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THE EFFECTIVENESS AND LIMITATIONS OF POLITICAL INTEGRATION IN CENTRAL AND EASTERN EUROPEAN MEMBER STATES: LESSONS FROM BULGARIA AND ROMANIA

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Antoaneta Dimitrova

Abstract

This paper reviews the European Union's efforts for political integration of the post-communist states that joined in the 2004-2007 enlargement. The paper traces the EU's focus on different democratic institutions, as it evolved from minority problems to rule of law and the struggle against corruption and highlights different modes and tools of political integration. Subsequently, the paper focuses on the tools and modes of integration used specifically in the cases of Bulgaria and Romania. Reviewing key contributions of this debate, the paper highlights the limitations of the EU's approach, especially with regard to the Cooperation and Verification Mechanism used with Bulgaria and Romania, and concludes that a strategy that makes civil society a permanent partner of the EU has a better chance of success.

The Author



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1. Political Integration of Candidate States in the Broader EU Context

The European Union's (EU) focus on political integration¹, in the sense of evaluating and supporting democratic regime consolidation and democratic institutions, rule of law, human and minorities' rights, dates back to the early years of the 2004-2007 enlargement. While the EU was considered an important factor in the consolidation of democratic regimes in Spain and Portugal (Preston 1997), the Spanish and Portuguese transitions were considered nearly complete when these countries joined the European Community. The focus on strengthening political institutions and human and minorities' rights in the post-communist states of Central and Eastern Europe (CEE) developed through the instruments used in the so-called mixed Association or Europe Agreements, which the aspiring members of Central and Eastern Europe and the EU concluded between 1992 and 1995 (Dimitrova 2004, 2011; Maresceau 1997; Petrov 2011).

The political criterion formulated in the Copenhagen European Council Conclusions of 1993 provided² a broad definition of what the EU expected from its future member states in terms of democracy. In the course of the 2004-2007 enlargement, tools and criteria have been fleshed out through the European Commission's regular progress reports and in the interactions³ between the EU institutions and executives, legislatures, judiciaries and civil society representatives from candidate states and in various *ad hoc* forms of political dialogue. The EU's presence and attraction was seen to be significant in itself in providing 'passive leverage' and, later, active support for reformist parties (Vachudova 2005). The widespread perception that joining the EU equaled completion of democratic transitions mattered as well for elites in Central and Eastern Europe and for their citizens (Dimitrova/Pridham 2004).

In a more general sense, political integration during the last decades grew from the incremental efforts of all participating actors, but above all the EU itself, to define norms and values central to the European Union as a whole, a process which was seen by some scholars as an important step towards constitutionalization (Rittberger/Schimmelfennig 2006). The 2004-2007 Eastern enlargement provided an impetus to this process, next to other events and developments in the EU's member states.

The constitutionalization trend and the EU's efforts to support political integration in new member states, however, should be evaluated in comparison with the growth of other areas of EU competence. When compared to the monitoring and enforcement of the internal market *acquis* and new initiatives, such as the European semester, tools and modes for political integration are relatively modest, as member states are reluctant to cede sovereignty and enforcement is weak to non-existent. The only available legal basis

1 Political integration is a term also sometimes used to denote political union among the member states in the sense of European Political Cooperation as developed in foreign policy in the 1970s and 1980s. The term is used here to denote democratic norms and institutions in the EU as shared by member states and extended to candidates and new members and not foreign policy cooperation.

2 The first criterion from Copenhagen required "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities..." (European Council 1993).

3 The Association Agreements, in operation till the Accession Treaties were signed, were the legal framework which defined these regular interactions, for example in fora such as the Joint Parliamentary Committees and Association Councils. The other defining instrument was the Accession Partnership, passed in the form of Council regulation and not as a bilateral treaty.

to address serious breaches of democratic norms and principles, Article 7 of the Treaty on European Union (TEU), “the nuclear option”, contains such a high threshold of actor agreement necessary to get in motion as to be almost unusable (see also van Hüllen/Börzel 2013).

To be effective in promoting political integration in a more significant, structural way for new - and older - member states, treaty change and a more vigorous application of Article 7 of the TEU could be envisaged, neither of which are currently part of the EU’s agenda. The EU’s core identity and functions as a regulatory union (and nowadays Economic and Monetary Union) are still much stronger than political integration, even if all treaties and member states stress their commitment to the EU’s core democratic principles and values.

Notwithstanding these general characteristics of the context in which the EU has developed its modes of political integration, there has been quite some progress and learning in terms of tools and approaches towards addressing specific problems of governance in candidates and neighbors. Rule of law did not receive much emphasis in the initial treatment of the Copenhagen criteria (Dimitrova 2004, 2011), but the development of specific anticorruption measures did merit a special place in all of the EU’s strategy papers and monitoring reports (Kochenov 2004). With time, specific deficiencies and problems of the various candidates led to an increased emphasis on rule of law as part of a shift of focus. Whereas the initial emphasis in applying the first Copenhagen criterion was on stability (e.g. with the bilateral Stability Treaties between Hungary and Romania and Hungary and Slovakia in the mid-1990s), democratic institutions, balance of power (e.g. the initial evaluation of Slovakia in the Agenda 2000 in 1998) and minorities’ rights (e.g. Latvia in 1998), rule of law, judicial reform and measures against corruption acquired greater emphasis towards the end of negotiations and especially in interactions with Bulgaria and Romania, where these rules and institutions were particularly weak.

This paper will focus on the efforts of the EU to develop modes of political integration other than (or combined with) membership conditionality and specifically on tools supporting rule of law and judicial reform in Bulgaria and Romania after their accession to the EU in 2007. Nevertheless, the wider context of political integration and its successes during pre-accession in promoting, among others, human rights and minorities’ rights (Kelley 2004; Schimmelfennig et al. 2005; Schweltnus 2005) should not be forgotten. Comparisons between the EU’s relatively successful overall efforts at political integration before the completion of the 2004-2007 enlargement (Dimitrova 2004; Schimmelfennig/Sedelmeier 2005; Vachudova 2005) and efforts to influence the stability of institutions guaranteeing democracy and the rule of law after accession (Mungiu-Pippidi 2014; Sedelmeier 2014) provide grounds for analysis of domestic factors and mechanisms that influence the success of political integration post-accession. This paper will highlight recent studies in a comparative perspective and evaluate the results of important recent empirical findings regarding political integration with emphasis on rule of law and reform of the judiciary in Bulgaria and Romania, while striving to keep the broader context of developments in all the member states from Central and Eastern Europe.

2. EU Tools and Underlying Mechanisms of Social Influence

Post-accession conditionality and assistance from the European Union have a mixed record in terms of preventing democratic backsliding in the countries that joined the European Union in 2004 and 2007. It can be argued that conditionality as a tool has not entirely lost its strength, but there is a different balance between the mix of mechanisms underlying the ability of this tool to affect the behavior and decisions of political elites.

Conditionality – a policy tool that is often credited with the most significant impact the EU has exerted on candidate states – has always been underpinned by both social learning and rational incentives mechanisms (Andonova 2005; Dimitrova 2011). As Andonova (2005) has shown in her analysis of the Europeanization of environmental policy in the post-communist context, at the beginning of the post-communist transition, there were conditions conducive to transnational norm diffusion in the CEE candidates. These were first, policy failure leading to demands for lesson drawing, second, ideational linkages between democratization and environmental reforms and third, the desire to emulate Western institutions. As Andonova showed, next to the presence of favorable conditions for lesson drawing shaping demand for environmental policy transfer, cooperation with international institutions and their resources provided supply of expertise and international networks to develop lesson learning, information exchange and capacity building. As accession negotiations started, the linkage between the broader overarching objective of accession and the need to adopt – or request transition periods for adopting – the environmental *acquis* in order to move further in the negotiations meant that rational incentive mechanisms drove rule adoption. Mechanisms of socialization and learning persisted even in the context of interest driven negotiations, easing the way for adoption of the *acquis* (Andonova 2005: 137-139). A similar dynamic of mixed mechanisms of influence at play could be observed with respect to human rights and minorities rules: while the EU made observance of human rights and minorities' rights one of the key conditions for accession, other international organizations, such as the Council of Europe, provided for deliberation, expert networks, advice and policy solutions that facilitated and encouraged social learning and helped legitimize difficult decisions (Kelley 2004).

At the level of heads of state and government, external incentives did not constitute only material benefits or the promise of winning the next election, although such dynamics clearly also played a role in pushing political parties towards more democratic choices and liberal programs (Vachudova 2005). The leaders of post-communist parties and governments, even barely reformed communist parties, legitimized their own rule with a discourse referring to the return to Europe, about making the civilizational choice to join Western democracies and be part of the European Union (Henderson 1999; Dimitrova 2011). In terms of the scope of arguments available to political leaders and the elements of history and identity that they used to justify their policies and choices, in the 1990s and the 2000s, Europe was the only game in town. Rhetorical action, the reference to a shared community of norms (Schimmelfennig 2001), turned out to be binding not only to the leaders of the EU, despite the reluctance of some to admit the former communist states, but to the leaders of these states themselves. Until Hungary's Prime Minister Victor Orban broke this spell in August 2013 with a speech renouncing

liberal democracy and the EU as a model, no leader of a candidate or new member state would have challenged the commitment of their country and government to liberal democracy or European integration.⁴

3. Main Tools and Mechanisms Pre-Accession

The main legal framework governing relations during the negotiations period were the so-called Europe Agreements, the Association Agreements (AA) between the EU and the Central and Eastern European Countries (CEEC) (European Commission 1990). These were called mixed agreements because they contained elements of political and cultural cooperation which were, at the time of their negotiation, outside the European Community legal framework and in the competence of the member states (Maresceau 1997; Mayhew 1998: 43-46). They were based on the existing model of the AAs with Turkey and Malta, but went much further in several respects, including conditionality and political cooperation.

At the time when they were concluded, they were the most comprehensive trade and cooperation agreements the European Community had ever developed. They also had, similar to trade and cooperation agreements with other states, for example the one with Russia, a part on political cooperation, which referred to the EU's founding values and principles of democracy, rule of law and human rights. Connected to these, the main innovation introduced was the inclusion of the so-called suspension clauses⁵, articles which stipulated that relations and trade could be suspended in case of violations of democratic principles, human and minorities' rights (European Commission 1995). It is worth noting that a large part of the legal literature on conditionality refers to the operation and use of these specific provisions, which has been, in fact, very limited and therefore is considered by some to have been ineffective (Hillion 2004; Kochenov 2007).

Taking into account the shadow of sanctions in the form of suspension of the AAs, however, political analyses reach different conclusions (Mayhew 1998; Dimitrova 1998; Dimitrova/Pridham 2004). The EU and its institutional actors, have often referred to these Association Agreement clauses and used them to threaten sanctions when applying political conditionality. Therefore, we can claim that political integration has been supported by an enforcement mechanism, which relied on the shadow of suspension and sanctions. This has found its empirical expression in resolutions adopted by the European Parliament (EP) and diplomatic démarches adopted by the Presidency of the Council (for example towards Slovakia, addressing the actions of Prime Minister Vladimír Mečiar in the period 1994-1995), which all have referred explicitly to the obligations under the Association Agreement (Dimitrova 1998).

In terms of assistance programs, the main tool of pre-accession assistance was the PHARE programme, which was devised for economic reconstruction (Mayhew 1998), with very little support for democracy in mind, as the name itself indicates (based on the French acronym of Poland, Hungary: aid for economic reconstruction). The creation of domestic political frameworks for reform – constitutional change, political, improvement of minorities' rights and human rights – was made a condition for receiving assistance

4 The other possible exception is Vaclav Klaus, the long-standing eurosceptic President of the Czech Republic, who has been very critical of the EU, yet he has not questioned liberal democracy or the internal market.

5 The so-called 'Baltic' clauses and later, more strongly formulated, the 'Bulgarian' clause.

under PHARE, so the program did contain some indirect conditionality supporting political integration. In 1992-1993, two sub-programs of PHARE, the PHARE Democracy and PHARE Partnership and Institution-Building programme, were created. The resources committed under these programs were, however, very small compared to the overall assistance from the EU. For example, while total PHARE assistance was about 1 billion ECU in 1992, funding under PHARE Democracy in 1992 was 5 million ECU and overall PHARE Democracy (later PHARE and Technical Assistance to the Commonwealth of Independent States (TACIS) Democracy) funding remained small, around 1 percent of total PHARE funding (ISA Consult et al. 1997). From 1998 onwards, 30 percent of PHARE funding were devoted to institution building, which was managed by the Organisation for Economic Co-operation and Development's (OECD) SIGMA unit.⁶ While the share of projects supporting democratic institutions (for example parliaments and elections) and civil society remained small, the EU was able to use PHARE assistance as an instrument for political pressure, for example by suspending assistance after the violent repression of student protests in Romania in 1990.

In contrast to the conditionality in the Association Agreements and PHARE, there were institutional features of cooperation established with the AAs, to promote political dialogue, socialization and the inclusion of a somewhat broader set of actors. The Joint Parliamentary Committees, held regularly between members of the European Parliament (MEPs) and parliamentarians from the candidate states, were an important vehicle for political dialogue. Decision-making was not the most important feature of these meetings, but mutual learning and socialization were. Association Councils were the highest decision-making bodies established with the AAs, containing elements of political dialogue, conditionality, and enforcement (Dimitrova 2011).

The European Parliament developed its own version of political dialogue by launching the 'European Democracy Initiative' in 1992 (European Parliament 1992). The democracy initiative aimed, among others, to fund opposition parties for contesting elections and later to create links between parliaments in CEE and the EP. The European Parliament also proposed funding civil society organizations next to political parties, funding, which was later channeled through the PHARE Democracy programme (Dimitrova 1998).

An intergovernmental initiative, which was seen as an important tool to ensure both regional stability and political integration, was the so called Balladur Stability Pact, proposed by the French Prime Minister at the time to the Copenhagen European Council in 1993. The plan specified actions under the newly established EU Common Foreign and Security Policy (CFSP) pillar and aimed to ensure that neighboring CEE candidate states would conclude agreements with each other, guaranteeing consolidation of borders and minority protection. This was a typical leverage mode action, underpinned by fairly straightforward conditionality: a key to the success of the Balladur Stability Plan was making accession negotiations for the CEE states conditional on the prior resolution of border and minority issues. Romania, Hungary and Slovakia were targeted as countries having minority issues to resolve and were asked to sign bilateral Stability Treaties addressing

6 SIGMA stands for Support for Improvement in Governance in Management and has been active for the last twenty years as a special dedicated unit of the OECD. The SIGMA unit was created in 1992 with the general aim to make the OECD's general public administration and public management expertise available to CEE candidates and by extension to manage the PHARE programme (European Parliament 1998). SIGMA's expertise continues to be drawn upon for public management reform in candidate states from the Western Balkans.

these. These so called Basic Stability Treaties were indeed concluded later on and the Stability Pact itself became part of the framework of the Organization for Security and Co-operation in Europe (OSCE).

Last but not least, towards the end of the negotiations for accession in 2004-2007, the European Union proposed the creation of a Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania, aiming to continue monitoring on aspects of democratic governance, such as rule of law, reform of the judiciary and the fight against corruption and organized crime. The CVM's operation should be assessed as a post-accession tool even though it was adopted before accession.

The pre-accession tools, the actors they targeted and the modes of interaction are summarized in Table 1.

Table 1: Pre-accession tools and modes of influence on political integration

Targets Instruments	State actors	Non-state actors
<i>Direct</i>		
Enforcement (<i>leverage</i>)		
Conditionality (<i>leverage</i>)	Suspension clauses AAs Démarches of the Council Troika European Parliament resolutions <i>acquis</i> conditionality (negotiations) 'enlargement conditionality' ⁷	
Political dialogue (<i>linkage</i>)	Association Council Joint Parliamentary Committees Parliamentary representatives from opposition as well as ruling parties	

7 Additional multilateral or bilateral conditions which applied – sometimes informally during negotiations – to candidates, but not to EU member states, as there is no *acquis* or the policy is disputed among EU member states: e.g. establishment of constitutional courts and ombudsmen, adoption of laws on use of minority language and collective minorities' rights, improving conditions for orphans in Romania etc.

Assistance (<i>linkage</i>)	PHARE ⁸ , specifically PHARE Democracy institution-building assistance Technical Assistance and Information Exchange instrument (TAIEX) SIGMA Twinning Training sessions by EU public admin experts and European Institute of Public Administration (EIPA)	Non-governmental organizations (NGOs), political activists Governments Member state experts OECD experts Civil servants
<i>Indirect</i>		
Competition	Competition between Helsinki and Luxembourg group of accession countries, so-called regatta principle	
Lesson-drawing	Rule of law, judicial reform	Legal experts and NGOs
Socialization and capacity building	Training sessions by EU public admin experts	EIPA ⁹

Source: Author.

To summarize, the European Union's ability to support democratic institutions, human rights, minorities' rights and rule of law in the CEE states, when they were negotiating to join the EU, was based on a set of modes of influence in which conditionality, asymmetric governance and rational, incentive-based mechanisms dominated, but were supported and strengthened by socialization, lesson drawing and imitation mechanisms. The tools the EU used all contained a mix of the basic mechanisms of influence and socialization: socialization-ideational or rational-strategic. Furthermore, we should not forget that the impact of the EU was supported by the uniform preferences of domestic elites in favor of accession and in this sense was also overdetermined.

Given that the EU's relative success in supporting the consolidation of democratic institutions, human and minorities' rights – what we can call political integration – was based on a combination of mechanisms or modes of influence, the question is how a different mix of these same modes and mechanisms performs after accession and whether new ones were added.

Comparative studies of backsliding after accession have not found a general trend towards rapid deterioration of governance, but there have been no further improvements either (Levitz/Pop-Eleches 2010a,

⁸ Minimal political integration component compared to overall funding.

⁹ See also Mayhew (1998: 230-231).

2010b). Furthermore, two major mechanisms – remittances and migration – helped to support socialization and diffusion of democratic norms and have been based on social movements and demographic trends, such as immigration from Eastern to Western Europe, rather than targeted EU tools (Levitz/Pop-Eleches 2010b). Nevertheless, EU monitoring through the CVM has played its role in constraining negative trends, albeit under very demanding conditions (Sedelmeier 2014).

The CVM was a tool that initially relied on leverage, but without conditionality this did not amount to much, therefore it started out quite weak. As the Commission gained further experience in applying it, a link was made between the CVM reports, investigations by the European Anti-Fraud Office (OLAF) regarding fraudulent use of EU funds (in Bulgaria), funding and the attempts by Bulgaria and Romania to join the Schengen zone. Assistance to Bulgaria was suspended once in 2008, following an OLAF investigation of large-scale fraud committed under the Special Accession Programme for Agriculture and Rural Development (SAPARD) by a Bulgarian-German and Greek consortium. This was based on existing CVM mechanisms, but also on the Commission's general prerogative to suspend assistance under specific programs in cases of improper use of resources. Another recent case of a country for which there has been a suspension of funding has been Hungary. The Commission was able to do this without the existence of a CVM mechanism. Last but not least, the CVM used conditionality where the main incentive became the joining of the Schengen free zone, even though the connection between CVM indicator areas, such as corruption and the judiciary, and the operation of the Schengen requirements is not direct. Nevertheless, this has been a move that has added some more leverage to CVM reports despite protests from Bulgaria and Romania (Spendzharova/Vachudova 2012). There is a lively debate in the literature regarding the effectiveness of the CVM in Bulgaria and Romania. This debate and the findings of studies of the EU's efforts of supporting judicial reform will be examined in more detail in the next section.

Political dialogue and linkages through the European Parliament and European party groups have been developed further after accession, but we also see an ambiguous effect from such linkages in terms of democracy and political integration. Political party groups have been inclined to support governments from their part of the political spectrum even when the European Parliament has tried to vote on sanctions in the face of clear violations of democratic principles such as balance of powers between institutions or media freedom. Socialization within party groups may contribute towards strengthening democratic norms and a sense of a shared democratic community, but these same links undermine sanctions and enforcement through the European Parliament.

An interesting tool, which the European Commission has succeeded in introducing for all the EU member states, is the Anti-Corruption Report. This is a clear case of spill-over from enlargement *acquis* to the EU in general. In 2011, the European Commission proposed establishing a monitoring mechanism for full assessment of corruption in all member states, to be reported every two years (European Commission 2011a, 2011b). The first comprehensive Commission report that came out in 2014, however, showed that high levels of corruption are not the prerogative of Eastern EU member states only, but are evident in many Southern members as well, such as Greece and Italy (European Commission 2014).

The anti-corruption reports serve to mobilize opinion and provide a focal point for the efforts of reform-minded societal actors in Bulgaria and Romania and seem to reinforce the effects of the CVM. In this sense they are successful and will hopefully also contribute to the socialization of a broad range of actors across the member states. Their advantage is that they are an EU-wide mechanism of monitoring, although they lack sanctions and rely on naming and shaming to have an effect.

Table 2: Post-accession tools and modes of influence on political integration

Targets Instruments	State actors	Non-state actors
<i>Direct</i>		
Enforcement (<i>leverage</i>)	Commission/European Court of Justice (ECJ)/ sanctions (in <i>acquis</i> areas, such as non-discrimination, fraud in EU programs)	Local NGOs, anti-discrimination commissions
Conditionality (<i>leverage</i>)	CVM/suspension of assistance European Parliament resolutions	NGOs contribute informally to CVM reports
Political dialogue (<i>linkage</i>)	European Parliament party groups European Commission letters and statements ¹⁰ European Commission EU-wide corruption reports	NGOs participate A variety of domestic actors and transnational NGOs contribute
Assistance (<i>linkage and leverage</i> ¹¹)	Instrument for Structural Policies for Pre- Accession (ISPA), SAPARD, operational programs CVM monitoring missions and expert networks	NGOs evaluating and contributing to CVM monitoring NGOs, experts, Civil servants
<i>Indirect</i>		
Competition	Competition between Bulgaria and Romania on CVM/Schengen Commission EU-wide reports on corruption (since 2014), judiciary	

¹⁰ For example from former EU Commissioner Neelie Kroes on media law and media freedom in Hungary.

¹¹ When linked to the CVM and suspended, the programs provide leverage as well as linkages.

Lesson drawing	Rule of law, judicial reform	Legal experts and NGOs
Mimicry		

Source: Author.

In conclusion, if we look at tools to support democracy, rule of law and political integration in new member states after accession, the EU has upgraded its tools and its approach, but influencing democracy in member states is both sensitive and considered not to be the EU's core business. One area in which the EU has developed its approach further in the following rounds of accession negotiations has been rule of law and reform of the judiciary. The next section will examine the findings of existing studies evaluating the effectiveness of the EU's efforts in this area.

4. The Effectiveness of the CVM: A Mixed Record

As a collection of policy tools and actions the CVM combines 'hard' external incentives/sanctions elements with normative ones, such as an emphasis on making reports public and the naming of specific problem areas, as part of a naming and shaming strategy. Most of the literature so far has addressed the impact of the 'hard' mechanisms, the legal obligations and the application of conditionality in the CVM reports (Gateva 2010; Spendzharova/Vachudova 2012). However, some case studies have also addressed socialization and persuasion mechanisms and the engagement of societal actors other than governments (Dimitrova/Buzogany 2014; Dimitrov et al. 2014b).

The CVM 'hard' conditionality, the punishment for non-compliance component, has been shown to have developed over time, from weak to medium strength. Post-accession, the CVM did not initially appear to have much impact because negative reports from the Commission were not linked to sanctions (Gateva 2010; Spendzharova/Vachudova 2012).

Spendzharova and Vachudova (2012) singled out two mechanisms which contributed to the increased importance of the CVM reports in 2012: Schengen conditionality and the electoral dynamics. To start with, CVM reports and their criticism of lack of progress in key areas, such as judiciary and the fight against corruption, were linked to the accession of Bulgaria and Romania to the Schengen passport-free travel zone. Thus, the key to strengthening CVM hard conditionality was the linkage with other issue areas, which did not formally fall within its domain but where Bulgaria and Romania had an interest to comply, namely accession to the Schengen zone of free movement (Spendzharova/Vachudova 2012).

Electoral dynamics, the second mechanism identified by Spendzharova and Vachudova (2012), was a domestic driven one and relied on normative mechanisms such as strategic use of norms and rhetorical action. On the one hand, the Commission increasingly interpreted CVM provisions creatively by instituting an additional CVM monitoring report for Romania and threatening several times to produce an additional

one for Bulgaria as well. These threats mattered and had an impact in Bulgaria – a key nomination for the Constitutional Court was reversed at the last moment by interpreting an existing presidential prerogative to prevent the swearing in of the new judge. On the other hand, political parties also started using the results of the reports in the electoral struggle and non-governmental organizations anticipated and commented on the criticism contained in them. The addition of unscheduled reports or introduction of linkages with other policy areas are tools that are underpinned by coercion mechanisms applied in more sophisticated ways due to learning effects by the European Commission and the member states (Vachudova 2014). However, it can be argued that the most important effects have been observed where domestic actors have been socialized into EU norms and have later mobilized and used the CVM in specific campaigns. The role the CVM plays as a focal point for the efforts of media and civil society is acknowledged in a number of studies (Spendzharova/Vachudova 2012; Dimitrova/Buzogany 2014).

The mobilization of domestic actors around the CVM on several different occasions has been an important development pointing to the normative effects of this instrument. In Romania, for example, the Initiative for Clean Justice has instituted regular monitoring of government responses to the CVM (Dimitrova/Buzogany 2014: 143; ICJ 2008). The Bulgarian Association of Judges, an NGO, produced an alternative report in 2013 to highlight shortcomings in reform in specific areas and sent it to the government and the European Commission. The Bulgarian Institute for Legal Initiatives and the Rule of Law Initiative have been producing evaluations of judicial reform in Bulgaria from 2002 onwards, with four extensive and detailed volumes available up to and including 2013.¹² The Bulgarian Centre for the Study of Democracy (CSD) produces comprehensive corruption assessment reports focusing on the broader institutional and societal aspects of corruption and anti-corruption efforts (CSD 1999-2014). It must be noted, however, that the CSD reports are funded under a US program and not supported by the EU.¹³

The general institutional context in Bulgaria and Romania has undoubtedly been influenced by the existence of the CVM. Despite the continued resistance by large parts of the judiciary and the political class, described in a sociological study which is discussed later in the paper (Dimitrov et al. 2014a, 2014b), the CVM does support a normative context in which corruption and related phenomena, such as clientelism and weakness of the judicial system, are identified as problematic. Some studies even suggest that without the EU and the CVM corruption would not have become the focus of critical discussions in the public domain at all (Institute of Public Policy 2010: 12).

Affecting the domestic context and achieving improvement on specific government actions and laws, however, is not the same as achieving an effect in reforming the judiciary, improving the rule of law or limiting corruption. In terms of actual behavioral effects, the record of the CVM and the EU in general is mixed and the debate on how much has been achieved with the existing tools and approaches is very much still open.

12 Bulgarian Institute for Legal Initiatives 'Judicial Reform Index' available at <http://www.bili-bg.org/11/page.html>, accessed 28 April 2015.

13 I am grateful to professor Dimitrov for drawing my attention to this point.

5. Comparing the Impact of EU Tools: Institutional-Political Analyses

To understand whether the CVM and the EU as a whole make a difference we need to draw on in-depth country studies, but even more importantly, on cross-country comparisons. Two sets of comparisons should be particularly useful:

First, a set of comparisons between Central European EU member states which are not subject to the CVM and second, comparisons between countries which are EU members and those that are not. In the first case, by tracing variation effects of the EU's CVM, we can establish whether it is useful for combatting corruption or whether the EU's presence and socialization mechanisms, such as naming and shaming, are sufficient. In the second case, we can establish whether EU membership matters at all.

There are few such comparative studies available so far, but these nevertheless provide some useful insights. Sedelmeier's (2014) study of Romania and Hungary falls into the first category, while a report by the Institute for Public Policy (IPP) (2010) is an example of research from which we can draw the EU/non-EU comparison.

Sedelmeier's (2014) study of the effectiveness of EU pressure on Hungary and Romania presents interesting and nuanced findings. He shows that the EU achieved limited compliance in the case of media laws in Hungary and that its efforts to stop the impeachment referendum in Romania were generally more effective (Sedelmeier 2014). Less compliance was achieved with regards to general corruption issues in Romania and – following developments since 2013 – general institutional issues in Hungary. Sedelmeier (2014) stresses that conditions and mechanisms that achieved the CVM's positive effect in Romania were overdetermined. Therefore we cannot draw the conclusion that external pressure (CVM) was what made the difference between effects in Romania and Hungary.

Sedelmeier (2014) argues that at present we do not have sufficient evidence to establish whether both social pressure and external coercion are necessary for the EU to have an impact on highly problematic aspects of democratic backsliding. What is certain so far is that the best compliance has been produced by the combination of material leverage and social pressure and that these very demanding conditions need to be present to achieve an effect (Sedelmeier 2014: 118).

The importance of the combination of incentives and social mobilization by a wide range of actors is also evident from the comparative study of attempts to strengthen good governance, rule of law and proper procedure in the adoption of forestry legislation in Bulgaria and Romania (Dimitrova/Buzogany 2014). This study showed that the presence of domestic civil society groups that are interested and able to use the CVM reports to highlight domestic governance problems can lead to improvements in specific laws and procedures and limit state capture as one of the most prominent forms of corruption. The case of the Bulgarian protests against the forestry law in 2012 shows that when a ruling party's success is linked to pro-European orientation, domestic groups can use the CVM to call governments to account and they have a chance to succeed.

Legitimacy and the reputational costs to governments oriented towards the EU at the rhetorical and symbolic level are important scope conditions we can identify for the EU's efforts to be effective. This echoes findings and conclusions about EU influence in other parts of the world (Börzel/van Hüllen 2014). This was the case with the GERB-led government in Bulgaria in 2009-2013, whose own normative commitment to a European platform did not allow it to ignore domestic criticism that it deviated from EU rules and values. Pressure in similar circumstances in Romania, however, did not have a similar effect (Dimitrova/Buzogany 2014). Ultimately, as Sedelmeier (2014) has shown, the EU's influence on Romania during the constitutional and impeachment crisis in 2012 led to compliance with EU demands.

Another broad analysis of cross comparative cases can be found in the report by four national think tanks produced in the context of the Black Sea cooperation mechanism (IPP 2010). The report provides an analysis of national legislation and institutions relevant to fighting corruption and their implementation and functioning. It includes a qualitative analysis of the stakeholders' perceptions towards national anti-corruption policies and a review of representative cases of high-level-corruption for each of the countries. The report also sheds some light on how the measures introduced have been perceived domestically. The study covers Bulgaria, Georgia, Romania and Turkey and draws on empirical work conducted in 2010.

Even though this study does not explicitly set out to investigate the effects of the European Union's pressure in a broad sense and the CVM in particular, these feature prominently in the country analyses of Bulgaria and Romania.

The Romanian study stresses that corruption became a much discussed topic in the public domain because of the negotiations for accession. Despite remaining areas of criticism for Romania in the CVM reports, some strong institutions have been established and started to function well. The study in Romania identifies the National Anticorruption Directorate as such an institution, while the Romanian National Integrity Agency is evaluated as having a mixed record (IPP 2010: 13-24).

The IPP (2010) report suggests that in the case of Bulgaria, CVM effectiveness has been highest when actual sanctions have been applied, by means of suspending ISPA funding in 2008. The report indicates that it was "in nervous anticipation of a very negative monitoring report, the Cabinet and the MPs speedily prepared two conflict of interest bills". The report highlights the importance of the Law on Prevention and Disclosure of Conflicts of Interests (2008), requiring that all public officials file a declaration of conflicts of interests when taking public office, based on a broad and inclusive definition of public office positions (IPP 2010: 36). The adoption of this legislation was, according to the authors of the IPP report, not sufficient to address corruption, even if it narrowed the room for manoeuvre for corrupt officials (IPP 2010).

A number of anti-corruption bodies have been established in the executive in both Bulgaria and Romania. In the pre-accession period in Bulgaria, a number of inspectorates have been established in the ministries and a Chief Inspectorate in the Council of Ministers, with the objective to organize and coordinate state anti-corruption policies, to check information coming from citizens and the media as well as to perform checks of high level officials (IPP 2010: 38-39). Another specific body established in Bulgaria under

EU pressure in 2006 was the Commission for Prevention and Countering of Corruption in the Council of Ministers (IPP 2010: 39-40). These bodies, however, failed to make a strong start in using their prerogatives and were weakened by the unwillingness of politicians to appoint strong and independent leaders for them. Progress is slow and full implementation is ensured only when external pressure is combined with considerable domestic pressure from a broad range of stakeholders, such as NGOs.

This trend can be observed till the present day with regards to a number of specific institutional-procedural features adopted under EU pressure. For example, a software system used for random distribution of cases in the High Administrative Court, the Sofia District Court and the High Court of Cassation was introduced in Bulgaria in 2009 in the shadow of forthcoming CVM monitoring reports. The software, developed for and used by the Judicial Council in Bulgaria, has been riddled with deficiencies that clearly allowed random distribution to be circumvented and specific cases to be assigned to specific judges. A review commission comprised of members of the High Judicial Council as well as two prominent NGOs, the Bulgarian Institute for Legal Initiatives and the Programme for Judicial Reform, evaluated the system in 2013. The commission's report highlights loopholes in the system and a lack of protection in the software that make the manipulation of random distribution possible (Girginova 2014). Only in December 2014, under pressure by both civil society and external actors such as the Commission's monitoring team but also member states, most notably Germany, the decision was taken to invest in the replacement of the software and to ensure random distribution.¹⁴

The functioning of other parts of the institutional system dedicated to strengthening rule of law and anti-corruption measures, such as the Inspectorate of the Supreme Judicial Council, suffered from recurrent and serious lapses of implementation. An EU monitoring mission preparing a regular CVM report noted in December 2014 that the failure of the Bulgarian parliament to appoint the Chief Inspector of the Inspectorate of the Supreme Judicial Council since December 2011 has sent a negative signal in terms of political will to support strong working institutions for rule of law. Importantly, a group of prominent Bulgarian NGOs¹⁵ sent an open letter to the parliament and political leaders already in the summer of 2014, criticizing the slowness of the appointment procedure and urging political leaders to complete it.

The parallel actions of civil society and the EU in the case of the Chief Inspector appointment present another example of bottom-up and external actions combined to exert an influence on reluctant political elites. NGO and EU statements follow similar lines of argument and focus on the same problem cases and examples, suggesting that civil society and the EU aim to use coercion, persuasion and norms strategically and with some degree of coordination. However, the EU still sees governments as its main partners and interlocutors and the involvement of NGOs is not a structural feature of political dialogue with Bulgaria and Romania.

14 A series of articles following the attempts to reform the random distribution system for court cases is available at www.judicialreports.bg.

15 The NGOs involved were: Access to Information Programme, The Bulgarian Institute for Legal Initiatives Foundation, The Bulgarian Judges Association, The Bulgarian Helsinki Committee, The Institute for Public Environment Development and The Union of Bulgarian Judges. Letter available at http://www.bili-bg.org/cdir/bili-bg.org/files/18.06.2014_Election_Inspectorate_with_the_SJC_BULGARIA_7NGOs_Letter.pdf, accessed 28 April 2015.

6. Post-Accession Institutional Developments and the Rule of Law

A comparison of institutions established in the context of the EU's political integration efforts shows that some institutional creation has endured and had an impact in Romania, while in Bulgaria the new rules and structures have not been effective as yet.

Regarding Romania, institutional arrangements and bodies established during the pre-accession period to deal with corruption have been highlighted as good examples and practices before accession: for example the much-praised National Anti-Corruption Directorate, established in 2002 (IPP 2010: 25-29). In addition, another General Anti-Corruption directorate was established in the Ministry of the Administration and Interior personnel with assistance from Spain and the UK in 2005. The National Integrity Agency was evaluated as having a smaller impact by the IPP report (2010), while the National Anti-Corruption Directorate has been praised by both the EU and Romanian citizens for showing a stable track record in investigating and bringing to trial high-level corruption. There is no institution in Bulgaria that has built such a track record.

Despite the real progress in the struggle against corruption by the Romania National Anti-Corruption Directorate, there has also been a visible backlash against rule of law and the balance of power in the broader political landscape in Romania (Stratulat/Ivan 2012). The turbulent cohabitation of former President Bănescu of the Democratic Liberal Party and Prime Minister Victor Ponta of the Social Liberal Union coalition has eroded the authority of the Romanian Constitutional Court and challenged the balance between democratic institutions and branches of power numerous times. Ultimately, the failed attempts to impeach President Bănescu have been aborted under EU pressure, a process in which the CVM played a positive role (Sedelmeier 2014).

The backsliding trend which was observed in 2010 found another expression in legislation amending the law defining the functioning of the National Integrity Agency, another body created in the pre-accession period. The amendment was seen by the Commission as an interruption of the agency's activities and a breach of the commitments taken by Romania in the pre-accession period (IPP 2010: 14). Romania's record of responding to EU influence and the performance of domestic actors and institutions remains, therefore, mixed.

Similarly, the overview of institutional rules and norms transplanted over the course of the last ten years in Bulgaria leads to an assessment that indicates mixed results. Institutional adjustments progress, but slowly, often in a fragmented and piecemeal fashion and under pressure of an upcoming CVM report. This attests both to the impact of the CVM mechanism and to its limitations. Measures recommended by the EU are implemented, but often with great delays and clearly identifiable loopholes.

Comparing trends over time, CDS's recent report suggest there is a trend of increasing reluctance of elites to tackle corruption simultaneously with an increasing societal resistance to the phenomenon of high-level corruption (CSD 2014). For example, the CSD reported that in 2014 the participation of the Bulgarian population in corruption deals has marked its highest levels since 1999 with an average of 158.000 per month (CSD 2014: 9). The 2014 report specifies that the majority of corruption deals are initiated by the state's

administration, with civil servants exercising corruption pressure on citizens, when they use administrative services. The report also notes that in 2014 Bulgarian society witnessed “political corruption of threatening scope”. It points out that state capture by private interests has reached the “law enforcement bodies such as the Prosecution, financial surveillance and the Central Bank” (CSD 2014: 9). At the same time the report notes the growing protests against corrupt practices among a broad group of citizens, signaling a wide rejection of corruption by society.

The brief overview of the functioning of relatively new institutional arrangements and organizational units created in Bulgaria and Romania during the pre-accession period to strengthen the rule of law and limit corruption suggests their impact has been limited and implementation uneven. On the positive side, high-level corruption is clearly identified as a problem in both countries and political parties do not avoid discussion of corruption or judicial reform. In fact, both themes constantly remain in the focus of public attention. On the negative side, this attention does not translate into a good and consistent implementation of all measures.

Romania has been praised for its stronger agencies, but there has been backtracking on commitments and backsliding in integrating these institutions into the rest of Romania’s political institutions in a sustainable way. In Bulgaria the various agencies and bodies do not seem to have made much of an independent impact or to have become the focus of anti-corruption efforts, even though some of the legal provisions adopted under EU pressure create conditions to address corruption when civil society takes up a specific cause or issue. As the authors of the 2010 report noted, “institutional innovation per se cannot guarantee results as [...] institutions and rules are tools in the hands of public officials” (IPP 2010: 70). Their recommendations are twofold: a structural limitation of the role of the state in public life and further emphasis on formal procedural correctness at all levels of policy-making.

If we look at implementation, some measures have been implemented slowly or incompletely, while others have been supported by civil society and worked to some extent. More disturbingly, however, the overall effect in both countries appears to be a transfer of weaknesses of rule of law and the erosion of impartial decision-making from one part of the political and institutional system to the other. Dimitrov et al. (2014a) suggest that this state of affairs clearly indicates that even if there are small successes and adequate institutional provisions, corruption captures different parts of the political system. Therefore, they point out the need to look not only at the adoption of specific procedural measures but at deeper underlying political economy relationships and societal causes of corruption (Dimitrov et al. 2014a).

Dimitrov et al. (2014a) have performed an extensive and comprehensive content analysis of the requirements contained in all the CVM reports for Bulgaria and Romania (Toneva-Metodieva 2014). In addition, another study dealing with corruption evaluated in the light of the CVM adds structured expert interviews to highlight and explain some of the findings of their content analysis (Dimitrov et al. 2014b).

These studies find that the CVM reports underestimate corruption in key public sectors and target mostly institutional and procedural adjustments (Dimitrov et al. 2014a, 2014b; Toneva-Metodieva 2014). They

show that the largest number of recommendations in the reports target the law enforcement system and specifically agencies created to combat corruption (17 percent of all recommendations). Fifteen percent of all recommendations target the legislatures and 14 percent target the judicial branch. A comparison of the Bulgarian NGOs' corruption monitoring reports and the CVM shows a discrepancy between the focus of the CVM reports, which is on the judicial system, and the political and economic determinants of corruption identified by NGOs such as the Centre for the Study of Democracy and Transparency International (Dimitrov et al. 2014b: 17).

This group of scholars emphasizes the crucial differences between *acquis* implementation and rule of law reform. They suggest that whereas the EU has considerable experience and success in supporting implementation of the *acquis* and Bulgaria and Romania have performed quite well in this regard, rule of law reform as a sub-case of political integration presents a fundamentally different challenge. Success in *acquis* implementation does not translate, in terms of both challenges and instruments, into success in rule of law reform because of the latter's much more fundamental character and place in the political system (Dimitrov et al. 2014a: 140; Toneva-Metodieva 2014: 6).

The results of the content analysis of the CVM reports for both Bulgaria and Romania also indicate that the two countries end up with similar levels of criticism and shortcomings, despite their somewhat different starting positions and substantively different requirements (Dimitrov et al. 2014a: 100-102). This finding leads them to conclude that both countries have made equally small progress, indicative of the resistance of the political class to reform. For example, in the Bulgarian analysis, they find that one fourth of the monitoring report statements praise specific results and incidents of compliance, but 80 percent of these are small achievements and only 16 are substantial results (Dimitrov et al. 2014b: 22-23).

Overall, the analyses lead them to conclude the CVM has been ineffective. They attribute this ineffectiveness to a whole range of causes, including "inconsistencies, poor conceptualization, insufficient understanding of the complexity of the problem, underestimation of the domestic opposition to reform" (Dimitrov et al. 2014a: 141). Furthermore, the authors suggest that too often the EU takes achievements on paper as an indication of actual progress and that domestic elites, mostly governments in power, rely on this fact and minimize their efforts to reform the rule of law (Dimitrov et al. 2014a: 141).

The authors of this research conclude that the CVM has not managed to reach core societal mechanisms to make effective institutions possible, while conditionality itself has not been enough (Toneva-Metodieva 2014: 13). Furthermore, they argue that addressing the CVM to governments has led to "shared political irresponsibility", in the sense that the European Commission's procedural formal monitoring and domestic governments' complaisance about results based on legislative change have both failed to address the problems at the societal level.

The solution to these problems according to Dimitrov et al. (2014a) lies in adopting a radically different approach, moving from "shared political irresponsibility" to a shared partnership between the European Commission and a wide range of domestic actors interested in promoting the rule of law (Dimitrov et al.

2014a; Toneva-Metodieva 2014). However, such a radically different approach may be fundamentally incompatible with the principal-agent relationship between the Commission and the member states.

Last but not least, the emphasis placed by the EU in the pre- and post-accession period on strengthening the judiciary may have had the unintentional effect of eroding democratic accountability. This argument has been advanced by Parau (2014) on the basis of her analysis of the rise of Judiciary Councils in Hungary, Bulgaria, Romania and Moldova. These institutions were created as bodies responsible for judicial governance, to a great extent as a result of EU conditionality and following expert advice during pre-accession.

In the absence of a general theory of judicial independence (Smilov 2006) the European Union searched for practices and institutional solutions from the member states and proposed these as solutions to specific institutional shortcomings. Furthermore and in contrast to the case of public administration reform where a common approach and baseline criteria for administrative reform had been worked out through the efforts of the OECD's SIGMA unit (Dimitrova 2002; Mayer-Sahling 2009), the EU turned to a network of legal experts, who placed an emphasis on self-governance of the judiciary through Judiciary Councils but also on ensuring its independence by insulating it from political-parliamentary control (Parau 2014). Parau (2014) suggests that rule of law problems must be addressed by the rebalancing of the relationship between democratically elected politicians and judges and the ability of the former to hold the latter to account as part of the balance of powers principle.

Broader developments in both Bulgaria and Romania – such as examples of using allegations of corruption for the elimination of political opponents – seem to support Parau's (2014) argument that the strengthening of the judicial branch without balancing independence with accountability has damaged democratic checks and balances. The remedy, however, cannot be more institutional change, at least not on its own. Stronger political and parliamentary control over the judiciary may improve the democratic system only if politicians themselves are not intent on using the state for their own gain. As argued elsewhere in this paper, the institutional rebalancing would only work if the underlying political economy and societal causes of corruption are addressed.

7. Conclusion

Tools targeting specific new member states such as Bulgaria and Romania, and especially the CVM, have so far been evaluated as at best partially successful, although it is worth noting that citizens in Bulgaria and Romania overwhelmingly support continued EU monitoring (Flash Eurobarometer 406). Other tools which aim to promote measures to eradicate corruption and improve the judiciary *across all* the EU's member states have been established partially as a result of fears of corruption as a security and economic risk after the Eastern enlargement.

The EU-wide monitoring mechanisms, such as the European Commission's biennial corruption report, can rely on mechanisms of naming and shaming, but are not effective when confronted with serious breaches

of democratic principles such as violation of constitutional provisions, disregard of core democratic institutions and governments determined to take an authoritarian path. Ultimately, it is up to the member states to develop more effective, mid-range tools and mechanisms for influencing democracy and rule of law in the face of the rise of governments that may see authoritarian or illiberal political institutions as their goal or rely on state capture and rent seeking as fundamental political system characteristics that they are unwilling to change.

The mobilization of mixed mechanisms and tools engaging a wide range of societal actors keen to improve democratic governance seems to be the mode of governance that has achieved some results. The key finding from cases where domestic improvements have been achieved is that the EU can only achieve change together with civil society actors and broad societal mobilization. Therefore, other potential tools that could be developed in the future should ensure the structural inclusion of civil society organizations committed to rule of law, democracy, civic education, transparency and many others as partners to the Commission, European Parliament and member state governments. Changes to specific institutions and systems of rules, for example the judiciary, cannot constitute the main thrust of measures recommended to candidate states, but should be supported by a dialogue that mobilizes and empowers democratically minded citizens to achieve more fundamental societal changes.

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“Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond”

The ‘big bang enlargement’ of the European Union (EU) has nurtured vivid debates among both academics and practitioners about the consequences of ‘an ever larger Union’ for the EU’s integration capacity. The research project MAXCAP will start with a critical analysis of the effects of the 2004-2007 enlargement on stability, democracy and prosperity of candidate countries, on the one hand, and the EU’s institutions, on the other. We will then investigate how the EU can maximize its integration capacity for current and future enlargements. Featuring a nine-partner consortium of academic, policy, dissemination and management excellence, MAXCAP will create new and strengthen existing links within and between the academic and the policy world on matters relating to the current and future enlargement of the EU.