction

From energy supplies provided by nuclear power stations to the ability of bureaucrats to implement laws – there is hardly a domestic issue the European Union enlargement

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\(^2\) The author would like to gratefully acknowledge financial support from the Netherlands Scientific
process does not influence nowadays in the candidate states from Central and Eastern Europe, which have been participating in long marathon towards membership for more than ten years. Publics and elites frustrated by the length of the process and the complexity of EU conditions are told that the post communist states cannot join the Union until they have rebuild their institutions to ensure their effective functioning after accession. But can the European Union enlargement process build domestic institutions?

This paper attempts to address this important question by examining the implications of the governance extended by the European Union towards the candidate states in the enlargement period, which started informally in the early 1990s and formally with the European Council decisions in Copenhagen in 1993. The length of this period, the unprecedented scope of European Union acquis which needs to be adopted (Sedelmeier and Wallace, 1996), and the multiple conditions for accession set by the EU, suggest the need to examine the impact of the enlargement process on domestic governance.

Part of the larger goal of achieving stability and democracy, ‘institution building’ in the candidate countries is nowadays a self-proclaimed goal of the Union. Yet it is difficult for scholars, let alone European Commission civil servants or EU politicians,
to establish when/if the EU criteria have been successful in building legitimate and stable institutions. This paper is an attempt to start addressing this important question.

Building upon the governance perspective, one of the two main strands of research on the European Union in recent years (Jachtenfuchs, 2001:256), the paper analyses the mode of governance in the enlargement process and highlights its most important characteristics such as asymmetry and conditionality. The paper then proposes that the viability of enlargement governance as institution building will depend on the presence of certain conditions, namely, common rules, common norms and reform fit. In the second part, this framework is applied to one aspect of enlargement governance, namely administrative conditionality. Finally, the paper discusses the chances for successful institution building with regard to the bureaucracies in the post communist countries.

1. Conceptualizing enlargement governance

1.1 Enlargement as an extension of EU modes of governance?

European Union enlargements have received less attention in the scholarly literature on European integration than other aspects of institutional change in the EU. As influential commentators such as Philippe Schmitter (1996:14) and Helen Wallace (2000:149) have noted, enlargement is undertheorized and there are few analytical insights into the dynamics of institutional change brought by changes of EU membership. Nevertheless, in recent years, more interesting attempts have been made supporting investments that improve CEEC enterprises and infrastructures (Together in Europe, 1997).
to combine theoretical and empirical insights for a systematic analysis of enlargement. The EU’s early responses, leadership and strategy have been discussed by Pelkmans and Murphy, (1991), Michalski and Wallace (1992), and later Sedelmeier and Wallace (1996, 2000). Friis (1998a, 1998b) has focused on some of the EU ‘grand bargains’ regarding enlargement, which proved crucial for advancing (or delaying) the process. Friis and Murphy (1999,2000) have analyzed enlargement as a process affecting changing boundaries and order in Europe. Grabbe (2001) has analyzed the effects of Europeanisation on governance in Central and Eastern Europe (2001). Schimmelfennig (1999, 2000, 2001) has made systematic efforts to create a new theoretical framework and address the apparent paradoxes of enlargement.

A focus on enlargement governance has been emerging from this recent work. Such a focus is helpful in integrating the study of enlargement with general developments in European integration theory and governance (Eising and Kohler-Koch, 1999, Jachtenfuchs, 2001). However, given the 'variegated and disputed' use of the term governance in international relations and comparative politics (Eising and Kohler-Koch, 1999:5), governance needs to be defined. According to Eising and Kohler-Koch, “governance is about the structured ways and means in which the divergent preferences of independent actors are translated into policy choices ‘to allocate values’ so that the plurality of interests is transformed into coordinated action and the compliance of actors is achieved” (1999:4-5). Governance in this context is most often taken to imply the steering of society without a central authority or a government. Governance perspectives of the EU stress the multiplicity of state and non-state actors involved in polycentric and non-hierarchical relationships.
‘Governance by enlargement’ was taken initially to mean an extension, in the international arena, of the EU’s existing modes of governance. This implies stretching the EU order eastwards in a process of ‘horizontal institutionalization’ as defined by Schimmelfennig (2000), but not a separate, distinctive form of governance.

In Schimmelfennig and Wolf’s definition (2000: 2-3):

‘Through enlargement, originally Western institutions of international governance (principles of international order and conduct, issue specific norms and rules, organizational structures and decision making procedures) are being expanded into Central and Eastern Europe thus filling the institutional vacuum created by the breakdown of the Communist system’.

Following the work of Michael Smith (1996), Friis and Murphy (1999:226) have argued similarly that the EU has created a new negotiating order whereby, ‘the applicant countries are governed by a constant process of negotiations’. While providing a good argument why enlargement can be considered as a mode of governance, this does not help to specify it. I argue here for an approach taking into account the candidate states as ‘recipients’ of the governance and the character of the interactions involved.

Considering the actors, relationships and goals in this enlargement provides a starting point. The proclaimed political rationale of this enlargement is to enhance stability in

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5 Kohler-Koch (1999:20-23) distinguishes four modes of governance in the EU: statism, corporatism, pluralism and network governance. She singles out network governance as the new mode of governance in the EU and stresses the problem-solving style of decision making of network governance (Kohler-Koch, 1999: 25), while making clear it other modes of governance still exist in the Union.

6 A recent paper by Engert, Knobel and Schimmelfennig (2001) abandons this assumption and explicitly argues that enlargement governance is different from governance modes inside the EU.

7 Friis and Murphy (1999) distinguish only between ‘hard’ and ‘soft’ governance.
Europe by supporting the transitions to democracy and market economy in Central and Eastern Europe.\(^8\) It has been commonly claimed that enlargement aims to stabilize the new democracies in a way similar to the enhancement of democratic consolidation in Spain and Portugal when they joined the EU. EU conditions and criteria in this enlargement have been specifically designed for countries in transition and not for established democracies. Thus we can consider the enlargement governance mode not a simple extension of the EU’s own institutions, but something more.

1.2 Governance by enlargement as institution building

The period in which preparations for this enlargement have been under way coincides with the post communist period, which is ‘a distinct period of organizational change’ (Ganev, 2001). However, the crucially important issue of post communist institutional design, which makes this enlargement different, has not been explored in any depth by the enlargement literature, possibly because it has had little contact with the ‘transitions to democracy' literature dealing with the post communist transitions and transformations.\(^9\) Given that the latter has been rooted in (nation state based) theories of democracy and democratization, it is not surprising that the two not only pass each other as ships in the night, but they never even sail in the same sea\(^10\). To

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\(^8\) The ‘stability through democracy and market reforms’ rationale has been reiterated for example by Tony Blair and Göran Persson, who, in a joint call to accelerate enlargement preparations, stressed that, ‘Above all, the EU should never lose sight of what enlargement means for the political future of Europe. It means uniting our Continent in peace and democracy, a goal, which has eluded all previous generations’ (Financial Times, 21 September 2000), (see also Schimmelfennig, 1999).


\(^10\) With a few exceptions such as Philippe Schmitter, who has examined both democratization challenges and the role of the EU.
analyze governance by enlargement we need to draw insights from both.

The post communist transformations, which countries in Central and Eastern Europe have been undergoing since 1989, consist of multiple processes of change and involve the making of numerous crucial institutional choices (Offe, 1991, Elster, Offe and Preuss, 1998). These choices, past and present, have shaped post communist institutions and the 'differences in how the pieces fell apart shaped differences in how new institutions were constructed from the ruins' (Bruszt and Stark, 2000:11). Linz and Stepan (1996) and Stark and Bruszt (1998) in their different ways have argued that the strategic interactions of elites and oppositions during the transition period have shaped institutional choices in post communist countries. The European Union has been part of these strategic interactions in several ways: ideologically, by influencing ideas about the future and providing an example of stability and prosperity and strategically, by setting the conditions for membership and various instruments of governance in the enlargement process. While domestic factors have remained primary for the success of the post communist transformations, the EU’s presence and governance have featured as external factors of unprecedented significance.

The challenges involved in the multiple post communist transformations are, in the very least, the ‘vast reorganization of economic life’ including privatization and marketization, the establishment of constitutional democracies and sometimes the consolidation of new territorial nations (Offe, 1991, Elster, Offe and Preuss, 1998:17). Alongside these challenges, the proclaimed political goal of the post-communist countries has been to join the EU and NATO. Analyses have noted the strong linkage made in post communist societies between joining the Western European
organizations, democracy and prosperity (Dimitrova, 1998, Henderson, 1999, Whitehead, 2000). Despite the claim by Elster, Offe and Preuss (1998) that there has been no ‘grand ideology’ to guide the post communist transformations, it is clear that joining the EU, or ‘the return to the Europe’ (Henderson, 1999; Sjursen, 2001) has functioned as a transformation ideology. The concept of 'returning to Europe' has served to unite the closely associated processes of democratization, marketization and European integration.

By inviting the CEE candidate states to join in 1993 and by creating an ever more elaborate web of conditions and criteria to evaluate their readiness to do so, the EU has become involved in the post communist transformation processes, and institutional choices at various levels. In the enlargement process, governance ensuring that the Union acquis is fully adopted by the candidates, influences the candidates choices on a daily basis.

If we consider the institution building aspect, governance by enlargement looks quite different from any mode of governance existing inside the Union or its member states where the institutions of the state are not in profound transformation (even if sovereignty is 'pooled' in the EU, the pressure for changing national institutions is of a different magnitude). Whereas in the EU, governance is produced in the interaction between actors at various levels who share power in a network or bargaining configuration, in enlargement governance flows from the EU to the applicants. Secondly and much more importantly, EU governance affects the institutional formation or the internal order of the candidate countries, as they are still in the process of institutional and societal transformation. Thirdly, the EU extends its
institutions not in a vacuum as claimed by Wolf and Schimmelfennig (2000:3), but in interaction with the already established, albeit weak, set of domestic institutions with their corresponding rules and norms.

Robert Goodin (1996:13) claims that, “[g]overnance - to use the new institutionalist catch phrase within public administration - is nothing less than the steering of society by officials in control of what are organizationally the ‘commanding heights’ of society.” Following Goodin, I define governance by enlargement as the (partial) steering of post communist institution building in Central and Eastern European societies by officials involved with enlargement from the 'commanding heights' of the European Union. This definition helps highlight the differences between existing modes of governance inside the EU and enlargement governance. The contrasting characteristics are summarized in Box 1 and discussed in the following section.

Box 1.

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>‘Governance’ in the EU</th>
<th>‘Governance by enlargement’</th>
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<tbody>
<tr>
<td>Steering</td>
<td>the allocation of values in everyday politics</td>
<td>institutional change</td>
</tr>
<tr>
<td>Relationships between actors</td>
<td>non-hierarchical</td>
<td>asymmetric, hierarchical</td>
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<tr>
<td>Governance style</td>
<td>problem solving, bargaining</td>
<td>conditionality</td>
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Conceptualizing enlargement governance as institution building leads to one of the most important questions regarding enlargement, namely whether the EU governance will be successful and leading to institutionalization after this enlargement preparation period. A failure to create stable institutions in the post communist candidate states will not only endanger the EU’s own institutional structure and internal cohesion, but could have extreme consequences for the candidate states and in the worst case scenario may result in instability or even violence (Offe, Elster and Preuss, 1998).

Before turning to this important question of the viability of EU governance, we need to review its existing mechanisms. How does the European Union influence institution building in the candidate states?

1.3. Governance by enlargement: characteristics

The central importance of the acquis
From the first enlargement onwards, it has been well established that the EU has projected both its formal and informal rules by insisting that new members take up the acquis communautaire (later the ‘acquis’ of the Union) in full - a norm which has become institutionalized as the EU’s ‘classical method of enlargement’ (Preston, 1998)\(^\text{11}\). An established feature of this and previous enlargements is the transfer of rules and norms which have become formalized in the acquis, from the EU to the candidates. \(^\text{12}\)

\(^{11}\) See also Baun (2000:19) on the classical method as a governance norm.

\(^{12}\) It is important to note that formal rules are enshrined in various ways in the European Union treaties,
Asymmetrical governance

Another essential characteristic of enlargement is that it is explicitly defined by the EU and accepted by the candidates as an ‘asymmetrical process’ of taking over the rules of a club. The enlargement negotiations are, as stressed by several experts directly involved with them, such as Avery and Cameron (1998) and Mayhew (2001:12), strictly about the conditions for joining the club. This has crucial implications about the possibility to negotiate the norms and rules being adopted, which is limited.

Conditionality

Linked to this is arguably the most salient characteristic of EU enlargement governance: the employment of conditionality. Accounts of conditionality point to the recent explosion in its use by international organizations and especially by the EU (Checkel, 2000b; Schmitter, 1998; Dimitrova, 1998). The EU started to use conditionality already in the first and second generation agreements with the CEE states: in the so called ‘suspension clauses’ in their Association agreements with the Union. Conditionality is also a feature of the assistance provided under the PHARE programme, the main vehicle for financial support for Central and Eastern Europe.

Table 1 here.

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secondary legislation or unwritten agreements such as the ‘Luxembourg compromise’ while common European norms can find an expression in the so called ‘soft law’ or EU practices such as the seeking for consensus decisions in the Council of Ministers.

13 These clauses made the operation of the Association agreements conditional on the associated country’s observance of democratic principles and human rights and provided for a suspension of the
Since the beginning of the 1990s, spurred by a lack of trust between the existing and the future EU member states (Mayhew, 2001; Verheijen 2000), the EU developed the most complex and extensive set of conditions it has ever used towards third countries. (see also Yankova, 2000; Dimitrova, 1998, Grabbe, 2001). EU conditionality goes far beyond ensuring that the EU’s own institutional rules and norms are established. For this purpose it would have been sufficient to ensure the transposition of the acquis. Instead, EU conditions have been partially designed to address transformation problems and weaknesses of the candidates. This is evident from an examination of the so-called Copenhagen criteria, introduced by decisions of the Copenhagen European Council in June 1993, which became the linchpin of the enlargement governance mode. These are:

(1) the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
(2) the existence of a functioning market economy, capable of coping with competitive pressures and market forces within the Union;
(3) the ability to take on the obligations of membership, including adherence to its aims of political, economic and monetary union (Copenhagen European Council, Conclusions of the Presidency).14

Although these criteria were the first definite set of conditions aimed at enlargement candidates, their vague and general character has allowed the EU considerable leeway in interpretation (Dimitrova 1998, Yankova, 2000). With every subsequent evaluation agreement in case of violations.

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14 The criteria were supplemented by the caveat that the Union has to be ready and able to absorb new
based on these criteria, the EU created new subcriteria. As part of the increase in scope and complexity the European Commission developed the administrative capacity criterion, which will be addressed in the second part of this paper. The four criteria were further developed in enlargement instruments such as the Commission’s yearly Progress Reports and the Accession Partnerships, which increased conditionality in the enlargement process (Maniokas, 2000).

Through its asymmetry and conditionality, enlargement governance has influenced and continues to influence the timing and sequence of institutional choices in Central and Eastern Europe (Schmitter, 1998:53). The question is how we can establish if these choices will lead to viable institutions, which would survive beyond the formal steps to establish them. The legitimacy of such institutions can also be questioned: Checkel (2000b: 27-28) for example has claimed that hard, ex-ante conditionality would not work or would have detrimental consequences for legitimacy.

This paper, even though it recognizes the importance of legitimacy and democracy in the normative evaluation of enlargement governance, focuses mostly on the question of the creation of viable institutions, or institutionalization. Institutionalization is defined here, following Goodin, as the stable, recurrent, repetitive and patterned behaviour occurring within institutions and because of them. As Goodin points out, in an institutionalized setting, behaviour is more stable and predictable and this very stability and predictability is precisely why we value institutionalized patterns (Goodin, 1998:22). Such a definition is very pertinent to the role the new institutions members without compromising the achievements of integration.

15 This does not mean to overemphasize international factors and neglect domestic ones, but rather, by
are expected to play in the post communist setting in Central and Eastern Europe. It is
widely accepted in the institutionalist literature, that, ‘much of the ordinary bargaining
and exchange is possible only against the backdrop of the stability provided by more
deeply nested, institutionalized rules, ranging from informal norms of congressional
behaviour and committee structures to the Constitution itself’ (Buchanan and

But what happens when you don’t have a stable system of more deeply nested
institutionalized rules, or when these are in the process of change as well, as in the
case of the post communist countries in Central and Eastern Europe? Offe (1992)
suggested early on that the very multiplicity of choices facing post communist elites
creates obstructions. Making constitutional choices simultaneously with redesigning
lower order rules in the economy, social life, and all other spheres of public life -
what he calls a multiple transformation process - is only possible, he feared, when an
external power guides the choices. Offe has also suggested that the speed and
frequency with which the rules are changed may in itself prevent institutions from
taking root and that too much ‘designer activism’ would lead to failure in Central and
Eastern Europe (1998:220-224). Paradoxically, this is exactly what the EU, through
its enlargement governance, is trying to do. Will the new institutions which the EU
governance is aiming to establish (insisting on the adoption of the ‘acquis of the
Union’ with all the inherent bargains and norms) be successful?

2. Evaluating the viability of enlargement governance as institution building

using the governance perspective, to look at their interplay in the enlargement process.
The problem, both theoretically and empirically, with a mode of governance which aims to ensure the transfer of rules and norms is, that while rules can be more or less identified in the formal or informal institutional arrangements governing the interactions between actors in the EU, norms are harder to pin down. As March and Olsen (1995:191) observe, norms are imprecise and evolving and satisfying them involves negotiating their meaning and implications for institutions and behavior. It follows from this that conditionality has to be based on norms negotiation and not imposition. Wiener (2000) has similarly argued that negotiated norms would have a better chance of being accepted and internalized in the new member states than imposed ones. The asymmetric and conditional nature of enlargement governance, however, leaves little space for the negotiation of norms. How can we then determine the effectiveness of imposed EU norms?

Legro (1997) has argued that the question of why some norms are more influential than others in particular situations is not sufficiently elaborated in the literature on norms. He suggests judging the robustness of norms according to their specificity, durability and concordance. He also draws attention to the need to examine alternative ideational explanations for effects which can be attributed to international norms (Legro, 1997:34).

This paper incorporates the above points by looking at how specific the EU norms are regarding national administrations (specificity), have they been recognized by actors and for how long (durability) and what efforts are made to incorporate them (concordance). At the same time, the possibility of alternative ideas guiding institution building should be considered. Post communist reforms may have been inspired by
the idea of joining the EU, but even if the ‘macro’ goals of the EU enlargement and the post communist transformations may be the same, the factors affecting lower level institution building may differ, just as the agenda of post communist transformation differs from this of European integration.

Given the potential differences, we must look for the ‘fit’ between enlargement governance and post communist institution building, following similar explanations of implementation and regulation in the EU offered by Héritier (1996). She has argued that implementation of EU legislation depends on the fit between the EU policy measures and domestic institutions. We can argue in a similar way that the stability of institutions introduced in the enlargement process depends on the reform fit with the state of reform and the preferences of domestic actors. If there is a fit between the EU conditions and the reform consensus in CEE, a successful institutionalization is more likely. The situation gets more interesting if one of the other two options is true: if there is limited domestic consensus, then the EU conditions might help tip the scales in favour of reformers, but the new institutions may be weak. If the EU conditions are at odds with the domestic reform fit, for example because domestic consensus is inspired by different ideas or there is no consensus on reform, the viability of EU governance will be questionable.

Thus it is proposed here that enlargement governance would remain weak and its capacity for ensuring the institutionalization of EU rules and norms would be questionable unless the following requirements are fulfilled. First, a transmission of clear and established EU rules: the acquis of the Union, so far the center of every enlargement. The new features of enlargement governance, however, go beyond the
acquis. EU conditionality covers areas in which there is no EU acquis, hence no clear rules. This makes the question of the existence of common norms, our second condition, particularly relevant. If norms are to be imposed, they need to conform to Legro’s criteria (1997:34) of specificity, durability and concordance and should be somehow present in the EU informal institutions. Another possibility is the transfer of norms negotiated together with the candidates, which would entail the common construction of norms, problematic due to the asymmetric nature of enlargement governance. Even in the absence of acquis or common norms, EU conditions can coincide with domestic consensus for reform or with an already created post communist institution. If however, they go against domestic preferences on institution building, the best that can be expected is an empty shell, a legislative solution that will not lead to institutionalization.

Regarding administrative conditionality, my hypothesis is that it would be successful if based on formal EU rules or common norms or the institutional fit with domestic administrative reform. On the one hand, if the EU is trying to apply rules and norms that do not yet exist, it is unlikely to succeed: it will be hindered by both lack of clear rules and by the lack of negotiation and deliberation for which, as stated above, there is little space in the asymmetrical negotiation process. However, given the third possibility discussed above, the EU conditions may still be acceptable if they are addressing particular reform needs of the post communist administrations and are supported by domestic consensus. Bearing these propositions in mind, in the second part of this paper I will examine the case of the administrative capacity or the so called ‘bureaucracy criterion’ of the EU.
3. Governance by enlargement in action: the emergence of the ‘bureaucracy’ criterion

The emergence of the administrative capacity requirement, or ‘the bureaucracy criterion’ in the current enlargement can be traced to initial efforts to specify the Copenhagen criteria. The Commission focused especially on the single market acquis, which had presented EU member states with numerous implementation challenges. The Commission’s White Paper containing a strategy to prepare the candidates for the internal market was adopted by the Essen European Council in 1994. In December 1995, the decisions of the Madrid European Council followed up by requiring adjustment of administrative structures, without elaborating what this might entail. They stated that:

‘The European Council also confirms the need to make sound preparation for enlargement on the basis of the criteria established in Copenhagen and in the context of the pre-accession strategy defined in Essen for the CEE; that strategy will have to be intensified in order to create the conditions for the gradual, harmonious integration of those States, particularly through the development of the market economy, the adjustment of their administrative structures and the creation of a stable economic and monetary environment’ (Conclusions of the Presidency).

With these few lines, the Madrid Council introduced a condition which had no precedent in previous enlargements. At most, assessments of candidates had mentioned the requirement for the presence of adequate sectoral administrative capacities, but it was never a key issue in the preparation for membership (Verheijen,
The Agenda 2000, which emerged in 1997 and contained the Commission’s Opinions on the candidates, broke down the four criteria into detailed lists of conditions and requirements (see Table 1). By referring to horizontal and sectoral administrative capacity, the Commission followed the Madrid conclusions, but it set forth administrative capacity not as a supplementary task but as a necessary condition for accession, seemingly on a par with the first three Copenhagen criteria. Part B. 4 of the Opinions was dedicated to “Administrative Capacity to Apply the Acquis” and mention of this condition was also made throughout the other sections and under Part C “Summary and Conclusions”: “A judgment on the three groups of criteria ... depends also on the capacity of a country’s administrative and legal systems to put into effect the principles of democracy and the market economy and to apply and enforce the acquis in practice” (European Commission, Agenda 2000).

In contrast to the first three criteria, administrative capacity was difficult to operationalise. According to one delegated national expert working on the operationalization of the democracy and administrative criteria in 1996, the Commission informally requested the United Kingdom's help in making the democracy and the 'bureaucracy' criteria more specific (Interview, 3 July 1998).

Few ideas emerged from the UK or other member states regarding the operationalization of administrative capacity. The Commission had little time to

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16 Verheijen notes that administrative capacity was deemed as sufficient in Austria, Finland and Sweden and ‘not considered a stumbling block for accession’ in the previous enlargements (2000:7).
define what institutions and administrative units would be needed for the implementation of the sectoral 'acquis' (ibid.). Thus a general criterion for ‘horizontal administrative capacity’, equaling administrative reform was created. According to a Commission source, "we never found a way to judge administrative capacity among the existing member states. It was only in the case of the Central and Eastern European candidates knocking on our door that we erected the barrier of administrative capacity". (Interview, 24 November 2000).

Despite these difficulties, since 1997 the EU enlargement governance has required the strengthening of ‘the institutional and administrative capacity of the candidates’ (Commission Information Note on the New Policy Guidelines for the PHARE Programme in the framework of Pre-Accession Assistance’, 24 March 1997).

Institution building was set as a goal of the PHARE programme. In subsequent documents, the Commission defined institution building as ‘developing the structures and systems, human resources and management skills needed to implement the acquis’ (Commission, 2001). The new enlargement instrument of the Accession Partnerships also required a number of measures linked to general administrative reform.

The repeated references to the new criterion, however, did not mean that there was more clarity on what it implied. Given the Madrid European Council conclusions it seems that the main need was to assess administrative capacity in relation to areas of the acquis - the so called sectoral administrative capacity, focusing on the ‘key areas

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17 The Partnerships, a central part of a pre-accession strategy based on priority setting and conditional financial assistance (European Commission, 2001) specified short, medium and long-term priorities for
for the application of the acquis’ such as the single market, competition and so on. However, the Opinions also extrapolated to require horizontal capacity, reform of the administrative structures as a whole and judicial system as a whole.

The difficulty in defining the 'bureaucracy criterion' was reflected also in the fact that after the initial work in the Agenda 2000, the European Commission asked the SIGMA unit of the OECD\textsuperscript{18} to develop operationalizable basic criteria for public administration horizontal administrative capacity. The report produced by SIGMA stated that ‘as accession approaches, the link between European integration and public administration reform seems to become stronger. Significantly, the European Commission places great emphasis in the avis on the capacity of Member States’ administrations to implement the body of European law (\textit{the acquis communautaire}) on schedule, although it has never been an issue in previous waves of accessions’ (CCNM/SIGMA/PUMA (98) 39, 1998:13).

Another SIGMA report (1999:8) identified the principles of reliability, predictability, accountability, transparency, efficiency and effectiveness to serve as guidance for public administrations in CEE in their reform efforts. They are derived from the administrative law, the constitutional arrangements and the case law of national courts and the European Court of Justice. Strikingly, the SIGMA paper claimed the principles are ‘a non-formalized version of the acquis communautaire’ (1999:19).

Following the input from SIGMA and the development of the Commission position itself, the main requirements associated with the ‘bureaucracy criterion’, have

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\textsuperscript{18} SIGMA stands for Support for Improvement in Governance and Management in Central and Eastern European Countries and it was established in 1992 as a joint initiative of the OECD Center for...
emerged as:

- sectoral capacity to implement sectoral acquis
- the development of European integration coordination structures
- horizontal reform of the administrations including civil service laws and a strategy for comprehensive public administration reform, based on SIGMA baseline principles
- ‘ability to implement’.

The sectoral acquis requirement stems directly from the Madrid conclusions and the third Copenhagen criterion. The components relating to civil service reform and European integration, however, are developed only in the Opinions. The civil service reform criterion was in its turn broken down into a series of specific requirements for, a general strategy for reform or a reform plan, the adoption of civil service laws guaranteeing the professionalization and political independence of the administration, the establishment of a career system and pay reform, requirements for the training of civil servants, local government reform and others. As Verheijen testifies (1999:90), EU officials have, in their interactions with the candidates, repeatedly stressed the need for the development of a professional civil service as a requirement for membership, even more strongly than in the opinions.

The Commission's and by extension the EU's requirements for administrative reforms implicitly favored the classical, Weberian model of civil service (in Fournier's analysis, 1998a: 113) over a 'new public management' model which has been at the core of the public administration reform wave in Western Europe. This raises doubts

Cooperation with Non-Member Economies and the EU’s PHARE programme.
as to the extent to which the requirements for reform are based on administrative convergence of norms among the existing EU member states. In addition, some candidate states, such as Estonia, have explicitly adopted the NPM as their reform ideology (UNDP Estonian Human Development Report), exemplifying the diversity of existing reform discourses.

The most vague and difficult component of the bureaucracy criterion is undoubtedly the last one, the requirement to develop the capacity to implement the acquis. In contrast to previous accessions, transposing the acquis was not considered enough for the current accession candidates (Fournier, 1998b: 124). Apart from implementing horizontal public administration reforms, the candidates were also requested to prove that the new institutions were robust and capable of implementing the acquis, a requirement gaining in importance in the Commission Progress Reports issued after 1998. This aspect of the enlargement process, the issue of 'verification' (Mayhew, 2000) was not present at any previous enlargements. It is quite unclear how the Commission could ascertain that EU legislation is properly implemented beyond transposition.19

Notably, the only area for which the Commission Progress Reports of 2000 give specific guidelines is sectoral capacity. Financial assistance under the PHARE’s institution building part is entirely oriented towards the development of sectoral capacity. The Progress reports have retreated from the issue of horizontal public administration reform. This indicates a failure to operationalise the horizontal capacity

19 The EU’s own target for implementation is defined in relation to transposition and allows for an implementation deficit of no more than 1.5%.
The Economist, (2001:6) pointed out that ‘The Union has made membership contingent on the introduction of new administrative and judicial structures, but it has no mechanism for judging the quality of an administration’.

Could the failure to specify criteria for administrative capacity be related to the level of institutionalization of administrative rules and norms in the Union itself? The next section examines what common EU rules and norms exist with regard to national administrations and administrative practices.

4. Conditions for successful institutionalization in the case of administrative capacity

4.1 Administrative acquis?

As all authors discussing the subject agree, there is no general body of European law in the public administration sphere and individual member states are free to organize their administrations as they see fit (SIGMA, 1998, 1999, Verheijen, 2000). ‘In actual fact, public administration structures and regulations vary a great deal among the present EU member states. All of them jealously guard their independence on this issue. That they should refuse to recognize an applicant’s right to do the same is unthinkable’ (SIGMA, 1998:13).

It is quite clear, given the absence of Treaty provisions and evidence from experts that the first basis of a potential institutionalization process, the ‘acquis’ which representing common rules the EU would like the candidates to adopt, does not exist
in the case of the administrative criterion.

**4.2 Common administrative norms?**

Proponents of the bureaucracy criterion have claimed that even though there are no established common EU rules regarding national administrations and their capacity to implement EU legislation, there are some general, EU wide norms which have emerged as part of the process of ‘Europeanization’ (Fournier 1998b: 121), leading towards a common European Administrative Space. Given the criterion of specificity defined earlier, what evidence can we find of the existence of the European Administrative Space?

The European Administrative Space has been defined, rather ambiguously, as resulting from ‘a sort of Europeanization of administrative law as an outstanding element of recent legal developments’ (OECD: SIGMA, 1999:15). The SIGMA experts stress that ‘a common administrative space, properly speaking, is possible when a set of administrative principles, rules and regulations are uniformly enforced in a given territory covered by a national constitution. [...] The issue of a common administrative law for all the sovereign states integrated into the European Union has been a matter of debate since the outset of the European Community. No common agreement yet exists’ (Ibid.). This also gives an indication as to the durability of common EU norms regarding administrations.

With respect to the third criterion, concordance, recent initiatives to compare 'best practices' in the EU suggest that there is an ongoing effort to negotiate common norms
with regard to administrative capacity by the EU member states. The Dutch Presidency launched an initiative for informal standard setting between EU member states in the area of administrative capacity in 1997. It was meant to give substance of ideas of European Administrative Space, but although it was endorsed by some member states, it was not embraced by others (e.g. the UK). Following work on the development of a Common Assessment Framework (CAF) by several subsequent presidencies, a conference on best practices under the Portuguese Presidency adopted the Framework in 2000. Guidelines under the Framework were prepared in the second half of 2000 and finally approved under the Swedish Presidency in 2001. The assessment framework aims to be 'an aid to public administrations in the EU' in the use of quality management techniques in public administration. It is voluntary and limited in comparison with the extensive institution and capacity building requirements contained in the EU bureaucracy criterion. It must be also noted that these are recent developments, following the development of the EU bureaucracy criterion and not preceding it.

Efforts at coordination based on the CAF guidelines indicate norms may be under construction, although how far they are accepted by all EU member states is unclear. It has been argued that the principles mentioned in the SIGMA (1999) guidelines for Central and Eastern Europe are equivalent to EU norms. A more precise approach would be to ask how widely accepted and 'common' for the EU member states they are and for how long. Some of the principles are enshrined in wider EU framework of rule of law and administration according to the law. They clearly correspond to EU wide

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20 On the CAF, see information from the European Institute of Public Administration (EIPA) at: http://www.eipa.nl/CAF/Introduction.htm
democratic norms, which are also now enshrined in the Amsterdam Treaty. Other principles, however, such as transparency, are defined differently in existing EU member states, evidenced by the difficulties which the 2001 Swedish Presidency of the EU experienced when they tried to promote transparency by means of opening access to EU documents. Openness and transparency are newer principles, developing since the 1960s in some EU countries under the influence of Sweden (SIGMA, 1999:12). Accountability is also noted for the variety of institutional arrangements which help to maintain it. Efficiency and effectiveness are linked to the notion of the state as producer of public services which has, entered public administrations fairly recently (SIGMA, 1999:13).

On the whole, this seems to suggest that all of the above SIGMA defined ‘principles’ cannot be identified as common EU norms or that they are in the process of negotiation in the EU itself. They are not sufficiently specific and their elusive nature makes them dependent on the functioning of national courts and the ECJ. According to SIGMA attempts at their clarification tend to result to inconsistency and contradiction (1999:9).

Finally, difficulties with implementation among the Union’s current members provide evidence for continuing divergence in practices. Post 1992, the non-implementation of internal market directives has threatened to destroy the level playing field of the internal market. Improving transposition and implementation became a priority for the Commission, which developed the internal market scoreboard as a way to name and shame the member states lagging behind in implementation. Given that no EU

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member state implements perfectly, the 'verification' component of the EU’s administrative capacity criterion is particularly questionable.

4.3 And what about ‘reform fit’?

As argued at the beginning, enlargement governance and the post communist transformations may have the same overarching goal, but they can involve institution building following different logics and having different needs, which becomes evident in the case of administrative reform. Although the problems of post communist administrations are not the subject of this paper, reform needs will be briefly identified to suggest what the fit with EU requirements might be.

Communist bureaucracies have suffered from a whole host of problems in the past, many of them stemming from the merger between state and party and the existence of parallel party structures controlling every level of the administration (cf. Verheijen and Dimitrova 1996). After the separation of party and state, which took place at the start of post communist transformations, the weak post communist states were also left with weak bureaucracies that in most cases had never functioned autonomously of party control (Stark and Bruszt, 1998:15-16). One consequence was the inability of post communist states to separate bureaucracy and politics and to allow some degree of independence of the administration.

As Offe (1998:216) aptly points out, “[n]o Western political, economic or social institution has been invented for the purpose of extricating an entire group of societies
from the conditions of state socialism and its ruins”. This general argument is clearly valid for post communist bureaucracies: the challenge of separating the party from the state, and consequently politics from administration has never been encountered by the EU’s member states and it is dubious that they can provide a blueprint for the process known as ‘de-politicization of the administrations’. Furthermore, the use of bureaucracy as a communist party tool of oppression has ensured that post communist elites have a serious problem re-establishing the legitimacy of public authority (Coombes, 2001:37) - a very different problem from issues of implementation and administrative capacity prioritized by EU enlargement governance.

The divergence between post communist and EU reform needs regarding the administrations makes reform fit problematic. Furthermore, the need for reform has not been sufficient to generate domestic political consensus for reform in all of the candidate states. Cross country evidence of public administrations’ development presented in a recent volume edited by Verheijen (2001) shows that political instability and political interference have been enduring features of administration reform efforts in the post communist states (Verheijen, 2001:6-9). It is therefore particularly interesting to examine the viability of EU governance in cases when it has imposed administrative laws before domestic political consensus was reached.

5. Examining evidence of reform

22 Coombes (2001:41) points out that, there is a whole range of possibilities regarding the relationship between politics and administration existing in the European Union, ‘which moreover seems to have managed so far not only with great variation in the governing capacities of its different member states, but also with a confusion of politics and administration as an accepted fact’.
Having identified that there are no EU rules and limited EU norms regarding public administrations, the next task is to determine what the results of the EU governance are so far. What evidence exists of compliance with EU conditions in terms of institution building in post communist administrations?

It is easier to evaluate compliance in terms of acceptance of formal rules than in terms of the normative components. In the case of the administrative criterion, given the absence of administrative acquis, the evidence, which we can examine, pertains to the legal frameworks adopted as the backbone of administrative reform in the candidate states. Establishing whether these legal frameworks will also lead to institutionalization in the sense of the existence of stable and legitimate institutions is impossible yet. A further study along these lines could serve as a final test of the framework proposed in this paper.
Table 1 Civil service reform legislation passed in CEE countries post 1989

<table>
<thead>
<tr>
<th>Candidate state</th>
<th>Start of negotiations for EU membership</th>
<th>Laws on the civil service</th>
<th>Laws on the civil servant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>1998</td>
<td>No civil service law, focus on regional reform laws</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>1998</td>
<td>Civil Service law/Legal status of Public Officials 1992, under amendment</td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>2000</td>
<td>Law on civil service 1994; Law on the state civil service 2001; Draft law on public administration; Draft law on administrative procedures</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>2000</td>
<td>Law adopted 1996, revised, the new law on civil service adopted 1998**</td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>1998</td>
<td>Law on the Statute of Civil Servants 1999</td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>2000</td>
<td>2001 Civil Service Law adopted after protracted debates and amendments</td>
<td>2001 Law on Higher Territorial Units adopted</td>
</tr>
<tr>
<td>Slovenia</td>
<td>1998</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Existing empirical evidence regarding the state of public administration legislation (laws on the civil service and, in some cases, also territorial administrative changes as the main thrust of reform) is summarized in Table 1. As it shows, most CEE candidates with the exception of the Czech Republic and Slovenia have passed
legislation on the civil service. There has been quick formal compliance with the rules the EU introduced through its administrative criterion. Domestic institutional preferences and the state of reforms, however, have varied.

In some candidate countries there has been prior political consensus on the need for administrative reform (e.g. Hungary), in others, the EU conditions have 'overruled' the diversity of preferences and cut short the domestic political decision making process. This is particularly evident by studies on administrative reform in Latvia and Romania. As Reinholde (2000) asserts, in the case of Latvia, administrative reforms have received a crucial impetus from the EU, but it was not clear whether domestic consensus on the new rules and norms about administrations had already been reached. Hintea’s (2001) testimony of the late and hurried adoption of the administrative law in Romania indicates that domestic consensus on administrative reform had not been reached in that country either by the time the EU driven rules were set in place.

There has been an even more pronounced lack of consensus in the Czech Republic where the party led by Vaclav Klaus, the Civic Democratic Party (ODS), has argued against civil service legislation on principle, saying that it is not necessary for modernizing administrations. Since the EU continues to press for such legislation, this has become a point of contention in the Czech accession negotiations and evidence of the failure of enlargement governance to take into account domestic preferences.

Slovakia, on the other hand, followed EU requirements and adopted new legislation

23 As of 2001.
despite disagreements, which threatened to destabilize its governing coalition. Media testimony highlights the tension between EU conditions and domestic ideas on reform:

“Reform of public administration, in creating a new layer of elected government at the level of Slovakia's eight regions, and scrolling back state offices at the level of the country's 79 districts, had been a key demand of the European Union. The Union favours bringing government as close to the people as possible; EU officials had warned this year that Slovakia's entry chances could be hurt if the reform was not passed. However, the law did not please all sides, and was particularly criticized by those government parties, which had lobbied for the creation of 12 regions rather than 8. The reasoning behind the greater number had been that the 12 units obeyed the historical integrity of different parts of the country, and that they would give people greater power over decisions affecting them”. (The Slovak Spectator, 6 July 2001).

Domestic political consensus in Slovakia on the territorial units law was so fragile that a coalition crisis occurred when coalition members Democratic Left Party and the Civic Understanding party voted with the opposition Movement for Democratic Slovakia against the government sponsored draft proposal. Deputy Prime Minister for Economy Ivan Micloš resigned as coordinator of the government’s public administration programme. Deputy Prime Minister Kadlecíková was quoted to say that the Union had told the government that some reform of local government had to be carried out (The Slovak Spectator, 6 July 2001). Such testimony illustrates clearly the difficulties created by the EU’s enlargement governance mode, which in this case overruled domestic consensus seeking. 24

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24 On another occasion, the amendments to the Slovak constitution adopted in May 2001 required the
Conclusions

The European Union has no acquis, no formal rules regarding the functioning of national administrations. What it does have is a certain collection of administrative practices from which new European wide norms regarding reliability, transparency and accountability may be emerging, but they are still defined in too many diverse ways to serve as a blueprint for the administrations of the candidates. The EU enlargement governance mode, however, being conditional and asymmetric, has driven the candidates to make profound changes in their administrations, which can be, as argued above, equated with institution building. The basic guidelines developed for the EU and the candidates by the OECD SIGMA group require the formation of professional, Weberian type, independent administrations and coincide to a great extent with the needs and goals of reform minded actors in the CEE, but not always with an already established reform consensus.

It is doubtful that conditionality can give rise to stable institutions when EU rules do not exist, norms have not been negotiated and reform fit varies. There is a further potential for problems regarding both the democratic legitimacy of the created institutions and the ‘ownership’ of the reforms, in other words the ability of the broader public in CEE to accept the changes and make the new institutions their own (Checkel, 2000b).
These findings suggest that enlargement governance aiming to ensure institutionalization and based on conditionality can be highly problematic, especially for the states, identified above, where the public administration reform legislation was adopted in a hurry under EU pressure. In some cases at least it may remain an empty shell, leading precisely to the outcome the EU has been aiming to avoid. Secondly and more generally, EU enlargement governance can present challenges to the stability of domestic institutions by not taking into account domestic preferences. Institutionalization may fail because designed institutions fail to inculcate the norms and preferences that condition the loyalty of members (Offe, 1998:219). Ultimately, the success of administrative reform in central and eastern Europe will depend on whether the reformed administrations are seen as legitimate and effective by the public they are meant to serve and inspire loyalty in their own members as well as reflecting a stable configuration of political preferences. These are conditions much more difficult to fulfill, but much more essential than any improvement of their ability to apply the acquis in response to EU governance.

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