

serve a symbolic role. In contrast, the Bulgarian legislation still maintains a strong penal character which is the legacy of the normative framework preceding the country's transition from communism. In all three countries, however, there is a clear tendency towards a progressive administrative treatment of the legal position of foreigners. This is to the detriment of the judicial control over the procedures carried out against them; a danger which is exacerbated by the limited jurisdiction of the Court of Justice at European level.

5. CITIZENS ACROSS EUROPEAN BORDERS

Borders not only have a physical dimension but also a temporal dimension which strongly affects the legal status of migrants. Their lives are marked by: the waiting period of obtaining the documents required to enter or reside in the host countries; the amount of time necessary to acquire a different legal status such as permanent residence; and the period of residence that national legislations impose to obtain naturalization.⁵⁰ More generally, migrants enjoy *pro tempore* rights conditioned by the persistence of their status as legal residents. The Algerian sociologist Abdelmaleck Sayad noticed that the legal systems of host countries always consider migrants in a transitory position which is intended to persist *indefinitely*.⁵¹ This *indefinite* temporariness, which characterizes the structure of aliens' legal subjectivity, allows for the continual redefinition of the relation between citizens and foreigners. The physical and temporal boundaries of membership expand to include new categories of previous foreigners, while excluding others not only from the original polity, but also from the new extended boundaries which in the past they were allowed to cross.

The succeeding waves through which the enlargement process will take place highlight the diachronic dimension of the boundaries of European membership. Although exempt from visa requirements to enter the European Union, citizens of the candidate countries are currently subject to national legislations on immigration when hosted in present member states. Their right to reside and circulate in the area of "freedom, security and justice" is affected by measures analogous to those implemented by prospective member states to limit and regulate the accession of third country nationals, such as expulsion, administrative detention and work permits. The Commission's report on Romania's progress toward accession emphasises the

⁵⁰ On the temporal dimension of borders see also Charles Westin, "Temporal and Spatial Dimension of Multiculturality. Reflections on the meaning of Time and Space in Relation to the Blurred Boundaries of Multicultural Societies", in Rainer Bauböck and John Rundell (eds.), *Blurred Boundaries: Migration, Ethnicity, Citizenship* (Aldershot: Ashgate 1998), pp. 53–84.

⁵¹ Abdelmaleck Sayad, *L'immigration ou les paradoxes de l'altérité* (Bruxelles: De Boeck Université 1992), p. 51. On the issue see also Federico Rahola, *Zone Definitivamente temporanee. I luoghi dell'umanità in eccesso* (Verona: Ombrecorte 2003).

considerable number of Romanian illegal migrants returned in 2003 from present member states and neighbouring first wave candidate countries.⁵² These figures are considered a sign of Romania's success in implementing readmission agreements, as well as the efficacy of neighbouring countries in implementing Schengen standards of control. In addition, citizens of candidate states are affected by dispositions approved in their own countries which aim to prevent illegal migration to Europe. For example, according to an *Emergency Ordinance* approved in August 2001 by the Romanian government: "The entering or leaving a foreign state by the illegal passing of its borders, committed by a Romanian citizen or by a person without citizenship residing on the Romanian territory is considered as an offence and is punished with imprisonment from 3 months to 2 years."⁵³ Hence, a Romanian citizen (and also a future European citizen) who illegally crosses the border of the European Union or of a neighbouring country such as Hungary is liable, if caught, to be expelled from the host country, returned home and then prosecuted and punished as a "border trespasser."

Even after accession, citizens of the new member states will not immediately benefit from the Schengen lifting of national borders because workers will not be able to freely circulate during a transitional period which will last from two to seven years. During this time migration movements for employment purposes will be regulated according to communitarian and national policies, even though different conditions may be agreed on the basis of bilateral relations between singular member states and candidate countries.⁵⁴ Although the greater possibility of mobility is regarded as one of the benefits of enlargement in the eyes of the populations of Central and Eastern European Countries,⁵⁵ accession to European citizenship will be restricted precisely with regard to those rights which characterised its most

⁵² European Commission, *Regular Report on Romania's progress towards accession*, 2003.

⁵³ Art. 1(1), *Emergency Ordinance No. 112 referring to the punishment of some action committed abroad by Romanian citizens or by person without citizenship residing in Romania*, 30th August 2001.

⁵⁴ European Commission, *Information note on the free movement of workers in the context of enlargement*, 6 March 2001. The entrance of workers will be subject to the "conditionality" principle which reserves quotas of legal entry to those nationals whose countries collaborate in combating illegal migration. The principle of "conditionality", which requires candidate states to meet the Copenhagen criteria for admittance to the European Union, has been widely considered in the debate about enlargement, unlike the "conditionality" principle of migration policies which does not officially relate to the enlargement process. Nevertheless, the accession of new EU citizens to present member states will also be regulated for a long period by this second principle. Accession of candidate states does not mean the automatic accession to a full European membership for their citizens. In other words, the same border produces different sets of relations for prospective member states on the one hand and for their populations on the other.

⁵⁵ European Commission, *European citizens and freedom, security and justice, a qualitative survey of citizens of the 15 Member States and of the 13 applicant countries*, March 2003.

significant content: the freedom of movement and settlement in other member states. Nevertheless, visa exemption for citizens of candidate countries facilitate their accession to the informal labour market and assure them a privileged position in comparison to migrant workers of different origin. This phenomenon has already been analysed among migrants workers employed in agriculture in Southern Spain where Polish workers are a step ahead of their competitors coming from African countries.⁵⁶ Moreover, a *de facto* flexible application of measures such as expulsion and detention against nationals of countries candidate in the first wave of enlargement guarantees them advantages also in comparison to nationals of other candidate countries such as Romania.

The relocation of the European Community's eastern borders implies the fortification of boundaries that in the past were easily crossed by the inhabitants of Central and Eastern European countries and which, in some cases, did not even exist. The history of the region has been characterized by the re-drawing of national boundaries; the modifications which occurred after the collapse of the communist bloc being only the most recent case. As a consequence, many candidate states face the problem of ethnic nationals living in neighbouring countries. The case of Hungary is the most problematic as there are Hungarian minorities living in Slovakia, Romania, Ukraine and the former Yugoslavia. Although to a lesser degree, other candidate countries are affected by similar situations such as the Polish minority living in the Ukraine and Romanians living in Moldova. As has been underlined by the Romanian scholar Alina Mungiu-Pippidi, the sealing off of the borders of prospective member states "would sever minorities' connection with countries where the bulk of their culture lies, prompting illegal entrance and feeding resentment."⁵⁷ This has induced candidate countries to pass laws which entitle ethnic nationals who are citizens of other countries to a particular status of semi-citizenship. The best known case is the so-called *Status Law* which entitles Hungarian nationals to limited work-permits and other benefits. Following the example of Hungary, other countries approved legislations which give ethnic nationals comparable rights or decrease conditions and periods necessary to acquire citizenship, such as the Polish *Repatriation Act* of 9th November 2002, and the amendments introduced in 2002 in the Bulgarian law on citizenship. Such legislative acts have been criticised for basing the entitlement to rights on ethnic grounds and have thus been considered as nationalistic measures in breach of the universalistic principle which should ideally characterize European membership.⁵⁸ More simply they can be seen as a

⁵⁶ Nicholas Bell, "The exploitation of migrants in Europe", contribution to the conference "Borders and Migration", Austrian League for Human Rights, Vienna, 29–30 October 2002.

⁵⁷ Alina Mungiu-Pippidi, 'Europe's "Desert of Tartars, Challenge: The Borders of the Enlarged European Union,"' *Working Paper RSC* No. 2001/43, European University Institute 2001, p. 7.

⁵⁸ For an extensive analysis of the Hungarian *Status Law* and of debates on similar acts under discussion in other countries, see Brigid Fowler, 'Fuzzing citizenship, nationalising political

partial solution to the problem of the mobility of ethnic nationals once these find themselves on the other side of the fortified borders of an enlarged Europe.

Focusing on the temporal dimension of borders illustrates how membership in an enlarged Europe is developing as a plurality of diachronically differentiated legal positions. Following accession, citizens of the new member states will enjoy a status of semi-membership in contrast to the one granted to the citizens of actual member states as their right of circulation and settlement for employment purposes will be limited. The same conditions will apply to the countries in the succeeding waves of enlargement reproducing a sort of waiting-room for future citizens. Nevertheless, citizens of prospective member states already enjoy a privileged status compared to non-Europeans. At the same time, new visa requirements applied by candidate countries in order to meet Schengen standards extends the restricted area for migrants arriving from third countries. This disparity will, to a certain extent, be mitigated for ethnic nationals of candidate countries living in third countries, as they will enjoy limited membership rights in new member states and second phase candidate countries. Each restriction to the freedom of movement and settlement of imminent and future citizens is also a limitation to their social mobility. Therefore, each differentiated status corresponds to a position in a hierarchical order of relations.

6. CONCLUSION

The context of enlargement is a useful framework in which to analyse the system of differentiated membership which result from the transformation and repositioning of European borders. From the point of view of membership, borders are first and foremost “biographical” borders encountered by migrants long before their arrival in the proximity of EU territory. As Elspeth Guild has underlined: “One important physical manifestation of borders results from attempts by individuals to move. The individual, through interaction with state and other actors over the granting or withholding of rights, activates the “border” and engages with the government regarding the position of the border.”⁵⁹

The role that political and territorial boundaries serve in producing relations of *difference* over foreigners, commences “outside” and continues “inside” in the form of diverse legal status ascribed to individuals. Clear lines of continuity can be traced between the externalization of border control through visa policies or readmission agreements and the internalization of borders resulting from the institutions of expulsion or the administrative detention of aliens. Legal borders have exactly the function of constructing boundaries of *difference* surrounding individuals. It is this

space: A framework for interpreting the Hungarian “status law” as a new form of kin-state policy in Central and Eastern Europe’, Working Paper 40/02 published by the ESRC “One Europe or Several?” Programme, Sussex European Institute 2002.

⁵⁹ Elspeth Guild, “Moving the Borders of Europe”, inaugural, lecture held at University of Nijmegen, 30th May 2001, quoted in Bigo and Guild, above n. 36, p. 4.

difference that matters, rather than the actual physical departure of foreigners from the territory, as it allows the implementation of “governmental” policies of border management directly over individuals.

At the same time, the enforcement of policies and orders over a territory no longer applies to the state but to a network of different actors and bureaucracies. Foreigners’ positions are not ruled by law but are “administrated” in the name of a functionalistic principle of securitization. From the viewpoint of political and legal theory this process reflects a cleavage in the unity between law and sovereignty which has characterized the depiction of the modern state. In his essay on governmentality, Michel Foucault pointed out that law and sovereignty were absolutely inseparable: “On the contrary, with government it is a question not of imposing law on men, but of disposing things: that is to say, of employing tactics rather than laws, and even of using laws themselves as tactics—to arrange thing in such a way that, though certain number of means, such and such end may be achieved.”⁶⁰ From the position of the individual, the cleavage between law and sovereignty corresponds to a fragmentation of its legal subjectivity.

Traditional representations of citizenship, even when based on contending grounds for membership, have been characterized by equality among citizens. Difference resides outside borders, whether they are the nation’s or the community’s boundaries, or those extended over an ideal *cosmopolis*. In contrast, as underlined by Étienne Balibar, the positioning and functioning of borders no longer regard the margin of Europe but its inner method of government.⁶¹ Borders are dragged into the core of Europe because they follow the biographies of the individuals whose mobility is limited. Paradoxically the fact that the exclusive and discriminatory character of the “European fortress” not only lies at its perimeter but extends within and beyond the territorial delimitation of the EU also allows for a wider definition of its potential inclusiveness. This, however, does not derive from an abstract model of “post-national” membership, but from the fact that the fortified borders of Europe are violated and contested on a daily basis by people in movement. A consideration of these non-institutional aspects of membership and the everyday “practice of citizenship” demonstrates how the limits of inclusion coincide with those of exclusion and subsequently calls into question any rigid distinction between citizens and foreigners. The enlargement process challenges the theory and practice of defining European membership exactly because it brings into light how the deterritorialization and relocalization of the EU polity’s borders leads to a fragmentation of the legal subjectivity of the *citizen*. In other words, any eastern border of Europe is a border drawn within Europe itself.

⁶⁰ Foucault, above n. 5, p. 95.

⁶¹ Étienne Balibar, “L’Europa, una frontiera “impensata” della democrazia?”, in Giuseppe Bronzini, Heidrun Friese, Antonio Negri and Peter Wagner (eds.), *Europa, Costituzione e movimenti sociali* (Roma: Manifestolibri 2003), pp. 231–244.

5. Sub-National Governance in Central and Eastern Europe: Between Transition and Europeanization

Gwendolyn Sasse, James Hughes & Claire Gordon

1. INTRODUCTION

The accession of eight Central and East European countries (CEECs) in May 2004 marked the beginning of a more direct and equal interaction between the political, economic and legal orders of the old and new Member States within the framework of EU policy-making.¹ It also shifted the emphasis to the implementation and sustainability of the institutions, rules and norms adopted over the last decade. Thus, the post-enlargement context added a new impetus to the discussion about the successful transition and consolidation of states, democracy and market economies in CEE. While the post-enlargement dynamics have to remain speculation at this stage, there is a clear need for empirical research into the impact of the EU on the candidate states so far. Such research will be the basis for a better understanding of the relationship between the processes of transition and enlargement. By analyzing the EU's role in shaping sub-national governance in CEE, this chapter aims to make a step in this direction. The locale, the sub-national arena of regional and local politics is of key importance for the interrelated processes of post-communist transition and EU eastward enlargement. For political and economic changes to become consolidated, they have to become ingrained at all levels of governance. Likewise, EU enlargement and integration reach beyond national elites and institutions. They affect—and are affected by—sub-national actors and institutions.

Four conditions frame the analysis of the trends of regionalization presented in this chapter. First, EU regional policy comprises one of the biggest incentive structures for the accession countries. The CEECs stand to benefit substantially from the EU's structural funds and regional and cohesion policy. The enlargement to the CEECs in 2004 have brought a sharp increase in budgetary subventions from the EU. The financial package agreed at the Copenhagen Council in December 2003 committed €40.8 billion to the ten new members in 2004–2006, over half of which amount (€21.7 billion) is to be spent on “structural actions.”² The new

¹ This paper is based on research conducted within the framework of the ESRC project, “Elites and Regional and Local Governance in Eastern Europe” (Award no. L213252030; ESRC Programme “One Europe or Several?”).

² See Annex I of the Presidency Conclusions, Copenhagen European Council, 12–13 December 2002.

member states are also expected to be the main beneficiaries of regional funds in the next budgetary cycle 2007–2013. This incentive structure, underpinned by the power asymmetry characterizing the relationship between the EU and the CEECs, left a considerable scope for EU conditions, rules and norms to shape institution-building, perceptions and practices in the transition countries. One could therefore expect a significant and detectable impact of the EU on sub-national governance in CEE as well as a degree of convergence in the institutional outcomes across the CEECs.

Secondly, despite the prominent role of regional policy within the EU, the institutional environment at this level of governance is flexibly arranged. Regional governance is a sovereignty issue of the member states, and the EU's emphasis in regional policy is on process and outcome rather than on particular institutional models. Accordingly, the *acquis* is very "thin" on regional policy. The divergent models inside the EU and the absence of clear legal requisites counterbalances the latitude for EU influence in the candidate countries. We can hypothesize that the impact of the EU has been constrained by the lack of institutional detail tied to conditionality in this policy domain.

Thirdly, the apparent thinness of the *acquis* in the field of regional policy contrasts with the centrality of this domain in EU policy-making and its budgetary implications. The lack of a complex set of explicit and codified institutional rules in the *acquis* and even the Structural Funds Regulations suggests a wider scope for implicit or "soft" conditions as well as individually tailored guidelines and pressure during the enlargement process. This setting increases the likelihood of inconsistency in the message communicated by Commission officials over time, resulting in weak institutional outcomes in the CEECs.

Fourthly, the pre-accession negotiations have exhibited a "regional deficit" in that they have been confined to the Commission on the EU side and national elites from the executive structures in CEE. The lack of involvement of sub-national actors in the preparation for EU regional policy suggests a cross-national preference for minimalist and formal rule adoption, including a bias against politically empowered regions. Moreover, one could expect disengaged sub-national elites to be more Eurosceptic than the acculturated "Europeanized" national elites.

2. EUROPEANIZATION AND CONDITIONALITY DURING ENLARGEMENT

"Europeanization" describes the diffusion of common political rules, norms and practices in Europe, but there are significant differences of opinion as to the substantive content of the concept and whether it has meaningful effects within national political systems.³ Defined broadly, it denotes "ways of doing things" which are

³ See Kevin Featherstone, "Introduction: In the name of Europe", in Claudio Radaelli and Kevin Featherstone (eds.), *The Politics of Europeanization: Theory and Analysis* (Oxford: Oxford University Press 2003), pp. 3–26; Tanja Börzel and Thomas Risse, "When Europe hits

first defined and consolidated in the making of EU decisions and then incorporated into “the logic of domestic discourse, identities, political structures and public policies”.⁴ Europeanization is thus understood as a top-down process of “institutional adaptation and the adaptation of policy and policy processes”,⁵ including “the penetration of national and sub-national systems of governance by a European political centre and European-wide norms”.⁶ Studies of “Europeanization” generally tend to emphasize one or more of three key dimensions: the source of “Europeanization” (although there is a lack of precision with regard to particular EU institutions), its impact on advancing the convergence of institutions and policies, and its role in the norm diffusion which forms the basis of a “European” identity.⁷ Macro-analyses of political structures tend to detect lower levels of “Europeanization” and convergence than policy-level studies.⁸ For some the variation simply reflects the fact that the process is “incremental, irregular, uneven over time and between locations, national and sub-national.”⁹ For others the “domestic impact of Europe varies with the level of European adaptation pressure on domestic institutions and the extent to which the domestic context (...) facilitates or prohibits actual adjustments.”¹⁰ The apparent weaknesses of “Europeanization” as a concept and an analytical tool are best summed up by Goetz’s description of “a cause in search of an effect.”¹¹

Despite these weaknesses, the context of EU enlargement provides a novel testing ground for the notion of “Europeanization”, given that the EU has a potentially strong instrument at its disposal—conditionality—through which to impose “European” rules and norms on the candidate countries. There are several reasons

home: Europeanization and domestic change”, *European Integration online Paper (EioP)*, 4, 15 (2000), p. 2; Claudio Radaelli, “Whither Europeanization: Concept stretching and substantive change”, *European Integration online Papers (EioP)*, 4, 8 (2000); Beate Kohler-Koch, “The evolution and transformation of European governance”, in Beate Kohler-Koch and Rainer Eising (eds.), *The Transformation of Governance in the European Union* (London: Routledge 1999), pp. 14–35.

⁴ Radaelli, above n. 3, p. 3.

⁵ Featherstone, above n. 3, p. 5.

⁶ Johan P. Olsen, “The Many Faces of Europeanization”, *ARENA Working Papers*, 2 (2002), p. 3.

⁷ Börzel and Risse, above n. 3, pp. 1–3; 268–270; Christoph Knill and Dirk Lehmkuhl, “How Europe Matters. Different Mechanisms of Europeanization”, *European Integration online Papers (EioP)*, 3, 7 (2000); Claudio Radaelli, “How does Europeanization produce Policy Change? Corporate Tax Policy in Italy and the United Kingdom”, *Comparative Political Studies*, 30, 5 (1997), pp. 553–575.

⁸ Olsen, above n. 6, p. 14; Radaelli, above n. 3, p. 19.

⁹ Featherstone, above n. 3, p. 4.

¹⁰ Knill and Lehmkuhl, above n. 7, pp. 1–2.

¹¹ Klaus H. Goetz, “European Integration and National Executives: A Cause in Search of an Effect?”, in Simon Hix and Klaus H. Goetz (eds.), *Europeanised Politics? European Integration and National Political Systems* (London: Frank Cass 2001), pp. 211–231.

why conditionality should be expected to operate as a strong force for “Europeanization” during the EU’s eastward enlargement. The lack of alternative ideological or systemic paradigms for the CEECs, their institutional debilitation arising from the exit from communism and their preoccupation with political and economic transition, has made the elites in the CEECs structurally weak protagonists in the accession negotiations. Moreover, the adjustments to be made by the CEECs concern many ‘new’ policy areas for which there was no equivalent under the old regime. In the case of the transition ‘laggards’, where domestic political and economic decisions had not yet created lock-in effects, this scope for EU influence was potentially even higher. Additionally, the EU structured parts of the accession process like a race, particularly through the introduction of the “queuing system” for accession in 1997. The incentive for CEEC elites was to engage in a competitive emulation of ‘Europeanness’ and to cooperate with the Commission on a strictly bilateral basis. The compliance and commitment of the CEECs was regularly monitored by the Commission in the Opinions of 1997 and the subsequent annual Regular Reports, which maintained the momentum for adaptation and cross-country comparison.

The Copenhagen criteria of 1993 are the standard point of reference for studies about EU conditionality. Scholars of EU enlargement have matched macro-level national developments with the fulfilment of the broad normative goals outlined in the Copenhagen criteria.¹² More recent studies have acknowledged that the broader elements of the Copenhagen criteria are, in fact, largely politically determined by the EU.¹³ The ‘Europeanizing’ effect of EU conditionality for eastward enlargement to the CEECs has so far been generally assumed rather than empirically investigated.¹⁴ In principle, conditionality should be based on a catalogue of succinct criteria as well as clear benchmarks, enforcement and reward mechanisms to ensure credibility and consistency in its application over time. The Copenhagen criteria, however, do not define the benchmarks or the process by which EU conditionality could be enforced and verified. Furthermore, the 80,000 pages of the *acquis* are not uniformly conditional across policy areas. Some areas of the *acquis* are ‘thicker’ on regulatory content than others.

¹² Karen Smith, ‘The use of political conditionality in the EU’s relations with third countries: how effective?’, *EUI Working Paper*, 7 (1997); Heather Grabbe and Kirsty Hughes, ‘Redefining the European Union: Eastward Enlargement’, *RIIA Briefing Paper*, 36 (London: Royal Institute for International Affairs 1997).

¹³ Heather Grabbe, ‘How does Europeanization affect CEE governance? Conditionality, diffusion and diversity’, *Journal of European Public Policy*, 8, 6 (2001), pp. 1013–1031; Heather Grabbe, ‘European Union Conditionality and the *Acquis Communautaire*’, *International Political Science Review*, 23, 3 (2002), pp. 249–268.

¹⁴ For the first coverage of a range of policy studies within one conceptual framework, see the papers presented by Frank Schimmelfennig, Ulrich Sedelmeier *et al.* at the Workshop ‘The Europeanization of Eastern Europe: Evaluating the Conditionality Model’, EUI Florence, 4–5 July 2003.

This chapter explores the institutional and attitudinal dimensions of ‘Europeanization’ by means of a comparative case study of Hungary and Poland. Through process-tracking it first examines how EU conditionality has operated in practice and whether we can attribute to it any ‘Europeanizing’ effects in institution-building and convergence with regard to sub-national governance. Hungary and Poland have been selected because they have been among the most important candidates for EU membership from several viewpoints. They are two of the most powerful economies of the CEECs, they are generally regarded as having successful transition records, they were the priority focus of the EU’s technical transition assistance programmes delivered by PHARE, and they were among the most important core group of the CEECs during the enlargement process. They share certain additional key features that could influence regional reform. On the one hand, they both have a tradition of regional identities, while exhibiting a low salience of politically significant ethno-territorial cleavages that might have deterred regional reform. On the other hand, they have both experienced repeated changes of government across the left and right of the political spectrum during the 1990s, making institutional reform an issue of party politics and delaying its completion. Despite these commonalities, their institutional adaptation in the field of regional policy has been very different and illustrates the two trends of regionalization in CEE: administrative-statistical regionalization (Hungary) vs. democratized regionalization (Poland). Based on large-scale local elite interviews in Pécs (Hungary) and Katowice (Poland), the second part of this chapter tries to gauge the extent to which sub-national elite values and attitudes have become ‘Europeanized’ during the enlargement process. The research presented here demonstrates that EU conditionality not only escapes a narrowly positivist framework of analysis, but also that it is better understood in procedural rather than strictly causal terms. It involves formal and informal pressures arising from the behaviour and perceptions of the actors engaged in the political process of enlargement. It also puts the interaction between international incentives and pressures and the domestic political context of transition states at the heart of our understanding of EU enlargement as a whole.

3. REGIONAL ADMINISTRATIVE CAPACITY IN A LEGAL VACUUM

While parts of the Commission seem to have been influenced by the ideal of “multi-level governance” and the desirability of “participation” at the regional level in the shaping of regional policy in the CEECs,¹⁵ the accession negotiations have been confined to the Commission on the EU side and national elites from the core executive structures in the CEECs. Moreover, the Commission lacked a coherent institutional model of sub-national governance to draw on and project into CEE.

¹⁵ See James Hughes, Gwendolyn Sasse and Claire Gordon, ‘Conditionality and Compliance in the EU’s Eastward Enlargement: Regional Policy and the Reform of Sub-national Governance’, *Journal of Common Market Studies*, 42 (2004) 523.

Regional policy is overwhelmingly a competence of the Member States, and its institutional environment varies widely along a spectrum from unitary-centralized to federalized-decentralized states. Reflecting the Commission's limited remit in this policy area, chapter 21 of the *acquis* is concerned with procedural rather than institutional form. It requires Member States to have an "appropriate legal framework", an approved "territorial organization" based on NUTS classifications, "programming capacity" (including a development plan, procedures for multi-annual programming, the partnership principle which envisages the involvement of regional administrative, social and economic actors in the management of structural funds and ex-ante evaluation of the development plan), "administrative capacity" (defined as the clear definition of the tasks and responsibilities of all bodies and institutions involved in the preparation and implementation of Structural Funds and the Cohesion Fund and effective inter-ministerial cooperation) and sound "financial and budgetary management" (including control provisions and information on co-financing capacity and the level of public or equivalent expenditure for structural action).

The loosely defined legal and institutional provisions of chapter 21 are derived from the Framework Regulation (Council Regulation (EC) 1260/1999) on the Structural Funds, which in itself does not require transposition into national legislation. Chapter 21 has proved to be one of the most problematic areas during the negotiation process.¹⁶ The structural thinness of the *acquis* in regional policy makes for an apparent conditionality gap during enlargement, which is only partly filled by the EU's Structural Funds regulations. The Regular Reports of 2001–2002 and the Comprehensive Monitoring Reports of 2003 made the most explicit use of the Structural Funds criteria for measuring progress, while putting the emphasis on the adoption and amendment of laws, regulations and regional development programmes as well as the establishment and reorganization of ministries and coordinating units.

While the adoption of the *acquis* was a fundamental condition tied to the Copenhagen criteria, the Madrid European Council (1995) introduced a supposedly clarifying condition to the effect that the candidate countries must have the "administrative capacity" to implement the *acquis*.¹⁷ The terminology was restated in the Commission's report "Agenda 2000—For a Stronger and Wider Europe", the Commission's 'Opinions' on the candidate countries' readiness to join in July 1997. The Commission linked the call for "administrative capacity" to specific areas of the *acquis*, for example sectoral capacity, effective structures for coordinating the negotiation process, administrative and judicial reforms, and the preparation for

¹⁶ Among the CEECs the Czech Republic provisionally closed chapter 21 in April 2002; Estonia, Latvia and Lithuania followed in June 2002, Hungary, Slovakia and Slovenia in July 2002 and Poland in October 2002. Bulgaria and Romania have not yet closed chapter 21.

¹⁷ See Presidency Conclusions, Madrid European Council, 15–16 December 1995.