INTRODUCTION

Five years after the fifth enlargement and more than two years after the sixth expansion of the European Union (EU), an attempt is being made to give those two groundbreaking events a reality check.[1] Arguably, the time has come to subject the triumphant political discourse, praising the unprecedented endeavor of expanding the European Union from fifteen to twenty-seven Member States against the test of effectiveness. The crucial question is: has the patient survived the operation and is it still alive and breathing normally?[2] On the one hand, we may hear that the European Union is in crisis and the fundamental questions of *finalité* remain unanswered. We also hear of the constitutional drama and post-enlargement blues undermining the effectiveness of the integration enterprise. On the other hand, some argue that the two recent waves of enlargement have been the EU's most successful foreign policy projects, which proved their purpose and justified the political and economic sacrifices. To evaluate all pertinent factors underpinning the fifth and sixth enlargements of the European Union would go beyond the scope of one book. That would require a multi-volume, interdisciplinary study of enormous proportions.

The focus of this study is on the application of EU law in the twelve new Member States of the European Union. It is not a matter of professional chauvinism of the authors but rather a method of introducing critical analysis of legal issues into the equation of post-accession political and academic discourse. The recent two enlargements are often perceived as *par excellence* political processes of reunification of Europe. Undoubtedly, such an approach has merits. However, it should be remembered that the Community Treaties established a new legal order, for which the Member States passed sovereign competences for joint governance and – what is equally important – the subjects of that

[1] The accession of Bulgaria and Romania is considered by many as the second wave of the fifth enlargement of the European Union. Although politically the 2004 and 2007 enlargements are part of the same project, they are not in legal terms. The accession of ten countries on 1 May 2004 and the remaining two on 1 January 2007 is governed by separate Accession Treaties, which provide for similar but not the same entry conditions. As explained later in this book, both Bulgaria and Romania have been special cases due to domestic problems with compliance with EU *acquis*. Almost three years after the accession, Bulgaria and Romania are still covered by a tailor-made post-accession monitoring mechanism and, to much regret, are still underperforming. Bearing in mind the above, we refer to fifth and sixth enlargements of the European Union.

[2] One of the early analyses clearly suggests that this is the case. See further P. Settembri, 'The surgery succeeded. Has the patient died? The impact of enlargement on the European Union', *Jean Monnet Working Paper* No. 4/07.

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legal order are not only the States themselves but also individuals.[3] These fundamentals were established by the European Court of Justice at the very early stages of the integration exercise and remain equally valid in 2009. The legal aspects of the recent enlargements have already received a fair degree of attention in the academic writing; however, the focus was mainly on the constitutional challenges of membership in the European Union. The scope of this volume is much broader. The authors aimed at an in-depth and comprehensive analysis of national legal orders and reception of EU law by national authorities, with particular emphasis on domestic judiciaries. All chapters grouped in Part Three of the book follow the same structure, allowing readers to appreciate a comparative analysis of crucial legal issues related to the recent enlargements of the European Union. Parts One and Two were tailored to create a proper systemic background and tackle several horizontal matters, including the impact of the enlargements on the European Union (Part One – West meets East) and on the newcomers (Part Two – East meets West).

Before inviting readers to dwell into this "Brave New World", it is fitting to explain the symbolic title of this book, its leitmotif and the photographs on the cover. One may ask if the new Member States are a Brave New World, and, if so, are they the Huxley's world or rather something different. The editor of this volume argued recently that Poland – the biggest newcomer – is on its way from Ismail Kadare's 'Palace of Dreams'[4] to Europe.[5] Similarly in this volume, together with the contributors from both sides of the late Iron Curtain, the editor argues that the new Member States have gone during the past twenty years from Huxley's vision of the world to a rather new environment. It may still be considered as "work in progress"; however the progress has been tremendous. By the same token, the title term "Brave New World" has received a new meaning. Although criticism of legal developments is clearly *en vogue* these days, it is only fair to take into account the unprecedented breadth of the legal reforms the Central and Eastern European countries have had to go through during the past two decades.

When one appreciates the negative impact of Communist brain-drain on law-makers and judiciary as well as the mentality of its members, the perception of the last twenty years of legal *rapprochement* towards Europe changes considerably. From that perspective a glass filled with water looks half full, not half empty. In this context we are facing the Brave New World – countries in transition, which as a part of the integration exercise, had to reform their legal orders totally and in a very short time get ready to deal with this new legal order (as proclaimed by the European Court of Justice). This book demonstrates that the change has come, and EU law is paving its way – sometimes against all odds – in the new Member States. This process is clearly far from over and will take decades to complete. Yet, the first five years (in the case of eight countries which joined in 2004) is instructive enough to demonstrate the limits and potential of

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[3] ECJ, Case 26/62 *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration* [1963] *ECR* 1.

[4] I. Kadare, *The Palace of Dreams* (Random House, Vintage Classics 2008).

[5] A. Łazowski, 'From Palace of Dreams to Europe', paper presented at a conference '"Legacies and Prospects" Poland 1989: 20 Years On', St. Antony's College, Oxford University, 8 June 2009. Text available at http://westminster.academia.edu/AdamLazowski/Talks.

the enlargement project. Arguably, the legal order of the European Union has survived this important test; however, it has also demonstrated the challenges to the EU's absorption capacity. The latter is usually understood in a very political fashion as the ability of the European Union to function properly and maintain its effectiveness. It should also be understood as covering the ability of the legal order underpinning the integration endeavor to remain effective and efficient. Following the accession of Romania and Bulgaria, an interesting rule of thumb emerges. The legal absorption capacity of the European Union decreases proportionally to the gravity of domestic problems with human rights standards, corruption, independence of judiciary, etc. EU conditionality employed thus far *vis-à-vis* countries aspiring for membership has worked relatively well with countries to which the first verse of Pink Floyd's 'Great Day for Freedom' applies. A number of countries that emerged on the ashes of Communism engaged in absurdities and atrocities depicted in the remaining verses of this very moving tune. This book is about the ten countries that raised the glasses high as freedom arrived and passed on peaceful, albeit turbulent at times, multidimensional transition. It all started with three Visegrad countries – Czechoslovakia, Hungary and Poland. Prague, Budapest and Warsaw – capitals of the trio – have their new world streets, and this symbolic fact is reflected on the cover of this book. For those countries who turned to far rockier paths, there is a long way to go; however, as this book proves, the Brave New World is a possible and feasible scenario.

Tempus edax rerum said Ovid a long time ago. This very acute observation applies to all things in life, including books. With a rapidly changing legal landscape it is almost impossible to publish a book on EU law which by the time it reaches readers is still up-to-date. Alas, this book is no exception. Since the material was submitted in June 2009 a number of developments has taken place. Not only a plethora of new case law has emerged but also the Treaty of Lisbon entered into force on 1 December 2009. The cut off date for this volume was 1 June 2009 and the authors aimed to reflect the law as it stood then. As always with edited volumes some chapters were submitted early, some late. Every effort was made to update them all so that the book gives readers a comprehensive overview of the legal developments which took place since the European Union enlarged in 2004 and 2007. In several chapters the centre of gravity is on the first years of membership with a view of demonstrating the emerging practices of national courts undergoing a fast track Copernican revolution. However, a brief account of major subsequent developments was also made where necessary.

Adam Łazowski