

# **What can the EU do to promote rule of law in members and neighbours?**

## **Lessons from Bulgaria and Romania<sup>1</sup>**

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### *Introduction*

The European Union's focus on political integration<sup>2</sup>, 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 viewed as nearly completed when these countries joined the European Community. While the EU's contribution to the overall strengthening of democratic institutions is considered by many (Vachudova 2005; Dimitrova/ Pridham 2005; Schimmelfennig/Sedelmeier 2005; Levitz/ Pop-Eleches 2010 a,b, but see Mungiu-Pippidi 2008; 2014 for a different view) to have been essential for the consolidation of democracy in Central and Eastern Europe in general, the evaluation of the Union's efforts to promote rule of law and support the struggle against corruption shows mixed results. The question arises why has the Union as a whole and its various institutional actors and networks managed to support democratic consolidation and a host of other regulatory reforms needed to apply the policies of the Union, but not influence the struggle against corruption to the same extent?

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<sup>2</sup> 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.

This paper attempts to explore this question by reviewing existing studies examining the tools and approaches used by the EU to influence reform of the judiciary and the anti corruption efforts in Bulgaria and Romania. The first part reviews the tools and instruments of political integration and their underlying mechanisms and the emergence of the EU's approach towards rule of law and corruption. The next section discusses corruption and state capture as phenomena of post communism and trends and data from the whole of the EU to put developments in Bulgaria and Romania in perspective. Next I will look at the studies that have particularly addressed judicial reform, corruption and the Cooperation and Verification Mechanism (CVM) applied to Bulgaria and Romania after their accession and their findings. Based on the review of this growing literature and on recent data on corruption trends, I argue that the EU's approach and its effects appear to have a puzzling and uneven effect largely dependent on domestic mechanisms to work. In the conclusions, I sketch some scenarios that may approach the problem with corruption differently.

The EU's first attempt to support the strengthening the political institutions, human and minorities rights in the post-communist states of Central and Eastern Europe was 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 inclusion of suspension clauses that made the operation of the agreements conditional on observing democratic principles and human rights was an innovative feature of EU agreements with third countries at the time and one that was developed and strengthened in later agreements.

The political criterion formulated in the Copenhagen European Council Conclusions of 1993 provided<sup>3</sup> a broad definition 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

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<sup>3</sup> The first criterion from Copenhagen required 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.

reports, in the regular interactions<sup>4</sup> between the EU institutions and executives, legislatures, judiciaries and civil society representatives from candidate states and in various ad hoc forms of political dialogue with the accession states. 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 equalled completion of democratic transitions mattered as well, for elites in Central and Eastern Europe and for their citizens (Dimitrova and Pridham 2004; Dimitrova 2011).

In a more general sense, political integration grew from the incremental efforts of all participating actors, but above all the EU itself, to define norms and values central for the European Union as a whole, a process which was seen by some scholars as an important step towards constitutionalization (Rittberger and Schimmelfennig 2006). Rule of law did not receive much emphasis in the initial treatment of the Copenhagen criteria, 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, observing the detrimental effects of corruption and weakness of rule of law in a number of candidates,<sup>5</sup> led to an increased emphasis on rule of law and a shift of focus. Whereas the initial emphasis in applying the first Copenhagen criterion was on stability (e.g. with the so called basic Stability treaties between Hungary, Romania, Slovakia mid-1990s), democratic institutions, balance of power (e.g. initial evaluation of Slovakia in the Commission's Agenda 2000 in, 1998) and minorities' rights (e.g. Latvia 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 focuses on the efforts of the EU to develop modes of political integration other than (or combined with) membership conditionality and specifically on tools

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<sup>4</sup> 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.

<sup>5</sup> At the start of the negotiations of the first group of candidates, corruption problems were highlighted in the regular reports on Poland, the Czech republic and mentioned in practically all the regular Commission reports.

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, Engert and Knobel 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 and Sedelmeier 2005b; 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.

*Behind the policy tools: complex modes of political integration*

Using process tracing in cross comparative case studies to establish the causal influence of variables tends to privilege single mechanisms over multiple and complex ones. This is especially true for in-depth, theory driven case studies with a small n, such as the universe of cases of European Union's effectiveness in political integration in candidates and new member states. The danger of such an approach is that complex mechanisms of political integration, relying on multiple channels interacting with each other, are not captured. Before proceeding to evaluate the effectiveness of European Union efforts in political integration and especially in influencing the rule of law and struggle against corruption in Bulgaria and Romania, a discussion of the relationship between EU tools, modes of integration and mechanisms is needed to explicate the relationship between well known EU tools, such as conditionality and mechanisms rooted in logics of social action that underlie these tools.

Conceptualizing conditionality, as it was used in the 2004-2007 enlargement, exclusively and only as underpinned by a mechanism of external coercion, or manipulation of the incentive structure of executives or legislatures can be misleading, because it is based on evidence from a set of overdetermined cases, where several mechanisms and logics of social action worked in the same direction

(Dimitrova 2014, Sedelmeier 2014; Schimmelfennig and Sedelmeier 2005). To start with, even in a purely rational, external incentives interpretation, the mechanism of bargaining underlying conditionality's success in convincing domestic actors to implement costly reforms depends on both threats of exclusion and the promise of rewards (Schimmelfennig and Sedelmeier 2005, Steunenberg and Dimitrova 2007, Epstein and Sedelmeier 2009). Furthermore, the character of incentives to which political leaders respond matters and it depends ultimately on their preferences and the way these are aggregated by domestic institutional structures such as parliamentary or presidential regimes, electoral systems, and types of political parties. While preferences of political leaders cannot be specified a priori, we have extensive knowledge of the preferences of Central and Eastern European leaders that led their countries' transformations and accession to the EU between 1990 and 2004/2007. The transformations themselves, as separate processes with their own domestic dynamic, shaped institutions of the state and actors and created a mixed set of conditions for political integration (Dimitrova 2004; Mungiu-Pippidi 2014).

Pre-existing socialization of CEE elites linked to rhetoric referring to the unification of Europe divided by historical injustice was crucial in the enlargement process (Schimmelfennig 2001). CEE elites' incentives for complying with EU demands for reform were by far not only material, but also symbolic, based on the powerful discourse claiming that joining the EU would be a 'return to Europe' for CEE states (Dimitrova 2011; Henderson 1997; Steunenberg and Dimitrova 2007). The elites of CEE member states that negotiated to join the EU from 1998 onwards were thus influenced by external incentives *with* a credible membership perspective, pre-existing socialization in favour of the EU *and* a favourable international and domestic context (Dimitrova 2011, 2014). The significance of understanding and separating these multiple mechanisms underlying the impact of EU conditionality is that future expectations of impact may be exaggerated and rely too much on adjustments to the supply side of EU conditionality such as membership perspective or benchmarking. Variations in how credible the promise of accession is or attempts to change domestic elites' cost benefit calculations may prove useless without prior socialization. For current and future candidates, the socialization of domestic elites, which may not be as favourable as in the 1990s context. Elites with different socialization, for whom

joining the EU does not bring symbolic and reputational benefits, may respond differently to incentives.

Based on this reasoning, I argue that the policy tool of conditionality, as developed in the Copenhagen criteria, reports and policy approaches mentioned briefly in the introduction, can be seen to be supported by two different mechanisms coming from two different logics of social action (March and Olsen 1989; Börzel 2014). Rather than purely trying to manipulate the cost-benefit calculations of domestic actors – governments and other key veto players, as one interpretation suggests (Schimmelfennig and Sedelmeier 2005), conditionality can be seen to rely at the same time also on socialization and strategic use of norms. As shown in the previous paragraphs, past effects of conditionality have been difficult to disentangle empirically, because of the small number of cases that often contained evidence of both appropriateness and consequentiality logics operating at the same time (Andonova 2005; Dimitrova 2011; Epstein 2005; Kelley 2004). Furthermore, there is also considerable evidence that political institutions reform was influenced by both bottom up *and* top down processes (Jacoby 2004, Börzel and Risse 2012, Dimitrova and Buzogany 2014). Such combined mechanisms do not equate active and passive leverage together, or positive incentives plus passive emulation or mimicry, (for the concepts of passive and active leverage, see Vachudova 2005). Instead, they can be seen to combine socialization and incentives and require the participation of a broad set of actors besides governments, societal actors that have connected with the EU or would like to promote political change and reform for domestic reasons (Börzel and Risse 2012; Dimitrova and Buzogany 2014). Last but not least, the participation of civil society actors in dialogue with the EU and their own governments is mediated by state capacity itself, including levels of administrative coordination and more general levels of state capacity (Dimitrova and Toshkov 2007; Börzel and Risse 2012).

If we want to understand EU's effects in the small number of cases where the Union has attempted to strengthen political integration after accession (Hungary, Bulgaria, Romania), we need to disentangle the top down from the bottom up effects and look for socialization and external incentives mechanisms working through the rather limited set of policy tools available for this task: political dialogue, civil society

dialogue, naming and shaming, the Cooperation and Verification Mechanism and its monitoring reports.

Positing a complex mechanism of political integration, underpinned by both rational incentive based mechanisms and socialization is essential to understand the expectations and limitations of EU efforts. By searching for one dominant mechanism of political integration, our analysis can miss others, simultaneously at play and in particular miss their interaction (Sedelmeier 2014).

Furthermore, the European Commission and various EU level actors such as members of the European Parliament or twinning experts, were aware of the existence of multiple channels of influence and interaction and making use of these multiple channels.<sup>6</sup> For example, pre-accession conditionality was supported by dialogue at all levels through the accession negotiations themselves – between Commissioners and political leaders, between Commission officials and civil servants, between parliamentarians and MEPs in the Joint parliamentary Committees. Post accession, conclusions and recommendations from monitoring reports are supported by statements by Ambassadors and other key political figures in the public domain and political leaders from the EU's major political party families engage heads of state and government in active dialogue about desired reforms as further steps towards political integration.

As EU tools are underpinned by different underlying mechanisms and logics of social action and as different modes of integration engage different actors (Börzel 2014), this paper will examine them separately in order to differentiate their varying effects and contribution to political integration efforts. The rationale for doing so is also rooted in the complex understanding of conditionality discussed here and in the expectation that certain mechanisms will become weaker post accession while others will matter more. If we accept that political integration, when it was successful, depended on both pre-existing socialization and external incentives, the implications for post accession political integration are clear: with limited external incentives (both in terms of threats of sanctions and promises for rewards), socialization will matter

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<sup>6</sup> Commission official interview, 2 November 2014.

more. If only external incentives mattered pre-accession, backsliding or reversal are almost inevitable (Sedelmeier 2009), but if socialization processes were the precondition for the working of conditionality, then success without conditionality would depend on the pre-existing socialization and preferences of governments, judges, bureaucrats, civil society organizations, oligarchs and citizens and on the state institutions that aggregate these preferences. Only when sufficient domestic support by at least some of these groups for political integration exists, can we expect EU enforcement mechanisms to work.

Before examining the empirical evidence so far with regard to the European Union's success or failure in promoting political integration in the area of rule of law, it is important to put the cases we focus on in a broad comparative perspective in terms of general empirical trends and existing explanations of determinants of corruption.

#### *Origins and causes of state capture and high-level corruption*

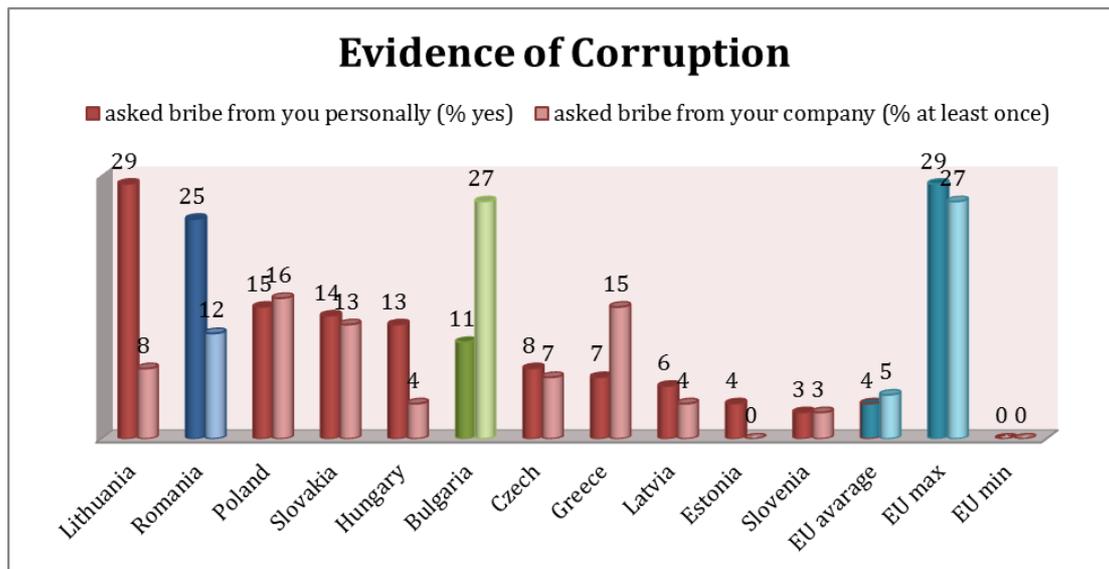
The influence of external actors and the EU in particular in political integration and rule of law and corruption problems should be contextualized both in terms of geography, by identifying regional trends and in terms of political economy, by seeking the domestic roots of political problems<sup>7</sup>. EU's success or failure with political integration should be considered in the broader context of domestic political systems, state capture and patronage in Central and Eastern European member states and further in the EU in general. A growing body of studies has emerged in the 2000s aiming to analyse state capture and its causes. These studies broke with the trend to neglect the role of the state as independent and dependent variable characteristic of the early studies of transitions from communism in the 1990s (Linz and Stepan 1996). Their explanatory frameworks and findings will be examined in the second part of this section in order to put EU mechanisms and tools in a comparative context with other, domestic factors.

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<sup>7</sup> There are clearly also broader historical, societal and cultural trends that could be taken into account, but will not be addressed here, as the focus of this paper is on actors driven institutionalism and mid-term developments.

To evaluate the success or failure of the EU’s specific measures applied to Bulgaria and Romania after accession, such as the Cooperation and Verification Mechanism (CVM), trends in these two countries should be compared with overall trends in other Central and Eastern European member states. The European Commission’s first comprehensive report on corruption for the EU-28 provides a basis for comparison with a wealth of perception and survey based indicators of corruption. The report provides evidence for a great variation of corruption trends among the CEE member states and the EU in general, where Bulgaria and Romania are by no means the only outliers. For example, high level corruption - as experienced by companies - is a problem in Bulgaria and Romania, while low level corruption is a problem for a number of EU member states, highest in Lithuania and Romania, but not to the same extent in Bulgaria. This is illustrated in chart 1, based on the results of survey related to corruption incorporated in the Commission report (2013).

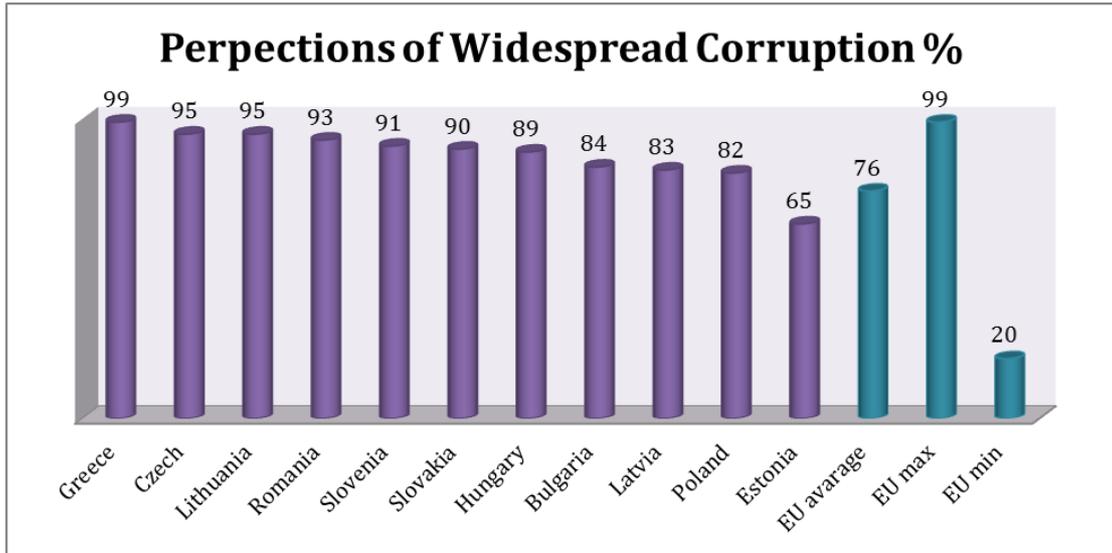
Chart 1: Has anyone asked a bribe of you or your company in the last 6 months?



Source: European Commission 2013

The Commission report shows a number of new member states experienced higher levels of perception of widespread corruption than Bulgaria and at least three member states score higher on this indicator than Romania, as illustrated in chart 2.

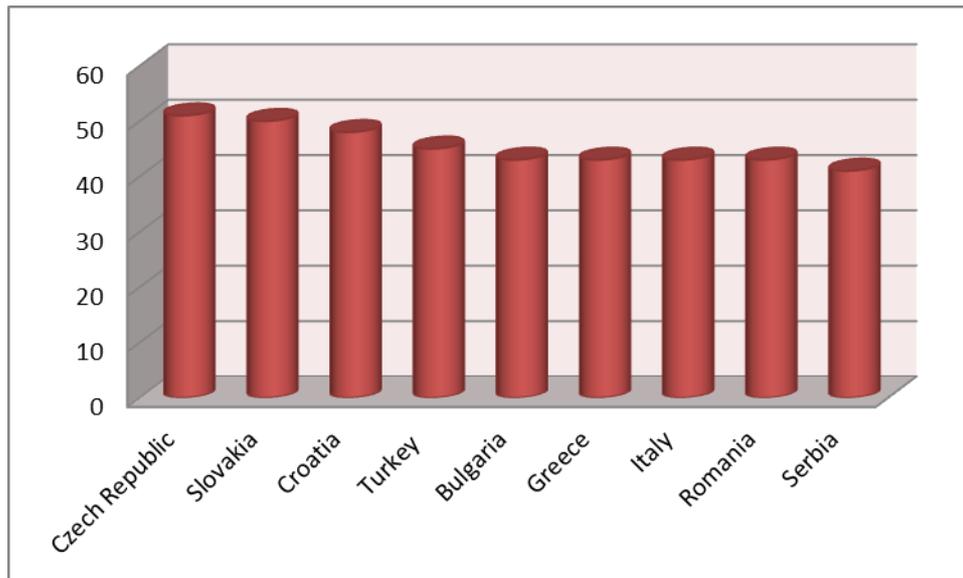
Chart 2: ‘How widespread is corruption?’



Source: European Commission 2013

The Commission report also provides some support for the view that state capture and high level corruption are to a great extent an effect of the post-communist transformations and therefore not only a feature of political economy relationships in Bulgaria and Romania, but of a number of new member states. This view, however, is contradicted by the similar levels of (perceptions of) corruption in other EU member states such as Greece and Italy. As shown in Chart 3, the most recent ratings of Transparency International place Bulgaria, Romania, Greece and Italy at the same place with the same score of 43 (69<sup>th</sup> rank), followed closely by Croatia, Slovakia and the Czech republic.

Chart 3: TI International scores of 2014



Source: TI International

There are clearly complex causes of these regional similarities, which should be further explored. So far, most analyses see corruption as phenomenon arisen as a consequence of the post-communist transformations. High level corruption is seen as the manifestation of a struggle over capturing the resources and institutions of the state and has come to be known as state capture. Viewing the state and its resources as a dependent variable, a number of studies have explored the role of post-communist elites, parties and party systems as causes or determinants of state capture (Ganev 2001; 2005, 2007; Jones-Luong and Grzymala Busse 2002; Grzymala Busse 2007; O’Dwyer 2004, 2006; Karklins 2005; Innes 2014).

Conducting a comprehensive analysis of privatization, state administration expansion and party funding strategies in Bulgaria, Estonia, the Czech Republic, Hungary, Slovakia, Latvia and Bulgaria, Grzymala-Busse’s (2007) breakthrough study of state capture in the post communist transitions stressed domestic factors and in particular, political party systems as the main causes of state capture. To explain why Bulgaria, the Czech Republic, Slovakia and Latvia ended up with higher levels of state capture than Hungary and Poland she established independently the levels of corruption by means of a broad and representative surveys, using anchoring vignettes to put corruption in perspective for the respondents (Grzymala-Busse 2007:242-246). According to her, the group of countries with high levels of state capture: The Czech republic, Slovakia, Latvia and Bulgaria, met their transitions with weakly formed

political opposition, which affected contestation. In these countries, the old communist parties had not reformed in order to turn into social democratic ones, able to provide strong opposition to new party formations.

Political party analyses of the current political landscape have built on this framework to explain why patterns of state exploitation might continue (Innes 2014). Innes has suggested that new parties on the right and centre right part of the political spectrum have continued the practice of non-regulation of certain political relationships which allows them in their turn to exploit the state. This has been especially true of emerging populist parties, which are ideologically unanchored, but have had to compete for lower income voter support in conditions in which redistributive programmes have not been possible. A common feature of these parties is that they established themselves by ‘monopolizing and asset stripping’ the state for resources and information (Innes, 2014:93) – in other words, the same processes which Ganev (2001, 2007) described earlier in the context of the first wave of post-communist privatizations).

Further broadening of the theoretical inquiry suggests that state capture by networks of rent seeking elites is not only a post-communist phenomenon. In recent years, North, Wallis and Weingast (2013) have developed a broad framework for interpreting history and development and a state typology distinguishing natural states and open access orders. They specify the predominance of patron-client types of organizational structures as a typical feature of natural states. Natural states, according to them, limit broad citizen access to organizational forms and ensure stability through allowing dominant elites to receive rents (North *et al.* 2013:35-37). The most essential feature of natural states is the predominance of personal relationships, but as natural states mature, they develop organizations that provide a certain measure of rule of law and organizations themselves become more institutionalized (North *et al.* 2013:63-73). Open access orders, on the other hand, are based on universal access of all citizens to political organizations, market economies and political party competition and independence of economic and political systems (North *et al.* 2013:112). According to North *et al.* (2013: 256-257), the transition from natural states to open access orders follows different pathways, but always involves institutionalizing open access through impersonal relationships. Furthermore, political

and state institutions such as elections or parliaments function differently in natural states and open access orders. In terms of normative advantages of one over the other, North *et al* (2013:266) suggest that open access orders support impersonal public organizations that are capable of delivering policies to citizens on an impersonal basis and as a consequence, a wide range of public goods and impersonal public services. Last but not least, open access orders rely on and support the rule of law, with a judicial system ‘relatively free of corruption’ (North *et al* 2013:267).

The OAO framework provides a new way to understand and potentially analyse systematically the different functioning of similar political institutions under open or limited access orders. It also makes clear that securing of open access impersonal relationships will ensure better functioning of institutions. Understanding all the implications of this fundamentally different approach and its findings for corruption and rule of law require further research and deliberation.

While on the whole, the post communist states that are EU members exhibit the basic features of open access orders, the close interweaving of business elites and state institutions – through the phenomenon of state capture described above – can be seen as a feature or a remnant of natural states relationships which erodes open access and undermines institutional effectiveness. It is clear that state capture or high level corruption aims to distribute public services on a personal basis and control access to public goods. The networks that played a key role in post communist privatization and market transformation processes, analysed in different ways by Stark and Bruszt (1998), Karklins (2005) and Ganev (2007) are remnants of links in the old regimes, but also seem to be highly, if not exclusively personalized.

Within this framework, European Union enlargement criteria are interpreted as equivalent to requirements for the ‘acceptance of open access rule for the economy and polity’, met by the authors of the framework with cautious optimism (North *et al* 2007:35). In the context of this paper, it is clear that EU efforts to strengthen the rule of law and curb corruption address fundamental features of the political and state order in Bulgaria, Romania or other member states or candidates. Last, but not least the authors suggest that threshold conditions can be related to economic development,

potentially providing another way to think about measure to strengthen the rule of law and curb rent seeking (North *et al* 2007, 2013).

Both the analyses of state capture and the regional trends in corruption scores presented in this section provide a useful reminder that addressing corruption cannot be seen as predominantly an aspect of political integration between the EU and its newer member states, but above all remains a domestic reform issue (Dimitrova 2010). With this caveat in mind, the next section will focus on the EU's record of support for rule of law and judicial reform in Bulgaria and Romania after accession.

### *Post Enlargement mechanisms for political change*

The argument that the scope for enforcement of non-acquis related elements of political integration after accession is limited is by now well-rehearsed (Sedelmeier 2008, 2014; Dimitrova 2010). In contrast to pre-accession conditionality which targeted both the acquis and non-acquis elements, post accession mechanisms for political integration do not include areas in which there are no common rules agreed between the member states, such as democracy and rule of law. Nevertheless, these norms are understood to be part of the broad norms of the EU and its treaty foundations. The most tangible expression of this conviction is the adoption of article 7 of the TEU, added in EU law after the Treaty of Amsterdam, containing safeguard provisions to protect the core EU values and procedures in case of breaches of democratic values. However, the article is often seen as a 'nuclear option' in dealing with imbalances in democratic institutions in the member states and has had a minimal impact so far (van Hüllen and Börzel 2013).

To deal with weaknesses in the areas of rule of law, the struggle against organized crime and corruption which Bulgaria and Romania have experienced the EU has therefore introduced a separate instrument, the Cooperation and Verification Mechanism (CVM).

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 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 and Vachudova 2012). However, some case studies have also addressed socialization and persuasion mechanisms and the engagement of societal actors other than governments (Dimitrova and Buzogany 2014; Dimitrov *et al* 2014).

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 and 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 fall formally within its domain but where Bulgaria and Romania had an interest to comply, namely accession to the Schengen zone of free movement (Spendzharova and 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 of 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 in the EU norms and have later mobilised 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 and Vachudova 2012; Kavrakova 2009; Dimitrova and Buzogany 2014).

The mobilisation by 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 and 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 4 extensive and detailed volumes available up to and including 2013<sup>8</sup>. The Bulgarian Centre for the Study of Democracy (CSD) produces comprehensive corruption assessment reports focus on the broader institutional and societal aspects of corruption and anti-corruption efforts (CSD, 1999-2014). However, it must be noted that the Centre for the Study of Democracy's work in monitoring corruption and state capture is not based on incentives and contacts with the EU or consultations within the CVM, but on grant support from the United States.

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 further on here (Dimitrov et al 2014), 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

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<sup>8</sup> Judicial Reform Index at: <http://www.bili-bg.org/11/page.html>

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 behavioural 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.

### *Comparative cases: institutional-political analyses*

To understand whether the CVM and the EU as a whole makes 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, 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 who 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 is a limited number of such comparative studies available so far, but they already can 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 (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 generally better effects in terms of its efforts to stop the impeachment referendum in Romania. Less

compliance was achieved on general corruption issues in Romania and – following developments since 2013 – on 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.

Therefore, in a line of reasoning similar to the methodological issues highlighted at the start of this paper 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 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 and 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 EU's efforts to be effective. This echoes findings and conclusions about EU influence in other parts of the world (Börzel and 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 deviates from EU rules and values. Pressure in similar circumstances in Romania, however,

did not have a similar effect (Dimitrova and Buzogany 2014). Ultimately, as Sedelmeier (2014) has shown, the EU's influence on Romania during the constitutional and impeachment crisis in 2012 eventually 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 Black Sea cooperation mechanism (institute for Public Policy – 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 European Union 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 the ongoing criticism for Romania in the CVM reports, some 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 (Institute for Public Policy 2010:13-24).

The IPP 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 20120).

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, check information coming from citizens and the media and perform checks of high level officials (IPP Report 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 report 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 lack of protection in the software that make 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, was the decision taken to invest in replacing the software and ensure random distribution.<sup>9</sup>

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 NGOs<sup>10</sup> 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. The criticism and content appear to be closely coordinated and suggest that both civil society and the EU aim to use coercion, persuasion and norms strategically and with some degree of coordination.

For 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 (IPP 2010:25-29), established in 2002. Another, General Anti Corruption directorate was also 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, while the

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<sup>9</sup> A series of articles following the attempts to reform the random distribution system for court cases can be found at: [www.judicialreports.bg](http://www.judicialreports.bg) (in Bulgarian).

<sup>10</sup> 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](http://www.bili-bg.org/cdir/bili-bg.org/files/18.06.2014_Election_Inspectorate_with_the_SJC_BULGARIA_7NGOs_Letter.pdf)

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 been also a visible backlash against rule of law and the balance of power in the broader political landscape in Romania (Stratulat and Ivan 2012). The turbulent co-habitation of former President Basescu 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 Basescu have been aborted under EU pressure, a process in which the CVM played a positive role (Sedelmeier 2014).

The backsliding trend which started in 2010 found another expression in the amendment of the law defining the functioning of the National Integrity Agency, another strong body created in the pre-accession period, which 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 remain, therefore, mixed.

Similarly, the overview of institutional rules and norms transplanted in 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.

In terms of comparison of trends over time, Bulgarian NGOs reports record a trend suggesting reluctance to combat corruption among elites, but also increasing societal resistance to the phenomenon of high level corruption. For example, the most recent report by the Centre for the Study of Democracy reported that in 2014 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 report notes that in 2014 Bulgarian society has witnessed and faced “political corruption of threatening scope”. It points out that capturing of the state of private interests has reached the “law enforcement bodies such as the Prosecution, financial surveillance and the Central Bank” (CDS 2014:9). At the same time the report points out the rising resistance and rejection of corruption practises among the Bulgarian population.

The overview of the functioning of relatively new institutional arrangements and organizational units created in Bulgaria and Romania during the pre-accession period to strengthen rule of law and limit corruption suggest their record is mixed. 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 remain constantly in the focus of public attention. So far this attention does not translate into 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 erosion of impartial decision making from one part of the political and institutional system to the other. Dimitrov et al (2014) 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 to 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. The next section will focus on such broader sociological and political economy approach.

### *EU tools encounter underlying political economy relationships*

As developmental economists have long known, designing institutions arrangements requires both ‘local knowledge and creativity’ (Rodrik 2008:20). Just as other international organizations have done, the EU recommended a set of institutional arrangements which were predicated on the idea that it was possible to find one set of appropriate institutional arrangements a priori and view convergence towards them as desirable. Such an approach has informed much of the EU’s work in the pre-accession period because it enables comparison and benchmarking, which were important tools for the Regular Progress Reports. The problem with this approach is that it focuses on the set of institutional arrangements in one domain, but does not pay attention to underlying causes or the potential interactions and effects on other institutional arrangements in the same system (Rodrik 2008:21-22). Such effects are clearly shown in the study by Dimitrov et al (2014) of progress in fulfilling CVM requirements in Bulgaria and Romania.

Dimitrov *et al* (2014) 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 2013).

These studies find that the CVM reports underestimate corruption in key public sectors and target mostly institutional and procedural adjustments (Dimitrov *et al* 2014; 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 per cent of all recommendations). Fifteen per cent of all recommendations target the legislatures and 14 per cent target the judiciary branch. A comparison between the Bulgarian NGO's 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 2013:17).

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 there, 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, in success in rule of law reform because of the latter's much more fundamental character and place in the political system (Dimitrov et al 2014:140, Toneva-Metodieva 2014:6).

The results of the content analysis of the CVM reports for both Bulgaria and Romania, also indicate that Bulgaria and Romania end up with similar levels of criticism and shortcomings, even with somewhat different starting positions and despite substantively different requirements (Dimitrov *et al* 2014:100-102). 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 one fourth of the monitoring report statements praise specific results and incidents of compliance, but 80 per cent of these are small achievements and only sixteen are substantial results (Dimitrov *et al* 2013:22-23).

Overall, the analyses lead them to conclude the CVM has been ineffective. They attribute this ineffectiveness to a whole range of causes among which 'inconsistencies, poor conceptualization, insufficient understanding of the complexity of the problem, underestimation of the domestic opposition to reform' (Dimitrov et al 2014: 141). Furthermore, these authors suggests 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*, 2014:141).

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, addressing the CVM to government 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 societal level.

The problem of the limited progress in judicial reform is not only the continuous negative effect on the whole political system, but also the economic constraint for investors (Allen, 2014). As discussed by North *et al* (2013), corruption represents elements of limited access order and can mean unequal access by some actors, in this case, foreign investors. We can expect that domestic actors that are either linked to business interests or captured by them have an interest in continuing to limit open access and impersonal procedure application, for example in key areas such as public procurement.

As predicted by North *et al* (2013) in the broader developmental context, a lack of understanding of the underlying political economy underpinnings of problems with rule of law and corruption may lead to reform measures and external templates which do not resolve problems with corruption, but move the problem elsewhere (Dimitrov *et al*, 2014: Racovita 2011).

Sometimes, such displacement effects have been obtained not only through the procedural approach Dimitrov *et al* (2014) are so critical of, but by the EU's excessively focusing on one specific set of institutional rules, for example rules strengthening the independence of the judiciary. This has been shown by Parau's (2014) analysis of the rise of Judiciary Councils in Hungary, Bulgaria, Romania and Moldova, as a result of European Union conditionality and advice. 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 OECD's SIGMA unit (Dimitrova 2002, Hinrik-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).

The solution to these problems according to Dimitrov et al (2014) is in adopting 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 2014, Toneva-Metodieva 2014). However, such a radically different approach is may be fundamentally incompatible with the principal agent relationship between the Commission and the members states. Parau (2014), by contrast, seems to argue for domestic 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.

*Towards a domestic centered perspective: more effective tools?*

The seemingly unbound leverage that the European Union has enjoyed during the pre-accession period has resulted in a certain overestimation of what the EU can do in candidate and member states. If we take a domestic driven perspective, as argued by Dimitrova (2010, 2014) Grzymala-Busse (2007) and Vachudova (2014), we get arguably a more realistic picture of what can be expected from European integration.

The CVM and all forms of European Union leverage in Bulgaria and Romania and also in other Central and Eastern European member states should not be seen as a of governance panacea to cure all domestic ills. They are simply not designed for this and never had such purpose in the first place.

Recent trends in democratization and Europeanization literatures have increasingly pointed to integration or democratization effects as the results of the interaction of domestic and external actors rather than domestic actors being the object of external

influences (Jacoby 2006; Tolstrup 2012). As our understanding of the precise dynamic of interaction between external and domestic actors becomes more sophisticated, we can better assess existing tools promoting rule of law as aspect of political integration or anti-corruption reforms. The broader theoretical developments seem to mirror the findings of the studies focusing on Bulgaria and Romania and the Central and Eastern European region. Both literatures highlight the importance of interactions between external democratizers and domestic actors, both at elite and civil society level.

The assessment of how successful and effective the CVM and other EU tools have been in supporting the rule of law and anti-corruption efforts in Bulgaria and Romania clearly varies considerably and the debate is still open. This variation stems from the level of analysis, the perspective and focus and implicit counterfactuals. As the analyses cited here show, whether we evaluate the CVM as unsuccessful because it did not influence the Romanian political system up to its institutional crisis and did not prevent the crisis occurring (Dimitrov et al 2014:99-102) or we consider it a success because the EU ultimately succeeded in stopping the move to impeach the President (Sedelmeier 2014) is a matter of perspective and depends on expectations of how deep political integration should go.

The comparative studies which look at formal legislative change and series of instances of specific interventions where political responses show an influence of the EU are more optimistic and positive in their findings (Sedelmeier 2014; Spendzharova and Vachudova 2012, Vachudova 2009, 2014). The broader, sociological studies highlighting trends and especially the unchanged overall levels of corruption and other governance indicators and suggest a lack of effect of EU instruments (Dimitrov et al, 2014; Toneva-Metodieva 2014).

The difference, however, is not just one of perspective or level of analysis. The studies appear to interpret their findings with different counterfactual comparisons in mind. Scholars working in a broad comparative or European context have evaluated the shortcomings of the CVM carefully, but also stress that the counterfactual comparison with a situation where no EU pressure would be applied. Vachudova (2008, 2009, 2014), in particular, has repeatedly stressed that in the absence of CVM

and EU membership in general, corruption in Bulgaria and Romania would have developed even more negatively (see also Innes 2014).

The Bulgarian study cited above appears to work with a different implicit comparison: a much more comprehensive reform and behavioural and societal change in Bulgaria (Dimitrov et al 2014). The conclusion they reach, namely that far reaching and comprehensive reform of governance in terms of seriously reducing corruption, significantly improving rule of law, transparency or economic growth, is not yet achieved through the CVM, cannot be disputed<sup>11</sup>.

Despite having not achieved a great change in Bulgaria, Bulgarian citizens appear to value the CVM as a monitoring mechanisms, as do Romanians, as shown in the latest Flash Eurobarometer survey conducted in December 2014. These most recent (from December-January 2015) results from the monitoring of the perceptions of corruption and effectiveness of the CVM via the Flash Eurobarometer reflect both the unchanged perceptions of high levels of corruption and the strong conviction of Bulgarian and Romanian citizens that the EU should continue to be involved in monitoring and the struggle against corruption (79% agree according to the Flash Eurobarometer). While less than half of respondents in Bulgaria and Romania are aware specifically of the CVM, there is general approval of the EU's continued involvement.

In the light of these recent public opinion results, it is possible to see how the findings and arguments of the different studies can be reconciled. The IPP report (2010) and the work by Vachudova (2009), Spendzharova and Vachudova (2012) and Sedelmeier (2014) all point to progress in legislative and institution building. Dimitrov et al (2014) suggest that this does not amount to real progress and substantive societal change. Yet analyses of cases where societal actors have made some collective effort to overcome corrupt practices show that legislation and institution building serve as

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<sup>11</sup> At the same time, it is important to point out that the purpose of the European Union and European integration has up to now not been governance convergence towards the highest common denominator. If that had been the case, other member states suffering from corruption –of which, as the charts above show, there are many - would have been the subject of research asking the question why the EU did not make these states more democratic.

the first step and as a focal point for protest, as does the EU involvement. Citizens, in their turn, appear to see the oversight from the EU as a guarantee that anti-corruption efforts would continue, despite their general scepticism that the levels of corruption have changed as a result of the efforts of domestic actors. It must be noted that the results for Romania show more confidence among Romanian citizens that the government's efforts to combat corruption are effective, in contrast to Bulgarian citizens whose perceptions remain the same since 2012 (Flash Eurobarometer 206, 2015). According to the same recent survey, 73% of Romanians thought that the EU has influenced positively judicial shortcomings, whereas in Bulgaria there has been a ten per cent decline (since 2012) among those who have considered the EU has an effect in addressing shortcomings of the judiciary and 14 per cent decline among those who consider the EU has a positive effect on efforts against corruption (in line with the arguments by Dimitrov et al 2014).

All examined studies agree that broad societal mobilization, participation and debate can make EU tools more effective and that for such conditions to be created, the European Commission and other EU level actors need to find broader partnerships in society beyond the executive. Civil society actors are now much stronger in Bulgaria and Romania than they were two decades ago. The argument that EU tools could achieve much more if they were redesigned to connect with these actors through direct channels should be considered seriously when we think of designing more effective tools for the future.

### *Three pathways towards more effective tools against corruption*

Moving from the general principle to specific recommendations based on the discussion above, we can distinguish three different pathways towards more effective support for rule of law reform. These can be labelled the procedural, the social and the economic pathways. Just like the modes and mechanisms discussed in the introduction, the different pathways represent idealized sets of actions which in fact can be integrated simultaneously in EU policy tools and in domestic institutions, if and when domestic coalitions for reform strive for further political integration.

The procedural pathway would consist of actions that aim to improve the currently used institution building approach, by, on the one hand, specifying rules, norms and performance indicators in greater detail so as to transfer existing models for judicial governance or reform more completely and effectively. The rationale and expectation of effectiveness of this approach are that once some elements of an institutional arrangement have been put in place – as they have been in Bulgaria and Romania by means of conditionality and CVM recommendations, the remaining, ‘missing’ elements should be also installed to close loopholes in the system and prevent corrupt actors using these loopholes. Actions included in this approach would cover both formal rules – legislative or organizational change and implementation, changes of administrative practices. Examples of actions along this pathway would be the adoption of a new, improved system for random distribution of court cases in Bulgaria or changes to the composition and membership of the Judicial Council. In terms of tools, the success of such measures would rely on continued monitoring reports under the CVM and cross conditionality related to Bulgaria and Romania’s wish to join the Schengen zone, as discussed above. In terms of underlying mechanisms, recommendations would be closest to coercive modes of political integration and will continue to carry the risks of non-compliance documented above. An upgrade of tools is still possible in the procedural pathway: for example by making civil society and state institutions partners of the European Commission in the making and implementing of CVM reports, rather than addressing these primarily to executives. The EU should work towards developing a mechanism allowing EU institutions and this broad range of domestic actors to negotiate parameters of reform together in a setting of compulsory consultation and ideally, addressed to all member states, as the European Commission’s 2013 report on corruption has been. The difficulty in implementing such an approach lies in the fundamental relationship between the EU and its member states that may limit the possibilities for an institutionalized partnership with civil society.

The sociological pathway would rely on actions which aim to persuade actors or to socialize them in internalizing rules and procedures which are compatible with a rule of law approach: the targets would be key political actors, but also members of the legal profession or young political party activists. Given the findings and discussion above outlining the limitations of procedural solutions, this pathway and related

actions and tools may need more attention and emphasis in the future, for example by encouraging concerted efforts for socialization in good procedure and good governance through the European political party families. Nevertheless, the limitations of such efforts are clearly shown in Sedelmeier's (2014) analysis of Romania and Hungary's responses to European criticism and the politicized approach adopted by the European Parliament to debates criticizing leaders belonging to a specific party group. Influencing reform through transnational professional or expert networks should remain also part of socialization efforts and should be supported by the EU, yet the objective should be a balanced inclusion of different interests and professional perspectives. Both in the procedural and sociological pathways, the mechanisms of interaction between the EU and the relevant member state, should allow the structural participation of a broad range of societal and political actors, but, as Parau (2014) has shown, the inclusion of obvious sectoral stakeholders is not sufficient and may sometimes lead to a concept of reform which serves a particular group and not the broader societal objectives of improved governance.

In the end, a combination of the procedural and sociological pathways would entail a set of tools and actions that would address themselves to a broad reform coalition. Only a broad coalition of domestic actors can identify and monitor all the relevant sets of rules that should be changed and implemented and create credible plans that cover more than one aspect of governance or are not specifically sectoral in nature. This would ensure that underlying political economy relationships – for example dominance of rent seekers in a specific part of the economy or set of state institutions – is not transferred to another set of institutions when measures are taken in a piecemeal fashion.

The studies and analyses discussed above suggest that the existence of rent seeking elites' intent on using and abusing governance structures and institutions of the state remains the most serious challenge to efforts to strengthen the rule of law or eliminate corruption. If we look beyond the literature that has aimed to identify and analyse the underlying political relationships that make the continued existence of rent seeking elites possible, the conceptual framework developed by North *et al* (2013) may lead to yet another set of recommendations for an economic pathway to improving the rule of law and curbing corruption.

Specific efforts and tools that may be part of such a pathway would be financial assistance through operational programmes and structural funds and measures to encourage diversified investment in the least developed regions (for example the North Western region in Bulgaria). The limitations of such an approach would be that if not carefully designed and executed, EU funds may create new local winners and be captured by the same rent seeking elites. If, however, EU financial assistance acts as an encouragement for external private investors, the flow of FDI might support diversification and development and limit the ability of rent seeking elites at the local level to reward loyalty through jobs and economic opportunities. This pathway may also include procedural elements such as control of public procurement procedures, not only as an element of rule of law but as a development measure.

Combining procedural, sociological and economic pathways and ensuring that the EU continues to engage domestic actors appears to be the most promising way to create the demanding conditions under which further progress in political integration can be made not only in Bulgaria and Romania, but in other EU member states and candidates.

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