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Reinvigorating the Enlargement Process and Strengthening the EU's Integration Capacity: Insights from MAXCAP

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REINVIGORATING THE ENLARGEMENT PROCESS AND STRENGTHENING THE EU'S INTEGRATION CAPACITY: INSIGHTS FROM MAXCAP

Policy Brief

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Reinvigorating the Enlargement Process and Strengthening the EU's Integration Capacity: Insights from MAXCAP¹

Key Recommendations. The EU should:

Open up the debate on enlargement

- Inform the public in current candidates and the member states about the rationale, process and progress in ongoing enlargement negotiations.
- Open the public debate on enlargement early enough and before accession (should be done by national governments and not only by the European Commission).
- Encourage debates in national parliaments and with citizens of member states and candidate states on key issues arising in ongoing accession negotiations.
- Highlight not only economic effects of enlargement but ideals and the vision behind enlargement choices and the importance of enlargement for stability, security and better governance on the continent.

Increase the efficiency of pre-accession policies to foster inclusive development

- Facilitate the development and monitoring of impact assessments that help the candidates to identify potential negative economic and social consequences of compliance with the internal market *acquis* at the level of sectors and territorial units.
- Include a broad range of state and non-state actors from the candidate countries (e.g. business associations, trade unions) when assessing the economic and social costs of integration with the internal market and remedial measures.

Increase the efficiency of policies to enforce the rule of law

- Ensure that the focus of current pre-accession measures is not exclusively on professionalizing judges and recruitment and training, at the expense of paying insufficient attention to democratic accountability.
- Ensure the structural inclusion of reform-minded civil society organizations in post-accession tools aimed at monitoring rule of law enforcement. Make established NGOs a regular partner in the discussion between the Commission and the candidate states' governments.

The 'big-bang enlargement' of the European Union (EU) has nurtured vivid debates among academics, practitioners and EU citizens about the consequences of 'an ever larger Union' for the EU's integration capacity. Over the past two years MAXCAP has examined whether the Eastern enlargement of 2004 and 2007 has limited the EU's internal capacity to enlarge further and its external capacity to support the political and economic integration of non-members.² These questions have not lost relevance, quite to the contrary.

1 The brief draws upon the findings of the EU-funded research consortium "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP) (<http://maxcap-project.eu>). The MAXCAP Policy Task Force for this policy brief included Tanja Börzel, László Bruszt, Antoaneta Dimitrova, Adam Fagan, Julia Langbein, Ulrich Sedelmeier and Asya Zhelyazkova.

2 Schimmelfennig, F. (2014) 'Enlargement and Integration Capacity – A Framework for Analysis', *MAXCAP Working Paper No. 1*, Berlin: Freie Universität Berlin.

Current internal and external challenges for the EU range from solving the refugee crisis to growing public contestation about EU politics, cumbersome accession negotiations with Western Balkan countries and Turkey as well as an unstable neighbourhood. MAXCAP's first Policy Brief³ presented our recommendations for the EU policy towards the Eastern neighbourhood countries. Our second Policy Brief puts emphasis on the policy implications of our interim research findings for the EU's approach to support political and economic change in current and potential candidate countries so as to avoid disintegrative tendencies in the post-accession period.⁴

The good news about enlargement

The EU political system has not suffered from enlargement. We find evidence that the political integration of the Central and Eastern European countries (CEEC) has not undermined the EU's capacity to adopt and implement EU law. The process of institutional EU enlargement has progressed slowly but steadily. Notwithstanding strong fluctuations in enlargement events from year to year, new members have generally been able to integrate further, e.g. in the Euro and Schengen areas. Candidate countries have moved closer to membership or deepened their integration with the EU.

Moreover, enlargement has not thwarted the institutional reform of the EU; nor has it disrupted the EU's capacity to make decisions, establish binding rules, and implement them effectively. Contrary to initial fears of many policy-makers, media and academic commentators, there is no evidence that the Eastern enlargement has led to institutional gridlock of the decision-making machinery or to a loss of problem-solving capacity.⁵ Enlargement has had a rather limited impact on the production of legislation and on the duration of the decision-making process. There is also little evidence that enlargement has weakened the EU legal system. The larger and more diverse membership has not led to an increased use of non-binding soft law at the expense of hard, binding legislation. Enlargement has induced a greater use of differentiated integration – where legislation is not uniformly binding on the entire membership – but such differentiation has only been temporary. Finally, the new members have not increased problems with national implementation of EU law. On the contrary, non-compliance in the enlarged EU has decreased. At the institutional level, the EU thus appears to have been capable of absorbing the intake of a large number of new member states without a loss in its internal integration capacity to enlarge further. On the one hand, these somewhat surprising developments can be explained by institutionalized tendencies in the EU to find mutually beneficial solutions that accommodate the preferences and capacities of all member states. The recent European refugee crisis is a clear example for such a tendency, where the new member states were convinced to withdraw their resistance to accepting refugees within their territories. On the other hand, the observed positive trend does not imply that the new member states comply equally well with all policy areas. It remains to be seen to what extent the new member states comply with decisions that they initially did not support. Recent findings show the new EU member states experienced more problems implementing the EU Justice and Home Affairs

3 MAXCAP Policy Task Force (2015) '10 Years of the ENP – The Way Forward with the EaP', *MAXCAP Policy Brief No. 1*, August 2015, Berlin: Freie Universität Berlin.

4 For a summary of our interim scientific findings see Schimmelfennig, F.; Börzel, T.; Kortenska, E.; Langbein, J. and Toshkov, D. (2015) 'Enlargement and the Integration Capacity of the EU – Interim Scientific Results', *MAXCAP Report No. 1*, Berlin: Freie Universität Berlin.

5 Toshkov, D. (2014) 'The Effects of the Eastern Enlargement on the Decision-Making Capacity of the European Union', *MAXCAP Working Paper No. 5*, Berlin: Freie Universität Berlin.

directives than most of the ‘old’ member states.⁶ Ongoing MAXCAP research is working on substantiating these claims.⁷

Eastern enlargement has not deepened economic divergence between old and new members. During the 2004 and 2007 Eastern enlargement the EU did not leave developmental outcomes of economic integration to the power of the market. EU accession, of which the regulatory integration with the EU internal market was an important part, increased economic and political interdependence between the CEEC and the EU insiders. The latter were forced to prevent the marginalization and destabilization of weaker economies in Central and Eastern Europe (CEE). This could have increased the risks of non-compliance on the part of the CEEC in the post-accession period, endangered the functioning of the internal market and reduced the welfare gains for the EU insiders. The EU, and particularly the European Commission, developed capacities and tools to anticipate and alleviate such major negative developmental consequences of rule transfer during the Eastern enlargement.⁸ The way the EU has managed the economic integration has helped to bring in the fledgling market economies from Central and Eastern Europe afloat into the strongest regional market in the globe, and to turn their markets into important export destinations and production platforms for EU insiders. Overall, the CEEC managed to upgrade their production profiles, albeit to varying degrees.⁹

The bad (or at least sobering) news about enlargement

The public perception and political debate are not acknowledging the positive effects of enlargement – quite on the contrary. In spite of the described smooth institutional transition and overall welfare gains, public opinion has become increasingly skeptical of further enlargement. At the same time, public support for further enlargement varies strongly depending on the non-member state in question.¹⁰ While public opinion results are not encouraging for future enlargements, MAXCAP research into citizens’ perceptions of enlargement offers more nuanced findings.¹¹ We researched how citizens view the Eastern enlargements and potential future enlargements in the old member states, such as Germany and the Netherlands, the 2004 and 2007 entrants (Poland and Bulgaria) as well as candidate states, such as Serbia and Macedonia. We find that future enlargements are not a priori rejected in the Netherlands and Germany, even though these member states are currently seen as the most critical and reluctant to support future enlargements. In both countries we find idealistic and supportive discourses, which refer

6 Zhelyazkova, A. (2014) ‘From Selective Integration into Selective Implementation’, *European Journal of Political Research* 53(4): 727–746.

7 MAXCAP’s next policy brief will discuss the implications of the refugee crisis for our findings about the effect of enlargement on the EU’s internal decision-making capacity, and will present recommendations on how to improve rule enforcement in certain policy areas.

8 Bruszt, L. and Langbein, J. (2015) ‘Development by Stealth. Governing Market Integration in the Eastern Peripheries of the European Union’, Paper presented at the European Union Studies Association Conference, Boston, 5-7 March.

9 Bruszt, L. and Vukov, V. (Forthcoming) ‘Varieties of Backyard Management: EU Integration and the Evolution of Economic State Capacities in the Southern and Eastern Peripheries of Europe’, in P. L. Gales and D. King (eds), *Restructuring European States*, Oxford: Oxford University Press.

10 Toshkov, D.; Kortenska, E.; Dimitrova, D. and Fagan, A. (2014) ‘The “Old” and the “New” Europeans: Analyses of Public Opinion on EU Enlargement in Review’, *MAXCAP Working Paper No. 2*, Berlin: Freie Universität Berlin.

11 Dimitrova, A.; Kortenska, E. and Steunenbergh, B. (2015) ‘Comparing Discourses about Past and Future EU Enlargements: Core Arguments and Cleavages’, *MAXCAP Working Paper No. 13*, Berlin: Freie Universität Berlin.

to enlargement enhancing the EU's global role and the EU as a community of democratic values. The research also sheds light on attitudes that are more skeptical. It reveals that citizens are often critical of enlargement as an EU policy because they would like to be informed better and in a more timely manner and to be more involved in enlargement decisions and steps. Last but not least, a significant finding in the six country studies is that in old, new and candidate states alike citizens expect enlargement to be a rule-based, objective process and to proceed according to clear criteria. In new member states and candidates, the view that enlargement should bring better governance is coupled with disappointment in national politicians and their reluctance to improve rule of law, combat corruption and provide open access to institutions and services.

The EU lacks tools to shape developmental outcomes in a positive way. The way the EU managed the economic integration of the CEEC during the Eastern enlargement was primarily about preventing large-scale economic collapse in an ad-hoc manner. The EU did not have tools at hand that would have helped these economies to match the domestic developmental needs with the requirements of honoring the rules of the single market.¹² Longer-term positive effects of EU interventions on catch up growth or on the broad-based distribution of the benefits of market integration within the Central and East European economies are questionable. The vulnerabilities of CEE economies to fluctuations in the single market are high and large sections of the societies in the CEEC could not benefit from economic integration. The EU has weak capacity to anticipate and alleviate developmental gridlocks in these countries. The enduring crisis in the weaker economies of the Southern peripheries of the EU has already shown the weakness of the way the EU used to manage competitive asymmetries during the Southern enlargement. In the new member states of Central and Eastern Europe it is a growth of economic nationalism, undermining democratic quality, which signals the weakness of the same strategy.¹³

The EU lacks tools to 'lock-in' political change. Political institutional change in the new member states is not necessarily set in stone.¹⁴ Preliminary findings on the ability of the EU to 'lock-in' political change and prevent backsliding support this assessment. In the absence of supportive domestic coalitions, weaknesses of democratic quality and governance capacity are difficult to redress in accession negotiations or by post-accession sanctioning.¹⁵ Victor Orban's agenda to build an 'illiberal democracy' in Hungary and the EU's inactivity in this respect is the most popular example for this phenomenon, albeit not the only one. Furthermore, the mere transfer of rule of law institutions during accession negotiations is not sufficient to ensure effective implementation after accession. Cases where domestic improvements have been achieved suggest that the EU can only foster change together with civil society and broad societal mobilization.

12 Bruszt, L. and Langbein, J. (2015) 'Development by Stealth. Governing Market Integration in the Eastern Peripheries of the European Union', Paper presented at the European Union Studies Association Conference, Boston, 5-7 March.

13 MAXCAP researchers are currently examining the effectiveness of post-accession tools the EU has available to mitigate competitive asymmetries and foster social cohesion within and across its member states. So far, our preliminary findings imply that the governance of structural funds needs major reforms: the transfers from the EU do not help to reduce developmental disparities; they serve more as free rents in the hands of central governments. We will present our findings and policy recommendations towards the end of the project in March 2016.

14 Börzel, T. (2014) 'Coming Together or Drifting Apart? Political Change in New Member States, Accession Candidates, and Eastern Neighbourhood Countries', *MAXCAP Working Paper No. 3*, Berlin: Freie Universität Berlin.

15 Börzel, T. (2015) 'Building Sand Castles? How the EU Seeks to Support the Political Integration of its New Members, Accession Candidates and Eastern Neighbours', *MAXCAP Working Paper No. 9*, Berlin: Freie Universität Berlin.

In the post-accession period, the EU lacks effective strategies to address implementation deficits due to the absence of specific prescriptions regarding legal and institutional changes in this area.¹⁶

Recommendations to strengthen the integration capacity of the EU

Open up the debate on enlargement. In the candidate countries the EU's enlargement policy should provide channels for citizen participation. Civil society programs and instruments, such as the ones used in the context of the Western Balkans, are useful and important. Above all, the EU should seek for tools to empower citizens in their push for reforming their own governments. Consultations and negotiations on difficult reforms should include citizens' representatives and NGOs as equal partners rather than in optional consultation after the fact.

In the member states the EU should inform the population and civil society better about the rationale and progress of enlargement negotiations. This should be above all the task of member state governments, which are and will remain key veto players in enlargement negotiations. The information campaign and debates on enlargement should not be left for the last moment when accession treaties have already been prepared. Instead, governments should inform the public and parliaments of key decisions taken in the Council of Ministers on negotiation chapters. In this way, the justified impression of many citizens that they have not been informed or involved in a process which will ultimately affect them all, will be avoided. In past enlargements, discussion of the candidates and their readiness came only at the end when citizens rightly perceived that they were being faced with *faits accomplis* and that their opposition or support would hardly matter. Parliamentary debates on ongoing accession negotiations have been very scarce as well. Regular debates in parliament and public discussions can create at least the opportunity for citizens to be better informed about the logic, progress and crucial steps of accession negotiations.

Next to national governments, European parties could play a role in opening up the debate on enlargement. European parties could play a key role in 'Europeanizing' the public discourse in this respect. Enlargement should not be presented only as a source of potential economic gains or losses, either. The ideals and vision behind enlargement choices, the importance of enlargement for stability and security and for improving governance in Europe should be communicated and discussed with citizens.

Increase the efficiency of pre-accession policies to foster inclusive development. In the pre-accession period the EU should not limit itself solely to ad-hoc negative developmental strategies aimed at preventing economic collapse of candidate countries. Such an approach to governing market integration might fuel disintegrative tendencies in the post-accession period. The EU should develop more activist pre-accession policies that aim at improving the match between the requirements of implementing the uniform EU rules and local developmental needs. There is a need to create developmental capacities both at the level of the EU and in the new member states to anticipate and manage the developmental consequences of rule

16 Dimitrova, A. (2015) 'The Effectiveness and Limitations of Political Integration in Central and Eastern European Member States: Lessons from Bulgaria and Romania', *MAXCAP Working Paper No. 10*, Berlin: Freie Universität Berlin; Fagan, A. and Sircar, I. (2015) 'Judicial Independence in the Western Balkans: Is the EU's "New Approach" Changing Judicial Practices?', *MAXCAP Working Paper No. 11*, Berlin: Freie Universität Berlin.

transfer at the level of local economies, sectors and territorial units. More activist pre-accession policies could include, among other tools, the introduction of impact assessments that investigate the potential negative economic and social effects of compliance with the EU internal market *acquis* on key sectors and/or territorial units in the candidate countries' economies. Impact assessments should also describe how negative economic and social effects could be mitigated and the range of beneficiaries extended through changes in the capacities of domestic actors and institutions, and/or EU funds or co-financing measures by the European Bank for Reconstruction and Development, the European Investment Bank or International Finance Institutions. The European Commission and the national governments of the candidate country should involve local actors, such as firms, business associations and trade unions in the writing of sectoral and/or regional impact assessments and in the monitoring of their enforcement.

Develop (more) effective mechanisms to enforce the rule of law. The rule of law has become a priority area of strengthening external integration capacity after the 2004 and 2007 enlargements. First, however, the absence of specific prescriptions regarding legal and institutional changes, plus the lack of substantive consensus across the EU makes policy objectives in the area of judicial reform unclear. This undermines effective conditionality and capacity-building. Second, the EU still tends to over-emphasize judicial independence without concomitant measures to strengthen checks and balances between the executive, legislature, and judiciary during accession negotiations with current candidates. There needs to be greater recognition of the fact that EU assistance and conditionality around strengthening judicial independence and training can engender unintended consequences. For instance, it can make the judiciary too powerful, unaccountable, and even discredit the rule of law in the eyes of the public. Whilst there is no suggestion here that judicial autonomy is not important and that better training is not desirable, there is a very fine balance to be struck between autonomy and accountability. Finally, the EU should aim to ensure the structural inclusion of reform-minded civil society organizations and other societal actors (education institutions, trade unions, think tanks) in negotiations and monitoring especially with regard to areas which require broad societal consensus for reform, such as rule of law.



“Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond”

The ‘big bang enlargement’ of the European Union (EU) has nurtured vivid debates among both academics and practitioners about the consequences of ‘an ever larger Union’ for the EU’s integration capacity. The research project MAXCAP will start with a critical analysis of the effects of the 2004-2007 enlargement on stability, democracy and prosperity of candidate countries, on the one hand, and the EU’s institutions, on the other. We will then investigate how the EU can maximize its integration capacity for current and future enlargements. Featuring a nine-partner consortium of academic, policy, dissemination and management excellence, MAXCAP will create new and strengthen existing links within and between the academic and the policy world on matters relating to the current and future enlargement of the EU.