



CONSOLIDATING AND REVITALIZING ENLARGEMENT: FURTHER INSIGHTS FROM MAXCAP

Policy Brief

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Consolidating and Revitalizing Enlargement: Further Insights from MAXCAP¹

Key Recommendations

- The European Union (EU) needs to develop more effective and more flexible instruments for preventing democratic backsliding among its member states. The current Article 7 sanctions are not sufficiently credible because of the near-unanimity requirement. Post-accession sanctions should combine the codification of a democracy and good governance *acquis*, impartial assessment (e.g. by the Venice Commission or the European Court of Justice), and a range of limited, preferably financial sanctions.
- The EU needs to deepen its mode of economic integration and develop mechanisms to anticipate and alleviate negative consequences of rules transfer as it expands trade liberalization and regulatory alignment to the Eastern Partnership countries.
- The EU's structural and regional policies need to be reoriented to create better preconditions for investment and growth in more backward regions of the new member states.
- EU member state governments and institutions should approach and engage citizens and grass-roots movements directly in an open and fact-based dialogue at the early stages of an enlargement process. Communication and debate should emphasize common European values and principles, including the rule of law, which are shared throughout the member states.
- The 'new approach' matches well with citizens' core concerns about enlargement but needs to work more bottom-up in cooperation with civil society organizations and monitor potential unintended effects of new institutions designed to strengthen the judiciary but actually providing new venues for political manipulation.
- The same is true for the use of the post-accession Cooperation and Verification Mechanism (CVM) in Bulgaria and Romania. In addition, the EU should avoid measures that undermine the legitimacy of the CVM – such as the questionable issue-linkage with Schengen accession that some member states made to attach material incentives to the CVM.

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 Frank Schimmelfennig.

Introduction

Over the past three years, MAXCAP has analyzed the internal and external integration capacity of the EU in relation to the 2004 and 2007 enlargements. Internal integration capacity refers to the capacity of the EU to integrate new member states into its political, legal, and economic system, to avoid disruption, and further cohesion in the EU. External integration capacity, in turn, denotes the capacity of the EU to integrate non-member states by strengthening their ability to become members, by aligning their institutions and policies with those of the EU and by promoting stability in its neighbourhood.

This policy brief builds on and complements MAXCAP's Policy Brief No. 2.² We identify three sets of findings on the state of EU integration capacity and general policy recommendations. First, internal integration capacity has proven strong at the organizational level of the EU. Second, and at the same time, political and economic cohesion and convergence at the level of member states (and beyond) has been more limited and unbalanced. Third, external integration capacity has weakened.

The focus of the policy brief is to describe which EU strategies and policies have worked well and less well in the past (or have had unintended effects) – and should either be maintained, applied more broadly, or reconsidered. It is an important caveat that we can generally not claim with confidence that policies, which worked in one context, will also work in another context – or that untried policies will work better than failed policies. But we can at least point to issues and areas, in which policy reform is needed.

Institutional integration capacity

Internal integration capacity at the level of EU institutions and policies has proven strong. According to our findings, the EU's new member states have not disrupted but integrated themselves successfully into the EU's political and legal systems. There is no evidence that Eastern enlargement has led to institutional gridlock and loss of decision-making capacity. Whereas there is some evidence that the new member states have distinct preferences from the older member states in a few policy areas, they are seldom able to act as a cohesive group, let alone derail the decision-making process.³ Nor has Eastern enlargement led to a deterioration of compliance with EU law. To the contrary, the Central and Eastern European new member states have on average a better compliance record than both the old member states and the new member states in earlier enlargement rounds. This fact is best explained by the legacy of accession conditionality.⁴ Moreover, efficient transposition does not come at the price of weak implementation with regard to practical application of EU

2 MAXCAP Policy Task Force (2016) 'Reinvigorating the Enlargement Process and Strengthening the EU's Integration Capacity: Insights from MAXCAP', *MAXCAP Policy Brief No. 2*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

3 Toshkov, D. (2015) 'The Effects of the Eastern Enlargement on the Decision-Making Capacity of the European Union', *MAXCAP Working Paper No. 5*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

4 Sedelmeier, U. and Börzel, T. A. (2016) 'Compliance with European Union Law in the New Member States after the Eastern Enlargement', *MAXCAP Working Paper No. 19*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

law on the ground. Except for the area of social policy, the new member states do not lag behind the old member states in practical implementation.⁵ Finally, the new member states have converged towards normal levels of differentiated integration in the EU – especially when compared to the benchmark of the Southern member states, which are most similar in wealth and capacity to the Eastern members.⁶ We conclude that, with regard to the EU’s institutions of decision-making, legal integration, and policy implementation, there is no identifiable need for reforms to enhance the integration capacity of the EU.

Political and economic integration capacity

Cohesion and convergence among EU member states and beyond have been limited and unbalanced. This is true for both the broader political and economic integration.

Political integration

Whereas democracy and governance effectiveness have improved overall in Eastern Europe, the countries of Central Europe, Southeast Europe, and Post-Soviet Europe have been moving on distinct paths and unable to catch up with the old member states. EU accession conditionality has had a positive impact on the political development of candidate countries. Unless the EU offers membership, however, it does not produce any systematic effects in its neighbouring countries. Moreover, the EU’s capacity to improve democracy and governance effectiveness weakens again, once candidate countries become members.⁷

In addition to maintaining the credibility of accession conditionality in the candidate countries (see below), the EU needs to do two things. On the one hand, it should signal to non-candidate countries that they have a general accession perspective – even if it is distant. On the other hand, the EU should develop more effective and more flexible instruments for preventing democratic backsliding among its member states. The current Article 7 sanctions are not sufficiently credible because of the near-unanimity requirement in the European Council and party-politically motivated protection of illiberal governments in the European Parliament.⁸ Whether the newly established rule-of-law mechanism will be effective remains to be seen. Accession conditionality derives its credibility from clear legal foundations, an apolitical, technocratic assessment mechanism, and tangible incentives. Post-accession conditionality could build on the same model and combine the

5 Zhelyazkova, A.; Kaya, C. and Schrama, R. (2016) ‘Notified and Substantive Compliance with EU Law in Enlarged Europe: Evidence from Four Policy Areas’, *MAXCAP Working Paper No. 21*, “Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond” (MAXCAP), Berlin: Freie Universität Berlin.

6 Schimmelfennig, F. and Winzen, T. (2016) ‘Eastern Enlargement and Differentiated Integration: Towards Normalization’, *MAXCAP Working Paper No. 20*, “Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond” (MAXCAP), Berlin: Freie Universität Berlin.

7 Börzel, T. A. and Schimmelfennig, F. (2016) ‘Coming Together or Drifting Apart? The EU’s Political Integration Capacity in Eastern Europe’, *MAXCAP Working Paper No. 23*, “Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond” (MAXCAP), Berlin: Freie Universität Berlin.

8 Sedelmeier, U. (2016) ‘Protecting Democracy inside the European Union? The Party Politics of Sanctioning Backsliding in the European Parliament’, *MAXCAP Working Paper No. 27*, “Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond” (MAXCAP), Berlin: Freie Universität Berlin.

codification of a democracy and good governance *acquis* beyond the general principles listed in the Treaty, impartial assessment (e.g. by the Venice Commission or the European Court of Justice), and a range of limited, preferably financial sanctions to be decided by a qualified majority.

The Cooperation and Verification Mechanism, a post-accession instrument to promote judicial reform and the fights against corruption and organized crime in Bulgaria and Romania, has been useful but of limited effect. Our research suggests that its impact has been most noticeable when preventing or reducing assaults on existing institutional achievements. Moreover, it provided a platform for committed domestic actors to instigate domestic debate and exert pressure for reforms. At the same time, the institutional focus of the CVM is insufficient to address problems, such as corruption, which are deeply rooted in society. We therefore propose a stronger orientation of the CVM towards the support of civil society. Finally, since the power of the CVM relies primarily on the legitimacy of the EU as an institution, measures that undermine the legitimacy are detrimental to its impact – such as the selective use of the CVM towards Bulgaria and Romania, the questionable issue-linkage with Schengen accession that some member states made to attach material incentives to the CVM.⁹

Economic integration

Regarding the EU's economic integration capacity, our findings are equally ambivalent. The EU has created opportunities for trade, investment, and regulatory improvement but at the same time exposed the weaker economies of the East to market pressures on non-competitive industries and backward regions.¹⁰ Somewhat surprisingly, convergence to EU requirements of efficient judiciary increases the chances of social convergence. The successful transfer of EU rules has also had a positive effect on Foreign Direct Investment (FDI), and labor productivity. As a combined effect of improved institutional conditions and the changing investment strategies of the largest European multinational firms, the strongest economies of Eastern and Central Europe have converged to the core countries at the level of the structure of their production and export. In the Eastern neighbourhood, however, such assistance has not been forthcoming. As long as governments in this region could pick and choose the extent and areas of integration, as they could under the initial European Neighbourhood Policy, this lack of support was less problematic than it is under the comprehensive free trade regime of the Eastern Partnership. In order to avoid destabilizing non-member countries further economically – and, ultimately, politically – the EU needs to deepen its mode of economic integration and develop mechanisms to anticipate and alleviate negative consequences of rule transfer.¹¹

9 Dimitrov, G.; Haralampiev, K. and Stoychev, S. (2016) 'The Adventure of the CVM in Bulgaria and Romania', *MAXCAP Working Paper No. 29*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

Sedelmeier, U. and Lacatus, C. (2016) 'Compliance with the CVM's Anti-Corruption Demands in Bulgaria and Romania', *MAXCAP Working Paper No. 19*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

10 Bruszt, L.; Langbein, J.; Vukov, V.; Bayram, E. and Markiewicz, O. (2015) 'The Developmental Impact of the EU Integration Regime: Insights from the Automotive Industry in Europe's Peripheries', *MAXCAP Working Paper No. 16*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

11 Bruszt, L. and Langbein, J. (2016) 'Varieties of Disembedded Liberalism. EU Integration Strategies in the Eastern Peripheries of Europe', *MAXCAP Working Paper No. 26*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

Not all is well in the new member states either. In the absence of post-accession policies that could address the developmental problems of the Eastern new members in a European context, economic convergence is based primarily on the availability of cheap highly skilled labor, preventing any considerable convergence to the core countries at the level of consumption.¹² While the EU's cohesion funds have contributed to the new members' wealth, they also increased the gap between more and less advanced regions as well as the gap between the central state and local governments. This has resulted in part from the increasing focus of Cohesion Policy on efficient spending and the co-financing requirements.¹³ The EU's structural and regional policies thus need to be redirected to create better preconditions for investments and growth in more backward regions. This would imply a reduction of co-financing requirements and a revival of the decentralization agenda.

Enlargement strategy

At a time when the EU faces new geopolitical challenges as a result of the Ukrainian crisis and the refugee crisis, the enlargement process has largely stalled in the Western Balkans, Turkey, and beyond as a result of weak credibility of the membership perspective.

Public opinion and discourses

Public opinion in the member states has become increasingly unfavorable to future enlargements of the EU. Negative public opinion in the EU member states is a major limiting factor of any future enlargement. It reduces the credibility of the EU's membership promise – in particular, if old member states raise the possibility of putting accession treaties to a referendum. As a result, non-member states cannot be sure to join even if they comply with the accession conditions. This uncertainty about being ultimately rewarded for reforms with membership will diminish the non-members' readiness to engage in reform.

The previous absence of an open and fact-based political and public debate on Eastern enlargement, especially in the older member states, has contributed to fueling anti-immigrant and Eurosceptic sentiments; the lack of deliberation and consultation about the process seems to be one of the major concerns of citizens in the member states. Elite communication on enlargement has focused too much on material costs and benefits, whereas pro-European discourses based on common values, ideals and identities have remained in the background.

The analysis of citizens' perceptions and understandings in six member and candidate states about the process of enlargement presents a far more nuanced and optimistic picture than public opinion surveys, as a

12 Bruszt, L. and Vukov, V. (2015) 'Transnationalizing States in Europe's Peripheries: European Integration and the Evolution of Economic State Capacities in the Southern and Eastern Peripheries of Europe', *Journal of Comparative Economic Studies* 10 (March 2015): 69-92.

13 Medve-Bálint, G. and Bohle, D. (2016) 'More Integrated but also more Divided: Intended and Unintended Consequences of Foreign Direct Investment and the Cohesion Policy in Eastern Europe', *MAXCAP Working Paper No. 34*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

number of the discourses we find contain supportive arguments for enlargement. Analyses of public discourse show that there are a number of enabling discourses that politicians in favor of enlargement can use to communicate with citizens. A large group of discourses contain arguments suggesting that citizens would accept enlargement if it was objective, rule driven and transparent. The emphasis on impersonal and non-corrupt institutions emerges when citizens define their own expectations from enlargement in the discourse analyses. These expectations can be interpreted as support for the EU's new enlargement strategy with its stronger conditionality and emphasis on rule of law.¹⁴

Our analyses suggest that EU member state governments and institutions should approach and engage citizens and grass-roots movements directly in an open and fact-based dialogue at the early stages of the enlargement process. They should seek a bridging rhetoric that would speak to citizens beyond economic and personal benefits and gains, since those are uncertain and change rapidly. Rather emphasis in rhetoric should be placed on the shared and common European values, ideals, principles, norms and rules when communicating and debating future steps towards widening.

The 'new approach' and judicial reform

The EU's enlargement strategy has been adapted time and again to changing circumstances of enlargement and lessons learned from earlier accession processes. An important recent innovation has been the 'new approach' with its focus on the rule of law and judicial reform. Whereas the new approach addresses weaknesses of previous enlargement rounds, and addresses core citizens' concerns about the candidate countries, our research shows that it can also lead to unintended consequences. New, relatively autonomous bodies tasked with training and regulating the activities of judges may unintentionally enable new forms of political manipulation to occur and reinforce conservative practices that serve to undermine the reputation of the judiciary.¹⁵ Simply supporting judicial councils and academies will not necessarily improve judicial practice and deliver more 'independent' judgments. Rather, continual monitoring of and intervention in the new institutions is likely to be necessary.

In addition, the 'new approach' suffers from sticking to the old top-down, intergovernmental channel of accession conditionality. Whereas it is true that strengthening the rule of law requires *governance capacity*, namely robust state and intermediary institutions able to tackle corruption, that civil society has a crucial role to play in driving reform and transforming legal norms and practice is incontestable. Civil society actors need

14 Dimitrova, A.; Kortenska, E. and Steunenber, B. (2015) 'Unintended Consequences of EU Conditionality on (Potential) Candidates', *MAXCAP Working Paper No. 13*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

Kortenska, E. (2016) 'The Limits of EU Enlargement Linked to Citizens' Perceptions of Past and Future Enlargements', *MAXCAP Deliverable 3.6*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

15 Fagan, A. (2016) 'Judicial Reform in Serbia and Bosnia-Herzegovina: Is EU Support and Assistance Augmenting Independence?', *MAXCAP Working Paper No. 24*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

to be brought into such institutions and to participate in policy development and implementation. This holds not only for the Western Balkans but also for the Eastern Partnership countries.¹⁶

Given their capacities and expertise, civil society actors are strongest in the role of monitoring EU integration processes related to anti-corruption. The EU should also encourage synergies and coalition building amongst local Civil Society Organizations (CSOs). The competition for similar donor sources often discourages the co-operation among local CSOs, but this should be changed to reflect a more cooperative guiding principle. The EU and other international donors should further encourage grassroots CSOs to develop alternative sources of funding and ensure that formal and informal anti-corruption networks have a greater geographic spread, particularly in rural areas.¹⁷

New geopolitical challenges

Even with a more credible membership promise and an improved strategy for strengthening the rule of law, the willingness of elites and the capacity of states to reform appear too weak in many (potential) candidate countries to move decisively towards EU membership. The changing geopolitical situation in the region should therefore be seen as an opportunity to reconsider the EU's overall strategy. Challenges such as the Ukraine crisis or the refugee crisis could motivate a more security-oriented strategy with a focus on strengthening the EU's borders and making lasting agreements on migration, energy and other vital security issues. This scenario would require a mainstreaming and acceleration of enlargement policy as one of the EU's responses to the current migration crisis.¹⁸

16 Fagan, A.; Börzel, T. A.; Hafner-Ademi, T.; Lebanidze, B.; Sircar, I. and Stojanoska, B. (2016) 'Societal Actors, State Building and the Rule of Law in the Western Balkans and the Neighbourhood: How Can the EU's Instruments and Strategies Be Strengthened?', *MAXCAP Deliverable 5.4*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.

17 Ibid.

18 Dimitrova, A. (2016) 'The EU's Evolving Enlargement Strategies: Does Tougher Conditionality Open the Door for Further Enlargement?', *MAXCAP Deliverable 4.4*, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), Berlin: Freie Universität Berlin.



“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.