



Foreign & Commonwealth Office

Meeting with Professor Dmitry Kochenov in London in June 2014

1. A Foreign Office official met with Dmitry Kochenov in London in June 2014.
2. Professor Kochenov said Article 49 had fallen short of what its text set out. On the one hand, individual Member States had overstepped their role; on the other hand, the Commission had assumed a greater role at the expense of Member States in general.
3. Greece had hijacked EU process over Macedonia's accession negotiations. The result was that Macedonia, early front-runner in the Western Balkans towards EU futures, was now off-track, more nationalist, and less pro-EU. Public opinion in it was radicalised. The EU's leverage over Macedonia had subsequently been reduced. The EU needed a mechanism to prevent Member States blocking the progress of enlargement countries. Article 49 talked of negotiations and unanimous approval, but not of veto powers – hence Greece had overplayed its hand. So a new balance was required to restore loyalty to the text, and faith to the spirit, of Article 49, whose text only allowed for final blockage of a country's EU membership aspirations.
4. The Commission's role in the enlargement process had expanded. Member States had been too keen to delegate to the Commission. Indeed, without Commission recommendations, nothing happened. But too many Member States took the Commission's role on trust. The Commission's track record was not great. It had not taken pre-accession reporting seriously. Member States needed to supervise the Commission better, and get the underlying thinking of Commission recommendations, and limitations of that information. Like all institutions, the Commission had a vested interest to build its power base. The cases of Hungary and Romania had shown the Commission had sanctioned shallower reform, which had led to these countries backsliding. There was no mechanism in the EU to deal with such regression. Article 7 was political and too difficult for Member States to invoke.
5. The Commission had been far more effective at getting accession countries to adhere to the acquis, than securing these countries' buy-in to values conditionality such as the Copenhagen Criteria. Hungary was an example. With the Copenhagen Criteria, the Commission was out of its depth, and in complex territory for which it had no templates to export. The Commission had been complacent that an accession country's meeting of the acquis would be sufficient to embed reform. Commission exercises were abstract; too much assessment rested on enlargement countries' formal rather than substantive compliance.
6. The Commission should, through the accession process, be preparing functional states, not states which are mere add-ons to the Single Market. Often, the Commission's

recommendations to candidate countries were contradictory, as was the case of civil service law for the Czech and Slovak Republics. The Commission's defence – that it was observing different regulatory contexts in the two countries – rang hollow. Moreover, its defence on Hungary's repeal of EU law post-accession – that it could not possibly have predicted such political eventualities – was self-exculpatory. The Commission had underestimated the negative impact of poor assessment on values conditionality. A greater role for the Council of Europe's Venice Commission, leading body in terms of assessment of Rule of Law – might lead to improved assessment ahead. Some Princeton scholar had proposed an independent 'Copenhagen Commission' to look at embedding the values articulated in 1993, but whilst attractive in theory the concept was not a practical suggestion.