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The EU exercised an extensive political authority towards the candidate countries of Central and Eastern Europe (CEE) during the 2004 enlargement negotiations period: a strict pre-accession conditionality was applied to ensure the alignment of the candidate countries' legislation and institutions with the complex body of EU legislation prior to the accession. In many respects the application of such strict and structured pre-accession conditionality was unique in the history of the EU enlargement. In its last annual monitoring report, the European Commission optimistically noted that 'in most areas of the acquis, preparations for the membership have been virtually completed [by the end of September 2003] They have reached a very high degree of alignment, and generally deserve to be commended for these achievements' (European Commission 2003, 23). The general consensus in the literature is that the EU was generally effective in promoting domestic reforms, and prompting the transposition of the EU law into candidate countries' legislative and institutional frameworks. However, there are well justified doubts whether the success of the EU membership conditionality can be achieved after the accession. In other words, it has been widely anticipated that the EU political authority and ability to elicit compliance with its rules in the post-accession period would be more limited than in the pre-accession period. Given that the main positive incentive of membership was already granted and the EU capacities to sanction its member states' non-compliance practices are quite limited, the new member states from Central and Eastern Europe would be quite prone to violating the EU law.

The scepticism and caution expressed in the academic circles regarding the continuity and effectiveness of the EU post-accession conditionality in the CEE states has been largely echoed by the EU itself and other international institutions. In anticipation of post-accession difficulties to transpose and, mainly, implement the EU general *acquis*, which consists of more than 80,000 pages of legislation (Toshkov 2008, 380), as well as the specific 'enlargement *acquis*', the EU created specific sanctions and safeguards in the context of the 2004 eastern

enlargement. According to Articles 38 and 39 of the Accession Treaty signed in April 2003, during the first three years of membership, the European Commission can take the following measures if new member-states fail to apply the *acquis* properly: temporary exclusion of a non-compliant new member-state from some benefits of the single market and other benefits of membership in certain policy areas. Influenced by the 'enlargement fatigue', the current Barroso Commission adopted a much stricter approach towards implementation of political conditionality, allowing for new formal procedures to suspend accession negotiations at each stage if pre-accession compliance is not satisfactory. A widely held view inside the European Commission in the immediate aftermath of the eastern enlargement was that of self-criticism in terms of the Commission's approach during the 2004 accession process, which had been too naïve and not sufficiently strict about matters of enforcement and implementation of the EU rules (Pridham 2008, 366). A study in 2004, the actual year of 'Eastern Enlargement', by the EU and the OECD found that administrative standards in the region were not up to Western standards: among the most frequently reported problems were patronage, low pay, discretionary power of senior civil servants, and rising levels of corruption (The Economist 2006). Two years later, in 2006, the World Bank reported that administrative and civil service reforms in the EU-8 (new EU member states of the CEE), rapidly pushed through during the pre-accession period, had ran into ground and had been quite limited in terms of institutionalisation and implementation (World Bank 2006). Widely reported in the media, the most controversial case of policy reversal concerned the issue of increased political control of the civil service in countries of CEE. In June and October 2006 Slovakia and Poland, respectively, amended their pre-accession laws on civil service by abolishing the newly created Civil Service Authorities, which made it easier for politicians in both countries to control the civil service. Moreover, even those countries in the region that were traditionally regarded as 'enlargement over-achievers' in terms of their compliance with the enlargement *acquis*, have

also backslided in the post-accession reform process. Thus, the government of the Czech Republic has repeatedly delayed adoption of a law to regulate the appointment of civil servants, and was largely unsuccessful in the implementation of civil service reform in the country (The Economist 2006). The cases of reform delay and backsliding are evident in other policy areas as well. In April 2006 the Polish government was severely criticised by the EU (in particular, by the European Parliament) over a range of social value issues including the proposed death penalty for paedophiles and intolerant policies towards sexual minorities.

Notwithstanding these clear-cut cases of policy reversal, however, the European Commission's own monitoring system does not identify a distinctive 'Eastern' compliance problem: the formal compliance record of the new member states, as registered in the Commission's infringement statistics, is on average better than that of the EU-15 (Sedelmeier 2008, 811-816). Such positive compliance record also applies to the domestic transposition of EU legislation as well as faster settlement of infringement cases in comparison to the old member states. In the period from 2004 to 2007 the mean transposition deficit in the new member states (EU-10) was lower than the average percentage of non-transposed directives in the EU-15 (Toshkov 2008, 380). Moreover, in 2007 the best-performing countries are new member states and the worst country-performer in the EU-10 still had a better compliance record than the worst performer in EU-15 (ibid.). A surprisingly good performance of the newly accessed EU-10 represents an interesting puzzle. Why is there such a discrepancy in compliance records across countries of CEE and policy issues?

A possible answer to this question, already discussed to a certain extent in the literature on Europeanization and compliance with EU rules, can be problems with the monitoring data provided by the Commission itself. It could well be that due to various reasons, including logistics and a lack of resources to closely monitor the compliance on the ground, the Commission data simply does not give an accurate picture of the true situation with

compliance in the new member states (Falkner, Treib and Holzleithner 2008; Hartlapp and Falkner 2009). Another plausible explanation to such mixed record of compliance could be found if one adopts a more nuanced understanding of the key variable of interest – compliance with EU rules. Thus, if compliance is viewed as merely formal transposition of EU laws into domestic laws, taking into account the legislative stage only, then it is quite possible that there is no distinct 'Eastern problem'. However, if one operationalises 'compliance' as both formal transposition *and* practical implementation of EU rules, then the policy backsliding in individual issue-cases does not seem to be as puzzling as before. As suggested by one study, 'the world of dead letters' rules in some new member states, meaning that a fairly decent transposition of formal EU rules is followed by a neglect of practical implementation (Falkner et al. 2005).

Given a mixed evidence of new member states' compliance record and a pessimistic outlook regarding reduced leverage of EU conditionality after the accession, it is reasonable to specify and 'fine-tune' further the analysis at both empirical and theoretical levels. Are such episodes of policy reversal and implementation failure a reflection of a general pattern of democratic backslide given the fragility of democratic systems and a generally weak state framework in countries of CEE? Or do these episodes represent mere exceptions and have been unfairly over-reported by the media? Is the EU political authority vis-à-vis new member states of CEE more limited in the post-accession period? If yes, what can explain such differentiated impact of post-accession conditionality? Why do some policy areas show more problematic post-accession compliance than others? More generally, how different is the dynamics in relations between the new member states of CEE and the EU compared to the enlargement negotiation process?

The main aim of this paper is to provide tentative answers to some of these questions through detailed intra-case comparative analysis of the compliance record across two policy

issues in a new EU member states – Slovakia. The paper adopts a recently suggested in the literature analytical framework (Steunenberg 2006, Meyer-Sahling 2006, Dimitrova 2007 and 2010) that focuses on the preferences of key issue-specific veto-players and non-state actors bargaining over adoption of formal rules and their institutionalisation in the new EU member states. The framework is, thus, used to explain divergent patterns of institutionalization and formal rules' adoption in the new member states during the post-enlargement period. Slovakia is a particularly interesting country-case to focus on. It commenced official accession negotiations in early 2000 and entered the EU in May 2004 along with the other seven CEE countries plus Malta and Cyprus. However, Slovakia's path towards opening the official negotiations with EU was a winding one as in the 1990s the country experienced serious violations of democratic standards under the Mečiar government, which caused criticism in the EU circles and led to delay in opening membership talks in 1997 on political grounds. The 1998 elections brought new political parties into a centre-left coalition government, which changed domestic configurations of main actors and their relative bargaining power, and made them more responsive to the EU hard political conditionality. As a result, the country made a huge leap forward in its journey to the EU and was able to start the membership talks in 2000 together with the 'front-runner' candidates such as Slovenia and the Czech Republic. Therefore, the analysis of a new member state with relatively difficult background represents a 'hard case' for the impact of the EU political conditionality prior to accession and post-accession compliance with EU rules, which may also have a wider meaning for the wider CEE region, EU-7. The two specific policy areas under consideration are the minority policy, a part of imported non-*acquis* rules (but known as the EU 'enlargement *acquis*'), and the social policy (with particular emphasis on the employment equality provisions), a part of the official EU *acquis communauitaire*. The rationale for selecting these two policy areas stems from the idea, already expressed in some studies, that variation in the post-accession compliance record

can be accounted for by the nature of imported EU rules: non-*acquis* rules can be reversed domestically at relatively low cost than the *acquis* rules, which are part of the European Commission's monitoring and enforcement mechanisms (Dimitrova 2008 and 2010; Sedelmeier 2006 and 2008). Therefore, these two diverse policy areas add important variation to the data on post-accession compliance record in Slovakia. The next section discusses briefly the current theoretical approaches advanced in the literature on pre- and post-accession compliance of the new member states of CEE. This is followed by detailed case studies of the two policy areas – the minority policy and the social policy. At the end of the paper, conclusions are drawn and future lines of research are outlined.

Pre- and post-accession compliance: theoretical considerations

Our knowledge of the effects of EU conditionality on domestic political reform during pre-accession negotiations between the states of CEE and the EU has improved significantly due to a burgeoning literature on the subject (Haughton 2007). One of the most interesting contributions of the literature on the EU pre-accession conditionality is a sophisticated and nuanced conceptualisation of how exactly external and internal factors interact when external actors attempt to export their norms and rules to a target state. Two broader theoretical approaches, rationalist institutionalism and sociological (or constructivist) institutionalism, have been particularly useful in teasing out the exact mechanisms of rule transfer from the EU to a candidate state during the pre-accession phase.

In brief, rationalist institutionalism suggests the candidate states' compliance with the EU conditionality can be explained by applying the 'rational actor' model of politics. The EU

impact was based less on normative persuasion and democratic socialisation of domestic political elites, but on offering 'carrots' and 'sticks' in order to compel a candidate state to adopt a certain policy. Thus, the effects of EU conditionality "correspond with a rationalist set of assumptions that define domestic actors as cost-benefit-calculating, utility-maximising actors" (Kelley 2004a, 428). As in all rationalist theory, expected individual costs and benefits determine domestic actors' preferences regarding whether to comply with conditions applied by an external actor. Domestic actors tend to favour such a relationship with external actors that would maximise their net benefits. As Schimmelfennig and Sedelmeier specify with regard to the 2004 eastern enlargement, 'a member state favours the integration of an outsider state – and an outsider seeks to expand its institutional ties with the organization – under the conditions that it will reap positive net benefits from enlargement' (Schimmelfennig and Sedelmeier 2005, 12). Rationalist institutionalists conceptualise the EU's domestic impact as following a 'logic of consequences' rather than a 'logic of appropriateness' (March and Olsen 1989, 160). Actors participate in processes of strategic interaction on the basis of their given identities and interests and try to realise their preferences through strategic behaviour (Risse 2000, 3). Following the logic of consequences, domestic actors comply with conditionality because they want to maximise their individual utility and decrease the costs of non-compliance. Similarly, external actors do not try to socialise and convince target states to adopt certain policies, but rather they choose to 'bargain' with them by means of various incentives and disincentives (or threats and promises). Thus, in the CEE context adaptational pressure from the EU changes the opportunity structures for utility-maximising domestic actors. It empowers certain domestic actors by offering legal and political resources to pursue domestic change, which turns formal domestic institutions and veto-players into main factors impeding or facilitating changes in response to the EU accession conditionality (Sedelmeier 2011, 11).

By contrast, sociological (or constructivist) institutionalism posits that domestic responses follow a 'logic of appropriateness'. Domestic actors respond to EU conditions and follow democratic norms for intrinsic reasons, that is 'based on personal dispositions informed by social beliefs, they do what is deemed appropriate in a given situation and given their social role' (Schimmelfennig 2002, 12). External actors, too, follow the logic of appropriateness when teaching and persuading target states to comply with democratic norms. In this regard, both sets of actors, external actors and domestic actors, 'try to "do the right thing" rather than maximising or optimising their given preferences' (Risse 2000, 4). The EU's domestic impact results from a process of socialisation in which domestic actors internalise EU rules and norms that they regard as legitimate. Socialisation can be seen here as "the process by which principled ideas held by individuals become norms in the sense of collective understandings about appropriate behaviour which then lead to changes in identities, interests, and behaviour" (Risse et al. 1999, 11). Thus, for a 'socialisee' (Flockhart 2005, 15) the socialisation process means to adopt and internalise an externally imposed rule or norm to such an extent that external pressure is no longer needed to ensure compliance (ibid.). Such complex process of norm adoption and internalisation takes place primarily at the level of socialisees and is usually presented in the literature as a process of 'social learning' (ibid.). As for 'socialisers' (ibid.), the aim of the socialisation process is to persuade, and sometimes even pressure, domestic actors to accept their norms and to adhere to norm-compliant behaviour. This is done solely on the basis of norms, without resorting to exogenous material manipulation. In addition, a number of enabling conditions should exist in order for domestic actors to engage in a social learning process through which the EU rules shape domestic actors' interests and identities: among such conditions are minimal domestic opposition to imported rules and a closer cultural match between EU rules and domestic formal and informal institutions.

It is noteworthy at this point that, although the two approaches emphasize analytically different mechanisms of EU rule transfer, these are complementary and not necessarily mutually exclusive (Schimmelfennig and Sedelmeier 2005; Kelley 2004a and 2004b). As Kelley points out, in the area of minority policy the EU never relied exclusively on conditionality: it was always combined with normative pressures of international institutions (Kelley 2004a). However, there is a certain consensus in the literature that the main mechanism that accounted for adoption of EU rules during pre-accession was the powerful external incentive of membership which strengthened the effects of EU conditionality, rather than alternative mechanism of social learning and socialisation (Schimmelfennig and Sedelmeier 2005; Dimitrova 2004; Grabbe 2006). In other words, socialisation mechanisms were complementary in influencing the domestic actors' preferences and opportunity structures, whereas the conditionality mechanism was *crucial* in enticing domestic actors to comply with EU conditionality.

The accession of eight CEE states into the EU in May 2004 sparked a new interest among scholars of both EU compliance studies and the Europeanization literature. The EU's involvement in domestic politics of CEE candidate countries was extraordinary, but it has become far from clear whether such strong leverage would prove sustainable in the post-accession stage. There are a lot of reasons to be sceptical about post-accession compliance trends in CEE. The sheer number of formally transposed EU rules during pre-accession represents a Herculean task for domestic governments to effectively oversee their practical application. This is aggravated further by structural and resource weakness of national administrations as well as generally weak state apparatus in post-communist democracies of CEE. Scholars working within both the rationalist and the constructivist theoretical approaches share the generally negative expectation that the dominance of conditional incentives as the main mechanism of EU rule transfer during pre-accession will create unfavourable conditions for post-accession compliance. However, they differ in 'their particular views about why this should be the case, and accordingly also on how compliance problems can be avoided or overcome' (Sedelmeier 2006, 147). For the rationalists the key explanatory factor for such negative assessment is the changed incentive structure for domestic actors after accession (Goetz 2005; Malova and Haughton 2006; Sedelmeier 2006, 2008 and 2011; Schimmelfennig and Sedelmeier 2005). The key question here is, thus, whether the punishment mechanisms entailed in the EU's compliance system will be able to compensate for the absence of conditional incentives once the new member states 'arrived in the safe heaven of "Brussels" (Goetz 2005, 273). As Sedelmeier points out, the prospects are then particularly 'daunting for the rules of the so-called "enlargement *acquis*", such as minority rights, which were included in the EU's accession conditionality, but which the EU institutions have no power to patrol vis-à-vis full members' (Sedelmeier 2006, 147).

The constructivists are also doubtful about the positive prospects of post-accession compliance. The key point here is that rules hastily transferred under the conditional incentive of EU membership are unlikely to take proper hold with domestic political elites and be perceived as legitimate, especially in highly contentious policy issues that had led to considerable domestic opposition during pre-accession. At the same time, however, it is plausible that the processes of social learning and identification due to longer time-frame of their effects will actually take place in the post-accession stage: 'rather than creating a backlash against legitimacy problems of the process, the experience of conditionality may have socialised the EU8 into perceiving good compliance as appropriate behaviour for good community members' (Sedelmeier 2008, 821). A number of other 'optimistic' scenarios suggested by some constructivists include continuation of post-accession compliance as new rules become 'sticky' due to habit and a 'status quo bias' (Schimmelfennig and Sedelmeier

2005, 227-8; Kelley 2004a, 192); the EU rules' empowerment effects through induction of domestic actors into new working norms in conformance with European standards and expertise (Börzel 2005, 52); and the 'locking-in' effect of the Europeanization processes on new member states (Grabbe 2006). Generally, it seems that the rationalist approaches are more sceptical about the positive prospects of post-accession compliance among new member states, and the constructivists tend to have more optimistic expectations. However, it is quite possible that the two scenarios are not mutually exclusive given the specificity of the post-2004 EU context and domestic political contexts of the new member states. As Pridham correctly notes, 'there may be conflicting pressures in both directions [compliance and non-compliance] or because the various political conditions present different implementation problems or simply because [new member states] may be selective about backtracking over the conditions' (Pridham 2008, 370).

The emerging research on post-accession compliance among member states has identified another important area which is worthwhile considering in detail: the type of EU rules being transposed and implemented in post-accession period (Sedelmeier 2006, Dimitrova 2007 and 2010; Sadurski et al. 2006). The argument here is that the national governments' willingness to comply with EU rules depends on whether the EU possesses concrete enforcement mechanisms such as material and social sanctions. In this regard, the prospects of post-accession compliance are particularly unfavourable for the so called 'enlargement *acquis*', which contained a number of requirements for introducing international democratic norms and horizontal institutional reform, such as ethnic minority rights and democratisation of domestic political systems. The rules and legislation related to democracy and human rights protection, which originated in the Council of Europe and its major international conventions, were later incorporated by the EU and included into Copenhagen enlargement criteria. These conditions did not focus on a specific policy issue, but required creation of a general institutional framework conducive to consolidation of democracy and economic development as well as facilitating effective functioning of EU policies domestically. The 'enlargement *acquis*', thus, should not be confused with the EU official *acquis communautaire*, an extensive body of EU rules and regulations on specific policy areas and administrative processes that should be adopted and applied by all existing member states. In this regard, the variation in post-accession compliance outcomes of non-*acquis* rules is potentially larger than in the case of EU formal *acquis* rules (Dimitrova 2010, 145). The fact that the European Commission does not have specific monitoring and punishment mechanisms in non-*acquis* areas, makes the latter more susceptible to irregular compliance, incomplete implementation and even violation on the part of EU-8 national governments. This is largely because rules which are part of the EU *acquis*, hence, would be more costly to reverse, whereas the non-*acquis* rules can be reversed at relatively little cost (Sedelmeier 2006, Dimitrova 2007 and 2010). By examining Slovakia's compliance record in one *acquis* policy area (social and employment policy) and one non-*acquis* set of rules (minority policy), this paper aims to investigate this theoretical claim in more detail in the next two sections.

Before concluding this part of the paper, an important issue of institutionalisation and implementation of EU rules in practice should be briefly touched upon. It has been correctly argued that the absence of the so called 'Eastern problem' of compliance does not reflect properly the reality of domestic transposition and application of EU rules partly due to irregularities of the compliance data generated by the Commission itself, and partly due to discrepancy between formal rule adoption and real institutional and policy changes on the ground (Falkner 2010; Dimitrova 2007 and 2010; Sedelmeier 2008; Hartlapp and Falkner 2009; Schimmelfennig and Trauner (eds) 2009). In other words, the good record of

compliance of EU-8 is more like a myth: the imported EU rules remain merely 'empty shells' (Dimitrova 2010) or 'dead letters' (Falkner et al. 2008), and rarely lead to proper behavioural changes by the domestic actors. To examine whether this is the case and to explain dynamics behind formal rule adoption and implementation, Dimitrova develops a useful theoretical framework that this paper intends to closely follow when analysing the case of Slovakia (Dimitrova 2010). The process of institutionalisation is viewed as a crucial part of implementation: a process whereby a new formal rule (e.g. EU employment equality directive) is supported by supplementary informal rules (everyday political practices and informal networks in the context of post-communist weak states) and both become the new rules-in-use (ibid., 138). Institutionalisation, for instance, may involve creation of supporting or supplementing rules. The supporting rules may be formal, such as secondary legislation adopted to facilitate application of the EU transposed legislation, or informal, such as action plans, strategies or manuals used by the national government to ensure post-accession compliance. The division into formal and informal practices and rules is particularly applicable to the post-communist context of 'weak state, strong actors' (ibid. 143) in CEE, where inherent weakness of public authority and administrative apparatus is combined with relative strength of individual political actors as well as non-state actors and informal networks (Ganev 2007; Helmke and Levitsky 2004). Crucially, the process of rule institutionalization and implementation is seen through the lens of political bargaining: in other words, different outcomes in the institutionalisation of EU formal rules would be determined by the competition of actors that bargain over institutions and imported formal rules in a weak state environment (Dimitrova 2010, 144). The most relevant actors participating in this bargaining include politicians and members of the government, as well as non-state actors such as business groups, oligarchs and NGOs (Grzymala-Busse and Luong 2002; Steunenberg 2006; Dimitrova 2010). All these actors can be potentially regarded as veto-players (Tsebelis 2002) which occupy a certain position in the formal configuration of the political system and are influenced by formal and informal practices.

Drawing on the theoretical considerations about post-accession compliance presented above and, particularly, on Dimitrova's theoretical framework, the following three possible outcomes of Slovakia's post-accession compliance can be put forward: 1. reversal of new rules; 2. implementation and institutionalisation (formal and informal rules align); 3. 'empty shells' or 'dead letters' (actors ignore formal rules, parallel informal rules are used). To specify these expectations further, the three working hypotheses are as follows:

1. For EU *acquis* formal rules the most likely outcomes are implementation or 'empty shells'. (1A. When veto-players' preferences are in opposition to EU *acquis* rules, two sets of rules will be used in parallel – formal and informal, which leads to an 'empty shells' outcome).
2. For EU non-*acquis* rules, reversal or institutionalisation are equally possible as outcomes. (2A. When adopted non-acquis rules are opposed by veto players, they will be reversed).

3. If veto-players' preferences are matched with the new rules, the formal and informal rules would align and the likely outcome is implementation (and institutionalisation).

The next part of the paper applies the theoretical approach outlined above by examining Slovakia's post-accession compliance in one of the EU *acquis* areas – social policy; and one EU non-*acquis* area – minority policy.

Protecting minorities in post-accession Slovakia: challenges of institutionalisation and implementation

The case of the minority policy in Slovakia is an interesting one as it presents a 'hard case' for testing the effectiveness and impact of EU conditionality in the post-accession period. First, there is some variation in status and rights of the two largest minorities in the country: the largest minority group, 10.7 % of ethnic Hungarians, occupies a relatively stronger position in the political system than the Roma minority of 1.8 % (data from the 2001 Census figures). Thus, there is a need to explore in detail whether this variation is due to different cultural attitudes and socio-economic conditions, or due to differences in political leverage on the part of these two minorities. Can one assume that the EU rules also played some role here in having the differentiated impact on promoting rights of both sets of minorities? Second, the norms for protection of ethnic minorities belong to the so called non-*acquis* EU rules which were extensively pushed for by the EU during the enlargement process. These rules and norms are not part of the EU official *acquis communautaire*, and are absent from the European Commission's monitoring system of enforcement and sanctions in case of non-compliance. A lack of credible punishment mechanisms on the EU part, therefore, can potentially make this policy area more prone to non-compliance or, more likely, to patchy, incomplete and differentiated compliance on the domestic government's part. Third, such pessimism can be

reinforced further if one takes into account Slovakia's record in reforming the minority policy and, more generally, in compliance with EU political conditions during the 2004 enlargement process. Indeed, as one scholar puts it 'in retrospect, relations between Slovakia and the EU have been the most difficult of any EU candidate state in the past' (Brosig 2010, 398). The most 'famous' set-back in the country's aspirations to join the enlargement negotiations process in the 1990s was the EU's refusal to open official membership talks with Slovakia in 1997, following a series of 'naming and shaming' sessions and démarches on the part of EU institutions after the then Mečiar government had adopted a number of undemocratic political reforms, including on the rights of minorities. This refusal had a sobering impact on domestic political groups, which were able to unite and consolidate its opposition against the Mečiar's populist government, and won the 1998 elections forming a new centre-right government under the leadership of Mikulaš Dzurinda. The legacy of Mečiar's anti-minority policies were a heavy burden for the incoming Dzurinda government: among the most controversial issue areas were significant delays in signing the treaty between Slovakia and Hungary and adopting a minority language law, a problematic penalty code, a highly restrictive State Language Law and the school certificate issue (Kelley 2004a and 2004b, Brosig 2010). The latter two issues have been explicitly referred to by the EU as important preconditions for starting accession negotiations, and indeed the government did not delay with reversal of the controversial legislative acts. In 1999 a new Law on the Use of Minority Languages was adopted, which specified conditions under which minority languages could be used in official communication. In the same year the parliament passed the education act amendment, which allowed for issuing of bilingual school-leaving certificates for students of primary and secondary schools.

However, Slovakia's big 'leap forward' in the negotiation process and a speedy adoption of the EU-requested legislation had harmful trade-offs in terms of the quality and implementation of the new legal provisions in practice. For instance, the 1999 Law on the Use

of Minority Languages did not contain specific requirements for public authorities to have a command of a minority language for ease of communication and the subsequent Commission's progress reports on Slovakia did not mention this issue at all. This example shows the emphasis on formal rule adoption on the part of the EU, which in the medium-term adversely affected proper application of the law and incomplete guarantees of minority languages rights. In terms of minority rights for Roma, the Commission itself reported in 2000 that despite the Dzurinda government's extensive efforts to tackle the 'Roma problem'[1], there was still a considerable 'gap between the good intentions and their actual implementation as (…) practical improvement in the daily life of the minorities is very minor if not unnoticeable' (European Commission 2000, as cited in Brosig 2010, 399). However, the EU itself is partly to blame for such discrepancy: the EU's failure to establish concrete benchmarks for Roma integration projects which would allow measurement of progress and development of specific guidelines for improvement left applicant countries with the impression that EU membership could be achieved without substantial reforms on the Roma issue and their implementation (Sasse 2005, 10).

The case of the Roma minority rights illustrates one of the post-accession compliance scenarios outlined in the theoretical section of this paper – the 'empty shell' or 'dead letters' outcome. After EU entry, the Dzurinda government continued with institutionalisation of the adopted formal EU rules: the Roma question was now firmly established on the government's agenda while the Roma Plenipotentiary's Office had become fully operational with five regional branches. It also closely participated in the relevant transnational networks and was closely engaged with the European Parliament (Pridham 2008, 380). New EU money started to arrive through the Structural Funds, some of which were directed to financing various Roma-

[1] The then government's efforts in this policy area can be characterised as mostly institutional in nature: for instance, in 2001 the government established a specific position, a plenipotentiary for Roma issues, and developed the 'Roma Strategy' to help the Roma minority in such areas as housing, unemployment, discrimination and education.

related matters such as schools, roads, training and labour market promotion (ibid., 381). In May 2004 Slovakia adopted an Anti-Discrimination Act, transposing the EU Racial Equality Directive into national law on time within the given deadline. All of these measures show some encouraging tendencies on the government's part to institutionalise EU formal rules adopted during pre-accession, and, in general, to engage more in a bottom-up manner rather than top-down approached adopted during the accession period.

However, despite all these efforts, the Roma issue still remains to be resolved at a deeper societal level as highlighted by clearly racial rhetoric of some political elites and the general public. For instance, the Prime Minister Fico has promised in his 2002 election campaign to tackle the 'irresponsible growth of the Romani population' (Commission on Security and Cooperation in Europe 2006, as cited in Brosig 2010, 404). Various NGOs' reports highlight the full extension of discrimination cases, such as forced sterilisation of Roma women in Slovak hospitals and intimidation of Roma victims by police officers to withdraw their witness statements from trials in progress. Neither the Dzurinda government, nor the Fico government took any concrete measures to investigate these allegations in detail (ibid.). Moreover, the supporting or supplementing institutional measures taken to facilitate timely and correct implementation of EU rules did not bring desirable results. For instance, despite the on-time transposition of the EU Racial Equality Directive, the new legislation remained unused by Slovak courts for more than two years (Gallová-Kriglerová and Kadlečíková 2007, 199, as cited in Brosig 2010, 405). The established by the Anti-Discrimination Act the Slovak National Centre for Human Rights (SNCHR) has performed disappointingly as 'up to spring 2007 only one Roma woman had obtained legal support from the centre' (Brosig 2010, 406). Therefore, one may conclude that the implementation of the EU non-*acquis* rules in relation to rights of the Roma minority has been largely ineffective. Measures aimed at the institutionalisation of formal rules in order to bring them in alignment with informal rules and practices did not bring

any significant changes to the situation with Roma and the status quo of 'empty shells' (when political actors ignore the new rules, and parallel informal rules and practices are used) unfortunately prevailed.

Conversely, the position of the Hungarian minority after EU entry has strengthened in comparison to continuing disenfranchisement and political disorganisation of the Roma minority. The main factors explaining such differences can be found in the domestic configuration and varying bargaining power of the main veto-players relevant to the EU non-*acquis* rules on minority rights. The steady improvement in situation with Hungarians in the country owed much to the presence of the Hungarian political party SMK (Hungarian Coalition Party), which participated in coalition government for eight years between 1998 and 2006. In the 1998 elections the SMK received 9.12 % of the popular vote and won 15 seats in the national parliament. It was mainly due to pressure from the SMK, supported by the EU and other European organisations, that the government put the minority language issue on the agenda straight after the election and formation of the government (Kelley 2004, 132). After the 2002 elections, the SMK emerged as a stronger player as it was able to increase its seats share in the parliament from 15 in 1998 to 20 in 2002. As a result, it became the second largest coalition partner after the SKDU (Slovak Democratic Coalition and Christian Union), which obtained 28 seats, along with the minor two political parties (KDH and ANO) with 15 seats each. Such dispersed configuration of political forces in the ruling coalition government allowed the SMK to push for additional legislation favouring Hungarian minority issues, further encouraged by the EU's explicit support of the issue (Pridham 2008, 380). However, there were times (such as regional reform and the Hungarian status law according special rights to Hungarian minorities living abroad) when tensions arose between the SMK and its coalition partners. In effect, the SMK could not really do much as it found itself between the grindstones of two national leaderships of Slovakia and Hungary, each refusing to compromise on the issue

of the Hungarian Status Law. Both sides looked to them for resolution and they were 'double-hated' by the Slovak nationalists for being 'irredentist Hungarians', as well as from the Hungarian government for being too passive (Kusá 2010, 17).

The 2006 parliamentary elections brought a new left-leaning coalition government under the leadership of Robert Fico (the SMER party), which ended the SMK's presence in power and it became an opposition party with 20 seats. The new coalition members under the Fico government took a less sympathetic stance on rights of the Hungarian national minority: the new government's first months in power were marked by bitter polemics with the SMK and with Budapest, which helped to radicalize the SMK and somewhat politicise the issue (Pridham 2008, 380). Up until late 2008 the government was reluctant to undertake concrete measures on reversal of the previous legislative acts guaranteeing rights to the Hungarian minority apart from 'less than friendly noises from the new Fico government from 2006' (ibid.). However, situation has worsened considerably since 2009, when the Slovak parliament passed an amendment to the Law of the State Language, imposing fines for incorrect use of the Slovak language by institutions and tighter requirements for some official bodies such as the Post Office, the Army and the police forces to use the state language in all official communication. The law entered into force on 1 September 2009 and the fines have been implemented from 1 January 2010. This was the same law that had caused a harsh criticism in 1995-1996 by the EU with regard to unfair elevation of the Slovak language over all other languages spoken in the country. The law was then amended in 1999, making the Slovak language policy more acceptable to the EU. The OSCE High Commissioner for National Minorities Knut Vollbaek has criticised the amendment and called on the government to amend the Law on the languages of national minorities so that it could balance the restrictive Law on the State Language. The European Parliament issued a statement about the incompatibility of the amended law with European standards in national minority rights and the Vice Chairman of

the Parliament's Foreign Affairs Committee said that 'the law de facto criminalises the use of minority languages in certain areas' ('Europe: the Language Law Discriminates', 10 July 2009, as cited by Kusá 2010, 19). But, overall, the EU reaction to the controversial new amendment to the law was muted. Perhaps, this can be explained by the fact that the EU does not possess any credible punishment mechanisms in case of non-compliance in the minority policy area and has only one lever at its disposal – the 'naming and shaming', which is not sufficient to influence the government to change the policy.

Thus, this particular issue case shows that there are hardly any 'lock-in' effects of Europeanisation and socialisation into democratic norms that scholars working in the constructivist perspective had predicted with regard to post-accession period. The government's actions in the first two years after the accession were more or less in continuity with formal EU rules adopted prior to accession. There was no significant opposition on the part of the Dzurinda government in 1998-2006 regarding the rights of ethnic Hungarians in the country and a certain degree of institutionalisation of adopted formal rules took place. The configuration of domestic and relative bargaining power of the major veto-players, including the direct participation of the Hungarian minority party, the SMK, in the coalition government, also facilitated alignment of formal and informal rules on minority policy. But after the 2006 elections new coalition government came to power, which explicitly opposed strengthening the status of the Hungarian minority in the country and with relative ease reversed the previous government's minority policy measures. For instance, in May 2010 in retaliation to the Hungarian citizenship law the Slovak Citizenship Act was modified in such a way that if a Slovak citizen acquires the citizenship of another state 'by an act of will', that is neither by marriage nor by birth, the person will automatically lose the Slovak citizenship (Kusá 2010, EUDO Citizenship Project). Judging by the results of the most recent parliamentary elections in summer 2010, in which the SMK party failed to win parliamentary representation for the

first time since its inception in 1998, the situation seems to be far from favourable for reaching compromise on one of the most sensitive political issues in Slovakia, and indeed, in the neighbouring Hungary. Although the departure of Fico from power in June 2010 and the coming of a new Prime Minister, Iveta Radičová, who is generally seen as less prone to nationalistic rhetoric, might calm things down slightly in the near future.

Protecting workers in post-accession Slovakia: effects of political bargaining and informal practices

During the pre-accession stage of EU membership negotiations, the candidate countries from CEE had to transpose all the European legislation in force prior to accession: a daunting task if taking into account merely the volume of rules to be adopted (around 90,000 pages of EU legislation!) notwithstanding the more substantive issues of ensuring legislative alignment and compatibility with national legal frameworks. EU *acquis* rules in the field of employment and social policy are usually seen by scholars of Europeanisation and EU compliance among the most significant parts of EU formal rules that had been transposed during the pre-accession stage (Toshkov 2007 and 2008; Falkner and Treib 2008; Sedelmeier 2009; Leiber 2007; Steunenberg and Toshkov 2009). Firstly, it includes a relatively large number of directives adopted during the last two decades and covering a range of diverse issues such as racial anti-discrimination and protection of workers from chemical hazards. Secondly and most importantly, the social policy and workers' rights represent a highly salient topic in both society and the political establishment in countries of CEE, meaning that the stakes of the political game and decision-making on issues in the area are quite high. The social policy is also a policy domain where clear ideological differences come to play: the leftist and the rightist parties, as well as more liberally or more conservatively oriented parties have clearly

divergent preferences with regard to the overall direction of the policy (Toskov 2007, 336). Thus, the configuration of domestic political forces, their preferences and relative bargaining power in relation to each other can be particularly informative when analysing the outcomes of post-accession compliance in this policy area.

Looking briefly at Slovakia's pre-accession compliance record in the field of social policy, it should be noted that despite the setback of delayed opening of the official membership talks due to controversial 'Mečiarism' era in government, Slovakia took a relatively short time to close the social policy chapter – up to five months. In comparison, the 'enlargement front-runners' in terms of compliance – the Czech Republic, Hungary and Poland – took more than a year and a half to transpose EU rules into national legislation. Moreover, Slovakia did not apply for any transitional periods aimed at gradual compliance. In comparison, Latvia and Slovenia applied and were granted three and one, respectively, transitional periods in the area of working conditions (ibid., 341). This is an interesting observation as it is plausible that for Slovakia, which at the time was keen to catch up and improve its image in the EU circles as a country capable to reform in conformance with the EU conditionality, such speedy transposition could be a 'rushed business' because it had significantly less time to develop proper negotiating position and set up the necessary institutional framework for effective implementation.

Overall, Slovakia's post-accession compliance in the field of social policy is consistent with scholarly findings about the absence of the so called 'Eastern compliance problem' (Sedelmeier 2006, 2008, and 2009; Leiber 2007; Falkner et al. 2008). Comparisons of pre-accession adjustments and post-accession compliance trends in CEE do not find much evidence of deterioration in the area of the social policy and, in general, there were no more significant transposition problems in the new member states in comparison to the old member states (Sedelmeier 2011, 26). On the contrary, the performance of the EU-15 in transposing six

labour-law directives was far worse with 'not even one-third of all cases (…) transposed "almost on time" and "essentially correctly"' (Falkner et al. 2005, 267, as cited in Falkner 2010, 103). At the same time, however, well-justified doubts about the degree of enforcement and implementation of imported EU *acquis* rules in the new member states of CEE have already arisen in the literature on post-accession compliance (Kühn 2005; Falkner and Treib 2008; Falkner et al. 2008; Maniokas 2009; Krizsan 2009). As one detailed qualitative study of the implementation of directives on working time and non-discrimination in four countries of CEE reveals, there is a significant gap between the good legislative record and formal transposition of the EU *acquis*, which in itself represents a distinctive 'world of compliance' – a 'world of dead letters' (Falkner and Treib 2008; Falkner et al. 2008). In such a 'world of dead letters' the transposition processes are politicised, and application and enforcement problems are systematic even if a rule was formally transposed without significant problems.

The application of the EU law is de-centralised and delegated to the member states: hence, the state is responsible for effective law enforcement. In this regard, the most important state institutions in ensuring practical application and enforcement of the EU law are the courts and other instances of the legal system, as well as administrative enforcement bodies such as labour inspectorates and equal treatment authorities. On a closer look, the EU formal rules on social policy, and especially, employment rights, have been transposed inadequately in Slovakia. There are a lot of 'loopholes' and unspecified provisions in the national legislation that leave a lot of room for manoeuvre for employers. For instance, the Labour Code, adopted in 2001 and amended in 2003, allows work contracts under commercial law, which can be seen as a legal 'escape route' depriving employees of proper protection under the labour law (Barancová 2006). Some employers even encourage potential employees to register as self-employed so that they won't be covered by the Labour Code (Schulze 2008, 113-14). The Code also fails to regulate efficiently the working time: it actually provides employers and

employees with unlimited possibilities of work resulting in Slovakia being a 'leader' in the extent of overtime hours (ibid.) The Code creates inadequately large legal space allowing a relatively great extent of overtime work not to be counted in the annual limit of overtime work. In addition, the pre-conditions for effective implementation of EU social policy rules are quite weak. The scarcity of resources and administrative weakness are among the most frequently reported problems of the Slovak judiciary (Fialová 2005, 152; Schulze 2008, 117). For instance, because of a lack of labour courts, most of disputes between employees and employers are settled in specialised civil courts. This means that judges are not qualified to deal specifically with labour-related law, and are not very familiar with EU-derived law and specialised legislation such anti-discrimination provisions (Schulze 2008, 117).

In terms of degree of institutionalisation of EU formal rules on social policy the situation is similar. After EU accession the number of labour inspectorates, the main body responsible for enforcement and monitoring of employment provisions, has been steadily declining, with further reductions likely (ibid.). The quality of labour inspectorates' work is also quite low: the inspectorates are usually seen as having much closer relations with employers than employees, and they rarely close down a business if necessary or impose sizeable fines (ibid., 118). Other institutions established to promote employment rights are not very effective either: for instance, the Slovak Centre for Human Rights, the institution established by the authorities to serve as an Equal Opportunities Body according to the relevant EU directive, has an extremely wide range of competences which is undesirable given the scarcity of financial resources allocated to the Centre.

Thus, this brief overview of enforcement and implementation of EU social policy and employment directives in Slovakia shows that post-accession compliance with EU rules have been insufficient and problematic. It seems that leverage of EU conditionality diminished with Slovakia's entry to the EU, and even the existing enforcement and monitoring mechanisms

applied by the European Commission are not sufficient to bring proper enforcement of EU formal rules. It seems that the 'empty shells' outcome – when the new rules are formally adopted but largely ignored in practice – is prevalent here. In the theoretical part of the paper it was expected that this outcome is most likely if the preferences of the main veto-players are in opposition to the new imported rules. On a closer look at the domestic configuration of political forces as well as their relative bargaining power vis-à-vis each other, this expectation is largely confirmed. First, the government's composition and ideological position are worthwhile examining in detail. Since 2002, when the centre-right governing coalition was formed, Slovakia started to gradually turn towards neoliberalism (Fisher et al. 2007). The main neoliberal idea of the economic rationality of market coordination over state coordination of economic behaviour has been gradually introduced by the Dzurinda government in many areas such as fiscal policy and taxation, the labour code, the pension system, welfare payments, etc. Neoliberals in Slovakia's 2002-06 government brought significant changes to labour market policies such as controversial amendments to the Labour Code (discussed earlier); abolishment of the Tripartite Act in autumn 2004, thus reducing trade unions' and employees organisations' privileged status in negotiations with the government and employers; and introduction of a more flexible labour market at the expense of employees' rights. All of these measures were passed with relative ease in the national parliament, and were not returned to the government for amendments or re-drafting. Obviously, the ruling centre-right coalition was robust enough to vote consistently on these issues. Also, despite the fact that these moves produced bouts of discontent from the trade unions, weak leadership and internal divisions limited the power of the unions to prevent changes (Malová and Rybář 2005). Trade union density has declined in Slovakia over the last 10 years. In 2003, union density was 27%, but it had decreased to 20% by 2007 (EIROnline, 'Slovakia', report). Thus, the trade-unions did not possess sufficient bargaining power in the then government to change the controversial provisions. Moreover, the

government's neo-liberal employment policies were largely backed and pushed for by informal networks and interest groups such as journalists, economic think-tanks, economic/business community especially those affiliated with banking institutions (Fisher et al. 2007, 990-96). The government's success to push through controversial reforms was further facilitated by the weak and divided leftist parliamentary opposition and the under-institutionalisation of the party system (Malová and Haughton 2006, O'Dwyer and Kovalčík 2007). In particular, the left-wing party, the SDL (Party of the Democratic Left) has split in 1999 and led to emergence of a new party, SMER under the leadership of Robert Fico. The SDL itself split again in 2002 due to internal tensions.

The left-oriented government of Robert Fico that came to power after the 2006 elections, somewhat surprisingly and despite some pre-election pledges, maintained continuity in the country's overall economic direction. Under the mounting pressure from the major trade-unions, the government agreed to significantly amend the Labour Code in favour of the workers' rights introducing a staggering number of new provisions – more than 150! The most important amendments related to employment contracts, working time and employee representatives. Although the majority of changes proposed by the government were approved, some proposals were not accepted or were adopted in milder versions by the parliament (Sziria 2007). Overall, the Fico government has been forced to maintain continuity and not to sway much from the country's 'neo-liberal path' due to limitations set by the international currency traders and other investors, and due to the pressure to join the single currency by the business lobby, including key financial backers of Fico's party (Haughton and Malová 2007). It seems that the imported EU rules on social policy did not 'fit' with the most powerful players' preferences and, as a result, were not institutionalised properly and remained largely 'empty shells'.

Concluding remarks

This paper attempted to explore the post-accession trends in compliance with EU *acquis* and non-*acquis* rules in Slovakia. The focus was purposefully narrowed down to two important policy areas: the national minority policy (part of EU pre-accession 'enlargement *acquis*') and the social policy (part of EU formal *acquis communautaire*). The paper also presents a 'plausibility probe' of the novel theoretical approaches, emerged recently in the compliance and Europeanisation literature, on the main factors that can explain behavioural non-compliance and the implementation deficit of EU formal rules in the new member states of CEE. EU pre-accession conditionality was concentrated mainly on the formal adoption of rules and standards and not on the full implementation and institutionalisation of the imported rules by domestic institutions. Motivated by the 'logic of consequences' rather than the 'logic of appropriateness', the domestic actors complied with EU conditions because of the main 'carrot' on offer – the EU membership. The membership incentive was strong enough to outweigh the high adjustment costs and overcome domestic opposition even in highly sensitive issue areas such as the minority policy. However, the change in incentive structure and sanction mechanisms after the accession suggests that compliance can be undermined. The detailed qualitative analysis of post-accession compliance record of Slovakia in the two policy areas largely confirms this expectation. The paper found a significant degree of behavioural non-compliance and failure to institutionalise the adopted formal rules in practice. Moreover, even if operationalising 'compliance' as merely legislative transposition into domestic law, there are some (hidden) traces of legislative non-compliance too. The legislative framework on both minority rights and social policy adopted prior to accession was far from perfect: the laws contained vague regulations and left many 'loopholes' for problematic application and interpretation. The problems, however, are more visible if one takes a more comprehensive

view of ‘compliance’ including the institutionalisation and implementation stages. Institutionalisation of the adopted formal rules in both policy areas is quite weak: institutional structures such as the court system and specifically created functional bodies (such as the Centre for Human Rights) have been largely ineffective in ensuring post-accession compliance and enforcement of imported EU rules.

The analysis revealed also some interesting variation in post-accession compliance record across the two policy areas. In the first four years or so after EU entry the implementation of the minority policy towards the largest minority group, the ethnic Hungarians, had some positive results and led to a steady improvement in the status and amount of legal rights. This can be contrasted with a general lack of positive changes in both institutionalisation and implementation of rules promoting rights of the Roma community in Slovakia. The main explanation for such variation in the outcomes lies in the realm of domestic politics: mainly, the configuration of domestic political forces and the presence of the epistemic community with relatively strong bargaining power (the SMK party as one of the ruling coalition partners and less nationalist centre-right coalition government under the Dzurinda leadership) vis-à-vis other main political players played a determining role in promoting and institutionalising rights of the Hungarian minority in Slovakia. When the government changed in 2006, the domestic configuration of political forces and their preferences also changed leading to a significant policy reversal. The changed dynamics in implementing EU rules on social policy, and especially employment rights, in 2002-2006 can also be explained by the government’s ‘turn to neoliberalism’ and a constant push from the informal networks (including the liberally-oriented NGOs and the business community) to change the policy to a more employer- and business-friendly format at the expense the workers’ rights. The dynamics of compliance with EU social policy rules has changed again when the new leftist government came to power in 2006.

Thus, one can see that in order to have a more complete picture of post-accession compliance in CEE it is absolutely crucial to structure the analysis on the basis of two key points: first, the compliance should be perceived as a complex concept including both the formal transposition and enforcement (or application) stages; second, the preferences of key actors bargaining over new institutions and implementation of new EU rules should be taken into account when explaining the outcomes of post-accession compliance. In terms of the preliminary expectations formulated at the end of the theoretical section in the paper, the analysis revealed that the 'empty shells' outcome characterises fairly well Slovakia's post-accession compliance trends in both the minority policy and the social policy. The variation in outcomes with respect to institutionalisation and implementation of imported EU rules had to do less with the type of rules (*acquis* or non-*acquis*), but more with domestic configuration of the major political forces and informal networks, and their preferences supporting or opposing the new rules. Further comparative research should aim to identify bargaining patterns and different constellations of issue-specific veto players and non-state actors in other policy sectors and countries to further extend the theoretical approaches on post-accession compliance of the new member states, as well as compliance in the old EU-15.

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