

Twenty Years of EU Enlargement to Central and Eastern Europe

Twenty years ago, on 1 May 2004, ten new states joined the European Union (EU), eight of which from Central and Eastern Europe (CEE). This round of enlargement quickly earned the name ‘big bang’ enlargement, as it was the largest, in terms of the number of new countries and population in the history of the EU, as well as the most challenging expansion of the EU.

This was a historic enlargement in many aspects, and an ambitious process of legal, political, and economic transformation, which was widely celebrated as a success. With enlargement, the EU actively promoted democracy, open and competitive market economy, human rights and the rule of law. Hence, citizens’ expectations in CEE countries were high for creating economic improvement, better governance and impartial institutions, and strengthening the process of democratization in the post-communist era.¹

Eastward enlargement was significant both in the history of those Central and Eastern European countries (CEECs) that shared a common historical legacy in the past, and joined the EU in 2004 and in 2007 and 2013, and in the history of EU integration, with substantial impact on EU law and politics.

The CEECs’ accession period (1993–2004) has generally been seen as a massive process of Europeanization that was effective because of these countries’ strong desire to ‘return to Europe’, which accorded the EU unprecedented power to influence their legal, political and economic development.² The CEECs’ adoption of EU rules was governed by strong EU conditionality,³ which acted as a crucial incentive for implementing the necessary legal, political and economic changes. Accordingly, the CEECs’ desire to transition to an ideal model of liberal democracy and market economy according to Western standards accompanied and influenced their market, constitutional and institutional reforms.⁴

¹ Antonaeta Dimitrova, *Learning the Wrong Lessons from Success? Why European Union Conditionality Can Make Institutions, But Cannot Inspire Citizens* (Universiteit Leiden 2018).

² *Europeanization Revisited: Central and Eastern Europe in the European Union* (M. Matlak, F. Schimmelfennig & T. Woźniakowski eds, Florence, European University Institute 2018).

³ Schimmelfennig defines conditionality as a direct mechanism of Europeanization. Frank Schimmelfennig, *EU External Governance and Europeanization Beyond the EU*, in *The Oxford Handbook of Governance* (David Levi-Faur ed., Oxford University Press 2012).

⁴ Ferenc Laczó & Vera Šćepanović, *Eastern Europe in the History of European Integration: From the Periphery to the Centre?*, in *Reinventing Europe: The History of the European Union, 1945 to the Present* (Brigitte Leucht, Katja Seidel & Laurent Warlouzet eds, Bloomsbury 2023).

Eastern enlargement was also a test case for the EU's integration capacity and for its transformative power through the governance mechanism of accession conditionality.⁵ It demonstrated the transformative power of European integration in the CEECs' dual transition to democracies and open market economies.⁶ Accession conditionality as a governance mode had a positive effect on democracy, governance capacity and economic transformation in the new CEE Member States, and pre-accession assistance softened the process of integrating transition economies into the EU's single market. Accession conditionality supported institution-building, which contributed to their impressive post-accession record of compliance with EU law. Noticeably, conditionality and eastern enlargement were a success, without any negative effects on the legislative capacity of the EU, or on its decision-making system as demonstrated by political scientists.⁷ Enlargement came to be referred to as 'the EU's most successful foreign policy'.⁸

Enlargement also redefined the EU's character from a regional organization with limited competences into a continent-wide project with substantial impact.⁹ Importantly, it has also made its foundational values, economic principles, administrative and institutional settings explicit, while it laid bare the absence of an *acquis communautaire* regarding democracy and rule of law.¹⁰ An EU concept of the rule of law was 'born in the process of enlargement', which was largely non-existent prior to this process.¹¹

At the same time, EU enlargement has always been a political challenge,¹² as it reduces power of the existing Member States, and comes with economic costs, certainly in case of the Southern and Eastern enlargements.¹³ Enlarging to below

⁵ Tanja A. Börzel, Antoaneta Dimitrova & Frank Schimmelfennig, *European Union Enlargement and Integration Capacity: Concepts, Findings, and Policy Implications*, 24 J. Eur. Pub. Pol'y 157 (2017), doi: 10.1080/13501763.2016.1265576. Tanja A. Börzel & Frank Schimmelfennig, *Coming Together or Drifting Apart? The EU's Political Integration Capacity in Eastern Europe*, 24 J. Eur. Pub. Pol'y 278 (2017), doi: 10.1080/13501763.2016.1265574.

⁶ Veronika Anghel & Erik Jones, *Three Lessons From the 2004 'Big Bang' Enlargement*, 12 Pol. & Governance 12 (2024), doi: 10.17645/pag.8358.

⁷ Börzel, Dimitrova & Schimmelfennig, *supra* n. 5; Dimitrova, *supra* n. 1.

⁸ Michael Emerson & Steven Blockmans, *Next Steps for EU Enlargement – Forwards or Backwards?*, Stockholm Centre for Eastern European Studies (2022).

⁹ Ferenc Laczó, *An Unconventional Marriage: Twenty Years Since the EU's 'Big Bang' Enlargement* (New Eastern Europe 2024).

¹⁰ Börzel & Schimmelfennig, *supra* n. 5.

¹¹ Antonina Bakardjieva Engelbrekt, Andreas Moberg & Joakim Nergelius, *Rule of Law in the EU 30 Years After the Fall of the Berlin Wall: Taking Stock and Looking Ahead*, in *ibid* eds, *Rule of Law in the EU: 30 Years After the Fall of the Berlin Wall* 3–36 (Hart 2021). Making the EU's fundamental values in Art. 2 TEU explicit, the inclusion of the explicit albeit imperfect mechanism for Member State sanctioning in the event of serious breaches of those values in Art. 7 TEU, as well as the adoption of the EU Charter of Fundamental Rights in 2000, can all be conceived in important respects as products of EU Enlargement.

¹² Antoneta Dimitrova, *Enlargement by Stealth?: Bulgaria's EU Negotiations Between the Political and the Technical*, 44 Southeastern Eur. 130 (2020), doi: 10.30965/18763332-04402002.

¹³ Nathalie Tocci, *How the EU Can Enlarge* (Politico 2023).

EU-average economies, with weak governance structures, incomplete democracies, and unresolved conflicts can greatly challenge the drive for EU enlargement or even stall the process altogether.

It is a process of balancing political and economic opportunities and risks,¹⁴ and it is developing at the intersection of geopolitics, state and institution building challenges, and the EU's own internal dynamics.¹⁵ Such politicization of EU integration has become stronger from the late 1990s, moving from 'permissive consensus' to 'constraining dissensus' for EU integration and enlargement, due to the politically sensitive nature of Eastern enlargement involving countries which were considered economically less developed and politically less stable than the old Member States.¹⁶ This controversial nature of EU enlargement to CEE has, however, been overridden by arguments justifying it as an 'act of historical justice' and 'historical responsibility for Eastern Europe' ending most of the divisions of post-1945 Europe and the Cold War. As commentators have asserted, there has been an imperative of EU enlargement: it 'must happen' because potentially non-enlargement has extremely high costs.¹⁷

Accordingly, EU enlargement has been and remains a theme with complex questions that require cross-cutting research, dialogue and debates between various disciplines. Political scientists, historians and lawyers have collectively been exploring the deeper layers of this process, which often has also formed part of their own personal lives over the course of the past decades. For political scientists the fact that law, politics and markets in candidate/acceding states developed in a hierarchical relationship with external actors and top-down governance mode (based on conditionality) driven by the EU and its laws, and policies have remained a fascinating subject of study with fundamental questions on the role of states, political elites and societies after 1989. They have extensively studied the external governance modes of enlargement, its impact on the countries that joined and on the EU's integration capacity, as well as the various models of capitalism that emerged at this Eastern periphery of the EU.¹⁸ Likewise, the transformation of the EU's own constitutional, political and economic structures have attracted much scholarly attention. Among

¹⁴ René Cuperus & Saskia Hollander, *Beyond the Enlargement Paradox* (Clingendael 2024).

¹⁵ Tyne Karjalainen, *EU Enlargement in Wartime Europe: Three Dimensions and Scenarios* 18 *Contemp. Soc. Sci.* 637 (2023), doi: 10.1080/21582041.2023.2289661.

¹⁶ Dimitrova, *supra* n. 12.

¹⁷ Nathalie Tocci, *The Enlargement and Reform Conundrum*, *Internationale Politik Quarterly* (28 Sep. 2023). Tocci, *supra* n. 13.

¹⁸ The first comprehensive examination, by Bohle and Greskovits, showed that after the fall of the socialist system, three versions of capitalism emerged in Central and Eastern Europe: a purely neoliberal model in the Baltic States, an embedded neoliberal model in the Visegrád countries, and a neo-corporatist system in Slovenia. Dorothee Greskovits, *Capitalist diversity on Europe's periphery* (Cornell University Press 2012).

these inquiries, legal investigations have remained somewhat limited to constitutional law issues concerning the rule of law backsliding. More specific areas of EU (economic) law outside of external relations remained largely unresearched.

On the pages of this journal, the topic of EU enlargement is not new. Several editorials in the past have been devoted to EU enlargement, in particular in 2004,¹⁹ in 2013,²⁰ when Croatia joined the EU and last year concerning Ukraine's accession.²¹

The editorial of 2004 drew attention to how the various rounds of enlargement starting in 1973, have not only widened but also deepened EU integration by strengthening the EU's legal and political structures. Innovations included the creation of the European Council in 1974, the direct elections of the European Parliament, the rule of reason doctrine, and the Single European Act in 1986 and the Maastricht Treaty's EMU in 1992. These developments contradicted the narrative that 'widening' of EU integration would be at the cost of its 'deepening',²² and confirm the claim that 'deepening happens because widening is necessary' and show how the imperative of enlargement provides the catalyst to reform.²³

The Editorial in 2013, pointed to some of the main lessons of the 2004 (and 2007) EU enlargement and highlighted important insights gained in assessing the first ten years of post-accession. Notably, it examined how the rounds of enlargement in 2004 and 2007 resulted in a revised enlargement methodology focusing more on enforcement of the EU rules and policies and requiring institution building, administrative capacity as safeguards of sustained reforms concerning political and economic transformation.²⁴ The imperfections of conditionality²⁵ lead to a new approach to the EU's enlargement governance in 2007, in 2013²⁶ and a more comprehensive methodology in 2020,²⁷ with stricter pre-accession monitoring than previous enlargement rounds and focusing on the economy and the rule of law with a stronger political steer.²⁸

¹⁹ T. Eijbouts, *EU Enlargement and Government*, 31 *Legal Issues of Econ. Integration* 159 (2004), doi: 10.54648/LEIE2004014.

²⁰ K. J. Cseres, *Constitutional Issues of Economic Integration*, 40 *Legal Issues of Econ. Integration* 191 (2013), doi: 10.54648/LEIE2013010.

²¹ J. H. Mathis, *From the Board: Ukraine's Accession to the European Union*, 50 *Legal Issues of Econ. Integration* 363 (2023).

²² Eijbouts, *supra* n. 19.

²³ Tocci, *supra* n. 17.

²⁴ K. J. Cseres, *Accession to the EU's Competition Law Regime: A Law and Governance Approach*, 7 *Y.B. Antitrust & Reg. Stud.* 31 (2014) 31, doi: 10.2139/ssrn.2738416.

²⁵ G. Pridham, *The EU's Political Conditionality and Post-Accession Tendencies: Comparisons from Slovakia and Latvia*, 46 *J. Common Mkt. Stud.* 365 (2008), doi: 10.1111/j.1468-5965.2007.00780.x.

²⁶ Communication from the Commission to the European Parliament and the Council, *Enlargement Strategy and Main Challenges 2012-2013*, COM/2012/0600 final.

²⁷ European Commission, *Commission Lays Out Its Proposals for EU Accession Process* (Press release 2020).

²⁸ The EU's revised methodology for accession negotiations adopted in Feb. 2020 aims at increasing the credibility and predictability of the process by clustering the thirty-five chapters that make up

Since 2013, Europeanization has been widely revisited showing that once countries became members, the EU's political integration capacity weakened.²⁹ The enlargement rounds in 2004, and 2007 showed that mere adoption of EU legislation did not guarantee that the receiving country made quality progress in effectively implementing EU law, including 'European' values and norms and hence, whether it influenced the consolidation of democracy and market economy in these countries.³⁰

Core parts of the 'enlargement acquis', such as democracy, rule of law and administrative capacity, that were transferred through EU's accession conditionality, are not, or only to a limited extent, part of the EU acquis and made legal enforcement difficult in the new Member States.³¹ While the EU's external integration capacity was crucial in the dual transformation of CEECs to liberal democracy and market capitalism, its internal capacity to protect democracy and the rule of law has weakened or even failed in the case of Hungary and Poland once these countries became members.³²

Accordingly, post-accession assessments questioned the durability of conditionality-induced Europeanization, both in terms of political and regulatory conditions, and, the EU's very transformative power, as well as its own capacity to cope with multiple crises (financial, migration and rule of law). This literature showed that the survival and effectiveness of reforms depend on whether the EU has mechanisms in place to detect and penalize non-compliance with transplanted measures and rules, i.e., whether it continues to offer carrots and sticks to keep reforms in place after accession.³³ The EU could monitor post-accession compliance, and sanction breaches of reforms related to the *acquis communautaire* by way of infringement proceedings and referring the non-compliant Member State to the European Court of Justice.³⁴ Moreover, socialization and domestic factors, such as the fit of the norms and institutions of the new Member State with those of the EU can support

the *acquis communautaire* which candidates have to implement before joining. The 'cluster on fundamentals' is a prioritized chapter and precedes other chapters and defines the pace for their negotiations. Besides the Copenhagen Criteria (working market economy, functioning democratic institutions, and public administration reforms), it includes all major aspects of the rule of law. The candidates need to show sufficient progress here before any of the other five clusters can be opened. And they need to make continuous progress as the cluster of fundamentals is the last to be closed in the accession negotiations. Rule of law conditionality precedes and predominates what Schimmelfennig and Sedelmeier labelled 'acquis conditionality'. Frank Schimmelfennig & Ulrich Sedelmeier, *Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe*, 11 J. Eur. Pub. Pol'y 661 (2004), doi: 10.1080/1350176042000248089.

²⁹ Tomasz Woźniakowski, Frank Schimmelfennig & Michał Matlak, *Europeanization Revisited – Central and Eastern Europe in the European Union* (European University Institute 2018).

³⁰ Börzel, Dimitrova & Schimmelfennig, *supra* n. 5; Börzel & Schimmelfennig, *supra* n. 5.

³¹ Woźniakowski, Schimmelfennig & Matlak, *supra* n. 29.

³² Börzel, Dimitrova & Schimmelfennig, *supra* n. 5.

³³ Umut Aydin, *Regional Organizations and Durable Domestic Reforms?: The NAFTA, EU and Competition Laws in Mexico and Turkey*, 41 J. Eur. Integration 745, 748 (2019), doi: 10.1080/07036337.2019.1599367.

³⁴ Jan-Hinrik Meyer-Sahling, *The Durability of EU Civil Service Policy in Central and Eastern Europe after Accession*, 24 Governance 231 (2011), doi: 10.1111/j.1468-0491.2011.01523.x.

durability of reforms. Administrative efficiency and state capacity also influence the extent to which new Member States comply with their responsibilities under EU law. However, as the pressures of conditionality decrease, Member States may reverse newly enacted reforms, or fail to enforce them.³⁵

The silence of our journal that followed after 2013 concerning enlargement, mirrors the period between 2013 and 2022, which has been characterized by ‘enlargement fatigue’, and the deprioritization of EU enlargement in EU politics.³⁶ The EU and its leadership did not actively pursue its enlargement policy from 2013 to 2022, and rather concentrated on its internal challenges.³⁷ Such standstill of the accession process of countries in the Western Balkans was, on the one hand, due to the EU’s own consecutive and existential crises, and its own actions that undermined its credibility and consistency, impairing the role the Commission has played in the stabilization and political consolidation of its neighbours and decreasing motivation among the candidate states to pursue eligibility for membership.³⁸

On the other hand, the region proved politically unstable, due to the history of ethnic conflict, and greater levels of political polarization, corruption and organized crime, while in terms of the economic criteria, many Western Balkan countries still need to fully transform into functioning market economies.³⁹ As in short and succinctly put by Tocci, the candidate countries ‘pretended to reform, while the EU has pretended to integrate them’.⁴⁰

The revival of the EU’s enlargement policy emerged with Russia’s full-scale invasion of Ukraine in 2022, which prompted the EU’s Member States to recalculate the costs and benefits of further EU enlargement and revive the accession negotiations in the Western Balkans.⁴¹

Granting candidate status and then, in December 2023 announcing accession talks with Ukraine and Moldova, adding Bosnia and Herzegovina to the list of countries of the Western Balkans who have advanced in accession negotiations, and granting candidate status to Georgia, has put the enlargement of the EU back on the political agenda. As emphasized during the European Council in December

³⁵ Aydin, *supra* n. 33, 745–746.

³⁶ Anna Szolucha, *The EU and ‘Enlargement Fatigue’: Why Has the European Union Not Been Able to Counter ‘Enlargement Fatigue’?*, 6 J. Contemp. Eur. Res. 1 (2010), doi: 10.30950/jcer.v6i1.124.

³⁷ European Commission. *The Juncker Commission: A Strong and Experienced Team Standing for Change* (Press Release 10 Sep. 2014).

³⁸ Karjalainen, *supra* n. 15.

³⁹ Magdalena Frenhoff Larsén, *Enlargement, Treaty Reform and Crises, 1993–2021*, in *Reinventing Europe: The History of the European Union, 1945 to the Present* (Brigitte Leucht, Katja Seidel, Laurent Warloutzet eds, Bloomsbury 2023).

⁴⁰ Nathalie Tocci, *How the War in Ukraine Has Transformed the EU* (Social Europe 2023).

⁴¹ Ukraine, Georgia, and Moldova applied for EU membership just a few days after Russia launched its invasion. Their applications were processed at record speed: Moldova and Ukraine were granted candidate status and Georgia the ‘membership perspective’ in Jun. 2022.

2023, enlargement is now seen as ‘a geo-strategic investment in peace, security, stability and prosperity’.

This new round of enlargement could add nine new Member States to the EU, which is in terms of its scale comparable to the ‘Big Bang’ enlargement of 2004. However, given the diversity of the candidate countries involved and the domestic and international challenges they face, this next round of enlargement looks more challenging and complex, qualifying the current period as that of an ‘enlargement paradox’.⁴²

As the editorial end of 2023 partially noted, while ‘Ukraine’s accession seems to be inevitably moving toward the top of the list of EU priorities’, ‘[i]t is also claimed to be something of a near impossibility’.⁴³ A re-occurring question of current discussions of EU enlargement is whether the EU and its institutional and decision-making structures are ‘fit for 35’ Member States,⁴⁴ but also how the candidate countries in the western Balkans, which are poor and relatively small in size, and Ukraine, which is large but also the poorest, would need to sustain politically and economically stable transitions to the EU.

Twenty years on, and in the aftermath of numerous crises including the financial crisis, the rule of law crisis and the current security crisis due to Russia’s war against Ukraine, Eastern enlargement emerges as a test case for the EU’s integration capacity, and its transformative power, as a neoliberal experiment in economic policy, and a key process to shape the EU’s own constitutional identity.⁴⁵ The successes and failures of enlargement, mainly viewed and discussed so far through the lens of consolidation of democracy and market economy in these countries, and their impact on EU integration, are today often discussed with regard to the future of EU enlargement policy. However, Eastern enlargement has also been characterized as an ‘unconventional marriage’ between East and West, that started with mutual trust but has gone through mutual disappointments over the past two decades with different expectations on both sides.⁴⁶ With remaining economic inequalities cross-border between old and new Member States, with a sharp asymmetry between CEECs’ political representation at EU level, and their citizens’ poor representation in technocratic, administrative and economic elites,⁴⁷ we may not be surprised that Eastern Europe is not on the ‘mental map’ of the other half of Europe.⁴⁸

⁴² Cuperus & Hollander, *supra* n. 14.

⁴³ Mathis, *supra* n. 21.

⁴⁴ Frank Schimmelfennig, Yves Mény, Sonja Puntcher Riekmann, Tanja Börzel, Sergio Fabbrini, Göran von Sydow & Valentin Kreilinger, *Fit for 35? Reforming the Politics and Institutions of the EU for an Enlarged Union* (SIEPS 2023).

⁴⁵ Börzel, Dimitrova & Schimmelfennig, *supra* n. 5; Börzel & Schimmelfennig, *supra* n. 5.

⁴⁶ Laczó, *supra* n. 9.

⁴⁷ Laczó & Šćepanović, *supra* n. 4.

⁴⁸ Dimitrova, *supra* n. 1.

Looking at Eastern enlargement in this way, the past twenty years raise not only fundamental questions about the directions, speed, methodologies, and capacities of EU integration, but also on the ‘political and economic peripheralization’ and the salience of the East–West divide in the EU.⁴⁹ Without internalizing and directly addressing these concerns, a next round of enlargement seems bound to fail.

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⁴⁹ Clara Volintiru, Neculai-Cristian Surubar, Rachel A. Epstein & Adam Fagan, *Re-Evaluating the East-West Divide in the European Union*, 31 J. Eur. Pub. Pol’y 782 (2024), doi: 10.1080/13501763.2024.2313694.