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Fostering Social Inclusion Through Institutional Transformation in Central and Eastern Europe: the Role of EU Accession Conditionality

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Abstract: Through the process of eastward enlargement, the European Union has developed a wide range of strategies and techniques to effect institutional change in central and eastern Europe. Conditionality lies at the heart of the EU's approach, and it has built a structure of incentives and constraints to motivate reformers to transform both democratic and market institutions. This paper explores the instruments used by the EU to strengthen institutions, build organisational capacity, and increase social inclusion in the candidate countries of central and eastern Europe. It concludes that the relative effectiveness of the different mechanisms used depends on how consistently the EU has pursued particular policy goals. The EU's success in fostering social inclusion has been blunted by the inconsistent messages it has sent to the candidates about social policy. This inconsistency is in turn partly the result of a tension between the EU's dual roles of aid donor and gatekeeper for club membership.

Introduction

To what extent and through what mechanisms can and should international institutions effect institutional change inside countries? This paper addresses this highly contested question in the context of the enlargement of the European Union (EU) to the countries of central and eastern Europe (CEE).¹ The enlargement process has been the most profound external transformative factor for these countries in the last decade. The scope of the conditionality attached to aid provision by the international financial institutions (IFIs) has widened remarkably in the last two decades, but the conditions for membership set by the EU are more

wide-ranging still. They comprise not policies designed to achieve macroeconomic stabilisation or development goals, but rather a set of structural requirements aimed at ensuring convergence towards key economic and socio-political characteristics of the EU, and compatibility with its legal base. Given the enormous extent of the changes undergone by the Union in the last two decades, adjustment to the EU of 2000 is a daunting challenge, particularly considering the starting-point of the CEE candidates in 1989.²

Like other international organisations active in CEE, the EU has aimed since 1989 to promote democratisation and marketisation through institutional transformation in the region. The EU's aid programmes, trade policies and example-setting role have promoted institutional models that will effect a fundamental change in the rules of the game for social relations in the applicant countries. We can expect that moving CEE institutions closer to EU models will increase access for previously excluded social groups because such access is generally better in western Europe. But the EU's accession policy does not give an explicit priority to social inclusion; rather, the chief goal is formal approximation of CEE norms with EU ones, and their implementation to ensure that the candidates for membership will be able to comply with EU rules after accession. Indirectly, this process will likely foster social inclusion; however, it is important to understand that the EU's main concern is adoption of its laws and procedures by the CEE countries, rather than the substantive outcomes of this process for increasing social inclusion.

All of the ten CEE candidate countries have now been judged by the EU to have achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection

of minorities. The main focus of EU accession preparations is consequently on economic conditions and the ability to take on EU rules, rather than changing political institutions or establishing an environment of rights. Transparency, accountability and access for excluded social groups may well be increased by EU-inspired institutional change during the accession process, but these are not central goals addressed directly by EU accession policy.

This paper explores the methods and techniques employed by the European Union in its eastward enlargement process to strengthen institutions and build organisational capacity, and considers how they may reduce social exclusion.³ The development of new strategies and instruments since 1989 is analysed in detail, with a focus on how different techniques have worked in practice. The authors deconstruct the EU's policies to assess which elements address institutional transformation, and how the EU has affected the logic of institutional change in CEE. The paper then draws together all the specific measures addressing social issues from scattered parts of EU accession policy documents, in order to provide an overview and assessment of how they work to promote social inclusion.

The EU's underlying assumptions in policy towards CEE

The logic behind EU policies in CEE is often implied rather than explicitly stated in its policy documents. It is therefore important to understand the assumptions that lie behind EU policy approaches towards CEE. We can discern five critical assumptions:

1. The EU assumes that adaptation to EU norms will in itself achieve goals such as strengthening institutions and building

organisational capacity. However, the suitability of these norms for individual CEE countries has not been tested by the EU. Accession is a complex process that has largely followed the procedural rules set by previous EU enlargements to advanced western economies, rather than being specifically adapted to meet the needs of poor, post-socialist ones. The main institutions produced in CEE in response to the EU's demands are concerned with implementing key EU policies, the most extensive and important being market regulation. The EU is much less demanding of institutional reform in areas such as healthcare, social security, social rights and other policies which are primarily the responsibility of nation-states, not EU institutions. While EU accession documents may call for structural change in these areas, they simply set general (and often vague) goals.

2. The EU assumes that membership will bring large economic, political and social benefits to the applicant countries. However, the formulation of particular accession policy goals and methods is not primarily driven by a development agenda for CEE. Although the EU has social policies, in its pre-accession policy the main goals are to make CEE countries formally compliant with EU rules and able to implement its policies, most of which are economic in nature rather than political or social. Meeting EU conditions requires institutional transformation, but this does not always or necessarily promote social inclusion. Economic and social development in CEE is strongly encouraged and supported by the EU, but the main task of pre-accession policies is preparing countries for the specific demands of EU membership. These two tasks overlap, but they are not identical, and where there is a conflict, meeting EU

rules takes precedence over CEE needs, including combating social exclusion.

3. The EU does not assume institutional transformation to be a two-way process in the pre-accession phase. After accession, the enlarged EU will have to revisit questions of internal reform, but before then the onus is on the candidates to adapt to the EU, not on the EU to adapt to CEE. This has not always been the case in previous enlargements, which involved a significant process of negotiation and interest intermediation.⁴ However, in this enlargement, accession conditionality is based on unilateral institutional adaptation by the candidate countries to EU norms.⁵ It is true that the EU is supposed to be adapting its structures to cope with the increase in numbers and diversity resulting from enlargement (following the Nice summit in December 2000), but its policies (or the domestic institutions of its member states) will not be changed to accommodate the needs and interests of the CEE countries until after enlargement.

4. The EU assumes that institutional change will be beneficial for CEE, but does not measure such change formally by any published indicator that is directly comparable across countries and across institutions. Most EU techniques are not results-based in terms of a published test of institutional change or a formal assessment of the outcomes of EU policies in the CEE region. The main measures of a candidate's compliance with conditions and standards are made in the European Commissions annual assessments of progress (called the 'Regular Reports'). These documents give much empirical detail about each candidate's efforts to meet different aspects of the accession criteria (particularly alignment of legislation and implementation of EU-compatible policies). However, the

reports do not use a transparent methodology for measuring change that is comparable across countries and across policy areas. Rather, a great deal of technical detail is supplied, and then a judgement stated as to whether progress is satisfactory. So far, there has been no explicitly stated logic linking description with prescription. The EU simply states how far compatibility has been achieved with EU norms and technical standards.

5. The EU assumes that the most effective way to cause institutional transformation is through conditionality. The EU also effects institutional change through other mechanisms – most notably aid, technical assistance, example-setting and benchmarking – but these are used in tandem with conditionality for membership. Inflows of capital (both public and private) are seen by the EU as important to facilitate economic transition, and the EU encourages access to the international system for CEE countries. However, these are not used as fundamental mechanisms of institutional change by the EU. In promoting institutional transformation, the EU has a relatively narrow focus on ensuring the compatibility of institutions with its rules and policy. Because its policies are wide-ranging, this focus has a fundamental and extensive effect on CEE institutions that goes beyond the EU's own goals. Moreover, many EU political actors are very concerned with promoting other goals such as social rights (as distinct from civil and political rights), minimum institutional characteristics such as accountability and transparency, and access of the excluded. However, the EU as an institution is fairly agnostic about these issues, concentrating its conditionality instruments on practical issues of ensuring the legal, technical and structural compatibility of CEE institutions with EU models.

In the next sections of this paper, we present the building-blocks of the EU's enlargement process. In Section I, we introduce the broad context, namely the EU's overall approach to eastern accession conditionality. In Section II we describe and evaluate the techniques and methods used by the EU for effecting institutional transformation. Finally, in Section III, we focus on the specific provisions addressing social inclusion in the enlargement process.

Section I
THE EU'S APPROACH TO CEE
ACCESSION, 1989-2001

This section sets out the macro-political context of EU conditionality for CEE, discussing the overall scope and goals of the accession process, how the accession and aid conditions were set, and where social exclusion comes into the EU's agenda.

From aid conditionality to conditions for accession

EU conditionality is not limited to enlargement. The EU applies both positive and negative forms of conditionality to third countries for benefits such as trade concessions, aid, cooperation agreements and political contacts, and since the late 1980s political conditions have increasingly been applied as well as economic ones. Both practical and ideological motivations lie behind the development of political conditionality, including protectionist ones. In its dealings with third countries, the EU has shown a preference for using 'carrots' rather than 'sticks', and conditionality is not always applied consistently. The CEE countries became subject to the most detailed conditions ever spelled out by the EU, applied from 1988 onwards to aid, trade and political relations'.⁶

The character of these conditions changed when they were linked to accession after 1993. The conditions set out at the Copenhagen European Council (see Box 1) are the most detailed ever for an EU enlargement. They were designed to reassure reluctant member states that disruption risks would be minimal, as well as to guide CEE applicants towards membership. This dual purpose of accession conditionality has continued to play an

important role in the politics of enlargement within the EU.

Box 1: The Copenhagen Conditions

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

All three of these conditions demand considerable institutional transformation. The first condition most obviously requires institutional adaptation that will change the dynamic of social relations away from the communist period. This condition is explicitly linked to a country's institutional capacity to protect civil and political rights, and it implies cultural rights for minorities. Guaranteeing the rule of law and democracy also require wider institutional change that is likely to increase access for previously excluded groups. All of the CEE candidates were judged to have fulfilled this condition in 1997 (except for Slovakia, which has met it subsequently), so the EU has not expended much energy on spelling out specific institutional changes to ensure the rights of individuals, minority groups and other democratic pre-requisites. Where the EU has made a difference in these areas is in keeping a watchful eye on treatment of minorities and the rule of law, and speaking out when a country steps too far out of line (see Section II.1 below on the mechanisms used to do this).

The second condition implies institutional transformation to change the rules of the game for economic activity. It requires liberalisation of the economy, but also regulation of markets. This combination of liberalisation and more transparent and consistent regulation may allow greater economic freedom to socially excluded groups, for example in entrepreneurship. However, this condition by no means guarantees an improvement in living standards for the poor or less economic deprivation. On the contrary, short-term pain for longer-term improved economic stability is the assumed outcome. The requirement to move towards a market economy has been accompanied by calls for fiscal restraint, restricting CEE governments' ability to increase social security and other welfare payments to alleviate poverty among the old, unemployed and rural-dwellers. The second part of the condition – competitiveness in the EU's Single Market – suggests economic restructuring, which will increase unemployment in the short run at least.

The third condition establishes the clearest blueprint for institutional change: the logic is that candidate countries will adopt the models used in EU integration in order to reach the stated aims of political, economic and monetary union. Institutional transformation will have to be substantial to achieve the “ability to take on the obligations of membership”, which is a very onerous task. The bulk of EU demands for institutional change lie in this last area: most of them are concerned with market regulation (for compatibility with the Single Market) and establishing institutions that can administer EU policies and deliver EU financial transfers effectively.

This third condition is concerned with the ‘*acquis communautaire*’, the whole body of

EU rules, political principles and judicial decisions. This set of texts is the basis for the ‘chapters’ on which the applicant countries have been negotiating with the EU (five have been in negotiations since 1998, the rest since 2000 – see footnote 2). The *acquis* is divided into 31 different ‘chapters’ for the purpose of negotiations. This dimension of the accession process is the most measurable, because countries can show how many chapters have been opened, provisionally closed, or ‘set aside’ for later consideration. Candidate countries have focused much effort on getting chapters provisionally closed, and opening new ones, in order to demonstrate their progress – even though closing chapters does not guarantee an earlier date for accession, and provisionally closed chapters can be re-opened later in negotiations. Because it is one of the few clearly measurable parts of the process, this aspect of negotiations has received much political attention.

The Copenhagen conditions and the moving target problem

All three main Copenhagen conditions are very broad and open to considerable interpretation. It is difficult to specify what would count as meeting them. As a result, not only has EU conditionality become increasingly detailed over the years, but it has also constituted a moving target for applicants. New conditions have been added and old ones redefined at the bi-annual summits of EU leaders. The EU has been both a player and a referee in this game, at the same time interpreting the conditions and changing expectations about rewards, resulting in an asymmetry in bargaining power.

The first two Copenhagen conditions require definitions of what constitutes a ‘democracy’, a ‘market economy’ and ‘the

capacity to cope with competitive pressure and market forces', all highly debatable and slippery concepts. The EU has never provided an explicit definition of these concepts, although there are implicit assumptions about their content in the Commission's opinions on the candidates' readiness for membership (published in 1997) and annual reports on their progress. There is no published rationale for how various EU demands will bring applicants closer to west European political and economic norms.

The thrust of the EU's economic agenda for CEE is 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 policy documents (particularly the Accession Partnerships discussed below) promote a remarkably uniform view of what a 'market economy' should look like. The socio-economic system they implicitly promote has a more 'Anglo-Saxon' flavour than the 'Rhenish' social market economies of France or Germany or the 'Latin' economic systems in the southern EU.⁷

The third condition, on the 'obligations of membership' is also open to interpretation. In previous enlargements, these were held to lie solely in the implementation of the '*acquis communautaire*', which amounts to 80,000 pages of legislative texts already, but it keeps growing as the EU develops new policies and issues new directives, declarations and jurisprudence. For this enlargement, the *acquis* has been defined more broadly as 'all the real and potential rights and obligations of the EU system and its institutional framework.'

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

In short, the Copenhagen conditions differ fundamentally from the traditional conditionality for benefits used by international financial institutions (IFIs) such as the development banks in fundamental ways. In its simplest formulation, IFI conditionality links specific perceived benefits to the fulfilment of certain conditions and is thus a means of ensuring the execution of a contract. By contrast, EU demands on CEE are an evolving process, subject to the intervention of many actors. The linkage between fulfilling particular tasks and receiving particular benefits is much less clear than in IFI conditionality because the tasks are complex and not amenable to quantitative assessment.

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

The EU's leverage on the CEE countries differs from that of the IFI because, unlike them, it has played a twofold role in the process of post-communist transformation in CEE. On the one hand, it is like the IFIs in

playing the role of an aid donor imposing conditions similar to those applied to other third countries: the conditions are intended to benefit the candidates by supporting post-communist transformation of economies and societies. On the other hand, it is guiding these countries towards club membership, and it is doing so by requiring wholesale adoption of the EU's rules and policies, whether appropriate or not.

How compatible are these goals? Some have argued that this 'club membership' view of eastward enlargement is an inadequate response by the EU to the unprecedented challenge of post-communist transition. It is important to point out that the assumption in much of the language used in official EU publications on enlargement is that accession and transition are part of the same process, and that preparations to join the EU are coterminous with overall development goals. There are reasons to be sceptical about this assumption: EU policies and regulatory models were created to fit economies and societies at a very different level of development, and even areas like competition policy or market regulations have often been adopted only very recently by a number of member states. As the outcome of a bargaining process between different interests and traditions, they contain anomalies or at least complex features that would likely prevail were they designed *de novo*.⁸ Moreover, they reflect priorities adopted by countries at a very different stage of economic development. In short, they were not designed for countries in transition and they often require a complex institutional structure for implementation that is little developed in CEE. EU models therefore call for an allocation of scarce administrative, political and management resources that does not cater to the most immediate needs of these countries. In areas like competition policy,

some prescriptions may be sub-optimal, given the forms of corporate governance emerging in the region as well as the kind of sequencing in privatisation and curtailing of state intervention adequate to a transition situation. Also, the EU's emphasis on regulatory alignment has potential contradictions with the process of industrial restructuring.

Constraints on the effectiveness of membership conditionality

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

Secondly, until 1998⁹ the EU did not provide a clear ranking to guide allocation of CEE resources, both human and financial in applying the Copenhagen conditions. Conditionality was blunted by the sheer number and scale of requirements, making it difficult for CEE governments to overcome

domestic resistance to the more unpopular tasks demanded by the EU. The European Commission first sought to remedy this situation in the White Paper on the Single Market, where it indicated primary and secondary tasks and is now gradually providing a hierarchy of the great number of tasks implied by its conditions. The issue is whether this can empower CEE governments without thwarting the flexibility necessary to their legitimacy.

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

In sum, these constraints are bound to have ramifications in the social policy field and implications for the link between EU conditionality and social inclusion patterns. To the extent that applicant countries' governments are concerned with

implementing social inclusion measures, these must be integrated and sequenced with a range of other potentially conflicting measures linked to conditionality goals (such as fiscal discipline and structural reform of social security systems). The EU's involvement affects calculations of trade-offs and policy choices. We turn to the specifics of this involvement in the next section.

Section II
THE EU'S TECHNIQUES AND
METHODS IN ACCESSION
CONDITIONALITY

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

The explicit social agenda set by the EU in the accession process is discussed in more detail in Section III. In this section we describe the EU's techniques and methods and their use so far, and we assess their impact. They fall into five categories:

- 1) Access to negotiations and further stages in the accession process
- 2) Provision of legislative and institutional templates
- 3) Aid and technical assistance
- 4) Policy advice and twinning projects
- 5) Monitoring, démarches and public criticism

1. Access to negotiations and further stages in the accession process

As discussed in Section I, the EU's most effective conditionality tools so far are access to candidate status, negotiations, and different stages in the accession process. It has taken a decade for the EU to evolve a more explicit use of conditionality in a gate-keeping role, where progress in the accession process is related to meeting specific conditions. As a result, convergence towards the EU can be described as a series of landmarks along a continuum. Eligibility for Europe Agreements (treaties signed bilaterally with each applicant from 1991 onwards) formally depended on five conditions: namely the rule of law, human rights, a multi-party system, free and fair elections, and a market economy. But more important is the EU's decision on when a candidate is ready to start negotiations. The first real application of EU conditionality to the CEE-10 occurred in 1997, when the Commission's judgements on their readiness for membership (published in its 'opinions') were used to choose the countries that could start negotiations in 1998.

Following the Helsinki summit in December 1999, negotiating status has been made explicitly conditional on meeting the first political Copenhagen condition. The hurdles can be described in a nutshell thus: if a European country has good relations with the EU, it will receive aid and trade concessions, but its government has to be politically acceptable and strongly oriented to the West to become a candidate for membership, and it has to meet the democracy and human rights conditions to start negotiations. These are rough and general conditions and the EU's decisions are clearly motivated by political circumstances as well. For example, the invitation to five more CEE candidates to start negotiations in 2000 was motivated by events in the Balkans that year. Similarly,

the Helsinki conditions for negotiating status were widely believed to be a way to leave Turkey out of the negotiations while finally responding to its long-held request for formal candidacy status and moving forward with other candidates.¹⁰ The EU is now developing more transparent and explicit ways of measuring compliance with the conditions prior to membership. By the time of the first accessions (probably in 2004-5), the EU will have a much more focused and clear ranking of conditions for new members than it has now.

For political reasons, it is easier for the EU to keep countries from joining the process than to isolate an applicant once part of the process. Slovakia is a case in point. In 1997, it failed to qualify for negotiating status on the grounds of democracy criteria (following a change of government in 1998, Slovakia was allowed into negotiations in 2000). But despite Slovakia's breaking the political conditions under the Meciar government, its Europe Agreement was never suspended even following the EU's *démarches* critical of undemocratic practices in 1994 and 1995. This forbearance reflects the fact that suspension is seen by the EU as a very last resort. In general, the EU has been very reluctant to use aid and trade conditionality as a negative sanction once an agreement has been signed. But the EU refused throughout the whole of the 1990s to sign a Europe Agreement with Croatia or the Federal Republic of Yugoslavia on political grounds. The other four applicants excluded from negotiations in 1998 (Bulgaria, Latvia, Lithuania and Romania) were judged to have met the democracy criteria, but not the economic condition. To this day, failure to show convergence with part of the *acquis* has not been used as an exclusionary condition, prior to final membership assessment. Social policies or social

inclusion criteria do not even figure in this equation.

A further conditionality lever was added at the start of CEE negotiations in 1998, when the EU introduced the 'Accession Partnerships'. This new instrument provides a direct lever on policy-making in CEE by setting out a list of policy 'priorities' that have to be implemented within the year or in the medium term (defined as five years). The European Commission then reports on the applicants' progress in meeting each priority in the Autumn of the year, and publishes revised Accession Partnerships that stress the areas which the EU regards as particularly important for progress in the following year. The Accession Partnerships record progress as well as serving as signalling and shaming devices. Access to negotiations and other stages in the accession process is the EU's strongest conditionality lever, and hence its most powerful political tool for institutional change. However, it is not a precise instrument that ensures complex changes in institutional frameworks. Rather, it is a blunt weapon that tends to be used for priority areas only.

2. Provision of legislative and institutional templates

Legal transposition of the *acquis* and harmonisation with EU laws are essential to becoming a member state, and they have so far been the central focus of the accession process and preparations by the candidates. The EU promotes both the strengthening of existing institutions and the establishment of new ones by spelling out priorities for institutional reform in the Accession Partnerships every year.

Legislative adaptation to EU norms was initiated by the Europe Agreements, which

cover trade relations as well as flanking political and administrative policies; they had a major impact on liberalisation of CEE trade and investment policies in the 1990s. 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. They also provide a general framework for political and economic cooperation, including approximation of legislation; they thus started the process of introducing the *acquis* to the applicants, and are still the only legally binding set of relations between the EU and CEE.

In the Europe Agreements, social policy is subsumed under the free movement of workers, vocational training and economic cooperation, with few binding commitments in this area for CEE. The main pieces of legislation to be transposed were listed in the Single Market White Paper (1995), which presented the *acquis* related to regulation of the Single Market, including a section on social policy and action. It set out the EU legislation on equal opportunities for men and women, coordination of social security schemes, health and safety at work, labour law and working conditions, and regulation of tobacco products. Legislative gaps and institutional weaknesses were also identified by the screening process that took place with each applicant prior to negotiations on each subject (there are 31 negotiating ‘chapters’ in all). The European Commission uses the screening process to identify the main areas where applicants’ legislation is not compliant with the *acquis communautaire*, and the results of screening are used to formulate EU negotiating positions and to establish priorities in the Accession Partnerships.

Priorities for institutional reform and development are presented in the Accession Partnerships each year, as are key laws to be passed and implemented that year. However, the EU does not provide draft laws: it sets out some general guidelines and it is up to the applicants to take the *acquis* and make their own laws. However, they also draw on EU models by looking at examples of how different member states have made laws to comply with the *acquis* in various fields.

The social *acquis* was opened for negotiations in late 1999, and has not presented many substantive problems, partly because it is a relatively small body of law. The Commission assesses adoption of the social *acquis* as rather slow in all countries (with the exception of Slovenia), but recognises that in the social field alignment with the *acquis* is often a lesser political priority than reform of health care and pension systems, which are necessary for viable social protection.¹¹ Instead, the EU stresses social dialogue as a method of preventing negative consequences of reforms for social cohesion. A new policy and legislation monitoring programme is being set up this year, with the acronym MISSOC. Under it, CEE countries will have to provide the European Commission with information on legislative and regulatory developments and implementation arrangements in the field of social policy.

In addition to imposing its own norms, the EU reinforces other international legal norms that promote social inclusion by making them part of accession conditionality. Thus, in order to join the EU, applicants must have ratified various human rights conventions, including the European Social Charter, the Framework Convention for National Minorities, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention

on the Elimination of All Forms of Discrimination against Women (CEDAW). A more general question is how EU conditionality is supposed to dovetail with that of other international agencies such as the World Trade Organisation, the Council of Europe, and the IFIs. It is not always clear how, short of strict transposition, these various conditionalities are to be mutually reinforcing. Implementation of agreements with the development banks is part of Romania's Accession Partnership, for example, and the IMF's focus on macroeconomic stability is echoed by EU priorities for maintaining internal and external balance. Nevertheless, these institutions hold different views on means and ends.

3. Aid and technical assistance

The EU is the largest external source of aid for CEE, providing funds administered by the European Commission and also bilateral programmes from individual member states (the largest of which is from Germany). The Phare¹² aid programme covers the ten countries which have applied for membership, and also the non-applicant Balkan countries for which the EU has taken special responsibility following the Kosovo crisis (including Albania, former Yugoslav Republic of Macedonia, and Bosnia and Herzegovina). TACIS is a separate aid programme for the CIS countries.

From its foundation in 1988 until 1997, EU aid policy targeted a broad range of goals connected with transition towards pluralist democracy and market economics, largely through technical assistance from EU officials and western consultants. Phare was demand-driven during this period, allowing CEE governments to formulate their own requests in the fields of institutional reform and infrastructure development. Projects

were awarded to consultants under a competitive tendering process, but without a policy framework, so there was little opportunity for consistent and persistent policy influence from the EU. In this first period of Phare social policy (1991-96), the policy advice delivered to CEE was somewhat random, as the EU did not use its opportunity to steer income maintenance policy in CEE towards European social policy traditions.¹³ Moreover, the proportion of funds devoted to social development, employment, health and related priorities was relatively small, as shown in Tables 1 and 2 in the Appendix (which gives a breakdown of Phare spending). Infrastructure spending received a large increase in 1994 (rising to over a third of total spending), and administrative reforms witnessed a modest rise. However, the civil society and democratisation allocation remained small.

Phare was turned into an explicit instrument of pre-accession policy, with all aid focused on preparations for accession, following the EU's Luxembourg summit in December 1997. All instruments were then more closely focused on detailed preparations for accession, even for those countries that would not start negotiations until later. The two main priorities were institution-building, with a stress on training of public servants (30% of the total funds available) and development of infrastructure (70% of funds), concentrating on transport and environmental projects.

In the period 2000-2006, Phare will provide 1.5 billion Euros a year to the ten applicants (an increase from around 1.3 billion Euros annually over 1995-99). The core priorities of Phare activities are now institution-building (receiving around 30% of Phare resources) and investment (around 70%). The full allocation of funds to CEE is set out

in Table 3 in the Appendix. The central goal in institution-building is to develop the applicants' capacity to implement EU legislation and prepare for participation in EU policies such as economic and social cohesion. The funds for this area are mainly given through secondment of officials from member states (see the discussion of twinning below). Support is also available to public authorities and non-governmental organisations (NGOs) to help fulfil the requirements of the first Copenhagen condition (related to democracy).

Investment support serves to strengthen the regulatory infrastructure needed to comply with the *acquis*, as well as economic and social cohesion measures similar to those supported in the member states through the European Regional Development Fund and the European Social Fund. These two funds supply finance for a broad range of social and economic measures in the EU, and the projects supported by Phare in CEE range widely.

The Commission identifies priorities in order to approximate the *acquis*, which national governments have to follow in their applications for Phare funds. Among the social policy areas where applicants have to make progress toward the *acquis* are: social dialogue, labour market institutions, social protection systems, public health, occupational health and safety, labour law, and equal opportunities for men and women. The European Parliament added a further requirement in 1998 that beneficiaries of Phare had to respect EU social policy provisions and that women and men participate equally in Phare programs.

From 2000-2006, the EU is also transferring funds to CEE from its Common Agricultural Policy (CAP) budget (500 million Euro per year) and Structural Funds (1 billion Euro

annually), making a total of 21 billion ECU available in pre-accession aid over the period 2000-2006. After they join, new members will be eligible for considerable additional funds from the structural funds and agriculture budgets, and these pre-accession funds are designed to develop their institutional capacity to handle such large transfers and increase their familiarity with EU procedures. The annual maximum total of pre- and post-accession spending for CEE is planned to rise to 17.3 billion Euro (at 1999 prices) by 2006 (see Table II in the Appendix). However, CEE countries will only get this amount if some countries join during that period and so become eligible for structural and agricultural funds. Otherwise, the annual limit will be the 3.12 billion Euro allocated as pre-accession funds for all the candidates.

The pre-accession funds are distributed through the ISPA¹⁴ and SAPARD¹⁵ programme. ISPA provides structural funds money to contribute to accession preparations specifically in the area of 'economic and social cohesion', which in this case covers environmental measures and transport infrastructure measures that promote sustainable mobility. Measures have to comply with EU law and the Accession Partnership objectives, and there is a scale requirement that each project should have a significant impact and not cost less than 5 million Euro. SAPARD funds (from the CAP budget) contribute to the implementation of the *acquis* concerning the common agricultural policy and related policies, and also to solve specific problems for the sustainable adaptation of the agricultural sector and rural areas in each candidate country.

EU agricultural policies are more controversial than the structural measures because the EU's agricultural policy is based

on a system of managed prices and large subsidies to farmers that runs against the free-market reforms promoted in post-communist CEE agricultural sectors. The applicants are not being encouraged by the EU to replicate this system - both for doctrinal and financial motives - but they have to prepare their administrations to deal with CAP funds. Decisions on how to spend the SAPARD money for agricultural development are largely in the hands of national agriculture ministries (subject to broad guidelines set by the EU), whereas ISPA funds are much more closely controlled by the Commission, which has to approve each individual project proposed by CEE authorities.

4. Policy advice and twinning projects

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

supply the officials, either individually or (more commonly) in consortia.

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

As with the first phase of Phare, the quality and consistency of the policy advice provided is difficult to assess. Pre-accession advisors largely set their own agenda in collaboration with the host CEE government, and their advice reflects their own assumptions, national backgrounds, and professional experience in their home EU ministries. Whether an advisor from a social affairs ministry is French, Greek, British or Swedish could make a considerable difference to the policy advice he or she offers on approaches to social exclusion, because these countries have very different traditions in social policy. Similarly, the advisor's level of concern about transparency, accountability and access for excluded groups depends very much on his

or her national tradition and personal views on the importance of these issues.

5. Monitoring, démarches and public criticism

Because of the salience of EU accession in CEE political debates, the EU can influence policy by ‘soft implementation’ means such as ranking of the applicants’ overall progress, benchmarking in particular policy areas, and providing examples of best practice that the applicants should seek to emulate. A key mechanism for this part of conditionality is the regular assessments of how prepared each CEE applicant is in different fields published by the European Commission every year. It has also made exceptional criticisms of undemocratic practices in particular countries in ‘démarches’¹⁶ intended to embarrass CEE governments and help opposition politicians. Criticisms of CEE governments made in EU reports are politically influential in CEE and can have a powerful impact on domestic debates about public policy and the government’s performance. They are therefore an effective part of conditionality, although their precise effects are difficult to track systematically across the ten countries.

The Commission’s ‘Regular Reports’ contain assessments of the candidates’ progress in meeting different parts of the accession conditionality, including the Accession Partnerships. The reports use a variety of sources, and do not state explicitly what measurement techniques and indicators are used to assess either absolute or relative states of compliance with EU conditions. Three Commission assessments of progress have so far been made. The Commission’s ‘Opinions’ on readiness for membership were published in June 1997, along with a recommendation that five of the applicants start negotiations. The Regular reports

published in Autumn 1998 and 1999 contained general assessments of progress in meeting the Copenhagen conditions, and also specific sections on how far each applicant has fulfilled its Accession Partnership tasks in the preceding year.

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

The instruments available along the persuasion-to-coercion continuum

All of the ‘conditionality instruments’ described above constitute a fleshing-out of what is meant by ‘conditionality’ and how this concept is operationalised in the EU. We can think of these instruments as various types of leverage used by the EU in influencing internal developments in CEE countries. This leverage works along a persuasion-to-coercion continuum.

Conditionality is the expression of a contract between parties with asymmetric power, where outcomes are obtained through various degrees of persuasion-by-example and coercion through systems of positive and negative rewards. The two logics are combined in some of the instruments used, but in different ways.

At one end of the continuum, there are domestic developments that are linked to the EU simply to the extent that its member countries and common policies seem to the applicant countries to be a model of 'good practice.' The EU has been a model to emulate, a focal-point for transition policies to take countries quickly away from communism and central planning. But use of this role as a model depends on the orientation of the different governments in power. CEE governments have been more or less inclined to follow the EU road-map, depending on their overall political leanings and specific policy preferences. But EU policies and models have served as a reference-point in domestic debates, providing ammunition for reformers and an external standard against which to measure policy alternatives.

But to the extent that EU priorities do not correspond to those of a given CEE government, conditionality is closer to the logic and language of power; that is, it can be about getting target countries to do what they would *not* do otherwise. The whole 'staging' of the accession process - with progress on the road to membership linked to domestic reforms - falls under this logic even where the domestic changes required is objectively in the interest of CEE countries. Technical assistance, monitoring and political shaming can be used to force the issue, by empowering certain domestic actors at the expense of others.

The different motivations for domestic reform and institutional form are hard to disentangle. Nevertheless, it is valid to ask: how would policies and institutional reforms have been different if the EU's requirements had not been so influential? Answering this question would require a more detailed analysis than is possible here, but an overview of the social inclusion-related provisions (as provided below) can provide some preliminary insights.

III. SOCIAL INCLUSION AND THE EU'S AGENDA FOR CEE

The direct and indirect conditionality levers presented in Section II have promoted social development and inclusion goals by causing institutional transformation in CEE.

However, this rarely happened under the heading of 'social inclusion'. This section presents measures that are explicitly and directly related to social inclusion in the EU's agenda for CEE. In this analysis, we look beyond traditional policy labels and seek to present EU 'social conditionality' by extracting relevant provisions from the dispersed elements of the EU agenda for CEE. We find that the EU has indeed sought to serve a broad range of social development aims in its support of the transition process. To start with, financial aid and technical assistance are used directly to combat social disadvantage. More indirectly, accession policy promotes institutional development and building administrative capacity in ways that will help to combat social exclusion. In particular, EU conditionality stresses effective implementation of laws such as labour codes and gender equality, and it promotes the development of institutions that will enforce social policies.

The advice received from the EU on precise institutional solutions depends on the background and policy preferences of the agents from member states (through twinning) and EU institutions (through visits by officials). The volume of contacts and lack of central coordination of policy advice has dampened EU influence in specifying social exclusion policy instruments. Nevertheless, although specific institutional requirements are limited, the EU has provided considerable aid and technical assistance to improve administrative capacity, including civil service reform, relations between political institutions, and

establishment of monitoring and oversight mechanisms. In addition to the EU's own work, the Phare programme funds a joint initiative with the OECD called SIGMA which advises CEE on how to improve governance and management by modernising organisational systems, and provides technical cooperation for specific public administration tasks (including policy-making, expenditure management, administrative organisation and oversight).

1. Institutional development to meet social goals

The EU has only one formal requirement for member states to establish institutions in the field of social policy and employment: applicants have to establish an independent guarantee fund under the Insolvency Directive to ensure companies can meet their obligations to employees. Apart from this, the applicants have to strengthen existing institutions rather than establishing new ones. However, in the social sphere, there is no European model for the applicants to follow in strengthening institutions because the structures for implementing the EU's social provisions vary enormously between member states, depending on their welfare model and labour market regulations. The most common elements (which have been set out for the applicants by the European Commission) are competencies of ministries and their agencies to implement the requirements in the fields of social protection, public health, employment law and equal opportunities. The common elements identified as essential for CEE in preliminary proposals are as follows:

1. labour market institutions to implement European employment strategy, notably the European Social Fund;

2. line ministries and enforcement agencies for occupational health and safety laws, labour law and equal opportunities (including inspectorates to ensure efficient services for health and hygiene, first aid, fire prevention, training, and promotion and research);
3. administrative infrastructure to participate in EU public health programmes and ensure implementation of directives for tobacco control;
4. health care professionals trained to deal with surveillance of communicable diseases, quality and safety of organs, blood and other substances of human origin;
5. representatives of the two sides of industry, including social partner organisations (which have a role in elaborating and implementing EU legislation);
6. lawyers and judges competent to apply labour and social security laws;
7. social security institutions that can develop social protection systems, especially social security schemes in the framework of free movement of workers;
8. independent commissions, ombudsmen or other bodies to oversee policy development for equal opportunities and the fight against racism;
9. NGOs and other players in civil society active in field such as social protection, equal opportunities, the fight against poverty, and combating racism.

The relevance of these provisions to social inclusion is clear, particularly the requirements connected with social protection, equal opportunities, fighting racism, involving social partners, and the role of NGOs and other civil society actors. However, the EU does not specify the precise institutional requirements in any greater detail than indicated above. Applicants have less scope for national adaptation than do current member states, given the wider mandate of EU institutions in CEE. However, EU judgements about the adequacy of their institutional infrastructure will depend partly on the immediate concerns of member states when negotiations are concluded. It is not a matter of conformity with a clear code or model, but of demonstrating administrative competence in order to give key Commission and member state officials confidence in a candidate's ability to deliver on its promises.

2. The EU's social policy agenda for CEE

It is not yet clear how EU social policies will be applied to CEE. Given the high proportion of 'grey law' and soft implementation in the social field, there are no clear-cut criteria as to what exactly has to be implemented in the CEE countries before accession and what can be left until afterwards. Legally binding directives must be applied, but how about targets and common strategies? Even among member states today, implementation of the social *acquis* is relatively 'soft', relying on national action plans, non-binding annual targets, benchmarking, progress reports and agreements to cooperate, rather than 'hard' integration of legally binding directives enforced by supra-national institutions (e.g. the Commission and the Court of Justice). Many so-called 'common' social policies work through peer pressure, not legal

requirements, allowing considerable variation between countries and regions as to how far they are implemented.

The nature of EU social policy makes it essential to look beyond the rhetoric of EU institutions and member states to actual measures set out to be required. The Commission has generally taken a maximalist interpretation of social policy for the applicants, requiring conformity with even non-binding parts of social policies.¹⁷ Clearly, this has provided an important push in areas such as labour codes and non-discrimination, especially when backed up by EU funds. But it is important to recognise, however, that the Commission's blueprint for CEE countries not only promotes goals but also sets constraints on social inclusion policies on the part of CEE governments, especially given its neo-liberal emphasis. It sets financial constraints by requiring applicants to devote funds to a large EU agenda, of which social exclusion is only one relatively small part, while national budget constraints in CEE anyway restrict their ability to provide social transfers at the levels of the more generous member states.¹⁸ More generally, the EU limits the public funds that could be used to build social capital and reduce social impacts by stressing fiscal austerity and macroeconomic stability. By establishing a large number of tasks to be fulfilled in a short time, the EU limits CEE countries' room for manoeuvre in pursuing other policy priorities, and promotes an EU-shaped policy agenda that reflects the division of labour between the EU and its member states in the social area rather than an agenda specifically intended to combat social exclusion.

Non-economic problems of social exclusion in CEE figure prominently in accession policy documents. For instance, the

Commission has expressed especially strong concern about the treatment of minorities in a number of applicant states since respect for and protection of minorities are among the political criteria most closely watched by national and European Parliaments. For instance, the treatment of Hungarian minorities in Romania and in Slovakia (under the Meciar government) received enormous scrutiny. So did the slow rate of naturalisation of non-citizens (principally the Russian-speaking minorities) in Estonia and Latvia. The fact that Estonia was recommended to start negotiations in 1998 (whereas Latvia was not) showed that the issue of the Russian minorities was not determinant for these countries' chances of joining; partly this was because the Commission judged the countries were making progress in proposing integration measures, but also it was to avoid pressure from Moscow.

The EU has also consistently highlighted the need for better protection of the Roma minority group (also called 'gypsies') as part of both the minority protection and human rights conditions. Discrimination and persecution of the Roma is a problem identified across the region by the gamut of international agencies. Behind European decision makers' insistence on this issue lies the fear of migration of Roma groups to Western Europe, a fear that has already been reflected in UK and Finnish visa policies. EU-level pressure consists primarily of public criticisms of insufficient policies on the part of CEE governments, and small amounts of aid to NGOs and civil society groups working with the Roma. Other human rights issues have arisen in particular countries, such as the treatment of the large number of children in state childcare institutions in Romania (a legacy of the Ceaucescu era).

The EU provides aid for rural development (through the pre-accession structural and agricultural funds), but on nothing like the scale provided to EU farmers and rural-dwellers. Nevertheless, it also encourages restructuring of the agricultural sector which will certainly cause the large numbers of small farms across the region to consolidate, and introduce greater mechanisation. This will massively diminish the numbers of those employed on the land, which will unavoidably increase the number of rural poor, in the short run and accelerate urbanisation in the longer run. There has been no large-scale evaluation of how CEE cities will be able to cope with the influx of people in terms of transport and housing infrastructure, as well as social services (all of which are already under strain in growth poles like Warsaw, Prague and Bratislava). There is no clear EU strategy yet for helping applicants cope with the socio-economic upheaval and unwanted social effects of the migration from the countryside to the cities, which will be particularly large for Poland, given that a quarter to a fifth of its population currently sustain themselves in rural areas at low levels of productivity.

Other parts of the EU agenda address social exclusion more broadly. 'Economic and social cohesion' for instance, a very broad development policy objective stated in many EU policy documents that covers measures ranging from administrative reform to training of officials, to budgetary oversight systems, to environmental measures and transport infrastructure. The breadth of measures covered reflects the enormous range of policies funded by the Structural Funds budget in the current EU rather than a clear social inclusion agenda for CEE. The guidelines for projects to be funded by Phare, ISPA and SAPARD aid are very broad, and the more precise criteria for accepting or rejecting projects connected

with economic and social cohesion will only emerge over the period 2000-2002, as the budget cycle progresses and decisions are made.

3. Social inclusion tasks in the Accession Partnerships

Social exclusion is targeted by elements of the tasks in the Accession Partnerships that come under the political and economic conditions, as well as under economic and social cohesion, and employment and social affairs. A full listing of measures that target social exclusion, either directly or indirectly, is provided in Table 4 (in the Appendix). As the Table indicates, some priorities apply to all the applicants and are required by the *acquis*, whereas others are specific demands made on individual countries to remedy problems identified by the EU through the screening process or the Regular Reports.

As discussed above, under the political criteria, the EU emphasises implementation of measures (including adequate funding for them) that target combating the social and political exclusion of national minorities (e.g. Hungarian minorities in Romania and Slovakia, and non-citizen Russian-speakers in Estonia and Latvia), as well as preventing discrimination against the Roma across the region (particularly in Bulgaria, Czech Republic, Hungary, Romania and Slovakia). Anti-discrimination measures and improved access to education and employment are also stressed for five of the applicants that have substantial minority populations. The EU has also repeatedly stressed the need to improve the conditions of the large number of children in state childcare institutions in Romania, and this task has been extended to include greater provision for the treatment of people with long-term illnesses and disabilities.

The economic criteria for a number of countries include reform of social security financing, particularly pensions. Agricultural policy for Poland also includes a social component. There are further relevant measures under the priorities for employment and social affairs referring to new legislation or effective implementation of existing legislation (e.g. equal treatment of men and women, new labour codes, using social dialogue with trade unions and other social partners), and also preparations for participation in EU-level employment policies after accession. The economic and social cohesion part of the *acquis* is mainly concerned with capacity-building for public administrations to take part in EU regional and structural policies (e.g. improving coordination of social policy, improving budgetary systems and procedures).

EU aid programmes also promote social inclusion objectives. Phare ran three programmes called 'Consensus' aimed at implementing the social *acquis* and reforming social protection systems in CEE between 1995 and 1999. Their focus was on designing social protection reform policies that are sustainable, and Phare undertook social sector policy reviews for each country and outlined best practice in European social protection schemes. From 2000 onwards, Phare will provide funding for national programmes aimed at adopting the social policy *acquis*, following the priorities set out in each country's Accession Partnership; most of the money will be used to cover twinning projects in each country. The immediate objectives are to develop institutions; strengthen social protection systems to adopt the *acquis*; enhance dialogue between governments, social partners, NGOs and the general public about reforming and modernising social protection systems; and provide information for the for policy and legislation monitoring.

The EU aims strongly to reinforce Phare's social dimension in its 2000-2002 programme, a late but important focus of aid policy. Part of Phare's annual budget is to be devoted to regional development and social cohesion, helping the candidate countries to draw up national development plans that are compatible with EU policy and methodology. The aim is to help boost economic development and prepare for participation in the Structural Funds after membership.

4. Social regulations for the Single Market

The EU has often been described as a 'regulatory state'.¹⁹ Regulatory requirements constitute the bulk of the *acquis* and therefore of accession conditionality. Among these, standards and rules applying to products and services as well as to testing and certification procedures are the most numerous and do not have a direct social impact except to the extent that increasing general levels of consumer protection in a country is likely to level the playing field between rich and poor, uninformed and sophisticated consumers (although the impact of higher standards on prices provides a counter-effect here). To be sure, the EU has generally adopted the principle of mutual recognition in these areas which means that beyond very general EU wide standards, specifications vary widely across member states, and there is no fact of the matter as to which specific standards CEE countries must adopt.

More important for our purposes here, product regulations are supplemented by a wide range of process regulations constraining enterprises. Thus, applicants have no choice but to align with EU legislation in the fields of occupational health and safety, labour law, equal treatment of women and men, and public

health, including reinforcement of the related administrative structures and those required for the coordination of social security.²⁰ But here again the question is when and how. In all of these areas, while the laws on the books are straightforward, there is a considerable margin of interpretation as to what real implementation actually entails. When in doubt, EU citizens can take the matter to the European Court of Justice. But the latter has no jurisdiction over would-be members' policies.

There are three key areas of social regulation for the Single Market:

1. Equal conditions for men and women in the workplace. CEE applicants are generally compliant with the EU already from the legal point of view (because gender equality was enshrined in their pre-1989 constitutions), but the EU stresses that these laws must also be effectively enforced.

2. EU labour law consists essentially of rules about the representation of workers in the place of work, the length of the working week, and conditions of contract and termination of contract (i.e. hiring and firing). These directives are less stringent than many of the labour codes currently prevailing in CEE; for example Poland has a shorter limit on working time than the EU's 48-hour working week. However, although EU labour laws may be more liberal, implementation is likely to be stricter than that prevailing in CEE countries.

3. Health and safety at work is the only part of the social policy *acquis* that is likely to impose significant costs, for public institutions (such as inspectorates) and for enterprise investment. It includes standards for protective equipment, the manual handling of loads, work with display screens, exposure to carcinogens and

biological agents, work on fishing vessels, and in surface and underground mineral extraction. Existing inspectorates will need to be reformed, better-equipped and perhaps expanded, while enterprises will have to invest in buildings and machinery.

Enforcement of environmental and social standards of production in the CEE is not only a legal matter but a politically sensitive one. Reflecting a currently prevailing trend associated with the costs of globalisation, Western Europeans often voice fears of 'social dumping' and 'unfair competition' on the part of CEE countries. To be sure, CEE countries have benefited from a competitive advantage due to these lower standards that has for a while attracted FDI. But Western fears are broadly unfounded, if only because trade from CEE countries constitute around 5% of total external EU trade. Moreover, a number of the process-related regulation have already been implemented (for instance important parts of the environmental or social *acquis*, as well as regulations such as health warnings on cigarette packets).

But the related question still largely unaddressed by the EU is how to deal with regulation which poses real financial or economic problems, either for the state budget or for the competitiveness of enterprises. The bulk of the costs will arise through environmental rather than social regulations; however, there may be a few enterprises whose financial stability is put at risk by certain EU occupational health and safety regulations and EU aid will cover only a small proportion of the costs of implementing them.²¹

Negotiations will determine the speed of implementation before and after accession, and accusations of social dumping will weigh against cost considerations on the EU

side. It would make sense in financial terms for applicants to delay investments in social and environmental standards until after accession, when they will be able to use the structural funds to meet some of the financial costs. The pattern of implementation of process-related regulation will therefore depend partly on the type of financial assistance offered by the EU, although EU transfers will not fully cover investment needs (particularly for environmental regulations). The CEE governments' room for manoeuvre in implementing the social *acquis* will depend in part on the bargains struck over transition periods after accession. In the end, if faced with a choice between transferring more assistance to central Europe or giving generous transition periods in expensive areas of regulation, the EU will probably opt for the latter in the environmental field. We would be less secure in predicting that these transition periods will extend from environmental regulation to social one. It may be more difficult for an applicant country to get agreement in negotiations for a long transition period in the area of health and safety at work than environmental protection regulations such as the Waste Water Directive. Health and safety has an impact on the competitiveness of enterprises, the quality of the water supply to households does not. In practice, requests for transitional periods have been relatively limited, and for short periods of time (e.g. Slovenia has asked for a three-year transitional period for implementation of the *acquis* on health and safety at work with biological, chemical and physical agents). We may see more, however, when the second wave of applicants present their negotiating positions in these areas.

CONCLUSIONS

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

However, EU-driven institutional change has two key benefits that may outweigh any sub-optimal choices:

- EU membership as a focal-point: the EU's conditionality provides a clear framework to work towards, helping to overcome inertia and avoiding a lengthy search for a domestic political consensus on institutional models.
- The EU as a commitment device: the accession process provides a set of incentives for rapid institutional change that entrenches reforms and protects them from sectoral interests and backsliding.

The institutional transformation and increase in organisational capacity provoked by EU accession demands has changed social relations fundamentally from the communist era. In this respect, it has promoted social inclusion. In addition, there has been

development of a specific social development component in the EU's agenda for CEE applicants over the past two years, and this dimension looks set to grow further in the years preceding accession. However, social inclusion goals are mainly pursued through aid policy rather than directly in conditionality for membership of the EU. Objectives related directly to social inclusion have moved up the agenda relatively late in the accession process, and after several years of pursuing a technocratic approach focusing legislative alignment and compliance with EU regulations and legal norms its focus on tasks that specifically connected with meeting its idiosyncratic accession requirements. Perhaps owing to undue reliance on previous enlargement models, the EU has not promoted a consistent and coherent social development agenda tailored to the needs of CEE countries.

To the extent that they do exist, social inclusion objectives are consequently fragmented across a range of policy instruments, and the EU lacks a consistent and persistent strategy to pursue social inclusion. Nevertheless, the enormous scale of the EU's overall role in CEE policy-making has meant that its sporadic efforts to promote social inclusion have a major impact, even if that impact is much less than the potential power that a consistent EU-level social agenda might have.

Under what circumstances will social criteria determine readiness for accession? Indicators of poverty, inequality of income, and non-monetary forms of deprivation may influence how the EU's member states regard a country's general progress in post-communist transition, but they are unlikely fundamentally to determine its acceptance or refusal for membership in the absence of other problems. Macroeconomic stability is

a prerequisite for entering the Single Market and monetary union, but labour market reform is not currently seen as part of the equation. We believe that 'social conditionality' would only be determinant in cases of persistent failure to respect and protect minority or human rights. EU officials have already hinted that a state's failure to do enough to combat discrimination by private citizens would also count strongly against its chances of membership.

In essence, aid policy is the focus of direct EU efforts to promote social inclusion, while accession conditionality has some indirect effects through parts of its political and economic criteria. Elements of the agenda for legislative and institutional alignment with EU norms are also related to social inclusion. As a result, the EU's main impact has so far been in:

- Promoting social inclusion of minority groups (particularly the Roma) through policies to combat discrimination and increase access to education and employment;
- Encouraging allocation of public resources (both human and financial) to certain social objectives through setting annual priorities for accession preparations and co-financing requirements for aid;
- Supporting effective implementation and enforcement of anti-exclusion legislation through provision of policy templates and financial aid to transpose anti-discrimination legislation and build institutional capacity;
- Building administrative capacity to implement frameworks for social

cohesion policies and to channel EU aid effectively to meet social inclusion goals both before and after membership;

- Pressing for sustainable reform of social insurance and pensions systems.

We find that the strengths and the weaknesses of the EU's approach are conditioned by the degree of consistency in the EU's approach are at three levels:

1. Consistency between 'internal' and 'external' social models. Conditionality is ultimately aimed at CEE countries' adaptation to the EU, so the first question is: adaptation to what? Is it adaptation to EU policies, to a 'European model,' to variants of national policies, or to a blueprint tailored to applicants' circumstances and needs? In other words, we have asked how much consistency there is between the kind of social model it implicitly promotes externally and that which it pursues internally, at EU or domestic level. The EU itself has a general commitment in its treaties to social and economic cohesion, but member states' interpretations of its implication differ widely. This is not surprising as they subscribe to very different models of welfare-state capitalism, from Scandinavian social rights-based to the Franco-German conservative-corporatist system, to Anglo-Irish liberalism and Southern capitalism (Esping-Andersen 1996, Pearson 1991). As a result of this diversity - as well as the secondary nature of social policy integration as a by-product of market integration - EU social policy is confined to a small part of member states' social agendas. The European Social Charter adopted at Maastricht is little more than a lowest common denominator list of basic social rights. Owing to 'subsidiarity' and a

preference for keeping the welfare state at home, social insurance and protection programmes are mostly confined to the national level (Stone Sweet 1998). The main role of the EU in the fight against social exclusion remains confined to measuring and monitoring the problem, drawing general lessons from national experiences, and coordinating national efforts to fight it (Silver 2000). Although the EU has recently adopted a non-binding 'Charter of Fundamental Rights', which includes some social rights, this document is vague about the nature and extent of such rights. Moreover, it is not legally binding, partly as a result of the opposition of some EU member states to the establishment of certain rights at EU level.

So what are CEE countries to emulate? The minimalist EU social regulations or the full-blown social programmes run by most member states? Clearly, applicants are only formally required to take on EU rules, not national ones. As a result, the main social requirements included in EU conditionality are concerned with regulation of the Single Market, rather than social exclusion policies. Few of the typical European social exclusion policies (such as minimum income policies, employer subsidies, active labour market policies and training) formally apply to CEE, because they are applied at national level and are neither required nor paid for by the EU itself. Once applicants become member states, they will gain access to EU programmes like the European Social Fund (which provides money for programmes to develop work skills), but pre-accession requirements and funds are concentrated on preparing their civil services to administer such programmes rather than meeting social inclusion objectives in the meantime.

The EU has begun to formulate a policy on combating social exclusion this year.

However, the proposals put forward by the European Commission in the last few months²² refer only to the member states, and it is not yet clear how they might apply to the applicants. Moreover, the proposals focus on coordination and cooperation between member states, that is, forms of soft integration rather than Community law that would be obligatory for the applicants as part of accession conditionality.

2. Consistency between accession requirements and transition needs. There is little doubt that meeting the policy and institutional requirements associated with accession to the EU have had to take precedent over more classical development concerns, including their transition economy variants. Economic and social development of CEE is strongly encouraged, but the main task of pre-accession policies is preparing countries for membership. In some cases, accession and objective development needs may converge - after all, membership is expected to bring large economic and social benefits to the applicant countries - but the formulation of particular accession policy goals and methods is not primarily driven by a development agenda for CEE. Notwithstanding the EU's social goals, accession is a complex and highly technocratic process that has largely followed the procedural rules set by previous enlargements to advanced western economies, rather than being specifically adapted to meet the needs of poor, post-socialist ones.

We have discussed the tension between the EU's dual roles of being both an aid donor and a gatekeeper to club membership. Is the Commission's action in the CEE countries really helping to further the democratic and economic development of these countries *per se*, or is it focused on getting them to adhere to club rules? The

answer is that it tries to do both. Given the narrowness of the EU's mandate in social affairs for its current member states, it is hardly surprising that it does not apply a coherent logic for social inclusion to CEE. The EU sends mixed messages to candidates because of its lack of a coherent voice at micro-policy level. This in turn causes inconsistencies in the application of conditionality across different EU agencies (administering aid, trade relations and diplomatic contacts) and over time. For these reasons, accession conditionality only works as a blunt instrument at the macro level, changing the overall tenor of relations and progress through different stages of the accession process. Although it can be effective at this macro level, accession conditionality can only rarely be used as a scalpel to change particular policies or sculpt particular institutions.

Aid money to the candidates is specifically devoted to accession-related tasks and disbursed through an inflexible and bureaucratic process. It is thus hard to use aid as a carrot to get the countries to move in a particular direction. Moreover, EU aid to CEE is still small compared with FDI inflows for the front-runner candidates, so withdrawal of aid is not a heavy sanction economically, although the political embarrassment it causes can be effective.

3. Consistency between aims and methods. The EU has a tendency to use technocratic methods to pursue political aims. The amorphous nature of the EU's social agenda for CEE results from the incentives driving the actors who shape EU conditionality. EU member states officially decided in 1993 to enlarge the Union to the countries emerging from communism in CEE with the avowed aim to contribute to their stability and encourage their re-integration into the world economy and western political community,

but the decision was taken with considerable trepidation. To a greater extent than in any prior enlargement, EU leaders seem to have been overwhelmingly driven by the fear that enlargement might jeopardise the integrity of existing EU institutions and policies. This has led them to an approach that leaves little room for concessions to CEE demands in the negotiations and demanding a high level of adaptation prior to accession.²³ Applicant countries simply have to attain a sufficient level of development before they could join.²⁴ And the recourse to transition periods as well as generous fiscal transfers would be much more limited than in prior enlargements, especially to the Mediterranean countries. While this could in part be attributed to greater fiscal constraints and a turn in economic orthodoxy away from budgetary transfers, it is hard to dismiss the sense prevalent in applicant countries that modification of the stringency of conditionality could be used as a political instrument in the timing of enlargement.

The response of the CEE countries has been to follow a pattern of unilateral anticipatory adaptation to the EU since almost the very beginning of their transition.²⁵ But the formalisation of this convergence process through accession conditionality has meant that the priorities and means chosen to achieve convergence were subject to enormous external scrutiny. The accession process has been delegated largely to technical experts in the European Commission, and EU actors (both in EU institutions and in the member states) have felt empowered by their political mandate to treat conditionality more as a blueprint for CEE than as a basis for policy dialogue with the applicants. This is all the more important since the EU has changed enormously since the Mediterranean enlargement, encompassing new policy fields - such as the environment, monetary union, justice

and home affairs, and foreign policy - that require a high level of administrative capacity and institutional sophistication. Even traditional flanking measures for the Single Market related to health and safety concerns have become much more complex. In this context, not only must applicants meet an elaborate and highly demanding set of rules before they can join, but they also have to show that they can enforce these rules effectively and that they have the capacity to cope with further development of new laws and policies. In the absence of objective criteria for such evaluation, the evaluators acquire enormous discretion.

Tensions and synergies between EU and World Bank priorities for CEE

The above discussion suggests potential tensions or even contradictions between the World Bank's attention to social development needs and the EU's focus on accession requirements. Above all, the two institutions do not suggest exactly the same priorities. EU policies are often cumbersome to administer and implement; they have consequently high opportunity costs in a post-communist context of scarce public resources. In addition, EU agricultural and environmental policies are controversial because they run against other reform efforts. EU environmental standards are very high and hence very expensive to implement, while the Common Agricultural Policy is based on a system of production subsidies and market intervention that runs against the grain of market liberalisation. It remains to be seen how much the EU will change its requirements in these areas over the next two years, during which time it will have to formulate common negotiating positions in these sensitive areas.

The fact that EU aid is so focused on accession clearly leaves a gap for other

agencies, and there are some potential synergies between their programmes in this respect. In all of the CEE countries, the basic institutional infrastructure (legal, political, economic and social) needs considerable strengthening in order to establish economies which are able to attract investment and to compete internationally in the long run. One area of overlap between EU and World Bank priorities, for example, is institutional reform to increase administrative capacity to absorb investment, both public (often from the IFIs themselves) and private (FDI and portfolio investment).

The EU does not particularly stress poverty reduction in CEE among its economic criteria, beyond a general support for improving macroeconomic conditions and long-term competitiveness. The Accession Partnerships have repeatedly stressed the need to reform social insurance and pensions systems in order to make them sustainable within the constraints of limited fiscal deficits, rather than with the aim of improving standard of living of current pensioners or recipients of other social benefits). Similarly, the EU also emphasises restructuring of industry, aimed at increasing the international competitiveness of CEE economies in the longer term; in the short and medium terms, this will create greater explicit unemployment, however, as it uncovers hidden joblessness and under-employment as well as uncompetitiveness. It is striking in this context that combating structural unemployment, a characteristic feature of economies in transition does not figure in the EU blueprint. Similarly, EU competition policy guidelines fail to include considerations of social safety-nets in its approach to subsidy withdrawals and privatisation. Thus, for instance, when Estonia had to choose between competing bidders in the privatisation of its energy

sector, it was discouraged from taking into account differences in severance packages and other social measures flanking the bids.²⁶

There is a clear need for social and other programmes to deal with the large proportion of the population which will continue to lose from transition long before they start to benefit. Even the countries most advanced in transition have major problems with healthcare systems and assistance to the poor (particularly pensioners, the unemployed and those in rural areas) which are not be immediately addressed by successes in marketisation. Many social exclusion problems will in fact be exacerbated by the need for tight fiscal and monetary policies and for industrial restructuring (creating yet more unemployment in the short run). Both the World Bank and the EU need to pay more attention to the need for more systematic employment policies in these countries. More generally, the EU needs to rely more systematically on IFIs and NGOs to supplement and even inspire its own approach to CEE before and after accession. This is already the case to some extent; for example, NGO and IFI attention to the plight of Romania's orphans has caused the EU to press strongly for major improvements children's rights and their treatment in state institutions. Such synergies need to be reinforced and explored in other areas.

Lessons from the EU's experience

We believe that there are a number of lessons from EU aid and accession conditionality for future EU policies towards CEE, as well as those of other international agencies:

- Keep conditionality focused on core priorities and be consistent in pursuing this narrow agenda.
- Set a clear ranking of priorities and ensure that the structure of incentives is tailored to country circumstances.
- Tailor policy templates to a country's level of development rather than transposing them wholesale from advanced economies.
- Ensure that institutional capacity-building measures reflect policy objectives rather than just replicating the structures in advanced economies.
- Conditionality imposed crudely without considering the fit with domestic institutions causes high opportunity costs in a context of very limited human and financial resources.

While it is far from complying with these precepts, the EU has had a major impact on some of the laws and regulations of CEE countries aimed at social inclusion and - maybe more importantly - on standards of enforcement of these regulations. EU aid and financial transfers have assisted this process, encouraging allocation of public resources (both human and financial) to some social objectives. However, the fragmentation of objectives across the EU's agenda and lack of consistent political pressure to combat social exclusion (because it is not an EU priority) have reduced the EU's impact in this area well below its potential. There is thus considerable room for the World Bank and other international agencies to fill the gaps left by the EU in combating social exclusion in the CEE region.

Vitally important poverty alleviation work is being undertaken in countries around the

world where formal data simply is not available, nor likely to be anytime soon. Rather than ignoring these situations and the important lessons they hold, this note argues that the logic underlying more formal quantitative program evaluation strategies can be fruitfully applied using qualitative approaches, yielding insight and ownership that neither approach would attain on its own.

Notes

¹ The term 'CEE' is used in this paper to denote the 10 countries of central and eastern Europe that have applied to join the European Union since 1989. They are part of the Europe, Central Asia (ECA) region, but form a distinct sub-group in that they are subject to strong EU influence as candidates for membership.

² There are ten CEE applicants for membership, and two Mediterranean ones. Six of the applicants (the Czech Republic, Estonia, Hungary, Poland and Slovenia, plus Cyprus) began accession negotiations with the EU in March 1998, and three of them (the Czech Republic, Hungary and Poland) joined NATO in 1999. Bulgaria, Latvia, Lithuania, Romania and Slovakia (plus Malta) opened EU accession negotiations on 15 February 2000. This paper is concerned with the post-communist CEE applicants and does not discuss the Mediterranean ones in detail, but the same conditions formally apply to Cyprus, Malta and any country that applies to join the EU in future.

³ In this paper, the concept of social exclusion is understood broadly as a multi-dimensional socio-economic conception of deprivation, including types of exclusion from social systems that do not result from lack of resources.

⁴ See Grabbe and Hughes 1998.

⁵ See Grabbe 1999.

⁶ See Grabbe 1998.

⁷ To use a characterisation of capitalist systems in Western Europe developed in Rhodes and Apeldoorn 1998.

⁸ Nicolaidis 1996.

⁹ In 1998 the first Accession Partnerships were published: see Section II below.

¹⁰ Nicolaidis 2000.

¹¹ Assessment in the 1999 Regular Reports issued by the European Commission.

¹² Meaning 'lighthouse' in French, the acronym stands for 'Poland and Hungary Assistance for the Reconstruction of the Economy', but the programme was extended to cover all ten applicants for membership plus several former Yugoslav republics and Albania.

¹³ See Deacon et al. 1997.

¹⁴ ISPA = 'Instrument for Structural Policies for Pre-Accession'.

¹⁵ SAPARD = 'Special Accession Programme for Agriculture and Rural Development'.

¹⁶ Démarches are serious public criticisms, issued as part of EU foreign policy by unanimous inter-governmental agreement between the member states.

¹⁷ See Brusis 1998.

¹⁸ See Grootaert 1995 and 1997.

¹⁹ Majone 1996.

²⁰ Accession Partnerships of October 1999.

²¹ See Mayhew and Orłowski 1998 on the potential economic impact of social regulations on enterprises.

²² See Commission of the European Communities 2000a and 2000c.

²³ Grabbe and Hughes 1998.

²⁴ This approach is in contrast to the one for the Mediterranean countries that joined in the 1980s, which were poor and still in transition from dictatorship. Greece, Portugal and Spain were given large financial transfers from the EU budget and also long transitional periods to allow them to catch up with EU policies after they joined.

²⁵ Nicolaidis 1993.

²⁶ Author interview, July 2000.

Appendix

Table 1: Phare sectoral allocations

By main sectors 1990-93 and 1994-96 (% of total Phare commitments)

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

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

Table 2: Total Phare commitments, contracts and payments, 1990-1998 (in million € Euro)

Sector	Commitments	Contracts	Payments
Administration & public institutions	761.23	395.35	291.58
Agricultural restructuring	562.60	459.01	438.57
Civil society and democratisation	104.84	79.79	64.95
Education, training and research	1,012.09	959.93	867.51
Environment and nuclear safety	753.12	544.62	447.19
Financial sector	268.68	257.82	248.76
Humanitarian, food and critical aid	533.02	521.07	501.52
Infrastructure (energy, transport and telecoms)	2,145.59	1,298.24	958.04
Approximation of legislation	84.07	73.81	19.66
Consumer protection	12.91	12.63	8.97
Private sector, privatisation & restructuring, SMEs	1,156.02	924.98	815.81
Integrated regional measures	340.15	124.91	83.34
Social development and employment	272.84	233.64	202.37
Public health	105.57	98.92	88.46
Other (multidisciplinary, general technical assistance, etc.)	778.15	712.59	552.39
Total	8,890.88	6,697.3	5,589.10

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