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The Newer Member: Bulgaria in the European Union

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Although qualified by policy makers and academics as the end of the EU's fifth enlargement,¹ the accession of Bulgaria and Romania in January 2007 differs substantially from the earlier round of expansion into post-communist Europe. Even if Bulgaria's entry was not legally hindered by the rejection of the Constitutional Treaty in 2005 (since its participation in the common institutions was already regulated by the Nice Treaty), the ever increasing enlargement fatigue across the Union member states had some negative impacts. Among the most serious ones, and paradoxically beneficial as well in terms of political commitment to domestic reform, was a prolonged period of uncertainty throughout 2006 whether the safeguard membership postponing clauses of the Accession Treaty will be invoked or not. The three-party coalition government had to devote much resource on ensuring smooth and successful ratification of the Treaty by all 25 member states as well as on convincing the Commission's Directorate General on Enlargement that even if not entirely ready by January 2007, Bulgaria can credibly commit itself to certain 'post-accession membership criteria' to be fulfilled under strict monitoring and reporting.

In terms of the practicalities of accession, the nomination and appointment of Bulgarian representatives in the common EU institutions seemed uncontroversial thus proving right the argument that the objective of accession had been the most potent glue keeping the ruling coalition together and enabling it to agree on matters that usually produce much debate and disagreement. The post of Commissioner went to the hard-working and consistent European integration Minister, who is perhaps among the few in Bulgaria that can be reasonably credited with ensuring that accession was not delayed for 2008. The no less important seat in the European Court of Justice went to the largest party in the coalition, while MEPs were proportionately distributed across the parliamentary represented parties. A decision was taken to postpone elections for the European Parliament for 2007, which will give almost no breathing space for the newly elected Bulgarian MEPs as they will have to immediately engage in an electoral campaign for the June 2009 elections for the next European parliamentary term.

1. The background

Although Bulgaria and Romania started accession talks together with four other candidate countries (the so called Helsinki six: Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia) in the year 2000, it soon transpired that they are lagging behind in their progress on the 31 chapters of *acquis communautaire*. The other four, including the Luxembourg six (Cyprus, the

¹ See, among others, Zielonka, J. (2007) 'Plurilateral governance in the enlarged European Union', *Journal of Common Market Studies*, Vol. 45, No. 1, pp. 187-209. Olli Rhen's stated that 'the fifth enlargement was completed' with the entry of Bulgaria and Romania in a speech at the Italian Ministry of Foreign Affairs on 16 January 2007.

Czech Republic, Estonia, Hungary, Poland and Slovenia) concluded their negotiations in 2002 and signed Treaties of Accession already in 2003 with the view to enter in 2004.² At that time Bulgaria was still negotiating on many of the remaining 31 chapters. Negotiations were still not concluded in May 2004 when the actual fifth Union enlargement happened. 'Justice and Home Affairs' turned out to be among the most problematic chapters in the negotiating brief even if it included a nascent EU body of law. According to informal accounts, the JHA chapter was actually closed with the help of certain influential member states exchanged for support by Bulgaria for their positions within the Constitutional Convention. The overarching priority in Bulgaria at the time was progress on negotiations; the Constitution and its content were not really of high political salience. Hence, the pragmatic decision to use being part of the Convention as an instrument to achieve a more important objective – to conclude accession talks and sign an Accession Treaty.³

In terms of legal provisions, Bulgaria's accession to the EU was already enabled in 2003 when the Treaty of Nice entered into force. In fact, the Irish negative referendum of 2002 presented a much bigger hurdle to entry than the 2005 referenda in France and the Netherlands. The Treaty of Nice institutional provisions accounted for Bulgaria's Union membership determining the number of its Council votes, the number of its MEPs as well as its representation in the Commission, the Court of Justice and in other Union bodies. Even if emerging enlargement fears were already visible at the time of the ratification of the Treaty of Nice, they were far from the anxiety of letting more European states in the club which grips the Union today. The reversal of the Irish 'NO' vote was an easier task compared to the seemingly huge one of getting French voters on board with respect to a revamped Constitution currently under discussion.

From a certain point of view the antagonism to enlargement is understandable. The immediate effect of letting a large number of poorer member states (as the case was in 2004) was mostly negative for ordinary EU citizens. They faced the competition of well qualified but unemployed new citizens who were willing to do their job for less as well as the decision of investors to move businesses eastwards. The press in many Eurosceptic member states was quick to jump on the bandwagon and demonise Union enlargement thus instilling public fear of what is to come next.⁴ Values such as solidarity, even if arduously advocated by the Union's political elite, turned out to not to be strongly engrained in the Union's popular culture and self-perception. This is where the Accession Treaties of Bulgaria and Romania signed in April 2005

² For a detailed presentation of process and steps of the two most recent enlargements see http://ec.europa.eu/enlargement/index_en.htm

³ Interviews of the author with two of the Bulgarian representatives on the Constitutional Convention (August 2004).

⁴ Some of the tabloids in the UK stand out particularly in this respect, see 'Mafias ganging up on us in the UK' by Oliver Harvey, *The Sun*, 2 November 2006.

created an important precedent. In order to ensure that their entry is not a burden on EU's policies and institutions, both of them included a safeguard clause: accession could be postponed for a year if they were deemed unprepared to join.

2. Pre-accession efforts

The suspense over Bulgaria's accession was maintained until the last months of 2006. The Commission was responsible for monitoring and reporting on the country's progress in fulfilling the remaining conditions for membership and, based on the observed performance, was only able to assess it as barely satisfactory. Several areas where serious gaps with the *acquis communautaire* existed remained problematic throughout 2006, namely corruption, judicial reform, organised crime and poor administrative capacity to implement EU law.⁵ This suspense helped pressure Bulgaria's political elite into proposing and taking some concrete and visible steps in remedying the gaps. A number of relevant acts were amended; a new Chief Prosecutor was appointed and given far-reaching powers to deal with corruption within the judicial system. Cooperation between the police and the courts was improved with a view of better aligning investigation and prosecution work and secure convictions. Steps were also taken to enhance administrative capacity in terms of transparency and accountability, particularly as regards the administration of EU pre-accession and structural funds.

Following the signature of the Accession Treaty, the Ministry of Foreign Affairs announced a tender for appointing lobbying consultants. This was deemed necessary in order to ensure that the ratification process proceeds smoothly in all 25 member states. Several key ones were singled out as problematic, including France, Ireland, Denmark and (less so) Germany. Bulgaria's negotiating team was under a lot of pressure to respond to various questions coming from the relevant parliamentary committees of member states undergoing ratification. The European integration Minister had to schedule a heavy travelling agenda with talks and presentations held across the Union with the purpose of ensuring that member state Parliaments have all the necessary information before proceeding with approving the Accession Treaty.

Following the September 2006 Commission's report recommending that Bulgaria and Romania could join the EU in January 2007, the ratification process geared towards its end. Those within the Union who opposed accession were left without strong arguments. The Bulgarian government and Parliament moved to decide on the nominations for Bulgarian representatives in the common institutions as determined by the Treaty of Nice. Given Barroso's call for female nominations and the positive track record of Bulgaria's European integration Minister, Meglena Kuneva, she faced almost no competition for the job. The complexity of a three-party coalition

⁵ See European Commission's 'Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania', COM (2006) 549 final, 26 September 2006.

meant that there would have to be compromises, which also made it easier to agree. In exchange for agreeing on Kuneva's nomination (she represents the second party in the coalition, the National Movement Simeon II), the strongest party (the Bulgarian Socialist Party) got to nominate the ECJ justice from among its ranks. Again an appropriate choice seems to have been made - a former Constitutional Judge and participant (as the Socialist Party parliamentary representative) in the work of the Union's Constitutional Convention. No elections were held for the European Parliament; instead the parliamentary represented parties decided on their MEPs based on a proportional calculation and distribution of the 18 available seats.

3. Bulgaria as member state

As has already been noted, Bulgaria's (and Romania's) entry into the EU created an important and largely unwelcome precedent. For the first time membership was granted under strict safeguard clauses and the possibilities of sanctions if conditions were not met. For example, within the problematic JHA chapter and due to the slow reform of the judiciary, Bulgaria's court rulings cannot be applied in other member states and this has an evidently negative impact on creating a common area of justice. Important restrictions were imposed on freedom of labour movement by even more member states than in 2004. The Commission was charged with monitoring progress and reporting on whether Bulgaria makes steps towards heeding of what now became 'post-accession criteria for fully-fledged membership'. The government has been given some breathing space of half a year before progress would be formally assessed and decision taken on the imposition or not of sanctions.

The nominated Bulgarian representatives in the common institutions were confirmed by a Council decision in January 2007 as well as Bulgaria's voting rights in the Council itself and the new requirements for a qualified majority. The European Parliament acquired 18 Bulgarian MEPs who were distributed across its political groups. The one representative of the far-right movement 'ATAKA' enabled the formation of a new political group within the EP itself – Identity, Sovereignty, Tradition. Following the election of a new President and the reshuffling of the committees, and because of its far-right ideology, other MEPs moved to isolate the new group from acquiring any chair posts, which is a trend similar to the one observable within the Bulgarian Parliament with respect to 'ATAKA'.⁶ Within the Commission, Kuneva was given the portfolio of consumer protection and already in February released a green paper Thighlighting online commerce as an area in which complex rules are holding back businesses and

⁶ This is hardly surprising. The 'ATAKA' MEP was quick to antagonise other Parliamentarians, including the then EP President Borrell, with derogatory statements against the nomination of Livia Jaroka (an MEP of Roma origin) as Parliamentarian of the Year 2006 in the field of Justice and Human Rights.

disadvantaging consumers. She set herself a difficult agenda to increase the cross-border retail market and to provide better information for consumers through appropriate legislative measures.⁷PTT

Meanwhile, the Bulgarian government and parliament continued their efforts to comply with the remaining membership conditions. The Constitutional provisions granting far-reaching immunity to Bulgarian judges, prosecutors and investigators, singled as one of the reasons for the existing inefficiency and possible corruption within the judicial system, were amended in line with EU's standards. A special judicial monitoring body was also set up. Justice, Freedom and Security Commissioner Frattini praised police efforts in arresting members of organised crime groups but criticised the lack of speedy and effective prosecutions and urged the judiciary to secure high-profile convictions.⁸PT European Parliament elections are scheduled for May 2007 and are expected to further galvanise public opinion and stimulate political commitments on progress with the remaining problem areas. Within the Council, the Bulgarian government has been guided by two overarching objectives – to secure the release of the five Bulgarian medics sentenced to death in Tripoli over allegations of knowingly using HIV-positive blood for transfusion and to obtain a high compensation for closing two of the reactors of Kozlodui's nuclear plant.

The first seems to have already generated some progress with statements from across the Union that the Libyan authorities should suspend the death sentences and ensure fair trial for the accused. The current Bulgarian Prime Minister is pretty concerned over maintaining a single EU voice on the issue, having recently had to talk to his Slovak counterpart before Fico's visit to Tripoli.⁹PT The second, however, is far from being achieved. Apparently bothered by the fact that Bulgaria has no surplus electricity to export, the Energy Minister (himself a nuclear physicist and a power broker within the Socialist Party) has claimed that a sum of €1 billion is the appropriate EU compensation for the requested closure.¹⁰PT It remains to be seen how these objectives will determine Bulgaria's position on other issues and its voting strategy within the Council; it is not unlikely that it will bargain its backing to member states that are willing to support it on them. As it seems already, the Bulgarian government is willing to be taking anti-free-market positions by opposing the Commission proposal for the unbundling of ownership within the energy sector. Within the Union, standing to block a decision has often been a signal that a government is open for offers on other fronts.

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⁷PT See European Commission's 'Green Paper on the Review of the Consumer *Acquis*', COM (2007) 744 final, 8 February 2007.

⁸PT 'Frattini tells Bulgaria to speed up prosecutions' by Judith Crosbie, *European Voice*, 22 February 2007.

⁹PT During his speech in EP's Strasbourg plenary session on 17 January 2007, one of the Bulgarian MEPs (representing the strongest party in the governing coalition) called for a EU to come up with a 'strong and clear voice, which will be heard in Tripoli' against the execution of the death sentences.

¹⁰PT In a televised interview on 26 January 2007, Minister Ovcharov argued that the closure of Kozlodui reactors 3 and 4 is causing an energy crisis in the region and that he will bring up the issue of increased compensation for Bulgaria at the EU Energy Ministers Council.

The EU accession of Bulgaria and Romania has set up a dangerous precedent by allowing pre-accession criteria for membership to be transferred into post-accession ones. This is so for two main reasons: firstly, giving a strong argument for other candidate states to ask for the same treatment and, secondly, making Union politicians wary of making commitments (e.g. entry in 2007 in the case of Bulgaria and Romania) which could lead them into taking unpopular decisions. The negative impact of this precedent is to be borne mostly by those currently queuing for membership. For example, Croatia's accession has been conditioned on solving the Constitutional impasse, while the Commission President has recently refused to commit the Union to giving Macedonia a date for starting accession talks.^{TP11PT} Turkey is in no less enviable position having seen 8 of the 35 negotiating chapters frozen over disagreements on Cyprus. The Union is clearly more willing to exercise a stronger hand in the enlargement process and grant less benefits-of-the-doubt as the case was with Bulgaria and Romania.^{TP12PT}

The next in line, Croatia, enjoys strong support on the part of some member states and this is very important for the purposes of successfully negotiating entry, however, the next enlargement of the Union does not seem likely to happen before 2010. The pure logistics of concluding negotiations, signing an Accession Treaty and having it ratified by all 27 member states require an increasing amount of time as the Union becomes larger and more complex. The negotiations for the 1995 enlargement were structured in 21 chapters, those for the 2004 and 2007 ones – in 31 and the briefs of Croatia and Turkey have already expanded to 35. It is no surprise that the Macedonian European integration Minister is pushing hard for starting negotiations and hoping for a date to be given during or before the upcoming Slovenian Presidency.^{TP13PT} The earlier this happens, the less the risk of the negotiating brief covering a few more areas of required legal approximation. For the 2 most recent entrants it has taken four months between the conclusion of negotiations and the signature of the Accession Treaty and then more than a year and a half for the ratification process. If this is to provide any guidance and if the next entry is to happen in January 2010, membership negotiations with Croatia must be provisionally concluded around this time next year. From today's perspective, however, this does not seem to be a likely outcome.

4. Useful literature on the subject:

¹¹ During his official visit to Macedonia in February 2007, Barroso confirmed that the Western Balkans remain a high priority for the EU, but told the leaders of the country that more needs to be done in terms of reforms before accession talks could begin.

¹² See 'Presidency Conclusions', Brussels European Council 14/15 December 2006, CONCL 3, 16879/1/06.

¹³ 'Macedonia aims for early accession talks' by Andrew Beatty, *European Voice*, 22 February 2007.

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Sedelmaier, U. (2005) *Constructing the Path to Eastern Enlargement: the Uneven Policy Impact of EU Identity* (Manchester: Manchester University Press)