

CHANGING FROM WITHIN? THE INTRA-ORGANIZATIONAL DYNAMICS OF EU ENLARGEMENT

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Abstract

This paper opens up the black box of enlargement, focusing on how the intra-organizational relationships among the Council of the European Union, the European Commission, and the European Parliament affect the process of enlargement. Formally speaking, enlargement is an intergovernmental process, suggesting that member states are firmly in control of its outcomes. However, the EU's supranational actors, specifically the European Parliament and European Commission also attempt to influence enlargement at various stages. I posit that the process of enlargement to the Western Balkans has evolved, influenced by changing constraints which are operating on the aforementioned actors. The added value of this work is in disaggregating the enlargement process based on its institutionalized relationships in both a vertical and horizontal dimension. It provides a supply-side argument for how enlargement policy has evolved from within the EU, rather than simply as a function of external factors.

Keywords

Change; Enlargement; European Union; Institutions

1. INTRODUCTION

The process of contemporary EU enlargement is different from in the past. As Hillion (2011) has insightfully demonstrated, enlargement rounds have varied historically due to internal factors, such as the nature of membership composition, as well as factors external to the EU, like the political, economic and security climate of the day. The requirements for membership have also changed accordingly, producing unique constraints and incentives for actors to engage in the process. Today, the process of enlargement represents a relatively hierarchical, institutionalized and formal mode of governance. Designed to be an objective, predictable and linear process, enlargement is now guided by strict conditions and decision-making procedures, which have their basis in legal agreements and treaties.

Those rigorous membership criteria are usually explained from a demand-side perspective. Specifically, the discrepancy between existing member states and candidates is sufficiently large to merit a rather formal and interventionist enlargement policy in order to bring non-members up to the EU's standards (Schimmelfennig and Sedelmeier 2004; Hillion 2011). Indeed, through contemporary enlargement the EU not only engages in building future members (e.g. Macedonia, Serbia, Montenegro, Albania), but in some cases it also undertakes state-building within the broader enlargement context (e.g. Kosovo, Bosnia and Herzegovina). The demand-side analyses disproportionately focus only on one dimension of enlargement, the relationships between existing members – which formally decide the fate of applicants – and non-members seeking to join the club. Those relationships entail what I term as the *vertical* aspect of enlargement; vertical in the sense that the conditions for membership are imposed top-down by the EU, through a highly asymmetrical institutional relationship with candidates.

However, a limited focus on the vertical dimension does not address how enlargement policy is made within the EU. That is, how the conditions of enlargement are supplied to a candidate state. Enlargement is formally an intergovernmental process, suggesting that member states are firmly in control of its outcomes. At the same time, however, the EU is an aggregate of different sub-organizational actors and interests. It is a forum for intergovernmental bargaining among member states in the Council, which can also be shaped by supranational influence by the European Parliament and Commission. A focus on the *horizontal* relationships among those organizational actors can highlight the underlying processes of political contestation and bargaining which are

missed by many leading studies of enlargement. An important question to ask therefore is how do the inter-organizational relationships *within* the EU affect the *external* application of enlargement policy?

This paper incorporates both the vertical (EU-Candidate) and horizontal (intra-EU) institutional relationships, which are often not treated as theoretically relevant in the enlargement literature. It develops a preliminary model which attempts to shed light on the conditions under which enlargement policy has changed in its application to the states of South Eastern Europe (SEE). Specifically, I argue that enlargement policy has changed, becoming stricter and more demanding of candidate states, but not because of a deepening discrepancy between current and potential members, *per se*. Rather, enlargement has evolved as a by-product of the inter-organizational relationships within the EU, specifically among the Council of the European Union, the European Commission, and the European Parliament, and their jockeying to augment their respective influence over policy. That is, enlargement is changing from within, and not simply due to external factors. And while the end result is familiar, i.e. the persistence of member state authority, supranational actors have nevertheless managed to inform enlargement proceedings to a certain degree.

In order to test my claim, I trace the relationship between the EU and SEE from early the 2000s, which codified their formal relationship and enlargement perspective. An emphasis is placed on the relationships among the three aforementioned actors, specifically in instances where their interactions resulted in the evolution of enlargement policy. In this case, I am concerned with the introduction of integration partnerships and the application of benchmarking during pre-accession, which made attaining membership status more difficult for candidates. By taking a process-based approach, spanning from the establishment of the initial formal agreement with a potential candidate through the process of pre-accession and ultimately membership, the nuances of the enlargement process begin to show.

2. THEORETICAL MODEL

In my application of the concept, enlargement is understood as an institutional process, rather than a final organizational outcome. Broadly speaking, it is the long-term process by which different actors coordinate their behaviours according to a set of common rules and objectives. It entails a

gradual process of exporting the EU's internal institutions to prospective members. Thus, enlargement can be studied as a continuous rather than a simple dichotomous variable. It can also be studied from two analytically distinct yet related dimensions, the vertical and the horizontal.

2.1. Vertical dynamics of enlargement

The vertical dimension of enlargement is set out in Articles 2 and 49 of the TEU, which establish the formal criteria for membership. The so-called Copenhagen Accession Criteria further augment the criteria, requiring conformity to additional political, economic, and membership requirements. The negotiation of the specific conditions under which a candidate state will join the EU is compartmentalized based on the various aspects of the EU *acquis*. Externally, the EU partakes in those negotiations as a unitary actor; the relationship is therefore bilateral at the macro level. However, little work has been done to explain how the EU reaches its common position, besides the usual starting point based on the state-centric assumptions of liberal intergovernmentalism (Moravcsik 2005).

The external relationship is underpinned by conditionality, whereby the EU offers the long term reward of membership - as well as the short term financial, economic and political benefits - as external incentives, in exchange for gradual approximation to EU rules and standards (Schimmelfennig and Sedelmeier 2004). However, a candidate simply meeting the EU's formal criteria for membership is only a necessary but not sufficient condition for membership. These points are further clarified when the EU is disaggregated according to its constituent organizational actors below.

2.2. Horizontal dynamics of enlargement

The horizontal relationships within the EU are codified in Article 49 of the TEU: "The European Parliament and national Parliaments shall be notified of [membership] application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member

States and the Applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements” [emphasis added].

At its core enlargement is intergovernmental, because each member state must sign off on enlargement decisions, i.e. unanimity is required. Furthermore, according to Article 49 adjusting the formal requirements for enlargement is also based on an agreement among member states and the applicant. The less prominent supranational features are exemplified by the role of the Commission in providing its opinion and the European Parliament in providing its final assent. In short, the latter two actors have no formal role at some of the key junctures on the enlargement path.

Only when there is agreement among its constitutive actors can the EU formally supply the conditions of enlargement to meet an external demand by an applicant. When both the vertical and horizontal planes are taken into account, they result in an enlargement bargain, which encompasses the congruence of the EU organizational actors’ preferences internally, and establishes the criteria an external state needs to meet in order for the accession process to unfold. In short, formally institutionalized rules fix into place the actors that are part of the so-called enlargement bargain, how they relate to each other procedurally, and the means by which their behaviour is regulated and directed towards the organizational objective, in this case integrating outsiders.

Importantly, because the formal institutional rules of enlargement impart different roles and powers with respect to different actors, they embody different interests with regard to how enlargement evolves and how those actors interact. By disaggregating the EU according to its constitutive organizational actors and outlining their preferences and ability to influence outcomes, we can obtain a better idea as to how EU enlargement actually unfolds. The preferences of the actors with regard to enlargement decision-making, as well as the main constraints which operate on them, have been theoretically derived and subsequently corroborated through interviews. Despite some intra-organisation differences, by assuming that the preferences of individuals and their respective units are aggregated within each organisational actor, I subscribe to a unitary actor assumption.

Council of the European Union (Council)

The Council serves as both the *de jure* regime maker and gatekeeper to the club. Unanimity is required on key enlargement decisions, meaning that all member state representatives in the Council serve as veto players. As a result, a high threshold of agreement must be attained for enlargement to proceed. Moreover, while sometimes member states disagree on enlargement decisions, where there is always agreement is that “all member states are in favour of strict conditionality” (Interview with Council delegate, 12.05.2014). As articulated above, the bargain is encapsulated in conditionality and the Council in particular is a staunch proponent of strict accession criteria.

The overall objective is that if enlargement does indeed occur, it generally needs to ensure minimal distributional implications for incumbent members. In other words, the costs of enlargement must be borne by the external state. Accordingly, the Council is particularly attuning to issues of enlargement fatigue, and insists on strict conditionality in order to ensure maximum net benefits from accession. However, when the candidate meets the specific enlargement conditions and the Council fails to move the process forward, it can be perceived as not honouring its commitments. This is a direct consequence of its formal institutional role, which gives member states power over key decisions. As a result, the remaining actors can force the issue and pressure the Council, despite its final gate-keeping ability. Thus, a constraint operating on the Council is the obligation to ensure the credibility of the enlargement bargain.

With regard to the other actors, the Council’s primary objective is to retain its already significant authority over enlargement decisions. This entails rebuffing overtures by the Parliament to increase its role in the process, which is a common theme in their relationships over internal EU policy, where the Parliament has succeeded in attaining greater legislative competence. Member states have also tacitly delegated authority to the Commission, which they monitor with caution. The Council can afford the Parliament its often extreme opinion on enlargement matters, “because there are no real consequences from its decisions”, while with the Commission, “the less [member states] are involved, the more room there is for the Commission to move its own agenda” (Interview with Council delegate, 17.03. 2014).

In brief:

Council’s preferences:

1. Retain authority over enlargement (rebuff the Commission and Parliament);
2. Candidates pay the “full price” of admission (minimal cost to incumbent members).

Council’s constraints:

3. Ensuring the credibility of the enlargement bargain.

European Commission (Commission)

Formally, the Commission is not an official signatory party to accession treaties. Its formal role can be described as one of a conditional agenda-setter, based on its role in monitoring and providing recommendations (Tsebelis 2001, 370). In effect, the Commission’s role is contingent on the deferral of authority by member states, because they can equally choose to ignore the Commission’s opinion.

Because the treaties grant significant authority to member states, the main preference of the Commission is to eke out further influence over the process wherever possible. On the one hand, the Commission attempts to do this by expediting the enlargement progress. This is because the role of the Commission gradually increases the further along the process a candidate moves, due to its expertise and the technical nature of the final stages of accession negotiations. On the other hand, consistent with its pro-enlargement organizational posture, the Commission attempts to forge the highest common denominator agreement and push the enlargement agenda forward in the Council.

Reconciling its egoistic interests with the fact that formal authority rests in the Council is, according to a senior level Commission official, the “paradox which we have to navigate” (Interview with Commission official, 13.05.2014). This paradox is compounded by the fact that the further along the path to Europe a candidate is, the greater the role for the Commission. A delegate of a state that recently joined the EU sums up the relationship between the Commission and Council quite well; because the Commission helps candidates and pushes enlargement forward it is “your best friend before membership”. But once those candidates join the Union, the Commission becomes “your biggest enemy after membership” because it then pushes existing members for furthering enlargement (Interview with Council delegate, 18.03.2014).

Accordingly, there is a feeling among member states that the Commission is obsessed with showing success and can often become political in that regard, even pushing for enlargement when the political climate is not necessarily conducive (Interview with Council delegate, 17.03. 2014). However, if the Commission is overly ambitious and overtly contradicts the position of the Council, its authority can be hedged by the member states, which is a significant constraint operating on the Commission.

Moreover, the Commission's opinion and reporting on enlargement to the Council is also dependent upon its relationship with the external state. It must therefore show significant progress domestically in candidates and demonstrate the benefits of enlargement overall for the EU. Consequently, the Commission is better able to attain its preferences for enlargement when the candidate in question shows a good record of reform, and when the Commission can convince member states of the benefits of enlarging the Union.

In brief:

Commissions' preferences:

1. Obtain a greater role over enlargement proceedings where possible.

Commissions' constraints:

2. The extent of its overreach vis-à-vis member states;
3. The ability to demonstrate the success of enlargement policy.

European Parliament (Parliament)

Compared to its influence on internal policy, the Parliament has a minor role in enlargement. Its direct influence stems from the formal requirement to give its assent to the final accession treaties based on a majority vote. This can be interpreted as a "partial veto" over the process of enlargement during its latter stages. However, during the intermediary stages of the process it is often completely side-lined by the Council. Thus, its main objective is to augment its status, ideally to co-legislator, according to the EU's ordinary legislative procedure.

Similar to the Commission, the Parliament also takes a pro-enlargement stance. Underpinned by its relatively higher democratic legitimacy, the Parliament has a more ideational approach to enlargement compared to the Commission and the Council. MEPs, for instance, find pride

in the fact that it represents over 500 million people of the EU, which is a source of its “implicit power” (Interview with EP Secretariat official, 9.10. 2014). Yet, its involvement remains effectively decoupled from the actual decision-making procedures on enlargement policy. In many respects, the Parliament is left in the dark, as it depends on information provided by the Commission regarding the progress of candidates. Its inability to assert itself over enlargement matters in the early stages of the process is attributed to its lack of expertise on enlargement policy and weak capacity to institutionally engage in daily policy-making. This is because enlargement is a political game, and not a legislative game where the Parliament can assert itself and challenge the authority of member states (Interview with EP Secretariat official, 9.10. 2014.).

In brief:

Parliament’s preferences:

1. Attain co-equal status with the Council over enlargement matters.

Parliament’s constraints:

2. Lack of expertise/capacity on enlargement matters.

2.3. Predicting change from within

By disaggregating the key actors and their respective constraints, one can begin to better predict the agents of change in enlargement policy and in which direction that change will occur. In theorizing how change might come about, I employ a hybrid rationalist-historical model rooted in neo-institutionalist assumptions. The neo-institutionalist elements are evident in my understanding of institutions. This paper shifts away from the traditional view of institutions as stable and recurring patterns of behaviour, i.e. as outcomes of equilibrium. Neo-institutionalism sees them as rule structures which not only influence the behaviour of individual agents but that can in turn be affected by those agents (Bulmer 1997, 7). Therefore, while institutions are designed with some end in mind, their creation or internal structure does not automatically lead directly to its attainment. Rather, as Thelen (1999) has argued, institutional agents must actively pursue their goals and maintain the direction of the institution.

The historical influence on my approach draws on the tenants of path dependence and the argument that the establishment of formal institutional rules matters because they limit subsequent actors’ choices and consequently

the scope of their outcomes (Pierson 1996; Levy 1997). In this case, rules codified in formal agreements (e.g. the TEU, Stabilization and Association Agreements) establish the institutional baseline according to which enlargement should proceed. They serve as a reference point to study precisely how enlargement has changed with regard to the Western Balkans from the structure that was put in place upon their initial engagement with the EU.

Importantly, actors occupying different institutional roles will have variable interests regarding institutional persistence or change. This also draws on rationalist accounts, which focus on the maximization of individual utility, and is open to the idea of agents reforming exiting institutions to attain a new equilibrium. While actors like the Council have a tendency to preserve their power and promote institutional persistence which reinforces their power, less advantaged actors like the Commission and Parliament (and to a lesser extent a candidate country) are more likely to exhibit institutional agency and push for change, depending of their respective constraints. This is in line with a common answer as to who wants institutional change. As Mahoney and Thelen (2010) argue, losers from institutional creation seek to ameliorate institutional asymmetries, while those in a position of privilege should seek to reinforce the status quo. Thus, one can hypothesize generally about agents of change:

H1: All else equal, institutionally empowered actors will seek to preserve the status quo and institutionally weaker actors will seek to alter it.

However, this tells us little about whether actors will actually manage to elicit change. Informed by the specific formal institutional rules that were first set out under the TEU (and subsequently SAAs), actors produce contextually-dependent strategies once those rules come into effect, as elaborated in the section on the horizontal dimension of enlargement above. And while actors are constrained by institutions, they also actively seek to alter them to suit their individual interests, which results in renegotiation and contestation that can lead to the creation of new institutions down the line (Stacey 2010, 41).

Expanding on the work of Stacey (2010), I argue that changes in institutional constraints result in an increased probability that evolution in enlargement will come about. A necessary condition for deviation from formal rules is the relaxation of constraints for institutionally weaker actors and/or the increasing constraints for institutionally powerful actors. Actors subject to changing constraints reach an impasse where they will no longer have

appropriate outlets based on the previous institutional logic. Despite the unevenly distribution of formal ability to affect enlargement policy, actors are induced to find alternative means by which to define and advance their interests, either through a new institutional path that is more representative of their interests, or by adapting the existing one (Lieberman, 2002, 704).

Simply stated, if constraints are unchanged, actors have the same incentives to follow formal institutional rules as they had at institutional foundation. If constraints operating on actors have changed, the incentive structure for actors is therefore different, and they are more likely to exhibit institutional agency in order to attain their interests under the altered environment. Under this scenario, the change in constraints provides the impetus for the relevant actors to seek change from the status quo, resulting in institutional adaptation and an altered enlargement bargain. Under such conditions, previously weaker actors like the Commission and Parliament will be better placed to attain their preferences on enlargement. Consistent with actors' preference and constraints as outlined above:

- Council constraints + □ Commission constraints

H2: If the enlargement bargain is challenged, and the Commission can demonstrate the success of enlargement without overreach, it will play a greater role and expedite enlargement.

- Council constraint + □ Parliament constraints

H3: If the enlargement bargain is challenged, the Parliament will be afforded greater influence due to its legitimating role.

The section below tests the above hypotheses by tracing how enlargement policy has unfolded in the case of SEE states. It begins with the establishment of a formal institutional relationship which bound them to the EU in 2001, and which also established how the actors within the EU itself were meant to interact moving forward. It then demonstrates how enlargement policy has evolved, through the introduction of supplementary accession partnerships and benchmarking, which effectively augmented the conditions of membership.

3. THE EVOLUTION OF ENLARGEMENT POLICY TOWARDS SEE

The wars during the breakup of Yugoslavia left the EU handicapped by its inability to prevent and manage conflict in its own back yard. As former EU Commissioner for External Relations Chris Patten admitted "the 1990s was

a decade of despair, death and destitution in the region. It should have been the hour of Europe, but we blew it... We owe it to the people of the Balkans to do everything we can to make this vision [of EU membership] a reality" (Patten 2002). The war in and over Kosovo in 1999 eventually provided the political impetus for the EU which was previously lacking. And by late 2000 the Zagreb Summit sealed a new type of association agreement for the Western Balkans, codified as the Stabilization and Association Process (SAP).

As key components of the SAP, bilateral Stabilization and Association Agreements were eventually negotiated with countries of the region. The SAAs served as an explicit link between the pre-accession process and the preparations for the obligations of membership (Avery 2004, 37). This was a notable shift in EU external relations; resulting in a proactive policy of enlargement based on governing rather than containing its neighbourhood. Part of that change entailed an increasingly rigorous process of pre-accession.

The first of the SAAs came into force in 2004 for Macedonia, the same year that Croatia also gained its candidate status. However, in the wake of CEE states joining in 2004, the EU began to seriously question its ability to digest the new members and to remain operational and effective (Ross 2001, 56). France, for instance, made it explicitly clear that it was prepared to veto any future candidature for the states of the Western Balkans, even if the Commission had provided a positive "avis" on their membership applications. The French concern was that accepting other candidacies would send a signal to other neighbouring countries that enlargement would continue normally (Dousté-Blazy 2005). At that point, the Dutch delegation was also weary of expediting the enlargement process, while the UK sought to reduce the budget allocation for pre-accession assistance, which would seriously hamper any candidate state.

In response, then Enlargement Commissioner Olli Rehn attempted to reassure the sceptics that the granting of candidate status would not mean immediate accession negotiations. As a final compromise, member states were assured by the Commission that new conditions for membership would be established, clearly signalling that the "the next step could be very far away" (Beunderman 2005).

But did the augmented form of the enlargement process really reflect the wishes of member states, or did pro-enlargement supranational actors like the Commission or the European Parliament succeed in expediting the process, consisted with their preferences? The section below reviews the main developments in enlargement policy during that period. It first explains the

logic behind further institutionalizing the relationships with SAP states through so called integration partnerships. It then further specifies the intra-organizational dynamics within the EU, which ultimately shaped the substantive nature of the enlargement process towards states of the Western Balkans.

3.1. The integration partnerships: business as usual

After enlargement to CEE, the Commission proposed the development of a more objective and rigorous pre-accession process for the Western Balkans. Affirming that the integration of the region into the Union was a “priority”, the Commission called for further strengthening the pre-accession process by introducing integration partnerships “in order to supplement the SAAs” for the countries of the Western Balkans (Commission 2003). In application, this meant that more technical issues concerned with individual chapters of the *acquis* would be prioritized earlier in the enlargement process for the SEE states.

This step was a departure from previous enlargements. It illustrates the increasingly rigorous pre-accession process for the Western Balkans compared to any other previous enlargements. This occurred in two institutionalized forms, first European Partnerships and then the updated versions in the form of Accession Partnerships. Similar instruments were used during CEE enlargement. However, in the case of CEE candidates agreed to implement the EU *acquis* upon accession to the Union, while the new process required approximation to EU laws and standards prior to starting accession negotiations. And because the Commission plays a greater role during the technical accession negotiations, by extension the new partnerships also assumed a greater role for the Commission in their formulation and implementation.

Indeed, as initially envisaged, such partnership agreements did not foresee a role for member states, neither in their drafting, implementation nor subsequent amendment. The Commission’s reasoning then was that an active role by the Council would be too time-consuming for member states (Sajdik and Schwarzinger 2008, 33). While member states were willing to give the Commission some leeway, they did not relinquish full control over the development of the partnerships.

Ultimately, it was concluded that the Council will decide on the broader principles and priorities of the partnerships, as well as their

subsequent changes, because they were to have “a significant political impact” (European Council 2004). As a result, the partnerships are formally concluded between the Council and the individual candidate states. However, because the partnerships are supplementary political, rather than legal agreements – like the SAA – they are not formally subject to unanimity. Rather, the Council is meant to formally decide by a qualified majority, based on the Commission’s proposal, the contents and conditions of each European partnership as well as any subsequent adjustments (European Council 2004). Moreover, the altered procedural requirement altogether excluded the Parliament from the process.

The lowered threshold of agreement to qualified majority voting (QMV) rather than unanimity – which is the usual decision-making rule for enlargement matters – makes their implementation more straightforward. Importantly, the absence of a veto threat by a member state indirectly enhances the role of the Commission, which is less constrained and would theoretically not be preoccupied with forging a consensus if one did not exist before. Thus, the lowered threshold of agreement by member states on the integration partnerships, and their increasingly technical nature should have resulted in a greater role for the Commission, as hypothesized above.

Yet, member states continued to reign supreme over the process. Why did member states retain the usual decision-making procedure by unanimity, despite the fact that the formal procedure for determining the content of the partnerships was QMV? Heisenberg (2005; 2012) has shown the significant influence of the informal institution of consensus within the Council. Her work has demonstrated that informal consensus-based decision-making has persisted in the Council for over four decades, despite the fact that consensus sets a higher political hurdle for agreement than the formal treaty requirement of QMV.

In the case of enlargement, the implicit norm according to which member states operated was “diffuse reciprocity”. Diffuse reciprocity can be defined as conformity to generally accepted standards of behaviour based on a series of sequential actions that entail mutual concessions within the context of shared commitments (Keohane 1986, 4). The objective is for all states to compromise and agree so that “nobody loses everything” because all states “have skeletons in their closet” and that must be taken into account down the road (Interview with Commission official, 13.05. 2014). In other words, existing members show solidarity with the “red line” contentious issues that their colleagues might have in the Council. This is particularly important in

enlargement matters when there is an existing bilateral issue between a member and a non-member.

There is also the socialization factor, which rings true particularly in the case of enlargement. Because the issues which are discussed are fundamentally about future colleagues with whom they will eventually share a table, the two enlargement working groups are known as “the diplomatic working groups” because of their insistence on agreement (Interview with Council delegate, 19.03.2014). Taken together, these factors contribute to a “pre-agreement” even before a draft common position is presented. By applying consensus informally in decision-making over the integration partnerships, the Council ensured that any decision does not step on any one member’s toes, which might be the case if the formal QMV rule is retained. This point will be further explicated below through the example of the introduction of benchmarking during enlargement.

3.2. Further attempts at supranational agency

The introduction of supplementary integration partnerships in the process of enlargement represented an additional procedural requirement. They also represented more opportunities for supranational actors like the Commission and Parliament to attempt to inform enlargement proceedings, despite the Council employing the informal norm of consensus and thus constraining them.

The Commission’s 3 Cs of enlargement

In the altered enlargement context, the Commission outlined its new approach for enlargement based on three fundamental pillars: consolidation, conditionality, and communication. Regarding consolidation, the objective was to reaffirm the EU’s interests in enlargement, arguing that “[e]nlargement has always been an essential part of the European project”; regarding conditionality, the Commission warned that “the pace of enlargement must take into consideration the EU’s absorption capacity” (Commission 2005). It also emphasized the need to enhance public support for enlargement, through better communication about its benefits and challenges (Commission 2007).

The Commission’s pro-enlargement stance was affirmed in the syntax of its 3 Cs proposal; consolidating the EU’s interest in enlargement took precedence over concerns about integration capacity (Interview with

Commission official, 13.05. 2014). Unsurprisingly, the Commission viewed the concept of absorption capacity in functional terms, concerned with whether the EU can simultaneously deepen and widen without jeopardizing its objectives as set out in the TEU. It was therefore not a question of one or the other, but how to manage both. For the Commission, future enlargements would nevertheless occur, although the terms thereof might have to be renegotiated.

The Parliament's response: let's get technical

The other proponent of enlargement, the European Parliament, took on the issue and developed a somewhat bold position in response. On the one hand, it pressed the Council to uphold the integrity of enlargement and on the other hand it criticized the Commission for "the superficial way" in which it dealt with the institutional aspects of enlargement (European Parliament 2006). The Parliament thus became more active in matters of enlargement. It started with three resolutions which reiterated the importance of continuing enlargement and further argued that the "responsibility for improving [the EU's] integration capacity lies with the Union and not with the candidate countries"; the Parliament also attempted to augment its role by arguing that its formally proscribed "right of assent should apply not just after the conclusion of the negotiation process but also before the opening of membership negotiations" (European Parliament 2006). Formally, the Parliament assents to the accession treaty (i.e. the conclusion of the negotiation process), and it aimed to augment its status according to the ordinary legislative procedure.

The push by the Parliament to focus on absorption capacity was in order to exert its influence on the decision-making scene, writ large (Interview with EP Secretariat official, 9.10.2014). In fact, the Parliament was rather more concerned with the internal institutional aspects that might be affected by enlargement. In other words, it wanted to make sure that further widening did not affect the deepening side of the equation. Arguably the Parliament was not interested in integration capacity vis-à-vis the Western Balkans as such. Rather it was pushing a parallel agenda based on a dual objective: the internal institutional and treaty reform of the EU, and the recalibration of EU external policy based on a more differentiated structure (Committee on Foreign Affairs 2009).

Back to the status quo: the Council's renewed consensus

Notwithstanding questions of integration capacity, the future European status of the Western Balkans was consistently affirmed by the European Council. For the states concerned, it became more a question of when their accession would occur, not if it would occur. The Council's approach was paradoxical; on the one hand formally affirming the region's European future, while on the other hand being politically concerned about its integration capacity. The Council attempted to reconcile this dilemma by further strengthening its pre-accession procedure, which would serve as a safeguard not only to ensure the EU's interests, but also to keep the candidate countries (at that stage Croatia and Macedonia) on track in their reforms.

The result was the so-called "renewed consensus" on enlargement in 2006, which was a synthesis of the Commission's approach based on the 3 Cs, and the Parliament's insistence on integration capacity. Member states thus agreed that "the enlargement strategy based on consolidation, conditionality and communication, combined with the EU's capacity to integrate new members, forms the basis for a renewed consensus on enlargement"; the consensus required that the EU "keeps its commitments towards countries that are in the enlargement process" based on a new focus on "strict conditionality" (Brussels European Council 2006).

Enhanced conditionality and the renewed consensus emphasized a result-driven approach of enlargement. They were specifically manifested through the introduction of benchmarks in the pre-accession process, notably in the Accession Partnerships. While the "priorities" that were outlined under the European Partnerships had the makings of benchmarks, the new approach would be subject to strict timelines and based on explicit operational roadmaps: Their purpose is to improve the quality of the negotiations, by providing incentives for the candidate countries to undertake necessary reforms at an early stage. Benchmarks are measurable and linked to key elements of the *acquis* chapter. In general, opening benchmarks concern key preparatory steps for future alignment (such as strategies or action plans), and the fulfilment of contractual obligations that mirror *acquis* requirements. Closing benchmarks primarily concern legislative measures, administrative or judicial bodies, and a track record of implementation of the *acquis* (Commission 2006).

Benchmarking affected enlargement at two levels, both in their formulation within the EU, and their application in the relationship between the EU and a candidate state.

3.3. Formulating benchmarks and inter-organizational implications

Although the intention behind the application of benchmarks during pre-accession was rather innocuous and indeed based on rational reasoning, it ultimately resulted in an unanticipated dynamic between the Commission and member states. Ultimately, their introduction resulted in perhaps the most significant procedural change in enlargement policy, as far as the Western Balkans were concerned. Below I detail their significance with regard to three dimensions: formal treaty reinterpretation, increasing the number of veto points, and agenda setting ability. Concertedly, the three dimensions augmented the role of member states in the process, particularly at the expense of the Commission and candidates.

Treaty reinterpretation

The Commission viewed the application of benchmarks in rather functional terms, to make the enlargement process more efficient and more transparent. Moreover, given the technical nature of benchmarks, which were tied to specific provisions of the *acquis*, the Commission expected to have the primary role in their formulation and measurement, as was the case during accession negotiations during CEE enlargement. Alternatively, member states employed benchmarks politically, which arguably had unforeseen legal effects.

As in the case of the European and Accession partnerships, amendments formally remained the prerogative of the member states by qualified majority based on the formal procedure, because they entailed a change in the principles and priorities contained in integration partnership. The Council was also supported by the Commission in its capacity to provide recommendations and monitor progress of the benchmarks. In reality, the Council equated benchmarks during the pre-accession phase of enlargement to the benchmarking procedure used during the formal negotiation of individual chapters during accession negotiations, which was the penultimate step prior to the signing of the accession treaty. Although the two procedures were identical, in the latter case they have a greater standing because they serve as explicit agreements during accession negotiations. In other words, with each

opening and closing of a benchmark the state becomes closer to full membership. However, SEE states were formally only subject to the Copenhagen criteria as required by their SAA and the TEU. In the pre-accession process under the SAP/SAA framework, benchmarks were nevertheless employed in a similar manner to when a state is negotiating accession. However, they remained a political tool because formally they placed no obligation on the EU to move enlargement forward if they were met by a candidate.

Article 49 of the Lisbon Treaty amending the TEU states that the “conditions of eligibility agreed upon by the European Council shall be taken into account”. Benchmarks during pre-accession were therefore interpreted as such additional “conditions for eligibility” by member states. Because the TEU stipulations are invoked, it further set off the requirement of unanimity as contained in article 49 of the TEU for all enlargement matters. What was introduced as a political tool was interpreted in a legalistic manner, effectively rising the threshold for membership. The end result was the requirement of unanimity for decisions regarding the pre-accession criteria. And in the absence of a role by the CJEU, the broad interpretation of the treaty effectively gave member states primary law-making power (Hillion 2011, 212). Consequently, the Council was further empowered where formal procedures did not officially stipulate.

Benchmarking might have witnessed an augmented role for the Commission had the QMV requirement been kept in place, thus shifting the inter-organizational balance towards the supranational pole. Contrary to expectations, member states reasserted their control over the formal procedure of enlargement by supplementing the existing procedure.

Veto points

The addition of benchmarks exponentially increased the gatekeeping role of member states in the enlargement process. In effect, it introduced more veto points along the path to Europe, opening further possibilities for lower-level re-evaluation and renegotiation of the accession criteria and the EU’s relationship with a candidate state. For instance, the number of formal veto points by incumbent member states included the legal junctures (SAA and Accession Treaty, which were also subject to a partial veto by the Parliament), and the political junctures (including the European/Accession partnerships and their respective benchmarks). Informal veto points (which have formal

consequences) were thus introduced for opening and closing benchmarks for each chapter of the *acquis*.

Not only did this informally augment the accession criteria for future members, but it also resulted in more complex and time consuming decision-making procedures. The initial idea behind benchmarks was that the Council would simply approve them based on a proposal from the Commission, and also to sign off on their satisfactory attainment by the candidate states. The Commission emphasized the use of benchmarks in order to increase the transparency and accountability of the process, and by extension increase its monitoring influence over it. The result, however, favoured the authority of the Council, which could control the process at the working group level before even sitting at the table to negotiate with the candidate.

Despite the initial intentions, the pre-accession process became less efficient and more complicated; especially during the initial inclusion of benchmarks, which resulted in a “procedural mess” when trying to determine specific provisions for the candidates (Interview with Council delegate, 30.04.2013). In that respect, the broadening in scope of the formal institutional procedure resulted in increased transaction costs and further slowed down the pace of integrating of outsiders, because it required more bargaining among member states.

Ex-ante agenda setting

As established, member states managed to augment their influence over the pre-accession process by ensuring their final right of acceptance or refusal over benchmarks. According to the formal procedure, recommendations still remained in the hands of the Commission. The right to recommendation is guarded by the Commission at every opportunity, often trying to convince member states to just let them do their job without intervention (Interview with Council delegate, 19.03. 2014). This is helped by the fact that the latter stages of enlargement involve the highly technical issues of approximation to the *acquis*. As a result, the trend is one of increased deferral to the Commission during the latter stages of membership negotiations, where the Commission often takes the lead (Interview with Commission official, 17.4.2013). How can one reconcile the two seemingly disparate processes of deferral to the Commission on technical matters on the one hand, and the augmented veto capability of member states on the other?

At the working group level, member state interaction with the Commission proceeds according to two unwritten rules. The first is the fact that once pen is put to paper, a draft position often remains unchanged. Despite the augmented role of member states, the Commission assumes an important role in drafting the initial proposal on the opening and closing of each benchmark, outlining the priorities and defining the EU common position on each point. Indeed, it is generally agreed that its deep knowledge of each country provides the Commission a significant advantage in the formulation of policy. As one official stated, “he who owns the information is boss” and the Council sometimes struggles to keep up with the Commission (Interview with Council delegate, 17.03.2014). Once the desk officers of DG Enlargement present their draft, it is rarely revised; the final outcome “boils down to the initial texts, the Commission defends quite well its interests” (Interview with Council delegate, 30.04.2013).

The fact that drafts are difficult to change can be reduced to two factors. On the one hand, the Commission is typically aware (or it is made aware) of the particular position of each member state on any given issue. For instance, before drafting on an issue which is contentious for a specific member, the Commission gives the member states heads up so there are no surprises and so it can ensure agreement (Interview with Council delegate, 13.05.2014). Generally, the Commission does its best to predict the highest common denominator position among member states, while also taking into account its own position, in order to expedite the process (Interview with Commission official, 15.04.2013). On the other hand, member states operate based on consensus, as explicated above. The fact that unanimity is required in order for a draft to be adopted further complicates the issue of change. Member states, however, have been rather creative in circumventing this hurdle, which ironically they imposed on themselves due to the insistence on consensus.

The second unwritten rule, therefore, is the ex-ante lobbying of the Commission by member states, which in effect infringes on the role of recommendation by the Commission. This tactic is strategically employed by member states. Specifically, member states choose their battles, exerting their influence only on highly contentious political matters that are perceived to affect their national interest. As a result, member state delegates focus their energies on impacting draft common positions on benchmarks, rather than attempting to change country progress report because they do not have to sign up to them (Interview with Council delegate, 18.04.2013).

Importantly, once the Commission puts a draft position on the table, it generally remains unchanged. The Commission and respective member-states sometimes consult prior to the formulation of the draft in order to gauge the temperature of the relevant actors. The more proactive states in that respect are usually those that are more conservative on enlargement policy, suggesting a relationship between the degree of interaction with the Commission and their posture towards enlargement. Those that are particularly interested in an issue would literally fight over the placement of a comma, “as if we were writing the Bible” as one official recalled (Interview with Council delegate, 18.03.2014). Alternatively, states that are pro-enlargement are usually passive bystanders; in fact, there are some doubts as to whether they even read the Commission’s reports, or they simply approve them (Interview with Council delegate, 30.04.2013).

In the event of lobbying, moreover, states are also aware of the requirement for reaching consensus, and thus often provide only “guidelines” to the Commission regarding their national position, in the anticipation that the Commission will round off any edges to ensure all sides as sufficiently content (Interview with Council delegate, 18.03.2014). In that respect, the feeling is that the Commission always has an open door to discuss issues *a priori*. However, the extent to which a national policy preference is reflected in the collective position can vary based on the salience of the issue (Interview with Council delegate, 19.03.2014). The more sceptical states want to ensure that the Commission does not come to them with something “too positive” and they imply a pre-emptive veto by making it clear ahead of time that “something wouldn’t fly anyway, so don’t put it in the document” (Interview with Council delegate, 30.04.2013). As a result, the Commission has to acquiesce to a certain degree to the ex-ante lobbying by proactive member states. The ex-ante lobbying by member states, therefore, translates to a de facto pre-emptive agenda setting role by the Council, at the expense of the Commission.

Interestingly, although member states afforded themselves the right to formally veto a proposal by the Commission, as shown above, they rather choose to affect the policy-making process at earlier stages. This can be attributed to the fact that it is easier to convince one actor at the front end (DG enlargement), rather than 28 Member States at the back end. If a member state manages to successfully lobby the Commission, moreover, their interests would be effectively pre-approved by the Commission in the draft, and thus make them harder to change by other member states at the back end.

3.4. Applying benchmarks in the vertical dimension

Regarding the implications for the external relationship with SEE states, the inclusion of benchmarks resulted in the “generalization of conditionality”, reflecting the increasingly conservative nature of the enlargement process (Hillion 2011, 202). Specifically, before the introduction of benchmarks, the start of accession negotiation was conditional upon a candidate meeting broad requirements like the Copenhagen criteria. The incorporation of benchmarks into integration partnerships resulted in a cascading or compartmentalized form of conditionality, whereby each step that a candidate takes towards Europe is scrutinized and must be approved by the Commission and Council. In effect, by reducing the negotiated aspects of the process, benchmarks contributed to the asymmetry of the relationship, precisely because each benchmark is tied to the relevant aspect of the *acquis*. Thus, parts of the *acquis* would be incorporated into the candidate state prior to the start of accession negotiation. This represents a significant change from previous enlargement negotiations, because during the penultimate stages of the process the candidate is able to better negotiate the terms of its accession. In effect, benchmarks front-load conditionality and place a greater strain on the enlargement bargain.

Yet, the introduction of benchmarks was first perceived as an opportunity by candidates. The reasoning was that because the benchmarks were to increase the objectivity and the measurability of the process, the fulfilment of each benchmark would result in the gradual yet assured progress towards full membership. In other words, benchmarks resulted in the real expectation that once satisfied, accession negotiations would automatically progress (Interview with Macedonian diplomat, 13.05.2014). In reality, benchmarks eventually contributed to a gap between expectations and outcomes, and ultimately further questioning the credibility of the process. This is in part because the Commission and Council undertake a fine balancing act with regard to the enlargement bargain. On the one hand, they must keep the state sufficiently engaged, but on the other hand, they do not want to be overly positive on issues of key priority to the EU for fears that a candidate then leans back and relaxes (Interview with Commission official, 17.04.2013).

Adding to candidates’ frustration is the fact that sometimes no one really knows where a benchmark really starts and ends (Interview with Council delegate, 19.04.2014). In some cases, the Council and the Commission

interpret the same text differently, based on their respective interests. For instance, at one stage, the Council shared with the Commission's assessment of the Macedonia's "sufficient" fulfilment of benchmark criteria, but it did not approve proceeding to the next stage of the process (European Council 2011). Alternatively, in the case of Croatia the year prior, the Council also agreed with the Commission report regarding Croatia's "sufficient" fulfilment of benchmarks, yet in that case, it proceeded to set a date for its accession (Interview with Council delegate, 30.04.2013). Thus, benchmarks also increase the opportunities for political manoeuvring by states and the Commission. Although they could be used strategically, the purpose of benchmarking was in fact to make the process more objective and measurable in order to precisely avoid such issues.

4. CONCLUSIONS

The conditions under which candidates can join the EU are becoming increasingly more demanding over time. This is not necessarily due to the widening gulf between members and non-members. Rather, as this paper has argued, it is also a function of internal factors, which originate within the EU. That is, enlargement is changing from within, as a side effect of the inter-organizational relationships between the Council, Commission, and Parliament. In other words, it is only that member states wanted to augment the accession criteria. It was also the fact that supranational actors like the Commission and the Parliament attempted to enhance their own role over the decision-making procedures of enlargement. In response, member states sought to reassert the formal authority over the Council, which subsequently resulted in more frequent and more demanding procedural steps during the pre-accession phase.

In vertical terms, the application of enhanced conditionality through benchmarks at the intermediary steps of pre-accession further affirmed the asymmetry of the EU's external relationships. Although SEE states were making sufficient progress in meeting its requirements of alignment to the EU *acquis*, the bar was progressively raised. On the one hand, states were consistently offered explicit guarantees of membership in order to keep them orientated towards Brussels. On the back of those assurances, the EU then augmented the conditionality, which underpinned the process. As a result, the enlargement bargain shifted the responsibility back onto the applicants.

With regard to inter-organizational relationships and the horizontal dimension, the dynamic relationship among the Council, Commission and Parliament affirmed the first hypothesis. Most notable was the persistent influence of member states, in light of attempts by the supranational actors to exercise their agency. After the accession of CEE states, the Commission was dealing with the political debates about absorption capacity. Despite SEE states making gradual progress in reform and showing the continuing success of enlargement policy, it was therefore more difficult to argue for the further integration of more countries. In that respect the Commission was constrained from fully realizing its preferences.

Responding to increased constraints, the Commission provided solutions to maintain the integrity of the enlargement bargain through more rigorous integration partnerships. Rather than the Commission augmenting its role, the Council was able to reassert its dominant position as the driver of the enlargement process. Importantly, in an instance where the Council's authority might have been otherwise challenged, i.e. by operating based on qualified majority under the accession partnership and thus providing a window of opportunity for the supranational actors, the Council managed to informally employ unanimity. The point is revealing because under qualified majority rule, one might expect an increasing influence of the Parliament (and to a lesser extent the Commission), because the Parliament attempts to attain co-legislative status (and indeed succeeds in doing so in internal EU policy when the Council does not operate based on unanimity). It is interesting to note that the Parliament also had a broad interpretation of the formal treaty provisions on candidate decisions. Its failure is further surprising because it is arguably the most legitimate among the three actors considered herein, and has been actively pushing for a more value-based enlargement policy. The results can be attributed to the fact that the Commission, Parliament and candidates were more institutionally constrained than the Council. As a result, hypotheses two and three can only be partially accepted, and remain subject to further empirical scrutiny.

The Council was thus able to not only preserve its formal authority, but also to supplement it informally. This was also the case with regard to its relationship with the Commission, where the evidence suggests that the member states can play the role of pre-agenda setters. Although formally the Council is granted the right to accept or revise Commission drafts, member states choose to make their voice heard before the Commission produces a draft position. This is in part due to the weight of the pen (of the Commission),

informal consensus seeking (within the Council), and the implicit threat of a block by member states after a draft is submitted. Compounded with the introduction of further de facto veto points through benchmarks, the Council contributed to augmenting the conditions for enlargement as well as its standing in relation to the EU's other actors.

The introduction of enhanced conditionality and a more rigorous enlargement process therefore had some counterintuitive outcomes. Internally, rather than increasing the efficiency of the pre-accession process and augmenting the role of the Commission, the process became more complicated, primarily due to the reassertion of Council authority in the application of benchmarking. In the short run, those unforeseen consequences favoured the member states rather than increasing the authority of supranational actors. However, in the long run benchmarks also serve to externalize the price of enlargement. They placed increasing political and material costs on candidate states in order to meet the new requirements, rather than incumbents bearing the costs of allowing a less fit candidate to join the club. Over time, such changes place a greater strain on the enlargement bargain, which can gradually challenge the authority of the Council. In other words, the increasing concentration of authority towards the Council – which has a conservative stance on future enlargement – can result in increasing pressure for it to honour its previous commitments to the Western Balkans. As a result, it can counter-intuitively result in member states once more becoming susceptible to supranational pressure, opening the door to another phase of supranational agency.

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