

# Pushing the Boundaries: DG Enlargement between Internal and External Environments

## EU Diplomacy Papers

7 / 2010

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# **Pushing the Boundaries: DG Enlargement between Internal and External Environments**

**André Ghione**

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## Abstract

Studies of EU enlargement generally take as their subject the motivations for a country's accession; rarely do they analyse in great detail any of the steps in the process itself. My contribution to the literature is an analysis of DG Enlargement in its role as a boundary spanner during the pre-accession period.

One of the key boundary-spanning tasks exercised by the DG is to provide information about the organisation, its operations, and its management to the external environment. To answer the questions to what extent DG Enlargement can be characterised as a boundary spanner, and how the relevance of this characterisation might have changed over time, I examine DG Enlargement's performance during the 2004 enlargement round and the critical self-assessment it undertook thereafter to determine whether lessons learnt have resulted in changed behaviour. In order to maximise evidence of boundary-spanning behaviour, I have chosen DG Enlargement's management of the Copenhagen criterion of minority rights protection as my case study: with the condition absent from the *acquis*, DG ELARG must persuade membership aspirants to adopt this norm by other means.

I will argue that DG Enlargement did act as a boundary spanner during the 2004 enlargement round, but that its assimilation of lessons learned has not dramatically affected its current behaviour. Despite disseminating the findings of its internal evaluations widely throughout the EU, political unwillingness to come to an agreement on common standards of minority rights protection prevents DG ELARG from improving its performance other than at the margins.

## 1. Introduction: DG Enlargement and minority rights protection

The Directorate-General for Enlargement, like the Roman deity Janus, is the guardian of the gates to the EU. Like Janus, the DG faces two directions: inward to the EU as it currently is, and outward to the EU as it will one day become. And like Janus, DG Enlargement symbolises change and transition, at times pushing the gates outward so that the worthy fall within them.

DG Enlargement's institutional position at the boundary separating the internal from the external warrants careful study. This unique status should, in theory, afford the DG great power: its officials' external action brings with it information that can improve internal decision-making. Most of this data establishes candidate states' fitness for integration into the EU and membership of an "area of peace, stability, and democracy in our continent".<sup>1</sup>

My research will focus on one of the measurements of this fitness, one – because not fully honoured – that has created a situation where a considerable number of the EU's new citizens do not benefit from the area of peace, stability, and democracy so recently expanded to include them. I write of the final political criterion enunciated in the 1993 Copenhagen European Council conclusions, namely that "membership requires that the candidate country has achieved stability of institutions guaranteeing [...] respect for and protection of minorities".<sup>2</sup>

The EU's approach to this condition merits close attention, for any future enlargement<sup>3</sup> will extend membership to states comprising sizeable minority populations. Balkan states present perhaps the most difficult challenge, founded as they were in the ruins of Yugoslavia on Westphalian conceptions of sovereignty.<sup>4</sup> If the EU were found to have applied minority rights conditionality only half-heartedly during enlargements past, consistent (mis)application would bode ill for the future of the ethnically heterogeneous states queuing for membership.

My analysis thus focuses on the Directorate-General for Enlargement's efforts to ensure fulfillment of the minority rights criterion during the 2004 enlargement round. Taking the Romani<sup>5</sup> ethnic minorities in Slovakia and Slovenia as a case study, the DG's performance will be analysed to identify the strengths and weaknesses of its

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<sup>1</sup> Commission of the European Communities, 'Enlargement', *European Union in the World*, Brussels, 18 March 2007, retrieved 20 April 2009, [http://ec.europa.eu/world/what/enlargement/index\\_en.htm](http://ec.europa.eu/world/what/enlargement/index_en.htm)

<sup>2</sup> European Council, 'Conclusions of the Presidency', Copenhagen, 21-22 June 1993.

<sup>3</sup> With the exception of Icelandic accession.

<sup>4</sup> For a contextualisation of post-Yugoslav ethnic politics, see H. Poulton, *The Balkans: Minorities and States in Conflict*, London, Minority Rights Group, 1993; and M. Ignatieff, *Blood and Belonging: Journeys into the New Nationalism*, London, Vintage, 1994.

<sup>5</sup> The term 'Roma' will henceforward be used to refer to Romani peoples in question, irrespective of self-identification. This is done for simplicity's sake rather than to deny the heterogeneity of the group.

modus operandi. Putative changes will be considered indicative of organisational learning,<sup>6</sup> permitting a response to the questions: To what extent can DG Enlargement be characterised as a boundary spanner, and how might the relevance of this characterisation have changed over time?

I will argue that DG Enlargement did act as a boundary spanner during the 2004 enlargement round, but that its assimilation of lessons learned has not dramatically affected its current behaviour. More precisely, my hypotheses are as follows:

- HYPOTHESIS 1        The shallow foundation afforded minority rights in the *acquis communautaire* hinders DG Enlargement's ability to effectuate objectively desirable changes in the minority rights regimes of candidates.
- HYPOTHESIS 2        The existence of other pan-European organisations dedicated to human and minority rights advocacy – the Council of Europe (CoE) and the Organisation for Security and Cooperation in Europe (OSCE) – provides the DG a solution to this problem by offering ready-made surrogate standards.
- HYPOTHESIS 3        DG Enlargement and its external intergovernmental and nongovernmental interlocutors must, for want of resources, foster synergies with one another to achieve desired ends.

In the second chapter of my thesis, I establish the definitions of and assumptions underlying concepts of organisations, organisational behaviour, learning, internal evaluation, and boundary spanners. By marrying these concepts, I develop a theoretical lens through which to analyse DG Enlargement's efforts to manage the minority rights criterion.

The third chapter is an in-depth examination of the international and Community acts dealing with the protection of minority rights. As these texts are unsatisfactory, DG Enlargement must act with a wide range of actors in the external environment to secure the protection of and respect for minorities upon which membership is conditional. The argument that this interference is necessary will be pursued in the fourth chapter, where I examine the DG's performance during the 2004 enlargement round. Its practices are described and analysed in considerable detail in an attempt to isolate the positive and negative aspects of its approach.

My fifth chapter reviews the internal evaluations conducted by the organisation and the changes they encouraged within the operations of the DG and the EU more generally. The conclusions establish that, although the DG itself has made relatively minor changes in its assessment process, the minority rights criterion remains subject to interpretation and thus invites politically expedient judgment.

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<sup>6</sup> D. Dolowitz and D. Marsh, 'Who Learns What from Whom: a Review of the Policy Transfer Literature', *Political Studies*, XLIV, 1996, p. 346.

## 2. Theoretical framework: Organisations, learning, and the concept of boundary spanning

In this first chapter, I expound the definitions of and assumptions underlying key concepts. I then establish their relevance in the EU context and their implications for the analysis to follow.

### 2.1 Definitions and assumptions

The literature whence these definitions are derived is geared in the main to business management studies. Nevertheless, I believe the insight they provide outweighs concerns regarding a departure from traditional International Relations literature. International Relations theory seeks to explain cooperation between states rather than between institutions. Historical institutionalism and its concept of path dependency may gain currency if and when subsequent enlargement rounds provide additional cases for study. But, here again, we are faced with a theory that accounts for neither the process of learning nor its consequent assimilation. I hope to fill these lacunae in what follows.

#### *Organisations*

An organisation is both an articulated purpose and an established mechanism for achieving it.<sup>7</sup> Organisations are assumed to continuously evaluate their purposes and to constantly modify and refine the mechanism by which they achieve them.<sup>8</sup> Evaluation examines output relative to internal and external expectations. The fact that any organisation's survival depends upon the satisfaction of its clients<sup>9</sup> is thought to incentivise careful and responsible management of tasks.

Action undertaken by an organisation in its environment constitutes, at least in part, its behaviour. This behaviour is historically based: evaluation of past iterations, followed by modification of or refinements to the mechanism, influence future performance.

Organisations function as holding environments for knowledge. Though such knowledge may be held solely in the minds of individual members, "it may also be held in an organization's files, which record its actions, decisions, regulations and policies as well as in the maps, formal and informal, through which organizations make themselves understandable to themselves and others".<sup>10</sup>

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<sup>7</sup> R.E. Miles *et al.*, 'Organizational Strategy, Structure, and Process', *The Academy of Management Review*, Vol. 3, No. 3, 1978, p. 457.

<sup>8</sup> *Ibid.*

<sup>9</sup> E.B. Haas, *When Knowledge Is Power: Three Models of Change in International Organizations*, Berkeley and Los Angeles, University of California Press, 1990, p. 30.

<sup>10</sup> C. Argyris and D.A. Schön, *Organizational Learning II: Theory, Method, and Practice*, New York, Addison-Wesley Publishing Company, 1996, p. 12.

For the purposes of the current study, a final assumption must be added: contextual factors can act to moderate or reinforce organisational behaviour. Moderation and reinforcement can be either internal or external in character. For example, an organisation subsidiary of another might display many of the same characteristics, owing a broader organisational culture. Or an organisation might operate in an environment hotly contested by other organisations, and thus be limited in its scope for action.

### *Boundary spanning*

Boundaries define organisations, separating the internal from the external. Boundary roles are those that link the organisation to the external environment.<sup>11</sup> Boundary spanners exercise these roles. According to Böhling, a boundary spanner must

- be able to represent to other members of the organisation the expectations, preferences, values, and norms of external groups;
- protect the organisational core from information overload and contribute to adjustment and renewal in the organisation by making it aware of new developments in the environment; and
- provide information about the organisation, its operations, and its management to the external environment.<sup>12</sup>

Improper management of any of these tasks damages the channels of communication between the organisation and its environment, undermining its information-gathering capabilities and rendering adjustment unlikely. This, in turn, jeopardises performance-enhancing changes to the organisational modus operandi, prompting questions among clients about the responsiveness of the organisation to new challenges and thus about its continued viability.

How much autonomy a boundary spanner enjoys is contingent upon several factors: the level of influence that other internal functions have on decision-making discretion; the level of experience, competence, and power accumulated over time; and the degree to which the organisational culture socialises boundary spanners to internalise goals and values.<sup>13</sup> Where the boundary-spanning role is exercised by an organisation subsidiary of another, we can expect a reduction in autonomy: highly complex relations within the broader organisation will doubtless impinge on decision-making discretion.

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<sup>11</sup> H. Aldrich and D. Herker, 'Boundary Spanning Roles and Organization Structure', *The Academy of Management Review*, Vol. 2, No. 2, 1977, p. 217.

<sup>12</sup> K. Böhling, *Opening up the Black Box: Organizational Learning in the European Commission*, Frankfurt am Main, Peter Lang, 2007, pp. 26-27.

<sup>13</sup> V. Perrone, A. Zaheer and B. McEvily, 'Free to Be Trusted? Organizational Constraints on Trust in Boundary Spanners', *Organization Science*, Vol. 14, No. 4, 2003, p. 426.

Whatever the relative autonomy granted the boundary spanner in a particular organisational framework, its power should not be discounted. In the words of Aldrich and Herker,

The organization [...] relies upon the expertise and discretion of its boundary role personnel. They have a gatekeeper's power, and may become even more powerful if they make correct inferences and if the information is vital for organizational survival.<sup>14</sup>

One advantage of characterising a subsidiary as an organisation *à part* is that it allows for the self-interested exercise of power. Where the subsidiary is the sole boundary-spanning unit of a broader organisation, the tendency to abuse its dominant position occurs almost incidentally.

In its interactions with the external environment, the boundary spanner should identify possible synergies between its parent organisation and others pursuing similar objectives. Noble and Jones conclude that organisations from the same sector are more likely to establish synergies, in part because the similarities between organisational cultures facilitate mutual understanding and foster mutual trust.<sup>15</sup> That said, boundary spanners would fail in their duties were they to circumvent interested external groups for reasons of expediency. Organisations in new environments can thus be expected to be more highly sensitive than would otherwise be the case.

#### *DG ELARG as boundary spanner*

In practice if not in law, the European Commission acts as principal interlocutor with the candidate states and influences both the content and shape of the enlargement process.<sup>16</sup> The traditional focus of enlargement has been the incorporation of the *acquis communautaire* into domestic law by the membership aspirant. As the Commission was already responsible for monitoring compliance on transposition and implementation within the EU, it was thought the ideal institutional actor to advise on and interpret the *acquis*.<sup>17</sup> This parallels Bulmer and Padgett's hierarchical mode of governance, whereby EU institutions exercise supranational authority in fields for which they are exclusively competent, leading to policy transfer.<sup>18</sup> Transfer potential will be maximised in Court of Justice of the European Union (CJEU) jurisprudence; it will be weakened in secondary legislation where the Commission and the CJEU supervise transposition and implementation in the Member States.<sup>19</sup>

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<sup>14</sup> Aldrich and Herker, *op.cit.*, p. 227.

<sup>15</sup> G. Noble and R. Jones, 'The Role of Boundary-Spanning Managers in the Establishment of Public-Private Partnerships', *Public Administration*, Vol.84, No.4, 2006, p. 892.

<sup>16</sup> J. O'Brennan, *The Eastern Enlargement of the European Union*, New York and London, Routledge, 2006, p. 56.

<sup>17</sup> *Ibid.*, p. 75.

<sup>18</sup> S. Bulmer and S. Padgett, 'Policy Transfer in the European Union: An Institutional Perspective', *British Journal of Political Science*, Vol. 35, 2004, p. 104.

<sup>19</sup> *Ibid.*, p. 112.

I submit that the relative success of the Commission's management of enlargement is subject to similar conditions. DG ELARG personnel elucidate the finer points of the *acquis* to membership aspirants and provide targeted aid to spur its implementation, fostering a broader comprehension of the EU's institutional framework. Simultaneously – and in conformity with the boundary spanning framework – they represent to the EU the expectations and preferences of candidate governments.<sup>20</sup>

Note, however, that the Union's norms and values are non-negotiable: demonstrable adherence to these last on the part of candidates are a *sine qua non* of membership. Insofar as these norms and values are constitutionalised in the Treaties or referred to in secondary legislation, DG ELARG need only ensure transposition of the documents into domestic law. For values on which both the *acquis* and secondary legislation remain silent, DG ELARG must at once be more prescriptive in its communications with candidate governments and seek to collaborate with like-minded international or regional organisations in the socialisation of future members.

Subjective evaluations of candidates' compliance with the membership criteria appear in the Commission's *Opinions* and *Regular Reports on Progress Towards Accession*. Information gathered by Commission delegations on-site and country desk officers in DG ELARG is condensed and presented to the Union as a measure of the candidates' readiness to assume the obligations of membership. Because these documents influence opinion in the Council and the European Parliament, the decision to include or exclude certain data is the greatest exercise in power available to the DG given its structural position.<sup>21</sup>

DG ELARG's selective provision of information to the broader Commission and Union organisations raises important questions. Having posited the DG itself as an organisation, it is legitimate to ask whether DG ELARG provides information considered vital for *its* survival, or information considered vital for the survival of the Commission writ large.

## 2.2 Tentative conclusions: Organisational learning in DG ELARG

As I have termed the acquisition of information the main catalyst for learning, a predisposition to learning should stem from the DG's role in its institutional as well as its external environment. A comparison of cases within the 2004 enlargement and subsequent self-evaluation will serve to judge whether DG ELARG's task performance as a boundary spanner should improve over time via instrumentalisation of lessons learned.

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<sup>20</sup> O'Brennan, *op.cit.*, p. 79.

<sup>21</sup> Aldrich and Herker, *loc.cit.*

An orthodox, policy transfer interpretation of DG ELARG's role is clearly unsatisfactory: the EU can and does promote change extending beyond the technical minutiae of the *acquis*. The prime examples are the political criteria introduced at the 1993 Copenhagen Council.<sup>22</sup> Most of these changes, too, could be explained by 'domestication'<sup>23</sup> of legislation: most criteria were firmly established principles of Community law before enlargement and were constitutionalised with ratification of the 1997 Treaty of Amsterdam.

Not so with the respect for and protection of minorities. Ensuring observance of a criterion existing outside the legal realm presents a challenge to DG ELARG, demanding full exercise of boundary-spanning roles. The DG must communicate to candidates the Union's insistence on full compliance while acknowledging that candidates' sensitivities to the issue do not differ significantly from those of certain Member States. Drafters of *Opinions* and *Regular Reports on Progress Towards Accession* highlight the value's importance by including a section pertaining to it in each document. But action extends beyond mere documentation: DG ELARG has cultivated synergies with the Council of Europe (CoE) and the Organisation for Security and Cooperation in Europe (OSCE), as well as international and local non-governmental organisations (NGOs), to maximise its impact.

Analysis will centre mainly on DG ELARG publications to establish the relative importance of minority rights protection in the conditionality hierarchy. The way the subject is framed will speak as much, if not more, to the importance accorded it by the organisation; it will also provide insight into organisational behaviour and the process of gathering and filtering information for wider consumption.

The hybridised approach I will be applying to the study of DG ELARG's organisational behaviour is entirely novel: any conclusions reached will necessarily be tentative, whether because of the cases I will examine or the policy field I am studying. This study should be seen less as an attempt at establishing a grand theory than as an attempt to add another explanatory variable to the study of the enlargement process.

### **3. 'Respect for and protection of minorities': What kind of political criterion?**

Three putatively pan-European organisations include minority rights within their purview: the CoE, which has been working for their guarantee since its founding in 1949; the OSCE, which has been committed to improving the conditions of minorities since the signing of the Helsinki Final Act in 1975; and the EU, whose focus on minority

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<sup>22</sup> European Council, *loc.cit.*

<sup>23</sup> Bulmer and Padgett, *op.cit.*, p. 108.

rights dates at least<sup>24</sup> from their inclusion in the Copenhagen European Council Conclusions of 1993.

Overlap would not much matter were inter-institutional harmonisation easily achievable. This, however, is not yet the case, with some long-time Member States having failed to sign and/or ratify CoE documents judged legislative gauges of commitment to minority rights protection. The challenges for DG Enlargement as a boundary-spanning unit within the Commission are, first, to rationalise the perceived contradictions in the EU's approach to minorities and second, to strengthen the nascent interorganisational networks it has developed with the CoE and OSCE to ensure achievement of their common goal.<sup>25</sup>

This chapter will examine the international agreements to which adherence is viewed by the EU as evidence of minority rights protection. The EU's own provisions for minority rights will then be analysed to highlight their inability to fill the gaps left by the agreements and to contextualise the tasks facing DG Enlargement as the Commission's principal boundary spanning unit in the field.

### 3.1 *Necessary and sufficient? International minority rights legislation*

The EU views ratification of three international agreements as signifying compliance with the minority rights criterion: Article 27 of the 1966 International Covenant on Civil and Political Rights (ICCPR) provides the minimum standard; Articles 31 and 32 of the CSCE Copenhagen Declaration of 1990 specify the rights minorities should enjoy in a candidate country; and the CoE's 1995 Framework Convention for the Protection of National Minorities (FCNM) serves as an additional reference document.<sup>26</sup> As will be seen, this legislation is by no means unproblematic and leaves room for Community measures to bridge dangerous gaps in protection.

Article 27 of the ICCPR reads,

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group,

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<sup>24</sup> Minority rights protection was an implicit precondition for membership under the tripartite Council-Commission-European Parliament Declaration on Human Rights of 1977 which required all candidates be parties to the European Convention on Human Rights (ECHR) of 1950. See J. Hughes and G. Sasse, 'Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs', *Journal on Ethnopolitics and Minority Issues in Europe*, 1/2003, 2003, p. 9.

<sup>25</sup> On the functioning of such networks, see K. S. Cook, 'Exchange and Power in Networks of Interorganizational Relations', *The Sociological Quarterly*, Vol. 18, No. 1, 1977, pp. 62-82.

<sup>26</sup> F. Hoffmeister, 'Changing requirements of membership', in A. Ott and K. Inglis (eds.), *Handbook on European Enlargement: A Commentary on the Enlargement Process*, The Hague, TMC Asser, 2002, pp. 95-96.

to enjoy their own culture, to profess and practise their own religion, or to use their own language.<sup>27</sup>

Pressed for a definition of what the term 'minority' might be taken to mean in the context of this Article, Special Rapporteur Francesco Capotorti wrote,

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, tradition, religion or language.<sup>28</sup>

Both Article 27 and Capotorti's definition are restrictive. Article 27 imposes a negative obligation on signatories; no policy promoting the rights of minorities need be undertaken. Capotorti's definition fails to make the (admittedly nice) distinction between the 'positive' minorities he describes and what can be termed 'negative' minorities, constituted for the purpose of defending themselves against discriminatory treatment.<sup>29</sup> The immutability of these categories may be questioned: in the hypothetical case a signatory to Article 27 ICCPR fails to honour its obligation, what would otherwise have been a quiescent minority could fast become restive.

Article 31 of the Copenhagen Declaration marks an improvement in minority rights protection, creating a positive obligation: "The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with other citizens in the exercise and enjoyment of human rights and fundamental freedoms".<sup>30</sup> Yet no prescription is made in this Article – nor, for that matter, in the remainder of the text – on constitutional questions regarding recognition of minorities. Dalton correctly argues that, due to a fear of separatist tendencies, "participating states will not surrender their right to decide between the range of policies open to them".<sup>31</sup>

Article 32, on self-identification, is crucially important: "To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise

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<sup>27</sup> 'International Covenant on Civil and Political Rights' Adopted and opened for signature, ratification and accession by resolution 2200A (XXI) of 16 December 1966, Geneva, Office of the High Commissioner for Human Rights, retrieved 20 April 2009, [http://www.unhcr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhcr.ch/html/menu3/b/a_ccpr.htm)

<sup>28</sup> F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, New York, United Nations, 1979, p. 96.

<sup>29</sup> J. Packer, 'On the Content of Minority Rights', in J. Rääkkä (ed.), *Do We Need Minority Rights? Conceptual Issues*, The Hague, Martinus Nijhoff Publishers, 1996, p. 124.

<sup>30</sup> Conference on Security and Co-operation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, Copenhagen, June 1990.

<sup>31</sup> R. Dalton, 'The Role of the CSCE', in H. Miall (ed.), *Minority Rights in Europe: The Scope for a Transnational Regime*, London, Royal Institute of International Affairs, 1994, p. 106.

from the exercise of such choice".<sup>32</sup> Where discrimination is deeply rooted, one notes a tendency for persons to forego this choice and instead identify with a group free from persecution. Only if no disadvantage arises from his choice will a person be likely to identify himself with his minority culture and contribute to its promotion.

In keeping with the documents reviewed above, the FCNM re-iterates the special needs of minorities while demonstrating a lack of agreement on measures of implementation.<sup>33</sup> Also worrying, as far as the elimination of discrimination is concerned, is the repeated emphasis on national minorities as opposed to minorities *tout court*. This has the perverse effect of privileging those individuals self-identifying with national minority groups while providing little or no protection to others. When in the preamble the FCNM states, "that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent",<sup>34</sup> it is reflecting the views of the signatory states—most of whom have diasporas abroad they would like to protect—rather than those of the non-national minorities arguably most in need of the mooted protections.

### 3.2 *Minorities in the Community legal order*

Until the formulation of the Copenhagen criteria the EU can be characterised as having been uninterested in the matter. This stems partly from the lukewarm reception of the instruments detailed above on the part of several Member States: France, arguing incompatibility with Article 2 of its constitution, has declared Article 27 ICCPR inapplicable and has not signed the FCNM; Belgium, Greece, and Luxembourg all have yet to ratify it. Furthermore, as Vizi argues, the Union in the conduct of its business and the CJEU in its jurisprudence have always adopted an individualistic approach to human rights.<sup>35</sup>

#### *The end of the Cold War as fountainhead*

Realist International Relations theory argues that the 'straitjacket' of the Cold War afforded the EC/EU the luxury of avoiding uncomfortable questions inessential to the proper functioning of the Community. Only with the end of the Cold War and the advent of "a new world" which "seemed to herald the return of self-help attitudes"<sup>36</sup>

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<sup>32</sup> Conference on Security and Co-operation in Europe, *loc.cit.*

<sup>33</sup> O. De Schutter, 'The Framework Convention on the Protection of National Minorities and the Law of the European Union', in A. Verstichel *et al.* (eds.), *The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument?*, Antwerp, Intersentia, 2008, p. 262.

<sup>34</sup> Council of Europe, *Framework Convention for the Protection of National Minorities and Explanatory Report*. Strasbourg, February 1995.

<sup>35</sup> B. Vizi, 'An unintended legal backlash of enlargement? The inclusion of minority rights in the EU Constitutional Treaty', *Central and Eastern European Online Library*, 1/2005, 2005, p. 99.

<sup>36</sup> J. O'Brennan, "'Bringing Geopolitics Back In": Exploring the Security Dimension of the 2004 Eastern Enlargement of the European Union', *Cambridge Review of International Affairs*, Vol. 19, No. 1, 2006, pp. 156-157.

did the EU focus its attention on the conditions of minorities. In retrospect, fratricidal war and state failure in Yugoslavia marked a seminal moment. As O'Brennan writes,

The disturbing legacy of European history meant the potential re-emergence of irredentism, and the presence of sizeable minorities in many of the new states left many fearful that the Yugoslav imbroglio rather than the relative harmony of the EU model was the template for the future.<sup>37</sup>

As each of the new states voiced its desire to join the EU, it was understandable that 'respect for and protection of minorities' would be included among the political criteria: the EU wished to deter admission of immature democracies prey to petty nationalisms and extremist political parties. So the 1993 Copenhagen European Council declared itself in favour of the French proposal for a pact on stability in Europe, "directed towards assuring in practice the application of the principles agreed by European countries with regard to respect for borders and rights of minorities".<sup>38</sup>

#### *Non-national minorities*

The fate of non-national minorities remained undecided, however. In the absence of kin-state advocacy these groups pursued their claims via other organisms, such as NGOs and individual cases before the European Court of Human Rights (ECtHR). Prospective EU accession provided another avenue for redress. If the EU were to insist upon a political criterion that, consciously or not, failed to insert the 'national' qualifier before minorities, these groups could reasonably expect amelioration of treatment.

The Romani populations of the Central and Eastern European countries (CEECs) provided the most striking example of social exclusion and discrimination. There are approximately 10 million Roma in Europe as a whole; the 2004 enlargement saw the Romani population of the EU increase by 1.5 million,<sup>39</sup> followed by an additional 2.2 million<sup>40</sup> with the Bulgarian and Romanian accessions in 2007. As a transnational minority claiming linguistic, religious, and cultural rights, a simple examination of their rights through the lens of securitisation was impossible; the legitimacy of Romani demands and the real danger they would go unmet challenged the EU's self-definition as an area of peace, stability and democracy.

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<sup>37</sup> *Ibid.*, p. 57.

<sup>38</sup> European Council, *loc.cit.*

<sup>39</sup> Directorate-General Employment and Social Affairs of the Commission of the European Communities, *The Situation of the Roma in an Enlarged European Union*, Luxembourg, Office for Official Publications of the European Communities, 2004, p. 6.

<sup>40</sup> A. Tanner, 'The Roma of Eastern Europe: Still Searching for Inclusion', *Migration Information Source*, 2005, retrieved 9 May 2009, <http://www.migrationinformation.org/Feature/display.cfm?ID=308>

Considerable attention was therefore paid to the plight of the Roma during the enlargement process.<sup>41</sup> In so doing, the EU assumed the functions traditionally exercised by kin-states. I wish to determine whether this attention affected positive change in the populations' treatment. One would expect this to have been the case as candidates worked to satisfy all criteria for membership. Yet it cannot have been taken for granted, as the analysis of international legal documents and Community legislation has shown. There remained synergies to be established and strategies to be devised, tailored to the exigencies of Romani populations in individual countries.

#### **4. A first attempt at boundary spanning: DG ELARG, Romani rights, and the 2004 enlargement round**

In this chapter, I analyse DG ELARG's performance as a boundary spanner in the field of minority rights during the 2004 enlargement round. A brief description of the enlargement process up to the establishment of the DG in 1999 is provided, in which I identify certain intrinsic advantages accruing to the organisation from its institutional position. I then study the cases of Slovakia and Slovenia, charting evolving organisational responses to particular challenges. I chose these countries for their historical, political and geographical similarities: both are relatively 'young' post-Communist states, having achieved independence in the early 1990s; both aspire to be nation-states despite the heterogeneity of their populations; and both are home to established Romani populations by virtue of their location in Central Europe.

##### *4.1 Finding its feet: The Commission and the CEECs pre-1999*

When in 1989 President Jacques Delors accepted on behalf of the Commission the task of coordinating aid from the G24 to the CEECs, he wittingly established the centrality of that institution to the future EC/EU-CEEC relationship. Phare (Pologne-Hongrie: Assistance à la Restructuration des Économies), the Community's own programme for technical assistance, was placed under the remit of a new service in the Directorate-General for External Relations (DG I).<sup>42</sup> At the insistence of the European Parliament, a 'democracy' line focusing on politics and civil society was inserted into the general budget for 1992. Owing to shortages of in-house staff and expertise, outside bodies and groups served as advisers and intermediaries.<sup>43</sup>

Important lessons were drawn from these early experiences. First, the need for specialised, Brussels-based personnel became clear as the EC/EU-CEEC relationship grew in complexity. Second, coordination with external organisations – whether those associated with the G24 or civil society groups operating independently on the

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<sup>41</sup> A. Williams, *EU Human Rights Policies: A Study in Irony*, New York, Oxford University Press, 2004, p. 71.

<sup>42</sup> U. Sedelmeier and H. Wallace, 'Eastern Enlargement: Strategy or Second Thoughts?', in H. Wallace and W. Wallace (eds.), *Policy-Making in the European Union*, Oxford, Oxford University Press, 2000, 4<sup>th</sup> edn, p. 433.

<sup>43</sup> *Ibid.*, pp. 433-434.

ground – added considerable value to Community efforts, whatever the difficulty of achieving it. Finally, information provided by EC field delegations was indispensable in targeting assistance properly.

This learning had been instrumentalised by the time the Prodi Commission took office on 13 September 1999 with a Directorate-General for Enlargement. The establishment of the new DG constituted the birth of an organisation with enlargement as its articulated purpose and possessing all the mechanisms required to ensure task completion. It is important to remember that this organisation was not created *ex nihilo*: the Phare programme's administrators from what had been DG I shifted to DG ELARG, ensuring continuity in personnel and the formation of a hard core of experience. Insofar as their previous work had sensitised them to candidates' wants and needs, one could argue they represented the expertise unavailable to the Commission when it began its work with the CEECs in 1989; insofar as their previous work had socialised them to internalise the Commission's goals and values, one could expect their task performance to showcase them.

#### 4.2 Slovakia

Slovakia presented arguably the greatest test of DG ELARG's mettle vis-à-vis the Copenhagen criteria and minority rights in particular. For one, the Slovak Constitution reflects an ethnic conception of the nation, distinguishing clearly between the "Slovak nation" and "national minorities and ethnic groups living on the territory of the Slovak Republic".<sup>44</sup> Though recognised as citizens, persons belonging to minorities are conceived as different from the members of the national community for which the state is established.

Toxic inter-ethnic relations marked post-independence Slovak political culture. Following the 'Velvet Divorce', then-Prime Minister Vladimír Mečiar openly encouraged xenophobic attacks on Romani settlements, stating "[I]f we don't deal with them, they will deal with us".<sup>45</sup> Nationalist mobilisation also targeted the 650,000-person Hungarian minority, with a regressive language law passed in 1995 drawing Budapest's ire and Brussels' criticism.

Bratislava's indelicate treatment of minorities featured prominently in the Commission's negative *Opinion* on the Slovak membership application, delivered in 1997:

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<sup>44</sup> J. Ringelheim, 'Minority Protection and Constitution Recognition of Difference: Reflections on the Diversity of European Approaches', in A. Verstichtel *et al.* (eds.), *The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument?*, Antwerp, Intersentia, 2008, pp. 47-48.

<sup>45</sup> Sourced from J. Rupnik, 'Joining Europe together or separately? The implications of the Czecho-Slovak divorce for EU enlargement', in J. Rupnik and J. Zielonka (eds.), *The Road to the European Union. Vol. 1: The Czech and Slovak Republics*, Manchester, Manchester University Press, 2003, p. 29.

Improvement is [...] required in the treatment of the Hungarian minority, which still does not benefit from the general law on the use of minority languages which the Slovak authorities have undertaken to introduce and for which there is provision in the Constitution. The position of the Roma (gypsies) also requires attention from the authorities.<sup>46</sup>

Already we see DG-I officials acting as boundary spanners, alerting EU decision-makers to the mismatch between constitutional provisions and laws adopted. Arguably more important was the Commission's refusal to stand down from the minority rights criterion, though it made an example of Slovakia in the process by postponing accession negotiations. The Commission also attempted to foster synergies, upholding the recommendations of the OSCE's High Commissioner for National Minorities and consequently enhancing that party's prescriptive power.<sup>47</sup>

Retarded progress towards EU accession proved a decisive factor in the Slovak public's evaluation of the political system, as demonstrated by Mečiar's replacement as prime minister by Mikuláš Dzurinda in October 1998. The leaders of the four parties constituting the governing coalition immediately sent a joint letter to the Commission, undertaking to accelerate integration with the EU and to fulfill the Copenhagen criteria as soon as possible.<sup>48</sup>

With Dzurinda's coalition promising required policy change, the Commission developed a more favourable view of the Slovak membership application. Important here was Prodi's appointment of Verheugen as Commissioner for the newly created DG in 1999. A talented and powerful politician, Verheugen proved a strident advocate of an inclusive enlargement.<sup>49</sup> This preference was well known to the Member States, who sometimes thought him a traitor in the ranks.<sup>50</sup> This led DG ELARG to tergiversate in its conduct thereafter. While the organisation reflected the views of its champion and thus emphasised the positive and downplayed the negative aspects of applicants' performances, it also advanced the arguments of its Member State clients. DG ELARG thus showed itself firmly committed to the project entrusted it, duly noting Member State and applicants' concerns and working to reconcile all parties concerned to politically feasible compromises.

#### *Regular Reports as bi-directional communication*

With an eye to securing the inclusive enlargement it preferred, DG ELARG's first *Regular Report* strove to rehabilitate the Slovak government's image in the EU-15.

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<sup>46</sup> Commission of the European Communities, *Agenda 2000 – Commission Opinion on Slovakia's Application for Membership of the European Union*, DOC/97/20, Brussels, 15 July 1997, p. 22.

<sup>47</sup> *Ibid.*

<sup>48</sup> Commission of the European Communities, *Regular Report from the Commission on Slovakia's Progress Towards Accession*, Brussels, 1998, p. 8.

<sup>49</sup> O'Brennan, *The Eastern Enlargement of the European Union*, p. 82.

<sup>50</sup> *Ibid.*

The DG stressed that Bratislava had launched programmes in co-operation with NGOs to support the education and integration of Roma children, and had adopted a strategy “to tackle the problems of the Roma community”.<sup>51</sup> In contradistinction to the Commission’s lukewarm endorsement of the previous government’s “Plan for Solving Romany Problems”, DG ELARG qualified Dzurinda’s strategy as a positive development, notwithstanding its general character and lack of timetable. To expedite Slovakia’s progress, the DG provided a €4.3 million tranche of Phare funding dedicated to the “strengthening of civil society and policies and institutions protecting minorities rights”; a further allocation of €2 million was granted “to support activities for the Roma minority”.<sup>52</sup>

Despite the Roma suffering “disproportionately high levels of poverty and unemployment, discrimination, violence at the hands of thugs (‘skinheads’) and lack of protection from the police”, DG ELARG’s general evaluation found that the changes effectuated since September 1998 fully satisfied the Copenhagen political criteria.<sup>53</sup> On aggregate, the DG’s judgment was correct: government began implementing the Basic Treaty with Hungary, setting up a Joint Committee for Minority Issues, and Parliament passed a Law on the Use of Minority Languages in Official Communications in July 1999. This improved the conditions of the numerically superior Hungarian minority, bringing national legislation “into conformity with the Slovak Constitution, applicable international standards and specific recommendations from the OSCE, the Council of Europe and the European Commission”.<sup>54</sup>

The DG availed itself of one of the few instruments at its disposal – Phare funding to Roma and NGOs – to promote Romani integration. The *1999 Accession Partnership for Slovakia* represented the second-track of the DG’s strategy, committing the government in the short-term to “improv[ing] the situation of the Roma through strengthened implementation [...] of measures aimed, notably, at fighting against discrimination, foster[ing] employment opportunities and increas[ing] access to education”.<sup>55</sup> Monitoring capacity was increased, and a greater degree of autonomy gained, as DG ELARG launched the first twinning programme in the field of Romani rights in 2000.

The cumulative effect of these measures cemented the issue in Slovak political discourse. In 2000, the government launched a new, tiered Roma strategy, with more than 100 projects carried out by central and local governments in housing and infrastructure, education and training, employment, health and social affairs, and

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<sup>51</sup> *Ibid.*, p. 18.

<sup>52</sup> *Ibid.*, pp. 7-8.

<sup>53</sup> *Ibid.*, pp. 17-18.

<sup>54</sup> Commission of the European Communities, *1999 Regular Report from the Commission on Slovakia’s Progress Towards Accession*, *op.cit.*, p. 17.

<sup>55</sup> Commission of the European Communities, *Regular Report from the Commission on Slovakia’s Progress Towards Accession*, Brussels, 8 November 2000, p. 20.

culture.<sup>56</sup> A 2001 public works project highlighted DG ELARG's contribution to the flowering of civil society: NGOs and religious organisations, working with local authorities, implemented a programme worth some €35 million from which Roma communities were main beneficiaries.<sup>57</sup> That same year, the government appointed a Plenipotentiary for Roma affairs to liaise with the Romani community, the public, and the media. At a lower level, NGO-run training courses allowed Roma to visit state and public institutions, providing rudimentary though vitally necessary civics education.<sup>58</sup>

DG ELARG's final assessment of Slovakia's preparations for membership spoke frankly of the grave situation faced by the Roma.<sup>59</sup> By this point, the DG was no longer alerting the Union to development in its external environment; it was elucidating the challenges the Union would soon be importing into its internal environment. In stating that Slovakia "needs to make enhanced efforts in order to complete its preparations for accession" in, *inter alia*, the field of social policy and employment,<sup>60</sup> the candidate was encouraged to rush policy transfer rather than concentrate on its implementation. It would be up to other Commission DGs to adjust their policies to correct for window dressing.

#### 4.3 Slovenia

Slovenia presented DG ELARG far fewer challenges than did Slovakia. This is partly attributable to demographics: Slovenia's population is approximately half that of Slovakia, with no one minority group accounting for more than two per cent. Consequently, the government had little fear of irredentism. Rather, it drafted its Constitution in such a way as to ensure protection of its own minorities abroad. Article 5(1) states,

In its own territory, the state shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. It shall maintain concern for autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland.<sup>61</sup>

Beyond the guarantees afforded autochthonous minorities from neighbouring states, Article 65 allows for "the status and special rights of the Romany Community living in

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<sup>56</sup> Commission of the European Communities, *Regular Report from the Commission on Slovakia's Progress Towards Accession*, Brussels, 13 November 2001, p. 23.

<sup>57</sup> *Ibid.*

<sup>58</sup> Commission of the European Communities, *2002 Regular Report from the Commission on Slovakia's Progress Towards Accession*. Brussels, 9 October 2002, p. 31.

<sup>59</sup> Commission of the European Communities, *Comprehensive monitoring report on Slovakia's preparations for membership*, Brussels, 2003, p. 34.

<sup>60</sup> *Ibid.*, p. 53.

<sup>61</sup> Republic of Slovenia, 'Article 5 [State Objectives]', *The Constitution of the Republic of Slovenia*, Ljubljana, 23 December 1991, [http://www.servat.unibe.ch/icl/si00000\\_.html](http://www.servat.unibe.ch/icl/si00000_.html)

Slovenia" to be "regulated by law".<sup>62</sup> The government's dogged refusal to do so was one of the few blemishes on Slovenia's record.

Commission documents drafted prior to the creation of DG ELARG speak to the state's full compliance with the Copenhagen criteria. Ljubljana's activity in the field of minority rights, at least, was frenetic: in July 1997, the government signed the CoE's European Charter for Regional or Minority Languages; in March 1998 Parliament ratified the Framework Convention for the Protection of National Minorities.<sup>63</sup>

Roma were considered reasonably well treated, represented as they were on municipal councils of the towns they inhabited;<sup>64</sup> state-funded programmes to help Romani communities were lauded. Granted, Roma were not fully integrated into the State, with severe underemployment the greatest concern.<sup>65</sup> But they were not subject to the systematic persecution prevalent in other CEECs, and it was believed that modest domestic change could secure greater inclusion.

#### *Regular Reports as bi-directional communication*

As a member of the accession avant-garde, Slovenia's image required no rehabilitation. The government had already signed up to most of the international legislation in the field of minority rights, obviating the need for DG ELARG to use its leverage for its institutional partners' benefit. Even use of Phare Roma programmes was foregone: unlike the Accession Partnerships for Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia, the *Accession Partnership for Slovenia* did not specify the integration of Romani populations as a priority area.

As in the Slovak case, DG ELARG flagged the mismatch between constitutional provisions and laws in force, highlighting Ljubljana's failure to draft the general protection law foreseen by Article 65. ELARG officials intimated that, while such an omnibus law would be preferable, the sectoral legislation protecting the Roma was satisfactory.<sup>66</sup> Improvements were, however, suggested: the DG called for a Roma registration drive to ensure the population's representation in local government better reflected real numbers, and emphasis was placed on socio-economic integration in the areas of health, employment, and education.

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<sup>62</sup> Republic of Slovenia, *op.cit.*

<sup>63</sup> Commission of the European Communities, *Regular Report from the Commission on Slovenia's Progress Towards Accession*. Brussels, 1998, p. 12.

<sup>64</sup> Commission of the European Communities, *Agenda 2000 – Commission Opinion on Slovenia's Application for Membership of the European Union*, DOC/97/20, Brussels, 1997, p. 21.

<sup>65</sup> Only 13 per cent were employed on a full-time basis. Commission of the European Communities, *1998 Regular Report on Slovenia*, *loc.cit.*

<sup>66</sup> Commission of the European Communities, *Regular Report from the Commission on Slovenia's Progress Towards Accession*, Brussels, 13 October 1999, p. 17.

In response, Ljubljana introduced a Programme on Equal Opportunities of Employment for the Roma in 2000. Its unhurried implementation and perceived short-termism prompted Roma complaints to the Commission and a subsequent reprimand from the DG in its 2002 report.<sup>67</sup> Amendments to the Law on Local Government adopted in May 2002 were more successful, providing direct representation for the Roma in 20 municipalities. In tandem, the government earmarked additional funds for these localities in the 2003 budget “to implement policies benefiting the Roma population”.<sup>68</sup>

Reference to the continued challenges faced by the Roma is conspicuous by its absence in DG ELARG’s final assessment of Slovenia’s preparations for membership. One surmises this omission reflects a disinclination to overload the Commission’s organisational core with repetitive information.

#### 4.4 *Speaking to the prospective citizen*

On 9-10 December 2003, the Commission and the Project on Ethnic Relations held workshops with Romani leaders and government representatives from the CEECs. As expected of boundary-spanning activities, these workshops served a dual purpose: European officials received a first-hand assessment of policies from Roma in policy-making positions; and Romani representatives received a picture of the EU’s extant policies and future approaches to Romani issues.<sup>69</sup>

Arguably the most beneficial aspect of the workshops was a presentation of EU legislation, instruments and policies. On the legislative front, officials explicated Council Directive 2000/43/EC, known colloquially as the Race Equality Directive (RED). It was doubtless important that Roma be alerted to the possibility of bringing their governments to the CJEU should authorities act against the RED’s provisions, but the limits inherent in the Directive should also have been detailed.<sup>70</sup>

ELARG officials then explained in broad terms the functioning of the Structural Funds, again encouraging Romani leaders to network with their governmental partners as well as the DGs responsible for administering funds.

Finally, the structure of DG EMPL was explained. With four separate programmes on social inclusion, gender equality, anti-discrimination and employment incentives, this

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<sup>67</sup> Commission of the European Communities, *2002 Regular Report from the Commission on Slovenia’s Progress Towards Accession*, Brussels, 9 October 2002, p. 28.

<sup>68</sup> *Ibid.*, p. 27.

<sup>69</sup> Project on Ethnic Relations, *Roma and EU Accession: Elected and Appointed Romani Representatives in an Enlarged Europe*, Brussels, 9-10 December 2003, p. 9.

<sup>70</sup> N. Bamforth, M. Malik and C. O’Cinneide, *Discrimination Law: Theory and Context. Text and Materials*, London, Sweet and Maxwell, 2008, p. 768.

DG would, upon accession, become the Commission's primary interlocutor with the Roma.<sup>71</sup>

#### 4.5 *General conclusions*

Since its inception, and largely by design, DG ELARG has exercised a boundary-spanning function. That it found itself in a position of relative autonomy and power during the Eastern enlargement process was due in no small part to the inheritance of expert personnel from DG-I thoroughly inculcated with the broader organisational goals and values of the Commission and the routinisation of deliberative and consultative decision-making.

As my study of the Slovak and Slovene cases has shown, these advantages were not themselves enough to guarantee effective boundary-spanning activity in the field of minority rights. I will briefly summarise DG ELARG's performance in each of the roles enunciated above.

- **Representation to other members of the organisation the expectations, preferences, and norms of other groups.** Seeming inaction on this point is almost wholly attributable to the policy field. All Member States, the European Parliament, and the Commission were already cognisant of the normative preferences of the CoE and the OSCE. As the candidates were expected to exhibit the same preferences as and adhere to the norms of the EU, no representation was necessary.
- **Protection of the organisational core from information overload and contribution to adjustment and renewal in the organisation by making it aware of new developments in the environment.** Here DG ELARG performed admirably. The potential for overload was great, with information sourced from Commission delegations and parliamentary exchanges in addition to OSCE field offices, CoE reports, and feedback from international and local NGOs. In drafting its *Regular Reports*, the DG pored over this data and delivered to its internal clients only what information it deemed necessary. The rehabilitation of the Slovak application demonstrated the extent to which this practice was prey to the political preferences of project champions. On this point, the Slovak and Slovene *Reports* were polar opposites: DG ELARG painstakingly detailed Slovak progress while using boilerplate in its evaluations of Slovenia.
- **Provision of information about the organisation, its operations, and its management to the external environment.** DG ELARG provided ample information about the EU through daily contact with Slovene and Slovak officials; in the Slovak case, coordinated implementation of Phare Roma programmes demonstrated yet other processes, most notably those involving regional policy. As there were no Community minority rights standards to convey to these

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<sup>71</sup> *Ibid.*

governments, DG ELARG conveyed the EU's wish that candidates ratify the legal instruments of its institutional partners.

Whether and to what extent these experiences provoked a re-evaluation of DG ELARG's conduct will be analysed in the following chapter.

## 5. Report cards and re-education: DG ELARG's integration of internal evaluations

To its credit, DG ELARG displayed a strong willingness to learn from its experience as an actor in the minority rights field during the 2004 enlargement round. In this chapter, I will outline the main policy recommendations made by internal and external clients to enhance the efficacy of the DG's actions in support of minorities. I include evaluations conducted by DG ELARG as an organisation, by individual officials, and by the Commission more generally. Macro and micro level changes (i.e. at the Union and DG level) will then be examined in an attempt to locate instances of instrumental learning.

### 5.1 Internal evaluations

Acting as a holding environment for knowledge, DG ELARG published, in 2003, a compendium of the achievements of the Phare Roma programmes targeting Romani populations in Central and Eastern Europe. This ex post policy impact assessment and supplementary interviews with practitioners provide great insight into the DG's field approach and hints at issues perceived as sensitive by the organisation. A final internal document – DG EMPL's *Situation of Roma in an Enlarged European Union* – highlights the persistence of marginalisation in newly acceded countries and advocates anti-discrimination measures to be taken at all levels of governance. An examination of each type of evaluation in turn provides a base for understanding what policy changes followed the 2004 enlargement round.

#### *Review of the European Union Phare Assistance to Roma Minorities*

Though its recommendations were aimed at the governments of Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia, and DG EMPL in the Commission, this *Review* was not without constructive self-criticism. DG ELARG accepted its share of the blame for enabling governmental short-termism. To cite one example from the Slovak case, Phare allocated €8.3 million to a programme entitled 'Infrastructure Support for Roma Settlements'.<sup>72</sup> This, along with other infrastructure interventions in CEE, was characterised as counterproductive. DG ELARG advised against participation in top-down interventions in future Phare Roma programmes.<sup>73</sup>

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<sup>72</sup> Directorate-General Enlargement of the Commission of the European Communities, *Review of the European Union Phare Assistance to Roma Minorities: Interim Evaluation of Phare Support Allocated in 1999-2002 and Implemented until November 2003*, Brussels, Enlargement Information Unit, December 2004, p. 64.

<sup>73</sup> *Ibid.*, p. 42.

The DG's final recommendations trumpeted a holistic approach to Romani initiatives. ELARG officials had by now come to view all actors in the external environment as parts of an interrelated whole. DG ELARG was speaking to the future practices of its own personnel when it stressed that partnership working is neither natural nor spontaneous, but rather "an approach that needs to be managed, co-ordinated and also learned".<sup>74</sup>

### *Practitioner accounts*

All practitioners with whom I spoke agreed that in the absence of the political pressure exerted by the EU prior to Eastern enlargement, the situation of the Roma would have deteriorated.<sup>75</sup> They were also unanimous in acknowledging the imperfection of the process: if full integration had indeed been the objective, all post-enlargement reports testified to the EU's failing to have met it.<sup>76</sup>

Speaking to DG ELARG's ability to affect political discourse, one interviewee stated, "Since Roma monitoring was included in the *Regular Reports*, politicians have been forced to commit to the population's integration. Whether this trickles down to local levels is debatable, but a critical mass of commitments does have an impact".<sup>77</sup> Still, the absence of standards renders impossible any quantification of effects. Consequently, ELARG officials expressed frustration at judging whether or not programmes were designed simply to secure favourable reporting.

ELARG officials viewed political leverage with respect to the Copenhagen political criteria as a finite resource. "The moment we confirmed full compliance was the moment we lost recourse. You couldn't really be disqualified, after that".<sup>78</sup> There was a certain logic to this approach: strict application of the minority rights criterion to the Roma would have disqualified all Central and Eastern European applications. One interviewee put it thus: "Suspending negotiations over the treatment of Roma would not have been a principled stand; it would also have been an excuse for xenophobes to ramp up attacks. Blame would ultimately have been placed at their [the Romani minority's] doorstep." <sup>79</sup>

Most interesting were practitioners' views of other actors in the external environment. Over the course of DG ELARG's operations, a symbiotic relationship developed between the Commission, the CoE and the OSCE. The EU-15 as members of the CoE and OSCE accepted the DG's deference to their recommendations. In return, the

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<sup>74</sup> *Ibid.*

<sup>75</sup> Author's interviews with DG ELARG officials, Brussels, 31 March – 2 April 2009.

<sup>76</sup> 'Bottom of the heap', *The Economist*, Brussels and Bucharest, 19 June 2008.

<sup>77</sup> Author's interview with a DG ELARG official, Brussels, 31 March 2009.

<sup>78</sup> Author's interview with a DG ELARG official, Brussels, 2 April 2009.

<sup>79</sup> Author's interview with a DG ELARG official, Brussels, 1 April 2009.

CoE and OSCE received a fillip to their prescriptive powers as their norms were endorsed by what had become the principal European political organisation.

## 5.2 *An eager student? Organisational changes*

Internal evaluations conducted following Eastern enlargement prompted thoughtful consideration of policies across the EU's fields of competence. Before detailing the changes implemented in DG ELARG's modus operandi, I will comment briefly on EU-level changes—or attempted changes—that should also affect the DG's organisational behaviour in future.

### *Macro level*

Several ambitious attempts to fill what had been identified as “the obtrusive gap between the EU's external policies and internal commitments”<sup>80</sup> were made during the Convention on the Future of Europe. The most logical proposal called for a reference to be made to minority rights protection among the basic principles of the Union, completing the process of Copenhagen criteria constitutionalisation launched with the Treaty of Amsterdam.

The *Treaty establishing a Constitution for Europe* enshrined the minority rights criterion in Community law in a manner consistent with the CJEU's traditionally individualist application of human rights. Article I-2 reads

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.<sup>81</sup>

This clause survived the non-ratification of the Constitutional Treaty as the new Article 2 TEU of the Treaty of Lisbon.

*Contra* Hughes and Sasse, we can tentatively conclude that new Member States with sophisticated legal frameworks for minority protection have provided the EU new momentum to elaborate its own common legal and political standards.<sup>82</sup> With the Treaty of Lisbon now in force, an evaluation of the interpretations of the article by the Commission in its policy-making and the CJEU in its rulings will provide the basis for a more definitive judgment.

A parallel re-commitment to existing anti-discrimination within the EU can also be discerned. The most significant development to this end was Council Regulation

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<sup>80</sup> Vizi, *op.cit.*, p. 87.

<sup>81</sup> 'The founding principles of the Union', *Europa – Gateway to the European Union*, retrieved 6 May 2009, [http://europa.eu/scadplus/constitution/objectives\\_en.htm](http://europa.eu/scadplus/constitution/objectives_en.htm)

<sup>82</sup> Hughes and Sasse, *op.cit.*, p. 27.

168/2007 establishing a European Agency for Fundamental Rights (FRA). As per the text of the Regulation, the FRA is mandated "to provide the relevant institutions and authorities of the Community and its Member States when implementing Community law with information, assistance and expertise on fundamental rights".<sup>83</sup> In calling for collaboration with the Council of Europe and for dialogue with civil society, the FRA adopted what had been observed to be important elements in DG ELARG's boundary spanning work. The establishment of the FRA should aid that DG's action in the field of minority rights in future: the Agency is open to the participation of candidate countries, "facilitating a gradual alignment of their legislation with Community law as well as the transfer of know-how and good practice".<sup>84</sup>

#### *Micro level*

Several modalities of DG ELARG's operations have altered since the conclusion of 2004 enlargement round. While it continues to exercise each of Böhling's three boundary-spanning roles,<sup>85</sup> I submit that its relative autonomy and influence have diminished. This is partly a question of timing: current candidates lack the compelling narrative that hastened CEECs' accession to the EU. With few Member States championing enlargement's cause, and with "the contract of marriage between 27 countries"<sup>86</sup> in need of consolidation and reinforcement, the market for the DG's services is decidedly bearish. The decision to bring both Enlargement and the European Neighbourhood Policy under the same tent in the Barroso II Commission could be interpreted as evidence of this.

Member States have also shifted their view on conditionality. No longer does one-time compliance with the Copenhagen criteria suffice: the opening and closing benchmarks for each negotiating chapter have stretched their application over the entire process. What influence and autonomy DG ELARG has lost in the current climate has thus partly been recouped in the longer term.

A last change concerns the integration of the minority rights criterion into a negotiating chapter. Chapter 23 (judiciary and fundamental rights) was created to ensure citizens' fundamental rights are protected in all state jurisdictions, whatever their distance from urban centres. This addresses one of the known unknowns of practitioner reviews – whether high-level political commitments trickle down – by guaranteeing a homogeneous application of the law.

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<sup>83</sup> Council of the European Union, 'Council Directive (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights', *Official Journal of the European Union*, L 53, 22 February 2007, p. 2.

<sup>84</sup> *Ibid.*, p. 3.

<sup>85</sup> Böhling, *loc. cit.*

<sup>86</sup> O. Rehn, EU Commissioner for Enlargement, 'EU Enlargement five years on', Prague International Conference, Prague, 1 May 2009, retrieved 9 May 2009, <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/210&format=HTML&aged=0&language=EN&guiLanguage=en>

## 6. Conclusion and future perspectives

A now well-established institutional role as a boundary spanner has privileged organisational learning in DG ELARG. Through their immersion in the EU's external environment, ELARG officials are privy to vast amounts of information about the relative success of EU programmes, policy challenges facing candidate governments, regional activities undertaken by international organisations, preferences and demands of civil society, and future citizens' opinions on the Union and its future.

The volume of information available to the DG can only increase with the passage of time as people inside and outside the EU engage with the enlargement process. And because the outsiders of today might be the insiders of tomorrow, DG ELARG is in the unenviable position of having to cater to the wants and needs of a wider clientele than most Commission DGs.

I based my study on the assumption that isolating one element of DG ELARG's external action – initiatives to ensure candidates' compliance with the minority rights criterion with respect to Roma – would allow easy identification of lessons learned in the past and attendant changes in present behaviour. Based on my research, I can confidently conclude that DG ELARG has instrumentalised the lessons learned in 2004 *to the extent possible*; the vicissitudes of politics can undermine even the best-laid plans.

This bears directly on my second research question: How has this instrumentalisation affected DG ELARG's subsequent actions? Given the paucity of more recent examples, it is difficult, if not impossible, to prove instrumentalisation caused or influenced subsequent actions. If and when other states accede to the EU, an application of my methodology to their cases would prove instructive.

The case studies from 2004 confirmed my hypotheses. DG ELARG could not itself foster change in the minority rights regimes of candidates, owing a lack of *acquis* support. So it borrowed norms from the CoE and OSCE and communicated them to candidates as those of the EU, spurring a temporary boost in ratification of international legal instruments. Other intergovernmental and most nongovernmental organisations attempted to foster synergies with DG ELARG to achieve the objective of social inclusion.

Characterising the DG as a boundary-spanning organisation was innovative, and can prove fruitful to future analysts taking enlargement as their subject. One interesting avenue for research would be an examination of DG ELARG's response to clients' demands. My research found that Member States' alarm at the leap in Romani asylum claims in the late 1990s was determinant in placing the Roma near the top in ELARG officials' minority rights reports; it is an open question whether the

presence/absence of a policy champion, for example, holds equal weight. Another possible study could focus on the nature of DG ELARG's boundary-spanning communications with individuals in candidate states and the EU itself, at once bringing Europe closer to the citizen and bringing citizens closer to Europe.

My approach did suffer from its treatment of DG ELARG as a unitary actor. While it is true that the Commission delegation staffs in states negotiating enlargement did report the latest news and events back to DG ELARG in Brussels, they were also in continual contact with other relevant line DGs. Future researchers could treat the boundary-spanning role at a greater level of abstraction, substituting DG ELARG with the European Commission more generally.

I conclude with a reflection on the future of transnational minorities in the EU. DG ELARG was forceful in pushing governments to develop programmes for Romani inclusion, with mixed results. It was most successful when these claims followed on those of other, numerically superior minorities. I indicate in my thesis that kin-state members of the EU are usually successful in securing extensive protection for 'their' minorities abroad. What will it take for a transnational minority to benefit similarly? With Turkey and its large Kurdish minority in the enlargement queue, this is not a trivial question. A solution must be found so that, although Janus might shed a tear looking to the past, he might smile looking to the future.

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