

What does the case of Slovakia tell us about the EU's Active Leverage?

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Paper produced for the

EUSA Tenth Biennial International Conference

Montreal, Canada, 17-19 May 2007

Panel 10C

Introduction

The past few years have witnessed the publication of a flurry of books examining conditionality and the accession process in Central and Eastern Europe (CEE) (e.g. Grabbe, 2006; Hughes et al., 2004; Jacoby, 2004; Kelley, 2006; Pridham, 2005; Schimmelfenning and Sedelmeier, 2005; Vachudova, 2005). Many of these have sought to highlight, in the words of Heather Grabbe (2006), the EU's 'transformative power'. Among the most significant and best contributions was Milada Anna Vachudova's (2005) *Europe Undivided* in which she discussed the 'active' and 'passive' leverage of the European Union. The latter refers to the attraction or magnetism of EU membership, especially the expected economic benefits of joining the club, whereas the former refers to the 'deliberate conditionality exercised in the EU's pre-accession process' (Vachudova, 2005:63).

¹ This paper draws on Haughton (2007). I would like to express my thanks to Vladimír Bilčík, Erik Láštík, Darina Malová and Marek Rybář for a number of enlightening conversations over the years.

Central to ‘active leverage’ are the criteria for membership, starting with those laid down at the Copenhagen European Council in 1993. These include the requirement for states to be democratic, to function according to the rule of law and to respect minorities, while possessing a functioning market economy able to withstand the competitive pressures of membership of the single market and having the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. These rather broad conditions were fleshed out at the Madrid European Council in 1995 and in the numerous Commission reports charting the aspirant states’ progress (or lack thereof). States wishing to join the EU have to meet the Copenhagen criteria and then transpose the EU’s body of law (*acquis*) into their domestic law with no opt-outs allowed.

The role of the EU in bringing about change in Slovakia has been the subject of much attention by scholars (e.g. Deegan Krause, 2003; Harris, 2004; Pridham, 2002; Schimmelfennig et al., 2005). Indeed, it is often argued that Slovakia provides an excellent example of the EU’s active leverage at work (e.g. Lord and Harris, 2006). The attention stems from the EU’s decision not to invite Slovakia to begin accession negotiations at the Luxembourg European Council in 1997 due to a failure to meet the political criterion promulgated at Copenhagen four years earlier (Henderson, 1999; Rybář, 2005). Following the 1998 parliamentary elections and the removal of the government led by Vladimír Mečiar from power, however, at the Helsinki European Council in 1999 Slovakia was invited to begin accession negotiations. The country made great strides over the following three years, closing negotiations before the Helsinki summit and entering the EU on 1 May 2004.

This short paper seeks to reflect on the experience of Slovakia and highlights what that particular case has taught us about the active leverage of the EU. I recognize that unpicking causation between domestic and European arenas is fraught with methodological difficulties (Haverland, 2006). Unlike our colleagues from chemistry, as political scientists we are not afforded the luxury to isolate and remove individual ingredients and then re-run experiments to see if the results change, hence identifying chains of causation is extremely difficult and tends to lead to conclusions, which are vague, hedged and less than robust. Bearing that caveat in mind, however, I venture a

few arguments based on a close observation of the Slovak case. Firstly, building on the helpful distinction between political² conditionality and *acquis* conditionality, I suggest that the Slovak case demonstrates the power of *acquis* conditionality, but the limits of the ‘transformative power’ (Grabbe, 2006) of political conditionality. Indeed, *acquis* conditionality may be more influential in cases where political conditionality is perceived to have had an influence. Secondly, the EU has very little impact on domestic party politics beyond influencing the choice of coalition partners, but even here the impact of the EU is probably exaggerated. Thirdly, the power of the *acquis* conditionality varies depending on the clarity, consistency and ascribed salience of such laws.

Did Political Conditionality Cause Change?

As mentioned above the attention devoted to Slovakia derives from the ‘no’ issued at Luxembourg in 1997 and the ‘yes’ issued at Helsinki a couple of years later. The former decision was based on a failure to meet the political criterion promulgated at Copenhagen four years earlier (Henderson, 1999; Rybář, 2005). The invitation to begin accession negotiations followed the 1998 parliamentary elections which provoked the removal from power of the government led by Vladimír Mečiar. A number of scholars see the Slovakia case as demonstrate the power of EU’s political conditionality (e.g. Lord and Harris, 2006; Schimmelfenning, 2007; Schimmelfennig and Sedelmeier, 2005). I would suggest, however, that this view is mistaken.

The active leverage of the EU had little impact during the mid-1990s. Indeed, despite the frequent threats warning of exclusion from the first wave of CEE states to start accession negotiations and the rare and diplomatically significant decision by the EU and the USA to issue *démarches* (strong diplomatic notes) deploring the state of democracy in Slovakia³ the impact of such measures on the 1994-8 government’s policy was minimal. Indeed, if it did have an impact, the *démarches* probably helped to shore-up the bunker mentality of the 1994-8 government (Baco, 2000; Keltošová, 2000; Sitek, 2000). Even when the European Council decided not to invite Slovakia to

² Schimmelfenning and Sedelmeier (2005:210) label this ‘democratic’ conditionality.

³ The EU issued *démarches* on 24 November 1994 and 25 October 1995. The US issued its *démarche* on 27 October 1995.

begin accession negotiations at the Luxembourg summit, the EU's pressure had little effect on policy (Haughton, 2005). The EU's impact was minimal because compliance with the Copenhagen criteria would have placed constraints on the policies and functioning of the administration which Mečiar and his coalition allies were simply not prepared to accept, even though they sought membership. The EU, for example, had criticized the campaign waged by the government against one of the prime minister's political opponents, president Michal Kováč. But in response to the 'no' issued at Luxembourg, the campaign against the president and other opponents who were blamed for sullyng Slovakia's name was merely intensified (Haughton, 2003a; Hofbauer, 1998).

Despite the 'no' issued at Luxembourg, the EU only played a marginal role in opposition politics in the mid-1990s. Although joining the EU was a stated aim of all the major opposition parties and the increasing awareness in these circles that 'EU accession without Mečiar was impossible' (Rybář, 2005:183), the motivation to remove Mečiar and his allies from power was not due to a desire to provoke more favourable responses in the Commission's regular reports, but rather it was driven by a desire to improve the domestic political and economic situation, to remove those responsible for the economic woes of the country who had spent the previous four years more concerned to line their own pockets through insider privatization and build themselves expensive new villas than promote the economic well-being of the country. Although European themes were not absent from the campaign (Fisher, 2006) the 1998 election was first and foremost a battle to remove an illiberal government from power (Bútorá et al., 1999). Entry into the EU was more of an aspiration than a key source of motivation for the opposition in the mid-1990s. I would not deny the NGO sector - often funded by Western bodies - played a role in increasing turnout and therefore shaping the results, but if we seek to assess the EU's role we need to acknowledge both the indirect role of such international organizations (reliant as they were of ordinary Slovaks who wanted to see an illiberal government replaced), and the fact that the EU was not the only international organization involved. If we wish to point to any leverage, we could highlight the admittedly slightly nebulous desire to be a *normal* European country, which indicates the influence of a passive leverage of sorts.

Following the 1998 elections and the formation of the new government under the leadership of Mikuláš Dzurinda, Slovakia demonstrated its desire to receive an invitation to begin accession negotiations and catch-up with its neighbours. In a frenzy of diplomatic activity the new Prime Minister Mikuláš Dzurinda alone made 35 bilateral foreign visits to EU countries during his first 12 months in office. Building on the goodwill of the EU towards the new Slovak government the Commission created a unique institutional tool: The European Commission-Slovakia High Level Working Group, under the leadership of Deputy Foreign Minister Ján Figel' and the Deputy EC Director for Foreign Affairs François Lamoureux, met five times between November 1998 and September 1999 (Bilčík, 2001:9).

Do developments prior to the Helsinki summit, therefore, demonstrate the power of political conditionality? Firstly, some of these discussions in the working group were *acquis*-related (to which I will turn below). Secondly, there were many significant changes in domestic politics prior to December 1999, a number of which did address criticisms thrown at Slovakia by Commission reports. The motive force, however, was not a response to EU pressure. Take, for example, policies towards minorities. Although at face value the 'Law on the Use of Minority Languages' passed in July 1999 and the appointment of a deputy prime minister for human rights and minority affairs could be seen to be a direct response to the berating of the previous government's policies towards minorities, these changes were driven much more by domestic factors, especially the inclusion of the ethnic Hungarian party (the Party of the Hungarian Coalition, SMK) in the government.

I will return to the accession negotiations below, but the last event tied to political conditionality in the scholarly literature is the 2002 election. EU officials and Western politicians made it clear that a return to power of Mečiar would jeopardize entry into Euro-Atlantic clubs. Some scholars go as far as to suggest the 'extreme importance given to the accession to both NATO and especially the EU' in the election (Harris, 2004:194), but this claim is exaggerated. Although EU entry was a central plank of Dzurinda and his party's pitch to voters (Haughton, 2003), it was not the major theme of the election and was not decisive for the overwhelming majority of voters (Gyárfásová, 2003).

Restricting the Menu? The EU and Party Politics in Slovakia

Two significant contributions to the literature have stressed the impact of the EU on party politics. Vachudova (2005:177) maintains that EU leverage was ‘decisive in determining what kinds of political parties were on offer to be elected’ and probably the closest foreign observer of domestic Slovak politics Karen Henderson (2006:150) emphasizes the ‘strong influence of EU membership issues on the very shape of the party system’. Both of these claims merit examination. It is worth stressing at this point that the EU makes no explicit requirements in terms of party politics in the accession process. The EU’s primary concern is whether a state has signed up to the underlying liberal democratic values and can take on the burdens and obligations of membership.

The EU played a minimal role in shaping the choice of the kinds of party on offer to the Slovak electorate and did not shape the party system in any significant way. Appeals were not changed because of the EU. The Slovak National Party, for example, continued to spout its bilious, xenophobic rhetoric. Moreover, none of the new parties formed in the 1997-2000 period were created thanks to EU influence (Rybář, 2006). The Slovak Democratic Coalition was formed in response to the government’s handling of the 1997 NATO referendum, the culmination of growing disgust with the Mečiar-led government’s *modus operandi*. The Coalition became a party not due to any external influence, but thanks to the government’s tinkering with the electoral law in the run-up to the election. The Party of the Hungarian Coalition (SMK) (a fusion of three smaller parties) was also influenced by the meddling of the Mečiar-led government and policies regarded as discriminatory against ethnic Hungarians. Two other new parties created during this period, the Party of Civic Understanding and *Smer* (Direction), were created explicitly as a reaction against the polarization of Slovak politics into two rival camps (Fico, 2000; Schuster, 1999; Haughton, 2002). Even the Slovak Democratic and Christian Union forged by Dzurinda and his allies which would place EU entry at the heart of its appeal in the 2002 elections was not created for any EU-related reason (Haughton and Rybář, 2004).

The only aspect of party politics where EU influence was significant was in coalition formation and maintenance. Joining the EU was the ‘focal point for cooperation’ keeping the ideologically broad-based 1998-2002 government together (Vachudova, 2005:178). SMK was on the verge of walking out of the government in 2001, but external influence, in the form of politicians and political parties with an interest in Slovakia and keen to ensure the country’s accession was not jeopardized, seems to have been significant in persuading the party to remain in the government (Malová et al, 2005:44). Indeed, the power of EU pressure in the accession phase, seems to be confirmed by events following entry, most notably the decision of Robert Fico to ignore the protestations emanating from Brussels and jump into the coalition bed with Mečiar and Slota after the 2006 elections.

Oui to the Acquis

In contrast to political conditionality - which I would argue has been overemphasized by some scholars - during the 2000-2 period, which we can label *acquis* conditionality, I would suggest that the EU’s active leverage was very important. Just before negotiations began the government declared it would not request exemptions from the *acquis* and would ask for transitional phases only in a limited number of areas. The government stated boldly its ambitious goal to harmonize Slovak legislation with EU law by the end of 2002 and set 1 January 2004 as its entry date aim (Bilčík, 2002). A number of problematic issues were prominent during the entire accession process, especially judicial reform, the situation of the Roma minority, the enforcement of laws strengthening the domestic market and increasing transparency in privatisation, and the requirement on the Slovak government to draw up plans to close reactor and increase safety at the Jaslovské Bohunice nuclear power plant. Moreover, the negotiators have stressed the tough negotiations concerning issues of environment, energy, taxes, agriculture, competition and the internal market (the *four freedoms*) (see Figel’ and Adamiš, 2003). Nevertheless, in many areas, during accession negotiations Slovakia at times resembled ‘an obedient dog faithfully following its master’s instructions’ (Malová and Haughton, 2006:326-327).

The 1998-2002 period highlights four aspects of the power of the EU’s *acquis* conditionality. Firstly, as Vachudova (2005:109) argues the EU ‘does not coerce

candidates into meeting the membership requirements', rather it relies on the existence of a domestic political elite keen and willing to play ball. Secondly, the desire to catch-up with countries and ensure the enlargement train does not leave without them is an important motivating factor. Slovakia and the other 2004 entrants from the Helsinki group were less troublesome during negotiations than the Luxembourg entrants.

Thirdly, clear and unambiguous judgments requiring clear and measurable change provoked action. When the EU sang in unison, and ascribed salience to a particular policy, it could provoke change. In response to explicit criticism contained in the Commission's November 2000 regular report berating Slovakia for the insufficient independence of the judiciary, the unsatisfactory state of the fight against corruption, the generally poor state of institutional preparedness and overall administrative capacity of Slovakia, on 23 February 2001 the Slovak parliament 'adopted the most extensive amendment to the Slovak Constitution' since independence (Bilčík, 2002: 289). The amendment paved the way for reform of the judiciary, clarified the status of international treaties, redefined the powers of the Constitutional Court, provided for the creation of an ombudsman in the field of human rights protection and 'paved the way' for a 'broader reform of public administration' (Bilčík, 2002:289).

More broadly, although the Justice and Home Affairs chapter of the *acquis* was in places rather opaque and was undergoing rapid changes, officials from the accession states 'knew it was a potential veto-point in negotiations', so transposition of the *acquis* and conformity to EU standards was critically important (Grabbe, 2006:204). In contrast, thanks in part to the poor record of some of the existing member states in the realm of minority policy, provided the right language was used by the accession state, lack of policy improvement was highly unlikely to be a veto-point. Indeed, despite a raft of criticisms emanating from Brussels regarding treatment of the Roma minority, the Dzurinda government's actions were largely limited to declarations and resolutions. Roma continued to suffer discrimination and a lack of social inclusion (Vašečka, 2002). The EU was much more effective in changing the language and content of policy, than in affecting policy implementation. Indeed, in off-the-record remarks Commission officials lamented the difficulty of maintaining pressure on

accession states to continue with reforms in many policy areas such as minority policy, especially when almost all of the negotiating chapters had been closed.

Fourthly, although one of the real ‘dividends’ of the accession process lies in the entrenchment of democracy (Sadurski, 2004), there were consequences. Such time-consuming tasks as incorporating 80 000 pages of EU law into domestic law prompted many accession states to institute fast-tracking mechanisms which bypassed the normal procedures of democratic deliberation process. In Slovakia, for example, fast-tracking mechanisms in parliament were used almost exclusively during the government’s first year to get laws on the statute book. Such developments allied to the 2001 change in the constitution helped strengthen the executive at the expense of parliament (Malová et al, 2005). More broadly, the use of fast-tracking mechanisms provoked the question of whether EU demands were actually harming rather than helping democratic consolidation (Malová and Haughton, 2002:110-2). In this light, it is perhaps not surprising how some of the new member states have behaved since the ‘accession straightjacket’ was removed (Haughton and Malová, 2007:73).

Conclusion

This short paper has reflected on the EU’s ‘active leverage’ on Slovakia. I have sought to cast doubt on the transformative power of the EU in bringing about change to meet the political requirements promulgated at Copenhagen in 1993. Rather I see the changes in Slovak politics as a product of domestic political factors, particularly the desire to remove an illiberal government from power. Although I acknowledge that it is impossible to remove the EU factor from the equation, I would suggest that the 1998 election results would have yielded the same result in the absence of the EU. Where outside (not just EU) actors played a role was in providing contacts that ‘promoting learning about and adapting to the substance of democratic liberalism, capitalism and minority rights protection’ (Vachudova, 2005: 178), but this reinforced rather than changed the policy orientations of the incoming government. Moreover, I have suggested that arguments stressing the role of the EU in shaping Slovak party politics are wide of the mark.

In contrast, I acknowledge that *acquis* conditionality was at times significant in the Slovak case. In line with the rest of the accession states, the ‘enormous potential influence’ of *acquis* conditionality, however, was constrained by ‘diffuseness and uncertainty’ (Grabbe, 2006:3). Where the EU’s requirements were clear, directly linked to a reward and flagged up as being a potential veto point in negotiations, the EU made a difference. What the Slovak case also highlights very clearly is that a *sine qua non* of change is a domestic political elite which wants to make the change. Real change comes from within.

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