

# EU Governance and Central and Eastern Europe - Where are the Boundaries?

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## Abstract

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The recent debate on *multi level governance* in the EU-literature has largely focused on internal governance within the European Union, whereas the external side of the coin has been neglected. Considering that the end of the Cold War has called upon the EU to participate in the construction of a new European order, this paper takes on the challenge of removing this bias: to what extent is the EU also able to govern the political space outside its borders and what consequences does this have for its internal governance capability? The paper approaches these questions in two key sections. It sets out to adapt the present governance concept to the EU's external activities. It introduces the concept of boundaries as the key link between the EU's own governance system, its external role and hence its ability to contribute to order. It argues that the EU's boundaries play a dual role: on the one hand clear, stable boundaries are a condition for effective (internal) governance; on the other hand porous, fuzzy boundaries open up avenues for governance beyond its geographical territory. More specifically, the developed theoretical framework argues that governance beyond the EU's is mainly determined by the very same factors that structure the EU's internal interaction.

The second part of the paper applies the developed framework to the EU's relations with Central and Eastern Europe. It demonstrates how the EU since the end of the Cold War has been caught up in a tension between protecting its own governance system and producing order in the Central- and Eastern European region. Although it has tried to limit this tension by fudging its transactional, cultural and institutional boundaries, it has (in the middle of 1997) still not been able to find a stable balance between its two goals. The paper argues that an 'unbundling of the territory of the EU', i.e. the acknowledgement that there will no longer be a 'fit' between the EU's territory and authority - opening up for different kinds of membership and 'enhanced co-operation' - could be a long-term stable solution. Underlining the link between external and internal governance this would however produce a very *different* EU.

# EU Governance and Central and Eastern Europe - Where are the Boundaries?

*“Did sea define the land or land the sea?  
Each drew new meaning from the waves’ collision  
Sea broke on land to full identity”*  
Seamus Heaney

## 1. INTRODUCTION

The project of European integration was born and nurtured by the Cold War division of Europe and the transatlantic alliance. In turn, the project itself contributed to building political order in Europe through enmeshing states and Germany in particular in processes of co-operation and integration. The project was also directed towards supporting democracy first in Germany and Italy and later in the newly emerging democracies of Greece, Spain and Portugal. While it was theoretically open to all European states, EC membership was in practice limited to Western Europe until the collapse of communism in the East. A further limitation created by the Cold War was one of policy scope - the EC did not engage itself in defence matters as NATO and the US performed the essential role of defending Western Europe.

The collapse of the Cold War order raised important questions about the policy and geographical boundaries of the EC. Uncertainty about US foreign policy and the expectations of the new democracies in Central and Eastern Europe challenged the EC to assume a leadership role in creating a new European order. Order, in this context is taken to mean established patterns of behaviour and sets of relationships involving states, societies and institutions.<sup>1</sup> The need for new order arrived at the same time as the EC’s

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<sup>1</sup> As pointed out by Cox order can be more or less institutionalised. In some instances order will be provided simply by shared values; in other cases the values will be strengthened and ‘policed’ by institutions (Cox, 1986: 222-3).

internal governance system was strained by a combination of factors – absorption of a newly unified Germany, the end of the permissive consensus with respect to integration and the weight of its agenda, already extended by the internal market project and its spillover effects. In 1997, some eight years after the collapse of the Berlin Wall, the question of whether the European Union, which now houses the EC, can both maintain its own system of governance and participate in the construction of a new European order is as important as it was in 1989. There is no consensus on the normative basis of a new regional order; its geo-political and cultural boundaries are unclear and both states and institutions are engaged in continued processes of adjustment.

The key aim of this paper is to examine how the EC/EU has handled its boundary problem with respect to the Central and Eastern European countries (CEEC).<sup>2</sup> Given that political systems cannot operate without boundaries, we argue that the way in which the EU tackles this problem will very much determine the type of polity it becomes and how it contributes to the new order in Europe.

This paper suggests that the analytical lens of multilevel governance (Marks, 1994; Marks, Hooghe and Blank, 1996) is a useful framework to analyse the question of the EU's boundaries and relationship with the wider European order.<sup>3</sup> To-date, this literature has not been directly applied to the study of the international role of the Union (although Hurrell and Menon 1996 suggest that it could). Indeed, the literature has largely ignored the extent to which the external environment affects the internal capacity to govern and, in particular, the implications of lack of 'fit' between membership, territory and functions in the EU. The 'unbundling' of territory (Ruggie, 1993: 172) - that of the EU and the wider Europe - is taking place in the 1990s when states and institutions devise new patterns of governance in response to change. These alter the nature, significance and

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<sup>2</sup> Hungary, Poland, the Czech Republic, Slovakia, Bulgaria, Romania, and the Baltic States of Estonia, Latvia and Lithuania.

<sup>3</sup> In addition, we identify key characteristics of EU governance and attempt to overcome Bulmer's criticism that 'recent theoretical contributions on governance have been rather fragmented because they have dealt with specialised issues, and have not indicated much convergence upon a common framework for analysis. Suggestions have been made regarding frameworks for analysis but empirical application beyond individual case studies has not yet been achieved' (Bulmer, 1995: 4).

configuration of boundaries in Europe. Indeed, it is ironic that the application of the concept of governance which assumes a blurring of boundaries between inside and outside has largely ignored or downplayed the significance of the 'outside' in shaping the EU governance system. Equally, the focus of governance on territorial or political space within the Union creates the impression that the extent of EU governance is confined to its membership i.e. membership and governance are implicitly linked. This neglects the development of governance 'beyond the EU'. A quick glance at the EU's external role and presence in Europe however, seems to indicate that its role is largely determined by variables which make up the core of the governance literature: shared values, assumptions and goals, shifts in the locus of authority, activity at a number of levels and the participation of multiple actors in the act of governing.

By taking multi-level governance as our starting point, we aim to first of all address the gaps in the literature on the external role of the Union. This tends to mirror the distinction between EPC/CFSP and EC activities and treats the external role of the EU as being distinct from the internal integration process (Holland, 1991; Nuttall, 1992; Norgaard, Pedersen and Petersen 1993).<sup>4</sup> A focus on governance permits a comprehensive approach to the external role of the Union. It addresses the difficulty identified by Smith that 'it is evident that there is an intimate linkage between the internal development of the EU and its institutions and the broader European order, which is not solely attributable to the interests, power or policies of major European states. Whilst some analyses have noted this connection, it is doubtful whether it can be accounted for simply within an inter-state or inter-governmental framework' (Smith, 1996a: 8-9).

The paper is broken down into three parts. We begin by developing the concept of boundaries and the key features of EU governance. After this, we look at the character and style of EU governance, followed by a conceptualisation of the EU external role and its various instruments of governance. The second part of the paper applies the framework to the EU's relations with Central and Eastern Europe and asks whether the EU has re-drawn or re-defined its boundaries in order to create stability in this region and

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<sup>4</sup> For exceptions see Ginsberg (1989), Hill (1993) and Smith (1996a, 1996b).

whether the capacity to govern this region is exclusively linked to membership. The final section explores the question of whether the EU can, through manipulating its boundaries, find a balance between its two tasks.

## **2. A FRAMEWORK FOR ANALYSIS - MULTI LEVEL GOVERNANCE**

This section outlines the relationship between boundaries and EU governance. It demonstrates that while some overlap between the boundaries and territory of the EU is critical to the capacity to govern, other boundaries are fuzzy or permeable and permit the Union to govern political space beyond its territory. Hence, by manipulating its boundaries and, in particular, by taking the dramatic step of extending the EU governance system itself to encompass new states, the EU affects order in Europe.

### **The Role and Meaning of Boundaries - Defining the Scope of the Governance System**

As underlined by Wallace (1990: 14), boundaries are central to any study of governance. Not only do they establish the limits of EU governance by defining the *geographical scope* of the governance system, they also to a large extent determine the system's capacity to govern. Without stable boundaries which (clearly) define rights of access and participation, a governance system will therefore have difficulty in establishing efficient decision-making procedures. Conversely, rigidly defined boundaries can exacerbate the disadvantages of exclusion and entice otherwise hesitant outsiders to accede. Accession, in turn, may affect the 'carrying capacity' of the system.

Despite the significance of boundaries to any governance system, scholars who have conceptualised the European Union as a system of multilevel governance have not directly tackled the significance or meaning of boundaries. By building upon the work of

Smith (1996a), who uses boundaries to comprehend the link between the EU and the overall European order, this paper addresses this deficiency. In his work, Smith identifies four types of boundaries which are of critical importance to the EU-system - the geopolitical, institutional/legal, transactional and cultural (ibid, 13-18). The first boundary, the *geopolitical* one, refers to the fact that geopolitics, i.e. security and stability, can produce a dividing line between insiders and outsiders. As shown by the Cold War, this boundary can be extremely rigid and may clearly identify potential members of the club: in the period of 1957-1989, the countries east of the Berlin Wall were clearly excluded from membership.

The *institutional/legal boundary* refers to the density of institutions and practices in the EU, its status as a community of law and promoter of civic statehood (ibid: 15-16). Strictly speaking, this community of law refers to the constitutional order of the EU consisting of the 'hard law' of the Treaties, secondary legislation and interpretations of the European Court of Justice which set out the competencies of the Union and the rights and obligations of membership including those of participating actors in negotiations. The 'soft law' of the Union refers to *inter alia* political agreements and declarations issued by the EU and the engagement of actors in processes of co-operation. The institutional dimension refers to the complex set of institutions, procedures and norms which underpin the EU project. The overall character of the Union is such that core elements of the institutional/legal boundary are non-negotiable. These involve bargains on structures, goals, policies and methods and represent a costly investment on the part of the member states. The resulting *acquis communautaire*, the *acquis politique* and EU institutions cannot be easily shared with outsiders - correspondingly, new members must accept these in full or stay outside the institutional/legal boundary. This membership threshold may deter or prohibit membership of certain states. Moreover, the significance of the threshold is that it constitutes the core of the EU governance system and a dilution of that core could have repercussions for the capacity of the EU to govern (i.e. a diminution of membership requirements could create different categories of membership,

undermine cohesion and prejudice the implementation of agreed decisions).<sup>5</sup> However, the institutional boundary is not limited in all respects to the territory of the Union - for example, the EU model of governance may be exported through voluntary imitation by other states or by the conditional nature of EU external action which requires acceptance of certain norms and procedures by outsiders. Hence, what might be termed the 'soft' side of governance is not confined to EU members alone.

Smith's third boundary - the *cultural boundary* - refers to the fact that culture and political values can also serve as a boundary between a geographical area and the outside. Generally, although not always clearly articulated,<sup>6</sup> in the EU's case these values refer to support for democracy, respect for the rule of law and human rights - values which were not shared by the CEEC during the Cold War. Although this boundary can be very divisive - for instance for countries lying outside what is conceived as being *Europe* - the boundary has always been permeable in the EU's self-understanding. During the Cold War it upheld what Judt has called the EC's 'foundation myth'; that it was not just a club for Western Europeans, but 'the Europe for all Europeans' (Judt, 1996: 42). In addition, the EC has, through the conditionality of its policies, traditionally tried to spread its values beyond its member states. The very fact that this boundary is porous has consequences for EU governance: it enables the EU to govern beyond its territory while, at the same time, the attractiveness of the EU and its values may trigger a number of applications for membership.

Finally, the EU also maintains a *transactional boundary* through regulation of access to the EU market for goods, services, capital and persons. This boundary is eroded by the increase of transactions across EU borders (legal and illegal) and policy decisions which open the EU market to outsiders (on a sectoral or general level) or diminish the significance of the transactional boundary between insiders and outsiders. Hence, by

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<sup>5</sup> In this sense, the capacity of new states to take on membership obligations is a function of the capacity of the Union to remain effective.

<sup>6</sup> For instance, the TEU refers to the need for the EU to assert its identity on the international scene (Art. A) without specifying what this is, and an objective of the CFSP is to safeguard the common values of the Union (Art. J.1).



fudging its transactional boundary the EU is able to provide governance, without necessarily offering membership. Once again, this erosion of the boundary has implications for the achievement of agreed objectives and policies within the EU as many policy areas rely on tight external boundaries and clear distinctions between insiders and outsiders, for example, the Common Agricultural Policy.

To sum up, boundaries, to a large extent, define the governance system by signalling who is 'in' and who is 'out'. As underlined by Smith, some of the EU's boundaries are also, by definition, porous. The result of this is that the EU system has an inherent dynamic: on the one hand, its porous boundaries enable it to govern beyond its geographical borders; while, on the other, the difficulty of establishing clear boundaries puts pressure on its system of governance. In order to shed more light on this dynamic, we will have to take a closer look at how we define governance and how the EU system of governance operates.

## **EU Governance - Definition, Style and Capacity**

### ***Multi-level governance***

The key claim of the *multi-level governance* approach to European integration is that governance is no longer simply produced by nation-states, but also by the European Union (see Jachtenfuchs, 1995, 1997, Marks, Hooghe and Blank, 1996). The need for 'collective problem solving' *beyond* the nation state has mainly been triggered by increased interdependence in world affairs which undermines the capacity of the nation state to act (Carporaso, 1996: 32). This de-linking of authority, governance and territory has not however resulted in the establishment of a new hierarchical state at the EU-level. On the contrary, governance, that is 'the establishment and operation of social institutions.... capable of resolving conflicts, facilitating co-operation, or, more generally,

alleviating collective-action problems in a world of interdependent actors' (Young, 1994: 15) is produced in a complex, polycentric system called the European Union.<sup>7</sup>

By arguing that the EU is in itself a multi-level system of governance, this school currently stands out as a theoretical alternative to the other main theory on European integration, liberal inter-governmentalism (Moravcsik, 1994). Unlike liberal inter-governmentalism, the governance school does not look upon the EU as an inter-state bargaining process where outcomes are solely determined by state preferences and power. Although the member states are indeed 'formidable participants in EU policy-making, control has slipped away from them to supranational institutions' (Marks, Hooghe, Blank, 1996: 342). Decision-making is transformed into a process where several different actors compete for influence. The state's ability to control the process is further diminished by the fact that the very make-up of the governance system includes a number of (permanent) rules, norms and patterns of policy-making which restrict the margin of manoeuvre of the states - hence *institutions matter*.<sup>8</sup> Finally, membership of a governance system also alters the preferences of its members and triggers a situation where a state's overall interest as a systemic member affects its position on a given issue - therefore, *membership matters* (Sandholtz, 1996).

Turning to the issue of how the EU governs, two key instruments appear. The first instrument is 'soft' and refers to the fact that EU governance is not only tied to formal interaction but also to the development of norms and values. By establishing a common set of norms and values the EU can thus guide and steer the actions of its members. The second instrument focuses on the 'hard' or formal aspect of governance; arguing that the EU - made up of fifteen member states - governs through *negotiations* (Jachtenfuchs,

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<sup>7</sup> Jachtenfuchs expresses this as follows: 'the idea of governance *beyond* the state does not necessarily mean governance *above* the state, thus simply reconstituting the state with all its constituent elements simply on a higher institutional level. On the contrary, the idea of governance beyond the state has to stop relying on the state as the institutional form and the hierarchical centre of an integrated society' (Jachtenfuchs, 1995: 124; author's italics).

<sup>8</sup> In its stress on institutions the governance school draws explicitly on new institutionalist theory (see Bulmer, 1995).

1995: 125). These negotiations are - as alluded to above - not only determined by state preferences, but also by institutions, norms, rules and patterns of policy-making.

Drawing mainly on the work of Scharpf (1988), two key characteristics of the EU's governance capacity can be singled out. The first centres on the speed of the negotiations which, he argues, will be protracted. The core reason for this is that the EU as an *on-going negotiation* process will always be engaged in a number of games. Since the integration process is almost forty years old, any negotiation is bound to touch upon historical package deals (*the shadow of the past*); parallel, ongoing games (*the shadow of the present*) and the consequences of a given set of negotiations for future negotiations (*the shadow of the future*). Precisely because the EU is never engaged in a single game, but always in a number, it will have difficulties in producing swift decisions. In practice, a *policy of postponement* as argued by Schumann emerges as the dominant tendency (Schumann, 1991). What is more, there will be a tendency to ease decision-making by relying on the toolkit of the past (*path dependency*) which is to try to 'do what we have always done' instead of embarking on strategic innovation (Pierson, 1995).

The second characteristic focuses on the quality of outcomes. Since the EU is made up of fifteen nation states, each with their own national identity, it operates on the basis of a *bargaining decision style* (Scharpf, 1988: 258-259). Instead of looking upon how a common (EU) problem can be solved in the most efficient way, the member states look at a given problem through their own national 'glasses'. In other words, since the EU is not equipped with a dominant, common European identity, which would favour strategic decision-making, substantive issues become entangled with distributive ones. This triggers a situation where the search for optimal outcomes is replaced by national interest-based *package deals* or *side-payments* where all actors have to leave the negotiation table with a positive balance-sheet.<sup>9</sup> When compared to unitary state action,

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<sup>9</sup> This is in sharp contrast to what Scharpf, drawing upon Jeremy Richardson, calls the *problem solving decision style*. Here, actors bargain on the basis of a common utility function, concentrate on reaching efficient outcomes and disregard distributive costs. As argued above, the key reason why the EU is not able to operate on the basis of this style is linked to its lack of a common European identity which is distinct from the individual, self-interests of the states.

the outcome of negotiations is therefore *sub-optimal*. According to Scharpf (ibid, 261) there is however an exception to this general rule: if the EU-system is subjected to a *shock*, there is less likelihood that distributive and substantive issues will be entangled. Wallace and Wallace paint a similar picture of policy-making: 'the EU is an inherently conservative entity...which moves from one package-deal compromise to next with a good deal of inertia, with determined effort to defend entrenched advantages and built-in reluctance to address strategic issues' (Wallace and Wallace, 1995: 24).

### ***The External Dimension of Governance***

The above features of EU governance, we claim, also structure the EU's interaction with its external environment. The nature of the governance system determines the capacity of the EU to govern beyond its geographical boundaries. Its internal actions and presence have unintended effects on the outside, and vice versa, the external environment has effects on the inside. More specifically, the EU can govern political space outside its territory through:

a) *actorness/capacity to act*. The EU has a specific 'actor-capability' (Hill, 1993) with respect to the outside, the instruments and scope of which are defined by its constitutional order. Activity centres around issues of access, institutionalised contacts and the 'soft governance' of diplomacy, persuasion and dialogue. As argued by Smith, this formal activity can be so wide-ranging that it can transform itself into a *negotiated order*, whereby, after a certain period, the EU and the outsider are engaged in a continuous series of negotiations leading to the point where the overall process is actually as important as the outcome (Smith, 1996a: 259).

The EU's ability to use this instrument is intimately linked to its governance system. Of key importance here is that the EU's external action is based upon agreements first reached amongst its members (hence, external action is linked to an internal process of negotiations). Since this almost by definition affects old package deals, the EU's capacity to innovate or reach generous deals with outsiders is, as a ground rule, circumscribed. This is strengthened by the fact that member states' tendencies to focus on

national balance-sheets, rather than the systemic interest, is even more dominant when the EU deals with a country which is not even member of the club! (see Friis, 1997: 95). In theoretical terms, this point can be put as follows: there is a tendency to *externalise* issues upon which the EU cannot agree so that the inside is protected at the expense of the outside (see also Smith, 1996b: 463).

b) *presence*. The second instrument of external governance de-links governance from formal action. By representing a large economic and trading bloc in Europe, the EU's actions and pure existence affect the outsider (whether intended or not). This means that the EU serves as a model for market regulation as others emulate its regulatory policies with a view to securing market access or even membership - order is produced without inviting the outsiders into the club. This highlights a 'soft' component of EU governance. The presence of the EU is however not only tied to economics: by standing out as an efficient governance system based on democratic values and norms, the outsider can independently decide to emulate the actions of the EU. Should the EU, in its formal negotiations, not be able to live up to its own standards and norms, outsiders' willingness to emulate it could decrease. On the other hand, this attractive power of the EU may entice outsiders to join the EU as a full member with repercussions for the governance system as a whole.

c) *internalisation*. In principle, the EU can also provide governance by *internalising* the outside i.e. external developments and external actors become part of the EU bargaining process (Smith, 1994: 296). Internalisation stems from issue-linkage when bargaining on issues of foreign policy becomes intertwined with decisions on internal matters such as financing, institutional reform or enlargement. It also refers to the re-configuration by policy-makers of their 'mind-sets' or mental maps to take account of external actors. Finally, the activity of enlargement itself internalises political space in the EU. Moreover, it tests the institutional capacity of the EU (its carrying capacity) and bargains on the structures, scope and methods of governance. Hence, this paper argues that the solution to the boundary problem will to a large extent determine 'the type of polity that will govern

this ambiguous part of the world' (Schmitter 1996: 142). It is these issues to which the paper now turns.

### **3. HANDLING THE BOUNDARY PROBLEM IN THE IMMEDIATE POST-COLD-WAR ERA**

Until the fall of the Berlin Wall the EC governance system was endowed with what can only be described as hyperstable boundaries. The stability of the boundaries was mainly due to the fact that they were all defined by a condition, which appeared to be permanent, namely the Cold War. The Cold War drew a clear *geopolitical* and *cultural* boundary between Western and Eastern Europe; rendering EC-membership for Warsaw-Pact members and communist regimes, not subscribing to EC values, unthinkable. As the EC was equipped with these two sharp boundaries its *legal/institutional* boundary was not put under pressure: not only was there no 'risk' that Eastern European countries would apply for EU-membership; the same was the case for Western European countries which had declared themselves neutral (except Ireland). Finally, since the communist regimes (at least as a ground rule) had limited interests in and scope for promoting interaction with the EC, the *transactional* boundary was not permeated by, for instance, large movement of goods and immigration.

With the sudden, unexpected end of the Cold War, the EU's stability was exchanged with the very opposite: the geopolitical boundary suddenly appeared leaky and all the CEEC were transformed into potential candidates for membership. The *cultural* boundary was even more porous. Since the new governments all subscribed to the EU's values, the EU was confronted with a very difficult question, namely, *who is us?* The change of the *transactional* boundary was just as significant: suddenly the EU was put in a situation where the Iron Curtain was replaced by a very fluid boundary - the EU did not have fortress-like qualities to insulate itself from, for instance, major immigration waves

should the difficult transformation processes in the CEEC region result in serious instability.

Underlining one of the key points of this paper - that boundaries determine the conditions for governance - the sudden change in the EU's *geopolitical, transactional* and *cultural* boundary also put its *legal/institutional* boundary under pressure. The purpose of this empirical part of the paper is to analyse how the EU tackled its boundary problem. By taking the period since 1989, one can see that the pressure to respond to the needs of the newly emerging democracies engaged the EU in re-drawing and fudging its external boundaries through extension of market access, the creation of new relationships and the promise of EU membership. This section demonstrates that although the boundary policies of the Union were largely influenced by the character of its governance system, outside agencies and actors also mattered. The inherently conservative character of the EU, whose existence and functioning is bound up in a series of package-deals which emphasise strict differentiation between insiders and outsiders made it extremely difficult to reach agreement on actually moving its boundaries through enlargement. On the other hand, the extension of 'soft governance' eroded the *geo-political, transactional* and *cultural* boundaries between the EU and the wider European order. Moreover, the boundary politics of the Union displayed an important dynamic between the goals of maintaining the EU governance system and security within the EU area, on the one hand, and those of EU governance, and stability and order in Europe, on the other.

### **The Europe Agreement Experiment - Order Without Membership (1989-1993)**

In 1989, despite its official policy of overcoming the 'unnatural' division of Europe, the EC was just as overwhelmed by the geopolitical earthquake of 1989 as any other international actor. Suddenly the EC was put in a position where its own rhetoric of overcoming division in the *whole* of Europe was put to the test.

Looking at the EC's immediate response to the 1989-changes, one is left with the impression that the EC was willing to take on the role as a major producer of order in the new Europe. Instead of just developing its own independent policy towards the new democracies, the EC co-ordinated the economic help of all G-24 countries (Pelkmans; Murphy, 1991: 130). Already, before the escalation of events in mid-1989, the EC offered trade agreements to the front-runners of the democratic movement in Central and Eastern Europe, Poland and Hungary. Of great importance was however also the acknowledgement that the geopolitical change had shifted the EC's *cultural* boundary: after the end of the Cold War the road was cleared for co-operation with 'peoples with whom we share a common heritage and a common culture' (Europa-Archiv, 1990: D284).<sup>10</sup>

A closer look at its *Ostpolitik* soon reveals that the EC had great difficulty in developing a coherent, efficient policy towards its new neighbours. Indeed, the EC simply treated the CEEC 'as part of the 'foreign relations', of the EC, in much the same way as EC relations with former European colonies in Africa and the Caribbean, rather than as part of the internal relations of an increasingly unified Europe' (Bideleux, 1996: 541). The core reason for this was that the EC was caught in a major dilemma: on the one hand, it wanted both to protect its own security and the efficiency of its own governance system after the dissolution of its *geopolitical* and *cultural* boundary, while, on the other, it wished to contribute to the task of creating order in the new Europe.

The tension between the EC's ambition of providing order and maintaining its own security became particularly clear in the immediate period after the fall of the Berlin Wall. The key problem was that the break-up of bipolarity had not only liberated Central- and Eastern Europe but it had re-opened the German question and with it, that of security *within* the EC. Failure to deal with this could, in the last resort, lead to the dissolution of the EC. Thus, the member states were compelled to put this question right at the top of

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<sup>10</sup> This acknowledgement was particularly strong in Germany. As a re-current theme Chancellor Kohl stressed that 'Warsaw, Prague and Budapest belong just as much to Europe as Paris, London, Rome or Berlin' (See Kohl, 1992).



the EC agenda and other issues had to take a backseat. In practice, this affected the EC's *Ostpolitik* in two ways. The first effect was a strengthening of one of the key features of EC governance: *path dependency*. In a situation where the EC had to devote all its time and effort to Germany, it was simply all the more tempting to dig into the toolkit of the past. Instead of developing new, innovative, policy-measures, the EC offered the CEEC traditional association agreements under the name of Europe Agreements.

The second effect concerned the method chosen to deal with the German question: that of deepening EC integration through convening following an Inter-Governmental Conference. This strategy could have been thrown off course by any promise of EC membership, then a goal of many CEEC, which could overburden the 1990 IGC. Since failure could leave the German question unresolved, the majority of the member states preferred not to endow the association agreements with a membership clause. Instead, they would have a 'special value in themselves' (Commission of the European Communities, 1990: 7).

The conflict between the EC's ambition to contribute to the new order *and* maintain its own internal governance system affected the *Ostpolitik* in a slightly different manner: the EC was unwilling to launch a substantial re-think of its *legal/ institutional* boundaries. Despite the break-up of its *geopolitical, cultural* and *transactional* boundaries, the EC refused to move from the position where third countries either remained fully outside or became fully inside. In an EC of 25, for example, it would hardly be possible to maintain the institutional balance between inter-governmentalism and supra-nationalism. As France was especially reluctant to move towards either a more federal or confederal system of governance, President F. Mitterrand tried to convince his partner countries that a new institution under the name of all-European confederation rather than the EC should take on the role of providing order in Central- and Eastern Europe (Mitterrand, 1996: 179). By setting up a new loose institution, where the new democracies could meet regularly with the old, the EC could avoid the task of changing its boundary policy in the

near future.<sup>11</sup> However, as the plan was not supported by the CEEC, who opposed alternatives to membership of existing European organisations, it eventually foundered.

Similarly, the rejection of Commissioner F. Andriessen's concept of *affiliate membership* (April 1991) exposed opposition amongst the member states to altering the *legal/institutional* boundary. In effect, he proposed a softening of that boundary by allowing associated states a voice in the EC's institutions, but no voting rights. (Lippert, 1995: 227). Ireland and the Benelux states, in particular, objected to this blurring of the dividing lines between insiders and outsiders which could erode one of the core elements of the EC governance system.<sup>12</sup> As a watered-down compromise, the member states instead agreed upon a multilateral so-called 'political dialogue' with the associated states. Although this was presented as a novel idea, it did not depart from the traditional boundary policy as it was a consultative mechanism *between* the EC and the CEEC on matters of common interest (Lippert, 1995: 249).<sup>13</sup>

Although the above to a large extent explains the EC's difficulties in providing order, a simple point, derived from our framework for analysis, should not be forgotten: since the EC produced governance in a twelve-member, consensual negotiation system, it was almost by definition inhibited from developing visionary *grand designs*.<sup>14</sup> This was made especially clear during the Europe Agreement negotiations: instead of offering generous trade concessions which were arguably most appropriate in assisting market reforms, all insiders took care to protect their various nitty-gritty interests, ranging from

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<sup>11</sup> During the Europe Agreements negotiations, Mitterrand more than hinted at this fear: 'I do not want the Community to become a vague free trade area as certain Community members have wanted from the first day' (Friis, 1997: 258).

<sup>12</sup> It should be said that a number of member states (especially Germany and Denmark) actually rejected the Andriessen idea out of fear of creating a separate room for the CEEC or 'tricking' them out of full membership (Friis, 1997: 255-258). The CEEC seemed to harbour similar concerns.

<sup>13</sup> The unwillingness to dilute the very meaning of membership was confirmed in the parallel EEA-negotiation process. Here, proposals for decision-shaping power were watered down considerably. Unlike the CEEC, the EEA-countries were however offered consultation-rights on changes to the *acquis*.

<sup>14</sup> As argued in the theoretical section, creative decision-making can however emerge in situations of crisis or shock. Judging from the Europe Agreement experience however one has to make the following point: even the fall of the Berlin Wall did not amount to such a crisis that the member states embarked on creative policy-making.

potatoes to sour cherries. The fragmented, multi-level nature of decision making exacerbated this tendency.<sup>15</sup> As a result, the trade sections in the Europe Agreements came under fire not only from the CEEC, but also from a number of EC countries and the academic world (see Messerlin, 1992, CEPR, 1992, Club de Bruxelles, 1993,).

These and other critical evaluations of EC policy (Kramer, 1993, Lippert; Schneider, 1995, Sedelmeier and Wallace, 1996) do not however provide us with the entire picture of the EC's Ostpolitik. By examining its Ostpolitik through the conceptual lens of governance, the EC's role was actually far more wide-ranging than the Europe Agreements suggest. In practice, the EC itself stood out as an economic and political *model* which the CEEC found worthwhile to emulate. To put it differently, the EC, with its norms, values and legislative rules, was a 'recipe' for the kind of societies which the CEECs aimed at establishing after 1989. This was most obvious in the process of what Nicolaides (1992) termed 'anticipatory adaptation' embarked on by all the CEEC. Although the Europe Agreements did not explicitly require them to adapt all their relevant legislation to that of the internal market, they unilaterally moved in this direction (Nicolaides, 1992: 236-237). The effect was that of extending EC governance beyond its membership without any corresponding *softening* of the *legal/institutional* boundary. Although it is hardly fruitful to weigh the effects of 'hard' and 'soft' governance against each other, it seems safe to argue that the role-model of the EC contributed just as much to European order in the immediate period after 1989 as the Europe Agreements. The break-up of Czechoslovakia seems to illustrate this point: since the two nations wanted to stay *EC-fähig* they took great care to settle their differences peacefully and constantly referred to EC related texts in handling their divorce (Wæver, 1997: 70).

Although the EC's contribution to the new European order went beyond the Europe Agreements it should be equally clear that the EC never presented itself as *the* order for Europe. A clear demarcation between the internal (institutional) order of the EC and the

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<sup>15</sup> Drawing upon our framework for analysis the above can also be put as follows: due to difficulties of reaching internal agreements on concessions the EC simply *externalised* the issue. It protected the inside at the expense of the outside.

broader European order was maintained, or to put it in even simpler terms, the EC aimed at creating order *for* the CEEC rather than incorporating them in its own order. The lack of 'fit' between the EC and the European order was strengthened by the fact that the EC saw itself as only one of the agents producing order. In its statements, it repeatedly referred to both the OSCE and NATO/WEU as important, supplementary agents of order in Europe.<sup>16</sup> In other words: European order should not be created by one, single agency, but by a patchwork of regimes.

### **From Europe Agreements to the Copenhagen Summit, June 1993 - Towards a Link between Order and Membership**

As argued above, in the immediate period after November 1989, the EC aimed at contributing to the new European order, without either *moving* or *softening* its institutional boundary. Instead it hoped that the Europe Agreements, which mainly affected the *transactional* boundary, would stand out as a long-term policy. In practice, this strategy proved short-lived. Already, before the Europe Agreements had been formally ratified, the EC, at the Copenhagen Summit of June 1993, launched a major policy change which made an explicit link between order, stability and membership. Only by eventually *moving* its *legal/institutional* boundary, would the EC (apparently) be able to provide stability in Europe and prevent the outbreak of ethnic conflicts which could also impinge upon the security of its members.

The change of heart begs the question of why the EC suddenly substituted association with full membership as the key instrument for creating order. A part of the explanation lies in external factors - the deteriorating security environment led to constant pressure from the CEEC for a clear commitment to their EC membership at a time when they also sought security guarantees from NATO. This motivation also led the states on

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<sup>16</sup> The reference to NATO should be seen in the light of the fact that the EC lacked military governance capability.

the outskirts of the EC, especially Germany, to conclude that the disappearance of the EC's *geopolitical* and *transactional* boundaries called for a major response on the *legal/institutional* front. Precisely because the EC could not protect itself against the spillover effects of political instability or conflict along its borders, it should step up its engagement in the region with a view to stabilising it. Although this objective could possibly have been achieved through means below the membership line (ranging from soft governance to special kinds of membership), the German government chose to link order to full membership.<sup>17</sup> Paradoxically, the preference for the *sticky*, traditional road to enlargement triggered a political commitment, which to a much greater extent threatened to jeopardise the very governance system which the member states were trying to defend. By linking governance and order to full membership, the EC had thus put itself in a position where it would eventually be asked to deliver upon its promises, i.e. to make room for eleven newcomers in the present governance system.

However, in the short-term, the membership commitment was not accompanied by a timetable. Instead, the *prospect* of membership was offered as a support to the reform-process in CEEC or light at the end of their long transformation-tunnel. Not surprisingly, this effect of *postponement* was anything but a disadvantage in Germany's attempt to convince its partner states to give a commitment to membership.<sup>18</sup>

The EC's policy change was also intimately connected to the EC's style of governance. A feature of the governance system (as argued in the first section of this paper) is that the EC is at any time engaged in negotiations at a number of tables. In order to comprehend a given decision, one is therefore well-advised to put the decision into its context. In this light, one quickly concludes that the parallel games of German unification, ratification of the TEU and negotiations on the financial perspectives (Delors II), a resolution of which were pre-conditions for enlargement, had been successfully

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<sup>17</sup> A Commission proposal to create a European Political Area moved in the direction of soft governance, but was rejected by the member states (Lippert, 1997: 203).

<sup>18</sup> Germany also made sure to play the 'cultural card' and constantly referred to the 'fuzzy' cultural boundary: why should countries which the EC had both during and after the cold war characterised as *European*, sharing the same culture, not be allowed *inside* the institutional boundary?

completed by June 1993.<sup>19</sup> The road was therefore clear to offer a commitment on membership. Yet, the sceptics had to be convinced that this would not jeopardise the EC itself.

Another important feature of the EC's governance system, package-deals, enabled a compromise to be reached between the enlargement-enthusiasts (Germany, Denmark and the UK) who obtained the membership promise and the sceptics (France, Spain, Portugal) who linked this to vaguely defined entry conditions, including one which focused specifically on the tension between the EC's governance system and the creation of stability in Europe - enlargement could only take place if the absorption of new members did not undermine the momentum of the integration process (European Council, 1993). It also indicates that the EC had taken on the German strategy: the purpose of offering membership was just as much to create a long-term process where the *very prospect* of membership would provide order in the region. In addition, the reluctant member states had a systemic interest in meeting German-led demands for enlargement: without Eastern enlargement the sceptics could risk that Germany could be forced to pursue an *Alleingang* east of the Elbe - an *Alleingang*, which would for instance trigger French concerns and throw the EU into crisis.

The final component of the membership package was EU approval of French Prime Minister E. Balladur's idea of the Stability Pact. The core of his proposal was that the CEEC should resolve problems concerning minorities and borders prior to crossing the EC's *legal/institutional* boundary (Sedelmeier and Wallace, 1996: 377). However, this proposal also highlights another feature of EU governance: first, that the simple internalisation of problems or issues forces the EC to address the question of order alongside its new borders. Otherwise, the act of moving the EC may simply bring it closer to countries which are potentially unstable. Precisely in order to avoid this, the EC invited a country which can hardly be described as a potential insider, Russia, to participate in the Stability Pact. In addition, the decision to offer the prospect of

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<sup>19</sup> These issues had prevented the opening of negotiations with the EFTA applicants.

membership to all European associated states illustrated cognisance of the potential disintegrative impact of EC enlargement and attempted to engage all those concerned in a process of *negotiated order*.

### **From Membership Promise to Postponement - Governance Through the Prospect of Membership (June 1993-June 1997)**

That the decision to offer membership was a governing tool was made particularly clear at the Essen Summit in December 1994, when the European Council adopted the so-called pre-accession strategy for the associated states. In effect, this was a one-sided training/adjustment programme which outlined the key tasks to be undertaken in order to secure membership. Similar prescriptions for EU preparations were absent (Baldwin, 1996: 512, Hughes, 1996: 12). Instead, the latter's preparations were restricted to policy and budgetary reviews while the institutional implications would be tackled in the (then) forthcoming 1996 Inter-Governmental Conference (IGC).

That the pre-accession strategy did not modify the EC's traditional *legal/institutional* boundary policy was underlined by a number its elements. The 'structured dialogue' provided for a more regular schedule of meetings between EU ministers and their counterparts in the new democracies under the three EU pillars without any prospect of decision-shaping powers for the latter. Just like its predecessor, the political dialogue, the distinction between insiders and outsiders was maintained (Murphy, 1997). That the EU was not engaged in a re-thinking of its *legal/institutional* boundary policy was confirmed by its decision to present the CEEC with a detailed White Paper on adaptation to the internal market. Although the White Paper stood out as an example of *extra-territorial governance*, urging outsiders to take on EC legislation, it also underlined the fact that the EU was not about to offer the CEEC any kind of special membership. On the other hand, the implementation of the White Paper, the on-going processes of market liberalisation and regulation across the EU/CEEC area and the

opening of EU programmes and activities to the CEEC further fudged the *transactional* boundary between the EU and the wider Europe.<sup>20</sup>

The pre-accession strategy also emerged as part of a package-deal agreed by the European Council. This time the package focused on finding a balance between the two key security concerns of its member states: instability and the spillover effects of immigration from the East and the South. This balancing act was continued at the Cannes Summit in June 1995, where a French-led coalition was able to trade its acceptance for more economic aid to the East with an improved aid-package for the Magreb. Strikingly, this package also illuminates the relationship between the EU and the broader European order: due to its wide range of neighbours, the EU is drawn deeper and deeper into the task of creating order in Europe simply because each member state bordering on the periphery insists on measures to enhance stability in its neighbourhood.

The Madrid Summit, December 1995, moved one step closer to enlargement. It agreed to begin the preparatory phase of accession negotiations six months after the end of the IGC. However, the tension between maintaining the internal EU-governance and contributing to the overall order in Europe re-surfaced in Chancellor H. Kohl's attempt, at that Summit, to convince his partner states to limit this promise to the 'avant-garde' of the CEEC (three or four countries) (Financial Times, 14.12.1995). Such a move would minimise the necessary (short-term) institutional changes and would permit postponement of the re-negotiation of all those policy-areas, such as the CAP, EU finances and structural policy, which would be seriously affected by a large enlargement (hence, a small enlargement offered an escape from the shadow of the past and present).

Judging from statements made by the German Chancellor and especially also Foreign Minister K. Kinkel, this move was also linked to the conflict between the EU's goal of protecting its own security after the Cold War and contributing to the overall order in Europe (Bulletin, 8.10.1994, 24.1.1995, 6.2.1995, 21.5.1995). This now

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<sup>20</sup> An example of market regulation was the acceptance of EC competition rules by the CEEC. By this time all barriers to industrial trade with the CEEC were either removed or scheduled to go.



expressed itself in a fear that the EU could through enlargement internalise conflict from the wider Europe. More specifically, the German government was concerned by the prospect that this could lead to a situation where the EU would take in countries which would not at the same time join NATO. Since EU membership in reality amounts to a security guarantee, it would be inconceivable that it could look the other way if one of its members was attacked (Rummel, 1997: 367) - hence, the possibility that it could be drawn into a military conflict involving one of its new EU-partners which it would not have the military capability to handle. In order to avoid such a scenario, the German government, from early 1995, opted for a policy of complementarity between EU and NATO enlargement (FAZ, 21.5.1995; 20.6.1995). Instead of giving priority to order in Europe as a whole, the EU would instead attach priority to its internal security. However, the Madrid Summit rejected this strategy of selection, for the moment in any case, in view of the security concerns of other member states (above) and agreed to treat any application from the CEEC on its own merits.

The decision to govern through *internalisation*, i.e. enlargement, raised the question of the capacity of the EU to absorb new members, an issue which the 1996 IGC was mandated to address<sup>21</sup>. Although the IGC at the time of writing is just about to move into its final crucial stage, the negotiations so far indicate that despite the rhetoric of gearing the EU's institutions to enlargement, the IGC has not yet directly tackled this question. Considering our framework for analysis this is perhaps not too surprising: as an ongoing, consensual governance system the EU has an un-built tendency to postpone problems till the very last minute or until crisis occurs.<sup>22</sup> This is strengthened by the fact that it is engaged in protecting its own governance system by deliberately isolating the IGC from preparations and deliberations on enlargement. States such as France and Germany fear

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<sup>21</sup> The IGC and the decision to also review the CAP and structural policy *before* enlargement underlines the fact that the 'mindsets' of the EU actors had changed: CEEC played a central part in the insiders' policies even before the actual institutional boundary had been removed.

<sup>22</sup> Grabbe and Hughes have recently taken a similar view, arguing that it would indeed be surprising if the IGC had 'faced up to all the major changes required by a 25-30 member states EU when even an initial expansion by three or four countries may be six to ten years away' (Grabbe and Hughes, 1997: 46).

that issue-linkage, a tactic central to the package-deal, could see trade-offs between, for example, ratification of the IGC with its participation in the EMU or acceptance of particular CEEC in a first round of enlargement. However, by insisting on de-coupling, decision-making could be indefinitely postponed and the instrument of the package-deal, traditionally used to enable the EC/EU to move ahead, could be disabled (see also Friis, 1997: 377).

Although the lack of progress in the IGC is hardly surprising, it highlights the inherent tension between maintaining the present system of governance and providing order in Europe. The clearest illustration of this is probably the IGC's refusal truly to consider what (at least on paper) looks like a possible compromise between the two goals, namely a *softening* of the boundaries. Exactly because the move towards a more flexible Union, where old members could *opt-ahead* and the newcomers could obtain partial memberships, would also have substantial repercussions for the EU's present governance system, the member states have refused to accept this compromise. Indeed, after the IGC has highlighted the costs of *flexibility* or enhanced co-operation ranging from the undermining of the internal market to the danger of splitting the EU into several divisions - a flexibility-clause in the new Treaty will hardly make the Union more flexible!<sup>23</sup> Or, as one of the chief architects of flexibility, France's Foreign Minister, H. de Charette, put it in April 1997: the new Treaty will attach so many strings to the use of flexibility that it will amount to nothing but a 'chained Gulliver' (Agence Europe, April 1997).

#### **4. THE FINE ART OF BALANCING BOUNDARIES AND ORDER - TOWARDS A SOLUTION**

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<sup>23</sup> For an overview of the flexibility-debate at the IGC, see DUPI, 1997: 19-22 and Grabbe and Hughes, 1997: 47-50.

Judging from the IGC and the Ostpolitik of the EU one is left with the following picture: despite the fall of the Berlin Wall and repeated references to the fact that 'Europe has changed' - the EU has not embarked on any major reform of its *legal/institutional* boundary policy. An EU member still has to be fully 'inside' or 'outside' the system. Indeed at the IGC, the EU has also refrained from gearing its institutions to an EU of 27. Ironically, the EU, largely due to and in order to protect its own governance system, has manoeuvred itself into a *cul-de-sac*: after having offered full membership the EU is forced to deliver on its promises - a delivery, which will require a *revolution* of its internal governance system. Should the EU try to dodge its promises, the costs will be equally high: it would lose credibility and a substantial part of its soft governance capability. The removal of the light at the end of the transformation-tunnel could trigger instability in the region. In the last resort, the EU's internal governance system could also be put under pressure, since Germany - considering its geopolitical position - could be forced to act as a unilateral fire extinguisher in the CEEC-region (Friis, 1997: 381-392). It should be recalled that a failure to move the institutional boundary would also require the EU to develop a different (institutional) identity: after refusing to embark on enlargement the EU could hardly maintain its image as an organisation which reaches out to the *whole* of Europe.

On first sight, one could imagine that the EU could break out of the above tension by launching a small enlargement. This option, however, runs the risk of creating *disorder*. After having been promised full membership the 'have-nots' are likely to turn away in disappointment (Wallace, 1996: 2). This is strengthened by the fact that a small enlargement involving only Poland, Hungary, the Czech Republic and possibly Slovenia, would in principle stand out as a redrawing of the old boundary of Western Christendom (Wallace, 1995/6: 162). Since a country can neither change its religion or political culture from one day to the other, such a redrawing could, as argued by Turkey's Foreign Minister, T. Ciller, indeed be seen as a 'cultural Berlin Wall' (Die Zeit, 14.3.1997). In other words, a small Eastern enlargement could easily establish new boundaries in the new Europe. However, the EU is not the only producer of order in Europe. NATO has

decided to embark on a first, small enlargement and agreed to name the candidates at the Madrid summit, in July 1997. Should the EU also decide to embark on a small enlargement with the same states, the sense of insecurity by those left out will be sharpened: indeed, they will be subjected to what Germany's Foreign Minister K. Kinkel has called a 'dual rejection shock' (FAZ, 26.11.1996). On the other hand, a large-scale enlargement by the EU, beyond the borders of NATO, would create tension between the EU's own security and its goal of providing order.

At a time where the EU is still engaged at the IGC, it is obviously more than difficult to get a clear picture of how the EU plans to tackle the above dilemmas. Options have been aired (especially by France and Germany).<sup>24</sup> The gradual shift which has occurred in the German position illustrates the continued tensions caused by re-drawing the EU's boundaries. After initially advocating enlargement with a few applicants (*Gruppen-modell*), it has shifted its position on account of the 'dual rejection shock'<sup>25</sup> and the possibility that differentiation could be seen by outsiders as discrimination (Kinkel 1996a, 1996b). Germany now supports the French idea of holding a permanent standing conference on EU enlargement. Although the details of such a conference remain unclear, the overall objective appears to be that of kicking off the enlargement process with a family photo of all the applicants so that none are left out of the process.<sup>26</sup> This approaches the position of France, Denmark, Sweden, Finland and Austria, which claim that the EU should open negotiations with all applicants at the same time (*Startlinien-modell*). The danger here is that it could create pressure to extend

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<sup>24</sup> Unless otherwise stated, the sections specifying German thinking draw upon interviews with German politicians and civil servants dealing with the enlargement. The interviews were conducted in late April 1997.

<sup>25</sup> In the balance between the EU's own security and creating order in Europe Germany has apparently changed its position in favour of the European order i.e. to prevent the 'dual rejection shock' at the expense of possibly importing security problems into the EU.

<sup>26</sup> Klaus Kinkel has phrased the purpose of the conference - which was given its go-ahead at the General Affairs Council in mid-March 1997 in Appeldoorn - as follows: 'We must maintain a dialogue between those who fulfil the criteria and those who do not. The door must remain open to all parties. This is not a substitute for accession but an accompanying strategy and the decisive signal that with all due differentiation - all candidates are on the way in the EU' (Financial Times, 23.11.1996; see also International Herald Tribune 17.3.1997).

membership to states which do not meet all entry requirements. A compromise approach is under discussion between France and Germany: the EU should open the *pre-negotiations* on enlargement with all applicants. This would involve what has always been the first stage in enlargement negotiations, the so-called 'screening' of the *acquis*; which investigates the extent to which the applicants are able to take on the *acquis*.<sup>27</sup> As the screening process develops, only those countries which are actually able to take on most of the *acquis* will move from the first preparatory phase into the *real* negotiation phase, which will actually lead to membership. The German government, in a recent policy-statement, emphasised that all newcomers must be able to take on the 'entire' *acquis* and that partial membership e.g. of pillars two and three, but not pillar one, is 'politically unacceptable' (Deutscher Bundestag, 1997: 3, 38).<sup>28</sup> Precisely because, in the short-term, only a few countries can realistically progress to full enlargement negotiations, Germany acknowledges the need for an *Abfederungsstrategie*, i.e. a strategy which will cushion the disappointment of the second- or even third 'wavers' at the same time as it actually improves their chances of fulfilling the membership criteria (ibid: 38). This also recognises the broader consequences of EU enlargement for the European order. Although the German strategy (which has the support of France) will obviously not automatically turn into EU-policy, our framework for analysis seems to indicate that it stands out as a very likely option. It has a number of advantages:

- It enables the EU to postpone changes in its *legal/institutional* boundary policy for a considerable period as it allows the EU to take in small number of countries in the first round. Precisely because the EU is a complex negotiation system in its own right, such a postponement confirms one of the key features of EU governance.

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<sup>27</sup> According to Commission officials the screening involves 100.000 pages (Burghardt; Cameron, 1997: 4).

<sup>28</sup> In addition, the policy-statement, issued on 20th of March 1997, repeated a Franco-German proposal to prepare White Papers on those areas which had not been covered by the White Paper on the Internal Market (e.g. energy, environment and transport policy) (Deutscher Bundestag, 1997: 26).

- Since the EU governance system is characterised by a *shadow of the past*, a decision to keep the accession criteria as high as possible would also postpone and possibly prevent the untying of old package deals, for instance on the CAP.
- The compromise-features of the German model provide the bones of a package-deal for the member states: those eager to open accession negotiations with all applicants actually get agreement on both the Standing Conference and the opening of pre-negotiations with all, and those which support the opposite model can leave the bargaining table with agreement on a high threshold for membership and hence, the likelihood that only a small number of newcomers will be in the first wave.
- As the EU has great difficulties in changing its *legal/institutional* boundary policy, it has a major interest in governing *below* the membership line by using ‘soft’ instead of ‘hard’ governance (i.e. accession) to produce order. By agreeing upon this long-term model, the EU would be able to prolong the policy it embarked upon after the Copenhagen summit: to provide order through the *prospect* of membership. Or to use Smith’s theoretical term: the EU would be able to create a *negotiated order*, where the applicant countries would be governed by a constant process of negotiations (Smith, 1996b: 259).

Judging from the above, it should hopefully be equally clear that the German model only stands out as a viable solution in the short term. Once the applicants move from the pre-into the real negotiation phase the EU will again face the same challenge of finding a balance between its capacity to govern, the boundaries of its governance system and the wider European order. That the EU has not been able to find a long term solution is hardly surprising. As argued in our framework for analysis, a negotiation system, made up of fifteen states, with all their various national interests is almost bound to produce sub-optimal decisions (Scharpf, 1988). In addition, the external environment presents a degree of uncertainty which affects efforts to strike a balance between EU objectives. What is more: the EU can only leap forward in creative moves once it is subjected to a

shock-like crisis. In this respect, one will have to conclude that the jury is still out with regard to the EU's ability to handle its boundary problem in post-cold-war-Europe. Quite ironically, the first enlargement round and the prospect of several others being in the pipeline could indeed provide the EU with the all-important shock which will force it to realise that its traditional *legal/institutional* boundary policy cannot be maintained in the new Europe. Most likely, the EU will opt for the compromise solution, which is already on the table of the IGC of a more flexible Union. Should this indeed be the case, the link between European order and membership could possibly be loosened. In a flexible Union - which permits different degrees of commitment - it would no longer be science-fiction to imagine different kinds of membership, for instance only of pillar two and three. And what is more: the unstable countries, which will make up the EU's new 'near abroad' (Russia, Ukraine, Belarussia, Moldavia...) could possibly be offered new flexible arrangements, which represent more than association but less than membership. Such an 'unbundling of the territory of the EU' where there would no longer be a 'fit' between territory and authority would obviously produce a very *different* EU. In reality, it would however remove one of the ironies of European integration: the EU was set up as a response to regional interdependence which undermined the link between the nation-state's territory and authority while, at the EU-level that very linkage between authority and territory has been restored as a defining feature of the EU-system (*either you are in or you are out*).

## 5. CONCLUSION

This paper examined the relationship between the EU and the CEEC with the objective of uncovering the boundaries of EU governance in Europe. A focus on the boundaries was deemed appropriate as these establish the limits of the EU governance system and the links between it and the wider European order. What emerges from the analysis is that a number of boundaries define the EU, the most significant of which is the

*legal/institutional* one. This constitutes the core of the Union - its set of institutions and constitutional order which codify rights and obligations of its members - and is non-permeable in the sense that it can only be altered through re-drawing to include new states or through a re-construction of the governance system itself. This boundary however, has a 'soft' dimension arising from the EU's normative base and desire to extend political values to the CEEC, in particular, through *negotiated order*. This, plus the EU's presence enables it to build political order *beyond* the EU. The analysis also demonstrates that the disappearance of the geo-political boundary and the blurring of the *cultural* and *transactional* ones enable the EU to construct order in the CEEC. For example, its acts of market regulation and trade liberalisation provide the basis for a broader economic area in Europe. Conversely, the rigidity of the *legal/institutional* boundary remains a source of division between the EU and non-members and any enlargement has the potential to create disorder in particular if it does not take account of new neighbours. A focus on boundaries also reveals the impact of the external environment on EU governance in terms of presenting challenges, pressures and opportunities for action. At the same time, it highlights the significance of other actors and agencies in shaping European order and in affecting the EU's capacities in the same domain.

By using the lens of multi-level governance (and the insights of new institutionalism), this study unpacks the role of the EU as an actor, process, presence and model in Europe. As a collective actor, its style of governance affects outcomes: negotiations are protracted and the package-deal shapes outcomes by issue-linkage and an accommodation of all interests albeit at the expense of optimal outcomes. Postponement of difficult decisions such as those on enlargement and legal/institutional reform is also a feature of governance. Moreover, there is linkage between the internal and external dimensions of EU governance in that a) the governance system as a whole determines the capacity to act in the external domain; b) the EU is at any one time engaged in sets of negotiations on internal issues, the construction of the Union and external matters which cast shadows over each other, and c) questions of order and governance are 'internalised' through fudging of the boundaries and, in particular, through enlargement. The latter has



consequences for the capacity to govern and for specific historical deals on the structures, policies and finances of the Union.

In conclusion, this study demonstrates the capacity of the EU to govern 'beyond the EU' and the tensions that the unbundling of the EU and wider European territory create. These alter the configuration and significance of boundaries in Europe and engage the EU in a constant balancing exercise between the preservation of its governance system, security amongst its members and stability in the wider Europe. In other words, it continues to define and be defined by the European order.

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