

## Book Review

# **Dimitry Kochenov (2008)** ***EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law***

The Hague: Kluwer Law International

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The provocative title of this book immediately reveals the author's critical assessment of the European Commission's pre-accession monitoring in the fields of democracy and the rule of law. The subject of analysis is the application of the conditionality principle to the ten Central and Eastern European new Member States: Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Romania and Bulgaria. While certainly not being the first to write on problems of political conditionality in the context of EU enlargement, Dimitry Kochenov follows an approach differing in many ways from the traditional academic literature on this subject. In contrast to the countless political science contributions, this book proceeds from a legal perspective. Moreover, it is not limited to one or two target countries but includes a very thorough analysis of the entire eastern enlargement process. It is by far the most comprehensive, critical and detailed scrutiny of the Commission's pre-accession monitoring reports ever published.

The work is divided in two main parts. In the first part, entitled "*the law*", the general legal framework of EU enlargement is clearly explicated. Specific attention is devoted to the principle of conditionality and the place of democracy and the rule of law in this respect. The difference between the management of enlargement in practice and what can be found in the EU Treaty is striking. Although the reference to Article 6(1) TEU underlines the importance of democracy and the rule of law in the legal enlargement procedure on the basis of Article 49 TEU, no provisions regarding the level of compliance with those criteria are included in the Treaty. Hence, a network of "conditionality instruments" has been developed in the course of the pre-accession process. Eight different types of legal-political instruments of conditionality are identified (pp. 76-77).

The second part deals with "*the application of the law*". After a clarification of the notions "democracy" and "the rule of law", the European Commission's practice is (very) critically analysed as far as the reform of the candidates' legislatures, executives and judiciaries is concerned. The numerous illustrations of inconsistencies, shortcomings and simple mistakes in the Commission's annual progress reports lead the author to the conclusion that "[t]he Commission demonstrated total powerlessness when faced with candidate

countries unwilling to conduct the required reforms" (p. 208). The assessment of democracy and the rule of law conducted by the European Commission is, therefore, essentially understood as a political exercise which does not necessarily reflect the actual progress made by the candidate countries.

The concluding chapter makes a clear distinction between the principle of political conditionality as such and its application by the European Commission in the course of the preparation of the fifth and sixth rounds of EU enlargement. It is argued that the identified problems and inconsistencies are "not caused by an ill-formulation of the principle itself or failures in the workability of the conditionality idea, but by the poor application of the principle" (p. 311). By pointing at this gap between "conditionality on paper" and "conditionality in practice", six drawbacks of the Commission's practice are identified. Given the crucial role the principle of conditionality is about to play in the context of current and future enlargement waves – but also in other areas such as the European Neighbourhood Policy – a revision of its application is indeed recommendable. In this respect, the author suggests that "[c]onditionality can only become a true principle of enlargement, when the whole accession process is mostly moved away from the sphere of politics into the realm of the law" (p. 312). The question is, of course, whether such an evolution is feasible and even desirable given the inherent political inspiration of enlargement. In any event, the work of Dimitry Kochenov clearly illustrates the tension between law and politics in the field of EU enlargement. Accordingly, it forms a very significant and original contribution to the academic literature on the subject.

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