Looking ahead to future EU enlargements, Dr Paul De Raeve reflects on the mechanisms to process compliance with EU legislation and the impact of past enlargements on the nursing profession

Future EU enlargement – fit-for-purpose accession negotiation mechanisms needed

The Bulgarian EU Presidency has made tremendous progress in putting EU enlargement back on the political agenda, within a political context of populism, closing borders and even lesser Europeanisation. The EU accession for Albania and the five countries of the former Yugoslavia is the next focus for the Commission and many newer EU Member States post-Brexit. European Council President Donald Tusk even stated: "I don't see any other future for the Western Balkans than the EU. There is no other alternative, there is no plan B. The Western Balkans are an integral part of Europe and they belong to our community." Credibility is key to make progress in EU enlargement, knowing Albania, Bosnia & Herzegovina, Kosovo, Macedonia, Montenegro and Serbia, all of which want to join the EU.

Rule of law, justice and fundamental rights are of course of utmost priority for the process of EU enlargement if we are to achieve peace, security and stability in Europe, but equally important is to evaluate the mechanisms by which EU accession negotiations are processed. The progress made so far is an important step forward, but there can and should be no shortcuts on the way to the European Union.

Lessons learned from the Romanian and Croatian EU accession negotiations could therefore be helpful to evaluate the EU mechanisms to reach *acquis* compliance prior to EU accession dates being agreed by the EU Institutions.

No shortcuts for the *acquis*

A rich diversity of approaches to understand the nature of the policy process and its mechanisms to achieve better policy outcomes has developed over time. Although in 'Theories of the Policy Process' Sabatier (2007) provides an important point of comparison for a better understanding of policy theories, models, frameworks and mechanisms, most tools emerge from democratic systems, while EU accession policy outcomes in former communist regime countries joining the EU should be evaluated with a better understanding of the impact of regime on policy outcomes. Identifying regime-specific contextual factors can add new knowledge to the existing policy mechanisms the Commission is deploying during EU accession negotiations.

Considering the political context of the regimes under which policymakers operated during Romania's and Croatia's EU accession offers a better and unique insight into the dynamics of influence under conditions which have hitherto been largely unexplored. Hence, the political context in former communist countries is important for understanding the way that policymakers and political leaders operate and influence the EU accession policy process, and as such sheds light on the effectiveness of the Commission mechanisms to process compliance with the *acquis.*

Collecting the evidence to evaluate the EU accession mechanisms

The evidence to evaluate the EU accession mechanisms to line up with the *acquis* comes from the ethnographic case-study design involving qualitative interviews and documentary analysis to triangulate results from Romania and Croatia.

The data collection followed a qualitative approach using a multi-method design involving interviews and documentary analysis. The ethnographic aspect in the method relates to the cultural context and its impact upon the mindsets, attitudes and behaviours of political and policy leaders captured through observations and semi-structured interviews. Document analysis focused on Commission progress reports relating to the accession process in these two countries.

As themes, concepts and patterns emerged out of the interviews rather than being imposed on the data prior to data collection and analysis, the reality check with frontline people helps to modify the mechanisms to make them 'fit for purpose' for future EU enlargements. It is about increasing the credibility of EU accession.

The study design was informed by the ethical considerations related to interviewing political elites, the need to use interpreters for some of these interviews and the need to guarantee participants' confidentiality. Furthermore, unveiling my own assumptions and dismantling my professional experiences as an insider in the EU accession process situates the research and, consequently, the process of knowledge production while maintaining the ethical commitments throughout the entire research process.

EU mechanisms for reaching compliance

The evaluation of the robustness of the EU compliance mechanisms is key to build the credibility of future EU enlargements. When moving European directives into national legislation to reach compliance with the *acquis,* three EU policy mechanisms are mainly used:

1) The Commission's Comprehensive Monitoring Reports (CMRs)
2) The TAIEX peer review reports and
3) The TAIEX capacity-building seminars.

Study findings suggest that these three policy mechanisms were not robust enough to deliver successful legislative change. However, comparison of the Romanian and Croatian cases showed that the TAIEX peer reviews and capacity-

building seminars enabled civil society and political leadership to influence the process. The TAIEX peer review recommendations and capacity building generated knowledge helpful to keep up the political momentum, but the recommendations were only partially integrated into the CMRs discussed within the European Institutions. As such, it can be concluded that the compliance mechanisms did not have sufficient traction to move from legislative endorsement to legislative implementation through governmental commitment and stakeholder engagement. The findings related to the three policy mechanisms can be specified as follows.

Comprehensive Monitoring Reports

The annual CMRs are an important tool for enabling European political leaders in the Council and Parliament to evaluate the progress made by the applicant for EU accession. Comparing documentary evidence from two countries, which were the focus of earlier TAIEX missions, allows us to see how decision makers from the EU make certain judgements on the compliance process. In Romania, one sentence in the CMR of 2002 stated that 'no progress was made on mutual recognition for the sectoral professions'. Such an implication was intended to make the Romanian Government aware of non-compliance with the directive. Consequently, halfway through the EU accession process (June 2004), the European Institutions agreed to create a safeguarding clause for Romania as the 2002 and 2004 TAIEX peer review reports provided evidence of key areas that required further strengthening to achieve full compliance. This increased the political pressure by delaying entry to the EU by one year if the Romanian Government failed to meet its political and economic targets.

Furthermore, the CMR of 2004 stated that, although Romania had achieved stability of institutions guaranteeing democracy and the rule of law, public administration 'is still characterised by cumbersome procedures, a lack of professionalism, inadequate remuneration and poor management of human resources'. However, two months after the European political leaders agreed the CMR of 2004, all chapters of the *acquis* became provisionally closed – implying that Chapter 3 and the directive on mutual recognition of professional qualification (now Directive 2013/55/EU) were being transposed into national legislation. The CMR in September 2006 concluded that 'Romania will be in a position to take on the rights and obligations of EU membership on 1 January 2007' (European Commission, 2006). But it was only in 2013 that the Parliament and the Commission forced the Romanian Government to introduce bridging courses for nurses to remove the derogation as foreseen in the directive (European Commission, 2013). Thus, even though this requirement has been set the government persisted in dragging its feet. The deadline for achieving this goal is running out of time (2018).

In Croatia, over a five-year period of Commission reporting on the progress of EU accession, reference was made to the lack of harmonisation of the rules concerning regulated professions to ensure the mutual recognition of qualifications and diplomas between Member States. The 2005 report refers to the Croatian Government setting up a centre for academic mobility and recognition of higher education qualifications within the Agency for Science and Higher Education. This appears to cover mainly academic recognition, with limited impact on the recognition of professional qualifications. In 2006 and 2007, the Commission Monitoring Reports to the Council and European Parliament stated that no progress could be observed regarding the mutual recognition of professional qualifications.

Croatian legislation did not distinguish between the recognition of academic and professional qualifications, suggesting the directive was not followed through. The 2008 Commission report highlights that the minimum training requirements for all medical professionals – doctors, dentists, midwives, nurses, pharmacists – were still not in line with the *acquis.* The 2009 Commission monitoring report mentioned some progress on the mutual recognition of professional qualifications and so Chapter 3 of the *acquis* was provisionally closed on 21 December 2009. All

acquis chapters were provisionally closed in December 2010, despite the knowledge that a second peer review was needed to measure progress (European Commission, 2012). The Croatian Government signed the Accession Treaty in 2011, implying that the Commission had agreed that the directive, as part of Chapter 3 of the *acquis,* had been transposed into a new Croatian nursing act.

TAIEX peer review reports

In relation to the other mechanisms used, the TAIEX peer review reports highlight prominent areas that require further political and policy attention, but the outlined expert recommendations are unfortunately not an important source of information for the CMRs on which EU political leaders make their informed decisions on progress and compliance. Chapter 3 of the *acquis* was provisionally closed, although there was no evidence of the TAIEX recommendations being addressed adequately. This is politically unacceptable and will only create more problems after EU accession. Indeed, like Juncker once said: solve your problems before you join the EU!

Findings from the interviews indicate that the TAIEX peer review reports were treated as a negotiation tool between the governments and the Commission, with only minor engagement of stakeholders to formulate solutions to address the TAIEX recommendations. While the TAIEX recommendations could have a political impact on negotiations, the governments' reluctance to admit they were lagging behind EU standards as set out in Directive 2013/55/EU impacted negatively on the development of the nursing profession in both Romania and Croatia. If we want an EU nursing workforce within the EU and Europe, benefitting from free movement, it is key that the TAIEX mechanisms improve.

TAIEX capacity-building seminars

A further mechanism is the TAIEX capacity-building seminars aimed at addressing the weaknesses highlighted in the peer review reports. The TAIEX capacity-building seminars are designed to facilitate a better understanding of how to translate the directives into national legislation, and how to address the challenges highlighted in the TAIEX peer review reports.

Assistance is given through expert missions, workshops or seminars and study visits. The main target groups are civil servants working in public administrations at national level, the judiciary and law enforcement authorities, parliaments and civil servants working in parliaments and legislative councils, and professional and commercial associations as well as representatives of trade unions and employers' associations. All these groups can take part in TAIEX seminars, being concerned about compliance with EU standards.

In contrast to Romania, the Croatian findings showed that the TAIEX peer reviews were focused on evaluation of legislative and administrative capacity. The directive helped in the design of a roadmap for future technical assistance by allocating EU accession funds to address some of the key identified challenges. The Croatian professional association organised three TAIEX capacity-building seminars with the ultimate aim of bringing together stakeholders and building consensus across the policymakers (mainly physicians and lawyers) who were involved in negotiating the *acquis.*

The Croatian case provides empirical evidence of the positive impact that capacity-building mechanisms can exert on the engagement of state and non-state stakeholders across multiple levels of government. In contrast, the Romanian Government did not see the need to address shortcomings. Findings indicate that the Romanian Government was slow to act and to concede the size of the compliance challenge. Failure to demand EU support, due to complacency, appears to have been a major missed opportunity to bring together relevant stakeholders to design new national nursing legislation in compliance with the European directive.

The credibility of EU negotiations mechanisms linked to regime contextual factors

In Croatia, some regime-specific contextual factors impact on policy outcomes. The issues of political identity dominated policy leaders' discussions about the regime. The communist period in the former Yugoslavia was seen in rather positive terms such as 'flexible socialism' with opportunities to travel abroad and having freedom to make your own choices. Some degree of free market enterprise and intellectual freedom was tolerated under Titoist Communism as long as society and professions complied with the dogmas of brotherhood and unity. However, the communist regime refused to negotiate or accept underground voices who challenged the people's status or living conditions.

Policy leaders in the study emphasised that the regime strengthened their desire to influence the policy process and to build on their own national and professional identity. The Croatian Spring Movement in the 1970s showed how strong the opposition was at the time; however, the centralised power also meant that changes were legitimated only by the Yugoslav Government.

Furthermore, orientation on the collective culture, equity, regional solidary and social security was perceived as intrinsic to the socialist welfare state in Croatia. As far as engagement was concerned, collective values were seen as central to the enthusiasm needed to engage in the development of a Croatian healthcare system. Repercussions of the old system in relation to leadership were, however, very explicit.

Another consequence of the regime was that the move towards liberal democracy ensured certain continuity of political leadership. Several interviewees indicated that it was common for the former Communist Party leaders to become fighters for human rights: these political leaders were well-educated, infiltrated into civil society, and knew how to handle the media to advance their political agenda. So, it is possible civil society became biased.

Finally, an important development concerns the context of the war, of going through extreme conditions, that created a sense of camaraderie between physicians and nurses, which positively impacted on the design of a national healthcare system. Importantly, under the circumstances of ethnic conflict, nurse leaders from different ethnic groups continued to communicate informally. This allowed them to build joint political and professional capacity during the most turbulent period in post-communist Croatia.

Concerning Romania, the analysis of policy leaders' accounts identified similar regime-specific contextual factors. First, policy leaders described living under the totalitarian regime in Romania as dominated by lies, corruption, terror, poverty, violations of human rights, and isolation from the Western World. For leaders who had grown up during the Ceaușescu regime (1965-1989), it was common to refer to this period as characterised by tightening internal security (Securitate) and failures to modernise the Romanian economy. The Ceaușescu policies led to depriving the population of essential goods and services such as electricity, television programmes and food.

Interviewees acknowledged developing two different individual identities to protect themselves and to succeed in the system. One identity was adaptive to the regime – some leaders took the Communist Party membership followed by extra benefits such as better jobs and housing loans. Involvement in the socialist youth movement and being compliant with the right people enabled daily survival. Having connections in the Ministry of Health was desirable for the promotion of one's own ideas. The alternative identity was based on indirect non-compliance with the regime. Surviving the totalitarian regime required the ability to cope with fear and control (the Securitate's searching for 'internal enemies'), to build resistance and to create one's own systems of support. The accounts demonstrated that all this made the current leadership stronger – they were not blinded by the system but developed informal networks of trusted friends

and role models. Along with the basic sense of security such networks provided a sense of justice and democracy, energy to continue advocating for the values and holistic approach of the nursing profession.

Furthermore, the Soviet Semashko model, which the communist regime in Romania had adopted, marked specific working conditions for nursing and for the Romanian society in general. Allegedly, free, universal healthcare was accompanied by very low salaries and informal payments. The informal economy was and still is widespread, the Romanian society being subject to the whole system of informal payments (tipping) for healthcare and other types of service. Tipping became the universal practice: everyone was expected to offer and to accept cash 'under the table', although it could have led to imprisonment. Workers were 'pretending' to work and consumers were 'pretending' to pay. Such a working ethos leads to inequality: cash payments from patients to providers prohibited equal access to healthcare.

Finally, policy leaders reported ambivalence with regards to transformations in the political and professional identities in Romania after the fall of the Ceaușescu regime. With the beginning of transition towards democracy in 1990, civil society started to play an essential role in developing policies at the national level. However, political instability made the transition process cumbersome and non-transparent so that policy leaders struggled to find their feet. Speaking of the recent past, the interviewees raised their concerns over the professional autonomy of nurses in Romania. They stressed that the implication of ambitious doctors and self-interested politicians in positions of influence had been that the nursing agenda was totally overlooked in designing new policies. The interviewees believed that nurses working for the healthcare system in Romania had to be very motivated and dedicated in order to be able to provide nursing care under appalling conditions: in the recent past they were obliged to work 18-hour shifts, sometimes up to three shifts in a row to earn a basic salary (average wage of €250 per month) to prevent them living below the poverty level. Such harsh working conditions led to high unemployment amongst nurses in the 2000s (up to 50%), to the mobility of nurses to Western European countries, and to shortages of nurses in Romanian hospitals.

Conclusions

Looking at the Croatian and Romanian cases, we observe that although communism had ceased to prevail politically for many years, its cultural legacy persisted. Based on these findings, it can be argued that the CMRs were ineffective for EU accession negotiations, as they did not provide a critical assessment regarding the implementation of the EU accession requirements and the EU accession was handled almost exclusively by the governments, with the *acquis* being declared confidential.

The Romanian and Croatian findings indicated that the TAIEX peer review recommendations were not picked up by the CMRs so as to enable the European Council and European Parliament to make informed decisions about Romania's and Croatia's readiness to join the EU. Equally, the leadership lacked a political strategy, planning and advocacy requisites to advance the TAIEX recommendations on the national political agendas of other EU Member States agreeing the accession of Romania and Croatia. It is therefore concluded that the CMRs lacked the power to move from legislative endorsement to legislative implementation through governmental commitment.

The Council and Parliament need to make informed political decisions based on robust mechanisms to assess progress on compliance and on an effective stakeholder engagement when a national government and the Commission negotiate.

In the aforementioned cases, policy outcomes were determined by the weak TAIEX mechanisms – mainly due to the lack of enforcement of the peer reviews and to the fact that capacity-building sessions were not being advocated for or applied for. In addition, the CMRs lacked the political clout to put EU accession on hold until all weaknesses noted in the TAIEX reports had been addressed. A lack of alignment between the CMRs and the TAIEX peer review reports clearly questions function and impact of the latter on country-specific agenda setting legalised by EU Institutions.

Finally, EU accession was handled almost exclusively by the governments. TAIEX – led by the Commission's Directorate-General for Enlargement – lacked the authority as non-state stakeholders, including European organisations to mount a challenge. It was not in a position to hold the Commission and national governments to account for failing to take concrete measures to address the weaknesses identified during the peer reviews which benchmarked national nursing legislation with the directive. Furthermore, moving the compliance process onto a capacity-building footing would have slowed the process overall, jeopardised the EU accession, and even raised questions about compliance in other areas of the *acquis.* Instead, the ministries dealing with EU accession simply did not invest their efforts in upgrading the nursing workforce. Indeed, there was a deliberate intention to block free movement in order to counteract the danger that the nursing workforce would be lost under the free movement opportunities created by the directive. In turn, this would have reduced the grip of national governments managing their health workforce.

Based on the evaluation of the use of Commission mechanisms to process compliance, the case study findings provide evidence that the Croatian nursing leadership was more politically oriented and adept at strengthening its advocacy capacity; it was able to exert political pressure on the EU accession process. Conversely, the Romanian nursing leadership was only mobilised post-EU accession. Interpretation of the comparative findings shows that the EU accession process created a (missed) policy window for the nursing leadership to advance a professional agenda both before and after accession. Equally important, EU accession provided a mechanism for engagement in policymaking and thereby had potential to increase nurses' political knowledge, skills and advocacy capacity to steer ongoing development of the nursing profession in both of these Eastern European countries.

The two cases, therefore, serve as a litmus test of the effectiveness of the mechanisms that the EU used to 'Europeanise' these countries prior to accession. Pre-accession conditionality was a requirement for the new member countries from Central and Eastern Europe and the cases demonstrate that Europeanisation call does not result in changes necessary for the transferability of EU legislation in the pre-accession period. In these two cases adjustment mechanisms were neither robust nor durable and Europeanisation as far as Directive 2013/55/EU is concerned is dependent on the political will to recognise the weaknesses and to do something about them prior to EU accession.

Finally, it can be argued that the power differentials and rivalry between the ministries and different types of leadership on the national level weakened the advocacy efforts. The study, therefore, helps to explain why leadership in Romania and Croatia were unable to capitalise upon the EU accession policy window. The absence of an effective stakeholder engagement as set out in the proportionality directive (2018) to effectively set the political agenda, and co-design new policies in accordance with the *acquis,* is a key challenge for EU accession negotiations and should be a mechanisms indicator for success.

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