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Language: English

ISSN: 1876-3332

Print ISSN: 0094-4467

Publisher: Brill

Subjects: Area Studies, Slavic and Eurasian Studies, Modern History, History

2019: Volume 43, in 3 Issues

brill@turpin-distribution.com

Submission information: brill.com/authors



How and Why Did the Laggards Turn Out to Be the Forerunners of a Major Transformation in the EU's Integration Strategy?

Bulgaria and Romania's Peculiar Role in Redefining the EU Integration Strategy

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Abstract

For nearly a decade Bulgaria and Romania were considered the laggards of the Fifth EU Enlargement. They seemed unable to cope with the timing of their Europeanisation and, hence, the support they got from the EU was a mere continuation of the pre-accession conditionality in the form of post-accession monitoring, obscurely named "Cooperation and Verification Mechanism" (CVM). This paper presents some sound empirical evidence to prove that the CVM did not work as expected. The malfunction of the mechanism was *pre*-destined by a crucial mistake in its initial political design since it was meant, in the first place, to soothe the West European disappointment with the Fifth Enlargement in the context of the EU's constitution project failure. It was not tailored to the needs of a post-communist society – to establish anew a rule-of-law (RoL) institutional system, which was the core societal problem. The real issue at stake was not the "unpreparedness" of the two neighbouring countries, but a major flaw in the approach of the EU enlargement policy, which has manifested lately, in a much harsher form of serious rule of law abuses, by the developments in the previous "best performers of the Fifth Enlargement" – Hungary and Poland.

Keywords

Europeanisation – EU enlargement policy – rule of law – political conditionality – CVM

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It is clear that enlargement is a policy that has developed dramatically over time, going from improvised exercise to finely tuned ‘foreign policy’ – from something that erupted on the European Community’s (EC) agenda with great suddenness, to a permanent part of EU’s daily doings.

IKONOMOU & BYBERG 2017: 3

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1 Introduction – Why Did Bulgaria and Romania Receive Special Treatment?

Let’s start with a tentative framing caveat – no, this is not a new version of the old fable of “the Tortoise who outran the Hare”. It is the sad story of a major EU integration policy mismatch, which, at present, threatens the foundation values of the Union and its prospects of future development. Let’s recall the general scheme at first.¹

For nearly a quarter of a century the EU has considered the Fifth Enlargement to be its most significant foreign policy success and the academic literature happily echoed this optimistic self-esteem (Cirtautas/Schimmelfennig 2010, Pridham 2010, 2007, Sedelmeier 2011, Verheugen 2007).² Having emerged after the collapse of the Communist Block and the subsequent unification

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- 1 This (very simplified) sketch below is a synthesis of the previous main points of academic literature and our own findings out of a research project on Bulgaria’s EU accession. The latter was carried out under the auspices of the Jean-Monnet Center of Excellence at SU *St. Kl. Ohridski* (funded by Erasmus+, 2016–2019). It is based on 46 semi-structured in-depth interviews (of 15–35 pages each) with participants in the process – prime ministers, vice-prime ministers, ministers and deputy ministers, directors of EU integration departments, chairs of negotiation teams and diplomats, and with several officials of the European Commission as well.
 - 2 Two representative examples: “The Eastern enlargement of the European Union (EU) in 2004 and 2007 is often referred to, by practitioners and analysts alike, as the EU’s greatest foreign policy success to date.” (Cirtautas/Schimmelfennig 2010); “Eastern enlargement has been the most ambitious effort of the EU to promote democracy, human rights, and the rule of law in third countries. The prospect of membership helped transform ten former communist countries (including Romania and Bulgaria, who will join the EU in 2007) into consolidated liberal democracies with functioning market economies in less than 15 years.” (Börzel/Risse 2004: 516).

of Germany, the EU was designed to nullify the disastrous foreseeable consequences of those developments (Baldwin 1995, O'Brennan 2006). The stake was very high – the trinity of peace, stability and prosperity could be heavily jeopardised. That was exactly why the three major novelties in the Maastricht Treaty (by which the EU has been established, as a further stage of the EEC's development) consist of: a) introduction of the common currency of the Single Market; b) introduction of a common justice and home affairs policy (focused on visa and border control issues, mainly) and c) introduction of a common foreign and neighbouring policy. To put it crudely, the EU was created, mainly, in view of the needs of its future Eastern enlargement as a crucial component of its general strategy of development.

Hence, the pace of the Fifth Enlargement depended not so much on the level of the applicant countries' "preparedness" in terms of compliance with the notoriously vaguely defined Copenhagen criteria (Rezler 2011, Kochenov 2004, Maresceau 1997), but on the steps of the Union's institutional development which had to create its "absorption capacity" for a new member-state inclusion. It is not a big surprise that the EU, whose existence aims for the pacification of Europe, in the first place, received its main impulses for speeding up the Eastern Enlargement from the war episodes in former Yugoslavia – the Kosovo crisis being the last in the sequence. Yet, what was framed by the war concerns was not the timing of the process only, but its scope as well. This is why the support provided by the Bulgarian and the Romanian governments for NATO's operation in the latter war conflict turned out to be a decisive argument for accepting the two countries in NATO and, subsequently, NATO became their strongest advocate for the EU accession.

However, the two countries, having the weakest support among the then 15 member states, initially dropped out, for a while, from the fifth wave of EU enlargement – not because their accession preparations lagged that much behind the Slovakian or Lithuanian ones, but because their accession aspirations were most easily contested for a number of various reasons. For example, their population was, jointly, of nearly 26 million people (more than one third of whom was of rural settlement and employment) and the two countries were the poorest among all CEECs. Thus their EU membership, on the one hand, would be a heavy burden on the already highly constrained EU budget and, on the other hand, the task of Europeanisation of the two societies was particularly burdensome. And besides, they themselves have had pointed to 2007 as their target accession date. No doubt, their progress towards (a possible) fulfillment of the accession requirements was far too difficult and protracted. Since any dropping out of only one of all CEECs was not an option at all, because of clear political concerns, whether the one or the other country would actually

perform better than its rival in the couple would not be of any relevance for the EU accession decision.

Notwithstanding the truly slow and controversial advancement of the two countries to compliance with the EU accession standards, the real motives for the political decision to postpone of their entry into the Union were never officially declared or publicly justified (on any factual terms). The decision relied on a “shared general feeling” about the unpreparedness (lagging behind) of the two countries, as a senior official from the European Commission put it.³ That political decision based on “shared opinions” and various tacit concerns (fiscal, mainly, but not exclusively) to postpone Bulgaria and Romania’s accession to the EU for just two years later surprisingly turned out to be a reason for a substantial change in the enlargement policy – meanwhile there had emerged a need to redefine the accession terms for the two countries. The coincidence between the two major political shocks – from the rejection of the EU Constitution by the referenda in France and Netherlands and from the disappointment at the new member states’ reluctance to fulfill the obligations assumed (as a prerequisites for their EU accession) – led to the phenomenon of “enlargement fatigue”, as it was called euphemistically (Pridham 2007, O’ Brennan 2014). Both Bulgaria and Romania, experiencing serious difficulties in their accession advancement, encountered some escalating disapproval for their eventual EU membership. While the voting results proved that the Romanian EU membership had met somewhat stronger opposition during the ratification process in the parliaments of the old member states, the Bulgarian diplomats, engaged in the effort to regain a political approval for their country’s EU accession, report very hard times in doing their job in 2005–2006.

That was why the two countries were surprised in the second half of 2006 by a political novelty in the EU’s enlargement policy; by “an offer you can’t refuse” – the pre-accession conditionality was transformed into a post-accession one, since conditionality was the essence of the EU enlargement policy (Schimmelfennig/Sedelmeier 2004, Sedelmeier 2011; Gateva 2015). It envisaged, next to the habitual safeguard clause applied to all CEECS, an opportunity for a further postponement of the entry date for another year and an unprecedented Cooperation and Verification Mechanism, substantially differentiated in its benchmarks for each one of the two countries (Gateva 2015). It was supposed to help the local authorities to compensate for the “lagging behind” in a short period – of three or four years maximum.

In actuality, this never happened, and this fact is the corner stone of the current analysis. Is the CVM’s failure to achieve its own goals for the provisioned

3 For the exact quotation see in Gateva 2015: 116.

time⁴ a fault of the successive local governments or is it a shared fault of the governments and the “methodology of EU enlargement” based on accession conditionality (Maniokas 2004)?

2 The Peculiar “Bulga-Ro-manian” Single Case

2.1 *Some Sound Quantitative Empirical Evidence*

It is important to explain why the Bulgarian and the Romanian developments should be considered, typologically, a single case.

The reason for this is not only the fact that both countries appeared similar, seen through the prism of the EC’s political evaluations throughout the course of their EU accession, and, respectively, that they both became EU members in 2007 on common, harder terms three years later than the other post-communist countries of the CEEC group. These facts are important, of course, but there is a deeper reason for the political decision made by the EU – initially to postpone the EU membership and, later on, to implement the unprecedented post-accession conditionality. What could be the serious political arguments?

There is a new empirical quantitative method for measuring the socio-political differences and distances between the 35 EU member and candidate states. It is based on 34 separate social indicators, concerning a broad variety of aspects of social life. Its implementation results in a division of these European societies into three distinctive clusters (Haralampiev et al. 2016).⁵ This clustering persists over time pointing to substantial typological differences between the European countries. The empirical analysis reveals that both Bulgaria and Romania not only form a separate part of the lower cluster (which includes also Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, and Turkey); they also remain invariably closest to each other and share similar directions of divergence – from the centre of the (conventional) European multi-dimensional socio-political space.

4 See a detailed justification of this assessment by the findings of empirical quantitative research on the CVM in Dimitrov et al. 2016.

5 It is noteworthy that the initial data set of the European Catch-up index we used is comprised of 47 different indicators (<http://www.thecatchupindex.eu/TheCatchUpIndex/>). However, only 34 of these proved to have a systemic quality and a strong correlation with the overall ranking of the countries (a strong correlation exists if Pearson’s $r \geq 0.665$). The set of these indicators is sufficiently representative of the respective national societies’ social system. It is quite telling that very different indicators, such as: employment as percentage of population (age group 15–64), trust in people, PISA scores, infant mortality by the age of five, political instability, rule of law, e-government development, etc. are included in the set of indicators.

Even more to this effect, if we change the measurement methodology and the data source, making use the anti-corruption profiles provided by the EC (in its Anti-Corruption Report of 2014 on all EU member states)⁶ we will find again that Bulgaria and Romania form a separate common cluster while standing afar from all the other countries (Haralampiev/Dimitrov 2016).

Figuratively speaking, the two countries are typologically socio-political twins. This fact should be taken into account when studying their capacity for full-fledged integration into the EU.

2.2 *Typologically Similar, But Not Identical*

However, the similarities between Bulgaria and Romania should not be over-estimated. Despite the typological commensurability, there are significant differences between the two countries. For instance, the analytical use of the above-mentioned *Anti-Corruption Report* on the entire EU issued by the EC in 2014 reveals a telling story (Haralampiev/Dimitrov 2016). The results of this comparative analysis enable us to distinguish the relative closeness and distance between EU member states (Figure 1).⁷ The colour of the cells illustrates the resemblance type – the paler the colour, the worse the anti-corruption performance of the country; the darker the colour, the better the anticorruption profile of the country. Thus, the colour intensity of a crossing cell demonstrates the level “closeness/distance” of all couples of countries.

6 “Report from the Commission to the Council and the Parliament. EU anti-Corruption Report,” (https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf, accessed on 04.10.2018.)

7 We thank Assoc. Prof. K. Haralampiev for the calculations and visualisations of the findings. The 15 indicators of the EC anti-corruption report used for this analysis have a high degree of mutual correlation. They are: Control of Corruption (percentile rank); Transparency International Corruption Perception Index (index number); Europe 2020 Competitiveness Index 2012 (score); Government Effectiveness (percentile rank); What percentage of the population think corruption is widespread? (%); Government and utilities expenditures on works, goods and services per capita (2010 estimate re-used for 2011) (Euro); GDP per capita (2012) (Euro); World Bank Doing Business Rank 2013 (rank); Over the past 12 months has anyone asked you, or expected you, to pay a bribe for his or her services? (% “yes”); Do you consider patronage and nepotism to be a problem for your company when doing business? (% of answers “a very serious” and “quite serious” problem); Has anyone asked or expected someone from your company to pay a bribe? (% “at least once”); Do you consider corruption to be a problem for your company when doing business? (% of answers “very serious” and “quite serious” problem); Shadow economy (% of GDP); Government efforts to combat corruption are effective (%); There are enough successful prosecutions to deter people from corrupt practices (%). (https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en).

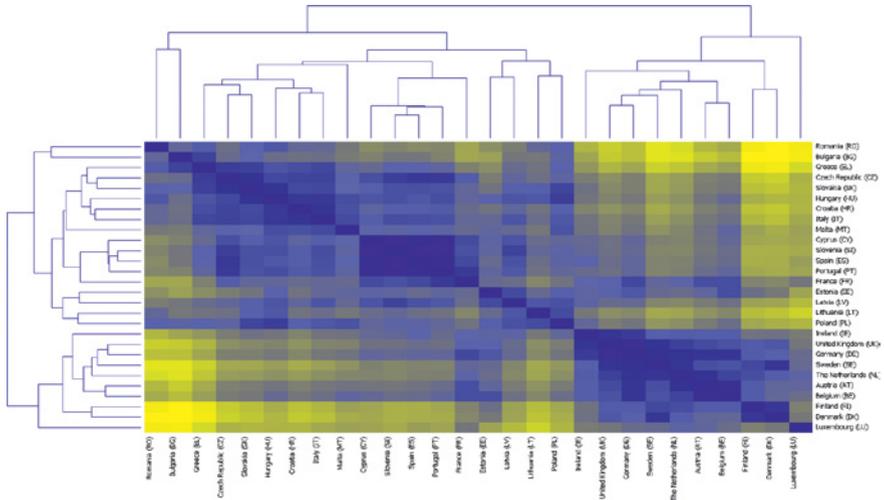


FIGURE 1 Distance map and clustering with ordered leaves among EU member states by their anti-corruption profiles

THE EUROPEAN COMMISSION’S ANTI-CORRUPTION REPORT ([HTTPS://EC.EUROPA.EU/HOME-AFFAIRS/WHAT-WE-DO/POLICIES/ORGANIZED-CRIME-AND-HUMAN-TRAFFICKING/CORRUPTION/ANTI-CORRUPTION-REPORT_EN](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en))

Nevertheless, it is not the colours but the clustering which is more important because it reveals the conventional “structuring” of groups of countries in terms of their typological socio-political similarity/closeness. The same analytical result may be visualised in a different form (Figure 2).

Now we see that Bulgaria is somewhat “closest” to Greece and is diametrically opposite from Finland. At the same time, Bulgaria is quite distant from Romania, not because our northern neighbour is any closer to a conventional European core of the EU social-economic and political space, but because Romania is even further away from the abstract centre of this socio-political space.

Yet, if we look at Figure 1 more closely, we will find out that still Bulgaria and Romania form a common, separate single cluster although they are not as close to each other as Slovakia and the Czech Republic (or Slovenia and Spain, who are typologically most similar).

The empirical findings about the countries’ anti-corruption records, presented above, do not tell the whole story, of course. Important new nuances are revealed if we focus our attention on the temporal changes. Looking at the long-term tendencies outlined by some other data supplied by Transparency

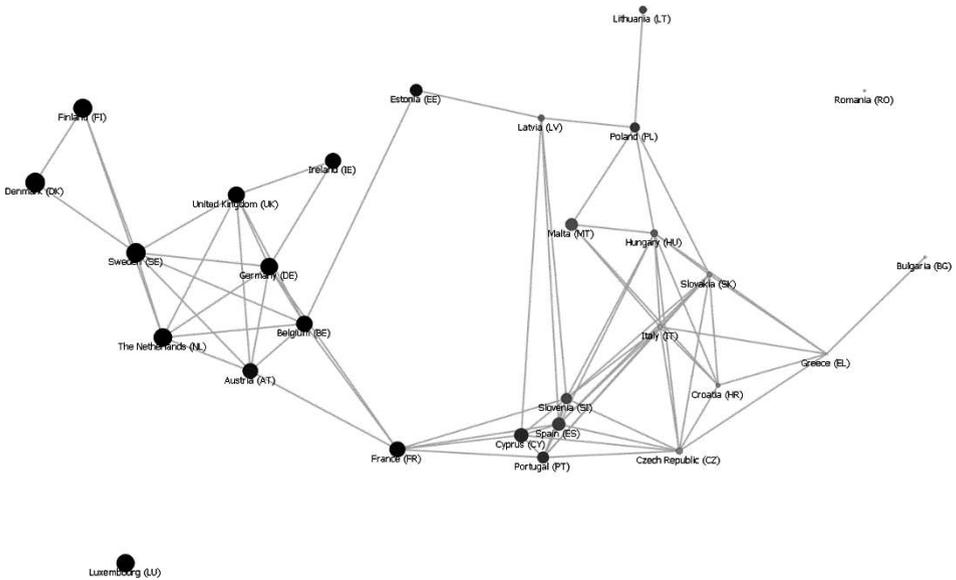


FIGURE 2 Multidimensional scaling, the size and the intensity of blackness of a country's bullet together demonstrate the strength of its anticorruption record THE EUROPEAN COMMISSION'S ANTI-CORRUPTION REPORT ([HTTPS://EC.EUROPA.EU/HOME-AFFAIRS/WHAT-WE-DO/POLICIES/ORGANIZED-CRIME-AND-HUMAN-TRAFFICKING/CORRUPTION/ANTI-CORRUPTION-REPORT_EN](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en))

International on the perception of corruption, we see distinctive dynamic trends (Table 1 and Figure 3).⁸

The key observed tendencies may be summarised in three major points.

First, despite the positive shift of results across the whole 16-year period from the beginning of negotiations for EU membership and until 2016, Bulgaria and Romania have persistently obtained lower results than the average for the other Central and Eastern European countries (CEECS). Hence, their exclusion from the first wave of the “Big Bang Enlargement” of 2004 is not out of an arbitrary political decision, as the anti-corruption records are symptomatic of the types of national rule of law systems which, in their turn, are representative of the quality of the national societal systems in general (Haralampiev et al. 2016).

8 It is worth noting that other international comparative surveys presenting data on the social-political processes in the two countries – for instance, that of the Fraser Foundation – provide very similar results regarding the differences and similarities between the two countries.

TABLE 1 EU member states' Corruption Perception Scores 2000–2016, post-communist countries. The average score of the rest countries is substantially higher than the scores of Bulgaria and Romania which are very close.

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Aver.
Bulgaria	35	39	40	39	41	40	40	41	36	38	36	33	41	41	43	41	41	39
Romania	29	28	26	28	29	30	31	37	38	38	37	36	44	43	43	46	48	40
Estonia	57	56	56	55	60	64	67	65	66	66	65	64	64	68	69	70	70	66
Latvia	34	34	37	38	40	42	47	48	50	45	43	42	49	53	55	56	57	49
Lithuania	41	48	48	47	46	48	48	48	46	49	50	48	54	57	58	59	59	52
Czech Republic	43	39	37	39	42	43	48	52	52	49	46	44	49	48	51	56	55	50
Slovakia	35	37	37	37	40	43	47	49	50	45	43	59	46	47	50	51	51	49
Hungary	52	53	49	48	48	50	52	53	51	51	47	46	55	54	54	51	48	51
Poland	41	41	40	36	35	34	37	42	46	50	53	55	58	60	61	63	62	54
Slovenia	55	52	60	59	60	61	64	66	67	66	64	59	61	57	58	60	61	62
Average CEECS without BG and RO	45	45	46	45	46	48	51	53	54	53	51	52	55	56	57	58	58	54

SOURCE: TRANSPARENCY INTERNATIONAL ([HTTPS://WWW.TRANSPARENCY.ORG/RESEARCH/CPI/OVERVIEW](https://www.transparency.org/research/cpi/overview)).

Second, the dynamic trends in each country are, in general, unstable, although overall positive directions of change are evident. Bulgaria, however, has not shown significant progress; starting from a score of 35 points, it ended with 41 out of the maximum 100 points (a change of 6 percentage points only). The line of positive development is much more marked in Romania, which started with 29 points and reached 46 out of 100 (a change of 17 percentage points, i.e. one which is three times bigger).

Third, the line of change in Romania's results is isomorphous to the average result of the other post-communist countries in the EU that are not subject to the impact of CVM. Even worse, Bulgaria, which is under the CVM together with Romania, does not show a record of sustained qualitative improvement.

These empirical facts make the effectiveness of the CVM truly questionable: the changes in the two countries subjected to it are differently structured. On the other hand, the positive trend in Romania is closely in line with the trends in the other countries that are not subject to the impact of the CVM – the correlation

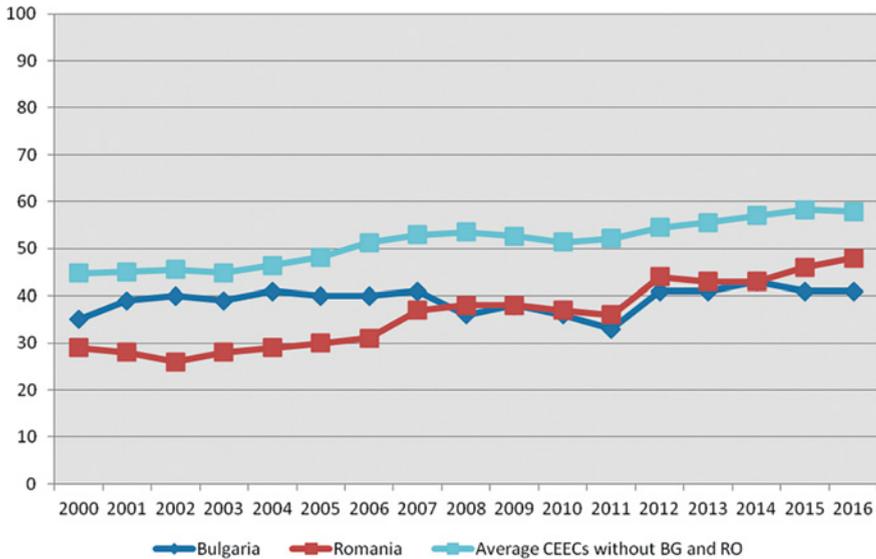


FIGURE 3 Dynamics of development of Corruption Perception in Bulgaria and Romania compared to the average of the rest of the post-communist EU member states

between the Romanian trend and the one in the rest of CEECs is 0,963. On the other hand, in Bulgaria there is no such trend (the correlation between the Bulgarian and the Romanian trends is 0,31).

To put it bluntly, the influence of the CVM does not conduce to the positive difference between Bulgaria and Romania. Here it should be emphasized once again that the CVM has been planned to achieve its goals in a short time span of 3–4 years. Failing to do so is a serious reason to consider the political approach (as embodied in this policy mechanism) a failure (Kochenov 2008). This fact needs an explanation.

3 The Problem with the EU's Enlargement Policy Exposed by the CVM's Failure

3.1 *The Political Origins of CVM*

Compared to other CEECs, Romania and Bulgaria have displayed the slowest progress with regard to ability to reform (Andreev 2009, Ganev 2012, Dimitrova/Dragneva 2001, Papadimitriou/Gateva 2009, Pridham 2010, Racoviță 2011) transparency and enforcement of accountability in terms of RoL. During the pre-accession period, the pressure exercised by the EU as part of its

conditionality policy met tacit, nuanced resistance on the part of several successive governments in the two countries, where all authorities showed reluctance to implement reforms (Gallagher 2013; Dimitrov 2012, 2016). Both countries continued to act like obedient “pupils”, expecting to be rewarded for conforming behaviour (Tanasoïu 2012), and not as contractual partners implementing EU norms. The real preparedness of the societies of Bulgaria and Romania for effective membership was placed in a secondary rank of importance. The decision to accept them in the EU was not so much “achievement-based”: it resulted, mostly, out of a situational accumulation of specific circumstances and geopolitical considerations in the second half of the 1990s.⁹

The 2007 phase of the Fifth EU Enlargement deserves some particular attention because it has led to changes in the way the EU manages the enlargement process (Phinnemore 2009; Pridham 2007, 2010, Gateva 2015). The accession of Bulgaria and Romania became far more contested at national parliamentary and general public levels in several major EU member states – Germany, France and the Netherlands. There were increasing political and popular concerns about the enlargement and therefore additional provisions were necessary to ensure that this enlargement would neither cause damages to the EU, nor run counter to public opinion (Chiva/Phinnemore 2012; Papakostats 2012; Phinnemore 2009; Gateva 2015). Thus, the introduction of a post-accession EU conditionality became inevitable. But why has the EC, the chief proponent of this particular mechanism, devised the major novelty in the post-accession conditionality in the particular form of CVM?

During the pre-accession period, the relative lag of Bulgaria and Romania was compensated for by a formal transposition of the *acquis* required for EU membership since this “rules transfer” had been considered the essence of Europeanisation (Sedelmeier 2011, Pridham 2010). Monitoring the process of “rule transfer” made some sense since its results provided a conventional rating system for measuring the advancement of the contestants for EU membership. In the post-accession period, however, a) the adoption of *acquis* had already been achieved, and b) the conditionality had lost the compelling force of the main incentive – EU membership had already been attained. For lack of any other means of pressure, the EC continued to rely on the naming-and-shaming approach. Toneva-Metodieva (2014) is right in pointing out that the inefficiency of the CVM stems from the intrinsic limits of the EU’s “rewards and sanction” approach to complex and controversial enlargement processes directed at post-communist societies.

9 Regarding the notorious “gift for Kosovo”, see Smith 2003; Grabbe 2006; Gallagher 2013; Bechev 2010 and many others.

However, we should go a step further and be more specific, saying that the ineffectiveness of the CVM was predetermined: the pre-accession conditionality has been incapable of inducing far-reaching reforms in the fields of democracy and RoL (Kochenov 2014; 2008; Pech 2016, Slapin 2015). Precisely the specificity of the pre-accession conditionality approach up to 2004 led to the need for a post-accession conditionality because it was precisely the enlargement-led Europeanisation of the CEECs which fostered the speeding up of the process at the expense of its formality, fostering, in the end, superficiality and reversibility. The cause of an ailment cannot serve as its remedy, no matter how long that treatment is applied. The real problem of the CVM lies in its initial political design based on a) an unrealistic definition of the situation in the Bulgarian and Romanian case, and b) an unrealistic belief in the EU's "transformative power".

3.2 *Why Was the EC Blind to the Incapacities of the Conditionality Approach?*

A senior officer at the directorate-general "Enlargement"¹⁰ at that time remembers that when it became evident that something should be done in order to tackle the Bulgarian-Romanian problem everyone who had dealt with the Eastern enlargement was summoned at the EC. Their unanimous answer to the question "what must be done out there?" was "monitoring!" Unanimity at that point counted as universal truth. Especially at the point at which, as it was explained above, the major concern was not the problem itself but the soothing of the Western public opinion by a clear message that the EC was aware of the problem and was taking care of it.

The assumed instrumental adequacy of the mechanism proposed was fake but it seemed a "good solution to the problem" at that point for a number of specific reasons. First and foremost, the EC had the prerogative to carry out monitoring only over EU applicant countries. That was what it had been doing for a decade and it had become very experienced in it – besides, the EC had no great variety of coercive instruments at its disposal. Second, the monitoring had been the main instrument in EC's "tool box" of the EU conditionality approach to the Eastern enlargement. Up to 2004 it seemed as a powerful instrument conducing to (signs of) Europeanisation in the CEECs. But what had appeared as its own strength was, in fact, an effect of the specific historical context of its implementation – a severe rivalry among the EU accession countries "to not give a reason be dropped out" from a race for a very high bid (EU membership) (Gateva 2009; 2015). The particular historical situation was

¹⁰ Personal interview in April 2015.

mistaken for an intrinsic character of the EU conditionality instrument. Without that particular context, the enlargement policy instrument emerged void of its magical powers (Toneva-Metodieva 2014).

The contemporary literature on Europeanisation recognises that the inefficiency of the pre-accession conditionality derives from the fact that the pre-accession preparation, focused on *acquis* transposing and drafting of reform strategies, was mostly on paper only (Dimitrova 2010; Dimitrova/Buzogány 2013; Kochenov 2014; Pridham 2010).¹¹ That type of enlargement-led Europeanisation could not bring about any substantial socio-structural changes that would guarantee respect for the RoL and, because of it, would transform the domestic political behaviour in line with authentic, accountable democracy. Neither the pre- nor the post-accession conditionality was supposed to transform the pattern of “feckless democracy” (Carothers 2002). Bulgaria and Romania were simply the first countries where the methodological problem of the EU integration policy became evident but was identified (wrongly) as a domestic problem of the two countries alone.

4 The Common Stake – The Rule of Law in the European Union

The course of events in the CEECs in recent years has significantly changed the perspective on the case of Bulgaria and Romania (Bugarcic 2014; Bogdandy/Ioannidis 2014). In Hungary, Victor Orban is maintaining a sustained course towards non-liberal democracy (Kornai 2015; Ágh 2015, 2016; Magyar 2016); the RoL is being threatened in Poland on a larger and larger scale and the provisions of Article 7 of the Treaty on European Union (TEU) are triggered against these member states. In other words, countries once considered “the best performers on the course to EU membership” now seem to be betraying the fundamental values of the EU. These new circumstances are having a very significant impact on how the Bulgarian-Romanian situation is assessed. Ten years ago, the situation in the two Balkan countries seemed to be an exception to the general pattern of EU enlargement; today, we should look upon this “exception” as an early harbinger of the problems now common to most of the ten EU post-communist member states (Ágh 2015, 2016) and some other countries as well.

11 It is important to highlight the fact that the CVM continues to receive positive assessments only when the evaluations are based on *its impact on compliance* – the extent to which a state meets the demands and recommendations made by the EC, and not on *its problem-solving impact* – the extent to which it diminishes corruption on the ground (Sedelmeier/Lacatus 2016).

The EU post-accession conditionality appeared necessary not due to the two countries' time lag in meeting membership standards; in fact, the highly superficial and reversible Europeanisation in Bulgaria and Romania was only an early sign of the problems related to the general political principles and way of implementation of the EU enlargement policies. Formally, those policies emphasised the political and economic membership criteria equally¹² but, in practice, they mainly prioritised the preparation for participation in the EU free market (Hughes et al. 2005). Consequently, the indisputable success of the Fifth Enlargement was in the field of market integration, in contrast with its results in the field of democracy and RoL (Epstein/Jacoby 2014). We may predict confidently that the post-accession conditionality, in the form of CVM, will be dropped, because it achieved an unforeseen success: it illuminated the deep political problem of the EU in general – RoL promotion and support, a problem occurring with substantially varying degrees of acuteness and in different forms in many EU member states. The solution to such a problem requires fundamentally different and differentiated political approaches and policy instruments (Haralampiev/Dimitrov 2016).

5 The Lessons Learned So Far

Constant innovation is a key particularity of the EU's enlargement policy (Gateva 2015, Pridham 2010, 2007). At present there are several important signs that the lessons learned from the EU accession of Bulgaria and Romania have been highly valuable.

5.1 *The Abandonment of the CVM*

First of all, Croatia was saved the trouble of undergoing post-accession conditionality, given that the country's socio-economic, and especially political, indicators were not significantly different from those in the Bulgarian and Romanian case. Croatia's performance on the catch-up index indicators defines it as rather a hybrid case, being only somewhat better than Bulgaria and Romania and yet typologically different from the core EU Member States. The main reason Croatia was not subject to post-accession conditionality was that the CVM had proven incapable of inducing RoL improvement and high-quality democracy after accession. Yet, the country was subjected to much more detailed, tuned-in benchmarking and tightened pre-accession-conditionality (Gateva 2015).

12 C. Smith even claims that the political criteria hold the "upper hand" over the rest (Smith 2003).

5.2 *A Major Policy Change in the EU Enlargement Approach*

An even more significant lesson learned from the Bulgarian-Romanian case is the qualitatively different “New Approach” to enlargement applied towards the Western Balkan countries and Turkey. The main novelty in this approach concerns two things: a) the great attention focused on establishing RoL as a precondition for successful accession to the EU, and b) the inclusion of the public at large, and not only the state institutions or the political elite, as a partner in the course of preparation for the EU (Pridham 2007, Gateva 2015; Fagan/Sircar 2015; Kmezić 2016). The new EU approach rests on the principle that issues of the judiciary and of fundamental human rights (Chapter 23 of the *acquis*) and justice, freedom and security (Chapter 24) “should be tackled early in the accession process and the corresponding chapters opened accordingly on the basis of action plans, as they require the establishment of convincing track records” (European Commission 2011). Each country’s advancement is measured against a checklist of country-specific benchmarks and a track record of implementation of the EC’s recommendations.

Particularly important in this respect is the requirement to provide sound proof of real progress, and not only promises, government programmes and new legislation.

The second important element of the new approach is that the EU is trying to avoid the top-down European integration by involving other stakeholders, for instance civil society organisations, in addition to domestic governmental officials (Fagan/Sircar 2015; Kmezić 2016). This is a truly fundamental change, as it enables avoiding the mistakes of the previous enlargements, whereby Europeanisation, eventually reaching some members of the upper layer of administrative officials only¹³ (Grabbe 2006), remains shallow and reversible.

Thirdly, the most important initiatives for solving the RoL problem are those taken at a fundamental level common to the whole EU and these deserve some additional comments.

6 Some Broader and Deeper EU Integration Policy Implications

The most important change in EU policy for RoL promotion, which is traceable back to the EU’s experience with Bulgaria and Romania,¹⁴ as several EC officials

13 James Hughes and his colleagues early on sent a strong empirically grounded warning that even this very limited task had been far from sufficiently solved (Hughes et al. 2005).

14 The then European Commissioner for Justice, Freedom and Security, Franko Frattini (2004–2008), was among the few who were against the introduction of the CVM, insisting

admit, refers to policy initiatives aimed within the Union at large. It is not coincidental that after the CVM progress reports of 2012, which assessed for the first time the achieved results in the two countries as reversible, a statement that represented an admission of the CVM's inefficacy, in 2013 the European public witnessed some very important initiatives. In that year Viviane Reding, the Vice-President of the European Commission, who is also *responsible for the portfolio of RoL and Fundamental Rights*, declared the strategic initiative of implementing a specialised policy for protection of RoL. She made an important emphasis that the problem of abuse of power is general to all EU countries, though occurring to various degrees and in various forms; this view should remove the risk of tendentious focusing on the post-communist European countries alone.¹⁵

The implementation of the same new approach to the problem of strengthening the RoL was reflected in the following year in the EC's first Anti-Corruption Report, which made a detailed assessment of the specificity of the problem in each member state.¹⁶

These preliminary steps led to the next key initiative. On 25th October 2016, the European Parliament voted by a great majority a resolution endorsing the Commission for the establishment of an EU mechanism aimed at safeguarding democracy, the RoL and fundamental rights.¹⁷ Without doubt, the recent developments in Hungary and Poland were among the major concerns, which

instead on implementing a general RoL and anti-corruption scoreboard for all EU Member States. His initiative for establishing an European Public Prosecutor failed then but it is rapidly acquiring shape today (https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/networks-and-bodies-supporting-judicial-cooperation/european-public-prosecutors-office_en, accessed on 04.10.2018).

- 15 At a conference of the CEPS held in Belgium Reding emphasized: "In our Union, these rule of law matters are thus no longer a 'domaine reservé' for each Member State, but are of common European interest. [...] As European Commission, we have to pay attention (when called upon to act) not to fall into the trap of a certain 'anti-Eastern' bias in some of the current rule of law discussions." (<http://www.euinside.eu/en/news/viviane-reding-rule-of-law-mechanism>).
- 16 "Report from the Commission to the Council and the European Parliament – EU Anti-Corruption Report," (https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf).
- 17 "European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights," (2015/2254(INL)) (<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0409+o+DOC+XML+Vo//EN>, accessed on 04.10.2018).

raised awareness of the urgent need for such a mechanism. A closer look at the details of the recommendation, however, shows that many of the key elements of the proposed public pan-European mechanism coincide quite closely with many of the recommendations for increasing the effectiveness of the CVM (Dimitrov et al. 2014). An indicative fact is that the Parliament had already organised a hearing with Bulgarian and Romanian experts on this matter in 2015.¹⁸ Thus, the experience of Bulgarian and Romanian membership has certainly contributed, at least to some extent, to the political comprehension of the severity of the problem and to development of general policies strengthening the value foundations of the EU.

7 Conclusion – Thinking Big

Back in 2007 Pridham was right in pointing out:

Since the 2004 enlargement, new patterns have emerged already in the aims, approach, and priorities as well as the methods of the EU's political conditionality. It is perhaps too soon to conclude clearly whether these represent a further historical phase in conditionality policy following that developed in the 1990s and the preliminary phase beforehand. But the changes are significant, and there are indications they are likely to stay and determine future policy.

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Ten years later we are certain that the post-2004 developments of the EU political conditionality mark a further historical phase. The main reason is that the implementation of that conditionality brought to light the key political problem of the contemporary EU integration – the need of promotion and safeguard of RoL and the other fundamental values. Bulgaria and Romania just happened to be the first two countries where the depth and the acuteness of the problem has been encountered, but back then it appeared as local specificity only. RoL is the core political problem in both Bulgaria and Romania, because of which the local authorities have, so far, failed to win the fight against systematic, politically patronised corruption. The failure of the EU's post-accession

18 It is noteworthy, however, that the public hearing was initiated by the Parliamentary Committee on Budgetary Control, not by the Committee on Civil Liberties, Justice and Home Affairs.

conditionality is of the same origin as the current RoL abuses in Hungary and Poland and these developments helped the EU leaders (and institutions) sense the importance of a deliberate common policy for defence of European fundamental values (Bogdandy/Ioannidis 2014; Kochenov/Pech 2015, 2016). The particular manifestations of this policy are quite various: the establishment of a European Public Prosecutor; issuing of the EU Pact on Safeguarding the Fundamental Values of the Union; triggering the “nuclear option” of Article 7 of TEU against countries where the governments undermine the RoL by their policies; introduction of a direct link between the national RoL performance and access to the EU funds after 2020 etc. Notwithstanding the high importance of each one of these successive steps and specific measures, it is exactly their general sequence as a long-term policy effort that will make the difference. Without the integral strategy for a deeper integration by institutionally pursued policies for RoL promotion, the EU foundation values become vulnerable and its future is questionable.

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