Florida State University Journal of Transnational Law & Policy

Volume 16 | Issue 2 Article 7

2007

The Stepchildren of the EU: Bulgaria and Romania

Ruth Jackson Lee

The Stepchildren of the EU: Bulgaria and Romania

Cover Page Footnote

J.D. Candidate, Dec. 2007, The Florida State University College of Law

THE STEPCHILDREN OF THE EU: BULGARIA AND ROMANIA

RUTH JACKSON LEE*

I. INTRODUCTION

The European Union's boarders were "stretched eastward to the Black Sea"[1] with the accession of Bulgaria and Romania on January 1, 2007 when over 30 million individuals from the most impoverished neighborhoods of Europe were adopted into the EU family.[2] The two Balkan nations, "often intertwined by the West due to their geographic proximity and common past"[3] had recently escaped communism in 1989 before applying for EU membership in 1995 leading to accession talks in 2000.[4] Both persevered seven years of negotiations over economic and political matters to join Western Europe as the EU-2 by becoming the 26th and 27th members of the Union.[5]

Completing the EU's fifth round of enlargement, the accession of Bulgaria and Romania was heralded in newspapers headlines across the world as a major success to be celebrated.[6] The expansion was said to not only offer new opportunity for business and trade, but more importantly, project stability in a historically

---

* J.D. Candidate, Dec. 2007, The Florida State University College of Law

1. Gareth Harding, *Bulgaria, Romania join EU: 'Historic' move wins few plaudits from within bloc,* The Washington Times, Jan. 1, 2007, at 1 [hereinafter *Bulgaria, Romania join EU*].

2. Nevyana Hadjivska, *Bulgaria, Romania celebrate joining EU,* Associated Press, Jan. 2, 2007, at 1.

3. Dana Neacsu, *Romania, Bulgaria, the United States and the European Union: The Rules of Empowerment at the Outskirts of Europe,* 185 BROOK. J. INT'L L. 201-02 (2004).

4. *Id.*

5. *Id.* at 201.

6. Hadjivska, *supra* note 2.

volatile region signifying the complete destruction of the Berlin Wall.[7] Nevertheless, "few outside of Bulgaria, Romania and the Brussels beltway [were] in a mood to toast the accession of the former communist states." Only a mere quarter of the citizens of EU's largest member states had positive attitude towards the two countries' grand entrance into the EU.[8]

The Union has been expanding ever since its creation in the 1950s but enlargement fatigue emerged after the "big bang" in 2004 when 10 nations joined, eight that were former Soviet satellite states in Central and Eastern Europe (CEE) that hardly resembled the West.[9] The admittance was three times larger by number of entrants than any prior enlargement, straining the EU institutions and programs.[10] Not surprisingly, there has been a strong public sentiment that the EU-10 has not yet sufficiently assimilated into the Union and many prominent Member States were hesitant to accept more countries without restructuring the Union.[11] The EU-2's accession therefore was quite unwelcome and the potential benefits the duo add to the organization were grossly, if not intentionally, overlooked.[12]

Though Enlargement Commissioner Olli Rehn vows to maintain the Union's values and standards while admitting CEE countries into the exclusive trading-block, opponents of enlargement fear that the differences of the two newcomers jeopardize the 'ever closer'[13] Union. Economically, Bulgaria and Romania are much poorer with per capita income below 4,000 euros, nearly a third of the norm for the Union's former 25 member states.[14] Socially, the nations favor EU-US military cooperation, the accession of EU applicants such as Turkey, Ukraine, Moldova and Georgia, and

---

7. *Bulgaria, Romania join EU, supra* note 1.

8. *Europeans Still Take a Dim View of the Euro*, The Fin. Times, Jan. 28, 2007 (polling 5,292 citizens from Great Brittan, France, Italy, Spain and Germany).

9. Michael Emerson, Senem Aydin, Julia De Clerck-Sachsse & Gergana Noutcheva, *Just what is this 'absorption capacity' of the European Union?*, CENTRE FOR EUR. STUDIES, 1-8 (Sept. 2006). Notable Member States arguing that the EU has met its capacity to absorb new countries include: Austria, Germany, the Netherlands and "most particularly" France. *Id.* at 2.

10. Thomas C. Fischer, *An American Looks at the European Union*, 19 EMORY INT'L L. REV. 1489, 1519 (2005).

11. *Bulgaria, Romania join EU, supra* note 1.

12. *See E.g.* Eur. Comm'n, The European Union: Still Enlarging 3-4 (2001) (describing the benefits of enlargement for both new and existing Member States).

13. Charter of Fundamental Rights of the European Union, Dec. 18, 2000, O.J. (C 364) 1, 5 (2000) at preamble ("The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.").

14. *Bulgaria and Romania face more reforms after joining EU*, EU Business, Dec. 28, 2006 *available at* http://www.eubusiness.com/news_live/1167271212.88/.

deeper integration of the new members.[15] These disparities, along with struggles of corruption and civil service that are "far behind EU norms"[16] have led to the development of a second class in the EU family, creating a wide gulf between the EU-2 and the former Members States. "[F]or the first time in enlargement history, Brussels has [imposed] 'safeguard clauses' that could see the newcomers shut out of EU justice and home affairs co-operation and will force them to submit 'progress reports' every six months."[17]

This article addresses the secondary status of Bulgaria and Romania, both in the eyes of the other members of the EU family and through policies that will subject them to heightened barriers to full membership benefits. To provide the appropriate context, the article will initially describe the development of the Union and its subsequent enlargement and integration. Part II explores the geography and history of the Union's newest Member States, Bulgaria and Romania. Finally, Part III details the two nations' prolonged accession to the Union because of their past separation from the West and discusses the discrimination each must endure from Old Europe despite being officially invited to join the EU.

II. BACKGROUND: THE EU'S EASTWARD EVOLUTION

The European Union arose from the ashes of World War II when six western European nations formed the European Coal and Steel Community (ECSC), a mere trade organization that developed into a supranational and intergovernmental body consisting of 27 member states known today as the European Union.[18] Only a few years after the violence in Europe ended splitting the continent into the East and West, French foreign minister Robert Schumann proposed the combined management of France's and West Germany's coal and steel industries to prevent the manufacturing of weapons of war.[19] Scholars consider this the first step towards a European federation as the proposal directly led to the

15. Andrew Rettman, *Fireworks fly as Romania and Bulgaria limp into EU*, EU Observer, Dec. 31, 2006, *available at* http://euobserver.com/9/23154.

16. *Id.*

17. *Id.* For a detailed discussion of Bulgaria and Romania's human right concerns. *See Bulgaria and Romania: Amnesty International's Human Rights Concerns in the EU Accession Countries*, EUR 02/001 (2005) (urging the Union "to continue to monitor the countries' adherence to universal human rights standards").

18. *See* Alexander A. Jeglic, *The European Enlargement Eastward: A Historic Development*, 1 INT'L L. REV. 81, 8. *See also* Michael Burgess, *Introduction: Federalism and Building the European Union*, 26 PUBLIUS 1 (1996).

19. PHILIP THODY, A HISTORICAL INTRODUCTION TO THE EUROPEAN UNION 1 (1997); Natalie Shimmel, *Welcome to Europe, But Please Stay Out: Freedom of Movement and the May 2004 Expansion of the European Union*, 24 BERKELEY J. INT'L L. 760, 761 (2006).

formation of the ECSC by Belgium, France, (West) Germany, Italy, Luxembourg and the Netherlands by the signing of the Treaty of Paris in 1951.[20]

To further integration, the founding six countries signed the Treaty of Rome in 1957 creating a common market known as the European Economic Community (EEC) that would have not only economic implications, but political.[21] From its origination, the EEC went further than any other European treaty before "[laying] the foundation of an ever closer Union among the people of Europe"[22] allowing its citizens, goods and services to freely move across borders.[23] The EEC Treaty provided for a customs union, a common commercial and transport policy as well as a limited monetary policy. Additionally, three distinct institutions were consummated by the EEC Treaty: the European Commission, the European Parliament and the European Court. The new institutions, in conjunction with the Single European Act, created an environment that supported further integration of the continent.[24] Still, it was not until 1992 that the European Union was officially established by the signing of the Maastricht Treaty setting "clear rules for the future single currency as well as for foreign and security policy and closer cooperation in justice and home affairs."[25]

There have been multiple waves of enlargement since 1973 when Denmark, Ireland and the United Kingdom joined the original six country trading organization.[26] The second wave began with the admittance of Greece in 1981 followed by Spain and Portugal in 1986.[27] Nearly a decade later in 1995, the third wave expanded the European Union boarders to include Austria, Finland and Sweden.

The end of the Cold War initiated the fourth wave when several post-communist governments sought unification with Western

---

20. Duncan E. Alford, *European Union Legal Materials: A Guide for Infrequent Users*, 97 LAW LIBR. J. 49, 50 (2005).

21. *Id.*

22. Treaty Establishing the European Economic Community, art. 1, Mar. 25, 1957, 261 U.N.T.S. 11, 4 EUR. Y.B. 412.

23. Shimmel, *supra* note 19.

24. Neacsu, *supra* note 3 at 195.

25. *Europe on the move: The story of the European Union*, Europa (2005) *available at* http://ec.europa.eu/publications/booklets/others/58/timeline_en.pdf.

26. THE EUROPEAN UNION IN THE WAKE OF EASTERN ENLARGEMENT, 10 (Amy Verdun & Osvaldo Croci eds., 2005).

27. Rather than considering Spain and Portugal's membership as part of the second wave along with Greece, a number of scholars consider it a separate enlargement, and therefore the 'third' and not 'second' enlargement. Similarly, a few regard Bulgaria and Romania's admission as the completion the fifth wave whereas the majority views the Balkan states' admittance distinct from the 'big bang.'

Europe via entrance into the elite club.[28] CEECs started submitting membership applications in the mid 1990s as their subjugated economies transitioned into free markets.[29] "[Seizing] the historic opportunity for building a larger democratic family of European nations" the EU introduced the Poland and Hungary: Assistance for Restructuring their Economies (PHARE) programm offering potential applicants financial assistance to prepare the recovering nations for assumption of membership obligations.[30]

However, the applicants were different than Old Europe.[31] Even after signing European Agreements—mutually binding political dialogues—the Union did not begin considering the former Soviet satellite states serious potential candidates until after the Copenhagen European Council in 1993 that imposed arduous political and economical prerequisites to accession.[32] The Copenhagen Criteria "[reassured] EU states that the Central and Eastern European Countries (CEE) will—if they become members—look like familiar, west European countries, not bringing instability, authoritarianism, or economic collapse to the Union."[33] The Copenhagen Criteria states that:

> Membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of

---

28. Verdun, *supra* note 26 at 12.

29. Jill Parker, *West Meets East: A Discussion of European Union Enlargement and Human Rights*, 11 TULSA J. COMP. & INT'L L. 603, 604 (2004).

30. Eur. Parliament, Briefing No 33, The PHARE Programme and the enlargement of the European Union, (1998).

31. Alain Monnier & Godfrey I. Rogers, *The European Union at the Time of Enlargement*, 59 POPULATION 315, 324-32 (2002) (highlighting the different characteristics between the E-15 and the E-10).

32. Roger J. Goebel, *Joining the European Union: The Accession Procedure for the Central European and Mediterranean States*, 1 LOY. U. CHI. INT'L L. REV. 15, 24 (2005) (concluding "for the first time [the European Council determined] that at least some of the fledgling democracies in Central Europe could ultimately join the EU").

33. Heather Grabbe, *European Union Conditionality and the Acquis Communautaire*, 23 Int'l Political Sci. Rev. 249-268 (2002). *See also* Heather Grabbe, *The Process of EU Accession: What will it bring to Southeast Europe?*, GDN-SEE 4 (2003) (concluding that the "conditions were designed to minimize the risk of new entrants becoming politically unstable and economically burdensome to the existing EU. They were thus formulated as much to reassure reluctant member-states as to guide the candidates.").

> membership including adherence to the aims of political, economic and monetary union.[34]

To further the integration of counties into the EU single market, prospective candidates are also required to implement and enforce the entire body of EU law known as the *acquis communautaire* which includes all EU treaties, regulations, and directives, along with the judgments of the Court of Justice.[35] Nonetheless, a country only becomes a part of the EU family when each existing member state signs the Accession Treaty which then must be ratified by the candidate.[36] "This approach has required that the countries in question have themselves been eager and willing to participate in the difficult process of transition to and convergence with the EU standards."[37]

When Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia met the rigorous requirements of membership and were accepted into the common market by each member of the EU family in 2004, the fourth wave of enlargement was finally complete. However, according to Heather Grabbe, Deputy Director of the Centre for European Reform, an independent think-tank, Bulgaria and Romania were not recommended for accession along with the other post-communist states due to their unimpressive economic and political progress.[38] Despite their great geostrategic importance,[39] the two Balkin nations had not met the "heavy burden [of transposing and implementing] standards of internal democracy, state administration, and detailed regulatory protection that the EU-15 have had a half century to accommodate."[40] Arguably, Communism had a more draconian grip on Bulgaria and Romania thus

---

34. 26 EC Bull 6/93, at 13 (1993).

35. Ian Ward, *The Culture of Enlargement*, 12 COLUM. J. EUR. L. 199, 205 (2005) ("All Member States are expected to accept the broad principles and parameters of Union legal, political, and economic jurisprudence, as it is expounded in the 80,000 plus pages of the acquis.").

36. Goebel, *supra* note 32 at 20.

37. Hiski Haukkala & Arkadv Moshes, *Beyond "Big Bang": The Challenges of the EU's Neighbourhood Policy in the East*, FIIA REPORT 13 (2004).

38. Heather Grabbe, *The Sharp Edges of Europe: Extending Schengen Eastwards, International Affairs*, 76 ROYAL INST. OF INT'L AFFAIRS 519-36 (2000).

39. Mustafa Aydin, INST. FOR SEC. STUDIES, *Europe's Next Shore: The Black Sea Region*, 12 (2004) (arguing that "aspirations are urgent for the wider Black Sea region not only because of the political, economic, administrative, ecological and social challenges which the basin is faced, but also in the view of the recurrent conflicts/instability in the region of the EU's eastern flank.").

40. Andrew Moravcsik & Milada Anna Vachudova, *National Interests, State Power, and EU Enlargement*, 17 EAST EUR. POLITICS & SOCIETIES 42, 45.

their escape from it has been significantly slower and plagued by more difficulties than any other CEEC.[41]

The Evolution of the European Union

European Economic Community
(established by the Treaty of Rome on March 25, 1957):
1957: Belgium, France, Germany (Federal Republic), Italy, Luxembourg, Netherlands;
1973: accession of United Kingdom, Republic of Ireland and Denmark;
1981: accession of Greece;
1986: accession of Spain and Portugal.

European Union
(established by the Maastricht Treaty on November 1, 1993):
1995: accession of Austria, Finland and Sweden:
2004: accession of Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.
2007: accession of Bulgaria and Romania.

III. THE WINDOW TO THE BLACK SEA – THE EU-2

A. The Republic of Bulgaria

"Bulgarians have always been Europeans in spirit and identity."
-Bulgarian President Georgi Parvanov

With a total boundary length merely 1,123 miles long, the small Southeastern European country of Bulgaria is surrounded by Romania, Turkey, Greece, Macedonia, Serbia, Montenegro as well as the Black Sea that connects it Russia, Ukraine and Georgia.[42] Of the 7.8 million people who reside within the crossroad nation, over a million are ethnic minorities.[43] Nonetheless, eighty

41. WINNERS AND LOSERS OF EU INTEGRATION: POLICY AND ISSUES FOR CENTRAL AND EASTERN EUROPE 98 (Helena Tang, ed. 2000) [Winners and Losers].
42. CIA, World Factbook, *Bulgaria, available at* https://www.cia.gov/cia/publications/factbook/geos/bu.html (last visited Mar. 10, 2007).
43. *Id.*

percent are Orthodox Christians, twelve percent are Muslim and among the remaining portion is an sizable Jewish community. [44]

Communism emerged within the plains, mountains and deep river valleys of Bulgaria following World War II.[45] Though Bulgaria remained largely neutral throughout the deadliest conflict in history, in 1944 the Red Army invaded only to withdraw three years later, "leaving behind a communist government" that would soon be recognized as the closest satellite of the former Soviet Union.[46] For twenty-seven years under the onerous dictatorship of Todor Zhivkov, "democratic opposition was crushed, agriculture and industry were nationalized, and the Bulgarian Orthodox Church fell under the control of the state."[47]

Following the collapse of several Stalinist governments across Eastern Europe, the longest serving leader of any Soviet block nation relinquished control in 1989 after Bulgaria had been isolated from Western Europe for several decades. Less than a year later, the first multi-party elections since the Second World War were held. However, under the name of the Bulgarian Socialist Party, the governing communist faction won the vote.[48] It was not until 1992 that the anti-Communist Union of Democratic Forces (UDF) took office and began to privatize the weak economy.[49]

Bulgaria had not yet evaded the social and economic turmoil lingering from the ravage of communism.[50] To further stabilize the economy "and put Bulgaria on the Euro-Atlantic path" former Prime Minister Ivan Kostov initiated major market reforms allowing Bulgaria to join the World Trade Organization in 1996.[51] Bulgaria subsequently became a member of the Central European Free Trade Agreement (CEFTA) and additionally entered free trade agreements with Turkey, Macedonia, Croatia, Lithuania, Estonia, Israel, Albania and Latvia.[52]

---

44. *Id.*

45. R.J. CRAMPTON, A CONCISE HISTORY OF BULGARIA 180-91 (2d ed. 2005).

46. Scott R. Safranski, Stephanie Dirscherl, & Ellen Harshman, *What Went Wrong in Bulgaria: Experience with Bulgaria's Foreign Investment and Privatization Laws*, 9 INT'L LEGAL PERSP. 1, 3 (1997).

47. U.S. DEPT. OF STATE, BACKGROUND NOTE: BULGARIA, 2007, http://www.state.gov/r/pa/ei/bgn/3236.htm#history (last visited Feb. 12 2007) [hereinafter BACKGROUND NOTE: BULGARIA].

48. CRAMPTON, *supra* note 45 at 212; Derek C. Jones, *The Transformation of Labor Unions in Eastern Europe: The Case of Bulgaria*, 45 INDUS. & LAB. REL. REV. 452, 455 (1992).

49. BACKGROUND NOTE: BULGARIA, *supra* note 47.

50. WINNERS AND LOSERS *supra* note 41 at 99.

51. BACKGROUND NOTE: BULGARIA, *supra* note 47.

52. *Id*; BULGARIA IN EUROPE: CHARTING A PATH TOWARD REFORM AND INTEGRATION 17 (Dimitris Keridis et al. eds., 2006).

In 2001, Bulgaria's ex-king Simeon Saxe-Coburg-Gotha became the first former monarch in post-communist Eastern Europe to be elected Prime Minister. The new leader "[continued to pursue] Euro-Atlantic integration, democratic reform, and development of a market economy." Before Saxe-Coburg-Gotha left office, on March 29, 2004, Bulgaria became a member of the North Atlantic Treaty Organization.[53]

The former leader of the Bulgarian Socialist Party, Georgi Parvanov became the first Bulgarian president to be re-elected in 2006.[54] Even with limited constitutional powers, Purvanov consistently supported pro-Western foreign policies, continuing Bulgaria's Euro-Atlantic integration.[55] Notwithstanding the considerable advancements, "[t]he strains of the transition to a free market economy are visible everywhere [....] Billboards advertise international schools, Western liquor brands and Black Sea real estate, while Stalinist government buildings rub up against scrappy but charming Parisian-style buildings from the late 19th century, when Bulgaria won independence from the Ottoman Empire."[56]

B. Romania

"It was hard, but we arrived [. . .] in Europe. Welcome to Europe."
-Romanian President Traian Basescu

Sharing boarders with the Republic of Moldavia, Ukraine, Bulgaria, Serbia, Hungry and the Black Sea, Romania is a strategic geopolitical area situated on the Balkan Peninsula between Central and Eastern Europe.[57] Over 22.6 million Romanian, including Hungarian and Roman minorities, inhabit the twelfth largest country in Europe. Most of the population belongs to the Orthodox Church, though thirteen percent are either Catholic, Protestant or Jewish.[58]

---

53. *Enhancing Security and Extending Stability Through NATO Enlargement*, NATO pamphlet (Apr. 2004), available at www.nato.int/docu/enlargement/enlargement_eng.pdf. For a discussion of NATO's enlargement, *see* Prasad P Rane, *NATO Enlargement and Security Perceptions in Europe*, 29 Strategic Analysis 470 (2005).

54. Eur. Com'm, Enlargement Newsletter, http://ec.europa.eu/enlargement/press_corner/newsletter/311006_en.htm (last visited Mar. 7, 2007).

55. BACKGROUND NOTE: BULGARIA, *supra* note 47.

56. Matthew Brunwasser, *Why Location Matters to Outsources*, Int'l. Herald Tribune, Sept. 8, 2006 at 1.

57. MINTON F. GOLDMAN, REVOLUTION AND CHANGE IN CENTRAL AND EASTERN EUROPE: POLITICAL, ECONOMIC, AND SOCIAL CHALLENGES 266 (1997).

58. U.S. DEPT. OF STATE, BACKGROUND NOTE: ROMANIA, 2007, http://www.state.gov/r/pa/ei/bgn/35722.htm (last visited Feb. 12, 2007).

Similar to Bulgaria, Romania was invaded by the Soviet Union in 1944 and became a nation ruled by communism in 1947.[59] The country remained under direct control of the Soviet Union until Romania began to pursue independent foreign policies in the late 1950s.[60] In 1967, however, Nicolae Ceauşescu successfully climbed governmental ranks to become president of the State Council instituting an extremely repressive regime.[61]

For twenty-three years, Ceauşescu remained in power until a violent protest in opposition to the forced relocation of a Hungarian minister removed the philistine commander from office. After a closed trial by a military court, Ceauşescu and his wife were executed on Christmas Day in 1989 for their pivotal roles in one of the cruelest regimes in the continent after World War II.[62] The dictator had impoverished the nation[63] "[by] paying off its national debt in full and continuing with fabulously expensive construction projects; much of the food produced was exported, while what remained for Romanians was rationed."[64]

The National Salvation Front (NSF) took control after the overthrow and established a provisional government that immediately repealed bans on abortion and contraception, Ceauşescu's most opposed regulations.[65] Multi-party elections were held in 1990 and a new constitution was adopted under which parliamentary and presidential elections took place in 1992. The West was surprised and disappointed when a previous communist reformer won the vote by a landslide, delaying the nation from developing into a functioning market economy. It was not until Emil Constantinescu, a member of the Romanian Democratic Convention (RDC), was elected president in 1996 that Romania embarked on a

---

59. STEVEN D. ROPER, ROMANIA: THE UNFINISHED REVOLUTION 13-17 (2000).

60. *Id.* at 35-36 (noting that Romania successfully negotiated the withdrawal of Soviet troops); *Id.* at 49-50 (noting that Romania refused to participate in the Soviet's invasion of Czechoslovaki).

61. Jim Rosapepe, *Romania: Don't Bet Against It*, 26 FLETCHER F. WORLD AFF. 159, 162 (2002).

62. *Id.* at 277; POST COMMUNIST ROMANIA: COMING TO TERMS WITH TRANSITION 14 (Duncan Light & David Phinnemore, eds., 2005); Michael Hitchcock, *The Romanian Revolution: Media Coverage and the Minorities*, 6 ANTHROPOLOGY TODAY 2 (1990).

63. Micea Geoana, *Romania: Euro-Atlantic Integration and Economic Reform*, 21 FORDHAM INT'L L.J. 12, 20 (1997).

64. Peter W. Schroth & Ana Daniela Bostan, *International Constitutional Law and Anti-Corruption Measures in the European Union's Accession Negotations: Romania in Comparative Perspective*, 52 AM. J. COMP. L. 625, 642 (2004).

65. George A. Critchlow, *Teaching Law in Transylvania: Notes on Romania Legal Education*, 44 J. LEGAL EDUC. 157, 157-58 (1994) (stating "[m]any observers, inside and outside Romania, believe that the popular revolution was stolen by the ruling National Salvation Front (FSN), recently renamed the Social Democratic Party of Romania (PDSR), many of whose leaders are former Communist Party functionaries.").

transition from a Stalinist state.[66] The new government struggled to reverse the grave destitution caused by years of totalitarian communism but the standard of living among the nation continued to decline ever since the fall of the Iron Curtain. As recently as 1999, more than one-third of Romanians still lived in poverty.[67] Romania's political and social heritage is therefore still regarded by the existing Member States as a paramount hindrance to further integration into EU institutions.[68]

IV. THE ACCESSION: A CINDERELLA STORY?

Symbolic and practical integration with the West through admittance to the European Union has been of great importance to liberated CEECs such as Bulgaria and Romania.[69] Amid boisterous concerns that the EU had reached its absorption capacity,[70] the supranational organization similarly recognized that enlargement of the Balkan nations provided an historic opportunity to unify the war-torn continent. Thus, at the Helsinki European Council of December 1999 the Union formally agreed to the future accession of both countries making membership practically inevitable.[71] Negotiations ensued thereafter where the European Commission individually met with representatives from each applicant state to mutually agree on the logistics of adopting, implementing and enforcing the *acquis*.[72] In spite of these outward gestures, however, "both countries [continued to be perceived] as laggards of the eastern enlargement family."[73]

As a result, the European Commission involvement in overseeing the implementation and compliance of the *acquis* increased dramatically.[74] Previously, becoming a member of the Union merely required "a little more than a process of checking that the

66. Christopher Costa, *The Tie That Binds: The Story of Foreign Investment Law in Romania*, 4 J. INT'L LEGAL STUD. 105, 125-26 (1998).

67. *Id.* at 199-200.

68. *Id.*

69. Schroth, *supra* note 64 at 643-44.

70. Daniel Dobrovoljec & Katrin Nyman-Metcalf, *Enlargement of the European Union- a Regatta with Moving Goal Posts?*, 3 EUR.J L. REFORM 131, 132 (2001).

71. Jeroen Bult, *Bulgaria and Romania Will Join the EU, But What About the Others?*, World Press, Oct. 15, 2006, *available at* http://www.worldpress.org/Europe/ 2524.cfm.

72. Parker *supra* note 29 at 607-08.

73. Othon Anastasakis & Dimitar Bechev, *EU Conditionality in South East Europe: Bringing Commitment to the Process*, South East Eur. Studies Programme, Eur. Studies Centre (2003).

74. David Phinnemore, *The Changing Dynamics of EU Enlargement*, CENTRE FOR EUR. STUDIES, Apr. 29, 2005 (stating that "[n]ot only have the accession criteria been extended and tightened, but it is clear that the EU's institutions are examining more closely the extent to which candidates are meeting them.").

candidates have adopted EU law, chapter by chapter and page by page" whereas the progress of Bulgaria and Romania has been monitored much more stringently.[75] In fact, the EU announced in 2002 that Bulgaria and Romania had not sufficiently advanced in the fulfillment of the Copenhagen criteria to join the Union along with ten of their neighbors in 2004.[76]

Both struggling with required reforms—Romania more than Bulgaria—the two nations continued their forward movement towards the goal of integration with Western Europe and were rewarded at the Thessaloniki Summit in 2003 when an accession date was tentatively set for January 1, 2007.[77] When Bulgaria successfully closed all accession negotiation chapters in 2004, Romania had only closed twenty-seven chapters due to a poor economic and political record. The EU nonetheless refused to bifurcate the two applicant's accession process.[78] Together Bulgaria and Romania signed Accession Treaties in Luxemburg on April 25, 2005 that contained protocols for a possible one-year postponement.[79] Upon the conclusion of extensive negotiations, however, the European Commission confirmed their accession date in September 2006 without any delay.[80]

To pacify the Member States that staunchly opposed enlargement, the European Commission "[kept] a watchful eye on the candidate countries" by the use of safety mechanisms and regular evaluations as Bulgaria and Romania continued to implement the *acquis*."[81] Six months before the accession date, a monitoring report that commended the applicants' achievements of attaining democracies and market economies was issued describing the necessary improvements to implement and enforce the *acquis*. It also verified the compliance of the terms reached by previous negotiations.[82]

A. The Family Estate

75. Moravcsik *supra* note 40 at 45.

76. Eur. Com'm, *Commission confirms Bulgaria's and Romania's EU accession on 1 January 2007*, IP/06/1257, Sept. 26, 2006.

77. *Id.*

78. Neacsu, *supra* note 3 at 201.

79. Decision of the Council of the European Union on the admission of the Republic of Bulgaria and Romania to the European Union, OFFICIAL J. OF THE EUR. UNION, Apr 25, 2005, L 157/9.

80. *Id.*

81. Parker *supra* note 29 at 609.

82. Eur. Com'm, *Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania*, May 16, 2006 COM/214.

Long before being accepted into the Union, the Balkan duo enormously profited from funding and assistance, such as PHARE, aimed at reforming their institutions and economic regulation to meet EU standards.[83] PHARE was originally a purely financial program developed in 1989 to restructure post-communist economies without the specific objective of furthering human rights. It was later adapted to "be an operational tool for preparation of integration."[84] Among its many advantages, civil servants from Member States are provided to work with counterparts in applicant states.[85]

Notwithstanding other benefits received as applicants, as a member of the Union, Bulgaria is expected to receive 3.9 billion euros in structural funding and rural development assistance during its first few years as part of the EU family while 10.5 billion euros are earmarked for Romania.[86] The financial support is being poured into rapidly expanding economies. Bulgaria's economic growth rate is more than double the EU average and Romania's rate is expected to be an impressive 7.2 percent.[87]

Entrance into the EU has improved the nations' image abroad.[88] Foreign investors from a variety of industries are placing their chips in Bulgaria and Romania with little hesitation. Moreover, both newcomers are experiencing an unrivaled demand for real estate following their recent membership into the Union.[89] In Bulgaria and Romania, property values in certain locations have more than doubled over the past three yeas. The International Business Times recently reported, "There's no end in sight [to the boom]. It's a far cry from the 1990s when mortgage lending was

---

83. Tom Burgis, *FT Briefing: Enlargement of the European Union*, The Fin. Times, Dec. 14, 2006 at 1.

84. Dobrovoljec *supra* note 70 at 135.

85. *Id.*

86. Burgis, *surpra* note 83.

87. Eur. Com'm., *The economies of Bulgaria and Romania*, European Economy News, (2007) *available at* http://ec.europa.eu/economy_finance/een/005/article_4326_en.htm.

88. *Bulgaria increasingly attractive for foreign investors*, The Sophia Echo, Feb. 26, 2007. (Foreign investors are "flocking" to the following industries: computer and data processing, tourism, agriculture, automobile and retail.).

89. Matthew Brunwasser, *On the new edge of the EU, a Bulgaria and Romania boom*, Int'l Herald Tribune, Jan 18, 2007 ("Prices for apartments in Bulgaria increased by an average of 15 to 20 percent in 2006. In Romania, values rose at an average of 8 to 10 percent [...] in some parts of Bucharest and Sofia the increases are much higher, with rates of return on investments among the highest in Europe.").

not permitted and banks languished under state control in both countries."[90]

B. Stepchildren Status

Bulgaria and Romania, however, will not receive the full benefits of belonging to the EU family any time in the near future.[91] "From a club of rich nations at roughly the same level of development and with similar political, cultural and social institutions, the European Union has become an organization comprising two groups of countries with fundamentally different economies and societies."[92] Instead, the Balkan members will be afflicted by heightened barriers from the *acquis communautaire* in addition to the possibility of being sanctioned if found in breach of "the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states" according to Article 6 of the Treaty on European Union.[93]

The EU-2 will be strictly controlled during their developmental years in the EU family.[94] The safeguard clauses included in Bulgaria and Romania's Accession Treaties allows Member States to institute protective measures for up to three years against the newcomers. Although similar provisions exist in the Accession Treaties of the ten countries admitted in the "big bang" in 2004 but applying them was never considered a realistic option.[95]

Existing members also have the ability to take advantage of a seven year transitional arrangement allowing them to restrict the free movement of workers, one of the EU's fundamental principles.[96] Britain, Ireland and Sweden were the only nations that did not apply such restrictions in 2004 but Britain has already an-

---

90. Alison Mutler, *New Balkan EU Members See Housing Boom*, Int'l Business Times, Jan. 21, 2007.

91. *Id.*

92. Boris Kagarlitsky, *Europe's New Second-Tier*, The Moscow Times, Oct. 5, 2006 at 1.

93. *Id.* at 3 (citing the Treaty on the European Union).

94. Alison Mutler, *Romania and Bulgaria join the European Union*, Associated Press, Jan. 1, 2007.

95. Gergana Noutcheva, *Bulgaria and Romania's Accession to the EU: Postponement, Safeguards and the Rule of Law*, CENTRE FOR EUR. POL'Y STUDIES, CEPS Policy Brief No. 102, May 2006, at 2.

96. Catherine Drew & Dhananjayan Sriskandarajah, *EU Enlargement in 2007: No Warm Welcome for Labor Migrants*, INST. FOR PUBLIC POL'Y RESEARCH (2007) *available at* http://www.migrationinformation.org/Feature/display.cfm?id=568 ("EU states Italy, Germany, France, the UK, the Netherlands, Austria, Denmark, Hungary, Ireland, and Belgium [imposed] restrictions on Romanian and Bulgarian workers heading west.").

nounced its intention to limit Bulgarian and Romanian workers because it received an excessive amount of migrant workers during the last enlargement.[97] The leaders of the EU-2 have responded with a twofold contention: (1) growing economies coupled with skill shortages resulting from potential flow of migrant workers will substantially reduce the potential flow of migrant workers; and (2) citizens who do leave will more likely relocate to countries with warmer climates, such as Spain or Italy.[98] Existing Member States have found these arguments unpersuasive; "[s]o far, only little Estonia has officially announced that it will welcome Bulgarian and Romanian labor-immigrants."[99]

Protective measures adopted by the EU furthermore require the two countries to report specific progress to the European Commission every six months to avoid losing economic aid.[100] The first report is due on March 31, 2007. Bulgaria must provide satisfactory evidence of improvement in judicial reform whereas Romania must demonstrate advancement in combating corruption.[101] If the two newest Member States are unable to provide adequate proof of development in these areas, as well as several others, warrants issued by their Courts will not be recognized in the EU. [102]

The EU-2 are also bound by a plethora of other heightened regulations. Russia's threat that it will boycott all EU meat imports because of perceived safety concerns over Bulgarian and Romanian meat and milk will subject the countries to discriminating agriculture restrictions.[103] Until future assessments are completed, only a few producers in the two countries will be permitted to sell produce in the internal market.[104] The European Commission has further adopted a measure prohibiting aircraft certified by the Bulgarian authorities from accessing to the EU transport market because of failure to ensure the airworthiness of their aircrafts.[105] In addition, both Bulgaria and Romania citizens are provisionally excluded from benefiting from the "Schengen Zone", a travel region free of border posts and checks between signatory

---

97. Burgis, *supra* note 83.
98. *Id.*
99. Bult, *supra* note 71.
100. *Id.*
101. Todor Roussanov, *Bulgaria and Romania: The new kids on the block*, The Economist, Jan. 4, 2007.
102. Bult, *supra* note 71.
103. *Id.*
104. *Id.*
105. *Bulgaria bans five carriers from making EU flights*, EU Business, Feb. 23, 2007 *available at* http://www.eubusiness.com/Transport/bulgaria-air.1/.

EU Member States. Finally, economists predict that 2010 will be the earliest date that Bulgaria will be capable of adopting the single currency of the European Economic and Monetary Union used by twelve Member States. Romania, on the other hand, may not be have the ability join the eurozone until 2014.[106]

V. CONCLUSION

The truth will be glaringly apparent even before the celebratory fireworks that radiate the midnight sky in Sofia and Bucharest fade to gray. In the eyes of the Union, Bulgaria and Romania are considered but stepchildren that are conditioned by heightened restrictions and strenuous obligations.[107] The two orphaned countries were only accepted into the family after both tenaciously endured nearly a decade of "'conditionality' whereby Brussels [compelled] the two countries to implement tens of thousands of pages of EU law and to improve domestic administration and adjudication, as well as fight crime and corruption."[108] The very conditionality that brought them from the doorstep to the hearth however, will segregate the newcomers from their fellow siblings, creating a secondary status within the family. The heightened barriers imposed by the existing Member States is a reminder of the difficulty in preserving balance of community mores of free movement with the self-interested national labor-market protection.[109] Until the Balkan duo can pass as one of the Union's own, Bulgaria and Romania have merely been provided a roof over their heads.

---

106. Rettman, *supra* note 15.

107. Carsten Volkery, *A Trial Period in the EU*, Spiegel Int'l, Jan. 3, 2007 *available at* http://www.dw-world.de/dw/article/0,2144,2261323,00.html.

108. Andrew Moravcsik, *Open the Doors,* Newsweek Int'l Ed., Oct. 2, 2006 *available at* http://msnbc.msn.com/id/14974997/site/newsweek/.

109. Drew, *supra* note 96.