

**Coming full circle:
Differential empowerment in the EU accession process**

Natasha Wunsch, University College London

Abstract:

The EU accession process brings a profound transformation not only to candidate countries' institutions and policies, but also to the political opportunity structure in place, creating new possibilities for previously marginalised actors. Studying the differential empowerment of NGOs throughout the Croatian accession process, this paper makes two related claims: first, differential empowerment depends crucially on domestic actors' awareness for and ability to use new opportunities to their advantage. Second, an overreliance on EU leverage poses important temporal and substantive limits on NGO empowerment and leads to a rapid decline of their relevance in the post-accession phase. I argue that a more sustainable shift in the domestic power balance would require both the EU and domestic civil society actors to place more emphasis on fostering improved practices of civil society inclusion in domestic policy-making settings throughout the accession process.

Natasha Wunsch, M.A.
PhD Candidate
School of Slavonic and East European Studies/School of Public Policy
University College London

Phone: +33 (0) 6 37 73 02 71
Email: natasha.wunsch.11@ucl.ac.uk

Work in Progress
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*Paper prepared for presentation at the EUSA Fourteenth Biennial Conference, Boston, 5-7
March 2015*

The EU accession process brings a profound transformation not only to candidate countries' institutions and policies, but also to the political opportunity structure in place. The shift from a self-contained state to a multi-level governance system with a dominant EU component inevitably has a strong impact on interactions at the domestic level. Previously marginalised actors may find their claims bolstered as their preferences overlap with the demands emanating from the EU. At the same time, conditionality and political pressure for reform impose strong constraints on formerly largely unchecked executives. This change in the domestic power balance opens the possibility for a broader spectrum of actors to become involved in domestic policy-making. The EU's call for participatory democracy and its growing financial and political support for civil society inclusion furthers such a dynamic. Yet, as this paper will argue, it is precisely the need for and reliance upon EU leverage as a vehicle for civil society empowerment that makes the long-term prospect of strengthening civil society actors doubtful.

Europeanisation scholars have coined the term 'differential empowerment' to describe alterations in the domestic power balance induced by the European integration process (Cowles et al. 2001; Börzel and Risse 2003). The accession process and its inherent asymmetry between the EU and the candidate state (Moravcsik and Vachudova 2003) appears as a particularly favourable context for previously marginalised actors to improve their position on the domestic scene. Yet, previous research in Central and Eastern European countries (CEE) yielded mixed results: while some authors found a limited degree of empowerment in the presence of enabling transnational actors (Parau 2009; Langbein 2010), others have suggested that civil society actors in accession countries are too weak to effectively capitalize on new opportunities and thus function essentially as agents of an EU agenda (Sudbery 2010; Börzel and Buzogany 2010). This situation is accentuated by the overdependence of non-governmental organisations (NGOs)¹ on external donors that transforms local organisations into political service providers and estranges them from their original constituencies (Ker-Lindsay 2013; Beichelt et al. 2014). The present paper focuses on pre- and post-accession dynamics in Croatia as the most recent EU member state, studying how the shifting political opportunity structure influenced NGOs' strategies and targets, and to what extent they were able to use the accession process as a means for empowerment.

This paper shows that while a limited form differential empowerment of NGOs did occur during the accession process, it amounted to a temporary phenomenon rather than a long-term

result of membership negotiations. This is largely due to a strategy of mirroring EU conditionality both in content and in form that found its natural end once the EU withdrew as a powerful driver of domestic change. Drawing on extensive fieldwork, I trace the curvilinear evolution of NGO mobilisation in the field of rule of law: following late organisation due to a lack of awareness for EU-related opportunities, a broad coalition of NGOs had its moment of glory towards the close of membership negotiations. However, its relevance quickly faded once an accession date was set and EU interest in critical input waned, leading to a strategic reorientation towards domestic targets, and eventually to a demobilisation of the movement. These findings hold important lessons both on the limits of externally driven civil society empowerment and on potential improvements to the EU's approach to civil society in future accession negotiations.

EU accession and changing political opportunity structure

The EU accession process draws aspiring member states into highly complex and increasingly lengthy negotiations centring on the fulfilment of the Copenhagen criteria, including the full adoption and ability to implement the EU's growing *acquis*. The deep engagement with the EU has a profound impact on the political opportunity structure, drawing domestic actors from a simple, often hierarchical political set-up into a 'two-level game' (Putnam 1988) with the EU as a dominant player (Schimmelfennig and Sedelmeier 2005). Social movement scholars have pointed out how the emergence of a multi-level governance system has resulted not in a mere displacement of contentious action from the domestic to the European level, but instead in a diversification of domestic actors' mobilisation strategies (Imig and Tarrow 2000). Moreover, the concept of opportunity structure itself has shifted from a more rigid, structural understanding towards the acknowledgement of its dynamically constructed nature that allows for a feedback effect from interest group activity upon the structural environment in which it takes place (McAdam et al. 2001). The case has been made for a fruitful combination of the 'exogenous' and 'endogenous' approaches to opportunity structures (Princen and Kerremans 2008).

The asymmetry between the EU and the candidate state that is inherent to the accession process (Moravcsik and Vachudova 2003) makes this context particularly relevant for an analysis of civil society mobilisation across multiple levels of governance. The ongoing membership negotiations would seem to favour civil society empowerment on two counts: firstly, in terms of procedure, NGOs are aided by the EU's increasingly explicit call for

participatory democracy and civil society inclusion in the accession framework (European Commission 2001; 2007; 2013a). Aiming to overcome the executive-dominated nature of the Central and Eastern European enlargement process (Grabbe 2001; Lippert et al. 2001) and the resulting superficial adaptation of membership candidates, the European Commission has complemented its financial support and capacity-building efforts to NGOs in enlargement countries with a more political approach centred on fostering an 'enabling environment' for civil society activity and improving state-NGO relations (Wunsch 2015). Secondly, in terms of content, EU conditionality forms an important reference point for NGO advocacy activities. While a negative reading of this dynamic might view NGOs as mere transmission belts for EU demands, the significant degree of natural overlap between the political criteria for accession and the human rights and democratisation goals of NGOs may in fact enable them to draw on EU conditionality without compromising their own agenda.

The most explicit manifestation of a changed political opportunity structure is certainly the emergence of the EU level as a new venue for domestic demands and a potential arbiter between conflicting interests (McAdam and Marks 1996). Over the years, the European Commission has gradually extended and institutionalised its consultations with NGOs in candidate countries, enabling them to feed directly into the EU's assessments on progress made on the ground and to raise issues of concern. Not only is this an opportunity for NGOs to shape EU conditionality, but it also offers them a potential ally for their demands. The 'Brussels route' therefore emerges as an alternative to domestic mobilisation (Eising 2007; Jelinčić and Đurović 2011), enabling NGOs to by-pass state-level actors and to use EU leverage to channel their own demands. This type of indirect strategy has been described as 'boomerang pattern' whereby domestic NGOs seek international allies to bring pressure on their states from outside (Keck and Sikkink 1999).

At the domestic level, EU pressure for inclusive policy-making, as well as a more general trend towards increased transparency and accountability over the course of democratic consolidation, can be thought to open additional possibilities for civil society actors. Nonetheless, it is important to separate the formal openness of a political system and the receptiveness of policy-makers (Hilson 2002), with the latter a question of political culture more than of institutional configurations. Thus, while the accession process may improve NGO access at the domestic level, such access can only be a favourable precondition – and by no means a guarantee – for more substantial forms of influence (De Bièvre 2008). Besides,

the mere speed of the accession process, more specifically the need to adopt a large number of new laws in a short space of time, can preclude the holding of effective consultations (Škrabalo 2012). While it is undeniable that the EU accession process brings considerable changes to the political opportunity structure in which NGOs in candidate countries operate and thus holds the potential for civil society empowerment, the EU accession process does, despite its increasingly drawn-out nature, *in fine* extend over a temporally limited period, with the attendant consequences upon the effectiveness of the EU's leverage and the possibility for backsliding post-accession (Dimitrova 2010; Sedelmeier 2012; 2014).

Theoretical framework: EU leverage and domestic agency

The Europeanisation process offers the possibility for a differential empowerment of actors who were previously side-lined, both through changes in their external environment – in the form of opportunities and threats – and through resulting shifts in their resources, objectives, and behaviour (Fairbrass and Jordan 2002). Yet, to presume that such changes in the domestic power balance occur automatically in the presence of specific external conditions would be overly simplistic. Instead, Europeanisation scholarship has increasingly focused on the role of domestic agency in shaping the concrete outcomes on the ground (Ripoll Servent and Busby 2013; Elbasani 2013). The three-step ‘usages’ approach (Jacquot and Woll 2004; 2010) is a particularly useful device when addressing the domestic intermediation of EU pressures: it suggests, firstly, that actors recognize or create political opportunities at the European level; secondly, that they consciously use these opportunities to further their political goals or to enhance their standing in the national arena; and thirdly, that these usages may translate into a concrete impact of actors upon a certain outcome. Opportunities therefore become only a necessary, but not a sufficient condition for political usage, which in turn is necessary yet not sufficient in order to achieve actual influence (Jacquot and Woll 2003). Rather than establishing a direct link between EU pressures and domestic change, the ‘usages’ approach posits actors’ strategic behaviour as an intermediary step between opportunities and their eventual outcomes. The focus lies on agency and on tracing whether, when, and how domestic actors have drawn on the EU for their own strategies within the domestic policy-making dynamics (Graziano et al. 2011).

How does this agency-centred understanding of the possible impact of a changed political opportunity structure translate into concrete expectations regarding the behaviour and performance of NGOs throughout and beyond the EU accession process? Most crucially, it

shifts our focus from an analysis of the impact of EU support to a study of actor mobilisation and changing advocacy strategies and targets. Interest group scholars have argued that the emergence of a multi-level governance structure imposes a 'dual strategy' on organised interests, whereby it becomes mandatory to combine multiple channels of access to be present in the policy process at all stages (Kohler-Koch 1997). Subsequent research has investigated which factors would determine, in the face of limited resources, whether interest groups would mobilize at the EU or the national level (Eising 2007; Beyers and Kerremans 2007; Dür and Matteo 2012). It seems obvious that NGOs in candidate countries do not have the possibility of maintaining deep engagement with all actor levels all the time. Instead, it is more realistic to expect a concentration of activities on the level considered most immediately relevant to NGOs' concerns, and most likely to respond favourably. Which this level is, is likely to vary over time depending on the status of a country within the accession process.

During the pre-accession phase, I expect a strong resort to EU-level mobilisation and a concurrent strengthening of NGO claims especially in areas where they overlap with membership conditionality. In contrast, the cessation of EU conditionality deprives NGOs of a crucial tool, with extensive evidence that domestic reforms are largely driven by EU membership requirements (Kelley 2004; Grabbe 2006; Börzel 2010a). I suppose that this loss of both active and passive EU leverage (Vachudova 2006) translates into a reorientation of advocacy activities towards the domestic level, and a relative decline in any civil society empowerment that may have taken place in the pre-accession phase. The two guiding hypotheses for my empirical analysis are therefore as follows:

H1: The pre-accession phase sees NGO empowerment through the strategic usage of EU leverage.

H2: The post-accession phase sees a reorientation of NGO strategies to the domestic level and a decline in their relative strength.

Besides analysing at which level – EU or national – actors mobilize it is useful to think about opportunities also in terms of what they are *for* (Meyer and Minkoff 2004). In line with the three-step model of usages, one may distinguish between opportunities for mobilisation (usages), and those for policy change (impact) (Meyer 2004a). Civil society empowerment has typically been defined as a shift in the relative strength of NGOs vis-à-vis executive actors (Parau 2009) that implies the ability to foster some form of domestic change (Sudbery 2010). However, precisely in light of the limited findings of civil society empowerment in existing

empirical studies, it is useful to expand the definition of empowerment beyond substantial influence to comprise also more procedural forms of impact (Kitschelt 1986). This may take the form of a recognition of NGOs as relevant policy actors, even where their demands are not reflected in the final policy outcomes (Betsill and Correll 2001), or of a general consolidation of a previously disparate movement (O'Dwyer 2012). Since recent findings from the Western Balkans suggest that constructive exchanges between state and civil society actors are hampered both by a lack of capacities and a lack of willingness on both sides to engage constructively (Börzel and Buzogany 2010), it is likely that civil society empowerment will be at best procedural, and closely related to EU leverage.

The assumption of a pivotal role for EU pressures in triggering differential empowerment is in line with traditional approaches to accession Europeanisation (Börzel and Risse 2003; Schimmelfennig and Sedelmeier 2005). However, the emphasis upon domestic actors' strategic usage of this enabling function of conditionality to enlarge their repertoire (Tilly 1983; McAdam et al. 2001; 2009) brings a new perspective to the study of domestic interactions throughout the EU accession process. Whereas existing research mainly focuses on dyadic relationships between the EU and a specific subset of domestic actors¹, the present study sheds light on the triangular dynamics connecting the EU, the state, and the NGO levels. Moreover, the temporal extension of the study beyond the accession date allows for an assessment of the sustainability of differential empowerment induced through overlapping preferences and examines the capacity of NGOs to adjust their strategies to a renewed shift in the political opportunity structure.

Research design and methods

The research design centres on a within-case analysis of a movement trajectory, heeding the call for a more process-oriented understanding of political opportunities that disaggregates not only outcomes, but also actors involved in producing them (Meyer 2004a). By tracing the evolution of NGOs' advocacy strategies and targets over time, I seek to uncover the impact of the shifting political opportunity structure triggered by the changing status regarding EU membership and the resulting shift in the EU's leverage. This actor-centred approach complements the more structure-oriented studies that seek to evaluate the impact of the EU's civil society support upon local actors (Fagan 2006; 2009) and offers a more complex insight

¹ Cf. Grabbe 2001 and Lippert et al. 2001 for the EU's impact on executives, Fagan 2009 and Börzel 2010 for NGOs.

into the functioning of EU conditionality as a tool for differential empowerment. Moreover, such a longitudinal study allows for the division of a single case into two distinct ‘before’ and ‘after’ cases amenable to comparative study through process-tracing (George and Bennett 2005: 79-83).

The choice of Croatia explains itself through the country’s intermediary status as a ‘bridge’ between the CEE enlargements of 2004 and 2007 and the pending membership applications of the remaining Western Balkan countries. While Croatia failed, largely due to its stalled democratisation throughout the 1990s, to ‘upgrade’ to CEE status in the way its neighbour Slovenia managed to, it did succeed to negotiate its accession rather swiftly following the opening of talks in October 2005, with negotiations closed less than six years later, in June 2011, and the accession treaty signed in December of the same year. The negotiations themselves were marked by a shift in the EU’s attention from legal adaptation to actual implementation of adopted changes on the ground, in an attempt to foster deeper changes that would be less easily reversed post-accession. This focus on implementation, coupled with a reinforcement of the EU’s support to NGOs with the launch of a Civil Society Facility from 2008 (European Commission 2007), seems to offer more favourable conditions for civil society empowerment than was the case in CEE, making Croatia a particularly interesting instance for study. The chosen time period for analysis is 2010 to 2014, which comprises the late stages of the accession process, the interval from the closure of membership talks to actual entry into the EU, and the first year of Croatia’s experience as a member state following its entry on 1 July 2013.

An examination of NGO mobilisation in the broader sector of rule of law, rather than around a specific issue, allows for a more global appreciation of the dynamics at play. The concrete analysis thus focuses on NGOs working in the area of *acquis* chapter 23, which deals with judiciary and human rights. The high concentration of NGOs active in the field of rule of law facilitates the extensive collection of data, which is crucial for effective process-tracing (Schimmelfennig 2006; Checkel 2013). Given the centrality of rule of law to the overall domestic reform process and the ensuing high level of EU attention and thus of EU leverage, it becomes a most-likely case for civil society empowerment. Such a choice makes sense in light of previous findings of limited civil society empowerment in CEE (Börzel 2010b), as it increases the chances of positive findings. Yet, it concurrently reduces the potential of generalisability, which is an important limitation of this research design.

The empirical analysis builds on data gathered in 40 semi-structured face-to-face interviews, eight of which were conducted in Brussels on several shorter trips over the period from November 2013 to March 2014, and 32 during a six-week fieldwork stay in Croatia between March and May 2014. Interviewees were selected by snowball sampling (Morgan 2008) and drawn from NGOs, state institutions, as well as the EU and other international donor institutions. They were asked to recount, from their respective perspective, NGO mobilisation around chapter 23 both in terms of their scope of activity and their degree of engagement with different sets of domestic and EU-level actors from the opening of chapter 23 up to the point at which the interview took place. Interviews were conducted in Croatian or in English. In order to obtain as comprehensive an insight as possible and avoid reliance upon a single source for specific facts, interviews were frequently held with several different representatives from the same organisation or institution. In addition, documentary analysis of EU documents, NGO publications and press releases, as well as media reports from Croatia was used to triangulate the information obtained from actors themselves and in order to fill evidentiary gaps necessary for the close tracing of evolving NGO strategies.

Empirical findings

The empirical findings suggest three distinct periods of NGO mobilisation: firstly, following late awareness for the opportunities related to the EU accession process, a small number of prominent NGO members managed to gather a broad coalition of organisations that devised a rather effective strategy of shadow reports complementing the EU's periodic assessments to draw attention to outstanding issues prior to the closure of chapter 23. Following the closure of accession talks, EU interest in critical civil society input waned, and the monitoring coalition reconstituted itself as a formal Platform formulating a series of demands to domestic policy-makers. Finally, the last months of the accession process saw a turn towards public campaigns aimed against the rising conservative backlash in certain areas of human rights, with post-accession financial difficulties and time constraints leading to a steady decline of the movement. The findings seem to illustrate the crucial role of EU leverage as an enabling factor for civil society empowerment, while suggesting at the same time that this empowerment is often procedural rather than substantial in nature.

Late, but successful mobilisation

Croatian civil society mobilised rather late in the accession process, with the initial stages of the negotiations marked by bilateral contacts between the European Commission representing

the member states and Croatia as a candidate country. NGOs during this period displayed a general disinterest in EU-related matters, focusing instead on domestic issues and adapting only very gradually to the new multi-level environment that had come to determine the speed and orientation of the domestic reform process. As one Croatian NGO representative put it in a written contribution for the newsletter of a Serbian organisation:

It is not that we did not want to be involved: it is that in 2007, when the negotiations started to gain momentum, we certainly did not know as much about public advocacy as we do today. The doors of the Government of Croatia and the EU Delegation remained shut to us for a long time. (Teršelič 2014: 7)

Still, during the initial years of Croatia's membership negotiations, a progressive structural change in the country's NGO landscape became noticeable: increased access to EU funding for project-based activities geared a number of organisations towards dealing with accession-related topics, resulting frequently in the creation of EU-oriented programmes within NGOs and an administrative restructuring to respond to the complexity of the fundraising process (Đokic/Sumpor 2013). Moreover, an increasing number of NGOs began to move from advocacy-focused activities to monitoring and the regular publication of very detailed reports on specific areas mostly related to the rule of law and the protection of human rights.² The structural adaptation of the NGO scene to the accession process also transpired through the use of more managerial approaches to advocacy work, with a growing number of organisations undergoing regular strategic planning sessions and working with policy frameworks and other formal guidelines borrowed from the international development toolkit.³ This professionalisation, though it did not result in an immediate inclusion of NGOs in the ongoing negotiations, set the stage for their more substantial involvement at later stages of the process.

A further substantial step in this direction consisted in the progressive recognition of NGOs as sources of information by the EU Delegation on the ground. Starting from 2008 as an expression of the Commission's commitment to civil society support articulated in the enlargement strategy a few months earlier, the Delegation staff in charge of the monitoring of reforms and the drafting of the annual progress report began to consult NGOs on their views

² Interviews with representatives of the Youth Initiative for Human Rights, 8 May 2014, and of Documenta, 26 May 2014.

³ Interview with a representative of GONG, 6 May 2014.

of their government's performance regarding a variety of commitments.⁴ This offered a valuable access point for NGOs to feed into the EU assessments of their country's performance, opening a new venue for their demands. Confirming the importance of transnational actors found in earlier studies (Parau 2009; Langbein 2010), it was the Open Society Foundation's Brussels Office that advocated for an institutionalisation of civil society consultations both through the Delegations and at DG Enlargement itself, contributing funding to cover the travel expenses of NGO representatives presenting their views in Brussels.⁵

On the whole, Croatian NGOs' involvement in the early stages of the accession process was characterized by a certain apathy mainly due to a lack of awareness for potential new opportunities and a lack of appreciation for the actual speed of the ongoing negotiations. Their gradual awakening to the reality of the accession process was mainly triggered through a demand for information from the EU Delegation's side and through an increased involvement with EU bodies due to the availability of project funding that resulted in both a structural and a thematic adaptation of the Croatian NGO scene to the requirements of the ongoing negotiations. This finding of very limited early usages EU-related opportunities by NGOs, which was essentially limited to the use of financial resources and demand-driven input into the Delegation's consultation process, points to the simplistic nature of a purely structural take on political opportunity structures. As long as opportunities are not recognized (see Meyer 2004b; Amenta and Halfmann 2012 on 'missed opportunities'), they cannot be used, and therefore do not impact actors' strategic behaviour.

Broad and visible mobilisation of Croatian NGOs did not occur until the opening of negotiations in acquis chapter 23. While NGO involvement in all chapters was originally foreseen in the Croatian negotiation structure, and did occur in other fields⁶, no NGO representatives were formally associated in the talks on chapter 23. The closed nature of the domestic political opportunity structure therefore left extra-institutional mobilisation and the near-exclusive use of the 'Brussels route' as the obvious alternatives. Sensing the urgency to act before the closure of accession negotiations froze a state of reform with which most NGOs were not satisfied, a growing number of human rights and watchdog organisations came

⁴ Interviews with a representative of the Open Society Foundation, 3 April 2014, and an EU official, 7 May 2014.

⁵ Interview with a representative of the Open Society Foundation, 28 March 2014.

⁶ Interview with a representative of Green Action, 12 May 2014.

together as a “coalition for the monitoring of accession negotiations.”⁷ Most coalition members had already been engaged in monitoring activities and were in close communication with EU-level actors, making the creation of a joint initiative more of a change in form than in methods. Still, bringing together the voices of civil society was crucial in facilitating the Commission’s dealings with NGOs⁸ and in aiding them to become recognized by the government as credible actors in the accession process.⁹

In February 2011, the coalition issued a first joint opinion on Croatia’s readiness to finalize negotiations, voicing concern that the “closing of Chapter 23 should mean that positive changes in the rule of law are irreversible, which is still not the case” (Joint Opinion of Croatian civil society organisations, 2011a). By coincidence, details from the report reached the members of the EU negotiating team as they sat in the office of the Croatian Chief negotiator, triggering a series of worried questions that took the Croatian side by surprise.¹⁰ Acknowledging the impact of the report on the Commission’s stance towards Croatia, an interviewee close to the accession negotiations claimed that its publication was “very damaging for us, we had to invest much effort to show we were ready.”¹¹ Three months later, the coalition issued a follow-up report that expressed ongoing concerns with reform efforts in chapter 23 and the government’s implementation capacities (Joint Opinion of Croatian civil society organisations, 2011b). Nonetheless, aware of the risk of postponing the closure of negotiations, the coalition conceded that the European Commission may decide to close the chapter for political reasons, but called for the establishment of “a formal independent monitoring mechanism in at least the first three years upon the closing of negotiations, throughout the ratification period and beyond” (ibid: 2).

As expected, the ‘Brussels route’ emerged as the dominant route to civil society empowerment in the late stages of the accession process, where EU leverage was at its maximum. Once an awareness for the new opportunities had been created – largely by actors external to the domestic NGO scene – there was a sudden surge both in the level of NGO activity and in their degree of recognition by EU-level actors. The coalition in particular enjoyed a resounding success, which one of its members summarized as “everyone wanted to

⁷ Interviews with representative of Documenta, 5 May 2014, Green Action, 12 May 2014, and the Centre for Peace Studies, 13 May 2014.

⁸ Interview with a representative of the Open Society Foundation, 3 April 2014.

⁹ Interview with a representative of the Croatian Foreign Office, 4 April 2014.

¹⁰ Interview with a member of the Croatian negotiating team, 4 April 2014.

¹¹ Interview with a former government representative, 1 April 2014.

meet us (...) the coalition became the strongest NGO player on the scene”¹². Encouraged by the local office of the Heinrich Böll Foundation and an EU official to go beyond local contacts in the EU Delegation, the coalition used its monitoring reports to engage with a broad range of EU-level actors, including Commission officials in Brussels, representatives of member state Embassies and MEPs, particularly from the Green Party.¹³ The awareness on the side of governments actors of these close contacts, as well as the occasional mentioning of NGO comments by EU officials in their dealings with state-level actors increased credibility of NGOs on the domestic scene.¹⁴

On the whole, it appears that the differential empowerment of Croatian NGOs was enabled by the concurrent appearance of a number of conditions: firstly, the closure of accession negotiations opened a window of opportunity where EU leverage was at its maximum. Even more specifically, the coalition members were able to benefit from the EU’s near-exclusive focus on chapter 23, which was among the very last, and the most sensitive, to be closed. Their priorities were therefore aligned with those of the EU, greatly facilitating the emergence of a ‘boomerang pattern’ of empowerment. Secondly, transnational actors supported NGO efforts by pointing out concrete opportunities for NGO mobilisation and pushing for increased engagement of the EU with civil society actors. Such a more comprehensive advocacy strategy increased the range of international allies supporting NGO claims, in turn strengthening their credibility vis-à-vis government actors. Finally, the chosen methodology of shadow reports was most likely to raise the EU’s attention. Indeed, comments from EU officials suggest that the monitoring reports were so successful precisely because they mimicked the EU’s technocratic language, offering critical input in a format easily digestible for the target group.¹⁵

Despite the obvious achievements of the coalition, the rise of the monitoring coalition is also indicative of the extent to which civil society empowerment is tied to the proactive usage of EU leverage, and thus likely to be limited in time. Most importantly, and foreshadowing the developments to come, civil society empowerment remained largely procedural: whereas NGOs did manage to raise the Commission’s awareness for certain specific shortcomings

¹² Interview with a representative of B.a.B.e., 31 March 2014.

¹³ Interviews with representatives of the Heinrich Böll Foundation, 7 May 2014, and of GONG, 2 April 2014, the Centre for Peace Studies, 31 March and 13 May 2014, and Green Action, 12 May 2014.

¹⁴ Interview with a former member of the negotiation team, 1 April 2014 and a former member of the negotiation Secretariat, 4 November 2014.

¹⁵ Interview with an EU official, 14 March 2014.

overlooked in its earlier assessments², there is no clear evidence for a substantial impact of NGOs on either the timing or the conditions of the closure of membership talks. Tellingly, the coalition's central demand – the establishment of a post-accession internal monitoring mechanism to prevent the backsliding of reforms – was rejected. Whereas EU actors were initially interested in such a mechanism, they eventually backed off in the face of the Croatian government's reluctance¹⁶, all the more since both the Commission and the member states were wary that such a decision might be interpreted as signalling a failure on the part of Croatia to fully meet all membership requirements prior to entering the EU.¹⁷

Reorientation to the domestic level

The closure of accession negotiations, much more so than Croatia's actual accession two years later, inaugurated a crucial shift in the political opportunity structure domestic NGOs were faced with. In the words of one interviewee, the Commission began to “behave like a bad stepmother”¹⁸, turning its back on the very organisations it had previously contributed to strengthening and used as a major source of information when drafting its assessments on Croatia's progress. With the change in Croatia's membership status imminent, both the EU and the member states were keen to treat their political counterparts as equals, avoiding all-too-harsh criticism of outstanding shortcomings. Thus, while the Commission continued to publish semi-annual monitoring reports on Croatia's readiness until three months before its entry (European Commission 2013b), these were more of a formal exercise, and at no point was the previously fixed accession date called into question. Incentive for further reform was thus minimal, as was the EU leverage NGO empowerment had so crucially depended on.

In light of the new situation, Croatian NGOs adapted their mobilisation strategies, shifting their advocacy from the EU to the domestic level. Shortly before the next legislative elections, held in December 2011 six months after accession negotiations with Croatia had officially been concluded, the coalition formulated 112 distinct requests to all political parties running for office. Renamed ‘Platform 112’, the coalition meanwhile united 70 different organisations. It succeeded in having all parties indicate which requests they would be prepared to comply with should they become part of the government¹⁹ and, in April 2012 and

¹⁶ Interview with a representative of B.a.B.e., 31 March 2014.

¹⁷ Interviews with a Croatian academic, 12 May 2014, a member state representative, 12 May 2014, and an EU official, 1 April 2014.

¹⁸ Interview with a representative of the Youth Initiative for Human Rights, 6 May 2014.

¹⁹ Interview with a representative of the Centre for Peace Studies, 31 March 2014.

in March 2013, published comprehensive reports on the government's performance on all 112 requests. However, despite public recognition and wide media coverage across the country, the Platform suffered from the notable change in attitude of its former EU-level allies.²⁰ While the Platform and its individual members continued to refer to the commitments taken on by Croatia during the accession process in their monitoring reports, they could no longer rely on the backing of the EU, which significantly weakened their demands.²¹ Following the closure of accession negotiations, the only recently established triangle of EU-state-NGO actors was thus once again reduced to a dyad, with bilateral relations between EU actors and the soon-to-be new member state dominating the scene, and NGOs left on the margins of accession-related interactions.

The overreliance of NGOs on the 'Brussels route' throughout the accession process is not without consequence upon their potential for empowerment once EU leverage seeps away. Indeed, the near-exclusive focus on engagement with EU-level actors leads to a neglect of the domestic dimension, not just in terms of substantial advocacy efforts – here, the EU indeed was the more likely ally and the 'Brussels route' thus the more rational, effective choice – but also when it comes to fostering domestic forms of access that could have been carried over into the post-accession phase. Whereas a number of changes did take place, partly in response to EU pressure for inclusive policy-making, partly thanks to civil servants with an NGO background pushing for improvements of national-level consultation processes²², NGOs themselves were less involved in seeking to transform the domestic political opportunity structure. While the endogenous dimension of the political opportunity structure thus is highlighted by the late mobilisation of NGOs, suggesting that opportunities exist only where they are recognized as such, subsequent mobilisation patterns indicate that NGOs largely took the political opportunity structure as a given at NGOs took in their strategic calculations (Kriesi 1995). The privileging of the 'Brussels route' thus became the 'path of least resistance' in the face of tense state-NGO relations on the ground, but simultaneously precluded a more long-term empowerment of civil society actors.

²⁰ Interviews with a representative of GONG, 2 April 2014, of Zagreb Pride, 6 May 2014, and with two member state representatives, 12 and 14 May 2014.

²¹ Interview with a representative of Documenta, 5 May 2014, and of GONG, 6 May 2014.

²² Interviews with a representative of the Government Office for NGOs, 4 April 2014, and a government official, 4 April 2014.

The temporal limitation of civil society empowerment was compounded by two factors: during the accession talks, speed was of utmost priority for the Croatian negotiating team. The overall process was driven by a desire on the side of state actors to complete negotiations as fast as possible, resulting in a certain hostility towards critical NGO remarks on incomplete reforms.²³ An analysis of the policy-making process in Croatia claims that ‘the “hurry-up atmosphere” created around legislative initiatives (...) significantly narrowed down the space for meaningful participation of non-state actors in the process of policy formulation’ (Vidacak 2011: 7). Following the closure of accession talks, it is the lack of an ongoing monitoring mechanism that prevents NGOs from drawing on any ongoing EU leverage over domestic reforms. Recent findings from Bulgaria and Romania suggest that it is precisely the introduction of a co-operation and verification mechanism for these two countries that enables non-state actors to use EU rules to promote better governance even post-accession (Dimitrova and Buzogany 2014). The decision against a similar, even internal, monitoring mechanism for Croatia deprived the local NGOs of a crucial tool for their ongoing empowerment.

Another consequence of the rapidity of change during the final stages of accession process is the conservative backlash that has characterized Croatian society post-accession (Dolenec 2015), and that stands in contradiction to the liberal democratic agendas NGOs sought to promote throughout the membership progress. It is against this rise of intolerance that Platform 112 has mobilized in its most recent shift from state-level targets to citizens.²⁴ The Platform launched two major campaigns, one seeking to convince voters in a national referendum to reject the introduction of a constitutional ban on same-sex marriages, and another regarding the protection of the use of Cyrillic script in areas with a large Serbian minority. Drawing on established media contacts and targeting a wide audience through public events and press conferences, the Platform is seeking to position itself as a promoter of tolerance of and liberal norms in line with ‘European values’ the country was thought to embrace by becoming an EU member.²⁵ While their arguments failed to convince a majority of voters in the same-sex referendum campaign – the constitutional amendment defining marriage as a union of man and woman was adopted with 64.8% of the votes – it seems that the substantial analysis of Croatia’s commitments under the accession process and various international conventions regarding the protection of minority languages (YIHR 2014)³

²³ Interview with a representative of the Ministry of Justice, 2 April 2014, and a member state representative, 14 May 2014.

²⁴ Interview with a representative of the Open Society Foundation, 3 April 2014, and of GONG, 6 May 2014.

²⁵ Interviews with a representative of B.a.B.e., 31 March 2014, and of GONG, 2 April 2014.

played no minor role in leading the Constitutional Court to strike down the referendum on a restriction of the use of Cyrillic (Balkan Insight 2014).

Despite the Platform's ongoing activities, it is struggling to find its place post-accession.²⁶ Besides the loss of the EU as its most powerful ally, an increasing number of organisations are also suffering from the gradual withdrawal of international donors and the complicated transition from pre-accession to structural funds that frequently results in payment gaps that put at risk the very survival of some of the strongest NGOs.²⁷ The latest Platform report published in November 2014, almost two years after the previous one, is revelatory of the decline of the movement. Continuing the downward trend in terms of length – the first report was 30 pages, the second seven, the latest only two – it self-describes as an “abstract” and “cursory assessment” (Platform 112 2014). The tone is bitter, with the state of play assessed as a “long-term downward trajectory into the abyss” (ibid.: 1) where “the role of citizens and organised civil society is still being ignored, especially when politically sensitive issues are at stake.” Departing from previous practice, and expressing the degree of disillusionment with the performance of government actors, the report also makes no recommendations for improving the work of authorities, “since we believe it to be unrealistic to expect substantial reforms in the forthcoming election year” (ibid.: 1).

In sum, it thus appears that civil society empowerment in Croatia has come full circle: following late, but successful mobilisation through the strategic usage of EU leverage in the final stages of the accession process, the waning of the EU's interest forced NGOs to focus their attention on engagement with domestic actors. However, the post-accession political opportunity structure proved much less receptive to their claims: attempts to pressure the new government into completing outstanding reforms even once membership talks had been concluded largely failed, and attempts to re-engage with citizens were at least mitigated given the rise of social conservatism following Croatia's entry into the EU. Moreover, even where civil society empowerment did occur, it was largely procedural, allowing NGOs to mobilize and gain strength through the use of EU leverage, but limiting their potential to wield substantial influence to areas where their preferences were closely aligned with those of the EU.

²⁶ Interview with a former government representative, 1 April 2014, a NGO representative, 2 April 2014, and a representative of the international donor community, 3 April 2014.

²⁷ Interview with a representative of GONG, 6 May 2014.

Discussion

The close study of the evolution of NGO mobilisation in the field of law throughout the Croatian accession process shows that differential empowerment of civil society actors is at best a temporary phenomenon and not a long-term consequence of the EU accession process. This is largely due to the crucial role EU leverage plays in empowering domestic actors, and which closely circumscribes both the substantial and temporal realm in which they can hope to gain strength vis-à-vis other players. Once a country has passed a certain threshold in the accession process – the closure of formal negotiations seems to play a more important role here than the actual accession – the EU's interest in critical NGO input dwindles and the window of opportunity for NGO empowerment closes. In the absence of a favourable domestic political opportunity structure, the strengthening of NGOs on the national scene quickly halted or even reversed.

At the same time, the findings point to the importance of agency in transforming opportunities into actual impact, be it only at the procedural level. Only once NGOs became aware of ways in which they could use the change in the political opportunity structure to their advantage did the emergence of a multi-level set-up actually influence their strategic behaviour and therefore the domestic power balance. Effective and comprehensive mobilisation towards EU-level actors became a means to bypass more reluctant state-level actors and exert indirect pressure upon the government via EU conditionality and the membership incentive. The fostering of such awareness through international donors and EU officials confirms the powerful influence of transnational actors on democratic transition processes (Orenstein et al. 2008). Still, support by transnational actors alone is insufficient to trigger civil society empowerment in the longer term, given that inclusive procedures at the domestic level are still in their very early stages (Vidacak 2011).

The Croatian experience holds a number of lessons for ongoing negotiations with accession candidates. First of all, if the EU wants to contribute to a more lasting empowerment of civil society in accession countries, it needs to place emphasis the transformation of the domestic political opportunity structure, including the political culture that shapes state-civil society relations. As long as civil society empowerment passes almost exclusively through engagement with EU-level actors, it will remain constrained to the duration of the accession process and quickly unravel once EU pressure subsides. While the introduction of a post-accession monitoring mechanism, be it through the EU or internally with a degree of EU

oversight, can extend the enabling function of EU leverage beyond the accession date, it would still be only a transitional solution towards a deeper transformation of local consultation practices. Given that it requires time for institutional changes to translate into new practices, it would be useful for any improvements in domestic-level engagement with civil society actors to take place early on in the accession process for their effects to take hold while EU leverage is still strong. A more explicit conditionality on inclusive policy-making, as it already seems to be emerging albeit in non-binding terms (European Commission 2013a), can be a first step towards fostering sustainable civil society empowerment throughout – and beyond – the accession process.

Yet, the most fundamental role lies with domestic actors themselves. The late mobilisation of Croatian NGOs amputated them of a crucial period during which they could have pushed for more fundamental changes in domestic policy-making procedures, rather than acting in a context of urgency that precluded more long-term strategic considerations. Late awareness for the new opportunities opened by the ongoing accession process made a ‘boomerang’ strategy the only hope to affect domestic reforms in the final stretches of the negotiations, resulting in the described limited form of empowerment. An earlier mobilisation targeted both at EU-level and national actors in an effort to foster a more durable shift in the political opportunity structure may have enabled NGOs to create an institutional framework and attitudinal change that carried them beyond the accession date, establishing them as policy partners in a spirit of participatory democracy. However, such a more long-term approach would have required a degree of awareness and strategic capacity that the Croatian NGO scene was not able to muster at the time.

Conclusion

The Croatian experience demonstrates that differential empowerment is a result of the combined effects of a changed political opportunity structure and domestic actors able to act upon it. EU leverage plays a crucial enabling role especially in the final phases of the accession negotiations, where the prospect of EU membership is most immediate and executive actors thus most receptive to pressures resulting from EU conditionality and domestic criticism. Albeit only during a limited period of time, Croatian NGOs were able to capitalize on the altered political opportunity structure by feeding their positions into the formulation of the EU’s conditionality and practising a sandwich strategy that mirrored the EU’s top-down pressure through bottom-up mobilisation. However, the Croatian case also

suggests that once EU pressure subsides, any NGO involvement that has not been thoroughly institutionalized prior to membership is quickly marginalised, with executive policy-making taking over once again. In order to correctly capture the dynamics of differential empowerment, this process must be studied over time and most crucially in the periods leading up to accession and immediately after this crucial shift of a country's status vis-à-vis the EU has taken place.

In light of the ambiguous experience of Croatia, the ongoing enlargement negotiations in Montenegro and Serbia represent important opportunities to translate lessons learned into improved practices on the ground. A significant degree of exchange is already taking place between the three countries, both at the state and the NGO level. The EU has adjusted its approach by opening chapter 23 early on in the negotiations to ensure a substantial period of time for reforms and their consistent implementation on the ground, thereby enhancing the window of opportunity during which NGOs active in this field can draw on EU leverage. At the same time, the experience of their Croatian counterparts has made Serbian and Montenegrin NGOs aware of the need to mobilise early and to use the accession process to foster more durable forms of inclusion at the domestic level. A close study of the forms and reception of this mobilisation can tell whether NGOs in these two countries will be able to emancipate themselves from the need for EU leverage and empower themselves more durably as credible and effective partners in the domestic policy-making process.

Notes

¹ The term 'civil society' tends to comprise a broad scope of non-state actors, ranging from citizens' groups to business associations, trade unions, and non-governmental organisations. This paper focuses only on the latter, who are most active in the field of rule of law.

² For instance, oversight over anti-discrimination complaints was given to the Ombudsman rather than a new specific Commissioner being created, as the government had originally intended.

³ While the Youth Initiative for Human Rights is not a formal member of Platform 112, it closely cooperated with the Platform on the Cyrillic issue.

Interviews partners from the following organisations and institutions

B.a.B.e. (Budi aktivna. Budi emancipiran.)

Centre for Peace Studies

Delegation of the European Union to Croatia (transition office)

Documenta – Center for Dealing with the Past

Embassy of France in Croatia
Embassy of the Netherlands in Croatia
European Commission, DG Enlargement
GONG
Government Office for Cooperation with NGOs
Heinrich Böll Foundation, Zagreb Office
Ministry of Foreign and European Affairs of the Republic of Croatia
Ministry of Justice of the Republic of Croatia
Open Society Foundation, Zagreb Office
Representation of the European Commission in Croatia
TACSO Croatia Office
Youth Initiative for Human Rights
Zagreb Pride

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