

A forced European integration?

**EU membership conditionality and its effect on the institutional development
of Slovakia and Hungary within the period of 1992-2014**

by

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Introduction

On 15 March 1996, President Göncz of Hungary issued the following statement during the Hungarian National Day: 'Europe of the future will, let us all hope, irrevocably and protectively embrace Hungary in a full-grown European Union. This will be the shared homeland of European countries all with equal rights.'¹ On 15 March 2016, exactly 20 years later, Prime Minister Orbán gave voice to a completely different rhetoric: 'It is forbidden to say that Brussels is stealthily devouring even more slices of our national sovereignty, and that in Brussels today many are working on a plan for a United States of Europe, for which no one has ever given authorisation.'² The EU membership of Hungary, formalized in 2004, was preceded by an extensive accession procedure, in order to properly integrate the future member states in the European Union. However, the statement of Orbán clearly indicates that nowadays, Hungary distances itself from the European Union and its policies. What factors can be identified in order to explain this attitude? Next to the fact that Prime Minister Orbán is issuing more and more inflammatory speeches, his policy has also been declared illiberal by the European Union since the Constitutional changes of 2013.³ Therefore, his statements do not only indicate an anti-European rhetoric, but his actions do also show a power imbalance of the Hungarian institutions. The European accession procedure of Hungary should have ensured a stable institutional development after 2004, given the fact that political criteria were an important part of the accession procedure. Can certain factors within the accession procedure be pinpointed as an underlying cause of the current developments in Hungary? And have other states experienced problems within this accession procedure as well?

As the literature on the European Union and EU enlargement has shown, a change in policy and attitude of states is explained differently by academics. Andrew Moravcsik and Milada Vachudova indicate that enlargement is a calculated move, in which the costs and benefits are also evaluated beforehand. Policy changes after EU membership are therefore subject to new rational cost-benefit decisions.⁴ Other authors, like Frank Schimmelfennig, make use of a constructivist approach based on norms and values. As new member states will adopt more norms and values, they will be more likely

¹ European Commission, 'Commission Opinion on Hungary's Application for Membership of the European Union' (version unknown), http://www.europa.eu/rapid/press-release_DOC-97-13_en.pdf (18 August 2017).

² Website of the Hungarian Government, 'Speech by Prime Minister Orbán on 15 March' (version 16 March 2016), <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/speech-by-prime-minister-viktor-orban-on-15-march> (18 August 2017).

³ Office of the Parliament, 'Fourth Amendment to Hungary's Fundamental Law' (version unknown), <http://lapa.princeton.edu/hosteddocs/hungary/Fourth%20Amendment%20to%20the%20FL%20-Eng%20Corrected.pdf> (2 May 2017) 4.

⁴ A. Moravcsik and M.A. Vachudova, 'Preference, Power and equilibrium: The causes and consequences of EU enlargement', in: F. Schimmelfennig and U. Sedelmeier (eds.), *The Politics of European Union Enlargement: Theoretical Approaches* (New York 2005) 198.

to enter institutionalized relations with European regional organizations.⁵ A third important theory by James March and Johan Olsen, which is closely associated to that of Moravcsik and Vachudova, is that of rational choice institutionalism. The theory states that actors functioning within an institution take a certain course of action by the due to certain constraints provided by this institution.⁶ The theory which shall be adopted within this thesis is that of rational choice institutionalism. Although a certain influence of norms and values and policy decisions on cost-benefits will certainly not be denied, the main focus of this analysis will be based upon institutions. The reason to adopt this specific research angle is due to the fact that a major interest of the European Union was improving the main political institutions and administrative capacity, *in order to* adopt the European rules and values, as described in the conditions of membership during the accession procedure. In order to properly guarantee co-operation between the already existing European Community⁷ and the new candidates for membership, a set of conditions was created in the form of the Copenhagen Criteria in 1993. However, these conditions of membership have led to law-making in future member states which permanently changed power relations between institutions in Eastern Europe, as can be witnessed in Hungary in 1998 and in Slovakia in 2001. Next to that, as the statement by Orbán shows, the conditions have not been completely met, or have been abandoned after the membership of the European Union.

Therefore, the core aim of this thesis is to measure the effects of conditionality, through a comparative analysis of two case-studies, Slovakia and Hungary, over the period of 1992-2014.⁸ The research question can be stated as following: *To what extent has the institutional development in Slovakia and Hungary between 1992 and 2014 been affected by the application of EU membership conditionality?* The cases of Slovakia and Hungary have been chosen due to three important reasons. First of all, Slovakia was a newly founded state during their moment of application, and Hungary already existed for a longer period. It will be an interesting comparison, because a possible difference policy choices of the two states with regard to the implementation of the European conditions can lead to a different development of the institutions in the states involved. Secondly, these two member states and the European Union are currently in conflict over subjects like migration and

⁵ F. Schimmelfennig, 'Liberal Community and enlargement: An event history analysis', in: F. Schimmelfennig and U. Sedelmeier (eds.), *The Politics of European Union Enlargement: Theoretical Approaches* (New York 2005) 172.

⁶ J.G. March and J.P. Olsen, 'Elaborating the "New Institutionalism"', in: R.A.W. Rhodes, S.A. Binder and B.A. Rockman (eds.), *The Oxford Handbook of Political Institutions* (New York 2006) 4.

⁷ In this thesis, the term European Community (EC) is used to discuss pre-1993 developments, while in all other cases the abbreviation EU (European Union) will be used.

⁸ This thesis will not analyse the academic debate on whether enlargement should be performed in the first place. The scope of the present study is mainly focused on researching the effects of conditionality and possibly improving certain aspects of conditionality. Authors who have published articles on this matter can be found in the bibliography of this thesis (Moravcsik, Epstein, Bickerton).

their relation can be defined as strained.⁹ It will be interesting to analyse the development of this relationship during the period of 1992 and 2014 and to see whether the transition of candidate of membership to an actual member state changed this relationship (losing conditionality after 2004). Thirdly, due to the fact that the progress towards accession of these states was significantly different, it will be interesting to assess whether the European Union has responded with different measures during their accession procedures, or applied a uniform policy. The year of 1992 is chosen as a starting point of this thesis, given the fact that it can be marked as the starting point of the accession procedure, and both states have just formulated their institutional powers and responsibilities within their constitutions. The ending point of the study will be 2014, in order to analyse the long-term effects of conditionality and find out whether the institutions of the state develop after the accession period.

Evidently, in order to answer the research question, multiple subjects have to be analysed. Chapter 1 shall not provide answers to specific sub-questions of the research question, but shall offer a theoretical basis on which the cases can be analysed. First of all, the concept of conditionality shall be explained and the reason why conditionality has been applied during the accession procedure shall be clarified. Furthermore, a definition of institutions and certain key criteria of institutional functioning, based upon the theory of March and Olsen, shall be established in order to assess the Slovakian and Hungarian institutions. Chapter 2 and 3 will be an analysis of the two case-studies. The first sub-question of these chapters is to what extent the institutions of these states are performing their key tasks, in which the key criteria which have been established in chapter 1 shall be applied. The second sub-question of this chapter is whether the institutions in the states involved were affected by the conditionality of the EU accession procedure. In order to answer this question, specific policy decisions of the EU to support or limit the states in their actions will be analysed. Although the macro-politics of the EU might be interesting for the discussion of enlargement in general, the impact of these policy decisions can provide a better insight in the effect of conditionality on the institutions of the state involved, due to the fact that the EU has the ability to influence the institutions and their policymaking during the complete period of accession. In chapter 2, which shall be focussed on the case study of Slovakia, the institutions that shall be assessed are the institutions of the parliament and the government. Chapter 3 will analyse the Hungarian case. The Hungarian case is an analysis of governmental power and its attempt to control other institutions. A different angle is selected with regard to the state institutions in the two cases, due to the earlier described fact that the progress towards accession of these states was significantly different. The institutional development of the two states was therefore different as well, where it is

⁹ Politico, 'Viktor Orbán: Make Europe (but not the EU) great again' (version 26 January 2017), <http://www.politico.eu/article/viktor-orban-make-europe-but-not-the-eu-great-again/> (5 August 2017).

interesting to analyse how the European Union reacted on different policies. Chapter 4 focusses on an assessment of the effects of conditionality based on a comparison of two cases. This can be regarded as the third sub-question. Furthermore, as a fourth sub-question, is it necessary to alter the current EU accession procedure and are there any viable alternatives? Therefore, should conditionality be reconsidered?

The research methodology of this thesis will be based on a comparative analysis of two case-studies. A qualitative assessment of the institutional development of these states will be performed, and the influence of EU conditionality on these institutions will be assessed. However, in order to improve the chance of an equal qualitative assessment of both cases, certain measurement criteria will be devised in chapter 1 of this thesis, in the form of four 'key criteria' by March and Olsen. In order to answer the research question and the sub-questions, this research relies on a variety of primary sources, including the constitutions of Hungary and Slovakia, EU financial programmes, documents of parliamentary elections, monitoring reports of the EU, press releases of the EU, EU legislation, EU treaties, and reports by third parties. It is important to use these EU sources, in order to assess the influence of conditionality on the institutions of Slovakia and Hungary during the EU accession period. The Slovakian and Hungarian sources have led to a better analysis of the functioning of the institutions in both states. Furthermore, reports by third parties (like Transparency International) and the secondary literature on institutionalism has offered the opportunity to establish the key criteria on institutions and to gain a better insight in the institutional power balances of the states of Slovakia and Hungary in the period of 1992-2014, whereas the secondary literature on enlargement and conditionality has led to place the current research within the academic debate.

Chapter 1 – Theory on conditionality and institutions

In 2012, the Chairman of the Norwegian Nobel Committee and Secretary General of the Council of Europe, Thorbjørn Jagland, declared: ‘The Norwegian Nobel Committee has decided that the Nobel Peace Prize for 2012 is to be awarded to the European Union (EU). The union and its forerunners have for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe.’¹⁰ However, has enlargement, and more specifically conditionality, actually ensured an advancement of peace and reconciliation? In order to answer this questions during the cases and to offer a final judgement on the effects of conditionality, an explanation of what conditionality is and why it is applied needs to be provided. Furthermore, the key criteria for institutions will be established in order to measure institutional functioning during the cases.

Enlargement and conditionality

The politics of EU enlargement of the European Union has been a key area of interest within the academic world. A real revival of the academic debate on enlargement of the European Union took place during the 1990’s, when a next enlargement round was initiated based on conditionality. A large portion of the literature on the enlargement of the Eastern European states is focused on a EU macro-political perspective. The academic debate is mainly focused upon a rationalist versus constructivist approach. For example, Moravcsik and Vachudova take a rationalist approach with regard to EU governance and they that the enlargement wave was a calculated move, in which the economic and geopolitical consequences should not be seen as a radical break.¹¹ However, a large portion of the academics seems to believe that a purely rationalist approach is insufficient. Therefore, Frank Schimmelfennig makes use of a constructivist approach. He theorizes that the more values and norms the new member states will adopt, the more likely it will enter institutionalized relations with European regional organizations.¹² A more recent continuation of this debate is provided by arguments in favour of EU enlargements, brought forth by Rachel Epstein. EU enlargement would enhance security, reinforce democracy, and generate wealth.¹³ However, Christopher Bickerton argues differently. The enlargement process has led to an illiberal political development in the new member-states and a technocratic administrative process.¹⁴ This EU macro-political perspective is however not the only research angle. Other research perspectives which are

¹⁰ Nobel Prize Website, ‘The Nobel Peace Prize for 2012’ (version 12 October 2012), http://www.nobelprize.org/nobel_prizes/peace/laureates/2012/press.html (19 August 2017).

¹¹ Moravcsik and Vachudova, ‘Preference, Power and equilibrium’, 198.

¹² Schimmelfennig, ‘Liberal Community and enlargement’, 172.

¹³ R. Epstein, ‘The benefits of EU enlargement: stability, democracy and prosperity’, in: H. Zimmermann and A. Dür (eds.), *Key Controversies in European Integration* (Basingstoke 2012) 206-212.

¹⁴ C.J. Bickerton, ‘EU Enlargement: a critique’, in: H. Zimmermann and A. Dür (eds.), *Key Controversies in European Integration* (Basingstoke 2012) 212-217.

identified by Frank Schimmelfennig and Ulrich Sedelmeier are applicants' politics, member state politics, EU substantive politics, and the impact of enlargement.¹⁵ Combinations of these research angles have certainly been applied in studies, as Wade Jacoby shows in his analysis of European Union substantive politics and the impact of enlargement during the accession procedure of the Eastern European states between 1992 and 2004, in which he argues that these states tried to emulate Western institutions.¹⁶ However, as Schimmelfennig and Sedelmeier identified during their study on theoretical approaches in the politics of European Union enlargement, the amount of studies on applicants' politics and the impact of enlargement with regard to the Eastern European states is limited.¹⁷ A crucial difference between this thesis and the previous academic literature is therefore based on two factors. First of all, this thesis will not be focused upon the enlargement of the Eastern European states in general. The specific research angle of this thesis will be narrowed down to the conditions of membership for the future member states, that is the aspect of conditionality. The reason for this focus is due to the fact that enlargement is a large process, in which a large range of academic topics can be subject of research. A thesis on a single key factor within an enlargement wave ensures that a focus on multiple research angles of enlargement is possible. These perspectives are based on applicants' politics and the impact of enlargement. This two-dimensional focus between the politics of the institutions of the applicants discussed in the cases, and the impact of enlargement is crucial, in order to offer a complete overview of what aspects of conditionality have been aiding or hindering the candidates for accession during the EU accession procedure and whether aspects of conditionality should be subject of change. In order to properly combine these two research angles however, a second factor needs to be introduced, which is a focus on institutions. Without this addition, it is impossible to assess the applicant's politics and the impact of conditionality on the two states involved. In order to measure the functioning of the institutions, certain key criteria will be composed.

In order to join an organisation, new members must agree to the rules, expectations, values and possibly the interests of the organisation. Due to the fact that introducing new members to an organisation means a change in operation of the organisation, the conditions of membership are a way to ensure the organisations values and interests from undesired changes.¹⁸ Conditionality is based on conditions for membership. In 1993, at the Copenhagen European Council, the Government of the European Union and the leaders of the associated states which desired to become members of

¹⁵ F. Schimmelfennig and U. Sedelmeier (eds.), *The Politics of European Union Enlargement: Theoretical Approaches* (New York 2005) 7.

¹⁶ W. Jacoby, *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe* (New York 2004) 5.

¹⁷ Schimmelfennig and Sedelmeier, *The Politics of European Union Enlargement*, 21-24.

¹⁸ K.E. Smith, 'The Evolution and Application on EU Membership Conditionality', in: M. Cremona (ed.), *The Enlargement of the European Union* (New York 2003) 106.

the EU agreed that accession could take place in the near future. However, in order to do this, certain obligations had to be fulfilled, in the form of 30 chapters of the *acquis communautaire*. This is 'the body of common rights and obligations that is binding on all the EU member states'¹⁹. These obligations were of political, economic, and administrative nature. The idea of conditionality was however not a new phenomenon for the membership candidates. During the enlargement wave between 1979 and 1985, in which Greece, Spain and Portugal became member states of the European Union, conditions of membership were also part of the accession procedure. These conditions were however less extensive and mainly based on forming democratically stable governments, due to the fact that these states were former dictatorships.²⁰ With regard to the 'new' conditions of membership, if a future member states passed a 'democracy test', they would be eligible for a financial aid programme, which was designed to support the member states in fulfilling the chapters of the *acquis*, by offering yearly EU budgets to these states.²¹ This programme was named Poland and Hungary: Assistance for Restructuring their Economies (PHARE). This name might sound confusing due to the fact that it only focusses on Poland and Hungary. It is however an extension of an earlier implemented programme which was created to support these states after the collapse of the Soviet bloc at the end of the Cold War, whereas the new programme is focused on supporting the future member states Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia. The new programme was implemented in 1997 and can be seen as a form of conditionality. If candidates for membership have not made enough progression during the last year, an extension of the PHARE program for the next year would not be possible. It could be seen as a tool of the European Union to keep the member states motivated.

A frequently used legal interpretation of conditionality was offered in 1997, within the following definition: 'that (1) one partner is aware of the intention of the other, but (2) does not incur any corresponding contractual commitment, and (3) that both partners only asses the agreement as being helpful for the achievement of the objective of one partner'²². The definition offers a loose interpretation of the agreement between the state and the European Union, in which the intentions and objectives of the two parties are most important and conditionality should be seen as a form to achieve goals quicker, whereas a contract is not really present. The year of this definition is noteworthy, due to the fact that developments in 1998 have been a crucial turning point in understanding conditionality within this EU accession period.

¹⁹ European Commission, 'Acquis' (version 6 December 2016), https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis_en (16 August 2017).

²⁰ EUR-Lex, 'Accession Treaties: Greece, Portugal and Spain' (version unknown), <http://eur-lex.europa.eu/collection/eu-law/treaties/treaties-accession.html> (16 August 2017).

²¹ M. Maresceau, 'Pre-accession', in: M. Cremona (ed.), *The Enlargement of the European Union* (New York 2003) 12.

²² P.C. Müller-Graff (ed.), *East Central Europe and the European Union: From Europe Agreements to Member Status* (1997) 16.

The earlier explained PHARE Program has proven to be a financial form of conditionality, which can be seen as a stimulus for the involved states to perform better. A second form of conditionality was however implemented in 1998, in the form of a sanction. The 'Accession Partnership Regulation 622/98' stated the following:

Where an element that is essential for continuing to grant pre-accession assistance is lacking, in particular when the commitments contained in the Europe Agreement are not respected and/or progress towards fulfilment of the Copenhagen criteria is insufficient, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps with regard to any pre-accession assistance granted to an applicant State.²³

This form of conditionality is far more invasive than a financial form of conditionality. Whereas the PHARE Program still has a rewarding element, the new regulation is purely punitive. The described called appropriate steps with regard to pre-accession assistance have completely annulled the earlier clause within the 1997 definition, which described the fact that a corresponding contractual commitment was not present. It can be stated that in legal terms, the new regulation has altered the Copenhagen Criteria from political conditions to legally binding constraints.²⁴

Why is EU conditionality applied?

Why has the European Commission chosen to apply the criteria established in 1993, and refused to reopen flexible arrangements for the future member states of the EU? This would make it even more difficult for the new member states to meet the new conditions. The primary argument for this approach by the European Union is because they are in a position in which they can exploit, what Karen Smith termed, 'a power of attraction'²⁵. The future member state is in a position of weakness due to the fact that they desire membership of the European Union. Conditionality can be seen as a foreign-policy instrument of the European Union, through which they persuade national actors to act in the interests of the European Union. Whereas the accession period is the only period in which the European Union has an effective position of great leverage, it is determined to use this power position within this period to its full extent.²⁶ This relatively brief position of leverage leads to some decisions of the European Union which should help the European Union in a number of ways.

²³ Official Journal of the European Communities, 'Council Regulation (EC) No 622/98' (version unknown), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998R0622&from=EN> (15 July 2017).

²⁴ M. Maresceau, 'Pre-accession', 37.

²⁵ Smith, 'The Evolution and Application on EU Membership Conditionality', 108.

²⁶ Ibidem, 108-109.

First of all, the membership conditions of the European Union are designed to ‘help protect the future integration process’²⁷. A proper integration of the new member states is crucial. Membership conditions should therefore ensure that, when deciding upon critical subjects like adding new policy areas or increasing the use of qualified-majority voting²⁸, the new member states should be fully integrated within the European Union. This strict integration process also protects the European Union itself from an undesired enlargement. Due to the fact that the European Union has often stated its openness for further enlargement, the conditions can offer a form of protection for unwanted states and their own ambitions.²⁹

When speaking of the obligations of membership itself. The future member states of the EU had to fulfil political conditions, economic conditions and administrative conditions. The political criteria were implemented in order to ensure ‘stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’³⁰. The economic criteria would guarantee ‘a functioning market economy and the capacity to cope with competition and market forces’.³¹ The last condition was designed so states could gain ‘administrative and institutional capacity to effectively implement the *acquis* and ability to take on the obligations of membership’³². This generally applicable accession procedure in the form of 30 chapters was to be fulfilled by the future member states. This should ensure, in theory, that all candidates for membership were to be at the same level of political, economic, and administrative progress at the time of formal membership, regardless of their current progress.

Institutions: a definition and key criteria

Within the theoretical school of rational choice institutionalism, institutions can be interpreted in multiple ways. The institutional perspective that shall be adopted within this study is that of ‘exogenous constraints’. An institution is presented as a game form in which humans have designed constraints. These constraints should ensure a certain course of action by the actors functioning within this institution. The institution can therefore be interpreted as a script that influences the behaviour of actors within the institution.³³ The institution therefore ‘structure incentives in in

²⁷ Smith, ‘The Evolution and Application on EU Membership Conditionality’, 106.

²⁸ Qualified majority (QM) is the number of votes required in the Council for a decision to be adopted when issues are being debated on the basis of Article 16 of the Treaty on European Union and Article 238 of the Treaty on the Functioning of the European Union. The topic is important, due to the fact that an increase in EU member states ensures that a higher number of votes in favour is needed in order to adopt a proposal.

²⁹ Smith, ‘The Evolution and Application on EU Membership Conditionality’, 106-107.

³⁰ European Commission, ‘Accession Criteria’ (version 6 December 2016), https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en (17 Juli 2017).

³¹ Ibidem.

³² Ibidem.

³³ K.A. Shepsle, ‘Rational Choice Institutionalism’, in: R.A.W. Rhodes, S.A. Binder and B.A. Rockman (eds.), *The Oxford Handbook of Political Institutions* (New York 2006) 24.

human exchange, whether political, social, or economic³⁴. This perspective is chosen due to the fact that the institutional analysis of Slovakia and Hungary will be focused on the central political and judicial institutions of these two states. Next to the fact that the interpretation of institutions can be perceived in different ways, the structure of institutions can also be perceived differently. The institutions which are subject of analysis in this thesis are that of a robust (or structured) institution, which generally continues to follow the same model, patterns and practices over the years. Modern day institutions like parliaments, political parties or judicial courts are examples of these structured institutions.³⁵ Although these institutions can still be altered by exceptional measures like amendment procedures, interpretive courts, suspension of the rules, nullification, and emergency powers³⁶, the general robustness and steadiness of this institutional form have contributed to the general perception that institutions can be interpreted as a script which constrain the behaviour of actors to some extent.

In order to establish a certain form of 'measurability' when assessing whether institutions are functioning properly, certain key criteria can be determined. Within this thesis, four key criteria about the functioning of institutions, formulated by March and Olsen, shall be employed. Although the four key criteria can certainly be used as 'basic building blocks' of the functioning of institutions, it is important to consider whether actors are actually constrained by these rules. This argument is important when the actions of actors within institutions are analysed, which is vital within the cases of Slovakia and Hungary.

The first key criteria that can be formulated is the notion that 'institutions create elements of order and predictability'³⁷. The constraints, in the form of rules, which are created by humans to enable and prevent certain courses of action, are already partly explained when introducing the factor of 'exogenous constraints'. The primary reason of constraining the behaviour of the involved actors is however ensuring that they carry out a certain 'logic of appropriateness'. The principal thought of this logic of appropriateness is described as following:

Rules are followed because they are seen as natural, rightful, expected, and legitimate. Actors seek to fulfil the obligations encapsulated in a role, an identity, a membership in a political community or group, and the ethos, practices and expectations of its institutions. Embedded in a social collectivity, they do what they see as appropriate for themselves in a specific type of situation.³⁸

³⁴ D.C. North, *Institutions, Institutional Change and Economic Performance* (New York 1990) 3.

³⁵ *Ibidem*, 27.

³⁶ K.A. Shepsle, 'Old Questions and New Answers about institutions: The Riker Objection Revisited' (version unknown), <http://scholar.harvard.edu/kshepsle/files/weingast.pdf> (18 March 2017) 18-23.

³⁷ March and Olsen, 'Elaborating the "New Institutionalism"', 4.

³⁸ J.G. March and J.P. Olsen, 'The Logic of Appropriateness', in: R.E. Goodin (ed.), *The Oxford Handbook of Political Science* (New York 2011) 478.

The logic of appropriateness should therefore lead to more predictable behaviour and decisions by the involved actors within the institutions.

This leads to the second key criteria. Due to the fact that institutions are formed by clear and routine processes, institutional stability and change are achieved through political action in the form of repetition and organizational patterns.³⁹ The earlier mentioned elements of order and predictability in the first key criteria should lead to these recurring patterns and actions within the institution itself.

Thirdly, the internal structures and rules of institutions cannot be changed arbitrarily. This is due to the fact that actors within institutions often defend the values, which they firmly represent, and outsiders often validate and legitimize the institutional procedures. So, although institutions should not be regarded as completely static and unchangeable, the occurring changes often reflect small adaptations, which are presented as the optimization of the institution.⁴⁰

Finally, the fourth and last key criteria is based upon the interaction between institutions. It states that institutional rules prevent the 'radical intrusions and attempts to achieve ideological hegemony and control over other institutional spheres, as well as stern defences of institutional mandates and traditions against invasion of alien norms'⁴¹. Although institutions are subject to change and beliefs and arrangements can be questioned, the set of rules which bind the institutions should prevent radical intrusions of other institutional powers.⁴²

³⁹ March and Olsen, 'Elaborating the "New Institutionalism"', 4.

⁴⁰ Ibidem, 7.

⁴¹ Ibidem, 15.

⁴² P.L. Berger and T. Luckman, *The Social Construction of Reality. A treatise in the sociology of knowledge* (4th edition; London 1991) 107-108.

Chapter 2 – Case study: Slovakia

Given the fact that the theory with regard to EU conditionality has been clarified, the political and judicial institutions of Slovakia can be analysed during the timeframe of 1992 and 2014. The formal-legal analysis of the workings of the Slovakian political institutions between 1992-2014 indicate a decreasing institutional power of the Slovakian parliament, whereas the institutional power of the government increased. A first sub-question which is important shall therefore be: are these institutions performing their key tasks during the period of 1992 and 2014? Due to the fact that more than two decades are analysed, the case study will be split up in three parts. First, the period of 1992 until 2001 will be analysed. Secondly, the period between 2001 and 2006 shall be reviewed. The last timeframe will be the years between 2006 and 2014. These specific years are chosen due to events which mark crucial turning points in institutional power.

In order to assess the executive and legislative power of the parliament and the government during this period, it is important to analyse the responsibilities of both institutions as described within the Slovakian constitution of 1992. Next to that, the key criteria by March and Olsen shall be applied upon the two institutions, in order to assess whether they are performing their key tasks. The second sub-question of this chapter is whether EU conditionality has influenced the development of the Slovakian institutions.

The first years of Slovakian independence: 1992-2001

A number of constitutional amendments in Slovakia can be identified as critical, and have a lasting effect on the institutional power of the parliament and government. In the long term, it can be stated that the institutional power of the parliament has decreased compared to that of the government, while the Slovakian constitution originally states that the parliament has a formal dominance over the government, with respect to legislation. The Slovakian constitution identifies the parliament as the main legislative body for an important reason. In order to preserve a separation of powers, the parliament is identified as the main legislative body, and the government as the main executive body. This constitutional form leads to so called 'checks and balances' on government power by other branches (the judiciary included).⁴³ This separation of powers has however slowly decreased in Slovakia. This shift in legislative power from the parliament towards the government is also recognized and confirmed within a report on Slovakia published by Freedom House. The timetable of this report, in which the political and civil liberties of Slovakia are assessed, is 1989-1998. The report states: 'Over the past three years [1995-1998], the percentage of approved bills introduced by

⁴³ P.M. Shane, 'Analyzing Constitutions', in: R.A.W. Rhodes, S.A. Binder and B.A. Rockman (eds.), *The Oxford Handbook of Political Institutions* (New York 2006) 197.

deputies in parliament has declined as the legislature increasingly defers to executive initiative.⁴⁴ Which constitutional changes have led to this shift in legislative power between the institutions of parliament and government?

A first important point of analysis is discovering the initial powers of the two institutions. Therefore, a closer look to the constitution of Slovakia can be clarifying. The constitution of Slovakia, which was signed in 1992, will provide the general rules and procedures which have initially defined the two institutions. Given the fact that these rules and procedures will be the leading constraints for the actors involved within these institutions, a closer observation of this constitution is therefore required. First of all, the constitution of 1992 describes the parliament of Slovakia, which is officially described as 'the national Council of the Slovak Republic', as 'the sole constitutional and legislative body of the republic'⁴⁵, within Article 72. And although it is stated that draft laws can also be submitted by the Government of the Slovak Republic, the National Council is regarded as the main legislative body. This is emphasized by the fact that the constitution states within Article 108 that the government is the 'supreme highest executive body'⁴⁶, and not a legislative body. This clear distinction in legislative and executive power which is set out in the constitution can be interpreted as a clear framework of rules and procedures of the two institutions about which kind of activities they can and should undertake. When the period right after 1992 is examined however, the actors involved in the institutions do not seem to follow these rules and procedures.⁴⁷

When the legislative productivity of the two institutional bodies are analysed in the period of 1994 and 2006, it becomes clear from Table 2, which illustrates the number of bills which are approved in the period of 1994-2006 and the number of bills which are proposed by the governments during this period, that the majority of the approved legislative proposals are mainly proposed by the Slovakian government, and not the Slovakian parliament. The constitutional rules and boundaries can therefore be regarded as unclear or not strict enough to uphold the institutional key tasks of the two institutions. The so called exogenous constraints which are mentioned within March and Olsen's first measuring criteria are therefore not strong enough and do not lead to a logic of appropriateness. The actors of the two institutions are not acting upon the elements of order and predictability which are pointed out within the constitution.

⁴⁴ Freedom House, 'Slovakia: Freedom in the World Ratings, 1989-1998' (version unknown), <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan008399.pdf> (14 August 2017).

⁴⁵ Constituteproject, 'Slovakia's Constitution of 1992 with Amendments of 2014' (version 28 March 2017), https://www.constituteproject.org/constitution/Slovakia_2014.pdf?lang=en (2 April 2017) 21.

⁴⁶ Ibidem, 32.

⁴⁷ Although this version of the Constitution is the revised version of 2014, the highlighted passages are not altered during the amendments of 2001 and 2011.

Governments 1994 - 2004	Total of approved bills proposed by the government	Total number of bills approved	Short track procedure	Vetoed by the president
III. Mečiar's government	287	313	50*	32
I. Dzurinda's government	406	532	100	72
II. Dzurinda's government	458	550	36	51
*Short track procedure available as of January, 1, 1997.				

Table 2: Legislative activity in Slovakia (1994 – 2006)⁴⁸

When clear rules and procedures have been determined in the Slovakian constitution, how is it possible that the actors of the two institutions involved are not honouring these rules and procedures? First of all, it should be taken into account that the Slovakian state gained independence in 1993, and the rules and procedures for Slovakia were relatively new. Although the parliament members and government members were certainly familiar with earlier governmental systems which were employed in the previous state of Czechoslovakia, the new system required a new set of rules and procedures which had to be formulated. Therefore, the two institutions had to figure out which key tasks were to be fulfilled by which institution in the new state, under the new constitution. Given the fact that constitutions 'can be given operational meaning only through the workings of other political institutions'⁴⁹, the operational boundaries and constraints of the constitution are still a matter of (or open to) interpretation. Shane has identified two different perspectives in his work on constitutional interpretation. One is internal interpretation, and one is external interpretation. An internal interpretation is a pure legal viewpoint on how to deduce the rules and procedures from the wording of the constitution. The external interpretation is a more political oriented viewpoint, in which actors within institutions interpret rules and procedures differently, in order to use it for economic or political self-interest.⁵⁰ The external viewpoint can be a proper explanation for the behaviour of the government after 1992. Legislative proposals by the government can serve self-interest, whereas rules and procedures are differently interpreted. The newly created state can

⁴⁸ E. Láštík, 'Get the Balance Right: Institutional Change in Slovakia during EU Accession and Membership', in: *Sociológia* 38 (2006) 537.

⁴⁹ Shane, 'Analyzing Constitutions', 191.

⁵⁰ Ibidem, 192.

explain the different perspectives of the different actors. This interpretation by Shane would explain why actors are not bound by institutional constraints and are not acting according to the logic of appropriateness.

The PHARE Programme Annual Report of 1997 of the European Union certainly confirmed the analysis that the two institutions of Slovakia were not following their own rules and procedures. As explained before, the PHARE Programme can be seen as a form of conditionality by the European Union. The development of Slovakia in 1997 was described as following:

In the light of its considerations, the Commission concludes that Slovakia does not fulfil in a satisfying manner the political conditions set out by the European Commission in Copenhagen, because of the instability of Slovakia's institutions, their lack of rootedness in political life and the shortcomings in the functioning of its democracy.⁵¹

In 1996, when the PHARE Programme started, Slovakia did not receive financial assistance. However, financial assistance was received in 1997 and this amount gradually increased during the years. Whereas Slovakia received 43 million euros in 1997⁵², amounts of 45.9 million euros in 1998⁵³, 69.5 million euros in 1999⁵⁴ and 78.8 million euros in 2000⁵⁵ were allocated to Slovakia by the European Union. However, the European Union recognized that the Slovakian National Programme for the Adoption of the *Acquis* (NPAA) from 1998, with planned legislation and implementation arrangements, would not be sufficient to implement all the chapters of the *acquis*. Especially the sectors of the reinforcement of administrative capacity and institution building were topics which needed more attention.⁵⁶ Interestingly however, the budget which is allocated towards improving the institutional and administrative capacity in Slovakia seems to be diminishing every year since 1998. The 'institutional budget' was non-existent in 2017. Although Slovakia received 17 million euros (37% of the budget) in 1998 for institution building, this amount decreased to 10.5 million euros (15% of the budget) in 1999 and to 'only' 4.8 million euros (6.1% of the budget) in 2000. This seems to be a clear miscalculation by the European Union. They have recognized the problem in Slovakia and have warned Slovakia by denying them financial aid in 1996. A budget was allocated

⁵¹ Commission of the European Communities, 'The PHARE Programme Annual Report 1997' (version unknown), <http://aei.pitt.edu/5963/1/5963.pdf> (20 July 2017).

⁵² Ibidem.

⁵³ Commission of the European Communities, 'The PHARE Programme Annual Report 1998' (version unknown), [http://aei.pitt.edu/33799/1/COM_\(2000\)_183_final.pdf](http://aei.pitt.edu/33799/1/COM_(2000)_183_final.pdf) (14 August 2017).

⁵⁴ Commission of the European Communities, 'The PHARE Programme Annual Report 1999' (version unknown), <http://www.esiweb.org/enlargement/wp-content/uploads/2009/02/ec-phare-annual-report-1999.pdf> (14 August 2017).

⁵⁵ Commission of the European Communities, 'The PHARE Programme Annual Report 2000' (version unknown), <http://www.esiweb.org/enlargement/wp-content/uploads/2009/02/ec-phare-annual-report-2000.pdf> (14 August 2017).

⁵⁶ European Commission, 'Regular Report on Hungary's progress towards accession' (version 1998), https://irf.gyemszi.hu/HolOrszag/zip_doc/eu/1998/ang1998.pdf (24 April 2017).

between 1997 and 2000, and although the EU was aware of the institution building problem, they seemed to underestimate the problem. Annex I, which shows the State of the Accession Negotiations at 2001, confirms this analysis. The status of chapter 30 of the *acquis*, concerning institutions, is 'to be opened'. However, the last phase of accession (2000-2004) proves that Slovakia is certainly capable of quickly implementing a large portion of the remaining chapters of the *acquis*. A better allocated EU budget could however certainly have led to an earlier implementation of the *acquis*, especially with regard to institution building.

Concluding, even though the Slovakian state was working with a new constitutional model, the years between 1992 and 2001 can certainly be described as a period in which the key tasks of the institutions were neglected. This might seem harsh due to the fact that institutions can still effectively produce legislative proposals and implement these proposals. The conclusion is however based on the fact that the institution responsible for legislative proposals, which is the Slovakian parliament, is not effectively producing legislation. Their institutional power is therefore significantly reduced, whereas the power of the government includes executive and legislative powers. The institutional balance of the Slovakian state is therefore absent. Next to that, EU conditionality is affecting the institutional progress of the institutions in Slovakia. Whereas the institutions were already failing to make clear distinctions in legislative and executive power, the European Union initially allocated smaller 'institution building' budgets within the PHARE programme after 1996. The progress towards accession in the years between 1997 and 2000 was therefore not comprehensive. Only after 2000 did this progress towards accession significantly increase.

An increasing pressure between 2001 and 2006

In 2001 a constitutional amendment was passed in order to implement European law more efficiently, and to meet all the requirements of the *acquis* of the European Union in time. An important reason why the government of Slovakia felt forced to implement this constitutional amendment is the fact that only 17 of the 30 chapters of the *acquis* were implemented. As shown in the list of provisionally closed chapters in 2001, annexed to this thesis, at that time only three other candidates for membership were performing worse.⁵⁷ Furthermore, chapter 30 on institutions, still had to be opened. The constitutional amendment involved a Law on Approximation of Decrees of the Government, that stated that the Slovakian government could issue decrees in order to implement EU legislation in Slovakia and could therefore fulfil the European Agreement on Association more effectively.⁵⁸ The government created a specialist institution for the drafting of bills concerning legal

⁵⁷ A. Inotai, 'The "Eastern Enlargements" of the European Union', in: M. Cremona (ed.), *The Enlargement of the European Union* (New York 2003) 102-103.

⁵⁸ Láštík, 'Get the Balance Right, 540.

integration, the Institute for the Approximation of Laws. Although this institute is only seen as an advisory body that should make sure laws are in conformity with EU standards, 'policy initiation is very clearly done through the foreign ministry'⁵⁹.

The legislative power of Slovakia is therefore heavily influenced by the European Union, and is very much under control of the government. Although it can be stated that this EU influence is indirect, the conditions which had to be met at that time led the government of Slovakia to increase its legislative powers, in order to be more effective in its implementation of EU laws. Furthermore, where this legislative power of the government was supposed to be temporary, it was extended in 2004 (until 2006), in order to implement EU legislation for a longer period after accession.⁶⁰ The EU accession period can therefore be identified as a catalyst for radical institutional change in Slovakia. The government gained more legislative powers, which it did not abandon shortly after EU accession as originally planned. The internal legislative structures of both government and parliament were altered in order to fulfil the EU accession criteria. Although the process was legitimate, the later consequences had unanticipated consequences with regard to the power balance in Slovakia.

When the complete period of 2001 and 2006 is analysed, it can be stated that the political institutions in Slovakia are still not adhering to the constitutional rules during this part of the accession period and shortly thereafter. Although formally, all chapters of the *acquis* might have been met, the measures to implement these chapters have led to a greater power imbalance within the Slovakian political institutions. This indicates two important disadvantages of conditionality. In order for Slovakia to fulfil all chapters of the *acquis* in time, the EU was willing to compromise chapter 30 of the *acquis*, with regard to institutions. The constitutional amendment of 2001 which granted the Slovakian government more legislative powers and the extension of this power in 2004 clearly reflects these power imbalances. Secondly, since Slovakia is officially a member state of the European Union after 2004 and the leverage of conditionality has disappeared, the capability of the EU to effectively influence Slovakian institutional stability has significantly reduced.

2006-2014: institutional improvement?

A Transparency International Report of 2014 gave more insight in the process of legislation initiation in Slovakia during the period of 2012-2014. Given the fact that there is a significant time gap between 2006 and 2012, and by 2012 the implementation of European law was largely completed, a return to more parliamentary legislative power would seem logical. Indeed, as Table 3 shows, governmental proposals compared to the total number of proposals significantly reduced. This is

⁵⁹ M.A. Rupp, 'The pre-accession strategy and the governmental structures of the Visegrad countries', in: K. Henderson (ed.), *Back to Europe: Central and Eastern Europe and the European Union* (London 2005) 93-94.

⁶⁰ Láštík, 'Get the Balance Right', 540.

certainly a good development, given the fact that legislative power is being shifted back to parliament.

	2014	2013	2012
Passed laws	88	140	100
Governmental proposals	73	112	76
Proposals of MEP	15	27	23
Proposals of Committees	0	1	1
Returned by President	4	10	4
Passed in shortened legislative process	5	4	9
The total number of legislative proposals	410	381	228*
*The data available just from December 2012 till April 18, 2012			

Table 3: Legislative Activity in Slovakia (2012 – 2014)⁶¹

However, a different problem within the parliamentary process has presented itself. The so-called ‘checks and balances’ within the legislative process are compromised during this period. Although the parliamentary power to initiate legislation has been largely restored, the parliamentary power to evaluate, amend, add, or correct already existing proposals is compromised. Within the legislative process of the parliament, there are different stages to evaluate, amend, add, or correct legislative proposals. In theory, when legislation is proposed, the parliament has three ‘reading possibilities’ to initiate one of these practices. Amendments and additions have to be brought forth during the second reading of the parliament. Whereas MPs have ample opportunity to think about the initial proposal of the bill, it often occurs that amendments and additions are submitted five minutes before the voting procedure. No extra time is added to revise the bill after amendments are accepted, and this leads to the fact that members of parliament are therefore not even aware of which precise wording is part of the bill and what to make of the new information. This can be seen as a serious flaw in the control of the legislative process. Next to that, the third reading offers no opportunity to correct amendments or additions which are brought forth during the second reading. Only grammar or spelling mistakes can be corrected. The only way to repeal amended or individual articles is to obtain a qualified majority within the parliament, which is three-fifths of the parliament. If this is not the case, then the voting must take place upon the whole bill, including the amendments and/or additions.⁶²

⁶¹ Transparency International, *Conflict of Interest in Legislative process in Slovakia* (2014) 5.

⁶² Ibidem, 9-10.

When analysing the period of 2006 and 2014, the two political institutions of Slovakia can be described as institutionally compromised. Given the fact that a more positive development with regard to legislative proposals has taken place, it would be radical to state that the institutions are not fulfilling all their key tasks. The legislative power with regard to legislative proposals has shifted back towards the parliament, which is certainly a good development. The institutional 'checks and balances' of the parliament are however still heavily compromised during the legislative process. A completely fair and legitimate power balance between the political institutions, as described within the constitution of 1992, is therefore still absent. The aspect of conditionality is not affecting the Slovakian institutions during this period, given the fact that membership of the European Union is already acquired. The European Union could influence these political institutions by infringement procedures, but either fails to recognize the compromised legislative process in the parliament or assesses the situation differently.

Slovakian case study: conclusion

To conclude, it seems harsh to denounce the two Slovakian institutions completely, due to the fact that legislation and effective governing was still possible during the complete duration of 1992 and 2014. During the EU accession period, it can however certainly be stated that the Slovakian legislative and executive political institutions are not performing the key tasks which can be expected from them, due to a long period in which the separation of powers did not exist. Only after the accession period, a certain balance of powers was slowly restored. The period between 2006 and 2014 will therefore be classified as institutionally compromised.

It has become clear that the institutions of parliament and the Slovakian government have already quarreled over legislative power since the draft of the constitution of 1992. In practice, a clear separation of powers between the executive power and the legislative power has not taken place, whereas the constitution has been very clear in its definition of legislative power. When the effects of conditionality are considered, it can be stated that the conditionality of the EU accession procedure is therefore not directly responsible for the incorrect functioning of the two political institutions in Slovakia. Although the PHARE Programmes by the EU between 1997 and 2000 have assisted the Slovakian government in implementing the chapters of the *acquis*, the choice of the EU to allocate small amounts of money to institution building can be seen as poor judgement. The progress of the Slovakian institutions and the fulfillment of the chapters of the *acquis* were only radically improved after 2000, whereas the European Union already recognized the need for Slovakian institutional improvement in 1997. Therefore, the EU conditionality of the PHARE Programme could have had a more lasting positive influence if the budget was allocated properly.

A more direct effect of the conditionality of the EU accession procedure are the clear conditions which have been pointed out by the European Union in the form of the 30 chapters of the *acquis*, which have instigated the Slovakian government to seize more legislative power in 2001, in order to fulfil the EU legislation in time. This development, in which legislative powers shifted from the parliament towards the government, has not ceased until 2006.

When the period after EU conditionality is analysed, the observation can be made that legislative power slowly shifted back towards the parliament. However, the institutional structure of the parliament is not strong enough to control the actions of the government when bills are proposed. When the key criteria are used to analyse the complete period, it becomes clear that the institutions have failed to create certain elements of order and predictability, failed to generate comprehensible and routine processes, and the institutional rules did not prevent radical intrusions and attempts to achieve hegemony and control over other institutional spheres. So although a recovery of the political institutions seems a viable future course, the institutional situation in Slovakia still compromised. The institution of the Slovakian government is clearly not completely bound by the key criteria which are defined by March and Olsen, given the fact that the political actors saw the need to quickly implement EU regulations, and changed institutional rules and constraints in order to fulfil these goals.

Chapter 3 – Case study: Hungary

The second case of interest is that of Hungary. Although the institutional angle will still be focused upon governmental power, a clear difference with the Slovakian case can be pointed out. Where the Slovakian case was a pure analysis of the interaction between the legislative and the executive institutions, the Hungarian case will focus primarily on the growth of power of the executive institution, which is the government. The field of analysis is therefore not limited to an interaction between executive and legislative power, but the interaction between the executive institutions and the judiciary will also be involved. Similarly to the Slovakian case, the first sub-question is to establish whether the institutions involved are actually performing their key tasks between 1992 and 2014. Three periods are defined, based on fluctuations in institutional progress during these periods or important interventions by the European Union (i.e. three pivotal turning points in the institutional history of post-Communist Hungary). The first period is that of 1992 until 1998. Secondly, the years of 1998 until 2006 are subject of discussion. The last period which is studied are the years between 2006 and 2014. The second sub-question will be to analyse whether the EU conditionality affected the institutions of Hungary during this period.

Promising prospects: 1992-1998

Hungary was one of the few states within Eastern Europe that did not adopt a new constitution after the fall of communism in 1989, yet it introduced major constitutional amendments. These fundamentally altered the old constitution of 1949, in the attempt to clearly identify and uphold rule of law and introduce important checks and balances within the democratic process. The most important changes were the enhanced powers of the parliament and the creation of a constitutional court with the possibility to monitor the actions of other institutions.⁶³ The interaction between the different Hungarian institutions after the constitutional amendments were initially quite positive. The so-called separation of powers which were pointed out within the newly amended constitution seemed to work quite effectively. The only form of interference which was still present was the presence of the executive branch within the judiciary, due to the fact that executive members of the government were still represented within the Constitutional Court.

The first reports provided by the European Union with regard to the European accession of Hungary confirmed these positive developments, although there was still much room for improvement. An EU report, dating from 1998, stated that the institution of parliament is functioning

⁶³ Princeton, 'The Constitution of the Republic of Hungary – 1989 amendments' (version unknown), http://lpa.princeton.edu/hosteddocs/hungary/1989-90%20constitution_english.pdf (22 April 2016).

well: 'Its powers are respected and the opposition plays a full part in its activities.'⁶⁴ This can be stated as well for the executive branch of the government, although a modernisation of public administration was necessary in order to improve transparency and to minimize corruption. Although the judiciary was functioning properly, certain recent improvements and reforms by Hungary were certainly recommended by the European Commission. First of all, the procedures of the court were slow. And next to that, the separation of powers between the judiciary and the executive branch was not realized yet. New legislation had to solve both problems. A massive increase in the number of Constitutional Court judges took care of the first problem, and the creation of a National Judiciary Council had to ensure a shift of power to the judiciary.

When the European involvement within the Hungarian case is assessed to a further extent, the role of the European Union can be understood as a positive factor during the first years of accession. The Slovakian case already showed that they initially were the only state which was not eligible for the PHARE programme, while Hungary did meet the obligations necessary in order to get the European financial aid. As the 1997 PHARE programme Annual report shows, the progress of Hungary towards accession with regard to institution building is described quite positively in 1997: 'Hungary presents the characteristics of a democracy, with stable institutions guaranteeing the rule of law, human rights and respect for and protection of minorities.'⁶⁵ Although improvements were recommended, the PHARE programme recognized positive developments and allocated an amount of 88 million euros to Hungary. The amount of money which was allocated for institution building within Hungary would be 13 million euros (14.8% of the budget).⁶⁶ This pre-accession aid was focussed on three aspects which, according to European authorities, needed improvement. First, a reform of the public administration and a training of the civil service was a first important step towards European integration. Second, an important reform which was required was that of the judiciary and the preparation of the Hungarian judicial system for European rules and values. Third, local self-government should be realised to a greater extent. In other words, decentralization should be an important objective.⁶⁷

Overall, therefore, the period of 1992 until 1998 can be described as a period of institutional stability in Hungary. Given the fact that the Hungarian state recently underwent constitutional changes after a long period of communism, the different political institutions and the judiciary were fairly capable of performing their duties according to the constitution and without the interference of other institutions. The separation of powers, as designed by the constitution, were largely present.

⁶⁴ European Commission, 'Regular Report on Hungary's progress towards accession' (version 1998), https://irf.gyemszi.hu/HolOrszag/zip_doc/eu/1998/ang1998.pdf (24 April 2017) 8.

⁶⁵ Commission of the European Communities, 'The PHARE Programme Annual Report 1997' (version unknown), <http://aei.pitt.edu/5963/1/5963.pdf> (20 July 2017).

⁶⁶ Ibidem.

⁶⁷ A.F. Tatham, *Enlargement of the European Union* (Biggleswade 2009) 334-335.

The key criteria of institutions seemed to be upheld and no institutional power was abused. These promising prospects were also emphasized by the European Union. Hungary would therefore be eligible for the PHARE programme. With regard to the question of the effects of conditionality, it can be stated that the effects of conditionality are therefore largely positive on the institutions of Hungary during this period.

1998-2006: A loosening grip and the pressure of accession

Given the fact that Hungary received a large amount of money which was intended for institution building, some reforms had to be implemented in the following years. The modernization of the public administration and improvement of the judiciary were beneficial for the government, due to the fact that they would enhance effective governing. The last reform however, which was focused on local self-government and more autonomy of regional actors was seen as a more problematic reform. Indeed, as Sedelmeier points out, the reforms which have taken place with regard to this subject can be interpreted as illiberal.⁶⁸ This becomes clear by the stagnation of the implementation of EU legislation with regard to decentralization and local self-government. An important thing to keep in mind is the fact that within the period of 1998 and 2002, the Prime Minister of Hungary was Viktor Orbán. As will become clear during his second term in office after 2010, these illiberal tendencies will not be limited to a one-time reform. However, in order to understand why the Hungarian government was reluctant to implement this form of legislation, the reasoning behind the EU objective of decentralization and local self-government should be explained.

The creation of a system in which a separation of powers is maintained by legislative, executive and judiciary institutions, who perform checks and balances, can be regarded as 'legitimacy by procedures'. These institutions are however often defined as macro-institutions, while intergovernmental relations between smaller institutions, which are called meso- and micro-institutions, should ensure higher performances. This non-procedural legitimacy is called 'legitimacy by performance'.⁶⁹ Although the analysis of the period of 1992 until 1998 has already proven that a legitimacy by procedure was already fairly present in Hungary, the EU proposed reforms during the accession period in order to accomplish this second form of legitimacy. The decentralization of government and involving local governments within the execution of legislation should lead to a more rapid implementation of EU legislation. Although an involvement of local government does not automatically lead to an increased effectivity of governance in every case, it can clearly be stated

⁶⁸ U. Sedelmeier, 'Europe after the Eastern Enlargement of the European Union: 2004-2014', (version 10 June 2014), http://eu.boell.org/sites/default/files/uploads/2014/06/eastern_enlargement.pdf (25 April 2017) 3.

⁶⁹ A. Ágh, 'Post-Accession Crisis in the New Member States: Progressing or Backsliding in the EU?', in: *Studies of Transition States and Societies* 2,1 (2010) 82-83.

that an abuse of power by the central executive institution, the government, would be made very difficult.

This last reason, a new check and balance on the central government in the form of local governments, was opposed by the Orbán government. Initially, Hungary had created a new Act XXI on Regional Development and Regional Planning in 1996, which seemed to implement a decentralisation policy even before it was a European objective of the PHARE programme. Regional Development Councils were to be created, in order to effectively ensure intergovernmental relations, as pointed out within the definition of 'legitimacy by performance'.⁷⁰ The Orbán administration (1998-2002) decided to alter these plans however. Attila Ágh, professor of political science and later president of a European Union decentralization project under the Medgyessy government, stated that most of the legislation passed by the Orbán government 'opposed all kinds of decentralisation'⁷¹, as was confirmed during the 1999 amendments of the 1996 Act. A rather crucial change was added during these amendments with regard to executive power. Whereas the Regional Development Councils would still be created and functioning similarly, the composition of these Councils would be altered radically. A large portion of civil members on these Councils were replaced by central government representatives. In other terms, the decision-making process within these bodies changed from local decisions to governmental decisions, due to the fact that government representatives were now a majority within these Councils.⁷² The intended local checks and balances would therefore be absent.

However, while the accession of Hungary was getting closer, the implementation of an effective decentralisation policy would be a crucial reform for the Hungarian government, due to the fact that the European Union regarded it as important step towards European integration. So although the previous decision by the Orbán government has shown that the executive institution saw no problem in altering plans in order to remain in control and keep power centralised, the new Hungarian administration, which was the Medgyessy government (2002-2006), caved in to European pressure. A complete public administration reform was initiated in order to transfer legislative power, competencies and finances from the central government to the regions. The new project: Integration, Decentralisation, European Union and Autonomy (IDEA), to be led by the earlier mentioned Ágh, clearly reflects the complete reform of the public administration on central and regional level and the intention of doing so in order to comply to demands of the European Union.⁷³

⁷⁰ A. Ágh and Á. Rózsás, *Organising for EU Enlargement: Challenge for the Member States and the Candidate Countries* (version unknown), <http://www.oeye.net/papers/hungary-institutionalpreparati.pdf> (25 April 2017) 10.

⁷¹ *Ibidem*, 12.

⁷² *Ibidem*, 10-11.

⁷³ *Ibidem*, 13-14.

To conclude, when the functionality of the institution of the government is analysed during the period of 1998 and 2006, a twofold answer can be offered. Between 1998 and 2002, the institution of government can be identified as compromised. The proposed EU legislation was implemented, but it was designed in such a way that other institutions like local governments could be controlled by placing government officials in local councils. Only in 2002, when a new administration took office, could the institution of government be described as stable. The effectivity of conditionality was precarious during this period. During the Orbán administration, it became clear that the Hungarian government had met the conditions for the PHARE programme. A real means to impose EU legislation was therefore not present for the European Union during this period. The EU partly regained this leverage over Hungary in 2002, when the deadline of the required membership conditions drew near. This however shows the limitations of conditionality, because the leverage only really intensifies in the last years of the accession period. Furthermore, as indicated during the Slovakian case, the influence of the EU after accession has significantly been reduced. The effects of conditionality during this period can therefore be assessed as marginal during 1998 and 2002, and as positive during 2002 and 2004.

2006 until 2014: Losing leverage

This successful European influence in the form of the 30 chapters of the *acquis* had led to a period of institutional balance in Hungary right after the European accession. In the period of 2006-2010, no real power struggles between the parliament, the government or the judiciary have led to so called 'radical intrusions and attempts to achieve ideological hegemony and control over other institutional spheres', which is the fourth key criteria of effective institutional rules and procedures. As the 2002⁷⁴ and 2006⁷⁵ elections have shown however, the earlier discussed opposition party Fidesz, led by Viktor Orbán, was a major contender for both elections. Their seats in parliament exceeded over forty percent in both elections, and they even were the biggest party in the 2002 parliamentary elections. Institutional balance was maintained, but opposition voices with regard to the Socialist party and their policy were always present.

A huge turning point with regard to the institutional power balances of Hungary were the parliamentary elections of 2010. A major victory for the Fidesz party of Orbán led to a solid power basis of his administration and a convincing majority of Fidesz members in parliament.⁷⁶ This

⁷⁴ National Election Office, 'Parliamentary election 2002' (version 11 February 2010), http://www.valasztas.hu/en/ovi/201/201_0.html (2 May 2017).

⁷⁵ National Election Office, 'Parliamentary election 2006' (version 11 February 2010), http://www.valasztas.hu/en/ovi/196/196_0.html (2 May 2017).

⁷⁶ European Parties Elections and Referendums Networks, 'Elections Briefings No 51: Europe and the Hungarian Parliamentary Elections of April 2010' (version unknown), <https://www.sussex.ac.uk/webteam/gateway/file.php?name=epern-election-briefing-no-51.pdf&site=266> (2 May 2017) 7.

convincing mandate of 68% of the votes would make radical decisions possible by the Orbán government, due to the fact that a parliamentary majority was secured. A first step towards these radical changes and the intrusions of other institutional powers were removing institutional checks and balances which could prevent the draft of a new constitution, by amending the already existing constitution twelve times.⁷⁷ Real radical changes were however initiated during the amendments of the new constitution of 2013. The crucial 'Fourth Amendment' of the new Hungarian Fundamental Law can be pinpointed as a major change in the institutional balance of Hungary. The main attempts of the executive institution, to achieve ideological hegemony and control over other institutional spheres with this amendment were directed at removing power from four other institutions. These were the judiciary institution, in the form of controlling the Constitutional Court; the institution of the media, in the form of restricting the national and commercial media outlets; political institutions, in the form of other restricting the power of other political parties; and religious institutions, in the form of setting religious boundaries.

The European Commission was concerned about these illiberal developments in Hungary, and tried to deter the initiation of the constitutional amendments. On 12 April 2013, President Barroso stated that 'the Commission has serious concerns over the compatibility of the Fourth Amendment of the Hungarian Fundamental Law with EU legislation and with the principle of the rule of law.'⁷⁸ Given the fact that a form of conditionality was absent, now that Hungary was part of the European Union, the pressure by the European Union was less effective. The gains for Hungary to comply were no longer present. The Commission did argue that 'once the on-going legal analysis carried out by the Commission's services has been finalised, the Commission will have to take the necessary steps in order to start infringement procedures where relevant.'⁷⁹ The infringement procedure should be seen as a substitute of the earlier used conditionality. The problem is however that states involved, in this case Hungary, are less compelled to act on it, because they have less to lose. The procedure could eventually lead to a case at the European Court of Justice, whose judgement is binding, but the European Union has no means to enforce the judgement of the Court.⁸⁰

The first radical change within the 'Fourth Amendment' concerned the control of religious institutions. Provision 4, of Article 4, states the following: 'Cardinal Act defines the detailed rules pertaining to churches. Cardinal law may set certain requirements for the length of existence and

⁷⁷ U.S. Commission on Security and Cooperation in Europe, 'Kim Lane Scheppelle's Testimony at the Helsinki Commission on Hungary: Full Text' (version 19 March 2013), <https://hungarianspectrum.wordpress.com/2013/03/19/kim-lane-scheppelles-testimony-at-the-helsinki-commission-hearing-on-hungary-full-text/> (2 May 2017).

⁷⁸ European Commission, 'Press Release: The European Commission reiterates its serious concern over the Fourth amendment to the Constitution of Hungary' (version 20 February 2017), http://europa.eu/rapid/press-release_IP-13-327_en.htm (23 July 2017).

⁷⁹ Ibidem.

⁸⁰ European Commission, 'General Information: Infringement procedure' (version 25 July 2017), https://ec.europa.eu/taxation_customs/infringements/general-information_en (25 July 2017).

degree of societal support that an organization with a religious mission needs to fulfil as a condition to becoming a church.⁸¹ These Cardinal Acts are initiated by the Hungarian parliament and the statement that a religious mission needs a certain 'societal support' insinuates that religious minorities in society have no legal rights and can hardly fulfil this description.

Whereas the intrusion of the Hungarian government within the religious institutions has increased, the increasing control of the executive institution over the media institutions is even more radical. The provisions in order to control the media outlets can be regarded as twofold. First of all, an important decision of the government is to put limitations on the freedom of speech in provision 4 and 5, of Article 5. A first example of this decision is to combat hate speech, in order to preserve another person's dignity. Whereas this example is not by definition an institutional violation but more of a moral discussion, the second example definitely is a preservation of institutional power: 'The exercise of one's right to free speech cannot be aimed at violating the dignity of the Hungarian nation...'⁸² A loose interpretation of this provision could be that criticizing the governing party which serves the interest of the Hungarian nation is a direct violation of the dignity of the Hungarian nation itself, due to the fact that the interest of the Hungarian nation are undermined by such negative statements. Vague notions like 'dignity' and 'the Hungarian nation' offer the Hungarian government a future chance to refer to this provision when negative criticism has to be repressed.

The second intrusion within the media institutions shall be analysed separately, due to the fact that this provision in the Fourth Amendment has led to not only an interference of the media outlets, but also of the political and the judiciary institutions. This 3th provision, of Article 5, states the following:

In order to guarantee the conditions for the formation of a democratic public opinion, political parties which have a nation-wide support and other organizations that nominate candidates must be provided free and equal access, as defined in a cardinal Act, to political advertising in public media outlets during elections for Members of Parliament and Members of the European parliament. *Cardinal Act may limit the publication of other forms of political campaign.* [emphasis added]⁸³

Whereas the provision initially seems to emphasize equality for political parties by stating that free and equal access must be provided, the last sentence in the provision is essential. It should however be understood that the word *may* in the last sentence can be replaced by *shall*. The sole purpose of this provision is to ensure that only public broadcast media, which are completely controlled by the

⁸¹ Office of the Parliament, 'Fourth Amendment to Hungary's Fundamental Law' (version unknown), <http://lapa.princeton.edu/hosteddocs/hungary/Fourth%20Amendment%20to%20the%20FL%20-Eng%20Corrected.pdf> (2 May 2017) 4.

⁸² Ibidem.

⁸³ Ibidem.

Fidesz party, can display political advertising. The government restricted commercial broadcasting in an earlier decision, but the Constitutional Court decided that this was unconstitutional. This provision in the Fourth Amendment is therefore included in order to legitimize the decision.⁸⁴ With this provision, The Fidesz party made sure to undermine the institutional power of the Constitutional Court, other political parties, and media outlets.

Thus, the Orbán government overruled decisions of the Court by introducing constitutional amendments. The institutional sphere of the judiciary has however also been influenced in the sense that permanent structural changes have been made within the judicial system. A crucial provision with regard to the Constitutional Court was made within Article 19. It stated that 'decisions and their reasoning of the Constitutional Court prior to the coming into force of the Fundamental Law cannot be used for interpreting the Fundamental Law.'⁸⁵ This decision hugely impacted the judiciary institution, due to the fact that case law between the period of 1990 and 2012 which contributed to the rule of law would be annulled.⁸⁶ Without any precedents, it would hugely undermine and weaken the Constitutional Court. Furthermore, in the future, the Constitutional Court would only be able to review and annul sections of the Fundamental Law and its amendments if it was challenged by petition or if they were encouraged to do so by the President of Hungary; the Government; one fourth of the members of Parliament; the President of the Curia; the Prosecutor General; or the Commissioner for Fundamental Rights. They could not initiate a review themselves.⁸⁷ A last provision was included which stated that the National Judicial Office would be the future central administrative office of judicial affairs, not the Constitutional Court. Article 13 furthermore concluded that: 'The detailed rules of the organization [National Judicial Office] and administration of courts and of the legal status of judges, and the remuneration of judges shall be laid down in a cardinal Act'⁸⁸, which was to be drafted by the parliament. Think tanks like the World Economic Forum (WEF), who assess competitiveness by institutional factors among other things, are of the opinion that the law courts itself are still relatively independent and free of corruption, whereas no clear evidence can be found of a biased view towards the governing Fidesz party.⁸⁹ The constitutional amendments have however created a situation in which an increasing government influence is more likely and judicial

⁸⁴ C. Brodsky, 'Hungary's Dangerous Constitution' (version unknown), <http://jtl.columbia.edu/hungarys-dangerous-constitution/> (2 May 2017).

⁸⁵ Office of the Parliament, 'Fourth Amendment to Hungary's Fundamental Law' (version unknown), <http://lapa.princeton.edu/hosteddocs/hungary/Fourth%20Amendment%20to%20the%20FL%20-Eng%20Corrected.pdf> (2 May 2017) 9.

⁸⁶ Brodsky, 'Hungary's Dangerous Constitution' (version unknown), <http://jtl.columbia.edu/hungarys-dangerous-constitution/> (2 May 2017).

⁸⁷ Office of the Parliament, 'Fourth Amendment to Hungary's Fundamental Law' (version unknown), <http://lapa.princeton.edu/hosteddocs/hungary/Fourth%20Amendment%20to%20the%20FL%20-Eng%20Corrected.pdf> (2 May 2017) 7.

⁸⁸ *Ibidem*, 7-8.

⁸⁹ Transparency International Hungary, 'Judiciary' (version unknown), <https://transparency.hu/en/kozszeaktor/igazsagszolgalatas/> (2 May 2017).

independence is harder and harder to maintain. The latest 2016-2017 WEF report confirms this view by portraying a declining trend when assessing judicial independence. Furthermore, the Hungarian institutions as a whole are performing dramatically, ranked 114th of the 138 nations in review, whereas political instability is seen as the biggest problematic factor, which confirms the concerning developments with regard to institutional development in Hungary.⁹⁰

Hungarian case study: conclusion

When the Hungarian institution of government during the period of 1992 and 2014 is analysed, it can be stated that this institution is stable during a large duration of this period. More importantly, especially during the EU accession procedure, the Hungarian government seemed to be a well-functioning institution. Only during the years of 1998 and 2002 can the institution be defined as unstable. After the accession procedure however, the governmental institution was definitely not performing their key tasks and seemed to be backsliding ever since the Constitutional changes of 2013. The executive power has been trying to control other institutional spheres and has achieved these ambitions, by imposing illiberal reforms.

As has become clear during this case, the role of conditionality of the EU accession procedure within the institutional development of the Hungarian government can mostly be described as positive. The period between 1992 and 1998 proved to be a period of institutional stability, in which the institution of government was functioning as described within the Hungarian institution. As the Hungarian institution was proving to be acting more and more compromised after 1998, the actions of the European Union and the conditionality of the EU accession procedure somewhat ‘forced’ the Hungarian government to initiate reforms as proposed by the EU and to undo the illegitimate actions by Orbán. The influence of the European Union therefore proved to be largely positive.

The post-accession period clarified two things. First of all, the leverage of the European Union over the Hungarian government which was present during the accession period, in the form of conditionality, was non-existent. The Hungarian government therefore was no longer strictly bound to the will of the European Union, given the fact that punitive measures are feeble. Authors like Bickerton have already criticized the EU for adopting a policy in which the EU imposed rules and regulations, instead of offering political choices to elected representatives of the states involved. This has led to a great deal of alienation. The second observation exemplifies this. The new rise to power of Prime Minister Orbán led to new illegitimate procedures of the Hungarian government, in the form of new constitutional amendments. This raises questions about the long-lasting effects of

⁹⁰ World Economic Forum, ‘The Global Competitiveness Report 2016-2017’ (version 28 September 2016), http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf (2 May 2017) 198-199.

conditionality. What other effects can be identified? And can the conditions of membership be altered or improved in order to prevent backsliding in the future?

Chapter 4 – The effects and the future of conditionality

In this chapter, the third sub-question with regard to the effects of conditionality (during the accession period and long-term) will be answered, based on a comparison of the cases of Slovakia and Hungary. Strengths and flaws of conditionality will be assessed by comparing the two case studies. The fourth sub-question which shall be analysed during this chapter is whether the EU accession procedure should be altered. Should conditionality be reconsidered or adapted? Topics like EU influence and forms of punitive measures are subject of analysis.

A comparison: the effects of conditionality

First of all, when the effects of conditionality are assessed during the accession period of both states, it is important to recognize that, although Slovakia and Hungary have both experienced a form of institutional backsliding after their accession, the chapters of the *acquis* within the accession procedure have certainly ensured a permanent development on a multitude of policy areas within both states during the period of 1992 and 2004. The EU reports concerning Hungary and Slovakia right before accession both concluded that they ‘reached a high level of alignment with the *acquis* in most policy areas’⁹¹. When the role of conditionality of the European Union within the Hungarian accession is compared to that of the Slovakian accession however, it can be stated that this influence is completely different. Whereas the influence of the European Union within the Slovakian accession can be described as an aggravator of the already existing power struggle between the legislative and the executive institution before 1997, the role of the European Union within the Hungarian case can be described as a stimulating force, trying to prevent an abuse of executive power. The attitude of the European Union can therefore certainly be regarded as vital within the institutional development of the states which have applied for accession. Especially during the accession period, their ability to influence the executive institutions has been comprehensive, due to the EU conditionality which the European accession procedure entailed. As will become when the longer lasting effects of conditionality will be assessed, this influence is significantly reduced after the European accession procedure. This has become evident within the Hungarian case, whereas the years after the accession period have led to decisions which have caused backsliding in which the institutional equilibrium slowly crumbled.

EU Conditionality, which was part of the accession procedure, certainly has some strengths. Both cases have shown that the 30 chapters of the *acquis* were an effective tool to develop the states to a

⁹¹ European Commission, ‘Comprehensive Monitoring Report on Hungary’s preparations for membership’ (version unknown), http://ec.europa.eu/development/body/organisation/docs/CMR_HU.pdf (25 July 2017).

European Commission, ‘Comprehensive Monitoring Report on Slovakia’s preparations for membership’ (version unknown), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key_documents/2003/cmr_sk_final_en.pdf (25 July 2017).

proper political, economic, and administrative degree, in order to integrate them smoothly into the European Union. Next to that, these conditions can be interpreted as necessary, in order to fully integrate the EU rule of law and ensure a fully functioning state apparatus which is at a desired level by European Union standards. In a sense, another strong point is the time-pressure when the deadline of the accession period drew near. An increasing power position of the European Union ensures an increase in leverage of the European Union. This has led to an increased willingness of the Hungarian government to cooperate and an increased productivity of implementing chapters of the *acquis* by the Slovakian government, whereas they fell behind in 2001 (see Annex I). The increased productivity becomes clear from the fact that The Accession Treaty was eventually signed on 16 April 2003 in Athens⁹², whereas the Slovakian state had only provisionally closed 17 of the 30 chapters in 2001.

However, the pressure to implement the chapters within a given time period also had a downside. The choice of the Slovakian government to issue a decree in order to be more effective in its legislative power, compromised the institutional stability of the state. Although the time-pressure of conditionality can be seen as a strength of the European accession procedure, the European Union should intervene when the institutional stability is compromised, and should encourage parliamentary law-making instead of governmental legislation in Slovakia. The second flaw which can be pointed out is the fact that the European Union failed to allocate the right budget for institution building to Slovakia, whereas they did provide a budget for institution building to Hungary (percentage wise). The conditions which had to be met for the PHARE programme were equal for all states, whereas the starting position for the states in 1992 were significantly different. The difficulty for Slovakia to achieve these conditions in five years was harder, given the fact that their state was just created, whereas Hungary was an existing state with already existing institutions. This observation can be remarked as unusual, due to the fact that the EU recognized that the institutional development of Slovakia was insufficient in 1997, but failed to invest sufficient institutional capacity building, whereas they did invest in Hungarian institutional capacity building, although they assessed the institutional development of Hungary as well-functioning. Table 4, which shows the financial assistance of the PHARE Programme between 1997 and 2000, exemplifies these budgets. A continues disregard for institutional capacity building can be witnessed in Slovakia. This difference in European Union investments can be seen as a large factor of institutional development in the two states, where the EU did more to contribute to the institutional development of Hungary, than that of Slovakia.

⁹² European Parliament, 'Treaty of Accession' (version 20 May 2003), http://www.europarl.europa.eu/enlargement_new/treaty/default_en.htm (25 July 2017).

PHARE Programme - European Union financial assistance								
	1997		1998		1999		2000	
	Total amount	Institutional capacity	Total amount	Institutional capacity	Total amount	Institutional capacity	Total amount	Institutional capacity
Slovakia	€ 43 million	- (0%)	€ 45.9 million	€ 17 million (37%)	€ 69.5 million	€ 10.4 million (15%)	€ 78.8 million	€ 4.8 million (6.1%)
Hungary	€ 88 million	€ 13 million (14.8%)	€ 67 million	€ 7.8 million (11.6%)	€ 91 million	€ 35.2 million (38.7%)	€ 119.8 million	€ 27.5 million (23%)

Table 4: Financial assistance in the form of the PHARE Programme (1997 – 2000)⁹³

The longer lasting effects of conditionality: new procedures?

Now that the strengths and weaknesses of conditionality during the accession process have been established, an important follow-up question is to see whether the conditions which have been determined for the new member states of the European Union have longer lasting effects after their accession. First of all, it is important to recognize that the closed chapters on policy aspects like administrative improvements, financial control, and the free movement of goods, services, persons, and capital will have longer lasting benefits after the accession of the states, due to the fact that the new member states will have the benefit of a continuous cooperation with other member states. As is shown before, these developments on these policy areas are also recognized by the European Union. Another consequence of the use of conditionality during this period is the fact that the states have had experience of implementing EU law within a given time period. The states have therefore proven to be capable of effectively making use of a state apparatus by the rules and values of the European Union.

The absence of conditionality in the future can pose problems in the future however. As has become clear during the first case, the parliamentary institution of Slovakia is still compromised after accession. Whereas the European Union had an opportunity to improve parliamentary power in the last years of the accession procedure, as they have successfully influenced the institutional situation in Hungary, this leverage is now gone. With the absence of conditionality, this balance between the parliament and the government in Slovakia is way harder to influence or even control for the European Union. As will become clear later on during this chapter, the measures of the European Union to influence member states after the accession procedure is significantly lower.

⁹³ These budgets are presented within the Annual Reports of the PHARE Programme, which can be found in the bibliography of this thesis.

Given the fact that the leverage of the European Union over the new member states is gone, the incentive to constantly cooperate and follow these rules and values is not necessarily existent. Only if the states are properly integrated in the European Union and share all the interests of the EU, will they continue to implement European measures. The Hungarian 'Fourth Amendment' to the constitution is a perfect example of this conflict of interest. Prime Minister Orbán saw more benefits in enhancing governmental power and seizing control over other Hungarian institutions than following the rules and values of the European Union. The fact that a form of conditionality is absent due to the fact that Hungary already has joined the European Union, explains the reason why Orbán does not desire something from the EU, and is less inclined to follow their rules.

Next to that, when states have become part of the European Union, punitive measures are very difficult to implement. As stressed before, the member state is no longer in a position of weakness, due to the fact that membership conditionality is no longer present.⁹⁴ Punitive measures do exist in the form of infringement procedures, but they are less threatening to states than membership conditionality. A first step for the European Union is to issue a press statement in which they express their concern about the developments in the member state. The earlier presented statement of President Barroso is an example of such a statement. A next step is to present the case to the European Court of Justice, who can issue a judgement over the matter. Officially, this judgement is binding. Although rulings of the Court are not easily dismissed without risking reputation loss and fines, cases of ignoring earlier rulings have been present (Greece 2000⁹⁵, Poland 2017⁹⁶). An important reason why states can adopt a position in which binding EU legislation is ignored, is due to the fact that the European Union no longer has means to enforce EU laws and has no power position to demand national policy changes. A last preventive step which can be used by the European Union is invoking 'Article 7'. Once a EU member state disrespects the values of the EU and the rule of law for a prolonged period of time, 'the sanctioning mechanism allows the Council to suspend certain rights deriving from the application of the treaties to the EU country in question, including the voting rights of that country in the Council. In that case the 'serious breach' must have persisted for some time.'⁹⁷ However, in order to successfully invoke this Article, four fifths of the countries are required for the majority.⁹⁸ This majority is very difficult to achieve and member states are relatively secure,

⁹⁴ Smith, 'EU Membership Conditionality', 108-109.

⁹⁵ The Telegraph, 'Greece fined in Euro court for ignoring ruling' (version 5 July 2000), <http://www.telegraph.co.uk/news/worldnews/europe/greece/1346764/Greece-fined-in-Euro-court-for-ignoring-ruling.html> (25 July 2017).

⁹⁶ Human Rights Watch, 'Poland ignores European Court over return of asylum seeker' (version 15 June 2017), <https://www.hrw.org/news/2017/06/15/poland-ignores-european-court-over-return-asylum-seeker> (25 July 2017).

⁹⁷ European Union Legislation, 'Promoting and safeguarding EU's values' (version 10 March 2015), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Al33500> (25 July 2017).

⁹⁸ European Union Legislation, 'Suspension Clause' (version unknown), http://eur-lex.europa.eu/summary/glossary/suspension_clause.html (25 July 2017).

given the fact that a lot of states are not willing to invoke this article, afraid that they will be subject of the article someday.

Membership conditionality: need for improvement?

The attitude of the European Union can therefore be regarded as vital within the institutional development of the states which have applied for accession. Especially during the accession period, their ability to influence the executive and legislative institutions has been comprehensive, due to the conditionality of the European accession procedure. As has become clear during the analysis of the flaws of conditionality, the model should be revised. The end conditions of the accession procedure are inevitable, and can be regarded as necessary for a smooth integration of the new member state into the European Union. The monitoring of the fulfilment of the conditions should be improved however. The candidates for membership have all started from a different position when their political, economic, and administrative development are observed. The option to choose a model based on equal conditions can be applied, but in order to better assist all states, especially those who are still lacking the institutional and administrative capacities to implement EU legislation, better EU monitoring should be applied. Whereas the EU recognized the problems of Slovakia, it failed to allocate the right funds. Better monitoring should therefore lead to better EU assistance.

A second point of improvement with regard to conditionality is the fact that once EU membership is obtained, the influence of the European Union is significantly reduced. The gap between the power position of the European Union during the accession procedure and the power position of the European Union after candidates of membership have become official member states is therefore extensive. This already has become evident within the Hungarian case, where the years after the accession period have led to decisions which have caused backsliding in which the institutional equilibrium slowly crumbled. Whether the liberal model of a separation of powers does not seem to be incorporated within the Hungarian tradition of state-building or it can be seen as a single case of a 'lust for power' by Orbán, it becomes clear that the executive power in the form of the governmental institution constantly seeks more power. In order to be more effective within the state-building process of Hungary, the European Union should have recognized this executive abuse of power during the first Orbán administration. However, after the accession period, the means to intervene are significantly reduced.

A study from 2006 revealed the weak power position of the European Union with regard to the existing member states by describing the weaknesses of the infringement procedures as following:

Any Member State, *especially the new ones* [emphasis added], may conclude that non-compliance "pays".

It takes time for the Commission to detect an infringement, initiate proceedings before the Court and get a

ruling finding that infringement has occurred. But even with an adverse ruling, the Member State concerned can still procrastinate. The Commission will have to initiate new proceedings and request that the Court impose a fine on that Member State for failing to comply with the previous ruling. It is after the second ruling that the Member State will start paying and actually feeling the “pain” of non-compliance. In the meantime, it could have “gained” anything between four and eight years of non-compliance.⁹⁹

Given the fact that the European Union has no absolute way to enforce compliance, a way to increase the likelihood that states will comply is to either apply rigorous sanctions or accelerate the proceedings of infringement, in order to ensure that non-compliance does not ‘pay’. Given the fact that the present-day developments in states like the Czech Republic, Hungary and Poland have ensured a number of infringement procedures by the EU¹⁰⁰, the need to reform punitive measures of the European Union is a major issue, in order to prevent future non-compliance.

⁹⁹ Eipascope, ‘The Compliance Problem of the European Union’ (version unknown), http://aei.pitt.edu/6371/1/Scop06_1_2.pdf (26 July 2017).

¹⁰⁰ European Commission, ‘Relocation: Commission launches infringement procedures against the Czech Republic, Hungary and Poland’ (version 20 February 2017), http://europa.eu/rapid/press-release_IP-17-1607_en.htm (26 July 2017).

Conclusion

One of the reasons to initiate this thesis was the current strained relationship between the European Union, Slovakia and Hungary. In order to historically analyse the effects of the application procedure and the role of conditionality on the institutions of these states, the research question of this thesis was the following: *To what extent has the institutional development in Slovakia and Hungary between 1992 and 2014 been affected by the application of EU membership conditionality?* The institutional development of the two candidates for membership has certainly been affected during the accession period and to a lesser extent thereafter. In the Slovakian case, by falling short in the financial assistance with regard to institutional building between 1997 and 2000 and by allowing the Slovakian government to seize legislative power in order to implement EU legislation, the European Union seems to have negatively influenced the key tasks of the Slovakian institutions during the accession period. However, in the Hungarian case, the EU positively affected the key tasks of the Hungarian institutions by allocating a larger budget to institution building and by pressurizing the Hungarian government to implement a decentralization policy after earlier illiberal decisions. With regard to the long-term effects of EU conditionality on the institutional development, the gap between the presence of EU conditionality during the years of 1992-2004 and the lack of punitive measures after the two countries' attainment of EU membership have had a negative impact on the institutions of the two states. Indeed, the EU seems to have no real power to intervene with its member states when institutions are compromised.

Given the fact that EU membership conditionality has proven to be positive and negative, should conditionality be altered or should it be reconsidered altogether? As earlier academic discussions about enlargement have shown, debates are often focussed around the future benefits of enlargement for applicant member states or already existing member states. To be precise, the application of membership conditionality itself and its final conditions should not be reconsidered. The final conditions, which are formed by the chapters of the *acquis*, are necessary in order to reach a certain level of development on the different subjects which are defined by the EU. In order to improve the final outcomes of an eventual accession procedure however, the follow-up on the monitoring process, in the form of financial assistance and sanctioning when illiberal reforms take place, should be altered. As the Hungarian accession procedure has shown, a positive result can be achieved if the proper EU measures are implemented during the EU accession period, in the light of the EU monitoring reports.

Although EU conditionality can provide a good functioning development of the candidates of membership and should not be reconsidered altogether, the immediate period after accession of new member states lead to a huge disadvantage of conditionality. The current punitive measures of

the European Union immediately after EU accession are feeble, and new member states are less inclined to simply comply with EU demands. This long-standing debate on the power of the European Union versus the power of the member states was initiated by on the one hand the neofunctionalists like Haas, who stated that national actors would gradually shift is loyalty and expectations towards Brussels. The theory of intergovernmentalists, posed by Hoffman, states that national governments would never abandon sovereignty and the control of integration.¹⁰¹ This thesis shows the relevance of this debate. The negative impact of conditionality during the accession procedure, as can be witnessed in Slovakia, can be regarded as troublesome but solvable. However, in order to retain a stable political situation in the new member states in possible future enlargement waves, the EU needs to gain a certain influence over the new member states after the accession procedure.

The current model of with modest sanctions and slow infringement procedures do not positively influence the leverage of the European Union. Given the fact that the European Union cannot simply enforce new rules without member state approval, new changes have to be made to enforce compliance. First, the already existing infringement procedures should be accelerated. As the last period of the Hungarian case has shown, current infringement procedures last multiple years, whereas non-compliance is not very costly for member states. By speeding up this process, compliance is more likely. Secondly, imposing higher sanctions on a member state in the case of non-compliance should even more increase the incentive to comply. However, the current punitive measures will be difficult to alter. Due to the fact that the current punitive measures of the EU do not only apply to states which are new members of the European Union, but also to existing members, possible 'radical' changes are not likely to be accepted by the member states. Therefore, the only means to gain leverage over new member states after accession seems to be during their application procedure for the EU. A possible means to gain more power is the initiation of a 'transition period' after accession, in which the European Union has extended powers over the new member states, which can only be effectuated in the case of illiberal policy decisions.

Further research on the power balance between the European Union and the member states would be an excellent research angle to assess whether the power balance of member states is as strong as suggested by, for example, Uwe Puetter.¹⁰² Furthermore, does the EU have options to increase its power over the member states, now or in a possible future enlargement wave? This study could be expanded to incorporate all candidates for membership during the enlargement wave between 1992 and 2004, in order to offer a conclusive answer whether the influence of European Union conditionality was largely positive or negative during the Eastern enlargement wave. Although

¹⁰¹ H. Zimmermann and A. Dür, 'More Powers for Brussels or Renationalization?', in: H. Zimmermann and A. Dür (eds.), *Key Controversies in European Integration* (Basingstoke 2012) 48.

¹⁰² U. Puetter, 'The new intergovernmentalism in EU governance', in: H. Zimmerman and A. Dür (eds.), *Key Controversies in European Integration* (Basingstoke 2012) 56.

this study has offered an overview on the interaction between the European Union and the institutions of two future member states, a more clear analysis can be offered which policy aspects of the European Union can be improved in the future and which facets of monitoring need to be improved, when all candidates for membership are assessed. As for now, as the recent developments in Slovakia and Hungary demonstrate, the influence of EU conditionality can be described as trivial.

Bibliography

Primary sources

Commission of the European Communities, 'The PHARE Programme Annual Report 1997' (version unknown), <http://aei.pitt.edu/5963/1/5963.pdf> (20 July 2017).

Commission of the European Communities, 'The PHARE Programme Annual Report 1998' (version unknown), [http://aei.pitt.edu/33799/1/COM_\(2000\)_183_final.pdf](http://aei.pitt.edu/33799/1/COM_(2000)_183_final.pdf) (14 August 2017).

Commission of the European Communities, 'The PHARE Programme Annual Report 1999' (version unknown), <http://www.esiweb.org/enlargement/wp-content/uploads/2009/02/ec-phare-annual-report-1999.pdf> (14 August 2017).

Commission of the European Communities, 'The PHARE Programme Annual Report 2000' (version unknown), <http://www.esiweb.org/enlargement/wp-content/uploads/2009/02/ec-phare-annual-report-2000.pdf> (14 August 2017).

Constituteproject, 'Slovakia's Constitution of 1992 with Amendments of 2014' (version 28 March 2017), https://www.constituteproject.org/constitution/Slovakia_2014.pdf?lang=en (2 April 2017).

European Commission, 'Acquis' (version 6 December 2016), https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis_en (16 August 2017).

European Commission, 'Comprehensive Monitoring Report on Hungary's preparations for membership' (version unknown), http://ec.europa.eu/development/body/organisation/docs/CMR_HU.pdf (25 July 2017).

European Commission, 'Comprehensive Monitoring Report on Slovakia's preparations for membership' (version unknown), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key_documents/2003/cmr_sk_final_en.pdf (25 July 2017).

European Commission, 'Commission Opinion on Hungary's Application for Membership of the European Union' (version unknown), http://www.europa.eu/rapid/press-release_DOC-97-13_en.pdf (18 August 2017).

European Commission, 'General Information: Infringement procedure' (version 25 July 2017), https://ec.europa.eu/taxation_customs/infringements/general-information_en (25 July 2017).

European Commission, 'Press Release: The European Commission reiterates its serious concern over the Fourth amendment to the Constitution of Hungary' (version 20 February 2017), http://europa.eu/rapid/press-release_IP-13-327_en.htm (23 July 2017).

European Commission, 'Regular Report on Hungary's progress towards accession' (version 1998), https://irf.gyemszi.hu/HolOrszag/zip_doc/eu/1998/ang1998.pdf (24 April 2017).

European Commission, 'Relocation: Commission launches infringement procedures against the Czech Republic, Hungary and Poland' (version 20 February 2017), http://europa.eu/rapid/press-release_IP-17-1607_en.htm (26 July 2017).

European Parliament, 'Treaty of Accession' (version 20 May 2003), http://www.europarl.europa.eu/enlargement_new/treaty/default_en.htm (25 July 2017).

European Parties Elections and Referendums Networks, 'Elections Briefings No 51: Europe and the Hungarian Parliamentary Elections of April 2010' (version unknown), <https://www.sussex.ac.uk/webteam/gateway/file.php?name=epern-election-briefing-no-51.pdf&site=266> (2 May 2017).

European Union Legislation, 'Promoting and safeguarding EUs values' (version 10 March 2015), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3A33500> (25 July 2017).

European Union Legislation, 'Suspension Clause' (version unknown), http://eur-lex.europa.eu/summary/glossary/suspension_clause.html (25 July 2017).

National Election Office, 'Parliamentary election 2002' (version 11 February 2010), http://www.valasztas.hu/en/ovi/201/201_0.html (2 May 2017).

National Election Office, 'Parliamentary election 2006' (version 11 February 2010), http://www.valasztas.hu/en/ovi/196/196_0.html (2 May 2017).

Office of the Parliament, 'Fourth Amendment to Hungary's Fundamental Law' (version unknown), <http://lapa.princeton.edu/hosteddocs/hungary/Fourth%20Amendment%20to%20the%20FL%20Eng%20Corrected.pdf> (2 May 2017).

Official Journal of the European Communities, 'Council Regulation (EC) No 622/98' (version unknown), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998R0622&from=EN> (15 July 2017).

Princeton, 'The Constitution of the Republic of Hungary – 1989 amendments' (version unknown), http://lapa.princeton.edu/hosteddocs/hungary/1989-90%20constitution_english.pdf (22 April 2016).

Transparency International, *Conflict of Interest in Legislative process in Slovakia* (2014).

U.S. Commission on Security and Cooperation in Europe, 'Kim Lane Scheppele's Testimony at the Helsinki Commission on Hungary: Full Text' (version 19 March 2013),

<https://hungarianspectrum.wordpress.com/2013/03/19/kim-lane-scheppeles-testimony-at-the-helsinki-commission-hearing-on-hungary-full-text/> (2 May 2017).

World Economic Forum, 'The Global Competitiveness Report 2016-2017' (version 28 September 2016), <http://www3.weforum.org/docs/GCR2016->

[2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf) (2 May 2017).

Secondary sources

Ágh, A., 'Post-Accession Crisis in the New Member States: Progressing or Backsliding in the EU?', in: *Studies of Transition States and Societies* 2,1 (2010) 74-95.

Ágh, A. and Rózsás, Á., *Organising for EU Enlargement: Challenge for the Member States and the Candidate Countries* (version unknown), <http://www.oeue.net/papers/hungary-institutionalpreparati.pdf> (25 April 2017).

Berger, P.L., and Luckman, T., *The Social Construction of Reality. A treatise in the sociology of knowledge* (4th edition; London 1991).

Bickerton, C.J., 'EU Enlargement: a critique', in: H. and A. Dür (eds.), *Key Controversies in European Integration* (Basingstoke 2012) 212-217.

Brodsky, C., 'Hungary's Dangerous Constitution' (version unknown), <http://jtl.columbia.edu/hungarys-dangerous-constitution/> (2 May 2017).

Calvert, R., 'Rational Actors, Equilibrium, and Social Institutions', in: J. Knight and I. Sened (eds.), *Explaining Social Institutions* (Ann Arbor 1995) 73-74.

Eipascope, 'The Compliance Problem of the European Union' (version unknown), http://aei.pitt.edu/6371/1/Scop06_1_2.pdf (26 July 2017).

Epstein, R., 'The benefits of EU enlargement: stability, democracy and prosperity', in: H. Zimmermann and A. Dür (eds.), *Key Controversies in European Integration* (Basingstoke 2012) 206-212.

European Commission, 'Accession Criteria' (version 6 December 2016), https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en (17 Juli 2017).

EUR-Lex, 'Accession Treaties: Greece, Portugal and Spain' (version unknown), <http://eur-lex.europa.eu/collection/eu-law/treaties/treaties-accession.html> (16 August 2017).

Freedom House, 'Slovakia: Freedom in the World Ratings, 1989-1998' (version unknown), <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan008399.pdf> (14 August 2017).

Human Rights Watch, 'Poland ignores European Court over return of asylum seeker' (version 15 June 2017), <https://www.hrw.org/news/2017/06/15/poland-ignores-european-court-over-return-asylum-seeker> (25 July 2017).

Inotai, I., 'The "Eastern Enlargements" of the European Union', in: M. Cremona (ed.), *The Enlargement of the European Union* (New York 2003) 102-103.

Jacoby, W., *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe* (New York 2004).

Láštic, E., 'Get the Balance Right: Institutional Change in Slovakia during EU Accession and Membership', in: *Sociológia* 38 (2006) 533-545.

March, J.G., and Olsen, J.P., 'Elaborating the "New Institutionalism"', in: R.A.W. Rhodes, S.A. Binder and B.A. Rockman (eds.), *The Oxford Handbook of Political Institutions* (New York 2006) 3-20.

March, J.G. and Olsen, J.P., 'The Logic of Appropriateness', in: R.E. Goodin (ed.), *The Oxford Handbook of Political Science* (New York 2011) 478-497.

Maresceau, M., 'Pre-accession', in: M. Cremona (ed.), *The Enlargement of the European Union* (New York 2003) 9-42.

Moravcsik, A., and Vachudova, M.A., 'Preference, Power and equilibrium: The causes and consequences of EU enlargement', in: F. Schimmelfennig and U. Sedelmeier (eds.), *The Politics of European Union Enlargement: Theoretical Approaches* (New York 2005) 198-212.

Müller-Graff, P.C. (ed.), *East Central Europe and the European Union: From Europe Agreements to Member Status* (1997).

Nobel Prize, 'The Nobel Peace Prize for 2012' (version 12 October 2012), http://www.nobelprize.org/nobel_prizes/peace/laureates/2012/press.html (19 August 2017).

North, D.C., *Institutions, Institutional Change and Economic Performance* (New York 1990).

Politico, 'Viktor Orbán: Make Europe (but not the EU) great again' (version 26 January 2017), <http://www.politico.eu/article/viktor-orban-make-europe-but-not-the-eu-great-again/> (5 August 2017).

Puetter, U., 'The new intergovernmentalism in EU governance', in: H. Zimmerman and A. Dür (eds.), *Key Controversies in European Integration* (Basingstoke 2012) 56-62.

Rupp, M.A., 'The pre-accession strategy and the governmental structures of the Visegrad countries', in: K. Henderson (ed.), *Back to Europe: Central and Eastern Europe and the European Union* (London 2005) 82-98.

Schimmelfennig, F., 'Liberal Community and enlargement: An event history analysis', in: F. Schimmelfennig and U. Sedelmeier (eds.), *The Politics of European Union Enlargement: Theoretical Approaches* (New York 2005) 172-197.

Schimmelfennig, F., and Sedelmeier, U. (eds.), *The Politics of European Union Enlargement: Theoretical Approaches* (New York 2005) 7.

Sedelmeier, U., 'Europe after the Eastern Enlargement of the European Union: 2004-2014', (version 10 June 2014), http://eu.boell.org/sites/default/files/uploads/2014/06/eastern_enlargement.pdf (25 April 2017).

Shepsle, K.A., 'Old Questions and New Answers about institutions: The Riker Objection Revisited' (version unknown), <http://scholar.harvard.edu/kshepsle/files/weingast.pdf> (18 March 2017).

Shepsle, K.A., 'Rational Choice Institutionalism', in: R.A.W. Rhodes, S.A. Binder and B.A. Rockman (eds.), *The Oxford Handbook of Political Institutions* (New York 2006) 23-38.

Smith, K.E., 'The Evolution and Application on EU Membership Conditionality', in: M. Cremona (ed.), *The Enlargement of the European Union* (New York 2003) 105-139.

Tatham, A.F., *Enlargement of the European Union* (Biggleswade 2009).

The Telegraph, 'Greece fined in Euro court for ignoring ruling' (version 5 July 2000), <http://www.telegraph.co.uk/news/worldnews/europe/greece/1346764/Greece-fined-in-Euro-court-for-ignoring-ruling.html> (25 July 2017).

Transparency International Hungary, 'Judiciary' (version unknown), <https://transparency.hu/en/kozszeaktor/igazsagszolgalatas/> (2 May 2017).

Website of the Hungarian Government, 'Speech by Prime Minister Orbán on 15 March' (version 16 March 2016), <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/speech-by-prime-minister-viktor-orban-on-15-march> (18 August 2017).

Zimmermann, Z., and Dür, A., 'More Powers for Brussels or Renationalization?', in: H. Zimmermann and A. Dür (eds.), *Key Controversies in European Integration* (Basingstoke 2012) 48-62.

Annex I: State of the Accession Negotiations at the end of the Swedish Presidency (end of June, 2001)¹⁰³

Chapters	Hungary	Czech Rep.	Poland	Estonia	Slovenia	Cyprus	Malta	Lithuania	Slovakia	Latvia	Bulgaria	Romania
1. Free movement of goods	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	To be opened
2. Free movement of persons	Provisionally closed	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Provisionally closed	Chapter opened	Chapter opened	Chapter opened	Chapter opened	To be opened	To be opened
3. Free movement of services	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	To be opened
4. Free movement of capital	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Chapter opened	Provisionally closed	Chapter opened	Chapter opened
5. Company law	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened
6. Competition & state aid	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened
7. Agriculture	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	To be opened	Chapter opened	Chapter opened	Chapter opened	To be opened	To be opened
8. Fisheries	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Chapter opened
9. Transport	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Provisionally closed	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened
10. Taxation	Provisionally closed	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	To be opened	To be opened
11. EMU	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	To be opened	To be opened
12. Statistics	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	To be opened	To be opened
13. Social policy & employment	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Provisionally closed	Provisionally closed	To be opened	To be opened
14. Energy	Provisionally closed	Chapter opened	Provisionally closed	Chapter opened	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Chapter opened	To be opened	To be opened
15. Industrial policy	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	To be opened	To be opened
16. SMEs	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed
17. Science & research	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed
18. Education & training	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed
19. Telecommunications	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	Chapter opened	Chapter opened

¹⁰³ A. Inotai, 'The "Eastern Enlargements" of the EU', in: M. Cremona (ed.), *The Enlargement of the European Union* (New York 2003) 102-103.

20. Culture & audiovisuals	Chapter opened	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened
21. Regional policy	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	To be opened
22. Environment	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	To be opened
23. Consumers & health protection	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed
24. Justice & home affairs	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	To be opened	To be opened	To be opened	To be opened	To be opened	To be opened
25. Customs union	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Provisionally closed	Chapter opened	Provisionally closed	Chapter opened	Chapter opened	Chapter opened	Chapter opened
26. External relations	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed
27. Common foreign & security policy	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed
28. Financial control	Provisionally closed	Chapter opened	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Provisionally closed	Chapter opened	Chapter opened	Chapter opened	Chapter opened	To be opened
29. Financial & budgetary	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	Chapter opened	To be opened
30. Institutions	To be opened	To be opened	To be opened	To be opened	To be opened	To be opened	To be opened	To be opened	To be opened	To be opened	To be opened	To be opened
Number of provisionally closed chapters	22	19	17	19	21	23	18	17	17	15	10	7