

## BRIEFING NOTE

### The Beneš decrees: implications for EU enlargement

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This year's succession of election campaigns in Central and Eastern Europe has seen an increasing willingness on the part of right-wing populists to play up historical injustices and past hatreds to gain political advantage. Much debate has centred on the decrees of Edvard Beneš, post-war Czechoslovak president, which legitimised the removal of the Czechoslovak citizenship of German and Hungarian minorities, and the expropriation of their property after 1945. The decrees effectively led to the expulsion of 2.5 million Sudeten Germans from Czechoslovakia. Right-wing parties in Austria, Germany and Hungary – including Austrian Chancellor Wolfgang Schüssel and former Hungarian Prime Minister Viktor Orbán – have called for the decrees to be annulled before the Czech Republic can join the EU.

The European Commission holds that the Beneš decrees are not an obstacle to Czech or Slovak accession, although the European Parliament's views are more ambivalent. There is no evident legal basis in the EU's treaties that would allow a historical injustice to disqualify a country from membership, but any continuing application of the decrees in Czech law would be incompatible with the anti-discrimination provisions in the treaties. The accession conditions involve criteria on democracy, human rights, and respect for and protection of minorities, but they relate to current practice rather than past wrongs. The EU's focus is on encourage the reconciliation in central Europe. Resolution of outstanding bilateral issues is an explicit precondition for NATO membership, and the EU has strongly encouraged the signature of 'Basic Treaties', for example between Slovakia and Hungary, and Hungary and Romania.

Nevertheless, a succession of right-wing populists has tried to exploit the issue during the campaigns for this year's many elections in central Europe. Hungary had a change of government in April, while the Czech Republic went to the polls in mid-June, and Slovakia and Germany both have parliamentary elections in September. Increasingly, party cleavages in post-communist central European countries are falling along nationalist lines rather than traditional West European left/right lines. Conservative parties tend to distinguish themselves from their rivals by their willingness to pursue nationalist interests rather than by neo-liberal economic policies or libertarian social policies.

During the Hungarian election campaign, then-Prime Minister Viktor Orbán said in February that the Beneš decrees were incompatible with EU membership. Hungary was then forced to call off a meeting of central European leaders after Czech and Slovak officials refused to attend owing to his comments. The meeting would have been an important opportunity for the candidates for EU membership to decide a common front against the EU's reluctance to grant their farmers full subsidies from the budget after they join.

In January, *Profil* - a Viennese weekly - published comments by Czech Prime Minister Miloš Zeman referring to the Sudeten Germans as “Hitler’s fifth column” and referred to their supposed collective guilt in destroying “the last island of democracy” in central Europe. Zeman was reacting to provocative comments made by Austrian populist Jörg Haider during his campaign for a petition calling for the Czech nuclear power plant at Temelin to be closed down. Haider – who is the governor of Carinthia – has tried to use the concerns of the Sudetenlanders who went to Austria after the war to block enlargement of the EU.

German Chancellor Gerhard Schröder cancelled an official visit to the Czech Republic at the end of February amid fears that the dispute could become an issue in the campaign for the German elections in September. Schröder’s conservative rival for the chancellorship, Edmund Stoiber, is prime minister of Bavaria, where many of the expelled Germans from Czechoslovakia settled, and his wife was deported from the Sudetenland. Stoiber told the Sudeten German association’s annual meeting on 19 May that he would push for annulment of the decrees if he became chancellor. He did not threaten to block Czech accession, but he questioned the suitability for membership of countries that defend historical expulsions. Moreover, this year’s CDU/CSU governmental programme declares all expulsion decrees and agreements to be contrary to the spirit and letter of EU and international law, and argues that the decrees enshrine ethnic cleansing in law.<sup>1</sup>

The feeling in the Czech Republic about the decrees is primarily one of embarrassment, not pride. Nevertheless, the country is most unwilling to open up the issue again, or to annul the decrees under pressure from its neighbours. It is difficult for the Czechs to agree to demands for restitution of property when the Sudeten Germans are widely regarded as having supported Nazi Germany’s conquest of Czechoslovakia in 1939. Czechs fear that a repeal of the Beneš decrees would result in a flood of property claims from the 80,000-strong lobby of Sudeten Germans. The Czech parliament reiterated its opposition to restitution of property or citizenship to those expelled, and the government argues that repealing the decrees would be tantamount to revising the post-war settlement agreed at the 1945 Potsdam conference. The decrees remain part of Czech and Slovak law, but the Czech government maintains that they no longer have any validity. However, the Sudetenlanders’ main concern is not the decrees themselves, but rather the restitution of their property – which is a separate legal issue from annulment.

The Czech and German governments signed a common declaration of reconciliation in 1997 that was supposed to close the issue with formal apologies from both governments. However, there are still many tensions waiting to be exploited by populist politicians in all the countries. In addition to the question of the many post-war expulsions of populations and persecutions, there is the wider linkage of relations between the Czech Republic and Austria, Slovakia and Hungary, in a region where history has left a legacy of hatred. The past decade has been a remarkably calm period of reconciliation, but the breakdown of Yugoslavia into war fuelled by ethnic conflict during that period provides a grim reminder of where extreme nationalism can lead.

The nationalist question also complicates the tricky issue of Germany’s role in the region. It is easy for populists to exploit the perception that enlargement is all about pursuit of German interests. After all, the Austro-Bavarian-Hungarian campaign on the Beneš decrees has been conducted under the EU umbrella, and there is a danger that this campaign will turn the Czech opinion against the EU as a result. Following the spat in Spring 2002, Czech public support for accession fell to 41% in April, down from 53% polled in January, while the opponents of accession rose to 36% from 20%.

Some German and Austrian MEPs have tried to use European Parliament debates to pursue the issue. The European Parliament has asked a panel of experts to assess the compatibility of the decrees with EU law, but the delegation it has appointed to have talks with Czech MPs is chaired by an Austrian with two German deputies, one of whom is the president of the Sudetendeutsche Landsmannschaft. Moreover, the head of the international affairs commission of the European Parliament is German, as is Enlargement Commissioner Günter Verheugen. It is thus easy to create the impression among Czechs that the enlargement process will be used to give satisfaction to the Germans on the post-war settlements, even if the decrees do not block the formal accession process.

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<sup>1</sup> CDU/CSU, ‘Leistung und Sicherheit: Zeit für Taten’, Governmental Programme 2002/2006, pp. 65-66.

The rhetorical temperature will drop once this year's elections in the region are over. The new Hungarian government – a coalition of socialists and liberals – will be less nationalistic in tone than was Viktor Orbán, and Prime Minister Péter Medgyessy has already said that he will not pursue the issue. After the Czech, Slovak and German elections, regional relations are likely to be dominated by the final push in negotiations for the planned eastward enlargement of the EU in 2004. It is unlikely that the issue of the Beneš decrees could disrupt the closing stage of negotiations, but it could sour the atmosphere. Moreover, if there is no progress towards eliminating the decrees from the present legal order, the Austrian parliament might refuse to ratify the accession treaty in 2003.

The nationalist tone of central European debates is a sign that formal reconciliation between governments will only slowly lead to a full reconciliation between populations. In the longer term, EU accession offers the opportunity to develop much closer cross-border integration. The EU needs to replicate the success of its strategy in the Franco-German borderlands – where it fostered post-war reconciliation and economic integration – in Germany and Austria's relations with their Czech and Polish neighbours.

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