

The Cooperation and Verification Mechanism:  
Shared Political Irresponsibility

# THE COOPERATION AND VERIFICATION MECHANISM: SHARED POLITICAL IRRESPONSIBILITY

Механизмът за сътрудничество и проверка:  
Споделена политическа безотговорност



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**The Cooperation and Verification Mechanism: Shared Political Irresponsibility  
between the European Commission and the Bulgarian Governments (Results of  
Analytical Observations on the July Reports on Bulgaria)**

*“With the borders of the European Union moving south-eastwards, we have been awarded yet another real-world experiment on the domestic impact of the EU.”*

**Tanja A. Börzel & Thomas Risse “When Europeanization Meets Diffusion: Exploring New Territory”**

*“Transitions from corrupt regimes to regimes where ethical universalism is the norm are political and not technical-legal processes.*

*...All good governance programs should be designed to promote this political approach: audits, controls and reviews should be entrusted to ‘losers’ and draw on natural competition to fight favoritism and privilege granting. No country can change without domestic collective action which is both representative and sustainable over time. The media, political oppositions and civil society should not be seen as non-permanent guests taking part in consultations on legal drafts but as main permanent actors in the process of anti-corruption and holding decisive seats in all institutions promoting ethical universalism.*

*...The failure of the anti-corruption conditionality is partly grounded in the lack of understanding of particularism as a regime of governance and in consequently selecting various implausible principals as main actors to change the regime.”*

**Alina Mungiu-Pippidi et al. “Contextual Choices in Fighting Corruption: Lessons Learned”**

*“One of the most important consequences of full membership in the EU, then, is the emergence of a domestically driven political dynamic that pushed the pendulum of corruption away from competitive rent seeking and toward cronyism. More corruption, worse types of corruption — that is what transpired when the EU’s sticks and carrots ceased to matter.”*

**Venelin Ganev “Post-accession hooliganism: Democratic governance in Bulgaria and Romania after 2007”**

*To the students of European studies,*

*we dedicate*

*our research findings!*

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## Extended Summary by Way of Introduction

This book is not a conventional academic work. It is not constructed as an abstract theoretical model which has been subdued then to an empirical test for verification/falsification of particular hypotheses about a set of influencing factors. *This is a story of the evolution of a research process which evolved as solving a sequence of tasks emerging from one another and it inductively construes an understanding of an extremely complex socio-political reality in which systematic relationships among diverse participants, socio-cultural and institutional models, and political stakes and methodological programs are interwoven.* This endeavor is justified by the direct political benefits that derive from the proposed explanations of the EU's post-accession conditionality crisis which has escalated after the EU enlargement moved to South-East Europe.

This text evolved out of the results of an empirical study that sprang as a *side product* in the course of conducting a research project entitled "The Role of Anti-corruption Policies in EU-Bulgaria Relationships". It was accomplished by an interdisciplinary team of researchers from the Faculty of Philosophy of Sofia University St. Kliment Ohridski in 2012. The initial idea was to ascertain how the Cooperation and Verification Mechanism (CVM)<sup>1</sup> of the EU tackled the

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<sup>1</sup> Bulgaria's accession involved a set of specific accompanying measures, put in place to prevent or remedy shortcomings in the areas of aviation safety, food safety, agricultural funds and judicial reform, fight against corruption and organized crime. For this purpose, a Cooperation and Verification Mechanism was established, setting out benchmarks to provide the framework for monitoring progress in this area. (Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organized crime (OJ L 354, 14.12.2006, p. 56).

This mechanism was put in place because of the fundamental importance of having a well functioning administrative and judicial system that might ensure Bulgaria's being able to deliver on all the obligations as well as to benefit from the rights of membership. It also reflects, inter alia, the need to fight corruption and organized crime. The purpose of the Cooperation and Verification Mechanism is to ensure that measures are taken to provide assurance to Bulgarians and to the other Member States that administrative and judicial decisions and practices in these areas in Bulgaria are in line with the rest of the EU. Progress on judicial reform, fight against corruption and organized crime, will allow Bulgarian citizens and business to enjoy the rights they are due as EU citizens. Without irreversible progress on judicial reform, fight against corruption and organized crime, Bulgaria runs the risk of being unable to correctly apply EU law. (REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Bulgaria's progress on accompanying measures following Accession Brussels, 27.6.2007, COM(2007) 377 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0377:FIN:EN:DOC>; accessed on 11.02.13. We refer to the English version of this document, due to some significant problems that arise in translating the reports into Bulgarian, problems which will be discussed below. )

problems involved in these policies and how the latter had been influenced by the monitoring: whether the problem was constant in time or growing or, possibly, significantly changing. We envisaged expanding the study in a comparative aspect, inasmuch as this is a crucial problem for Romania as well (as is demonstrated in studies by Mendelski, Tanasoiu, Racovita, Ganev, Andreev, Ivanov, Mungiu-Pepidi, Dirzu and many others). We focused our attention mainly on the CVM July reports, whereby the partnership between the EC and the governments of Bulgaria and Romania is effectuated as a specific *form and phase of historical innovation in the post-accession conditionality*<sup>2</sup> of the EU. We gave preference to these reports because they contain

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<sup>2</sup> Not surprisingly, the word “conditionality” figures in the recently published by the Court of Auditors official list of incorrectly used English words in EC documents: “‘Conditionality’ is a clumsy word that should be used parsimoniously (see ‘Reasonability’). Moreover, it is not an erudite synonym of “condition” but a derivative of “conditional” and means simply “the state of being conditional” (<http://www.thefreedictionary.com/Conditionality>). Finally, it is an uncountable noun that cannot be used in the plural, despite the 156 plural hits in EUR-Lex. It should perhaps be noted that this word is also used, equally incomprehensibly, by the IMF[...]” (Gartner 2013: 22). The problem in this case is far from merely a linguistic one; it is much more complicated and will be discussed in detail below.

The concepts of “pre-accession” and “post-accession conditionality”, which express the particularities of phases and forms of applying the political tools of the EU enlargement, are understandably new and “strange” in Bulgarian public usage. For some specific reasons that we have clarified in Section 2, we believe it necessary to continue to employ the phrases “pre-accession conditionality” and “post-accession conditionality” without translating them in Bulgarian, thereby emphasising this unusualness of the terms, instead of looking for variants that would give a more domestic sense to the specific political meaning of the terms, which would inevitably distort them. These concepts designate the *EU policies that the EC develops in ways corresponding to the changing tasks of the enlargement, in order to promote – including by setting imperative conditions – the requirements for normative and institutional changes to be made in the countries applying for membership, through which at least commensurability between the conducted national policies and the policies in the EU member states might be achieved (cf Mendeski 2009: 50). The compliance with these conditions guarantees full membership of a country in the Union (in accordance with its constitutive values and principles) and its capacity to bear the responsibilities of membership and, hence, to benefit from the advantages of the latter.* The most detailed, historically-grounded and reflective treatment of conditionality is, in our opinion, that of James Hughes and his team (Hughes et al 2005); see also Heather Grabbe (Grabbe 2006). For a distinctly legalistic and highly critical view of this specific issue see Kochenov 2009. Here we will follow Papadimitriou and Gateva’s brief and generalized standpoint: “The principle of conditionality - one of the key components of the EU’s strategy in post-communist Central and Eastern Europe - is widely acknowledged to be the driving force behind the process of enlargement-led Europeanization.” (Papadimitriou/Gateva 2009: 5).

Regarding the extremely general concept of “Europeanization”, for which the conditionality policies of the EU have been put to use, see Hughes et al 2005; Grabbe 2006; Sedelmeier 2011). The very fact that such a general concept as “Europeanization” is applied to all aspects and phases of the social-political changes ensuing from European integration indicates the primacy of recurrent common features and the secondary/negligible role of the differences in the historical construction of this new research subject. In the present study, however, we have turned the priorities around: we are interested in the important differences, despite the presence of recurrent features and similarities in the historical phases of EU enlargements, and, respectively, in the new aspects, the differences in policies for implementing conditionality. Hence, the Europeanization aspect necessarily becomes of secondary importance in this study. We emphasize that there are sound reasons to agree with Matias Waechter: “[...] socio-political evolutions in new member states are far too complex in order to be summarized under generalizing buzzwords. Conditionality is not a panacea for transformation processes, nor does the absence of sanction mechanisms leave the door open to all kinds

both a generalisation of facts and a political assessment of the on-going processes. We have been interested in the CVM's implementation as a specific form and phase of the historical innovation of the post-accession conditionality of the EU.

In the course of the study, however, we found to our surprise that these reports cannot be viewed as simply "transparent" with regard to the crucial problem area of the rule of law in the two neighboring countries (an area in which the issues of the efficacy of the judicial system and the fight against corruption become especially important). The reports, which should normally be a source of orientation and practical advice regarding the effective implementation of anti-corruption policies in each of the two countries, themselves, become *a source of political problems*.

The empirical data reflected in the reports is an evidence for the enormous astonishment of the Commission at its findings. The unexpected facts, which seem inexplicable to the Commission, which the Commission ascribes to the notorious "lack of political will" actually, testified to the persistence of the systematic resistance – going on for more than a century now - against civilizational transformation. In order to understand the findings, we had to look at the "crisis of post-accession conditionality" (Ágh) in *a multi-dimensional and historical perspective*. The crisis has been produced in the present out of the *clash of opposite illusions* on the part of the EC and of the local governments of Bulgaria and Romania, arising in the course of their current interaction. It is hence necessary to understand this clash *in a very complex and dialectical perspective*. Because it is only understandable as a historical result, which is path-dependant and is the derivative from the specifics of the interplay between the EC and the respective national governments. However, *this developing interaction is itself the product of the historically formed*

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of infringements: New member states seem to be neither less nor more compliant to EU legislation than old ones [...] Like transformation, Europeanization is not a bright success story nor an ascending road. It is a long, slow, sometimes meandering process with many setbacks." (Waechter 2012: 9).



*in previous decades specific character of the EU's pre- and post-accession conditionality – i.e. in entirely different circumstances. The most decisive among those circumstances was the lack of systemic resistance because profound modernisational reforms were not necessary in the countries of previous enlargements. With EU's enlargement moving to South-Eastern Europe, this resistance becomes a fundamental characteristic of the situation. It is usually hidden behind a purely declarative agreement with the course of reforms imposed by our country's external creditors, an attitude that has gone on and on in the form of prolonged mutual outwitting, of which corrupt practices are an inseparable part (Avramov 2008). That is exactly what the 6 successive EC reports on Bulgaria and Romania from 2007 to 2012 have registered.*

The most important conclusion of the study is that ***the paradigmatic problems of the EC approach to the societies of Southeastern Europe, embodied by the CVM in its present form, are a precondition for the growing inefficiency of this mechanism.***

This situation demands that three tasks, stemming from one another, be resolved:

- First, *to prove*, that the EC's application of post-accession conditionality through the CVM *is significantly flawed*;
- Second, to offer *an explanation of the causes* of the lack of progress, and *even the regress*, with regard to policies for establishing rule of law in Bulgaria and Romania, *a problem to which the shortcomings of the CVM have contributed significantly*;
- Third, *to propose an alternative variant of CVM implementation* that might radically enhance its effectiveness and *achieve a perceptible progress in the fight against corruption in the societies under observation.*

In order to better understand that a qualitative change of *the paradigmatic approach* currently applied by the CVM is needed, we shall highlight its key shortcomings demonstrated by our analysis which go beyond the ones already clarified in previous academic literature (Papakostas 2012; Tanasoiu/Racovita 2012):

- A feature continuing from the previous phases of pre- and post-accession conditionality is the indeterminate scope of the functional, institutional, and political connections between the structures in the observed sectors, and the connections between the separate subjects in each (Grabbe 2006, Hughes et al 2005). At the same time, certain key areas, connections and interactions that mediate the achievement of the rule of law are excluded from the scope of the CVM;
- The bricolage-like nature of the observations in the CVM reports: all too often, separate paragraphs and even separate sentences in them contain a mixture of facts, emotional and moral evaluations, normative principles, and optimistic expectations about what the future state of things might be;
- A high degree of arbitrariness in the levels of concreteness both of the findings and of the recommendations (Ivanova 2012), which makes it possible a) to fulfill some separate recommendations, *inasmuch as they do not lead to achieving the goals of the fundamental and all-encompassing reform;* b) *not to see the observed situation as a whole and to recognize the specifically political nature of the resistance against reforms;*
- *Recommendations are addressed to imaginary subjects that do not correspond to any real addressee – neither the “country” nor “all stakeholders”, nor “society as a whole” could receive the message;*

- An even more important weakness, in our view, is that *many of the report recommendations tacitly imply certain decisive preconditions which, were they existent, would make the recommendations themselves pointless.*
- *The connection existing between (1) criminal businesses (and ownership of large companies), (2) non-public politics, and (3) institutional resistance against the reforms is of crucial importance, yet it has received grievously little attention.*<sup>3</sup> This deficiency stems, on one hand, from the poor quality of the analytical conceptualisation of the reports, and on the other, from the unfulfilled promise to help the relevant actors understand the challenge these reforms represent.
- There is a shocking *lack of critical reflection on the uses of the CVM instrument*. The reports from 2012 quite obtrusively assert that the successes of the reforms are a result of the reports themselves (especially the report on Bulgaria), while the failures are entirely and only due to the Bulgarian/Romanian governments;
- The EC has, so to say, lowered its guard in the reports for 2012, as evident from the minimal expectations expressed that Bulgaria and Romania will *no more than cover the benchmarks in a satisfactory way. This represents a capitulation to the status quo and a betrayal of the interests of European citizens.*

The reports contain numerous and very significant shortcomings, *which are carefully traced by our analysis. The great danger which is taking shape already is that these shortcomings could*

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<sup>3</sup>“...the implementation of corruption related criteria of CVM, largely relied on governments’ political will and targeted a top-down application of conditionality. As such, it failed to see the endemic implications of the phenomenon as well as the need for a change in mentalities as a precondition for reducing corruption”(Papakostas 2012: 231). “However, as it was the case with other candidates, Bulgarian strategy emphasized on the criminal law aspect of the phenomenon and failed to look at corruption as a development-impeding issue with social, economic and political implications. At the same time, Bulgaria suffered from two further shortcomings that impaired implementation of its anticorruption strategy: the widespread corruption among judicial bodies that undermined the enactment of existing standards and corruption among political elites that impaired the quality of law-making” (ibid. 230).

*justify the possible holders of political responsibility* (for implementing the expected difficult social reforms) *to relieve themselves of this burden*. The intellectual and even the stylistic quality of the reports provides for the assessments contained in them to be disregarded, and this is particularly risky in a national situation where resistance against reforms is a more than century-old tradition and is deeply embedded in the present-day institutional design of public life and in the mentalities of the local political figures.

We should stress once again that the above remarks are nowise an excuse for the political resistance of Bulgaria and Romania against the goals of the so-called “post-accession conditionality of EU membership”. This resistance dooms the CVM to failure from the onset, because, as is quite well-known, the initial design of conditionality implies expectation for *unconditional cooperation* on the part of governments. The position we hereby present does not underestimate the significant contribution the CVM has made by the pressure it has so far brought to bear towards practical reforms in the two monitored societies. There can be no doubt that the dynamic situation registered through the CVM is, among other things, a result of the impact this mechanism has made upon the situation. But the picture contained in the CVM reports is very different from the kind of situation it was intended to register, assess, and promote<sup>4</sup>. All this means that *the main question in fact concerns the degree of adequacy in the future responses the EC will make*:

- Are any of the EC representatives (its President, Commissioners, administrators, and experts) aware that they are facing a considerably more complicated and more

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<sup>4</sup> In the memo accompanying the July Report in 2012 which contains the generalized assessment of the CVM implementation for the entire 5-year period it is explicitly stated: “Today’s report concludes that Bulgaria needs to step up reforms in order to reach the objectives regarding the rule of law set for the CVM. Overall, the report shows progress. However, *the objectives of the CVM have not yet been met and the benchmarks have not been satisfactorily fulfilled. Reform is not yet sustainable and irreversible.*” (Report on Progress under the Co-operation and Verification Mechanism in Bulgaria, [http://europa.eu/rapid/press-release\\_MEMO-12-568\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-568_en.htm), Italics added). Exactly the same has been stated about Romania (Cf Gateva 2013).

difficult transformation than was initially assumed *in the tools for post-accession conditionality?*

- Is the EC prepared *to respond politically* to this double transformation – both in the “object” of monitoring and in the changed or newly discovered structural reasons for the persistent failure to achieve the CVM goals? – This would have to be a response representing *yet another new, radical innovation in the history of EU approaches.*

The initial problem facing the CVM is that it initially ignores this systematic resistance against the introduction of the rule of law. Our study finds this resistance has been performed on a whole series of socio-cultural and political-institutional levels:

- a) beginning with the translation into Bulgarian of the positions stated by the EC;
- b) including the specific local public expertise which sets the tone for local public interpretations of the CVM reports;
- c) the fact that the recommendations in the reports are carried out intentionally in such a way that the reform goals might not be achieved;
- d) the refusal of the parliaments, governments and other empowered institutions to carry out an integral, consistent, and irreversible policy for judicial reform, including fighting corruption and organized crime.

When confronted with this “total civilizational resistance” (G. Dimitrov 2012) some of the real conceptual and methodological weaknesses of the CVM turn into an obstacle that might entirely prevent it from achieving its goals. Since these weaknesses have not been discussed publicly and in detail so far as a manifestation of *political approach in the implementation of post-accession*

*conditionality*, our report directs special attention to them. The aim of this *analysis is not to serve as an argument for abolishing the CVM (something on which the majority of local politicians in the two monitored countries insist), but to find ways for a qualitative improvement of its efficacy*. This is the only justification for scrutinizing the details of the problems arising in implementing the mechanism. We are looking for an adequate change of the mechanism that might optimize the further course of events in the monitored societies, thereby ensuring protection of the interests of European citizens.

Our analysis has found that the substitution of the methodology of monitoring and partnership for a methodology of preparing the monitoring findings (the reports) is the lesser problem. The big problem is that *there is in fact no clear methodology of European political cooperation*, no regulated public procedure by which the findings of the monitoring and assessment of progress could turn into political pressure, real interaction and/or effective assistance for the recipient countries. In the present version of the CVM, its political potential is considerably weakened by formal procedures. Undoubtedly, the fact that the EC reports are addressed to the European Parliament and the Council is a direct consequence of the institutional and legal geometry in the EU's general structural design. Formally the reports are addressed to two institutions that are not expected to undertake any political action on the basis of the findings and conclusions contained in those reports. Their representatives have no way of understanding the factual contents of the reports – neither correct enough, even less so critical, because the latter are at such a concrete level as to be understandable only in the context of national sociopolitical specificities. Hence, understandably, neither of the two institutions to which the reports are addressed uses them for purposes of stimulating policies – for pressuring the national governments towards the reforms that the EC believes to be imperative, fundamental and all-encompassing. On the other hand, since the reports are not directly addressed to Bulgarian institutions, it *appears natural no due political response comes with a clear commitment to specific reforms from the respective national*

*authorities either.* And the issue seems to be resolved by lip-service promises only – for more than six years now.

Our analysis raises with special urgency the question as to the possible alternatives that might lead to effective functioning of the CVM.

An alternative approach, one that takes into account the existing systematic resistance against reforms in the monitored countries, would be for the CVM to set much higher standards of political responsibility, amounting to a kind of – soft – *political board over the local governments.* (We have offered possible contours of such a political board in our main text.) This would raise political mobilization and responsibility of the entire European political community. Not to mention that government institutions in the monitored countries could come out with an official assessment of the reports and could be obliged to make public their strategic program documents with which they *should assume individualized responsibility for the measures taken with regard to the recommendations contained in the reports.* This would be *a precondition for putting the structures of civil society in a proactive position. Such a systematic change would create a **mechanism for total mobilisation of all internal and external actors and stakeholders, in a way that matches the importance of the problems and the serious consequences of the lack of rule of law in the monitored countries for the entire EU.***

The productive alternative requires *setting a priority on political cooperation* for overcoming resistance against the reforms, given that this resistance is inherent in the current situation. *This would involve assuming shared political responsibility **by institutionalising the public mechanisms for exerting pressure towards reform by all internal and external stakeholders.*** The constructive alternative would be to devise a more complicated tool that would be simultaneously flexible enough to take into account the changes taking place in the object to be impacted on, as

well as the possible differences in the national situations, and *much more rigorously regulated as a mechanism leading to the assuming of political responsibility for the results of the reforms.*

**To conclude,** the application of the CVM so far presents a “mixed picture”. Undoubtedly the Commission and its numerous associates has invested good will, devotion, and efforts, not to mention the purely financial inputs, into support for reform policies in the two countries. Yet what has been achieved through these good intentions and this political persistence on the part of the Commission is quite far from the set goals. The CVM has failed to meet the expectations of the stakeholders that it would be an effective tool in support of the reforms, because:

- a) it simply registers the transformations in the resistance against the reforms, and
- b) it creates the premise for legitimization of the imitation of the reforms through adoption of measures that do not lead to the envisaged result, namely, permanent establishment of the rule of law in the societies under observation.

There is no reason to expect that by preserving the CVM for no matter how long a period of time any results other than growing disappointment at its helplessness could be achieved. And the latter would lead to public disappointment in the EU itself, which has so far enjoyed support primarily by its new member states and the candidates for membership: these countries expect not so much material prosperity as “good governance” from the EU (Harteveld et al. 2013). *Continuing the CVM would be meaningful only if its effectiveness were to drastically improve.* That is why the mechanism should be reformatted as *an institutional mechanism for **joint political responsibility for the results of its application.*** What its new design should be is a question to be answered only after *a public European debate on its grounds, goals, powers, and on its instruments that should lead to clear results in regard to protecting of the interests of European citizens and fostering the integration process in the EU.*



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## 1. On the nature of the empirical study and the developments that made it necessary

We confess that the topic analyzed here cropped up – somewhat unexpectedly even for the researchers themselves – in the course of a study with a different purpose<sup>5</sup>. Our preliminary intention was to establish through empirical data how and to what extent the anti-corruption policies are perceived as a political, institutional, and social problem: whether the problem and its interpretations persist in time or change; whether it decreases or grows or, possibly, takes on a different form; whether the ways the national governments, the local political parties, and the EU interpret the problem and the policies coincide (and to what degree). We envisaged conducting the study in a comparative aspect, inasmuch as the problem is common to Bulgaria and to Romania<sup>6</sup>. The choice of research topic hardly needs to be justified at length. In recent years it has become a matter of conventional wisdom in our country, that the anti-corruption policies are a priority in the mutual relations between the European Commission, which is the guardian of EU interests, and the Bulgarian governments:

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<sup>5</sup> This was the interdisciplinary project “The Role of Anti-corruption Policies in EU-Bulgarian Relationships”, №19/04.2012 of NSF at Sofia University St. Kliment Ohridski. The research team members include Prof. Georgi D. Dimitrov (leader), Assoc. Prof. K. Haralampiev, Chief Assist. Prof. Stoycho P. Stoychev, Dr. Linka Toneva-Metodieva (researcher in charge) and European Studies and Political Science students at the Faculty of Philosophy, including Maria Yurukova, Sahir Hasan, Iva Atanasova, Romyana Vasileva, Teodora Angelova, Dimo Vasilev, Krasimir Mitrev, Viktor Gadzhalov.

<sup>6</sup> While we were conducting our study, an excellent article by Cosmina Tanasoiu and Mihaela Racovita was published; the latter could be considered an overview on the general state of the problem that interests us here: the nature and dynamics of the anti-corruption policies as a main accent in the mutual relations between the EC and the two neighboring Balkan countries. The study by the two authors is a synthesis, containing some updating, of their previous publications (Racovita 2011; Tanasoiu 2012), and it formulates generalizations that are fully supported by our research findings: “By 2007, lack of progress in pursuing judicial reforms and addressing endemic corruption threatened to derail Romania and Bulgaria’s bids for EU membership. Fearing that the absence of membership as an ultimate reward will limit national political elites’ enthusiasm for reforms, the EU sought to continue scrutinizing reforms through in-built safeguards and monitoring tools (such as the Cooperation and Verification Mechanism/CVM) aimed at assessing progress towards meeting specific benchmarks, among [which] the fight against corruption prominently featured. While anticorruption has been a powerful electoral campaign slogan in both Romania and Bulgaria, pre- and post-accession, this has had little impact on actual policies, the public perception, and/or the two countries’ external image. Both countries continue to make constant headlines in Western and national media as corruption and organized crime heavens, controlled by economic interest groups, corrupt politicians, abating policemen, a powerless judiciary system and dysfunctional institutions.” (Tanasoiu/Racovita 2012: 243).

“... corruption and organized crime were identified by the European Commission as two of the most serious problems in Bulgaria throughout its monitoring activities during the accession process: the emphasis on corruption became even stronger in the last pre-accession report of the Commission. System reforms, as well as practical results in the fight against corruption and organized crime, were specifically mentioned as conditions for the integration of Bulgaria into the European Union. [...] The EU concern about corruption in Bulgaria persisted, however, and, correspondingly, the monitoring by the EU Commission continued, as the fight against corruption remained one of the key areas in the reports in the framework of the so-called Mechanism for Cooperation and Verification of Progress” (Smilov, Dorosiev 2012: 219).<sup>7</sup>

The topical importance of such a study can be demonstrated by at least two distinctly different arguments:

*First*, there have been no studies in our country, whether empirical or conceptual, on the particularities of the application of post-accession conditionality or its results (according to its own goals for establishing rule of law in the states already admitted to the EU). Yet the CVM is an unprecedented political experiment, and we are interested, first of all, in what its benefits might be as regards improving the local situation. In other words, it is important for us to know the *empirical reality* of the application of the CVM in Bulgaria and Romania<sup>8</sup>, beyond the biased political assessments and the journalistic hubbub.

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<sup>7</sup> Cf Kalin Ivanov (Ivanov 2012 :103-104, see also Moroff/Schmidt-Pfister in the same collection, p. 3).

<sup>8</sup> For a very concise presentation of the reasons for introducing the CVM in the two neighboring, and quite commensurable, countries, and regarding its instrumental function, see Mungiu-Pippidi 2011. See also Vachudova/Spendszharova 2012 (we do not share, however, the one-sided positive assessment of these two authors, who have tendentiously looked only for those aspects of the implementation that provide reasons for approving it as something “unique”. Here is one of the many examples of obvious bias: since the sentencing of Mario Nikolov for misappropriation of European funds is seen as a result of pressure coming from CVM the fact that the sentence was not enforced could not have been taken into consideration by the two researchers. (Very rarely, in general, in mainstream literature on the enlargement to Eastern Europe can one see terms like “crisis”, “failure”, “contradictions”, “errors”, “reversal”, “imitation”, “backsliding”, “fraud” and this will indicate a very important aspect of the problem in question...).

But, *second*, this particular, unprecedented topic is also very important in terms of the *EU political innovation*<sup>9</sup>, whereby the Union implements its enlargement policies. For instance, the works of Grzegorz Ekiert, head of the Harvard Center for European Studies, provide serious causes to believe that the successive waves of EU enlargement have comprised *typologically different cases* (see Ekiert 2008). This is an important point, as the rules for admission of new member states to the Union *imply the application of universal criteria* and of the same recurring approach. Thus, there is a contradiction between the similarity/universality of cases of enlargement implied by the EU agreement framework and the actual reality and growing differences between the cases at each successive historical moment. Hence there is a need to find “forms for the movement of contradiction” (Hegel) through political innovations.

However, from the viewpoint of their economic potential, sustainability of democracy, and stable rule of law, the countries of the Eastern enlargement can be seen not merely as somewhat different but as situated along a continuous range between extreme poles. Correspondingly, the stages of enlargement can be viewed not simply as similar moments following one after the other in time, but as expressive of the typological *phases* of growing social maturity of the respective national societies, under the impact of EU conditionality that changes in its force and its way of application. To put it in more simple terms, the Central and East European countries that were admitted in the 2004 enlargement *differ in their pattern of Europeanization* from the countries of

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<sup>9</sup> Though differently formulated by researchers, this *innovative quality* of the post-accession conditionality is often considered to be *its key feature*: “The introduction of post-accession conditionalities in the 2007 enlargement was a major example of policy innovation reflecting both the ‘Balkan exceptionalism’ of the two new EU member states and the Commission’s ability to learn and adjust its enlargement strategy in view of changing realities on the ground.” (Papadimitriou/Gateva 2009: 18). Or “The EU’s application of conditionality varies – across issue areas, target countries, and over time” (Sedelmeier 2011). Specifically, the persistent grave problems of Bulgaria and Romania, which the preparations for EU membership were not able to overcome, such as widespread corruption, ineffective judicial system, and poor administrative capacity, “have prompted the EU to implement a novel monitoring instrument, called the Cooperation and Verification Mechanism (CVM), in an attempt to trigger reform by extending EU leverage into the post-accession period.” (Vachudova/Spendzharova 2011: 40; cf Maniokas 2004, Grabbe 2006, Gateva 2010, Buzogany 2012 and Papakostas 2012).

the previous enlargement wave as a type of accession conditionality, in the same way as the two countries of the next enlargement, i.e. Bulgaria and Romania (the accession of Croatia to the EU in 2013 is a belated, concluding event falling under this category), differ from the eight post-communist countries, acceding in 2004.

Viewing these stages as *typological phases of enlargement* has the conceptual and methodological advantage of taking into account the *changing configurations* between potential, problems, and employed political tools in each one of these specific cases. As a general principle of transformation, we can formulate the following rule: in each subsequent phase the potential for effectively bearing the responsibilities of the EU membership decreases. Proportionately, the problems / challenges increase in scope and depth while the capability for effectively bearing the responsibilities of EU membership decreases thus leading to due changes in the conditionality of the EU (Grabbe 2006, Mungiu-Pippidi 2011).<sup>10</sup>

This means that, somewhat roughly speaking, it may be expected that the countries of a potential new enlargement wave will similarly be in a less advantageous position compared with Bulgaria, Romania, and Croatia, as these three were compared with the previous wave of enlargement. In this case the experience acquired through the learning-by-doing method of CVM application will be decisive for the innovative potential and success of the EU in the following enlargement waves.<sup>11</sup> The study of the *enlargement crisis* that the results of Bulgaria and Romania have

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<sup>10</sup> Cf Svetoslav Andreev's conclusions (Andreev 2009). The interesting feature here is the possibility of going beyond the dichotomy whereby all new countries are either all the same or all very different; here the stress is on the *changing ratio of similarity and difference within the same category*. The earlier the accession takes place, the greater the homogeneity between old and new members, and between the new members themselves. To the contrary, the later the stage of accession to the EU, the greater the difference between these latest member countries even with respect to those admitted just before them, and also between themselves, in terms of potential for Europeanization. This gives us reason to say that the accession of Croatia belongs under the 2007 enlargement, but the latter does not belong to the previous 2004 enlargement, even though the interval in time is only 3 years, whereas the interval before Croatia is nearly 7 years.

<sup>11</sup> See MAXCAP Newsletter, Issue 01, 2013 (<http://www.maxcap-project.eu/news/maxcap-newsletter-issue-012013>, accessed 22.08.13).

revealed would provide priceless knowledge.<sup>12</sup> Whatever direction the next phase of enlargement might take – whether to the countries of the Western Balkans or much farther east, to Ukraine or the countries of the Caucasus, the possibility that the results would be more similar to those of the Central European countries than they are to Bulgaria and Romania is negligibly small.

The intention of our empirical study<sup>13</sup> was to use the CVM reports that were the initial documentary set as a source of information on the transformations and/or persistent problems of

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<sup>12</sup> There can be no doubt that the rule of law is the most severe problem of the countries in today's EU periphery, both in member states and in candidates for membership. In this connection, we should have in mind that "despite the engagement and financial support of the EU and international donors (e.g. World Bank, Council of Europe) there is little overall progress in the rule of law. The World Bank Rule of Law indicator for the period 2002-2008, on a scale from -2.5 to +2.5, exhibits progress in Serbia (+0.33) and Albania (+0.22), a decline in Bulgaria (-0.17) and little change in Romania (+0.04), the Ukraine (+0.06) and Moldova (+0.04). This is rather an unspectacular development as compared to the significant reform efforts which have been made in the last years." (Mendelski 2010: 2). Even more important is Mendelski's conclusion that "the EU is less transformative than assumed by Europeanization scholars [...] in terms of efficiency-related aspects of the rule of law [Number of judges, 2. Salary of a judge, 3. Judicial budget, 4. Direct assistance to the judge (e.g. computers, internet) 5. Administration and management (e.g. case registration system), 6. Extent of judicial training.], judicial reforms have engendered considerable change, while in terms of power-related aspects [unbiased and impersonal enforcement of law] only little change is observable." (ibid.) Mungiu-Pippidi offers a very clear explanation of the lack of substantial progress: "Bulgaria and Romania having embarked on the transition from the most disadvantaged starting-point, their lack of progress during accession mattered far more for them than for the other countries. Romania progressed in 2005-2006 after the anti-communists returned to power, but then lapsed back into the old practices. Bulgaria started to show goodwill only in 2009. Not only politicians proved to be reluctant 'Europeanizers'. In both Romania and Bulgaria, Judicial Councils and judges in general were not supportive of reform. Magistrates had been promoters of reform as long as their independence from political intervention was at stake; however, once they became completely independent their *esprit de corps* flourished and there was no more incentive to pursue self-improvement. In both Romania and Bulgaria the conservatives in the judiciary managed to exploit their administrative positions as heads of the courts in order to be elected to the Judicial Council or Constitutional Court. They then used their office to oppose substantive reforms to the judiciary's *modus operandi*. The magistrates' pay was increased to stimulate performance and curb corruption, but all attempts to set up any serious performance checks failed and accountability came to be the salient problem.<sup>20</sup> By 2007, evidence to that effect was pouring in from more than one country, so much so that the World Bank agreed that the most pressing issue had become 'ensuring judicial accountability, given newfound independence'.<sup>21</sup> The European Commission then upgraded its benchmark, calling for a Judicial Council that was accountable as well as independent. But, unlike the governments, which could lose elections for under-performing on EU accession, the Judicial Councils had no EU accession stakes. The judiciary's disregard for any interests other than its own became blatantly obvious during the unprecedented strike by the Romanian judiciary in 2009, when the judges sued for and ruled on a substantial pay-rise in their own favour, with reference to a bonus that had been legally cancelled years before at a time of dramatic budget deficit. Bulgaria's judiciary took top position in the 2008 Gallup Corruption Barometer, a global survey by Transparency International, which rated it as the world's most corrupt judiciary. (Mungiu-Pippidi 2011: 154)

<sup>13</sup> The initial intention of the project was to analyze all the official documentation sources, starting from the beginning of negotiations for Bulgaria's and Romania's accession to the EU in 1990s and until 2012; the documentation was to include all the party pre-election programs and other policy documents, relevant to Eurointegration during this period, strategies, action plans, etc., of the Bulgarian governments as well. The archive of documents amounted to 2903 pages, which could not be researched in 8 months with our available human resource. The present analysis is based on the findings of our comprehensive study of the reports of EC under CVM for the period 2007-2012 only. The conceptual design of the entire project and the details on the qualitative and quantitative research tools we used are publicly available (in Bulgarian) on the site of Association for Social Investigations and Applied Research Practices [www.asiarp.org](http://www.asiarp.org). Our choice of object of study, the CVM instrument, was dictated not least by the consideration that it

the government anti-corruption policies (in a comparative aspect for Bulgaria and Romania). We inevitably need to give some methodological arguments regarding the choice of this angle of treatment of the problem in question:

We have certainly not sought the “easy way” of coping with our task; from the start we were clearly aware how challenging it would be to work with the CVM reports as *embodying the EC approach to partnership with local governments*. It is common knowledge that:

“[...] there are two reasons to take care in using the Commission’s views as a method of measuring compliance: the first is that the Commission’s judgements were general and often vague, both in the macro-assessments and discussion of particular policy areas [...]). These comments are so general as to be almost meaningless; their main purpose was to establish a relative scale of progress when the language in each report was compared with that in the reports of different years and on the other applicants. At micro level, the Commission’s standards of measurement were never published and seem to have been somewhat *ad hoc*, at times making them inconsistent across policy areas and countries [...]. Secondly, the macro-assessments made by the Commission were not just technical reports on compliance with the Copenhagen criteria, but were opinions about whether a country was ready to start negotiations, which was a highly

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was hardly likely the results of the study on the preceding period, 1999-2006, would produce a different picture from what Mihaela Racoviță presented in her analysis entitled “Europeanization and effective democracy in Bulgaria and Romania (Racoviță 2011). Our colleague’s main conclusion, definitely proven through abundant empirical facts, is that while the EU has impacted on formal democracy through the instruments of political instrumentality, as far as effective democracy is concerned, i.e. the application of “soft measures” as a way of working, beliefs, and norms, it has had a very weak sway. Despite the accession conditionality, the monitoring mechanisms, the creation of institutions and/or the adoption of measures, there is little visible evidence of the existence of rule of law, democratic responsibility, good quality of the public administration, or government stability (Racoviță 2011: 42-43). Among the experts on the specific problems of the two countries it is a subject of common wisdom that: “Bulgaria and Romania have entered the EU with unfinished reforms in key sectors and have refrained from completing them in the first years of membership. [...] The unfinished transition of the countries could potentially have a strong impact on the political, cultural, and institutional factors that determine the compliance culture of a EU member state. Less favorable cultural factors include the widespread distrust in the functioning of the rule of law and the political and administrative system as a whole, fostered by the highly salient problem of corruption; political factors such as the persisting dominance of an “old” political elite which signed up for (EU-oriented) reforms in rhetoric, but not in action; and institutional issues such as dysfunctional court-systems and deficiencies in administrations. Overall, the implementation process in Bulgaria and Romania seems to follow a pattern comparable to what has been observed as the “world of dead letters” (Falkner et al. 2008 Falkner, Gerda, Oliver Treib, Elisabeth Holzleithner, Emmanuelle Causse, Petra Furtlehner, Marianne Schulze and Clemens Wiedermann. 2008. *Compliance in the Enlarged European Union. Living Rights or Dead Letters?* Aldershot: Ashgate.)” (Trauner 2009: 11-12). In short, CVM’s implementation is notably problematic and deserves in-depth studying.

politicized judgement. The Commission was a political player in the enlargement process, and it was subject to influence from the member-states.” (Grabbe 2006: 64).

We did not harbor the illusion that the EC reports are some sort of “political echograph” that would detect all the pulsations of reform efforts of the Bulgarian and Romanian governments; for we well know that a systematic study of the monitoring mechanism of the EC leads to the conclusion that its approach, and the reports that embody it, “demonstrate how nebulous and oscillating it was in many of its fundamental aspects” (Hughes et al. 2005: 115). But Hughes and his colleagues have also found that in the course of implementing the mechanism, the EC is learning from its acquired experience (Ibid. p. 86-87). Therefore, it may not be surprising that the reports from the *post-accession period in particular are much more concrete and politically instructive* We rely on the rule that the monitoring reports are becoming increasingly clear, inasmuch as the accession conditionality has encountered the resistance of the local politicians (cf. Ibid, p. 116-117). That is why we relied on registered facts (and the assessments and recommendations based on these) in order to *reconstruct* the dynamics of achievements and problems facing the Bulgarian (and the Romanian) governments.

We focused precisely on the regular reports of the Mechanism for cooperation and verification for several reasons. First, because “The reports are the only official and transparent public statements of the Commission’s assessments of the progress of the candidate countries over time” (Hughes et al. 2005: 85), and besides – “the Regular Reports became the default mechanism for the Commission to define and communicate standards of compliance”, especially in fields in which there are no legally fixed standards, as in the case of the fight against corruption (ibid, p. 87). Second, because their publication *proved to be a main instrument for stimulating local*



*governments towards reforms*<sup>14</sup>. The other instruments envisaged in the post-accession conditionality for EU membership are too weak, of doubtful legitimacy because of lack of clearly identifiable standards and universal applicability to all members (Alegre et al 2009), and for these reasons, rarely and unwillingly used (for example, the possibility of applying safeguard clauses or of freezing funds to be given under PHARE, SAPARD, ISPA, are derivative from the assessments in the CVM reports; or even less reliable are some other means, such as direct political pressuring coming from the diplomats of EU member states). Thus, the reports are a kind of culmination in the general mechanism for cooperation and verification. But the CVM is the basic field for carrying on the interaction between national societies represented by their governments and the EU, and is simultaneously the embodiment of a purposely pursued *political approach of the Commission*.

It would be simplifying the situation to judge of the quality of this approach only on the basis of the reports (i.e. the official publications of the mechanism's results). But there is little chance that the quality of the CVM and its results might differ substantially i.e. a good mechanism for

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<sup>14</sup> For a brief summary on what other elements the basic instruments of pre-accession conditionality include besides CVM, see Grabbe (Grabbe 2006: 79). In a sense, this mechanism is a way of adapting two functions to the tasks of post-accession conditionality: a) gatekeeping and b) benchmarking and monitoring. CVM envisages a combination of safeguard clauses and monitoring as to whether standards for reform policies are observed and expected results achieved. The choice of instruments that EC has made is understandable, assuming that “**Monitoring was a key mechanism in the conditionality for membership**, through the cycle of ‘Accession Partnerships’ and ‘Regular Reports’ published by the European Commission on how prepared each CEE applicant was in different fields (as discussed in Chapter 2). **This process provided the EU with a subtle and highly effective route of direct influence on domestic policy-making**. Not only did the Regular Reports give an indication of the performance of individual ministers, but they covered implementation of individual policies, so they implicitly judged the performance of lower-level officials within the ministries. [...]

**Moreover, the cycle of task-setting and reporting on progress established a public monitoring process that could be used by other actors –both domestic and external – to judge the progress of politicians and officials. The Regular Reports became a focus of interest for both the domestic and international media each year. Both voters and foreign investors paid attention to what the EU said about progress in key areas like privatisation and financial sector regulation.** (Grabbe 2006: 83, italic ours). But we should immediately recall an important warning by the same author: “Although benchmarking can be used instrumentally, the EU did not necessarily use it effectively where it had no detailed policy or legislative framework that could be used as a template for the candidates. One condition for effective use is thus the existence of an EU norm or template to be transposed. The experience of setting standards and creating monitoring mechanisms for the applicants was an important learning process for the European Commission – with potential feedback effects on the existing Union. Several key officials used their enlargement experience in planning monitoring processes for the existing member-states.” The problem is that the EU has no “templates” in any country precisely regarding the introduction of rule of law and the fight against corruption.

partnership, but bad reports on the monitoring results.<sup>15</sup> Especially given the fact that the entire interaction between the EU and the national societies, in terms of concrete measures and policies, depends on the monitoring results that found expression in the reports. We consider it a realistic assumption that the reports are an incarnation of the authentic position of the European Commission to the observed countries.

In the course of study, however, to our surprise, we encountered an unexpected problem. The facts and findings contained in the reports could not be viewed simply as “transparent” with regard to the issue of the rule of law (an area in which the efficacy of the judicial system and the fight against corruption figures as especially important). The reports cannot be and should not be considered directly informative as regards the capacity of the two latest (at that time) EU member states to fully cope with the responsibilities involved in membership and to take advantage of the opportunities that membership supplies for European citizens. The reports should normally have been a source of political orientation and practical recommendations for

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<sup>15</sup> Although it might be hypothetically plausible that the quality of cooperation between EC and the national governments is good enough, while the reports present it inadequately, this possibility is negligibly small. For if it were so, CVM would have achieved its results, i.e. progress in establishing the rule of law in Bulgaria and Romania, and the development of political events leaves no room for doubt as to whether this is true or not. Nevertheless, during the second year of this research project we included interviews with active participants in the interaction between Bulgarian governments and the EC, and the findings of these interviews support our initial hypothesis. This did not have to be planned for the first year of our project inasmuch as the initial hypothesis was that monitoring was not a problem in itself, hence we relied on the monitoring results in order to judge about the issues they register and correct. But alternative strategies are possible for studying this cooperation through the results of application of other basic instruments, such as: how European funding under operational programs is absorbed; in the first three years of the seven-year period, until 2009, on the average, about 3 percent of the envisaged funds were absorbed (for the whole 7-year period around 3,6 bln. Euro were adopted). But we should never forget that, according to the controlling organs, the funding of local policies by EU funds is a basic channel for systematic corrupt practices. In other words, the change in the sources of research would not change the nature of the general picture we are registering and seeking to explain, as regards the fight against corruption and its outcome. We should not forget Buzogany’s important statement: “While mediocre when compared to the funds received by Greece, Spain, Portugal and Ireland the preceding decade after accession, the EU’s regional funds provided substantial (potential) financial inflow amounting to 2-3% of GDP in the CEEC. However, the absorption levels of these funds depend on administrative capacities at the central and regional levels, as well as capacities of non-state actors, who apply for these funds. Several years after accession, the results are rather disappointing: absorption levels of EU funds are quite low in the CEE States (see Table 2).<sup>31</sup> In the case of Romania and Bulgaria, it was even questioned whether the country received more from the EU budget than they contributed to it. Overall, the low absorption capacity seems to point to a vicious circle that the administration is caught in: in order to be able to modernize, public administration needs to be capable to ‘download’ the EU funds effectively, however, it lacks exactly these capacities.” (Buzogany 2012: 124).

effective implementation of anti-corruption and reform policies, but it turned out they were serving this basic purpose only partially (Grabbe). Because some of their crucial peculiarities were becoming themselves *a source of political problems*. Thus the reports have become, at least to some degree, more of an obstacle than a tool and incentive for effective reform policies.

This finding completely redefined the aims of our research efforts. It became necessary (in addition to the initial, more modest goal - tracing the dynamics of anti-corruption policies under the impact of the CVM) to systematically describe the *meaning and structure emphases in the attitudes of the EC* to local anti-corruption policies, and the *dynamics of this attitudes* in time.

Three new tasks were set:

- To prove that the implementation of the CVM, as reflected in the series of reports for the period 2007-2012 is *full of methodological particularities that reveal the presence of political problems* (in other words, to prove that the reports both reflect the situation in the two countries and *express a crisis in the application of the CVM*);
- *To propose a conceptual explanation of the causes* leading to these political problems and their culmination in a crisis, taking into consideration the dialectics of the interaction between the European Commission and the national governments, as well as the specific historical experience that each participant in the partnership is burdened with;
- *To propose ideas for a possible political model for radically enhancing the effectiveness of the CVM<sup>16</sup>* as a counterweight to the increasingly audible appeals coming from interested politicians for the abolition of the mechanism.<sup>17</sup>

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<sup>16</sup> We adhere to a rather simple understanding of “CVM effectiveness”, according to which this is the capacity of CVM to *achieve its own aims within the set deadlines*. Our reasons to register its ineffectiveness, and look for its causes, lie in the fact that the establishment of the rule of law in Bulgaria and Romania continues to be as distant as in the beginning of 2007, when the two countries were admitted to the EU. Moreover, the events in Romania in 2012 that provoked M. Barroso’s unprecedentedly strong response against the violation of the rule of law in that country, as well as the events in Bulgaria in the summer of 2013, can be taken as a clear evidence of a relapse far behind the

*Hence, the main task of the present text is to raise the broadest possible political and public awareness, for without recognizing the political problems generated by the CVM reports, it is practically impossible that these problems might be solved.<sup>18</sup> If these problems were to eventually prove recurrent year after year, this would lead to two grave consequences: first of all, it would directly make the CVM itself pointless, and, second and still more disturbing, the persistence of these problems would be a very important element in the set of factors contributing to the lack of progress in Bulgaria's and Romania's reforms that are expected to protect the human dignity and quality of life of European citizens in general.*

This is no exaggeration. After the shaking crisis in recent years (take for instance Greece and Italy or Spain), it should be clear that the problem of corruption is inseparable from the issue of a country's specific economy, democracy, and overall quality of life,<sup>19</sup> but also that this is not at all only a local, national problem (or a regional problem of Southeast European countries). As the EU rightly mentions, though not with sufficient clarity and emphasis, "Today's European Union is

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starting point of the process. Thus, *there is no room for doubt that CVM has predominantly produced no substantial results*, despite momentary and partial achievements (Cf the views of Ganev and Tanasoiu).

<sup>17</sup> The political resistance on the part of the governments of Bulgaria and Romania has never ceased, and in fact has become even stronger and more publicly audible in proportion to the concern shown by the EC regarding the course of reforms. This resistance is particularly loudly voiced in Romania. For more details, see Tanasoiu (Tanasoiu 2012; also Ivanov 2012). Interviews conducted by our research team with key Bulgarian political actors and experts confirmed this fact.

<sup>18</sup> We explicitly remind the reader that we are staking foremost on the applied importance of the present analysis, because we believe it is the more important aspect. But the research work done is no less important, as being yet another voice *in the academic debate on the forms and perspectives for development of conditionality after accession to EU as part of the tools for its future enlargement and strengthening*.

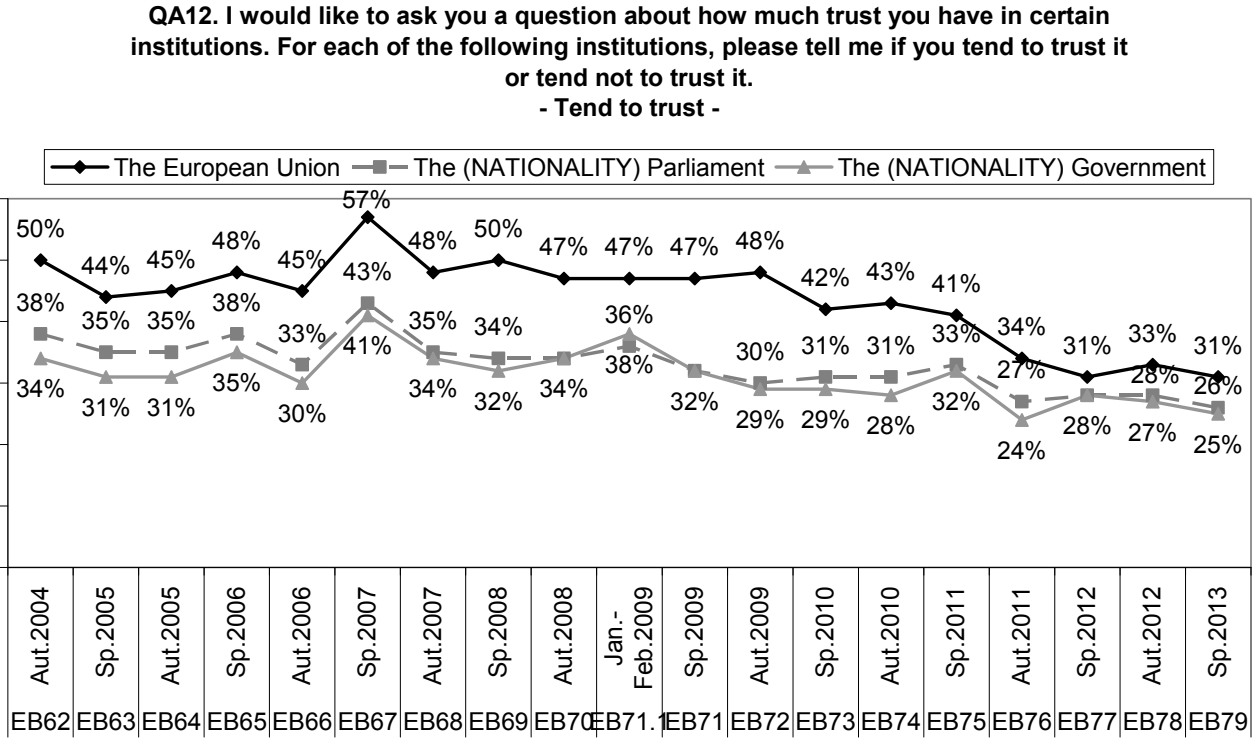
We are aware that we face a great risk in writing this text: it might prove not accessible enough for the general reader, too full of empirical evidence and methodological arguments for people practically involved in EU integration, and not conceptually rigorous enough in its examination of hypotheses by the standards of social science. We see no alternative but to consciously assume the risk due to the multiplicity of readers to which it is addressed and in view of the importance of the political conclusions of this analysis.

<sup>19</sup> For more on the high values of this correlation between democracy, economy, corruption levels, and general quality of life, see Lesenski 2012.

highly interdependent”.<sup>20</sup> Not only every country is dependent on all other Member States but the entire Union itself depends on its single members enormously (Greece) and vice versa – the countries are influenced heavily by the institutional health of the Union.

This interdependence has been empirically proven. The periodical Eurobarometer data are highly indicative in this respect: *for the whole period since 2006 and until now there has been a sustained trend of decline of trust in the EC and in the national parliaments and governments.* As evident from the graph below, trust in the EU and in the national political institutions (parliament and government) correlate strongly. In view of these facts, the question of the perspectives for EU development is not and will not be an “external policy issue” for any European country, for any government, or for any European citizen...

**Fig. 1. Dynamics of the trust towards the EU and towards the key national political institutions in the period 2004-2013**



<sup>20</sup> See the July 2012 reports for Bulgaria and Romania, p. 2 ([http://ec.europa.eu/cvm/docs/com\\_2012\\_411\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf); [http://ec.europa.eu/cvm/docs/com\\_2012\\_410\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf)).

Source: Standard Eurobarometer 79, Spring 2013, Publication July 2013;  
[http://ec.europa.eu/public\\_opinion/archives/eb/eb79/eb79\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_en.htm), accessed 26.07.2013.

Using the most recent available data reported by Eurobarometer'79 we could test for association between the trust in the EU and the trust in the national parliaments and governments for the period of 10 years. Doing so we are following the general theories for the subordination of the European political process to the national one (Schmitt 2005) and keeping in mind the empirical findings about the complexity of the relationship between trust in national political institutions and in the EU's ones (Munoz et al. 2011; Beckmann et al. 2013).<sup>21</sup> In hypothetical terms, we could assume that attitudes towards the EU, the national governments and parliaments are not three separate social facts, but, in essence, three different instances of a single political attitude.<sup>22</sup> The first step in this respect is to estimate the correlation coefficient between the three variables *for the period under examination*.

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<sup>21</sup> The EU consists of several supranational institutions, i.e. the European Parliament, the European Commission, the European Council, the Council of the European Union, the European Court of Justice, the Court of Auditors and the European Central Bank (ECB). *It is unclear whether there are differences in the way respondents view specific institutions. In addition, respondents most likely do not actually think of all these institutions when they answer the question about trust in the EU; on the contrary, they may also associate the EU with the euro or other institutions, such as the International Monetary Fund (IMF). All these factors would, in turn, influence their level of trust in the EU.*" (Beckmann et al. 2013: 80, italic, added).

<sup>22</sup> Aydin/Cenker (2012); McLaren (2007); Mishler (2001); Hudson (2006); Hutchison/Johnson (2011); Rohrschneider/Whitefield (2006).

**Table 1. Correlations among the trust in EU, the trust in national parliaments and the trust in national governments**

		ЕС	Национален парламент	Национално правителство
ЕС	Pearson Correlation	1	,873**	,827**
	Sig. (2-tailed)		,000	,000
	N	19	19	19
Национален парламент	Pearson Correlation	,873**	1	,926**
	Sig. (2-tailed)	,000		,000
	N	19	19	19
Национално правителство	Pearson Correlation	,827**	,926**	1
	Sig. (2-tailed)	,000	,000	
	N	19	19	19

\*\* Correlation is significant at the 0.01 level (2-tailed).

It is evident from Table 1 that the correlation between the trust in national parliaments and the trust in national governments is extremely strong – the coefficient is above 0.90. The correlation between the trust in them and the trust in the EU is somewhat weaker and yet sufficiently strong – the respective coefficients vary between 0,80 and 0,90. This is why we consider *the attitude*

*towards the EU as an important domestic political issue* which depends on the relationships between the national societies and the EU's institutions.

The interdependence is not self evident. Based on the data presented in the figure above, and pointing towards the significant strength of the correlation, one should raise the question whether trust in EU is not merely a function of the trust in national parliament and national government. In order to find the answer, we have constructed a regression model with the trust in the EU as the dependent variable and the trust in the national parliaments and governments as the independent (in statistical terms) variables<sup>23</sup>. As long as the regression model is built upon time series, we introduce “the time” as an additional factor in our model which provides concrete practical advantages: 1) simplifying the calculation procedures; and 2) providing the opportunity to account for all other factors that we do not control for (Velichkova 1981: 302).

The regression analysis shows that there is very strong correlation between trust in the national parliaments and trust in the national governments, therefore in this case is pointless, in a purely methodological aspect<sup>24</sup>, to treat the trust in the two national institutions as separate factors (although being conceptually different, thus providing grounds for a serious debate on the modes

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<sup>23</sup> Without contesting the validity of the alternative hypotheses in any way, we offer examples of the possible political meaning in this analytical move. The attitude towards the EU, not just in Bulgaria, for the majority of the citizens seems like a question of foreign policy, itself being a prerogative of the national political institutions and in this sense is part of “their play”. Therefore, the decline in their public support results in decline in the support for “their play”. Or, alternatively, the EU is perceived as a matter of politics in general, and the declining concern in politics in all of its instances is transmitted upon the EU. For example, Arnold et al claim that “individuals across Europe evaluate the institutions of the European Union through a single attitude dimension of political trust rather than through separate evaluations”. (Arnold et al. 2012: 1-6) For a variety of alternative hypotheses and their recent empirical test see (Munoz et al. 2011).

<sup>24</sup> In the first place, there is a multicollinearity problem. “The occurrence of strong linear relationship between the factors in the regression model means that the estimated regression coefficients do not reflect the genuine influence of the factors. They carry considerable error, which makes them largely unreliable.” (Manov 2002: 79). In our case, there is considerable multicollinearity as measured by the so called tolerance coefficient, which in essence is an indetermination coefficient and shows what share of the variance in a given factor is independent relative to other factors. In our case, the three tolerance coefficients are below 0.3 which is rather low. The conventional strategy in this case is to exclude factors from the model until we get satisfactory tolerance coefficients. The exclusion of factors, however, should be consciously guided process. This is the reason why we exclude the trust in the national parliament from the model. Its tolerance coefficient amounts to 0.051 which means that 94.9 percent of the variance in this variable is determined by the other two factors. This makes the factor redundant. With its exclusion from the model, the tolerance coefficients of the confidence in the national governments and time exceed 0.6, which is sufficient enough to keep them in the model.



of their interaction)<sup>25</sup>. The additional calculations show that the trust in the national governments has a strong impact on the trust in the EU. Nearly half of the variance in the trust in the EU (49.7 percent) is explained by the variance in the trust in the national governments. Together with ‘time’, the two factors explain up to 78.5 percent of the variance in the dependent variable. Extreme caution is necessary in the interpretation of our result. The problem is that if we shift the paces of the trust in the EU and in the national governments in the regression model, we get practically the same results: 49.7 percent of the variance of the trust in the national governments is explained by the variance of the trust in the EU. Together with time the  $R^2$  is 68.4 percent<sup>26</sup>. These results are meaningful, as well, and can find a logical explanation in the interdependence of the factors and their dependence from others. It should be noted that although meaningfully similar, these two results are far from being identical in non-statistical terms. Therefore, the direction of the correlation is conceptually important, especially when looking for causal relationships. We believe that *the attitude towards the EU is an important domestic political issue, which depends on the relationship of the national society with the institutions of the European Union.*

No matter how solid the conviction of the EU’s supporters may be that its strengthening and development is the better stake for the future of the European societies and for the European citizens’ rights protection, no matter how many arguments in its support may be found (Hix 2008; Borzel, Risse 2012), without some practical success in this development the decline in public trust

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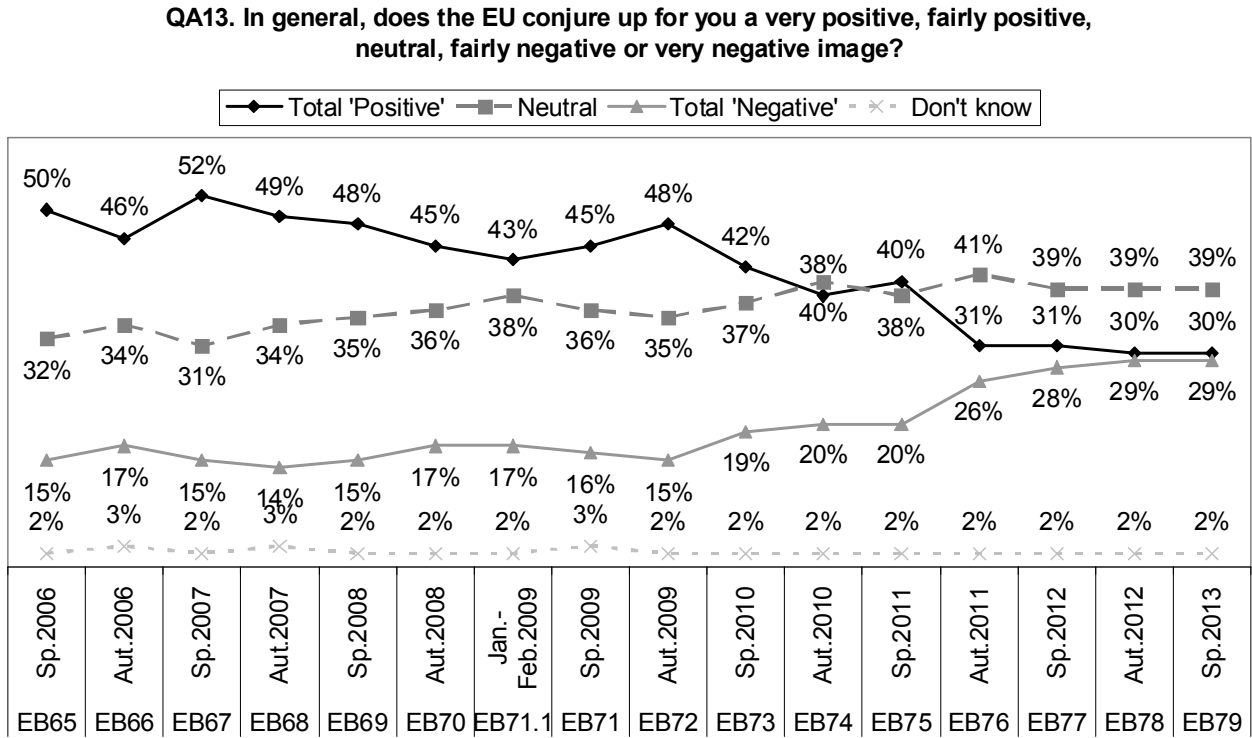
<sup>25</sup> It is worthless to go into details with the somewhat controversial assumption that the confidence in the government is “representative” for the confidence of the national political institutions, (being too nationally and historically specific). All we mean is that this methodological procedure makes sense in our specific analysis of the public opinion polls data.

<sup>26</sup> The lower strength of the connection between the two factors together could be perfectly explained by the fact that the trust in national governments is less determined by time relative to the trust in the EU. In other words, the decrease of the support is more significant in the confidence towards the EU than towards the national governments, as depicted by the graph.

in the EU will continue to grow thus becoming a major obstacle before future enlargements<sup>27</sup>. This is why the empirical study of the experience gathered through the accession of Bulgaria and Romania, that is the study of the effectiveness of the post-accession conditionality is crucially important<sup>28</sup>.

<sup>27</sup> The data from the periodical Eurobarometer survey are telling: in the six years since 2006, the negative attitude to the EU has doubled, while the positive attitude has lost about 20 percentage points, which amount to about 40 percent of its initial value:

**Fig. 3. Image of EU (Eurobarometer 2006-2013)**



Source: [http://ec.europa.eu/public\\_opinion/archives/eb/eb79/eb79\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_first_en.pdf), accessed 31.07.2013.

Our own calculations establish that as at the middle of 2013 (if the Eurostat and Eurobarometer data are correct) 224 660 000 out of 429 313 000 EU citizens, that is 52,33% of the whole population above the age of 15, are against future enlargements of the EU and about 10% more have no opinion. That is, the enlargement of EU is already highly unpopular and its public approval is steadily diminishing. Hence, the deeper understanding of the ongoing developments is truly vital.

<sup>28</sup> Regrettably, Eli Gateva’s observation is still valid: she notes that, unlike the abundance of literature on pre-accession conditionality, studies on the effect of the implementation of the CVM (as a unique experimental mechanism of post-accession conditionality) are very scarce. What studies there are continue to be very few in number, for instance (Papadimitriou, Gateva 2009; Trauner 2009, Ivanov 2012; Ganev 2012; Tanasoiu, Racovita 2012; Papakostas 2012, Vachudova, Spendzharova 2012 – this article is only a new revision of the previous

## 2. The unjustifiably overlooked resistance against the CVM

The deficiencies we found in the design and implementation of the CVM revealed to us an unexpected, and also insufficiently researched, phenomenon: the “crisis of post-accession EU conditionality” (Ágh 2007); so our attention as researchers was naturally focused on this aspect of the complex, multi-level situation. Hence stems the need, first of all, to demonstrate (through detailed empirical arguments) the gravity of the problem that we are studying. This focus on problems that have been overlooked and/or passed over in silence in the CVM as *an experimental instrument of the EC for applying the post-accession conditionality of EU membership*<sup>29</sup> may create the wrong impression of one-sidedness of our assessment of the mechanism. The careful scrutiny of the mechanism’s shortcomings nowise implies we do not see or depreciate its important merits<sup>30</sup>:

- The CVM is *a manifestation of true concern for the full-fledged participation of the EU member states in the entire functioning of the Union*, for their compliance with the values and principles upon which the quality of life of European citizens is built, and lacking which the existence of the Union would lose its purpose;
- The CVM is the result of the EC’s willingness *to propose innovative, politically experimental solutions* in cases when the EU enlargement policies encounter unforeseen substantial problems;

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cooperative publication by the authors, which came out under the title – “The EU’s Cooperation and Verification Mechanism: Fighting Corruption in Bulgaria and Romania after EU Accession” Spendzharova/Vachudova 2011). We have hitherto come across no studies on *the CVM itself*.

<sup>29</sup> As a rule, critical studies on EU conditionality are clear an exception in the main stream of literature, and they merit special attention (Grabbe, Hughes et al., Kochenov, Ágh, Mungiu-Pippidi, Mendelski, Papakostas).

<sup>30</sup> See also the detailed, well-balanced assessment of CVM merits and flaws in Alegre et al. 2009.

- In the particular way it is now implemented, it is quite complex in terms of procedure and methodology, *as it takes into account the systemic character of public life* and the fact that the problems of anti-corruption policies are indicative of the general condition of economic, political and civic life in the monitored countries.
- The instrument is *sufficiently sensitive to register the oscillations in time of the national policies* that ought to affirm the rule of law in these countries;
- Despite the clearly traceable commitment of the EC to the rules of “political correctness”, the contents *of the reports provide sufficient reasons for analysts and politicians to find many problems in the reform policies* that should have led to the expected goal – aligning the monitored countries with the other EU member states (if a genuine desire to see and solve the problems really exists);
- A particularly valuable quality of the CVM is *the EC’s persistence in maintaining the mechanism despite the obvious and growing resistance* of many local politicians to its implementation in the monitored countries.
- In the course of time *the CVM reports highlight ever more insistently and frankly the need for an “all-encompassing and fundamental” social-political reform* as a preliminary condition for genuine progress in the fight against corruption and in establishing rule of law in Bulgaria and Romania.

Taking into account the positive side in CVM, we also notice the problems. Among those problems one is of crucial importance. The severe resistance against its implementation has not been taken into account either in the concept or in the methodology of the initial design of this

instrument<sup>31</sup>. On the contrary: following the traditions of European political culture, in which treaties have imperative force, the CVM basically relies on the energetic cooperation of the national governments in the monitored countries in fulfilling the duties specified in the treaty of accession.<sup>32</sup>

*With all the risk inherent in posing negative hypotheses in the social sciences, we claim - based on all available evidence below - that there is no reason to believe that the EC takes into consideration the nature, the scale and systematic quality of the resistance against the very objectives,* and not simply against the separate sets of measures, of the Eurointegration policies recommended in the regular reports under the CVM. (Moreover, the theoretical literature on Europeanization, due to its initial paradigmatic assumptions, does not admit the existence of such a deeply rooted and systematic resistance – see the overview of relevant literature in Sedelmeier 2011). On the contrary, there is plentiful and heterogeneous evidence suggesting the EC’s lack of sensitivity for the purposeful, wide-scale and universal resistance against change, or what Venelin Ganev aptly summarized in the title of his paper “the rise of post-accession hooliganism” in Bulgaria and Romania (Ganev 2012).<sup>33</sup> To assume the contrary would mean that we question the

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<sup>31</sup>*“Using membership conditionality for precise policy influence requires willing, not reluctant partners:* in considering the coercive/voluntary mix, the voluntary cooperation is critical because the EU’s coercive power is very limited. ...This lack of coercive tools is hardly surprising, given the EU’s history and purpose: it was established as a vehicle for the economic and political integration of willing states, not as a force for transition in unwilling regimes.” (Grabbe 2006: 53, italic – ours, added). Exactly this crucial requirement is not met in Bulgaria and Romania as has been proved by the course of events in recent years. (For details and empirical proofs see Ganev 2012, Ivanov 2012, Tanasoiu/Racovita 2012, Papakostas 2012.)

<sup>32</sup> See the introductory paragraphs of the regular July reports for Bulgaria and Romania, especially those for 2007, 2008, 2009, which stress the **assumed government commitments of the two countries as a basis for the realization of CVM**. (Cf Tanasoiu - “The framework designed to secure Europeanization post-accession suggests that Europeanization was expected to happen as a result of assumed responsibility: norms compliance not because it would be rewarded for good behavior, but because it is a member state’s responsibility to do so.” (Tanasoiu 2012:189). In classical modern European culture, the fulfilment of contracts is implicitly imperative, unconditional, but in Southeast Europe things stand differently. The Bulgarian and Romanian governments, and more generally the national political elites, “released from the pressure of conditionality and accession, are guided by a relaxed understanding of contractual obligations a country has as a EU member state, and a rather cavalier attitude towards rules and regulations.”(Tanasoiu/Racovita 2012: 244).

<sup>33</sup> Beyond the beautiful forcefulness of the expression there is a much deeper problem: in the light of Racovita’s conclusions, we should say that this is not so much a “rise of hooliganism” but simply a much *higher degree of*

political integrity of the EC - the inadequacy of CVM is understood very well, but the Commission maintains it for unspoken, publicly untenable reasons. We prefer to rely on the integrity of the EC.

## 2.1. The linguistic level of resistance

This local resistance is all-embracing and penetrating different levels of our social reality. We can recognize it even at the linguistic level: the resistance against the viewpoint of the EC begins with the translation of the report into Bulgarian. At the linguistic level *per se* we can distinguish several significantly different, in all cases important, sub-levels of cultural, supra-individual resistance:

- Seemingly insignificant errors in meaning: for instance, it makes some difference what precisely Bulgaria is expected to create (a register of *agricultural economic units* or a register of ... *dairy farms* – in the English version the phrase is “farm register” while in the Bulgarian translation it is the second expression), and the substitution of one for the other may entail the failure of the whole Operational Programme, or, in the best case, a lag of years in a given sector policy. “Contemporary law” and “modern law” are very different things. *Recruiting staff* and *cadre selection* is not the same thing, especially in the judicial system. It should be noted, though, that such inaccuracies of meaning are relatively rare in the reports<sup>34</sup>. That is precisely why we think that *where there are such*

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*openness* in the constant resistance to reforms, which has in fact been a sustained practice in Bulgaria and Romania in *the specific model of interaction with the EU in the pre-accession period* as well 1999-2006 (Racovita 2011).

<sup>34</sup> But these are no trifles: “from the Treaty of Accession it becomes clear that there are serious shortcomings in the transposition and application of EU legislation in the sphere of the economy, the internal market, the judiciary and internal affairs, and that safeguard measures may be undertaken within three years after the accession (Report for Bulgaria, July 2007). In fact, this refers to the fact that within 3 years after the accession safeguard clauses may be activated, and not that their term of application will be that long. See Gateva (Gateva 2010, c 8).

Likewise in the 2012 report – the view of the EC that “This report considers in particular the sustainability and irreversibility of the reform process, including whether ownership is sufficiently embedded to maintain the direction of reform.” This is how it sounds in translation: “The present report examines specifically the sustainability and irreversibility of the process of reforms, including whether a sufficient behavior of engagement has been adopted and

*“discrepancies” (to put it mildly) between the Bulgarian and English texts, these are not due to poor linguistic skills of the translators but to a significant cultural incommensurability between the realities underlying these linguistic practices and policies.*

- Unfamiliarity with the specific matter discussed is likewise rarely to be found in the reports, but when it does occur, it does so as a persistent rule, not an exception. For instance, in Bulgarian translations “rule of law” is always translated as “rule of *laws*”. In the same manner, “EU law” proves to be translated as “laws of the EU”.<sup>35</sup> The root of the problem is not that the translators are not familiar with this “matter”: it is unfamiliar to the local representatives of professional practices underlying the esoteric professional vocabulary. The problem is that these “misunderstood terms”<sup>36</sup> make the *messages* of the EC to the authorities that should be implementing them equally miscomprehended. The problem is that concepts which in Western Europe are understood implicitly, being based on centuries-long shared traditions, need to be specially explained in our country, where the relevant social practice is missing.<sup>37</sup>

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whether the direction of reform will be preserved.” Firstly, the reference is not to many reforms, but to just one; more importantly, the reference is not to behavior but to *deep social foundations of political responsibility that might result in the irreversibility of the reforms.*

<sup>35</sup> Put in the simplest terms, the difference is about which of these stands higher – the *text* of the law or the *application* of the law whereby *justice* is achieved in a reasonable time span. Regarding the texts, there is no difference between Bulgarian law and European; regarding application, there can be no point of comparison actually. For more on the cultural context of the usage of legal concepts and the social-cultural essence of the concept of rule of law, see Slavov (Славов 2012).

<sup>36</sup> Much to the surprise of Bulgarian politicians, journalists and experts at large, the documents of EC talk about “action plan” meaning “a plan of policy action”, a thoroughly elaborated concept in which well-thought out expediency, systematic instrumental rationality, (*Zweckrationalitaet* as Max Weber would put it), is foremost, in contrast with all the connotations that the domesticated foreign word “action” (abridged version of “action movie”) might have in everyday usage in our country - high speed, violence, unexpected twists of events, etc. Not to mention, that the local decades-long traditions see every “plan” as purely formal, no more than words on paper.

<sup>37</sup> This is not the only example. The same is true for the arbitrary substitution of many key concepts of Europeanisation, ex. “methodology” by “methodics”, which will be discussed further on, etc., etc.

- The lack of possibilities for direct cultural translatability is simply an even more vivid illustration of the above-mentioned problem. The only difference is that in the first case, providing the concept is correctly understood, it could find an adequate Bulgarian translation. But as regards a number of key concepts of European integration policy, this is not the case at all. The terms should be carefully explained before they are translated – and then a most unusual expression should be sought for them in order to indicate - when regularly using it - that the expression refers to a quite specific civilizational task, framing the practice denoted by the expression. Such truly key terms are: benchmark, integrity, ownership, etc. There is no simple way of translating “benchmark” into Bulgarian<sup>38</sup>, because it refers to a standard of quality of public activity. We have no corresponding word for such a standard, because there is no tradition of striving that public policies will match certain standards. There is no way of translating “integrity” into Bulgarian, and not simply due to the multiple meanings of the word, which simultaneously signifies honor, honesty and dignity, wholeness, internal consistency, and especially the *moral unity* of all these connotations, the syncretic quality of a person (or institution) that simultaneously possess the *full set of high moral standards* and persistent consistency in fulfilling their

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<sup>38</sup> Cf. Ivanova (Иванова 2012a: 5). Another equally characteristic example is “conditionality”, of which mention was made above. The fact that an official institution (the Court of Auditors of the EU) has published a “Brief List of Misused English Terms in EU Publications” (Gartner 2013) is symptomatic of a very serious problem. The compiler of this list, however, seriously underestimates the depth of the problem, which is not limited to the undoubted linguistic barbarisms encountered in the vocabulary of the intellectually indolent bureaucrats (it is inevitable that when English turns into the modern-day lingua franca, it is barbarized, at times to the point of being incomprehensible to native speakers of the language.)

*The EU creates new realities*, and these must obtain linguistic signifiers (necessarily brief ones, in order to be convenient for public use). The fact that there is no established customary usage of a new term in English is the least problem. The real difficulty begins in the transition from the term to the concept. For European bureaucratic jargon signifies rather complicated institutional practices that could not be expressed fully even by a whole paragraph, let alone a single word. The true root of the problem is to be able to recognize the correct ones among the undefined “adequate” practices so as to be able to distinguish them from the “deficient” ones or from the misusages. The example of “conditionality” is particularly apt as an illustration of this problem, because the *scope of the concept has changed considerably in the course of time* – only within several years, and it includes different forms and varying packages of interrelations that use different instruments between institutions of different natures (EU and IMF, for instance) and their various partners (usually countries). Nevertheless, these practices are relatively unified and distinguishable from other practices of the same institutions, and their special importance makes them the subject of scientific attention, which requires a rigid use of words (comprehensive and unambiguous meaning).



tasks and, hence, have a characteristic wholeness in their conduct as public agents. It is understandable why an adequate linguistic equivalent has not been found in our language; in any case, the concept certainly does not refer to “ethics”, as the term “integrity” has been translated – for the needs of the reform of the judicial system (in Romania there is a specialized governmental agency – Agenția Națională de Integritate [ANI] – which deals with the problem of integrity but is certainly not specialized in... ethics). Regarding “ownership”, the lack of which is ever more frequently pointed out by the EC as the main cause of reform failures, we have already written sufficiently<sup>39</sup>. Bulgaria lacks the practice of bearing political responsibility with respect to commitment to some course of public behavior, so that translating “ownership” by “engagement” does not serve the purpose (though as a translation it is far better than the previous expression “political right to property”, used until recently). For the word does not refer to some kind of engagement declaration, but to the burden of personal, political, and institutional responsibility insofar as its subject-matter is really a matter of public interests.

- The deep linguistic structures also play an enormous role. In all cases, where verbs have been used to convey meanings in the English version of the reports, the Bulgarian translation – while remaining close to the meaning – has used common nouns (for instance “to monitor” is rendered into Bulgarian as “carrying out monitoring”; “the report indicates” becomes “the report contains the indication that”). It *only seems* there is no difference of meaning here. Verbs signify action, active stance in the world, where it is

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<sup>39</sup> If anyone would claim that people in Bulgaria know what ownership means, we would ask at once whose is the “ownership” over the candidacy of Judge V. Markovska for membership of the Constitutional Court (she failed to be appointed after a wide public resistance and an institutional mega-scandal in 2012) and who assumed the responsibility for the consequences of the political will implicit in this sort of “engagement”...? There is no end of the examples illustrating the predominant, recurring principle of political irresponsibility in key political actions (on this problem, see also Dimitrov 2012, the last chapter).

only natural for the actor to take responsibility. It is quite different with “things” which simply “exist”. We can contemplate, register them, but we cannot be held responsible for what *the case is as if out of itself*, and we normally hear (by virtue of the linguistically produced social reality) political explanations such as “that’s how things are”, “it turns out that”. Similarly, in the original English version we find linguistic turns in which the problems are placed in the position of direct object: “the report points out the problem”, while in the Bulgarian version the problem is present in the form of an indirect object in the sentence “the report draws attention to the problem”. It is remarkable that in all cases in which the Bulgarian text has shortened *or* lengthened the original phrase, though it could very well have been translated literally into Bulgarian, *the difference is that the literal translation would have sounded more trenchant*.

- We find exactly the same thing in a number of innocent, but evidently not disinterested, deviations in the translation. Again we are referring not to minor, casual terms but to key, defining concepts or expressions (for instance “advancement”, “moments”, “basic”). It is notable that, even though the English word “advancement” is the direct equivalent of the Bulgarian word [“*napredak*”], it is only rarely encountered in the original reports, but not so in the Bulgarian translations. For by its very design the CVM was meant to observe not mere advancement but substantive and substantial *progress*, i.e. a qualitative change, the passage through phases of development, and not simply advancement (providing Bulgaria and Romania are expected to become participants bearing the full responsibilities and rights that EU membership entails, which they were unprepared for at their accession). But according to the Bulgarian translations – it is as if the EC never expected anything but advancement: quite in the spirit of the understanding of local politicians, (but *also in the tradition of the negotiation process*, when the demonstration

of “some progress” has been accepted as being a sufficient substitute for the expected end result).

- Next, in Bulgarian there is a word corresponding to *moment* in English, and that word is the very same [“moment”] but in the report the EC says what it has been observing in the six year period are not just moments but *times*<sup>40</sup> of resentment and resistance. If the patriots are irritated that there have been *times* of resentment and resistance, let these be translated as instances – for they are certainly not a few merely casual “moments” – especially if we want to understand the *general sense* of what the EC is saying in its evaluation reports. (Another important example: [“osnovna”]”basic” and [“fundamentalna”]”fundamental” is not exactly the same in meaning specifically as concerns social reform. And such examples are abundant – they are to be found on practically every page of the reports.)
- Last, but not least, is the highly idiomatic use of English, a style that requires looking to the broader context in order to interpret the concrete use of a phrase. This actually proves to be an intentional multiplicity of meanings that the EC has sought to put in the nuanced words; this is due to the well-known political correctness...<sup>41</sup> But it makes room for and legitimizes personal preferences in translation at the discretion of the patriotic translator, who is not familiar with the specifics of social reforms but is actually free to choose a semantic emphasis according to personal conviction or sense of propriety.

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<sup>40</sup> “During the period in question there were moments of accelerated progress and moments of stagnation. At some stages there was active cooperation, while in others there was grumbling and resistance.” Cf. “Over this period, there have been times when progress has accelerated; others when there have been setbacks. Cooperation has been active at some stages, whereas at other times the CVM has been resented and resisted.”

<sup>41</sup> We fully agree with the empirical generalization of Tanasoiu that oftentimes the political meaning of the comments in the annual EC reports is consciously sacrificed in the name of political correctness: “In search of a balanced assessment, the Commission looked for positives even when not really there.” (Tanasoiu 2012: 177). Hughes and his associates, and Grabbe, and Maniokas have clarified well the additional problem of the intentional vagueness and internal lack of coherence in the reports, which are a result of the EC’s approach to conditionality for East European countries.

Particularly important information in this respect was provided to our team by a Bulgarian translator with many years of working experience in Brussels, who clearly explained based on his experience that it was not even necessary for a translator to receive special instructions from politicians to purposely soften the tone of the reports - for his/her inner voice “naturally tells him/her to smooth out” as far as they can *so as to erase the cultural distance*. No doubt this is a constant, impersonal cultural norm. The question is whether this softened/smoothed out version of the EC’s assessment, initially tailored to be “politically correct”<sup>42</sup>, can afterwards be adequately construed by the local politicians and institutional figures as a set of tools for carrying out reforms. Especially when we consider the recurring systematic resistance against reforms.

## **2.2. The expert guild resistances**

The same systematic attitude also underlies the resistance (or, at least, the ratio of acceptance/non-acceptance) occurring in the public reactions of the whole range of local stakeholders, including professional guilds<sup>43</sup> (especially jurists, who are the most directly affected), the political parties, the state institutions, and the media.

First of all, *particularly striking is the absence of high-quality, strictly professional expertise*.

Although political scientists, sociologists, economists, jurists, etc., are organized as research communities and are represented by their own nation-wide NGOs, none of these organizations have found it necessary to present the public with their opinion on the CVM reports. Neither has

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<sup>42</sup> Here we insist on the crucially important distinction to be made (as difficult as this might be in each separate case) between the “politically correct language” of political documents in EU and the EC intentional policy of vagueness, ambiguity, and inconsistency in conducting pre and post- accession conditionality, an approach of which these reports are a result (“The poor clarity and flexible interpretations that characterized the Commission’s monitoring during the enlargement process allowed for a wide latitude of political manoeuvrability over the application of conditionality and the evaluation of compliance.” Hughes et al. 2005: 116, see Maniokas as well).

<sup>43</sup> The choice of term – “guild” – to designate professional communities of expertise in the country bears direct resemblance to the openly medieval, pre-modernist character of these associations, in which we can find isolation from the outside world, the totally “measured” life of its members restricted by strict group rules, as well as the unconditional rule of the private, highly cohesive, interest and the pseudo-personal character of inter-member relationships, etc.

any academic institution – whether a university or the Bulgarian Academy of Sciences institute – publicly committed itself to making analytical assessments of the course of Eurointegration reforms in the country and how these are reflected/interpreted in the reports. This absence is particularly frustrating as contrasting with the persistent interest abroad in these problems which started long ago. Relatively young researchers coming from countries in the region (but working in research institutions in Western Europe and North America), have an active research interest in developments in Southeast Europe in the perspective of Europeanization and in post-accession conditionality (these include V. Ganev, S. Andreev, A. Dimitrova, A. Spendzharova, G. Nocheva, D. Toshkov, A. Mungiu-Pippidi, C. Tanasoiu, M. Racovita, G. Pop-Elesec and many others – it should be mentioned, however, that their analyses are primarily descriptive, and at times are marked by debunking pathos Ivanov 2012, Ganev 2012, Gateva 2012, Tanasoiu 2012, Vachudova and Spendzharova 2012; Racovita 2011, Tanasoiu/Racovita 2012)<sup>44</sup>. This is a key issue in light of the ownership deficits related to reform policies in a country like Bulgaria.

Against this backdrop, the task of responding to the EC monitoring is understandably left to the other public agencies: the media, various NGOs, political parties, and separate state institutions. We will review them in reverse order that will let us start with the simplest case. State institutions in general do not feel they owe the public a statement of their official position, simply because the EC report is formally not addressed to them.<sup>45</sup> Hence the expressed attitude to the reports is limited to the non-official standpoints of the authorities. A number of colleagues, who are regularly invited as experts by the respective institutions, have testified to what these

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<sup>44</sup> Of the authors known to us, only Ganev explicitly recognizes the priority of descriptive tasks in his study. But regardless of the kind and complexity of conceptualization of empirical observations offered by these researchers, *no explanation is found as to the causes of the registered processes – except for the customary references to the influence of historical legacies.*

<sup>45</sup> Each of them - the President, the Parliament, the government, the leadership of the judiciary – could come out with their official viewpoint on the reports, providing the public expects and demands this, or if the mechanism itself were to begin requiring them to do so.

attitudes are. The general and repeated observation is that the only question they have been asked is how the monitoring can be canceled. They have never been asked what to do in order to fulfill the expectations of our country. The reason is simple and important: *state institutions are not pursuing a common strategy for reforms. Amidst their routine work, the periodical EC's reports are simply external, needless, and momentary irritating factors* as recognized by our interviewed respondents from state institutions.

Hence it logically follows that the public use of the reports is reduced to their interpretation and use in incidental political clashes (Tanasoiu/Racovita 2012). And since the tone and vocabulary of the EC is purposefully selected as so not to be interpreted or used with party bias (Ivanov 2012; Tanasoiu 2012; Grabbe 2006), the commentaries degenerate, and are limited, to a brief series of mutual, one-sided interpretations/accusations. In Bulgaria certain parts of the report are highlighted while other passages or even parts of a sentence containing evaluations are passed in silence<sup>46</sup>.

However, this mode of interpreting the reports proves appropriate for media coverage, because the media themselves (with the exception of the daily newspaper *Sega*, which maintains a constant, but overtly critical, interest in EU issues), do not systematically follow the European integration issue and read the responses to the reports through their basic, broader interpretative optic: “is there or isn't there some material for a scandal?” In this particular perspective, the monitoring reports are predominantly “uninteresting”/boring for the media, since they mostly deal with policies and institutional systems, but very rarely with particular individuals who are to blame.

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<sup>46</sup> “The balanced language of Brussels (combining praise and scolding) offers a bit for everyone to use in the local struggles for power between: the government (bragging of its success) and the opposition (arguing the opposite); between the branches of government (the executive – for using the judiciary against the legislative; also the judiciary against the legislative, e.g. “the Romanian president of the Higher Council of Magistrates blames the “legal jungle” for the lack of progress); the legislative against the executive and the judiciary; the executive against the judiciary (for lack of transparency), and also within each of these branches (prosecutors against judges and HCM/HJC).” (Tanasoiu 2012: 187).

In view of the observations given above, analysing the monitoring reports proves to be the *monopoly of the NGO sector*. However, we must never forget the specific local character of this whole sector, stemming from its basic purpose to serve state interests more than the interests of citizens<sup>47</sup>. This eccentric function of the Bulgarian NGOs is evident in two interrelated characteristics of public expertise on European integration problems – a very low degree of precision of analyses, and easily recognizable partial guild stakes behind the interpretations, which encounter no public opposition from anywhere. We specially draw attention to the connection between these two effects (or defects). The fact that standards of methodology are so low<sup>48</sup> naturally opens the door to uncritical (guild-based, seemingly “self-evident”) appraisals. The private institutional/professional loyalties require that these low standards of expertise be maintained. The lack of competitive publicity can only contribute to this situation. Here we provide just a few examples, because a more detailed analysis of European integration expertise in our country, particularly on the topic of the CVM, would require a separate study.<sup>49</sup>

In order to make our point, we must take the very best examples of NGO expertise on the topic of the CVM in Bulgaria. For instance - the analyses of Ivanka Ivanova, an expert of the Open Society Institute in Sofia. They are extremely symptomatic, because this NGO has the greatest experience in public monitoring of reform policies in Bulgaria, while I. Ivanova herself is a long standing expert on problems of judicial reform. Her analyses are an appropriate illustration for two main

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<sup>47</sup> For more on this matter, see the collection “Съграждане на гражданството: Перспективи за публично партньорство в България”2012 [Building a Citizenship: Perspectives for Public Partnership in Bulgaria], (and also Десислава Христова-Кужидловски 2011 - Индекс на гражданското общество 2008-2010. Гражданското общество в България: гражданска активност без участие, [Desislava Hristova-Kudzhilovski 2011 - Index of civil society 2008-2010. The civil society in Bulgaria: civic activity without participation] Open Society Institute, Sofia).

<sup>48</sup>We will explicitly make the provision that the poor standards of methods and methodologies are not a distinguishing characteristic of local NGOs alone – this deficiency seems to be typical for entire sector in general. For instance Assoc. Prof. Haralampiev has found obvious errors in the data base of a very important (with respect to the results it has obtained) international comparative survey “National Integrity System”, conducted by Transparency International, a world renowned institution (Haralampiev 2012).

<sup>49</sup> In the framework of our project, we studied 42 expert materials, of which 23 were in Bulgarian and 19 in English.

reasons: a) as she is an obvious, though critical, supporter of the CVM as a tool for the external pressure that is indispensable for reform in the judicial system, but also b) because her articles clearly show that she takes the CVM reports simply as a topic upon which to project the idiosyncrasies of her professional guild bias<sup>50</sup>, something that is evident both in her praise and her criticism of this EC tool. It suffices to mention a typical uncritical objection she makes to a standpoint contained in the CVM report:

“... the inclusion of the action of the court within the scope of monitoring creates a risk for violation of the principle of the court’s independence, for the achievement of Bulgaria’s foreign policy goals (successful membership in EU) thereby becomes a function of the work of the court; but judges neither can, nor should, take into account in their work the political consequences of their decisions” (Ivanova 2012a: 8).

Even the mere fact that Bulgaria’s membership in the EU is viewed as a “*foreign policy goal*” is sufficient reason to disregard such expertise altogether. But we should pay attention to a very important feature here: the *systematic and conscious resistance* of the whole judicial system against the expectation of the EC that *it should commit itself to conducting policies for fighting corruption and establishing the rule of law* (in stark contrast to the EC’s often repeated expectations regarding quality of public life in Bulgaria and regarding the *expected engagement of all branches of authorities for maintaining this quality*).<sup>51</sup>

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<sup>50</sup> The author indicates the instruments used in the study: “From a methodological viewpoint, the conclusions of this analysis are based on three sources: a national public opinion survey of the adult population of Bulgaria, conducted in the period May 1-17, 2012 by a team of the Open Society Institute – Sofia; 1169 persons were surveyed; two focus groups with Bulgarian jurists conducted in May and June 2012; 12 individual interviews with representatives of Bulgarian institutions, of NGOs and magistrates.” (Иванова 2012а: 4). This would scandalize even a second year student of sociology who knows the methods and methodological rules that must be fulfilled in order for a survey to be legitimately called objective and reliable.

<sup>51</sup> We believe that Smilov and Dorosiev are quite right in summarizing, jokingly, that corruption in Bulgaria has the miraculous property of disappearing as soon as it approaches the guild of judges – especially when they have to pass judgment or when there is a question of their own involvement in this phenomenon (Smilov, Dorosiev 2012: 222). This is a typical case of guild interest. The author’s sinking into her guild’s self-evident views is particularly salient in another “expert analysis” of the 2012 EC report: “In demanding responsibility for the degree of respect for the basic principles of democratic life and the branch division of government, the external monitoring assumes the tone and supports the demands of the judges inside the country: the leading professional organization – the Association of Judges in Bulgaria – has long made it its priority to uphold the independence of the judiciary. This is the only necessary precondition for stopping the vicious circle of impunity.” (Иванова 2012б). AJB is the only public entity in



At the level of guild-based causes of resistance against the results of CVM monitoring, we find much in common between the aforementioned text and the essay by Daniel Smilov<sup>52</sup>, even though the two analyses are incomparable with respect to their methodological culture and even their thematic orientation, tone, and value priorities. Smilov asserts that the *CVM is fundamentally wrong in converting the fight against corruption, alongside effectiveness of the judiciary, as the sole (or priority) problem of Bulgarian society*, for it is not – and it cannot be solved if considered to be – the sole problem.<sup>53</sup> In attacking both the legitimacy and the political heuristics of the CVM at their very conceptual basis, this author suggests a distorted understanding of the mutual relations between Bulgaria and the EC, an understanding summed up in the essay’s title “*European Supervision of Legality: the Final Account*”.

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the country that frantically upholds the thesis – refuted by the bulk of facts – that the independence of the courts is the *only* precondition for responsible conduct of the judiciary, and it is blind to the fact that the majority of the regular magistrates are embedded in the status quo, as are likewise the internal professional fractions at all levels. The juridical circles are persistently deaf to the warning of the National Ombudsman, who himself comes from the highest rank of the judiciary, that the judicial reform is yet to be made and *cannot possibly be carried out without a radical cleansing of the ranks*. Note Mungiu-Pippidi’s remark: “... the evidence from Latin America had already shown that independence is a complex phenomenon and that the introduction of self-regulatory Judicial Councils does not solve the problem. Even though judges may be independent of direct political control, they may become dependent on other forces such as senior judges in a judicial hierarchy, or they may become plainly unaccountable and corrupt.[...] Reforms in Romania and Bulgaria frequently had to be pushed through against the will of the very people who were supposed to implement them. (Mungiu-Pippidi 2011: 153) The typological specificity of the synthesis between the marginalized role of the judiciary in fighting corruption and its own corruptedness is especially important when we seek the social causes of this problem (“High level magistrates often exhibit the same type of ethical minimalism [...] the integrity of their leadership continues to be questioned as well as their commitment to judicial reforms.” (Tanasoiu/Racovita 2012: 257)

<sup>52</sup> “The EU reports under the monitoring mechanism have one basic deficiency: they give the EU a wrong idea about Bulgaria and Bulgaria a wrong idea about the EU. The problem lies in the erroneous explanations of the facts, which in one way or another reduce everything to corruption and crime. This simplified analytical framework becomes a problem in itself and explains the feeling people have that policy-making is skidding.” (Smilov 2012).

<sup>53</sup> “Bulgaria is corrupt in the sense in which Aristotle claimed that democracy is a corrupt form of government in comparison with the politeia: in the former, governance benefits the majority, in the latter it benefits all. Corruption consists in disregarding the general interest and serving only the interests of certain groups of society (larger or smaller ones).” (Smilov 2012). The deliberate substitution of the question as to the *systematic character* of corruption in Balkan (and South European) societies, unlike those societies in which it is an exception to the rule, with the reference to the *universal defect of every democracy* is central to the thesis of the author, who argues that CVM is inadequate in principle.

Essentially, the position of the author represents a gross substitution: the EC's approach<sup>54</sup> whereby the anti-corruption policy is represented as foremostly *indicative* of the integral quality of the society under rule of law, i.e. indicative of the entire sociopolitical and institutional design of society, has been seen by the author as asserting this *as the sole problem* of Bulgarian society (indeed, a superficial reading of the monitoring reports could create such an impression). In view of this interpretation, the author definitively condemns the CVM as doomed to be unproductive in principle, and if it is to be continued, this *might be*, in his opinion, only out of *tactical considerations*, and not because of the expected results of a reform of public life.

We find this essay particularly important in that it shows that the ***real weaknesses of the reports the EC presents to the European public, EP and EC (in the Commission's capacity of stakeholder in the cooperation with member states of the EU) may easily discredit the very idea of the CVM and may thus directly serve the aims of political resistance against Eurointegration reforms in our country***, and in other countries as well.

In using Smilov's metaphor that the CVM is a "crooked mirror" held before the social reality in Bulgaria and Romania, we believe we have good reasons in *this* particular case to take the

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<sup>54</sup> The Romanian researcher Racovita grasps much more correctly the specific systematic meaning of the corruption problem in Bulgaria and Romania – "Since the Copenhagen criteria mentioned rule of law, transparency and separation of powers and given corruption ability to distort them (corruption in legislative bodies reduces accountability and representation; corruption in the judiciary suspends the rule of law; corruption in the public administration results in unequal provision of services) corruption became subjected to EU monitoring mechanisms. Romania and Bulgarian country reports increasingly pointed out lack of progress in addressing high level of corruption as well as lack of political will." (Racovita 2011: 31). Compare with Mungiu-Pippidi's statement: "While corruption and the rule of law are two distinct concepts, in the presence of the systemic corruption described in this paper they can hardly be disentangled. Anti-corruption must therefore be seen as part of a general effort to establish equality before the law and a rule-based system of governance. Leaving aside the practical difficulties of putting a concept as general as the rule of law into practice and assessing its short- or medium-term evolution, the evidence indicates that the Balkans has not yet achieved the evolution by one standard deviation that the EU has pushed for." (Mungiu-Pippidi 2011: 160-161).

This systematic understanding of corruption as a key social problem underlies the basic frame of the European legal acts. The thesis that "corruption represents a major threat to the rule of law, democracy, human rights, fairness and social justice, hinders economic development, and endangers the stability of democratic institutions and the moral foundations of society" stands in the preamble of the Resolution (99) of the Council of Europe for the establishment of GRECO. (<http://conventions.coe.int/Treaty/EN/PartialAgr/Html/Greco9905.htm> accessed 22.08.2013)

*complex relationship between the “reflected face” and the “mirror image” as a separate subject of study. Because the face is distorted with pain but does not want to look at itself in the mirror... This is an exceptionally complicated intellectual problem, which, moreover, is not given public importance due to the political consequences that solving it might carry. The problem consists in the dilemma between the possible roles of the CVM – as a way for public *legitimation of the resistance to “external intervention from the EU” and as a proof of the usefulness of partnership with EU in bringing about a qualitative change in effectiveness of the mechanism the Commission uses to achieve the goals of this partnership.**

The problem is that the long years of failure of a series of governments (two governments with different members) to achieve development in the quality of public life (the same is true for Romania as well) seem to “naturally” justify the viewpoint that qualifies the EC as always and indubitably right in its judgments. It seems the EC is always right simply because the local faults of the institutional, political and legal order in the two monitored societies are a proven and seemingly unquestionable fact<sup>55</sup>. But here a reversal occurs: the EC’s insensitivity to *the weaknesses in its own work is now becoming not only an obstacle to productive partnership with Bulgaria and Romania, but a separate and escalating cause of the lack of effective pressure for social development supported through the CVM.*

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<sup>55</sup> By now the available literature documents abundant examples clearly proving the ***stable persistence of political resistance against the reforms*** that EC is insisting on in defence of the values and legal foundations of the EU and the interests of European citizens (Andreev 2009; Ganev 2012; Tanasoiu 2012). We also agree with the findings of EC associates that “without the mechanism the situation would be much worse” (Gateva 2010: 21). That is why we find it unnecessary to specially demonstrate the political irresponsibility of the local governments regarding the implemented policies for European integration in the monitored societies.

Also, we should point out that, apart from the predominantly euphoric assessments about Europeanization as a source of democracy and stability in the countries that have undertaken it, there are also some sober estimates in literature, about the ***process of preparation for EU membership as a crash course in political irresponsibility*** (Ekiert 2008, see in particular pages 8-21 *regarding the many different ways* in which the political irresponsibility of the local governments is taught/encouraged ***by the very scope and way of conducting the pre-accession preparation*** of the member states. For a brief but fair overview of the many interpretations of the concept of “Europeanization”, see Sedelmeier 2011 and Dirzu 2011.

The problem is that the deficiencies in the mechanism of monitoring and assessment (which will be demonstrated through empirical facts further below), mirrored in the CVM reports, are turning into a real hindrance to the political assistance that EU can provide for these two countries; in a future perspective, they may prove to be an obstacle to providing effective support to all other countries in need of the latter (for EU must inevitably interact and influence its “periphery”/ “neighboring countries”).

What remains to be done after these introductory observations is:

- a) To outline the key particularities of the EC’s regular official reports to the European Parliament and the Council;
- b) To ascertain to what extent these particularities are a product of the particularities of the approach embodied in the Cooperation and Verification Mechanism and its pattern of implementation. In doing so we aim
- c) To propose ways for its optimization, *so that it might become capable of achieving the goals set in the CVM design at its adoption.*

### **3. Key flaws of the reports as a tool for promoting reform policy**

The exceptional political complexity of the relationship between “object-mirror-image”, as documented in the yearly official CVM reports, requires that we scrutinize in greater detail the particular features of the texts in order to discern the *very nature of the instrument* for cooperation between the EC and Bulgaria and Romania. We argue that nothing in these documents is accidental with respect to the specifics of the mechanism producing them, so that each detail should be a question of political responsibility. Once again we will make the qualification that starting the analysis with the political responsibility of the EC *nowise takes the blame away from the local governments for their own proven political irresponsibility; for policies of tolerating political corruption, or for imitating a fight against corruption* (Racovita 2011; Ganev 2012; Ivanov 2012; Mungiu-Pippidi 2011). But the local irresponsibility cannot wash away the problem *when real political partnership is at stake*. That is why we now move to empirical proofs of the thesis that there are some serious problems in the implementation of the CVM, evident in the regular EC reports. Let us trace the particular features of the reports *stemming from problems in the CVM*. Only after the existence of key problems a) is empirically demonstrated, can we b) propose an explanation of the causes of these problems and c) look for alternative ways of overcoming them.

#### **3.1. Variations in the role of the introduction**

All the reports for both countries are formally similar, being strictly built on a common pattern. They consist of an introduction setting the interpretative framework of the reports, a presentation containing factual evidence, and a conclusion that sums up the findings of the assessment and emphasizes the priority tasks to be fulfilled in order to solve the identified problems. The importance of this framework derives from the fact that the subject of the monitoring is quite complex, still fragmentary and of varying nature. The reports contain a great amount of details,

which differ in number across years. Hence, the conceptual and evaluative framework of the report is of key importance for the interpretation of the general message.

Even the simplest element of this formal construction – the introduction – is exceptionally complex, because it pursues multiple tasks simultaneously. It presents:

- a) the grounds for the legitimacy of the CVM;
- b) the aims and objectives of monitoring; and
- c) the very general meaning of the findings for the respective year.

The problem here is that *the political legitimacy of the partnership instrument should be proven by the social productiveness of the applied mechanism itself precisely in achieving progress of the reforms and thus defending the fundamental interests of the European citizens, as well as supporting the crisis-free functionality of EU institutions and policies*. In other words, if real progress *were* registered in achieving the CVM goals, as a result of the monitoring, then the task of the introduction would be relatively simple.

*If such a positive result is lacking, a series of problems immediately arises. The goals and tasks of the monitoring, which predetermine its result, would themselves become problematic, thus questioning the framework grounds of this unprecedented in EU history mechanism which is meant to be a form of political cooperation. As a logical consequence, both its legal grounds and its value foundations in the shared civilizational area of the Union become problematic because both of them prove to be insufficient by themselves, given that they complement each other as elements of the common social order, and are not mutually discrepant<sup>56</sup>.*

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<sup>56</sup> For a more detailed discussion of the specificity of *the civilizational* perspective to the problems we are examining here, see Dimitrov (Димитров 2012).

Here it is important to note that, in this zooming out perspective to the application of the CVM, first, the crisis of the monitoring results makes the declared and/or pursued cooperation itself questionable; and second, it inevitably problematizes the very connection between

- a) the basic values of the EU,
- b) the EU's constituting principles,
- c) the legal and institutional framework of the CVM, as a tool of post-accession conditionality, and
- d) the reform goals that derive from all these elements
- e) and the particular objectives (directly or supposedly) specified by those goals, that should have led to the desired integration result in the monitored countries.

We must be aware of this complexity of the problem of CVM application in order to explain the shockingly vast variations we encounter in the structure, length and contents of the introductions for the respective years when compared with each other. Formally they seem to be mere carbon copies where only the name of the country is changed no matter how different the substantive part of the reports would be in terms of factual evidence. The reason for this sustained combination of contradictory features of the introductions is one and the same: the crisis of the CVM tool, *which has successfully been fulfilling its observation role but has not served as a proof of success (in either of the two countries) or as an indication of real partnership with the EC.*

### **3.1.1. The problem of goal changing in the course of CVM's implementation**

The key justification for introducing the CVM is its substantive goal which is defined as the solution of a particularly important and persistent problem. At the time of their accession to the

EU, Bulgaria and Romania were not capable of assuming full responsibilities for their membership or for making use of the opportunities this provides.<sup>57</sup> However, in the first report, from July 2007, the formulated goal is too abstract and can be interpreted as limited to achieving a working administrative and judicial system. At that time these problems were only part of the full set of fundamental problems alongside issues such as aviation safety and food safety, agricultural funds, etc. At that time it *seemed as if* the working judiciary and administrative system were a priority, because without them there would be no application of EU law, yet those were not particularly severe problems. From this perspective it is quite justified that these two systems of social regulation and governance are explicitly mentioned in the reports for Bulgaria and Romania as being “*inter alia*” a means for conducting policies to fight corruption and organized crime as well. In the Bulgarian translation the phrase “*inter alia*” has been omitted and thus the purpose of the reform was narrowed down to two policies in the sector of internal security and home affairs in order that EU law may be maintained (the same law that in 2012 still seems to some magistrates in Bulgaria to pertain to “foreign affairs” only). For the EC, compliance with EU law is a self-evident priority. Obviously at that early stage the Commission did not realize that in both monitored countries non-compliance with the law is rather the rule, and violating the “external” law of EU should not bother anyone, especially not the local

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<sup>57</sup> “The Accession Treaty made clear that if there are serious shortcomings in the transposition and implementation of the *acquis* in the economic, internal market and justice and home affairs areas, safeguard measures can be taken for up to three years after accession. Bulgaria's accession was also accompanied by a set of specific accompanying measures, put in place to prevent or remedy shortcomings in the areas of aviation safety, food safety, agricultural funds and judicial reform, fight against corruption and organized crime. For the latter a Cooperation and Verification Mechanism was established, setting out benchmarks to provide the framework for monitoring progress in this area. This mechanism was put in place because of the fundamental importance of having a well functioning administrative and judicial system to ensure that Bulgaria would be able to deliver on all the obligations as well as to benefit from the rights of membership. It also reflects the need, *inter alia* to fight corruption and organized crime. The purpose of the Cooperation and Verification Mechanism is to ensure that measures are taken to provide assurance to Bulgarians and to the other Member States that administrative and judicial decisions and practices in these areas in Bulgaria are in line with the rest of the EU. Progress on judicial reform, fight against corruption and organized crime will allow Bulgarian citizens and business to enjoy the rights they are due as EU citizens. Without irreversible progress on judicial reform, fight against corruption and organized crime Bulgaria runs the risk of being unable to correctly apply EU law.” (Report in July 2007, p 2-3). This major justification for the creation and putting into action of the CVM – compensating the deficit in the rule of law – has not been contested by any researcher.



politicians. The lack of real progress in this matter could not have seemed a matter of concern for the national governments at that moment.

That is why in the introduction in the following year the Commission explicitly reminded the readers that *local authorities have committed* to dealing with the surmountable but serious challenges to their institutional systems.<sup>58</sup> Moreover, the governments of the two countries *recognize* that this is not a matter of a local social problem but of the fundamental principle of the rule of law, which, according to the EC *lies at the heart of the EU* (the Bulgarian translation reads that it simply “holds a place”, though a central one). Even more importantly, there is already awareness of the need to explicitly explain that respect for EU’s principles directly leads not only to the abstract rights of citizens but to access to funding as well.

This change in the legitimating of the CVM in the introduction in 2008 is very significant. It testifies to the search for a broader social support for the expected reforms (through the benefits for the citizens thereby expected). This support is needed in order to *tackle at the heart* problems facing the judiciary, and more generally, support for implementing the principles of rule of law. At that time, however, the EC could not have known that rule of law in Bulgaria was just dead letters since it has been at a “protoembryonic stage” (De Villepin 2009). Hence, in Bulgaria (and Romania) it was a matter not of its defense or of strengthening it but of creating it. Nor could

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<sup>58</sup> “On entering the EU in 2007, Bulgaria faced still serious challenges in ensuring the functioning of its judiciary and in fighting corruption and organized crime. These challenges were judged by the Commission and the other Member States to be surmountable and the Bulgarian authorities committed to remedy shortcomings in these areas so that Bulgaria could fully assume the rights and obligations of EU membership. The Bulgarian authorities and the other Member States recognized that far reaching judicial reform and a concerted effort to fight corruption and organized crime were necessary if Bulgarians were to be able to exercise their rights as EU citizens and benefit from all the opportunities, including financial support, which EU membership would bring. More broadly, they recognized that principles which are at the heart of the EU – respect for the rule of law, mutual recognition and cooperating on the basis of a fundamental bargain of trust – could only be put into practice if these problems were tackled at source.” (July Reports 2008). This is a crucial question since “Using membership conditionality for precise policy influence requires willing, not reluctant partners: in considering the coercive/voluntary mix, the voluntary cooperation is critical because the EU’s coercive power is very limited...This lack of coercive tools is hardly surprising, given the EU’s history and purpose: *it was established as a vehicle for the economic and political integration of willing states, not as a force for transition in unwilling regimes.*” (Grabbe 2006: 53, italic added).

they have known that Bulgarian citizens had no clue as to the social/investment meaning of those 11 billion Euros planned for Bulgaria for the period 2007-2013, since the citizens had never taken part in the discussion on the goals and instruments whereby these financial resources would have been used for socioeconomic development. Bulgaria had reported to Brussels that a wide public discussion had been held on the National Development Plan that is the basis for structuring the EU funding. In fact such a discussion had not been held, because there has never been any local political practice of the kind, despite the accepted directives for public partnership as a mechanism of good governance – accepted on paper only<sup>59</sup>.

In brief, in the second year too, the attempt to strengthen the legitimacy of the CVM through references to fundamental values and material benefits for the citizens in the two countries found no point of support. These prerequisites on which the Commission relies are illusory in the local context. Without broad public and political legitimacy of values and goals it was not to be expected that the mechanism would produce results, even if the tasks set had been technically achievable. Judging by the events in 2008 (when the EC froze nearly half a billion Euros of funding for Bulgaria due to abuses in SAPARD and PHARE)<sup>60</sup>, and by the public admissions of some leading figures representing the Triple coalition government at that time (statements by the Bulgarian Prime Minister, the Minister of Regional Development, and the leader of the mandate-bearing party), we now know that the executive at that time *saw no connection between the rule of law and the absorption of EU funds* (Dimitrov 2012).

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<sup>59</sup> For more details and empirical proof regarding this issue, see the studies in the collection „Съграждане на гражданството” [*Building citizenship...*] (Димитров 2013).

<sup>60</sup> For more detailed on the same topic see Trauner 2009, cf with Andreev (Andreev 2009 : 379). This fact is given a foremost place in researchers’ observations on CVM (Mendelski, Ivanov, Tanasoiu, Racovita, Ganev, etc.).

That is why the introduction to the third report drastically reduces the *goals* of the CVM.<sup>61</sup> While at first it had been a means of achieving the fundamental objectives of the social reform in the two Balkan countries, of defending European citizens, and for ensuring the functioning of the EU as a basis for attaining the first objectives, in the third year the CVM became an end in itself, which had to be pursued through intentional efforts and partnership at “technical and political level” – in stark contrast to the basic large-scale methodological program that would normally lead, *inert alia*, to success in the fight against corruption<sup>62</sup>, but also in order to solve the fundamental problem – the rule of law. But now the judicial reform, and the fight against corruption and organized crime, *seems* to have become the *only* problem in the framework of the minimized expectations of the EC. These problems *suddenly seem to have grown bigger* – as they have had remained unresolved for full three years... The fact that the tasks serve the attainment of a strategic goal now *seems no longer a matter of interest* (so it is dropped from the report), since *the solution of the technical aspects* of the task has *become* a “new political task”.

The conditionality of the situation stressed by the italics above is especially important.

*On the one hand*, the EC set a priority on the afore-mentioned triple task in Bulgaria, because in the course of monitoring, the Commission had already found that the judicial reform was the focus of resistance (at that stage, and even more clearly in the case of Romania) against the strategy that sought a fundamental change of the sociopolitical life of the country. Resistance

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<sup>61</sup> “When Bulgaria joined the European Union in January 2007, a Cooperation and Verification Mechanism (CVM)<sup>61</sup> was set up to help the new Member State tackle the recognized need for far reaching judicial reform and the fight against corruption and organized crime. The CVM is an autonomous Commission decision based on the Accession Treaty. It enables the Commission to work closely at political and technical level with the Bulgarian authorities to monitor and evaluate progress, to provide technical advice, and financial support. The CVM enables all other Member States to follow and support developments in these areas in Bulgaria and to provide both expertise and financial support. The interim and annual reports prepared by the Commission under the CVM assess progress and identify remaining shortcomings to help Bulgaria set priorities for actions to be undertaken to fully meet the benchmarks set out at the time of accession.” (July Report 2009).

<sup>62</sup> See the introductory quote to this article from the very useful international study entitled *Contextual Choices in Fighting Corruption: Lessons Learned*, conducted by an international team under the leadership of A. Mungiu-Pippidi.

was concentrated on the judiciary, because this is a key resource for conducting a policy against systematic corruption; but in a society characterized by systematic corruption, the judiciary itself is widely corrupt. Cutting this Gordian knot is the key to the whole social reform. That is why the judicial reform was defined for the first time in 2009 as needing to be “far reaching” (but not yet comprehensive, as it would be qualified in 2012).

This does not at all mean that the triple task is a separate problem, or is seen by the EC to be the “only problem” of Bulgaria (D. Smilov). It is merely the “weakest link in the chain” (to use V. Lenin’s notorious expression) that the Commission *has recognized through monitoring and assessment*. Since social reality is systematic, it is important to identify *the key element of the entire system* by which to impact systematically on social life. That is the major reason why, with each year, the judicial system holds an increasingly central place in the attention of the EC’s the CVM monitoring and assessment. It should be remembered that this particular sub-system is not just a means for solving the problem of fighting corruption and organized crime in Bulgaria, *inter alia*, but it serves as the foundation of the rule of law, it provides guarantees for the competitiveness of free market economy, and it supports civil society (Habermas 1999, van Gerven 2005). Attracting more attention on itself it changes the entire structure of the picture. The magnifying glass of the mechanism for EU post-accession conditionality has been focused on the sorest problem, so that the “pig picture” is now left outside the field of vision. While the technical aspects of the problem situation now seem grown in importance (having become separate political tasks).

*On the other hand*, starting from 2009 we see a *drastic minimization* of the political expectations for the two Balkan countries. The partnership has become focused on the technical aspects of the reforms in meeting the CVM benchmarks only, despite the explicit declaration in the previous reports that only the full effect upon social life of the accomplished measures would mean the

EC's external monitoring has fulfilled its purpose. In this sense, what was seen in 2009 was simply an intermediate phase in the general process in which the EC "lowers its guard". The final stage would be seen in the reports for 2012. In that year the expectations for the two countries were defined as meeting the standards "in a satisfactory way", i.e. at least to an acceptable minimum.<sup>63</sup> In other words, in the sixth year the goal was no longer to achieve the aims of partnership but to make at least some sustainable advancement under the CVM benchmarks that would at least permit maintaining the mechanism (for it was no longer realistic to expect that the initial goals would be attained in the near future).

This is undoubtedly a sign that the EC has capitulated before the expectations of the local political camarilla. From the very start of implementation of the CVM, these cliques insistently and angrily claimed that the mechanism was introducing "a double standard". So it became necessary in the 2012 reports for the two countries to point out explicitly that

"The CVM does not ask Bulgaria/Romania to achieve higher standards than exist in other Member States. Its target is to help Bulgaria/Romania achieve standards comparable to other Member States."

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<sup>63</sup> **"I. The Cooperation and Verification Mechanism: Supporting Bulgaria in Justice**

**Reform, the Fight against Corruption and the Fight against Organized Crime**

In the run-up to the accession of Bulgaria to the EU in 2007, it was agreed that further work was needed in key areas to address shortcomings in judicial reform, the fight against corruption, and tackling organized crime. This led to the establishment of a framework to support Bulgaria and to monitor progress in these areas, the Cooperation and Verification Mechanism (CVM).<sup>1</sup> Six benchmarks were established, covering the independence and accountability of the judicial system, its transparency and efficiency; the pursuit of high-level corruption, as well as corruption throughout the public sector; and the fight against organized crime. The Decision set up regular reporting from the Commission, and provided that the mechanism will continue until the objectives of the CVM are met and all six benchmarks are satisfactorily fulfilled." - It is clearly evident that the goals of CVM have been minimized as much as possible in their scope and rank of social significance. This expectation, greatly reduced in scope and meaning, of benefits to ensue from the implementation of the mechanism has been raised in rank to a title in the main section of the report, and is not merely a "context" or subsection of the "introduction" as in previous reports. In other words the emphasis now is on the support of the two countries for fulfilling the tasks, which, in the meantime, have become as if separate tasks (even though, as we recall, the tasks were only part of the reform process, the judicial reform was supposed to lead to the solution of the other grave problems). In the meantime the fight against corruption has become a major priority, for without results in this area, it seems the judicial reform cannot progress either. In other words, we are *witnessing a very complicated transformation within CVM architectonics with regard to the hierarchy of the goals* – this change has taken place in the course of applying of the mechanism, and has happened due to the discovery of reform priorities that were unclear (concealed) at the beginning, and also by minimizing the expected results down to the level of simply satisfactory meeting of the benchmarks."

But the governments were referring to a *different kind* of double standard: *they see a double standard in comparing the period of the country's full membership under CVM monitoring with the period of the same country's preparation for accession, when the Commission counted as progress ... merely the efforts shown, not the achieved results.* The persistent observations in the regular reports as to *lack of results are looked upon by the political cliques as "introduction of a double standard"* for one and the same country. But this is mostly a standard relevant to the countries themselves and the behavior of the EC, and not so much to the comparative international aspect with respect to other countries of the eastern enlargement<sup>64</sup>. The supreme wisdom of the local political camarilla, beyond any political party cleavages, is that *"breaking the rules is the main rule in politics"*. The entire history of dealing with the EC during the *pre-accession period* has only strengthened their conviction in the *universal truth of the rules and values of their own political socialization*. (It is not coincidental that precisely S. Stanishev, former Bulgarian Prime Minister who virtually ruined Bulgaria's membership in the EU, now presides the Party of European Socialists – he is a 'primus inter pares'.)

Ultimately the EC has given up on progress to be made in achieving a common standard of rule of law and complete membership in EU, and has gone back to the idea of a *modest advancement*

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<sup>64</sup> "To understand why the EU's influence was so limited, we have to look both at the supply side (the EU's rule-of-law promotion efforts) and the demand side (national circumstances and factors in the recipient countries). The supply side – EU efforts – was not without problems. One problem was the speed and timing of the process: the time factor. In the effort to grasp the political opportunity while at the same time not allowing any real room for negotiation with the newcomers (who had to adopt the *acquis* in full), the whole accession process became a bureaucratic exercise. The European Commission's detailed requirements and the related issue of conditionality created a relationship in which the Commission (as opposed to the domestic constituencies or their representatives) became the sole principal and the governments its agents. Reforms were not geared to policy feedback or impact evaluations, but instead to the need to satisfy the pressing bureaucratic requirements of the Commission's regular monitoring reports, creating a sort of 'prescription-based' evaluation mechanism with perverse incentives. Thus countries were judged in the monitoring process not by the effectiveness of their reforms or even by their real potential for change, but by the number of 'prescription pills' taken. The more advice a 'patient' or assisted country accepted the higher it was rated, with little checking of the 'symptoms'." (Mungiu-Pippidi 2011: 152)

We should be cautious here: on one hand the national governments of Bulgaria and Romania insist that double standards are being applied to them *not* in the sense of *new standards*. On the contrary, they mean that the preceding countries in East European enlargement received full membership although *none of them had completed the due reforms fully* and had not "met the standards". Since EC and the Council had closed their eyes out of political expediency (Grabbe, Ivanov, Maniokas), the governments of the two countries insisted not on "observing the common standard" but on *continuing the line of making exceptions to the rules*, which had become an "unwritten rule" and a standard practice of the EC. On the other hand, as Grabbe correctly stresses, "Despite the EU's insistence that applicants must be democracies, the EU itself had very little democratic accountability built into the accession process" (Grabbe 2006: 36, see also 207-208). In other words, the governments are indignant at the "double standard" of demanding democratic responsibility from them after the conclusion of the negotiations, though *the conduct of the Commission in the course of negotiations has trained them in the opposite*. The EC is notorious for having the democratic responsibility not as its strongest feature. As we see the notion of a "double standard" has a "double bottom" at least...

*to be made*. The gradual transformation of the benchmarks from instruments for public policies into the main aim of the CVM requires special scrutiny not so much of the contents as of the methodology underlying and justifying the use of these benchmarks.

### **3.1.2. The problem of the CVM methodology**

There are two reasons why this is the most traumatizing aspect of the partnership between the two countries and the EC. First, the chosen methodology will format and decisively predetermine the results of the invested efforts for interaction with the parties involved; and, second, *there are serious reasons to look for the causes of the poor results of the whole CVM in the specificity of the political approach underlying the methodology of the whole mechanism.*<sup>65</sup> The problem is very acute also because the methodology, which is decisive for the CVM application results, has been traditionally least developed conceptually (or has purposely been left vague in order to be flexible, as the researchers argue – see Maniokas, Hughes et al, Grabbe and others). And the *initial methodological shortcomings inevitably lead to very specific sociopolitical results.*

The lack of historical experience of the EC would be a correct but incomplete explanation for the emergence and escalation of this problem<sup>66</sup>. An even more important explanation for the twisted “state of the process” (as the Commission calls it) is that, whatever the flaws of the cooperation and verification mechanism as a project, they would be harmless if there *were* genuine cooperation between the stakeholders for achieving rule of law in the two Southeastern

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<sup>65</sup> The crucial problem of methodology as manifestation of the political approach embodied in the conditionality of EU has been discussed very rarely in academic literature (yet the studies carried out so far have achieved a lot – see the findings of Hughes, Grabbe, Maniokas, Buzogany).

<sup>66</sup> This is putting it too mildly: Racovita’s analysis shows that, had the respective institutions so desired, it would have been possible to study the experience acquired from the *pre*-accession conditionality and, on the basis of the conclusions drawn from it, to approach the design of the *post*-accession conditionality mechanism in a different way. Racovita demonstrates that in her native Romania about 80% of the innovations, introduced under pressure from the EC, for conducting anti-corruption policies in the period 1999-2006 were either eliminated or made deprived of force in the subsequent political decisions (Racovita 2011: 38-39). In the light of this experience it becomes a very problematic idea to address annual “recommendations” for partial measures to the governments of the two countries.

European societies. But in the actual context of systematic resistance at all levels against the pressure for reforms brought to bear through CVM, even the “flaws” in the “mirror” have a destructive political impact, not to mention the conceptual problems of the approach and of the benchmarks for public policies under evaluation. The more so if the approach behind the benchmark methodology is seriously flawed.

What are the decisive particularities and peculiarities in the design of the CVM methodology?

On one hand, the EC explicitly points out that fulfilling the goals of reforms monitored under the CVM requires the use of benchmarks as instruments, but not as goals and it aims at an overall social transformation. But researchers of post-accession conditionality regarding the rule of law (and in particular the fight against corruption) have often stressed that in this particular field there exists no *acquis* that would allow rigorously formulating benchmarks (Mendelski, Ivanov, Papakostas, Buzogany, etc.). In other words, the benchmarks will inevitably be doomed to be vaguely stated and problematic in their application.

On the other hand, *the complexity of the issue and its intrinsic challenges has evidently been strongly underestimated from the very start*. Although the introduction to the 2007 report contains a separate paragraph devoted to the methodology, the section is meager and we see that its main focus is placed on ... *the procedures for preparing the report*. The methods of monitoring and preparing the report have been addressed, but certainly not the methodology understood as the grounding of the correspondence between the specificity of the monitored problem and the particularities of the tool that matches the gravity of the problem. This connection ought to guarantee a) the correspondence between the properties of the complex subject, including even (possible) resistance against reforms; b) special properties of the method for monitoring, understanding, and making practical recommendations, so that the method should lead to



accomplishment of the objectives of the reform even under the need of surmounting of possible and expected resistance.

The substitution of the methodology of assessment with methods for preparing the monitoring results is still the lesser problem. The bigger one is *the factual lack of clear methodology of political cooperation* – how the findings and the assessment of progress made will be transformed into sustainable interaction with, or assistance to, the recipient countries (knowing that Bulgaria and Romania suffer from systematic, politically patronized corruption). The notorious method of “naming and shaming” simply would not do.

This deficit of a proper political approach is understandable only in view of the unrealistic expectation that the monitoring will prevalently register stable progress in solving the problems in the monitored spheres, combined with the vague expectation that the mechanism should remain unchanged in its principles of action as a post-accession conditionality, even though the monitored situation is highly risky, indeterminate and plagued by severe structural and political problems. We see that the CVM design reflects the previous history of conditionality in the eastward enlargement and also the *unrealistic expectations* entertained under the conditions of radical change of the “structure of the package of incentives” (Sedelmeier; Gateva)<sup>67</sup>.

The essential problem with the CVM is that it is meant to remain a highly arbitrary, abstract, and indeterminate (concealed or implicit) *mechanism of monitoring* only (Gateva 2010)<sup>68</sup>, *having no resources for powerful political influence* whereby to respond to the expected indefiniteness in the development of the very controversial situation. A better alternative would be to produce a

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<sup>67</sup> Cf. Gateva 2010; 2013.

<sup>68</sup> “[...]during post-accession stage the *remedial and preventive sanctions* established by the CVM do not provide strong incentives for compliance with EU conditions.[...] On the basis of the limitations and the inadequacies of the sanctions, we can conclude that the post-accession *negative* incentive structure is very *weak*. The substantial transformation of the incentive structure – from *strong positive* incentive structure to very *weak negative* incentive structure – highlights the key weaknesses of post-accession conditionality, which limit its effectiveness.”(Gateva 2010, p 20, italics - E. G. )

flexible, multi-variant *mechanism of interaction*, having a decentralized multiple addressee, and which would be clear, transparent, methodologically sharp and strictly implemented in each of its variants. The claims regarding the quality of the CVM refer also to the sector policy to be monitored, so that the mechanism should serve as an integral instrument for evaluating and especially as a clear, *institutionalized procedure for assistance, interaction* and political impact by the EU.

It is understandable that in 2007 the EC was not at all prepared to provide such a mechanism, even though the accession treaty with Bulgaria and Romania dated from April 2005. This is where the fundamental contradiction in the very idea of the CVM as a form of post-accession conditionality lies: on one hand, the reason for setting up such an instrument in these countries was their lack of capacity to carry the responsibilities of EU membership; on the other hand, the implicit assumptions of the mechanism presuppose that the countries *already have enough capacity*, and the difference between them and the other member states is only a matter of degree as the situation used to be previously with EU-8. The tacit premises of the approach are the crucial problem. It is devised to tackle a wrong issue. The hidden assumption is that the problem to be solved by the CVM is that the two countries are dragging along slowly (but with good intentions as it was the case during the preaccession period). Actually the problem is of a truly different nature – it concerns the very general way of functioning of economic and political life that deliberately frustrates the establishment of rule of law.

While in 2007 the Report begins with the solemn statement “This mechanism was put in place because of the fundamental importance of having a well-functioning administrative and judicial system to ensure that Bulgaria would be able to deliver on all the obligations as well as to benefit from the rights of membership” just one year later it was redefined as... support in dealing with

shortcomings<sup>69</sup>. The following year it was written that “The interim and annual reports prepared by the Commission under the CVM assess progress and identify remaining shortcomings to help Bulgaria set priorities for actions to be undertaken to fully meet the benchmarks set out at the time of accession.” This downgrading of the goals that we have been repeatedly outlining becomes obvious. The attention is increasingly focused on the benchmarks themselves (translated as “indicators” in the Bulgarian version, which leads to their secondary political devaluation). Even more importantly, in 2009 the EC found it necessary to introduce a whole subsection clarifying the methodology of the benchmarks, which in the Bulgarian translation was given the devaluing title “methodics of indicators”<sup>70</sup>. “Methodology” refers to the conceptual grounding of the rules for using the instruments in such a way that they might achieve the desired results in accordance with the goals. “Methodics” is focused on the procedural and technological specificities of each of the instruments, regardless of the goals.

The EC’s report in 2009 tries to make it clear that it refers to the full effect of application of the instruments, which includes the system of benchmarks, not the methods of monitoring. Yet it is also notable that there is only bare mention made in this report of the methodological priority of the systems approach to social life, and no clarification is made of the actual systematic links between the monitored and evaluated components of the institutional design in the two societies. (Given this conceptual shortcoming, the Bulgarian/Romanian recipients *are invited* to raise the methods of reporting to the rank of methodology for political interaction). In other words, the EC

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<sup>69</sup> “In addition, the Commission set up a Cooperation and Verification Mechanism to monitor the progress made and to enlarge the support for remedying these shortcomings [in the monitored spheres]. (July 2008 Report)

<sup>70</sup> “The Commission sees all the benchmarks as closely interlinked. In its dialogue with Bulgaria ample evidence has been given that progress under one benchmark contributes to progress under another benchmark. The rationale for the CVM is not to establish a check-list, but to develop an independent, stable judiciary which is able to detect and sanction conflicts of interests, combat corruption at all levels, and deal effectively with organized crime. Therefore the Commission does not envisage removing the benchmarks one by one but rather working with Bulgaria to the point where the CVM in its entirety is ended” (Report in July 2008).

controversially expected the local national authorities to acquire an integral understanding regarding the mutual connection between the indicated components, even though not enough had been done to ensure sufficient systematic understanding of each separate component as contributing to integral policy making. Let us clarify this.

It is not accidental that over the years the EC has designated the benchmarks by which it follows the progress under the CVM rather ambiguously, and it takes imagination to believe the same thing was meant by these designations year after year.

Still, in the Romanian case things are relatively clearer, for those national reports refer to four more or less separate but definitely integrated things: a) judicial reform policy; b) policy ensuring integrity in public institutions; c) policy to fight high level corruption; d) policy to fight corruption both at the local level and in separate sectors of public life. The first thing is a premise for the second and they both are preconditions for the effective fight against corruption at the two major levels – a) high and central, and b) grass-root.

In the Bulgarian case, even specialized sociological competence would not help us understand why the reform that ensures independence and accountability of the judicial system is one benchmark, but the reform aimed at introducing transparency and efficiency of the same judiciary refers to two separate benchmarks, and the fight against organized crime is given the same rank of importance as the fight against the two kinds of corruption mentioned above<sup>71</sup>. How is one to understand whether “accountability” refers to the responsibility of the judiciary to society or is only an element in the mechanism of transparency within the former?

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<sup>71</sup> “Six benchmarks were established, covering the independence and accountability of the judicial system, its transparency and efficiency; the pursuit of high-level corruption, as well as corruption throughout the public sector; and the fight against organized crime.” (Report in July 2012)

Moreover, this is how the benchmarks are listed in the introductory section of the 2012 report for Bulgaria; but in the central presentation, they are formulated differently, approximately the same way as in the 2007 report.

**Table 2. Variations in the wording used in the EC standards (benchmarks)**

Standard phrasing	Introductory phrasing in 2012
Benchmark 1: Adopt Constitutional amendments removing any ambiguity regarding the independence and <i>accountability</i> of the judicial system	Six benchmarks were established, covering the independence and accountability of the judicial system
Benchmark 2: Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on the impact of these new laws and of the penal and administrative procedure codes, notably on the pre-trial phase	its transparency
Benchmark 3: Continue the reform of the judiciary in order to enhance professionalism, <i>accountability</i> and efficiency. Evaluate the impact of this reform and publish the results annually	and efficiency
Benchmark 4: Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high-level officials	the pursuit of high-level corruption
Benchmark 5: Take further measures to prevent and fight corruption, in particular at the borders and within local government	as well as corruption throughout the public sector;
Benchmark 6: Implement a strategy to fight organized crime, focussing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas	and the fight against organized crime

The crucial problem lies elsewhere: in fact the first benchmark requires both independence of the judiciary with respect to the other branches of government, *and* dependence of the judiciary on its own results (i.e. responsibility to society); the second benchmark indicates the expectation of effective results to be achieved by the judiciary, while the third requires the same as regards the

management of the judicial system – but achieving results would require developing the necessary mechanisms for managing the judiciary (*effective management of the system guarantees effective justice, and substantial results produced by the system would prove the whole system has assumed its responsibility for fighting systematic corruption and ensuring the rule of law in the country*).

Nowhere in the CVM documents do we see the benchmarks presented in this comparatively understandable form. The structure of the benchmarks and their mutual logical connection is more than problematic. The problem is not that the same policy is structured differently for the two countries. The essential problem is that each of these standards is presented not in terms of the expected societal results of the respective policy but in terms of a cascade of heterogeneous actions that might (eventually) lead to that result. For instance, regarding the 6<sup>th</sup> benchmark, if new and ongoing investigations have been reported and even indictments have been made, but no sentences have been passed: how then are the results under this benchmark to be unambiguously accounted for/evaluated by the local authorities and by the EC observers?

Thus, the very formulation of the benchmarks – in terms of language and structure of meanings - precludes from the start the possibility for cooperation between those who are monitored and those who are monitoring: what if some real progress *has* been made in the fight against serious organized crime, but not against money laundering or large-scale economic crimes as well? And what if this strategy is applied quite scrupulously against some groups (of organized criminals patronized by government officials) but no one intends to take away their property, because in general most of the large private property, including that for personal use, and most of the economic assets, have not been acquired by legitimate means? What is it that should be reported: progress or the imitation of progress?

Not to mention even more important problems such as that the Bulgarian Constitution ensures formal independence of the judiciary but does not envisage any kind of responsibility (and hence no explicit mechanism of public accountability) for this institutional system. Even in the English language original of the report the emphasis is on “accountability”, and since the word “responsibility” is not used, the Bulgarian judiciary continues to not be accountable or responsible neither for the resources it absorbs nor for the results it produces. The EC report was the only source from which the Bulgarian public could learn that the Bulgarian judicial system had absorbed EUR 41 million allotted for the reform<sup>72</sup> while during the same period Romania, with its thrice larger population and twice larger territory, had absorbed only EUR 12 million for the same purpose.<sup>73</sup>

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<sup>72</sup> “Since 2007, the EU budget has made some €41m available to support judicial reform in Bulgaria through the Structural Funds. By mid-2012, 25 projects for a budget of €13.6m have been agreed in the areas of training, human resource development, capacity building and technical assistance. At the same time, several Member States have supported Bulgaria with bilateral projects in all areas of judicial reform including police reform, the fight against corruption and the fight against organized crime.” (CVM Report in July 2012, p. 3). The sums do not seem very impressive, so we should clarify: “The fraction of EU funding for judicial reforms as compared to overall funding by all international donors between 2005 and 2007 was on average 69% for Albania, 54% for Moldova, 39% for Serbia (including Kosovo), and 58% for the Ukraine (calculated on the basis of the International Development Statistics (IDS) online database, OECD). While Serbia has a small fraction, its total funding provided by the EU is, with 30 million USD, on average the highest, followed by Albania (14.3 million USD), the Ukraine (5.8 million USD) and Moldova (2.3 million USD). **Romania and Bulgaria benefited substantially from EU accession funds. According to the Phare allocations to support the public administrative and judicial capacity between 2004 and 2006, Romania received 263.89 million EUR and Bulgaria 152.76 million EUR** (ECOTEC 2006).” (Mendelski 2010, italic added). In other words, in five years the money spent on reforming the judicial system was approximately equal to the entire budget of the judiciary for the year 2013.

To put it quite plainly, about 200 million Euros have been poured into the judiciary reform in Bulgaria, and this is a rather serious cause for the lack of reform (in addition to the government’s lack of motivation to reform this system in a way that would make it independent and effective). We should recall the data provided by Mendelski, showing that as a result of this funding Bulgaria has had a decrease in the rule of law during the period 2002-2008. According to data Mendelski cites from an official source in the Council of Europe, in this period the salaries of the highest paid Bulgarian magistrates grew 3,25 times while the overall budget of the judiciary system increased 4,5 times, which was the biggest growth in the six east European countries observed. (Alina Mungiu-Pippidi says something similar, though the period she refers to is not quite the same: “Total EU allocations for administrative and judicial capacity reforms between 1998 and 2006 amounted to €452 million for Romania and €260 million for Bulgaria, notwithstanding their considerable domestic expenditure, as their budgets were increased repeatedly.” (Pippidi 2011: 146).)

<sup>73</sup> “Since 2007, the EU budget supported the fight against corruption and judicial reform in Romania through the Structural Funds with over €12m. This includes projects in the areas of education, health, regional affairs, in the judicial sector and with the National Integrity Agency. Additional support was provided by pre-accession funds. At the same time, Member States have supported Romania with bilateral projects in all areas of judicial reform and the fight against corruption”.(Report from the Commission on the Progress of Romania under the Cooperation and Verification Mechanism, p 3)

The problematic character of CVM methodology is evident in the high indeterminacy of each of the benchmarks, which have been given specific, shifting nuances of interpretation over the years, and in the lack of a sustained meaningful connection between them. Particularly telling is the arbitrary order in which the EC reports in various years the proofs of “progress” made under these benchmarks: simply no two reports are alike in terms of formal structure, scope and focus of attention. In principle, and viewed in abstract, it is acceptable that the EC might prioritize various policy measures that might in different ways lead to the implementation of the rule of law in the two countries. A problem arises when the logic of these shifts and choice of the respective priorities in particular, which change from year to year, *remains ungrounded* in the reports - even supposing it *has been well thought out in advance* (of which there is no proof).

The biggest deficiency of the chosen CVM methodology proves to be its biggest advantage as well: within 6 years it convincingly appears to “work”. The application of the CVM during this period has not enabled those to whom the results were addressed (the European Parliament and the Commission) to fully understand what was actually happening, nor what the actual problem was, behind the cascade of pointed-out omissions, shortcomings, lacks, and misunderstandings, which have led to a variety of political twists and turns. But the reports have painstakingly registered these omissions, shortcomings, lacks, and misunderstandings, and even the various forms of lack of real political cooperation on the part of the authorities in the two countries. In other words, within the limits of its own claim to be nothing more than a monitoring and assessment tool, the CVM really does “work”.

The problem is that a qualitatively different claim ought to be made: the monitoring and assessments are supposed *to lead to understanding the problems in greater depth*, and to find *adequate solutions* for the identified “shortcomings” (in structure and policies). In other words, these reports do not become tools for overcoming the deficits of achieving true rule of law and



for defending the interests of European citizens – this is made quite evident by certain pointless and even absurd recommendations, which we will discuss below.

### **3.2. Conceptual and political deficits in the benchmarks on which the CVM is based.**

#### **3.2.1 The general sense of each report and of the series as a whole**

The general sense of the assessment made by the EC for the respective period is usually summarized in the introduction of the reports<sup>74</sup>, and in the introductory passages of the conclusion:

**2007** – The situation seems uneventful:

“In the first six months of accession, Bulgaria has continued to make progress in remedying weaknesses that could prevent an effective application of EU laws, policies and programs. But, there has not been sufficient time to demonstrate convincing results in key areas. Continued attention will need to be paid to all areas in which accompanying measures are in force”.

**2008** – The assessments for the two countries differ: for Bulgaria the stress is no longer on the efforts made but on

*“the serious difficulties which the Bulgarian authorities are facing in making real headway in judicial reform and the fight against corruption and organized crime. Despite good efforts to establish necessary institutions and introduce required procedures and processes, there are few results to demonstrate that the system is actually functioning correctly”* (italic added),

as well as on the disappointment that, despite the understandable difficulty and complexity of the reforms, and the long time they require,

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<sup>74</sup> The only exception were the 2009 reports, when the introduction contained not a word about the contents of the general assessment. Starting from that year the EC stopped publishing the reports in all the languages of the EU member states, and made them available only in English, French, German and in the respective national language; this would hardly facilitate the Bulgarian and Romanian citizens to compare the reports.

*“However, despite the efforts of the Bulgarian Government, progress has been slower and more limited than expected”<sup>75</sup>. (italic added)*

In the Romanian report, on the contrary, the emphasis falls on the *efforts the authorities have made for the judicial reform and for investigating corruption* as well as on the *first visible results of these efforts*. Still,

“... achievements are fragile. A broad based political consensus behind the reforms is lacking, as is the unequivocal will across all political parties to root out high level corruption.”<sup>76</sup>

Despite these different nuances, the conclusions of both reports insist that achieving results will have extremely important social and political effects for the citizens of both countries, but also for the general socioeconomic development of EU and for the protection of the interests of all European citizens.<sup>77</sup> *This, however, was the last time reference was made to the very broad target of the social benefits ensuing from the CVM.*

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<sup>75</sup> “A clear strategy and an unequivocal commitment at all levels to reform the system are needed. This is not simply a question of giving new institutions and processes time to prove their effectiveness. Even with the existing structures – and despite their deficiencies - Bulgaria should be able to show results in the fight against organized crime and corruption, to prevent conflicts of interests and to deal convincingly with alleged connections between part of the political class, business and organized crime. To ensure the efficient absorption and delivery of EU funds Bulgaria needs not only to enhance substantially its administrative capacity but also drastically curb opportunities for high level and petty corruption and vigorously fight organized crime.” (July 2008 Report for Bulgaria).

<sup>76</sup> “There is a lack of broad political consensus for reforms and a definite will shared by all political parties to eradicate high-level corruption. The commitment of Romania to eradicate corruption is reflected at pre-trial stage but does not carry through to increased numbers of convictions or deterrent sanctions.” (July 2008 Report for Romania)

It should be specially stressed that the meaning of the reports varies significantly depending on the *chosen optics of interpretation*. For instance, in that same year, 2008, Atilla Ágh published a commentary in which he made the following prognosis: “In the case of Bulgaria and Romania, characterized by Alina Mungiu-Pippidi as ‘semiconsolidated democracies’ [...], there were some preventive EU actions to make them more compatible. Moreover, because of their premature membership one more ‘formal’ test was needed inside the EU as safeguard clauses. Nowadays the situation in Bulgaria and Romania can be described as ‘the quiet before the storm’ as the July 2008 Commission Report indicates.” (Ágh 2008a: 17). It is not surprising that the stakeholders refused to see the storm even when it actually hit...

<sup>77</sup> “Romanian/Bulgarian citizens deserve access to the full benefits of EU membership which should contribute to strengthening the rule of law and eliminating corruption. Progress under the CVM and in dispelling doubts about Romania's/Bulgaria's ability to deal with corruption will enable Romanian/Bulgarian citizens to reap these benefits and enhance their confidence in the rule of law. It will have long term positive effects on the Romanian/Bulgarian economy. Romania/Bulgaria has responsibilities vis-à-vis other Member states, for example as part of Justice and Home Affairs policy as well as in the common management of EU funds. Adequate administrative capacity and effective control of conflict of interest, fraud and financial irregularities is a necessary condition for Romania/Bulgaria

**2009** – Despite the different nuances, again the general meaning of the assessment is identical for the two monitored countries: for Bulgaria the report points out a certain degree of expected and praised “... *new momentum in Bulgaria's efforts to improve the judiciary and combat corruption since its July 2008 report*” (p 6). But in the same time

“however, these steps *are confined to the technical level and have limited impact...* they are not adequately backed up by a broad political consensus or a convincing strategy to make the fight against organized crime and corruption the top priority for Bulgaria... At the same time, *the measures taken are seen as piece-meal and as not systematically followed up at all levels. What is still missing is sufficient political commitment for broader initiatives which could form a more decisive, strategic approach*” (italic added).

As for the other country,

“Romania has taken a number of welcome steps since the Commission's 2008 report to re-launch the reform process: *a new momentum has been established which has resulted in a series of positive steps.*”

However, “Romania is still struggling to overcome the fact that the Criminal and Civil Codes were never fully revised. This has led to a series of legislative amendments and numerous emergency ordinances. In this situation it is not surprising that the jurisprudence of the Romanian judiciary is contradictory, generating undue delays which, in turn, are addressed in a legislative patchwork of emergency ordinances, implementing rules and practices. The ensuing complexity is the result of a politicized process and the broad-based political consensus behind reform and the unequivocal commitment across political parties to ensuring real progress in the interest of the Romanian people is not yet there. There is a risk that an ever growing web of legislation, implementing rules and practices resulting from permanent political party infighting may cause all concerned to lose sight of the main objective, i.e. to establish an independent, stable judiciary which is able to detect and sanction conflicts of interests, and combat corruption effectively.

*Against this background, the positive results of concrete reform efforts at technical level remain fragmented, reforms have not yet taken firmly root and shortcomings persist.*” (pp 6-7, italic added).

Behind the difference in details the typological situation in the two countries obviously continues to be the same.

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to fully benefit from EU pre-accession and structural funds.” See also the similar observations and comments by Fl. Trauner (Trauner 2009).

**2010** – If we consider only the passages given by the EC in emphatic italics in the report’s introduction in 2010 (an unprecedented differentiation in the EC's previous practice) we are left with the impression that the trends in the two countries are exact opposites: For Bulgaria it is said almost elatedly:

*“In this year's report the Commission points to a strong reform momentum which has been established in Bulgaria since the Commission's last annual report in July 2009. The new strategy for judicial reform demonstrates the existence of a strong political will in Bulgaria to achieve a deep and lasting reform of the judiciary.”* (p 2).

The report’s conclusion says the very same. While the corresponding passage for Romania sounds grim:

*“In this year's report the Commission points to important shortcomings in Romania's efforts to achieve progress under the CVM. Romania did not show sufficient political commitment to support and provide direction to the reform process and demonstrated a degree of unwillingness within the leadership of the judiciary to cooperate and take responsibility. These weaknesses must be corrected urgently in order to regain momentum in the reform process.”* [the italics are those of the original document].

The negative findings of the assessment for this year turn into a sustained trend.

**2011** – Once again this year the concluding assessments for the two countries seem like carbon copies (with some minute differences):

“Since 2007 the CVM has played a supportive role in helping Bulgaria/Romania put in place the structures of a modern judicial system. At times the CVM has been contested and criticized by one or other element of this necessary national consensus but today it is widely acknowledged that it has helped promote change in a positive direction. The Bulgarian/Romanian Government has shown determination and commitment in driving the reform process. [...] In five years the emphasis has shifted from the preparation and adoption of laws to their implementation. The elements of the legal framework needed for the reform are now largely in place, even if not complete. As will be seen from this report the next necessary steps in this process should focus on implementation by the judiciary and the police of the new laws.”

**2012** – Although this was the year in which a balanced assessment should have been made of the overall CVM results, the acute political clash in Romania, in which all the key authorities were

involved, certainly rearranged the EC's priorities; *the main focus of attention* now became whether *the reforms were truly irreversible* in the two countries. Apart from the factual differences in the two reports (which were quite substantial this time, but concerning current events only), the generalized assessments for the two countries were again the same: in the five-year period of monitoring there had been times of accelerated progress and of stagnation. In certain stages there had been active cooperation, while in others there had been discontent and resistance against the CVM. If we look with sensitivity at the linguistic details, we will certainly notice that, while the EC's assessment of Romania states that the CVM has played a positive role in that country, for Bulgaria it is said that the CVM has *made the major contribution to reforms* (which was why the Mechanism enjoyed the unconditional support of local public opinion, as registered by a special issue of Eurobarometer).<sup>78</sup>

This excessively concise overview of the consecutive July reports fails to capture some important details, ambiguities, complexities, ambivalence in the situations, and likewise, for that matter, in the annual interpretations of the situation that are being monitored. Nevertheless, the picture drawn by the reports is clear enough to allow us to go on to the next key particularities of the CVM: in the final account it successfully proved that in the monitored countries changes are made only under external coercion and only so far as the changes do *not* realize genuine progress towards the rule of law; hence, each one of the intermediate steps is also generally inconclusive, unstable, and reversible.<sup>79</sup> This observation fits in with the general findings of previous studies on post-accession conditionality (Mendelski 2009).

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<sup>78</sup> The specialized research literature on public opinion has established already that in general the citizens of countries with poor government tend to see the EU as a life-buoy (Harteveld et al. 2013), and hence the attitude of the Bulgarian and Romanian citizens could have been predicted in advance and is not that interesting because it derives not from the attitudes towards the CVM per se but from their broader political attitudes.

<sup>79</sup> The report of the Specialized centre for fight against corruption at the French Ministry of justice provides no room for doubts whether the South-Eastern European countries are the only ones where the institutions established for the counter-corruption fight rapidly lose momentum because they have emerged only as a response of some momentary public and political pressure.

### 3.2.2. General conclusions and recommendations in the reports

The conclusions of the reports, which should normally present the essence of the monitoring and assessments, also lack a common structural standard (or at least a standard applied consistently in all the annual reports). Anyway, we could easily spot in them the characteristic features that stem from the nature of the CVM as a whole:

- For the most part, the conclusions are either pointless<sup>80</sup>, or they repeat already stated findings, or else they offer emotional and moralistic, rather than analytic, assessments (the established facts are said to cause “concern, distress, worry, disappointment”, etc.). Of course, such assessments cannot lead to sensible recommendations.<sup>81</sup> It is important to bear this in mind if we are to understand Bridget Czarnota’s (Czarnota 2012) very keen observation that Bulgarian politicians are capable of *being ashamed* but do not bear any *guilt*. There are several important accents here: first, as we already pointed out, the CVM is designed as a *mechanism for influencing through shame* (what Héritier calls “social pressure”), so it is not surprising that it works in this very limited way. But shame, as a moral regulator, is effective only in very cohesive communities with a unified value system, which is not the case here. Secondly, both shame and guilt are ethical categories and either of them would equally be an inadequate response for a politician: a political agent is not expected to respond on a moral scale, but to

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<sup>80</sup> “The lacks of sanctioning rights in some areas, and the absence of effective sanctions in areas where these rights exist, is illustrative of how difficult it is for this action to gain traction.” (Report in July 2012, p 13). There are other gems as well: “High-level corruption cases typically involve influential public personalities.” (ibid, p 15).

<sup>81</sup> “The absence of convincing results under the current structures is striking and needs to be addressed urgently.”... “The core problems remain and need to be addressed urgently.” (2008 Report) Does the EC presume that the problems have not been addressed simply out of absentmindedness? What is the point in the repeated cry for stronger political will? Are any of the problems observed a matter of political will at all? It should be specially noted that even before the CVM began to be applied, researchers pointed out its fundamental methodological limitation: “... the development of the new mechanism (such as achieving benchmarks, the open method of coordination, annual ‘success tables’ in registering the application of regulation on the internal market) will not succeed in compensating for the lack of conditionality, as these instruments rely mostly on shaming and social influence than on effective material sanctioning mechanisms.” (Adrienne Heritier - Europeanization research East and West: A comparative assessment. In: The Europeanization of Central and Eastern Europe, ed. F. Schimmelfenning and U.Sedelmeier, 199–209. Ithaca: Cornell University Press. 2005).” (Tanasoiu 2012:175-176).

give pragmatic solutions to problems and to bear responsibility, not just guilt. But here the very nature of the problem is designated in such a way by the EC that it would seem the moral response is the adequate one. The greater part of the conclusions may be read as moral denunciations. Thirdly, shame and guilt are not moral categories of the same order: the heroes of the *Iliad* are constantly being put to shame, but never assume their guilt. For guilt implies the consciousness of free will, which the Greek heroes could not possibly have, being puppets on strings pulled by the gods. But where the community ties are very strong, being shamed before the others for one's failures is the severest penalty. Thus the observation of the British expert tells us much more than she has supposed: Bulgarian politicians are tied by very strong party or clan (criminal-redistributive) bonds, and due to this dependence, they do not have freedom of will and, hence, cannot assume guilt.

- A substantial part of the recommendations contain an obvious paradox: though fundamental reforms are said to be imperatively necessary as the only true solution of the current problems, the expected results are said to be achievable even with the resources already at hand<sup>82</sup>. This is certainly true to a certain extent – these resources could be sufficient ... in different West-European social settings. But the observed fact could also be a clear symptom of *the overt political will not to persecute corruption*, and of a deliberate tendency to beat about the bush of judicial reform. This latter conclusion – some powerful political opposition to reforms – is not drawn in the report; the focus continues to be on particular “surprising” details. The EC gives recommendations about policies and institutional procedures, incorrectly assuming that the local politicians *do* want these reforms to happen but simply do not know how to go about making them. These piece-meal recommendations draw attention away from the reforms as a public task (in the reports, their civic usefulness is forgotten – 2008 was the

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<sup>82</sup> “Some fundamental improvements are needed, although the first priority should be to deliver results irrespective of structural deficiencies. This requires continued political will and determination.” ( Report in July 2008, p 4)

last year in which the report referred to civic dimensions of the reforms). Turning a long list of particular measures into a political priority is a way of legitimating the disinclination of local authorities to carry out radical reform. This approach creates possibilities for those authorities to imitate reforms (because, by performing chaotic actions, it is possible to create the impression that “Brussels’s orders are being followed”).

- To continue these observations, at times the nature of the recommendations is a bewildering mixture of wishful thinking<sup>83</sup> and the proverbial “misplaced concreteness” (things that seem unquestionably clear in their concrete simplicity, but which are impossible if abstracted from the system of relations that gives them substance – such as freedom of speech, the integrity of magistrates, political ownership, etc.). We should not overlook those cases in the report where the remarks are so abstract as to make the assertions meaningless.<sup>84</sup>

- The large number of fragmentary recommendations of different caliber, pointing in different directions, and having different qualities, combined with the ambivalent and, not rarely, inconsistent assessments, makes it practically impossible to encompass them in an integral, coherent and unambiguous reform policy, which, in addition, should be realized by differentiated authorities at different levels<sup>85</sup>. In more than a few cases the EC addresses direct

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<sup>83</sup> “It is important that the Bulgarian authorities foster an open dialogue with Bulgarians by enhancing transparency on reforms undertaken under the Cooperation and Verification Mechanism.” (Report in July 2007, p 22); “The report also recommends that Bulgaria improve judicial practice in order to allow the judiciary to act more pro-actively and to show a stronger sense of responsibility.” (Report in July 2010, p 2)

<sup>84</sup> It is quite useless to say that “part of the administrative machine needs to have explicit responsibility for proactively pursuing illicit enrichment” (Report in 2012, p 16), if this part is not specified. It is pointless to say that there were times of rigor and reform efforts but also times of resistance against reforms, without distinguishing whether the reference is to some particular government, unlike others, or to one phase of the mandate of the same government - for instance, more rigour during the first year or two and lag or wind off in the next years. Every government could have had its unrhythmic, undetermined by structural factors, fluctuations of “political will”. These are entirely different situations and there should be different approaches to them; if these differences are not recognized, there cannot be an effective approach to dealing with the problem.

<sup>85</sup> We will only note that the vagueness, ambivalence internal contradictions and inconsistency of the monitoring reports are a *sustained characteristic of EU conditionality* which stems from the underlying political approach. These features have been discussed in detail by scholars of this instrument (Maniokas, Hughes, Grabbe, Gateva, Ivanov, and many others).



demands *to the government...* to provide testimonies of the *effectiveness of the judiciary*, although the Commission insists that the latter should be autonomous. It is doubtful whether even a totalitarian administrative apparatus could follow as consistent and unified a line of political conduct as is expected from the monitored countries.

To sum up, the character of the recommendations as a policy approach is a question of political responsibility of the EC. Providing fragmentary recommendations that cannot lead to the expected results anyway<sup>86</sup>, is welcome for any government that does not want to achieve results... The problem is that the EC's helpless reliance chiefly on the CVM as the main instrument for reform pressure *practically encourages political resistance against reforms*. This becomes very clear from the following important example: foreign pressure can be a legitimate instrument to use on the local authorities (as we saw it was when the Law on confiscation of illegally acquired property was passed, or when the leadership of the judicial system was elected, and in many other cases in Bulgaria and Romania). Whose is, then, the fault that this political instrument was not implemented starting from the first years of the CVM, at the first signs of resistance against the expected reforms? First-year students of European Studies in our country are taught that nothing can be explained by "lacks"; on the contrary, the lack itself should be explained in terms of something behind it that has "remained invisible". The reports abound in identified lacks, most often lack of political will, impetus or energy for reforms. But in fact the task of a refined methodology is to discern, behind these "lacks" of accomplished things, *the political will to do the contrary things*. If this had been

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<sup>86</sup> "[...] the Commission qualified the degree of 'progress' in each case in a remarkably imprecise manner, but this progress was sometimes relative to that achieved at the last round of monitoring, and sometimes relative to some new non-transparent measure. Consequently, whether it was concerned with new legislation adopted or institutional change initiated, the monitoring did not allow for a consistent and cumulative evaluation and ranking of the candidate countries." (Hughes et al 2005: 116-117). As mentioned at the beginning, we do not discuss in details the proofs for the political irresponsibility of the Bulgarian and Romanian governments not because we underestimate *that theirs is the main fault for the lack of reforms*, but only because this fact has already been well argued in literature (Ganev 2012, Tanasoiu 2012).

discerned in the very first years, the recommendations would have probably been very differently oriented, *and the application of the CVM would have given very different results.*

The crisis in the judiciary is not simply a legacy from the past; it is a tumor that grows under improper treatment. The first term of the newly established Supreme Judicial Council consolidated the positions of systematic corruption in the judiciary, but the same could equally be said for the integrity of other branches of government in our country. Belated measures *become* far too difficult to apply even if they are correct in principle.

That is precisely why we are discussing the shared part of the political responsibility of the EC: it is not one and the same thing to prioritize the training of magistrates or to the creation of mechanisms of bearing responsibility; it is not the same to expect that the monitored countries (Bulgaria and Romania) will have politicians sentenced for corruption or to insist at least for the creation of an ethical code for the members of parliament, and so forth.

Regarding the last remark, the objection might arise that it is impossible to include such a measure within the set of 6 initial benchmarks of public reform policies stipulated by the CVM. But this only shows the decisive importance of the initial conceptual and methodological flaws of the CVM. The EC's responsibility is that, as a direct consequence of the inadequate paradigm applied for reforms in Bulgaria and Romania, in the first years of membership the opportunity was missed to make a radical reform of the whole institutional system. For instance, CVM monitoring did not in any way influence the routine interactions in the implementation of EU policies within the countries (hence the astonishment of local politicians when access to the Shengen area was at a later stage suddenly denied). The chance was missed to work systematically for *institutionalizing the responsibility* for the conducting of public policies, which is in fact the biggest deficit identified by CVM monitoring. But here we come to another,

far more fundamental issue regarding the possibility of *political effectiveness* of the CVM (an issue raised earlier by D. Smilov).

### **3.3. The overall evaluation format of the reports as a reflection of transformations that have taken place in applying the CVM**

Given that the CVM was initially designed for monitoring (and promoting) progress in the implementation and consolidation of rule of law in the monitored societies, it is only normal that the series of annual reports should trace some line of change. The only intriguing question would be as to the nature of this line – whether it is straight and how steep the exponential curve of progress is.

But against the backdrop of this expectation, the reports show us a very different picture – not only does the line prove to be a curve – and even a zigzag – but, most shockingly, it does not always point forward. Even more importantly, the reports *register changes in the political nature of the situation being observed, which is why the status of the monitoring inevitably changes as well* - from counseling to opposition or exposure, veiled or overt. In this respect what is present in the reports is especially important when considered from the point of view of the delicate balance between the historical shifts and the persistency of the situation in question.

#### **3.3.1. The historical dynamics of the problem situation**

As we made explicit, there is clear empirical evidence as to the dynamics in the object of monitoring at all levels of the documents: language, stylistics and tone of presentation, structure of presentation, and emphases in the contents. Most telling as to the meaning of the changes is, in fact, the formal characteristics of the reports – for instance their formal structure.

**Table 3. Stylistic Differences in the Structuring of the July CVM reports (original typing reproduced)**

Year	Introduction	Main presentation	Conclusion and recommendations
07	<p><b>1. INTRODUCTION</b></p> <p><b>1.1. Context</b></p> <p><b>1.2. Methodology</b></p>	<p><b>2. ACCOMPANYING MEASURES: STATE OF PLAY</b></p> <p><b>2.1. Agricultural funds</b></p> <p><b>2.2. Aviation Safety</b></p> <p><b>2.3. Animal Health and Food Safety</b></p> <p><b>3. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION AND ORGANIZED CRIME</b></p> <p><b>3.1. Summary overview</b></p> <p><b>3.2. Assessment</b></p>	<p><b>4. FOLLOW UP UNDER THE COOPERATION AND VERIFICATION MECHANISM</b></p> <p><b>4.1. Support</b></p> <p><b>5. CONCLUSION</b></p> <p>(total 973 words)</p>
08	<p><b>1. INTRODUCTION</b></p>	<p><b>2. THE REFORM PROCESS IN BULGARIA</b></p> <p><b>2.1. Achievements</b></p> <p><b>2.2. Results</b></p> <p><b>2.3. Improvements needed</b></p>	<p><b>3. CONCLUSIONS</b></p> <p><i>Continued need for cooperation</i></p> <p><i>Outlook</i></p> <p>(Total 828 words)</p>
09	<p><b>I. Introduction - context and methodology</b></p> <p><b>I.1. Objective:</b></p> <p><b>I.2. The benchmark methodology:</b></p>	<p><b>2. State of the Reform Process in Bulgaria</b></p> <p><i>Achievements</i></p> <p><i>Fight against organized crime</i></p> <p><i>Reform of the Judiciary</i></p> <p><i>Fight against corruption</i></p> <p>Safeguard clauses</p>	<p><b>3. Conclusions and recommendations</b></p> <p>(untitled section)</p> <p><b>Outlook:</b></p> <p>(Total 931 words)</p>
10	<p><b>1. Introduction</b></p>	<p><b>2. State of The Reform Process in Bulgaria</b></p> <p><i>Achievements</i></p> <p><i>Reform of the Judiciary</i></p> <p><i>Fight against Organized Crime</i></p> <p><i>Fight against Corruption</i></p>	<p><b>3. Conclusions</b></p> <p><b>4. RECOMMENDATIONS</b></p> <p>(total 1170 words)</p>

11	<b>1. Introduction</b>	<b>2. State of The Reform Process in Bulgaria</b> <i>Achievements and Challenges</i> <i>Reform of the Judiciary</i>  <i>Fight against Organized Crime</i>  <i>Fight against Corruption</i>	<b>3. Conclusions</b> <b>4. RECOMMENDATIONS</b> 1. Reform of the judicial system 2. Transparency and accountability of the judiciary 3. Judicial practice in criminal cases 4. Fight against organized crime 5. Asset forfeiture 6. Fight against corruption 7. Preventing corruption  (total 948 words)
12	<b><u>I. The Cooperation and Verification Mechanism: Supporting Bulgaria in Justice Reform, the Fight against Corruption and the Fight against Organized Crime</u></b>	<b><u>II. Analysis of progress under the CVM 2007-2012</u></b> <b>II.1 Judicial Reform 2007-2012</b>  <b>II.2 Fight against Organized Crime 2007-2012</b>  <b>II.3 Fight against Corruption 2007-2012</b>	<b><u>III. Next Steps</u></b>  <b>IV. Recommendations</b>  (total 989 words)

We shall examine only the most salient changes: the reports start with an introduction; the latter, however, contained subsections only in 2007 and 2009, when the context and the methodology of the CVM’s implementation were emphasized in two separate subsections as having specific in meaning. But contrary to this relative negligence in 2012 the introductory first part was devoted entirely to *the CVM as an instrument of support* for Bulgaria in the three monitored areas, and its title was presented in bold type for the first time in the history of CVM implementation.

The changes that appear in the main presentation are even more symptomatic: the reports have shifted from statements that reform processes are expected to culminate in overall progress the assertion that *the process* is in fact in *a state* where there some achievements have been made and, separate from these, some results as well. Whereas in 2011 the part devoted to achievements contains a special section, entitled “*challenges*”, which figure as an inseparable part of the *achievements*. But in 2012 the report’s whole central part declares it represents an *analysis* of progress (and not simply a statement as to the state of arts). In that same annual report there is no formally separate conclusion, but only two final sections entitled “next steps” and

“recommendations”. *This innovation in the structuring of the final part of the report reflects the growing gravity of its contents, yet the “tasks” have been reduced to.... mere concrete “steps”.* The very graphics of the title “recommendations” reflect the growing importance of the latter’s contents.

In brief, *there is indisputable evidence here of the double transformation of the reports.* This transformation is related, on one hand, to the social situation in the monitored countries – which has developed starting from reluctant partial measures taken in response to the recommendations, passing through outright political resistance against the recommended reforms, and going all the way to a reversal from past achievements. But *the transformation also involves the positioning of the CVM itself with respect to this situation.* Though not explicitly explaining them, the reports express clearly enough *both aspects of the change.*

Going on to a more substantial view of the issue, while remaining at the level of general analysis in the reports, we can trace the dynamics of at least four crucial aspects of the relations between the EC and the Bulgarian/Romanian governments over the years. This is directly mirrored in the Commission’s grading of the respective national authorities. We can analyse the reports in terms of the following contents:

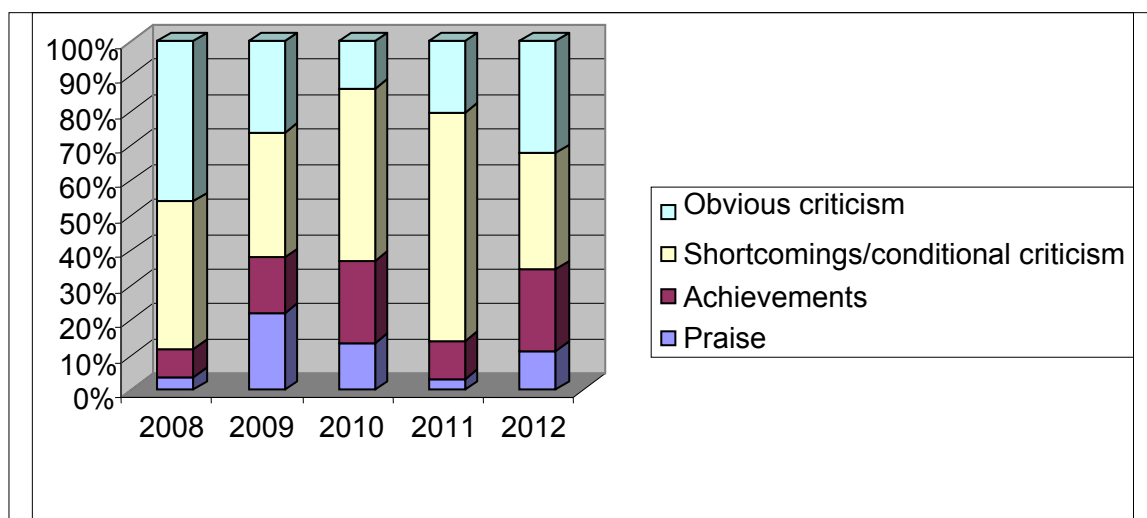
- 1) unconditionally positive evaluations/ praise for the political authorities;
- 2) statements about real results of reform implementation;
- 3) statements about shortcomings in the implementation of reform policies (which is a form of tacit criticism); and
- 4) outright criticism of the political agents at various levels – whether some branch of government institutions or the country as a whole.

The picture our quantitative empirical analysis draws is quite symptomatic<sup>87</sup>.

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<sup>87</sup> Data from the July Report of 2007 are not presented because the EC admits that the time span has been too short to expect end results from the policies implemented.

**Fig. 2. Dynamics in the General Balance of Evaluations Regarding the Bulgarian Governments**



In 2008 a very significant share of the report consisted in direct criticism, comparable in amount only to the statement of shortcomings, while the praise was negligibly small. In the following year the situation changed abruptly: there was a clear increase in praise and decrease in the share of direct criticism, even though the share of identified reform results was not very impressive. The largest share of registered results occurred in the following year, 2010, yet this fact must be evaluated against the context of the expanded conditional criticism which holds the biggest share. The praise and outright criticism were approximately the same in proportion. In other words, even the most positive evaluation in the period is not predominantly positive. The situation in 2011 is structurally different, *and it seems to take us back to the starting position in 2008*, but with a greater share of political deficits found (conditional criticism), and less direct criticism. In 2012, when, as we recall, the object of assessment had to be not only the achievements during the previous year but of the whole preceding 5-year period, the shares of the four kinds of assessments in fact duplicated structurally the situation of ... 2009.

In brief, the dynamics of the situation trace *the curve of changes but not a line of progress*. In view of these data, there can be no doubt what the EC's predominant concern is, as expressed in the reports for Bulgaria (and for Romania, for the very same matter). The openly expressed doubts about the sustainability and irreversibility of the reform policies being implemented

were not a response only to the harsh political crisis in Romania in that year. The registered for the whole period, absence of a general trend toward progress is the main reason for the report's more radical problematization of the social and political situation in the two countries and the slide-backs of the policies conducted there<sup>88</sup>.

There is no room for doubt that the dynamic situation registered by the CVM is, among other things, the result of the overall impact of the mechanism itself, but *is very different* from the situation that it was designed to register and accelerate as well. On one hand, the even partial fulfillment of the measures that the Commission recommends each year to the local authorities changes the institutional-political situation in a positive direction. But on the other hand, and to the Commission's surprise (that can be clearly traced in the reports over the years), the change is not so much in the direction of achieving CVM goals. To the contrary, the change lies in *a shift of the causes of the continuing non-achievement of these goals*.

Thus, on one hand, the *situation appears* to be improving – in measurable parameters – but on the other hand, *the crisis of pro-reform policies is deepening*. This indicates that, as they get deeper, the reforms bring out problems that initially could not have been visible and targeted

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<sup>88</sup> “Brussels’ reluctance to follow through threats with actions, coupled with a carefully balanced language, and inconsistency between member states’ governments limit pressure and accountability on national political elites who have internalized the idea that cosmetic reforms and promises of future action prevent sanctions. This does not mean that the EC reports, or statements, are irrelevant in national politics but they are less significant in pushing through reforms than as ammunition used by domestic actors by appropriating success and by allocating blame. Constant adjustment and re-adjustment of national legal frameworks mean that Europeanization happens in syncope and does not consolidate preventing long-lasting effects of socialization. Romanian and Bulgarian politicians are motivated more by domestic politics, losing track of EU commitments unless relevant for scoring points at home. Historically, national governments have used Brussels for domestic political gains.

The Romanian and Bulgarian cases are problematic in as far as the consolidation of domestic reform continues to be dependent upon Brussels’ ability to provide the right amount of leverage for national politicians not to lose track of the reform agenda or openly oppose it.” (Tanasoiu 2012: 190).



by CVM: the absence “of political actors across the whole party spectrum” that would be keen on reforms and on introducing the rule of law<sup>89</sup>.

These are in fact the problems that make questionable the very possibility of achieving the expected goals by using the CVM instrument. To give just one illustration of this fundamental problem, we will point out that, in fact, a large part of the recommended measures for judicial reform and fighting corruption (and organized crime) are based on the penalistic paradigm of individual blame for specific violations of law (Mungiu-Pippidi; Papakostas). Hence the indictment of these separate cases is expected to produce systemic results. When results fail to appear, the effect is ascribed as the local authorities’ fault due to lack of willingness, loss of orientation, inexcusable delay, etc. We do not see the reports ever coming to the logical conclusion we would have expected them to reach after five years of monitoring: namely, that a radical reorientation of the paradigm itself is necessary. Legal prosecution is not in principle the right priority means for fighting (i.e. conducting a policy for fighting) systematic corruption and the coalescence of public institutions with economically influential criminal groups of various kinds<sup>90</sup>.

And if we consider this conclusion carefully, we will see that the situation could never be different under the logic of the CVM’s initial design, which is directly tied to a conventional system of benchmarks for monitoring and assessing the development of rule of law in the two countries. One cannot expect to obtain a qualitative progress against systematic corruption by chasing and indicting criminals or by partial improvements of the administrative and judicial

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<sup>89</sup> “National political elites show a remarkable consensus across party-lines in resisting pressure from Brussels to reform those areas where personal costs trump national benefits, i.e. judicial reforms and anticorruption measures.” (Tanasoiu/Racovita 2012: 244).

<sup>90</sup> “Corruption in a society should not be conceptualized as an aggregate of individual corruption(s). The non-corrupt countries at the top of Transparency International do not differ from countries on the bottom simply by the numbers of individuals engaged in corrupt acts, but by their whole mode of governance. The countries on top managed to institutionalize open and non-discriminative access at some point in their past and so their institutions differ substantially from the ones on the bottom [...]” (Mungiu-Pippidi et al. 2011: 6).

systems. The two areas both need radical transformation, not piece-meal improvements. This is the crucial problem: the initial conceptual and methodological limitations of the CVM's approach doom the mechanism to focus on the expected due progress. And when the seemingly "natural process" did not happen the course of events lead to imputing blame to the local politicians for failing to achieve the CVM's goals. The accusation seems correct despite of the fact that the goals are actually unachievable in real conditions of systematic corruption and lack of rule of law. The grave problem is that *this* accusation *seems fair*, convenient and sufficient. It seems sufficient and just because the accusation is based on hard evidence only omitting the hidden premises. And this is especially useful for the EC in light of the fact that governments are not the carriers of an authentic program of social reform<sup>91</sup>.

But all this indicates that *the essential question is whether the responses of the EC are adequate*: is the Commission aware that the transformation it is monitoring is considerably more complicated than expected? Is it prepared to respond politically to this double transformation – both of the monitored "object" and of the shifting and/or newly discovered structural causes for the persistent non-achievement of CVM goals? The problem, we repeat, concerns political responsibility stemming from a double shortcoming: the methodology underlying the instrument fails to take into account the historical-cultural contexts of the situation; and second, the paradigm of the CVM lacks the needed flexibility to take into account the structural transformations within the monitored object.

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<sup>91</sup> Once again see the diagnosis of the renowned expert on anti-corruption policies in South-Eastern Europe: "But it [EU] has become like an arrow without a bow, as conditionality only works in the field of governance in combination with domestic grassroots pressure from civil society, which was never strong and which diminished after EU accession. The EU has come to rely too much on its own conditionality, which only works when empowering the forces of change in such societies and is ineffective when they are weak or absent. Identifying the drivers of change requires a shift from the prescription-based approach described in this paper (based on 'medicines' that all patients have to take) to a political economy minded approach, which seeks to understand who stands to gain from challenging this undesirable *status quo* and uses both rewards and sanctions in order to empower promoters of change to challenge the existing equilibrium and establish a new one." (Mungiu-Pippidi 2011: 161).

### **3.2.2. A side issue, but not a minor one: the Romanian case testifies to analytical and political helplessness**

If what is at stake here were not only the lives of 30 million European citizens in the two South-eastern European countries but *the perspectives for sustainable development of the EU as a whole*, we might say we have a very favorable “laboratory situation” for studying the practical capacity of the EC to implement pro-reform policies (post-accession conditionality for its enlargement). The Bulgarian and Romanian societies are typologically similar but also somewhat different; their institutional and political situations were not identical even at the start and, hence, differ in their course of development, no matter how similar the interim result appear to be to date (Papadimitriu, Gateva 2009; Trauner 2009; Racovita 2011; Vachudova, Spendzharova 2011, 2012). All this makes it possible to “investigate” the potential of the CVM, as an instrument of post-accession conditionality, to achieve its goals in such a situation<sup>92</sup>.

First of all, we should take into account the fact that Romania, after a long series of mutual outpacing with Bulgaria in the pre-accession period (Trauner, Ivanov, Racovita), started out with some initial advantage. The number of benchmarks for monitoring in Romania is less by two than in Bulgaria. In the first two years of monitoring, the findings were clearly more positive for Romania than for Bulgaria. Secondly, the constant specific emphases in the reports on Romania are very noteworthy: uncoordinated application of the laws; weakness of the personnel system; strong institutions for revealing corruption and conflict of interests; a strong prosecution; poor judicial results; obvious parliamentary resistance (this brief listing is meant as an illustration only - it is not complete or systematic).

In the light of this situation at the start, the story of the Romanian failure is very instructive: how were the devastating political events in 2012 possible at all (here the response of the EC towards a member state of the EU was unprecedented in harshness in the history of the CVM), especially

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<sup>92</sup> “The contemporary relevance of previous EU attempts to deal with ‘Balkan exceptionalism’ remains pertinent as the policy legacies of the 2007 enlargement continue to shape the context in which current and forthcoming accession hopefuls pursue their own ‘return to Europe’.” (Papadimitriu, Gateva 2009: 3).

against the backdrop of the comparatively optimistic monitoring findings in previous years? It was precisely at the end of the period under observation that the political crisis in Romania revealed the country's large-scale lack of "rule of law", an overall benchmark for assessing public policies, and made all previous partial achievements meaningless<sup>93</sup>.

To find a convincing explanation for this paradox we must take into account the *crucial misunderstanding of the monitored situation*. The EC reported very good results each year in terms of the number of indictments and investigations of cases of corruption (by comparison, the situation in Bulgaria is far bleaker). But the report series has also indicated *obvious and persistent party politicising of the fight against corruption*, and the unwillingness of the parliament to take part in implementing a common strategy for fighting corruption (Tanasoiu, Racovita 2012). The EC evidently cannot understand that the high results for prosecution of individual cases of corrupt behavior are *due precisely* to party politics. The results for penal dealing with corruption are so high because they do not reach the systematic foundation of corrupt behavior, a foundation that is protected by the constant resistance of all parties represented in the parliament (Racovita 2011). This is also the cause of the unequal application of the law in court, a situation that cannot be changed by any amount of training of magistrates.

We thus come to the explanation of the paradoxical fact that the CVM manages to maintain the common interpretative framework despite the striking factological differences between the monitored situations in Romania and Bulgaria.

Let us first present the empirical picture in detail. On the basis of the quantitative instrument that was developed for analysis of the reports for two countries under the 6-year period of CVM implementation (2007-2012), we have accumulated an empirical picture of the dynamics for a total of 133 indicators for all EC's reports describing their scope and character. We have

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<sup>93</sup> The fact that the crisis hit Bulgaria a year later but in a much harsher form is altogether different matter.

eliminated those indicators where (at least for one of the two countries) there were less than 15 occurrences/statements for the investigated period (since looking for correlations in those cases would have been problematic). Thus 92 indicators were left which sufficiently thickly represent the variety of content and the key specificities of the monitored national situations. On this ground, the correlation in the dynamics of the respective trends in the 6-year period was studied. Here are the results of the correlational analysis:

**Table 4. Strength and direction of the correlation between the registered trends in Bulgaria and Romania**

<b>Correlation</b>	<b>Frequency of occurrence</b>	<b>Percentage rate</b>
Over -1,00 up to -0,67	1	1,1
Over -0,67 up to -0,33	8	8,7
Over -0,33 up to 0,00	9	9,8
Over 0,00 up to 0,33	15	16,3
Over 0,33 up to 0,67	22	23,9
Over 0,67 up to 1,00	37	40,2
Total	92	100,0

This empirically registered picture is more than symptomatic. A diametrically opposite trend in the development of the national situations is registered in only one case, whereas a generally significant negative correlation (with values above -0,33) is registered in only about 10% of all dimensions. On the contrary, a strong positive correlation exists in around 2/3 of all cases, with an especially strong correlative dependence (above +0,67) in 40% of all cases. The strong positive trend is so clearly visible that no further discussion is really necessary.

This data points to an ambivalent but perfectly clear picture: the Bulgarian and Romanian situations, as viewed through the CVM lenses, may not be identical, but the *similarity undoubtedly*

*predominates in the development of the reform of the judicial systems and in the fight against corruption in the two countries.*

We thus come to the explanation of the above-raised cognitive-methodological paradox: how the CVM manages to maintain the common interpretative framework despite the striking factological differences between the monitored situations in Romania and Bulgaria. Here is the answer: both countries, each in its own way (and with nuances in the concrete dynamics), remain *equally far from achieving the CVM goals*<sup>94</sup>.

However, this brings us to an important question: ***is a political instrument that does not fulfill its own purpose necessary?*** Especially as we have found reason to believe that the paradigmatic particularities of this instrument have already contributed substantially to its success but also to its failure.

The chosen instrument for post-accession conditionality has proven inadequate in the course of its application, as it fails to take into account the fundamental difference between the political cultures and specific social-economic contexts in Western Europe as compared with South-Eastern Europe<sup>95</sup>. Let us summarize our views as concisely as possible:

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<sup>94</sup> There is nothing particularly new in comparison with the pre-accession period: “In response to Brussels accelerated demands and increased pressure for judicial reforms and curbing corruption, Romanian and Bulgarian governments chose different approaches. While Romanian governments opted for creating a network of institutions whose areas of responsibility overlap and confuse rather than contribute to curbing corruption, Bulgarian governments opted for development of strategies and methods [...] Effectively, these institutions served as smokescreens to hide backwards steps in enforcement of judicial reform and anti-corruption standards. [...] The number of agencies, bodies, institutions created with the declared purpose of fighting corruption does not translate into indictments, trials, results [...]” (Racovita 2011: 40-41).

<sup>95</sup> “The EU difficulty to push through Europeanization is therefore due to the difference in the way Brussels and national establishments approach Europeanization: Brussels relies upon provisions in treaties, Romanian and Bulgarian political elites play it by the ear, according to the rhythm of domestic politics.

Brussels’ reluctance to follow through threats with actions, coupled with a carefully balanced language, and inconsistency between member states’ governments limit pressure and accountability on national political elites who have internalized the idea that cosmetic reforms and promises of future action prevent sanctions.” (Tanasiu 2012: 190).

Due to the relative underdevelopment of their social-political and institutional potential (lower than that of EEC-8 but higher than that of the Western Balkan countries and of the European countries that remain within the Russian sphere of influence – see Mendelski 2010; Börzel 2011) Bulgaria and Romania have been, and still are, facing an insurmountable contradiction. They must deal with a) a much larger range of b) much graver and painful problems, c) while having a much smaller capacity to cope with the latter in order to become full-fledged EU members, d) within the brief time span that local public expectations are willing to tolerate. There is no easy solution to this problem. The most probable outcome would be a failure that no matter what government is in power, it will not solve the problem; moreover, e) the national governments in these countries are politically very inexperienced.

But an overt failure is an unacceptable political option, especially in the context of the competition between two neighboring countries that were both part of the former communist bloc. Hence, what may most logically be expected is the understandable two-stage action. First *fulfillment “on paper” of the EU requirements*, for the whole interaction between EU and the two countries is tightly limited to the documentary communication between the EC and the local governments (Mungiu-Pippidi 2011; Buzogany 2012). Second, when coming to the stage of implementing Europeanization and actual reforms, political fraudulence, systematic deceit begins, no matter which persons and parties are in power – we know this well from the political experience of... Greece. This second step has become *inevitable* precisely due to the one preceding it, i.e. the lack of “pre-accession management on the part of EU” (Ágh). Also, political irresponsibility is a cultural norm in the traditions of South-Eastern Europe (as the course of events in Greece and Cyprus has shown, among others...). This is the fundamental disparity between the fundamental values, principles and mechanisms that inform the EU (and respectively the CVM mechanism as a tool for post-accession conditionality) and the actual realities in this part of Europe. Due to the uncompleted modernisation here, the historical heritage exerts a strong influence, in terms of a

specific institutional and political culture in which nepotism, conflicts of interests, and corruption rule (Mungiu-Pippidi, Ganev, Ivanov, Smilov and Dorosiev).

This is especially true in view of the fact that the preparatory stage for membership was an excellent schooling in the imitation of progress (Racovita). The very accession to the EU is viewed by the local actors as a proof that the lack of results, the lack of a quality of public life corresponding to the values and principles of EU, is acceptable for the Union, or at least for its main institutions, the Council and the Commission. That is why the local authorities view the CVM likewise as a temporary phase in this same game; naturally, in the course of time, the mechanism “will simply melt into the air”<sup>96</sup>. (For us, the observers, the sincere surprise and indignation of the local politicians of all colors that the mechanism has proven not to be just a temporary measure and will continue is perfectly understandable, though not acceptable<sup>97</sup>.)

### **3.4. Characteristic *weaknesses in the approach of the CVM* which determine the specific features of the *CVM reports*.**

It has been made clear so far that in its present form the CVM has exhausted its potential to stimulate a fundamental and all-encompassing reform. The latter has been identified (with the aid of the mechanism, it should be emphasized) as the true task of conducted policies; a reform that could – among other things, as the EC correctly notes – solve the problems of corruption at all levels and eradicate the preconditions for the multiple forms of organized criminal organisations – above all economic ones – working in transborder commerce, tax crimes, absorption of EU funds, public procurement, etc., but also in the sectors of energy, fuels,

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<sup>96</sup> The reader is most welcome to recall here the famous statement “all that is solid melts into air”, which asserts the universally transitional character of everything modern.

<sup>97</sup> Assuming that the magistrates at all levels are not stupid, what motive could they have to achieve successful results in the judiciary reform, given that (according to official data) they have absorbed about 200 million Euros in five years just to continue the reform? If the executive branch carries through the EC’s imperative demand for wide and fundamental reform, most of the funding for reform would stop.



pharmacy, media, gambling, sports, education. etc. In order to better understand that a qualitative change needs to be made of the approach currently applied, let us recall once again the latter's key shortcomings:

- An indeterminate scope and, hence, indeterminate functional, institutional, and political connections between the monitored sectors and the particular agencies within them, while at the same time certain *key social zones and the connections between them are overlooked*.<sup>98</sup>

- The most glaring weakness of the reports (stemming from the loose methodology of monitoring) is the bricolage-like nature of the observations: in too many cases separate paragraphs and even separate sentences contain a mixture of facts, evaluations, normative principles, and declared expectations (in some cases those of the EC; in others, of the government; and in still others, of citizens) about what the future state of things should be. And the vague, inconsistent and internally contradictory style of expression is a permanent feature of the reports, as often pointed out by researchers such as Hughes et al., Grabbe, Maniokas, Ivanov, Papakostas and others.

- A weakness noted by authors before us (for instance I. Ivanova, C. Tanasoiu, M. Racovita, H. Grabbe, Maniokas) is that the reports show a high degree of indeterminacy, not to say arbitrariness, in the levels of concreteness both of the findings and of the recommendations: it does not become clear which theses are illustrated with examples and when, or on what basis, some individual cases are viewed as emblematic while others are supported with statistical data.

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<sup>98</sup> We have to agree with the statement of the EC that "As corruption and organized crime are often linked, detailed financial investigations are an important part of any investigation in this area and of particular importance to uncover links between organized crime and politics. These aspects have not received appropriate attention in Bulgaria." (Report in July 2012, [http://ec.europa.eu/cvm/docs/com\\_2012\\_411\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf), p 15). But we must continue further and say that the EC itself has hardly paid *due attention* to this particular connection from the very beginning; if the connection had been understood, there would have been a very different treatment of the problem of political responsibility of the executive and legislative branches of government in our country, and a different approach to the reforms.

All this betrays a lack of methodological rigor in the instruments for collecting and interpreting the information.<sup>99</sup>

- The most annoying defect, especially in the recommendations for action, is when imaginary subjects are defined, that are not matched by any real addressee – neither the country, nor the society as a whole could act as a single agency of whatever activity. There simply cannot be a problem that a country (or society) as a whole might solve, “in raising a somewhat holistic requirement for political self-organisation of society” (as Habermas puts it). Solving problems is always a matter of concrete policies that have some institutional and political holder of office behind them. Until these holders are identified, we cannot expect them to assume responsibility; not to mention that even if we did identify them and directly imposed responsibility for these policies on them, this in itself would not guarantee results. The data from the content analysis<sup>100</sup> of documents show that in about 70 percent of the cases when the reports refer to unfinished work in fighting corruption in Bulgaria, it does not actually become clear who exactly did not finish this work. It is indicative that for the “indeterminacy” dimension in the reports on Romania, the corresponding percentage is 34, which is twice less.

- We are clearly aware of the exceptional complexity and the internal contradictory nature of the matter discussed, i.e. of the impossibility of presenting unambiguous theses and assessments because of the controversial character of the situation. Yet, we believe that political

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<sup>99</sup> The critique levelled by Tanasoiu and Racovita at the CVM methodology and the existing limitations to the use of its results is quite similar: “While their direct impact is hard to estimate, the CVM reports have been called into question over their methodology of tracking progress, data collection strategies and sampling methods when deciding which high corruption cases are monitor though envisioned as precursors to the activation of safeguard clauses, the progress in the two states proved to be less than expected, the CVM reports have so far contributed to the political narrative, signalling the mood in Brussels and delivering warnings or praise, rather than announcing measures to come.” (Tanasoiu/Racovita 2012: 250)

<sup>100</sup> As we have mentioned in the introductory presentation of our research, all monitoring reports for Bulgaria and Romania under the CVM (2007-2012) have been processed, using a questionnaire of 133 indicators, including various aspects of the factological content and the political assessments of the ongoing processes in the public sectors under monitoring. We should remind that the instrumentarium of the study is publicly accessible on the website of the Association for Social Investigations and Applied Research Practices, [www.asiarp.org](http://www.asiarp.org).)

correctness in many cases has gone too far. The authors of the CVM reports should know these will be read by people who are engaged in mutual political confrontation. This problem cannot be resolved the easy way, by reverting to the language of “political correctness”! This means that each obscure sentence might provide reasons for one of two opposed parties to feel justified in its denunciation of the other. This is exactly how the ambiguities in the reports fail to contribute to the assuming of political responsibility. And in this case the political irresponsibility would be on the part of the EC.

This is precisely the essential problem that our study has established. The reports contain very many and very significant peculiarities, not to say shortcomings, which *could justify* the possible holders of political initiative (whom the difficult social reforms that are expected from) to free themselves of its burden – especially having in mind political factors that dictate the rules of politics from behind the curtain. If the intellectual and even stylistic quality of the reports *would give reasons for the assessments contained in them to be disregarded, that would be particularly risky*. Especially in a national situation in which the resistance against reforms has more than a century of history behind it and is deeply embedded in the present-day institutional design of public life and in the mentalities of the local political figures.<sup>101</sup>

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<sup>101</sup> On this issue see Avramov (Аврамов 2007), and also Dimitrov (Димитров 2012). We are convinced Repin’s famous painting “Zaporozhye Cossacks writing a letter to the Turkish Sultan” would look mild compared with a picture of Bulgarian MPs reading an EC report on progress made in establishing rule of law in our country. For a serious discussion of this problem see Ganev (Ganev 2012) also Tanasoiu (Tanasoiu 2012). For a serious discussion of this problem see Ganev (Ganev 2012) and Tanasoiu (Tanasoiu 2012), (Racovita 2011). The generalization made by Andreev regarding the first two years of applying the CVM is valid for the entire period of its implementation: “During their first two years of membership the leaders of Bulgaria and Romania have done very little to convince their EU counterparts and societies at home that they have genuinely been willing to transform their political and administrative systems in order to fully meet the membership requirements. On the contrary, domestic actors have remained quite passive over long periods of times, and have only reacted to direct pressure from the European institutions in an emergency fashion.” (Andeev 2009 : 337) We should point out once again that what is new in the Bulgarian and Romanian cases is only the degree of intensity of the problem, but it is a common problem to all countries in the east European enlargement of the EU: “The advanced countries have two pillars for the legitimacy of their democratic regimes: legitimacy by procedures and legitimacy by performance. That is, political systems are accepted by the populations as legitimate if they abide by democratic rules and procedures, and if the governance provides high performance. In the new ECE democracies this second pillar in the nineties was – and to a great extent still it is - largely missing, although this is a fair demand that democratic institutions have to work, indeed, more efficiently.” (Agh 2008: 315).

By no means do the above remarks belittle *the important contribution of the CVM* in bringing practical pressure towards reforms in the two monitored societies, or its contribution to conceptual clarification of the problems facing pro-reform policies. Particularly valuable in this connection are the observations regarding the delicate balance between historical advancement and recurrence of the analysed problems in the situation under scrutiny.

Hence there is need for a change of the paradigm, of the approach<sup>102</sup> to post-accession conditionality: the change should be from rational institutionalism to historical sociology, for the sake of the desired qualitative improvement, of the efficacy of a new CVM.

Our approach will try to keep in view simultaneously

- a) *the internal contradictions of both sides of the cooperation*, and
- b) the above-mentioned interplay *in several cycles* of mutual dependence and outwitting between the EC and the national societies in South-eastern Europe, an interplay in which
- c) *the false beliefs arising along the path chosen* play an important part, and in which
- d) the role of social science has been to strengthen and legitimize the *seeming truth* of these false beliefs.

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<sup>102</sup>Clearly the mainstream literature on Europeanization through conditionality follows the approach of practical political implementation of this process, so we should be aware of the general defect in the approach that underlies both the political practice and the social science “theory” that gives a systematic account of this practice: “First of all the mainstream literature in the West tends not to recognizing the post-accession crisis as a new phenomenon in ECE that has been provoked by the dual pressure of the EU entry and the missing social consolidation.” (Ágh 2008b: 303). The common Bulgarian-Romanian case just adds new accents to the general problem of the post-accession crisis: “The second reform wave in the nineties at its first attempt was not successful in breaking the exclusive power of the centralizing state due to the economic crisis management with fiscal recentralization. After this failed first attempt the second reform wave, however, has come back within the EU, and the ECE countries have tried to cope with its tasks at the second attempt of completing the institutional reforms. Actually, some smaller reform moves were continued in ECE in the nineties but a coherent, second reform wave did not take place. It came on the agenda only much later as structural accommodation for the EU membership. The second generation reforms are necessary in order ‘to move on to the second-phase tasks of fine-tuning and institutionalizing reform.’” (ibid. 347).

This whole complex topic of study is viewed here in terms of its development with every successive wave of EU enlargement, a development that has led to the present crisis<sup>103</sup>.

We insist that *the purely practical interest in the variants for enhancing effectiveness of the CVM in the two countries (or more generally in the countries of South-eastern Europe), and for Europeanization free of crises, is only part of a bigger and important problem: how European integration is conceptualized.* Even though the practical emphasis in this study clearly predominates over the purely cognitive one, our study has led us to asking questions about the paradigmatic approach to the fundamental European process, EU enlargement (Sedelmeier 2011). This is why the paradigmatic problem must be brought to open discussion even in a pragmatically oriented study. The practical concerns crucially depend on our cognitive approaches.

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<sup>103</sup> “This time there is no question about what sociologists mean when they talk about crisis. The European integration project has never since its inception been as close to a crash as it is now. Nor do we need much justification for the view that what now is needed is critique, a social science that offers views on how modern societies work, stick together and change.” (Sulkunen 2013: 3).

## 4. The cognitive problem of identifying EU enlargement crisis and the political responsibility to resolve it

### 4.1. Cognitive roots of the political errors

The problem of the CVM as an instrument of EU post-accession conditionality shows in that it is nowise improving substantially the situation that was the cause of its implementation. Despite the fact that the idea of the CVM is a demonstration of the innovative character of the post-accession conditionality it *rather seems to continue the previously fruitless approach of the Commission*<sup>104</sup>. This research finding must be clearly declared, especially if we hold to the important distinction between reform *de jure* and reform *de facto*<sup>105</sup>. The big problem our study revealed is that the CVM is derivative of the specific *paradigmatic attitude to EU enlargement*. If one may speak of error here, it concerns the extrapolation of a momentary success of a particular course of political behavior in the EU's enlargement as a general rule doomed to success universally regardless of the specific contexts (Ágh). Here we should make some additional clarifications because it is a point of overlapping between the practice of enlargement and its conceptualization:

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<sup>104</sup>“Even if we assume that the majority of the above problems have been common to most new EU member states from post-communist Eastern Europe, the uniqueness of the actual situation of Bulgaria and Romania principally consists in the failure of their rulers to deal with a large number of “unresolved issues” from the accession period. In fact, the bulk of the previously singled out by the European institutions and political observers as major problems have grown even bigger and out of control...” (Andreev 2009: 389). Even more important is what has been put in a mild form: “On the eve of accession of Bulgaria and Romania to the Union, the European Commission was not exceptionally successful in pressurizing the governments of both countries to deal with their unresolved problems.” (ibid. 390).

<sup>105</sup> We agree both with the observation and the diagnosis of M. Mendelski: “...[the question] how successful the EU-driven judicial reforms have been in Romania is extremely pertinent. Have these reforms led to an improvement of judicial quality (rule of law)? My answer to this question is differentiated. I conceive judicial quality as a multi-dimensional concept which distinguishes between *de jure* and *de facto* aspects and between judicial capacity and judicial impartiality dimensions. The main argument of this article is that while the EU has been a very important change agent (among other domestic ones) in triggering judicial reforms and bringing about change in *de jure* and capacity-related aspects of judicial quality, it has not been able to change domestic power structures and create a fully independent, impartial and incorrupt judiciary. The limited improvement of the impartiality dimension has undermined progress in *de facto* judicial quality and has not resulted in the creation of the rule of law. *This uneven and relatively disappointing outcome is explained here in terms of the inappropriate reform approach adopted by the EU (technocratic efficiency-focused and elite-driven) and with the resistance of domestic anti-reform actors.*” (Mendelski 2012: 24, italics added). We should add that the Bulgarian case is typologically identical but the additional stress is due that the EC's political approach should itself take into account the resistance of the local actors when designing the tools for *post-accession* conditionality.

Understandably, the academic tradition of EU enlargement-led Europeanization studies is new and quickly proliferating<sup>106</sup>. But it is not of particularly high quality, which finds manifestation in two aspects: the attitudes underlying it are predominantly positivistic ones, and respectively it *lacks critical methodological reflection* (Maniokas 2004; Hughes et al. 2005; Grabbe 2006; Ágh 2007). On one hand, the academic “norm” (or “mode” in the everyday and scientific sense of the word) in this literature is to use primarily abstract and formalistic typological and normativistic approaches that rarely and only indirectly bring the research in touch with the seething realities of social life – at least life in the last decade. At the very least, these approaches are insensitive to the *qualitative difference* of social life in some EU countries (not only Bulgaria and Romania, but in fact all of Southern Europe, as evidenced by statistical data on the infringements of EU *acquis* in the countries of the area – Sedelmeier 2008; Toshkov 2012). These differences between the countries and the waves of enlargement are not denied but are disqualified by their treatment as mere quantitative variations of common trends.

An additional qualification should be made: Attila Ágh quite rightly directs our attention to the social-historical grounds of scientific legitimacy of various paradigmatic approaches:

“In the case of these new, immature democracies in the making the analysis has to focus on the process and the periodisation of Europeanization and democratization because these countries have not yet reached that level of consolidation, which is common in the West European countries (on democratic consolidation see Linz and Stepan, 1996; Plasser et al,1998). Nor they have had an evolutionary development, since the democratization process has also produced many contradictions and setbacks. Although the basic foundations of the democratic order have been laid but there are still many ‘deficits’ and/or ‘paradoxes.[...] In my view, institutional and representative consolidation has been half completed, while behavioral and civic culture consolidation is still ahead in ECE. Although the EU membership has offered good conditions for completing the process of democratic consolidation, the present post-accession crisis has also aggravated and deepened the destabilization and deconsolidation processes.” (Ágh 2008b: 304).

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<sup>106</sup>Sedelmeier cites the results of a statistical trend: for the period 1999-2009 the EU’s interest in enlargement eastward has led to an increase **by twenty times** of the number of publications on Europeanization, registered through SSCI (Sedelmeier 2011: 7).

And also:

“The usual institutional approach is very good to assess this transformation process in ECE, it has still two weaknesses. First, it neglects the socio-economic changes with their huge social conflict potential that has created ‘roadblocks’ to reforms. Second, the cultural-psychological factors also matter, since after two decades of permanent change the ‘reform fatigue’ makes all reforms terribly difficult. Thus, beyond the analysis based on historical and sociological institutionalism, these two other important factors have to be taken into consideration to evaluate the reform process in ECE. The ECE governments have tried to carry out radical reforms but they have met a big social resistance, since the living conditions are still poor for the large part of population as the absolute or relative losers of systemic change [...]. The “silent” majority has lost the patience, thus they are not silent any longer and they want better life instead of new and new reforms. The final result is the split between state capacity and social capacity, which may jeopardize the reforms. The readiness or resistance of the population is an important part of the reform capacity, without this factor the institutional analysis may remain only on the surface because the reasons behind the particular social tensions and actions cannot be discovered.” (Ágh 2008b: 306).

The research approach proposed by this renowned Hungarian researcher remains isolated amidst the literature devoted to Europeanization; so far the prevalent publications have been in the traditions of rational institutionalism<sup>107</sup>. On the other hand, and as a kind of implicit critique of this trend, we also find primarily descriptive studies in which prevails the pathos of debunking of the specific “normality” or “particularity” of social pathologies in the respective national societies in the course of their retarded Europeanization. In this category of studies, there is practically no explanation given for what is happening (unless we count as explanatory such intellectual childishness as references to the “carrot and stick” that are missing after EU accession, an account that is simply a macro political projection of behaviorist psychology).

In contrast with both these alternatives, *we strive to prove the priority importance of a reflective and historical paradigmatic approach to the problem of conditionality as an instrument of EU enlargement*. It is important because the initial approach will later determine *the sensitivity or*

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<sup>107</sup> In the comprehensive overview by Sedelmeier (2011) of the literature on Europeanization through EU enlargement, no publication by Ágh is mentioned, even though there are at least two dozen titles by this author; however, these works are analytically critical for the most part.



*lack of sensitivity to key problems confronting EU conditionality policies and the ability to cope with these problems.* We will try to demonstrate the advantages of historical sociology as an interpretative approach to EU enlargement and the political alternatives to enlargement, and we will do so in opposition to the prevalent paradigm of “rational choice and rational institutionalism”.

Of course, we build upon what has been achieved before us by other researchers. We fully agree with a number of authors who have been following for many years the specialized literature devoted to EU enlargement and who long before us have ascertained its key deficits. For instance, we find especially valuable Ekiert’s conclusion that

“existing studies are too heavily influenced by analytical frameworks developed within the sub-field of international relations. In short, the study of enlargement and its implications needs more theoretical, methodological, and empirical diversity.” (Ekiert 2008: 7)<sup>108</sup>. An even more important observation by this author is that “the possible negative scenarios, their exact causes, mechanisms and consequences, remain poorly specified and inadequately investigated.” (Ekiert 2008: 5).

In our view, this shortcoming of the scholarly tradition is closely linked to another deficit, identified by Schimmelfennig and Scholtz:

“In general, however, analyses of EU accession conditionality have not taken historical legacies into account” (Schimmelfennig and Scholtz 2010: 4).

This is surprising, *especially in the light of the proven strong correlation between the democratisation potential of the East European countries and their respective historical heritages* (Klingemann/Fuchs/Zielonka 2006; Schimmelfennig/Scholtz 2010; Mendelski in many publications).

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<sup>108</sup>Cf the view of Sedelmeier that the predominant paradigm of rational choice / rational institutionalism in studies on international relations and comparative political studies provide a methodological advantage for the study of Europeanization, including that of East European countries (Sedelmeier 2011).

The problem is that not only the researchers, *but likewise the EU policies for accession conditionality fail to take these heritages into account*. Academic literature, or at least the predominant part of it inspired by institutional rationalism<sup>109</sup> (as a present-day embodiment of positivism in political science), tends to follow passively the enlargement practice of the EU (admittedly, for about 20 years and until recently, this practice had been consistently successful, which justified the predominance of positivism).

This order of things is what we are trying to reverse in our study: policies should be derived from (or at least lean on) the findings of scientific analyses that seek the causes for the effectiveness (or ineffectiveness) of those policies. So we shall make a clear summary of our thesis.

The CVM turned out doomed to inefficacy, unable to achieve its goals within a reasonable timelength. This was not due to separate weaknesses in its design or to faulty, inadequate use of the mechanism's political potential<sup>110</sup>. On the contrary, despite all its shortcomings, the mechanism would have been considerably more productive if the local governments had used it to achieve the aims assumed as early as the accession agreement between the EU and the two countries in question. But, knowing the realities of civilization in South-Eastern Europe, *there is no reason to expect the local governments would be naturally inclined to achieve these aims*<sup>111</sup> –

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<sup>109</sup> “[...] with regard to theoretical findings, most studies also agree, at least implicitly, that not only the success, but also the limitations of the EU's conditionality – i.e. the conditions that determine its effectiveness – are best explained by a rationalist institutionalist approach. Rationalist institutionalism emphasizes conditionality – rather than alternative mechanisms such as socialisation – but crucially also specifies both international and domestic mediating factors. Thus, it explicitly takes into account that ‘conditionality’ is far from a homogeneous instrument that is applied uniformly across countries and issue areas.”(Sedelmeier 2011: 29-30). As may be expected, this paradigm in principle sees no reasons that might *limit its application* but domestic variations only.

<sup>110</sup> The key precondition in H. Grabbe's virtuoso conceptual study of EU's enlargement conditionality is the assumption that the potential of conditionality is not fully employed.

<sup>111</sup>“The quality of the rule of law and the effective implementation of the *acquis* depends not only on the administrative capacity of a state but also the degree to which the new values, rules, and practices being propounded are internalized by state functionaries and citizens. From this point of view, faster and more extensive institutional transformations produce serious problems of compliance, especially in societies demoralized by decades of authoritarian rule.” (see Sztompka, P. 1992. Dilemmas of Great Transformation. *Sisyphus*, 2: 9-2; and Sztompka, P. 1997. Looking Back: The Year 1989 as a Cultural and Civilizational Break. *Communist and Post-Communist Studies*, 29: 2, pp. 115-129. Regarding the problem of civilizational deficit, see Ekiert 2008: 20).

in the past two years, events in Cyprus, Greece, Bulgaria, and Romania have amply illustrated this general principle. But in fact the problem is not just a regional one, and the EU initiatives, undertaken in 2013, to seek for generally applicable mechanisms for verification and defense of the rule of law in *all* member states, come as a logical response to the universal nature of the problem.

But here lies the real obstacle to the mechanism of post-accession conditionality: its overall design is built upon unrealistic assumptions that *inevitably generate unfulfillable expectations*. The fundamental mistake lies in the assumption that the EC and the local governments share common social and mental space and see the situation through a mutually-shared perspective. In the EC's point of perspective, it seems that the local governments sincerely want to carry out a fundamental reform against the status quo that generates systematic corruption (and powerful organized crime in the Bulgarian case), but simply do not know how to go about it (Mungiu-Pippidi 2011). Hence, the CVM is expected to function as an operative manual for conducting the stages of the reform. These initial assumptions are where the general helplessness of post-accession conditionality stems from: in the actual situation there is systematic resistance on the part of all political actors against reform policies (Ganev; Racovita; Tanasoiu). The current version of the CVM has simply not been conceived to solve the specific social problems that EU enlargement in South-Eastern Europe has come up against and will continue to encounter in the future<sup>112</sup>. To use the apt

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<sup>112</sup> “[...] the emergence of many and occasionally quite serious problems in both countries after their accession has not done a good service to the future EU member states from the Western Balkans and further East. The seemingly ‘self-inflicted’ post-accession political crisis in Bulgaria and Romania has given plenty of arguments to the various opponents of EU enlargement, by essentially proving that stricter and more comprehensive conditions should be imposed on future member states not only before, but also after joining the Union.” (Andreev 2009: 391). We certainly must agree with Tanja Börzel: “Expectations to promote successful Europeanization through accession conditionality had been indeed high, both among politicians and academics. They started to sober quickly, though. Unlike in CEE, democratization and economic transition have proceeded only slowly, frequently stalled and in some cases even relapsed. At least students of Europeanization should have known better.” (Börzel, 2011: 6). Indeed, at least social scientists should know better. The difference between the case of the Western Balkans and that of Bulgaria and Romania is a matter of degree and not of fundamental differences (Mendelski 2010; Mungiu-Pippidi 2011). With the exception of the unresolved border issues, all other characteristics of the Western Balkans are likewise typical for all South European countries to some degree or another. The alternative would be to find a completely new approach for effectively solving the local problems, first in the member states (Bulgaria, Greece, Romania) and then in the

metaphor of Eckart Stratenschulte, Director of the European Academy in Berlin, the great problem of post-accession conditionality lies *not* in the fact that the EU has lost (most of) the carrot while not having an effective stick either (or at least is not inclined to use its tools for coercion). The problem is that dogs, especially those of them that tend to be “predators” (V. Ganev), cannot be motivated with carrots, no matter how tasty and rich in vitamins these vegetables might be.

To put it plainly, *the reason why a specific instrument for post-accession conditionality is necessary in the first place is that, in the societies of South-eastern Europe, the governments all too often serve not the citizen’s interests but the interests of large-scale business linked to corruption and (economic) crime* (such as tax crime, money laundering, misappropriation of public funds, and, not rarely, classical criminal activities like smuggling, sales of drugs, etc.). Yet now, the EC’s main partner is the national governments. Herein is a secret contradiction - ***the partnership, which implies equality of arms, should lead to a qualitative change in one of them.***

This initial social-historical contradiction must be taken into account in the initial assumptions on which the particular mechanisms of post-accession conditionality are built (as well as, more generally the mechanisms for interaction with countries in this region). Without taking into account this premise in the specific design of the institutional mechanism for partnership, *EU policies for enlargement and integration will be doomed to strategic fruitlessness.*

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candidates for membership. We are certainly not the first to have seen the seriousness of this problem. Cf Ágh: “Compared to their fellow Balkan neighbors, Bulgaria and Romania are, no doubt, some kind of a success story. Yet, EU membership merely opens another chapter in their Europeanization rather than marking the end of the story and as the latest *Progress Reports* (23 July 2008) on Bulgaria and Romania indicates (Commission, 2008). They are still not meeting the EU institutional requirements, which should be a serious warning for the WB about the difficulties of the structural adaptation to the EU. Therefore one has to identify first of all the urgent tasks for the institutional transformations in the WB region with their specificities. If the term for the Eastern enlargement was the pre-accession period, then by extending it one can talk about ‘pre-pre-accession’ management, since a new transitory period have to be added before the real pre-accession.” (Ágh 2008a: 27).

The reader should pay special attention to Ágh’s idea that the concept of “pre-accession period” should be changed into “pre-accession management”; in other words, the more or less “natural course” of preparation for EU membership should be substituted by *active management of the process of creating preconditions* for Europeanization by political engaging the EU institutions in the process.

That is why we believe the true problem disclosed by our study is the *paradigmatic error in the CVM approach*<sup>113</sup>, duplicated in the Europeanization studies. This refers, firstly, to an approach that is initially realized in practice in EC policies and afterwards scientifically legitimized as natural and universal by most of the researchers on Europeanization. At this stage in our study it should be clear that we are asking *not whether* the EC has contributed to the crisis of post-accession conditionality, but *how it concretely contributes to engendering the crisis*. The next question is: *why* it does so and, in final account, *what political alternatives are there to this?*

We undoubtedly need to agree with Tanja Börzel: at least Europeanisation researchers should have known better. However we need not blame them, but should rather look for the underlying reasons for the failure of their diagnosis. On one hand, an overview of the specialized literature on Europeanization and enlargement reveals that only recently has sustained and growing scientific interest appeared regarding the *context* of enlargement; and as a result of this, interest has also grown in the so-called *legacies* that influence the course of current political processes (Cirtautas, Schimmelfennig 2010). On the other hand, this is not a “belated attention” paid to the historical legacy, for it is not since recently that scholars have been interested in the role of economic and political culture in the Europeanization of Central and Eastern European countries<sup>114</sup>. The

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<sup>113</sup>Of course, we do not claim to be the first to have identified how different conceptual approaches to pre- and post-accession conditionality instruments may impact directly on policies. For instance, A. Mungiu-Pippidi has rightly stressed the connection between the procedural interpretation of rule of law and the easy applicability of this interpretation as a recipe for action, in contrast with the substantial but difficult and problematic interpretation that might reach the root of the problems: “It is simpler to assist with building the rule of law if it is conceived in instrumental terms, because such an approach provides an easy guide to assistance programming. However, any assessment of the final outcome – the rule of law itself – will invariably impinge on the broader definition. It is also this comprehensive definition of the rule of law, which looks at the quality of a society’s overall institutional framework, that has come to dominate alternative explanations of development.[...] In principle, the EU should pursue mainly the ‘thick’ or substantive approach, as candidate countries need to satisfy a number of general democratic conditions (the so-called Copenhagen criteria) in order to qualify for membership. However, that approach is more difficult to implement: in addition to the lack of agreement on the essential elements that it entails<sup>11</sup> it is also politically more sensitive. There are also specifically European complications. How is it possible to promote the ‘European legal model’ when a recent Council of Europe report warns readers that there is no such thing and perhaps never will be?” (Mungiu-Pippidi 2011: 147.)

<sup>114</sup> For example, two sufficiently representative collections: Klingemann/Fuchs/ Zielonka (eds.). 2006. *Democracy and Political Culture in Eastern Europe*, Kovács/ Zentai (eds.). 2012. *Capitalism from Outside? Economic Cultures in*

fundamental problem is related to the paradigm - *how* this historical heritage or specific cultural context *will be approached in methodological terms*. The collection of articles by Janos Kovacs and Violetta Zentai (Kovacs/Zentai 2012) illustrates that if we look at economic or political culture through rose-colored glasses, we will certainly not recognize how culture influences Europeanization in the former communist countries<sup>115</sup>. Hungary is certainly not a South-European country, yet political life there in recent years has been a serious challenge to the EU.

But even if, like Frank Schimmelfennig, we take a value-neutral approach to the regional context of historical legacy, this would still not guarantee a correct understanding of the specificity of the object under study: the heuristic and political benefits would be minimal, if we believed that the “legacy” is simply one more *separate factor* among others in an aggregate of factors in current politics (such as structures, actors, institutions), even if we regarded this factor as involving a number of deep, enduring, broad in scope conditions<sup>116</sup>. *The legacy is not an external condition*; it is incorporated in the mode of operation of the entire social system, in the particular goals,

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Eastern Europe after 1989.. But our choice of the truly exemplary study within this tradition would have to be V. Ganev’s *The Preying on the State* (Ganev 2013).

<sup>115</sup> For those who are not acquainted with the viewpoint of the well-known Hungarian economist, here is a summary of his stance: “Imagine if East-Central Europe were to suffer within the EU while the Balkan countries enjoy life outside the Union. That would be a real blow to the dominant narrative! The farther you are from Western Europe, the more developed you become.” (Kovacs 2006: 346).

<sup>116</sup>The graph proposed by Schimmelfennig and Cirtautas vividly shows that the “legacies” are perceived as separate factors that are external to the present day once but on which the enlargement and Europeanization depend (Cirtautas, Schimmelfennig 2010: 432). The very inclination to think of culture and/or legacies in terms of a package of factors (Kovacs 2006: 340-342, but also Schimmelfennig, Sedelmeier, Ekiert, Vachudova) makes it impossible to understand the systematic influence of the “legacy” on the course of the present-day processes. That is why Mendelski’s study is particularly interesting: it points to the following methodological conclusion: “What can we learn from the comparative analysis for further analysis of institutional change? First, variation in institutional development is not only a consequence of structural or historical legacies. Similar historical administrative and judicial legacies do not necessarily bring about a similar development in the future. Variation can be equally explained by temporally more proximate and external factors, like the impact of EU conditionality. This does not mean that historical legacies do not matter, however their effect can be intensified or diffused by more recent factors (be it external conditionality or spillover from economic crisis or wars). Consequently, it is the interplay of different external and domestic factors which shapes the institutional path of a policy or the overall governance development of a country. Unfortunately, this complex interplay can be context and time-specific so that only the right combination will produce a breakthrough in governance reforms.” (Mendelski 2009: 62).

What was said regarding the “historical legacy” factor is in fact valid for all other factors as well, when we view them through the optics of their systematic interconnectedness, and in terms of constellations of mutual links that vary in rank, weight and force.

instruments, behavior and mental horizon of actors, groups, institutions that determine the structure of the fundamental dependences on the “soft state” (which is no longer the proprietor but is the largest client and/or donor), a situation in which democracy becomes something formal, and legality plays a marginal role (Ganev 2013, Hristov 2013). Understandably, *corruption is a winning strategy for success in such a social system.*

We must see the historical-cultural legacy as *part of the inherent character of the structures, actors, and institutions, which manifests itself in their complex way of interaction through the prism of their specific value-based orientations. In this view, of key importance is* their initial dependence on (non)public policies basic to their existence, which includes their attitude to the European funds and EU programs<sup>117</sup>). Unless this systematic and dialectical complexity is taken into account, we would predestine EU’s integration and enlargement policies to failure. Only after this radical reorientation of the paradigm can we understand why the local governments, regardless of their party affiliation and ideology, all turn out to be “predators” that are not particularly interested in the “carrot” of membership in the EU and successfully sabotage the instruments of post-accession conditionality<sup>118</sup>. This reorientation means desisting from the search for factors of the mode of action of social systems (Schimmelfennig, Ekiert) and looking upon the

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<sup>117</sup> The very productive fulfilment of this extremely complicated methodological program justifies our recommending Ganev’s book as exemplary for the scholarly tradition we are following.

<sup>118</sup> Let us make one last, important provision: the stress on the historical-cultural context is not solely relevant to the problems of the public policies of governments and of the EU. It is equally of heuristic value in explaining the successful cases. The fine point is that the paradigm of “rational institutionalism” is much weaker when it has to explain the failures, and so *it prefers not to notice them.* For instance, we agree with Börzel and Reise that “Spendzharova and Vachudova (2012) found little evidence for back-sliding in Bulgaria and Romania, which joined the EU three years later than the other CEE countries.” (Börzel/Reise 2012: 193) and we are largely inclined to attribute this result not to ignorance of the facts by the two female authors but to the consistent and deliberate adherence to the paradigm of rational institutionalism (Spendzharova/ Vachudova 2012). The question here is not that “[...] students of Europeanization have turned a blind eye to the possibility that opponents of EU reforms can also use the EU to advance their power and interest, inducing some domestic change, which, however, ultimately goes in the opposite direction to the EU’s intentions [...]” (Börzel/Pamuk 2012: 81-80), but whether the conceptual model allows a place for what seems to be a “pathology” in the implicit perspective of rational institutionalism. That is why we agree with Geoffrey Pridham’s observation that: “As a whole, the post-accession picture was more complex than that imagined by both the rationalists and constructivists.” (Pridham 2008: 385). Precisely in cases like the one we are examining here – which is a complex, changing one, ridden with internal contradictions and impregnated with mental patterns – historical sociology can best prove its explanatory potential.

“historical legacy” as the *character of the system’s mode of action*. This should not really be a problem since this methodological programme is well-known for over a decade:

“Studies of transition generally focus more on the immediate events and processes and less on the historical background which shapes it. Nevertheless, historical legacies and the extent to which a transition state has a ‘usable past’ are generally recognized as having an important bearing on the transition outcome. The term ‘historical legacy’ and the issue of ‘usability’ are, however, not systematically researched in the study of transition. Paradoxically, the more routinely employed concepts of ‘path dependency’ and ‘initial starting conditions’ tend to focus on the predetermining effects of decisions taken at the outset of the transition process rather than exploring the influence of historically rooted factors which may be equally important. (Hughes et al 2005: 30) [...] This kind of emphasis on the role of elites in implementing universalizable progressive change tends to overlook how the context in which transition occurs can have significant constraining effects on the outcome.... the legacy of the old regime will continue to loom large over the transition process itself.

One of the most underestimated aspects of post-communist transitions in Eastern Europe is the extent to which they are influenced by the legacies of the communist regimes.” (Ibid. 31)

In this connection, having made these methodological provisions, we fully agree with Katalin Kovacs and Petya Kabakchieva that:

““Europeanization” is highly path-dependant. The deeply-rooted cultural traits of the recipient administrative cultures could not be overcome overnight and generate various patterns of cohabitation. More advanced recipient countries managed to develop islands in the sea within their old administration, introducing fairly decentralized vertical chains, whilst the less advanced countries opted for building “superstructure” instead. These “superstructures”, regardless of the over-insured control mechanisms, proved to be less resistant to corruption and political favoritism.”<sup>119</sup> (Kovacs, Kabakchieva 2012: 146; see also Andreev 2007).

The further south-east in Europe we go, the more often we encounter this historicized research perspective on the subject of study:

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<sup>119</sup> The difference between historical sociology and the “path-dependent” approach is that the latter, being a method devised to explain the behavior of *organisations*, emphasizes the study of past decisions that influence present behavior (see also Andreev 2007). It lacks the broad scope of *historical sociology* as we know the latter from the classical works of De Tocqueville, Elias, Mannheim, Braudel and more recent authors like the American sociologists Moore Jr., Tilly, Skocpol. Regarding the Bulgarian situation and the contemporary historical facts in our country, see the excellent study by Ganev (Ganev 2013) or Аврамов (Аврамов 2007).



“This non-uniform internalization of Europeanization demonstrates that, although, this process in different countries may be based on identical exogenous principles and the operation of similar instruments, eventually Europeanization proves to be a distinctly national exercise of reformation and adjustability. It represents a path of domestic transformation in which every country adapts its policies, processes and institutions to new rules, procedures and practices emanating from the same European system of governance.” (Dîrzu 2011: 53)<sup>120</sup>.

Even Vachudova and Spendzharova, scholars with a preference for institutional rationalism, frequently begin their analyses of the particular Bulgarian-Romanian case by introducing the decisive role of historical legacy:

“Domestic conditions in Bulgaria and Romania at the moment of democratisation were less auspicious than in neighboring states. A large literature on the comparative politics of post-communism has shown the importance of communist and even pre-communist legacies in shaping political trajectories after 1989. Bulgaria and Romania suffered under oppressive and highly clientelistic communist regimes that took power in societies with low levels of industrialisation and civil society organisation in the pre-communist period. The “revolutions of 1989” in these countries were instead an internal communist coup where second-tier opportunists reinvented themselves as transitional democratic leaders, and then used the power of the state to win early elections. For much of the 1990s partial economic reform enriched the elite and entrenched networks of corruption while prolonging the economic hardships of the average citizen. In both countries the communist successor parties have been implicated in the most far-reaching and systematic corruption, as years of state capture by these parties would predict.” (Spendzharova, Vachudova 2011: 40; cf Vachudova, Spendzharova 2012: 2)<sup>121</sup>.

In short, it is the particularity of the issue under investigation in South-East Europe that requires such a historically-informed research perspective to be implemented. It is no coincidence that Papdimitriou and Gateva have entitled the conclusion of their analysis of the particular Bulgarian-Romanian course of Europeanization “Policy legacies and future implications – looking back to

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<sup>120</sup> Cf Ivanov: “Varying Bulgarian and Romanian responses to EU demands two forces: the conditionality of the European Union and the local ‘politics of anticorruption’ in each country, with roots in history, culture and peculiarity of transition”. (Ivanov 2012: 103).

<sup>121</sup> We stress again – the work that is most systematic and rich in empirical data regarding this process, and that offers the most convincing analysis is V. Ganev’s (Ganev 2013).

see forward” (Papadimitriou/Gateva 2009). And their interest in this particular case is incited by the fact that the case

“points to the significance of domestic mediating factors that *condition the transformational impact of the EU and have produced divergent reform trajectories across Central and Eastern Europe.*” (Papadimitriou, Gateva 2009: 2, italics added).

We must not overlook the differences that exist between, on one hand, the views of Hughes et al., Mungiu-Pippidi, Mendelski, Ganev, Avramov, Ágh, Kochenov, etc., frequently quoted in this study, and, on the other hand, the broad Polianism of the major part of studies on Europeanization which “found little evidence for back-sliding in Bulgaria and Romania” (Börzel/Risse 2012 :193). In view of this stark contrast between different interpretations given of the same set of facts, we cannot fail to see the depth of the problem. It is not a question of ignorance as to the facts or of personal bias or of the influence of random non-scientific factors. We come up against ***fundamental incongruity between the paradigms*** that entitle the facts as valid (or deny them this quality), and thus decide in advance the orientation and results of research. This problem deserves additional attention due to the methodological complexity and great importance of its direct political consequences.

We must repeat once more – we are not the first to have formulated this problem frankly. About ten years ago Hughes and his co-authors explicitly pointed out the issue as to the approach guiding the practical implementers and researchers of Europeanization, and they stressed that the biggest problem involved is the underlying tacit positivism:

“While existing studies have assessed how the EU has constructed conditionality and described the mechanisms by which the EU has attempted to implement it in the CEECS, the fundamental problem with the use of the concept of conditionality remains that it is underpinned by positivist assumptions. Positivist assumptions that conditionality generates compliance and or adaptation are tautological and, thus, are not analytically meaningful since they tell us nothing about the substantive nature of conditionality or the

nature of the compliance and the relationships between the two. These relationships can only be analysed by observation of how they work together in the real world.” (Hughes et al. 2005: 11)<sup>122</sup>.

According to these British scholars (who, as we stressed, have had no influence on the methodological orientation of the mainstream literature on Europeanization, despite being repeatedly referred to), the harm done by this positivism can be traced at several levels:

- a flat, one-dimensional understanding of the interacting elements of social life as being unidirectional “impact factors”;
- a universal understanding of Europeanization and EU conditionality as having variants and degrees of implementation that differ in but not in quality or historical phases;
- as a result of the above-mentioned characteristics, there is a recognisable tendency to mythologize the impact of the EU on other countries with which it interacts, as something unquestionably positive and irreversible; this includes countries that are candidates for membership, newly admitted members states, and neighboring states; this view indicates the inability to grasp the actual complexity of Europeanization, the variety, dialectical complexity and vulnerability of European integration and EU enlargement (Hughes et al. 2005: 22).

In contrast with this positivism, which continues to prevail even today, the authors propose their own research program:

“Thus our definition of conditionality is one that defines it by the process of its application rather than by an ideal-type assumed power relationship [...]. It is the interaction between multi-level actors, perceptions,

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<sup>122</sup> “This book argues that the phenomenon of conditionality is insufficiently understood within a narrowly positivist framework whereby EU conditionality is seen as a formal instrument for the transposition of the EU’s rules, norms and institutional templates to the CEECs.”(Hughes et al. 2005: 2). “EU enlargement conditionality is more usefully analysed as an interactive and dynamic process rather than one that should be examined only in terms of clear causative effects within a narrowly positivist framework. By investigating how EU conditionality operated in a key policy area during enlargement we have demonstrated the dynamic and fluid nature of both the concept and its impact on the candidates.” (Ibid.173).

interests, different rewards and sanctions, temporal factors, institutional and policy compliance, that characterizes conditionality” (Ibid. 3)... Consequently, the application of conditionality must be analysed on a case-by-case basis with regard to policy domain and country, paying attention to the multi-level actors involved both on the side of the EU and the candidate countries, their perceptions, the signalling of different rewards and sanctions, the interactions over compliance, and how as a process it develops over time.” (Ibid. 174).

Due to the methodology and inherent way of functioning of this research program, it is only logical that in the course of application of conditionality there will become evident:

“[...] the fluid nature of conditionality, the inconsistencies in its application by the Commission over time, and the weakness of a clear-cut causal relationship between conditionality and policy or institutional outcomes in the CEECs. The domestic institutional changes in the CEECs in the context of EU adaptational pressures have varied significantly across countries, with considerable room for manoeuvre for domestic actors” (Ibid. 8).

This is an approach that intentionally gives priority to the *complexity, internal dynamics and contradiction in the relations between the parties involved contextuality and historical legacies, seen as active constituents of the model for interaction of the process of European integration and Europeanization* – especially when studying the development of EU conditionality – and we take this approach as a consciously made choice of research strategy. This implies an obligatory *methodological reflexivity* – not only with respect to the research process but also with regard to the conducted policies of integration through conditionality.

We should point out that in the literature specially devoted to Europeanization through conditionality for EU membership, *the question as to the approach to reforms for establishing rule of law* is treated very rarely (Hughes et al., Maniokas, Mungiu-Pippidi, Ágh, Sedelmeier, Kochenov), so these exceptions are extraordinary valuable:

**“I argue that *the EU’s approach to rule of law reform is not appropriate under the prevailing conditions in South Eastern Europe. While the EU (together with its domestic change agents and other international donors) fights the rule of law reform battle with *de jure* and capacity-related reform weapons based on a technocratic and short-term approach, which focuses more on election outcomes than on the democratic process (Stewart “The interplay of domestic contexts and external***

democracy promotion: lessons from Eastern Europe and the South Caucasus”, in: *Democratization*, 16: 804–824. 2009), domestic veto players (reform opponents) use flexible guerrilla strategies which seem to be more successful in the long-run. Veto players employ an informal, flexible and non-democratic approach of resistance, which is based on influence, violence and licit and illicit actions by clientelistic power structures of political and economic actors (e.g. oligarchs), less formalized actors from the secret service, semi-mafia and criminal structures. Last but not least there are pressures and hidden actions by non-democratic countries (e.g. Russia) which hinder democratization in Ukraine and Moldova. The struggle over reforms resembles an asymmetric war, in which the EU pretends to reform (especially in the neighborhood countries) and the clientelistic powerful domestic actors pretend to be reformed. *Without changing the present reform approach of the EU, reform actions based on external conditionality will produce at best redistributive, capacity-related and short-term outcomes, rather than transformative and sustainable change.*” (Mendelski 2010: 15, italics added).

It is hardly a coincidence that in studying precisely these six countries – Albania, Serbia, Bulgaria, Romania, Moldova, and Ukraine – the author detects the *priority importance of the approach* to Europeanization because of the cultural disparity between the way of acting of local compared with “external” actors. But what is the value of applying a historically-informed perspective towards EU conditionality?

#### **4.2. How the “picture” becomes different after the change in the paradigmatic view on partnership between the EC and the Republic of Bulgaria: political consequences of the methodological choice**

In brief, the crisis of post-accession conditionality in Bulgaria and Romania has *built up as a result* of the clash of two long-term historical trends, which have produced *contrary but equally unrealistic expectations with regard to the CVM*. In this sense, the practical implementation of

this *innovative EU mechanism*<sup>123</sup> has been largely doomed to failure due to the paradigmatic particularities of the approach it is based on.

This means that, in order to understand the present state of the process, we must necessarily make a conceptual reconstruction of the particular “historical legacies” of EU conditionality as well as understand the peculiarities of the political models of these two South European countries. These two different prehistories, which predetermine the different political approaches, values, and mental patterns, are what engender the counter *Utopian expectations*. The clash between these contrary illusions is what thwarts the CVM.

The EC extrapolates on the basis of its experience from past years, from past enlargements and from the preparation for accession of the two South-eastern European countries. Now, this extrapolation amounts to projecting an unchanging model onto a future that, however, now proves to be a time of very different, structurally deteriorated conditions - for the two countries and globally. The national governments of the two countries are likewise projecting, but they do so in prioritising a package of properties of the pre-accession conditionality already familiar to them (moreover, they project in the context of problems that are aggravating their situation)<sup>124</sup>. The high degree of vagueness and inner inconsistency of the EC’s conditionality is very favorable for the emergence of these illusions. But it is also conducive to their clash and this is how the initial misinterpretation of the CVM and its current failure were politically constructed. Let us look into the details.

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<sup>123</sup> “The previous section has shown how EU conditionality for the CEE candidates changed after it was first set in 1993, *in both nature and scope*. The Copenhagen conditions set in 1993 were very general and open to interpretation, and they were then made progressively more specific and explicit through the pre-accession strategy. *The main actor shaping these conditions and defining the requirements in detail was the Commission rather than member-states.*” (Grabbe 2006: 14, italic added. See also p 25).

<sup>124</sup> For instance, in 2008 Bulgaria had a budget surplus of 4 billion Euros, so the loss of EU funding did not seem very menacing for the government, which had only a one-term horizon of acting and thinking.

First, we will look at the processes in the aspect of EC-led conditionality. In-depth studies of this unprecedented political practice (Maniokas, Hughes et al., Grabbe, Ágh, Kochenov, Buzogány, Papakostas) have convincingly shown that its development over the decades of the history of EU has had a distinctly *political character*.<sup>125</sup> Its essential distinguishing features are the following fundamental *assumptions*:

- Conditionality is a universal EU instrument, i.e. it is applied by the EU with respect to all candidate members and is thought to have a guaranteed impact, because the EU is a voluntary union of societies that, in typological terms, are of the same order. (Positivistic researches have invariably confirmed that the hidden assumptions underlying enlargement policies are factually true<sup>126</sup>.)

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<sup>125</sup> “The comparative analysis of the Commission’s reports cannot provide very clear and convincing arguments to support the choices made. There is no justification for the argument that only five countries had passed the line. The reports themselves have been written using different basis for evaluation and evaluation techniques.<sup>11</sup> Instead of clear methodology, the Commission used certain approaches which favoured certain countries and discriminated against others. It seems that the conclusions were made from the general impression about and the trust in a country rather than from the careful examination of its internal preparation [...] Later comments made by those who were involved in the particular decision-making suggest, for instance, that decision on Slovenia and Estonia made in 1997 was based more on geopolitical considerations<sup>125</sup>. However, the decision was presented as an objective choice based on the Copenhagen criteria.” (Maniokas 2004: 5).

<sup>126</sup>For instance, Sedelmeier draws the general conclusion, from his extensive overview of past research, that the EU “had a strong and systematic impact on state institutions of CEE – executives, legislatures, and judiciaries.” (Sedelmeier 2011: 17) ; “The literature finds the greatest impact of the EU in the policy dimension. Most studies confirm that this impact is due to the EU’s conditionality and that the incentive of membership – if credible – also trumped domestic costs [...] These studies largely find that the EU’s policy impact has been strong across policy areas and candidate countries.” (Ibid. 22); Moreover, as suggested above, in view of the importance of the membership incentive for conditionality-driven adjustment, the changing incentive structure after accession post-accession compliance in the new members should be more problematic than preaccession adjustments. However, case studies that provide evidence for the above expectations are in a minority.[...] By contrast, a number of case studies of particular policy areas and broader cross-country comparisons of compliance in the enlarged EU do not find systematic evidence of compliance problems after accession. [...] Along similar lines, compliance in the new members does not appear more problematic than in the old member states.”(Ibid. 25-26) .)

In brief, since Europeanization is universal, it cannot fail to be constantly successful, beyond occasional small obstacles arising now and again [...] Hence it is understandable that the same author saw no reason to change his views by 2012: “The European Union (EU) has generally been highly successful in diffusing its policies and institutional models to states that aspire to membership.” (Sedelmeier 2012: 20). Of course, he has only been able to find arguments that Europeanization through EU conditionality is sustainable. By coincidence, his observations are not about those sectors where there is struggle for political power, and moreover, newly admitted countries like Bulgaria and Romania never fall within his focus of attention.

- The advantages of membership in the Union are so great that the national governments will do anything to achieve them. And once achieved, the norms and quality of social life of the Union, required by the countries' status as member states, become self-sustained. Consequently, Europeanization is an irreversible process, and the only problem is to once become a member of the Union (which seems to happen automatically). That is why the *process of implementing the acquis* does not involve a clear, rigorous legal regulation, which is normally contained in them. It does not involve a strict regulation of rights and duties for preserving the status of EU membership, unlike the strictness of the concrete policies and ways of action and interaction of the Union's institutions contained in the *acquis* (broadly speaking, a difference between the detailed regulation of the behavior of private agencies and the sporadic regulation of the behavior of governments). The importance of protecting the rule of law as a specific political task for the Commission arose only in 2013.
- Conditionality is invariably constructed as an asymmetrical power relationship, and this asymmetry is so conspicuous (Maniokas, Grabbe, Sedelmeier, Börzel and Risse, Papakostas) that it *excludes* the eventuality of resistance of the local elites that have chosen the course of accession to the EU. The pre-accession conditionality europeize successfully and permanently the major local political players. In other words, the post-accession conditionality as a continuation of the former is in itself a guarantee that the rules will be observed, especially as *membership in the Union is without alternative*.
- Another assumption is that no one stands to lose from Europeanization and hence one cannot expect to meet with serious, systematic resistance against it, except by generally surmountable single "veto players" (players having positions and resources to block political decisions). Apart from that, Europeanization is a natural process carried out



through evolution, adaptation, diffusion, training, and socialisation, negotiating of opposed interests, calculation of benefits. It is a *normal way of development of European societies* (despite the excessive and/or disproportional focus on the economic, distinctly neo-liberal foundations of social life interpreted in specifically neo-liberal terms – something that was registered ten years ago by researchers Hughes, Grabbe, Ágh, and others)<sup>127</sup>. This necessarily leads to the circumstance that the set of sanction instruments is very poorly developed, and also to a permanent disinclination to *apply even the existing sanctions* (thus forming a vicious circle: the awareness of how limited and precarious is the possibility for bringing influence through sanctions becomes a cause for a conscious refusal to apply sanctions).

- Since it is hard to define what exactly constitutes fulfillment of the tasks involved in Europeanization, and the application of precise measures of fulfillment is impossible, the EC sets a priority on *measuring the success in terms of transference of the acquis to the local normative basis*; from there on it is assumed that the mechanisms of rule of law, required under the Copenhagen criteria (Grabbe, Mendelski, Ivanov, etc.), begin to operate automatically. Heather Grabbe, however, is *very precise when she asserts that the minimalistic expectations of the Commission* derive from the “fluctuating” content and scope of the acquis (Grabbe 2006: 33-34).
- The policies for applying the EU conditionality are always impregnated by a considerable dose of intentional vagueness and ambiguity, even inconsistency, so as to leave *ample*

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<sup>127</sup>Even if empirical research registers very significant “variations” of the results of applied conditionality, especially the post-accessional kind, the positivist “theory” of Europeanization will easily find a ready-made explanation for this (the reasons, of course, *cannot be inherent* to the EU conditionality policies): “*It is the domestic structures, Stupid!*”(Borzel/Risse 2012: 197).

*leeway for political discretion* (Hughes et al. 2005; Grabbe 2006; Ivanov 2012; Buzogany 2012; Maniokas 2004)<sup>128</sup>.

- The fact that the efficacy of EU conditionality widely varies depending on the concrete country, on the specific sector policies, but also on the historical point in time when it is applied is revealed at a very late stage of its historical development. Even more importantly, this variance still continues to be interpreted as a difference in degree and scope, not in principle (Sedelmeier 2011; Borzel & Risse 2012; Mendelski 2009; Toshkov 2012).
- As a result of all this, the *constant political innovativeness* that the EU/EC accession conditionality has been achieving for nearly a quarter of a century (Hughes et al., Grabbe, Sedelmeier, Ágh, Borzel) is mostly a *spontaneous process* of learning from one's mistakes and *intuitive experimentation* rather than a political approach, understood and implemented as an operationalized strategy (Grabbe 2006). The non-occurrence so far of any major mistakes and failures ("Europeanization is a constant "success story") has justified this way of development and made it possible for conditionality to be continued persistently in its key characteristics, including its intentional vagueness<sup>129</sup>. Conversely, this means that

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<sup>128</sup> "The Accession Partnerships left the rules of the game uncertain for applicants: what exactly would count as a 'failure to respect the Europe Agreements' or to make progress in fulfilling the Copenhagen criteria? The EU was still left with a large margin in interpreting whether applicants had met the conditions and whether or not relations were satisfactory in the period prior to accession." (Grabbe 2006: 16, see also pp 19-20). "However, no explicit rationale was presented for this agenda, even though it covered so many functions of the modern state. The conditions were presented as if they were self-evident, with no acknowledgement of the policy debates going on in the EU and outside...." (Ibid. 24) "Even though this was such a wide agenda from such an important external influence, there was no detailed justification for these demands beyond the fact that they came in the name of joining the EU." (Ibid. 25). The linkage between fulfilling particular tasks and receiving particular benefits was much less clear than in IFI conditionality because the tasks were complex and many of them were not amenable to quantitative targets that showed explicitly when they had been fulfilled." (Ibid. 32).

<sup>129</sup> "The EU's policy agenda for CEE was innovative in the history of European integration in that it went further than the agenda for any previous applicant. However, its development was an iterated process whereby the conditions were changed and reshaped over the pre-accession period. It was an often ambiguous conditionality, because the EU is a complex constellation of actors who often maintain ambiguity to gain agreement among themselves. For these two reasons, the conditionality was difficult to interpret for the applicants, and the researcher has to go to some lengths to 'deconstruct' the EU's agenda for the candidates before trying to analyse its impact." (Grabbe 2006: 37).

the occurrence of a “major mistake” may become *the cause of a qualitative change in the mechanisms of realisation of post-accession conditionality* in order for the EU to develop as a successful, *responsible agent* of enlargement policies.

On the basis of this persistent political character of EU conditionality, at the point when it has to turn from *pre-accession* into *post-accession*, a critical period looms ahead. It is not coincidental that Ágh believes *the whole period after the beginning of the fifth enlargement is a period of EU crisis*<sup>130</sup>. He is referring to the fact that post-accession conditionality ought to *be solving completely different tasks*, while in fact *it is continuing to follow its characteristics from the pre-accession phase*. Very briefly, this contradiction between the new nature of the tasks and the old nature of the solutions proposed by EU conditionality can be reduced to the contrary functioning of three trends:

- a) the disappearance of expected benefits from membership,
- b) the change of the context (and the status of the former candidate countries), which endenders a *growing change in the gravity of the inner motivation for conduct* under

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<sup>130</sup>The introductory paragraph of the introduction to the book by Ágh and Ferenc, in which the eastward enlargement is viewed as a crisis, reads:

**“I INTRODUCTION: THE PLEASURE AND THE PAIN OF JOINING THE EU**

***7.1 Absorption capacity and post-accession management***

The last year, 2006 was the 'annus miserabilis' in the new member states. The previous year, 2005 was qualified in the same way by the old member states. It has become clear for the new member states that the most difficult period is not behind them in the accession period but ahead of them in the post-accession period. The Eastern enlargement has been a success story in a historical approach and in many policy areas, coupled with a high economic growth. But it has also been a very painful process for the populations of the East Central European (ECE) countries that has been followed with a high insensitivity in the Western public opinion and by the EU transnational institutions. The old member states have their 'enlargement fatigue' and the new member states have their 'transition or accession fatigue' with a large number of 'hesitant Europeans' on both sides. This paper tries to describe this situation and explore the reasons for the post-accession crisis in the new member states by indicating the social challenge behind. [...]

There has been a specific situation in the new member states that will be analysed in this study, namely unlike the former enlargements, *the formal entry of the EU10 does not mean their effective membership, since they have a 'completing membership' process within the EU in various policy fields*. This aspect of *post-accession management* has been largely neglected by the EU that has generated many crisis phenomena in the new member states it has produced for the short run a destabilizing effect.” (Ágh, Ferencz 2007: 7, italic - AA).

conditions of full membership, while the context actually decrease this motivation, and, hence,

- c) the question of the instruments to be applied for exercising influence in this new context exactly becomes far more significant; however, these instruments have decreased in number and deteriorated (Gateva 2013). This is how the post-accession hooliganism in Bulgaria and Romania (Ganev) bursts out.

More importantly, in this way a new key characteristic of post-accession conditionality is constituted: an acute internal contradiction that, however, remains invisible or misunderstood by the agents of this political process. In fact, the failure of the CVM in Bulgaria and Romania has shown something that is not new in itself. *The on-going course of political events reveals the structural crisis of the post-accession conditionality which has now been highlighted as a fundamental feature of the process because it has abruptly come starkly to the surface.*

This next, *culminating phase of the crisis* is now produced by the clash of the *contrary, equally illusory expectations of the EC and the local governments*. The collision is a result of two overlapping processes. First, it was generated (to a considerable degree) by the latent phase of the crisis, at the time when political decisions were made (in other words, they are path dependent). But secondly, it is also generated by the general *persistent pattern in the approach of the EU conditionality* (i.e. by its own legacy which is culturally specific), and by the historical nature of the two societies, which temporarily “fell out” of EU enlargement at its fifth wave. In other words, both sides to the interaction are dependent *on their own respective “historical legacies” which define the path of the conditionality...*

The *illusion* underlying the EC’s expectations from the application of the CVM consists in the EC’s hope that the periodical reports will have the same force of impact as did the reports of the

pre-accession period. Sustainability of the illusory hope is astonishing in light of the accumulated disproofs after the second year of application of the mechanism in both observed countries. Its key position in the EC's approach is evidenced by for instance, the mere enumeration of the areas of existing social problems as if sufficient incentive for the local governments to focus their efforts on reforms in precisely those areas. Also, the expectation that the EC's "naming and shaming" would be a sufficient warning for the governments to get back on the due, correct course of action. These expectations *were valid and were producing results* for nearly 10-15 years. It was only natural for the impression to arise, at that time, that these tacit assumptions regarding Europeanization are "universally valid" (not to mention that the positivistic social researches are constantly confirming the assumptions both as facts and as slogans).

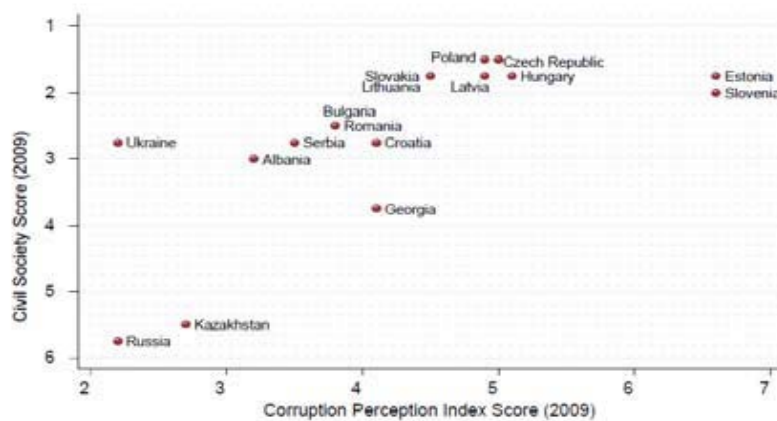
These expectations were illusory, for the situation was in fact quite different:

- Each successive wave of EU enlargement involves countries that significantly differ from the previous; not only were the countries of the fourth and fifth enlargement different in type, but even within the overall set of "East European" countries there were significant differences between Poland, Hungary, Czech Republic and Slovakia on one hand, and Bulgaria and Romania on the other, while the Baltic countries are also a separate and internally differentiated case (Estonia and Lithuania proved to be following quite different trajectories of development after their accession to the EU). This is not only a matter of differences in "speed" of progress or of some single trait by which the countries differ from one another in quantitative terms. There exist deep typological disparities between societies that prove to be qualitatively different so that the typological differences define separate subgroups; for instance, Bulgaria and Romania are countries in which different languages are spoken, whose histories are quite different, yet which are hardly

distinguishable in their typological aspect <sup>131</sup>: they fell out together from the top ranks of the fifth enlargement, unlike the lagging Baltic countries that nevertheless managed to outdistance them.

<sup>131</sup> Mungiu-Pippidi supplies very interesting data showing that in the positioning of a conventional social space of 16 former communist countries, Bulgaria and Romania hold a perfectly identical position.

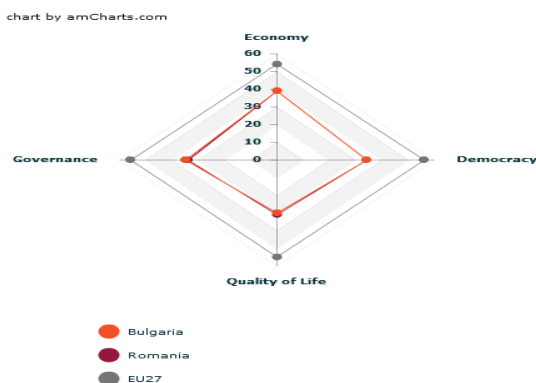
**Fig. 4. The Association Between Civil Society and Control of Corruption**



*Freedom House Nations in Transit 2009 scores recoded (stronger civil society has higher scores); CPI 2009 from Transparency International (higher scores indicate more corruption) (Mungiu-Pippidi 2011: 162).*

The complex Catch-up Index of the Open Society Institute is very detailed in its initial, varied in quality indicators, yet it likewise is not able to register differences in the social life of Bulgaria and Romania:

**Fig. 5. Graphical presentation of the finding of the Catch-up Index survey for Bulgaria and Romania in comparison with EU-27**



Source: <http://www.thecatchupindex.eu/TheCatchUpIndex/> (Lesenski 2012).

- The causes of these typological differences lie in the *deep structural foundations of social life*. (For instance, Bulgaria and Romania have a distinctly agrarian character of their economies and societies, and stemming from this is the weak commercialisation, weak social cohesion, undeveloped civil society, a superficial Christianisation where the social bonds are constituted by the state power; hence, the “first free elections” held after the internal communist party coups in the two countries were won by the former communists; the central role of the state continues to be maintained, but the state is purposely kept in a condition of helplessness and is plagued by clientele, quasi-patriarchal relationships, etc. – there is an enormous and growing amount of literature on these questions.)
- All this means that for this type of societies the tasks of Europeanization are far greater in number, relate to a far greater range of domains of social life, and have to deal with far more difficult challenges<sup>132</sup>. In brief, tasks of such depth and range are practically unachievable, except on paper. But the very lack of rule of law in these countries makes it very simple to adopt the *acquis* (as it is all the same whether the laws you will, in any case, *not* be applying in practice are part of national or of transposed legislation). Thus it becomes possible to create the realistic illusion that these two countries are rapidly making up for their lag by adopting the *acquis*, a process by which the EC measures progress in preparation for EU membership. On the basis of the EC’s past experience, the Commission

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<sup>132</sup>It is important to recall A. Ágh’s warning as early as 2007 that, due to the essential contradiction in the conditions for EU accession at the later stages of enlargement, the governments that have to implement post-accession policies are carry a disproportionate (and continually growing, at the following stages) burden and responsibility:

“1. The later the enlargement takes place, the less developed countries enter with a longer and more difficult catching up period, and with an increasing need for the EU assistance.

2. The more complex EU carries out the enlargement, the more qualitative problems the new members have to face in the policy formulation and integration (e.g. in social, environmental and information-society policies).

3. The more developed the EU becomes, the less willingness is felt by its member states to assist the new members, including helping them in joining the new policies as a post-accession management.

[...] The cumulative negative effect of the above three points is going to be stronger and stronger in the case of further enlargements and it creates tremendous difficulties for the latecomer new members, Bulgaria and Romania, and even later for Croatia.” (Ágh 2007: 16-17)

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can be deceived by imitation of successful Europeanization in these two neighboring, typologically similar countries.

- Since there have been previous waves of enlargement, the EC *has now learned* how real the problem of law-implementation is, and has begun to insist on receiving proof precisely of *application* (meaning results). And this is far from being the only aspect of the fundamentally changed context of partnership. The change is due to the fact that the momentum for social change accumulated in the pre-accession period had seemingly confirmed the assumption that Europeanization is universal and irreversible<sup>133</sup> and respectively made it seem inappropriate to penalise non-fulfillment. But when Europeanization has in fact been only on paper, the passage of a country to the status of EU member entails a major loss of incentives for respecting the rules and complying with them (Gateva; Ganev; Papakostas). The fundamental change implies several things: a) *expected benefits* of membership, and b) a *competitive environment* of other candidates, but also c) *the (im)possibility for parties to draw electoral advantages from mere membership in the EU for its own sake*. Apart from this, very little has really changed inside the countries in terms of quality of life; i.e., genuine Europeanization through the effective rule of law is not felt to have happened.
- With the accession of Bulgaria and Romania to the EU, there arose for the first time the unprecedented task that *the nature of the judiciary in the two societies be changed* through social transformations. This is a particularly delicate issue for two reasons. First, as numerous studies have established, the post-accession conditionality is productive with

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<sup>133</sup> We should not forget that the Bulgarian-Romanian case is *certainly not the first case of reversibility in Europeanization in a post-accession period*: a precise empirical scrutiny based on complex quantitative indicators, leads to the conclusion that: “The reform reversals after accession in most firstwave countries confirm the limited (unsustainable) impact of the EU.” (Mendeski 2009: 62).



regard to policies that lean on clear *acquis* and for which progress can actually be proven. This is not the case in the sphere of justice, for an effectively functioning judiciary is a structural precondition for rule of law, and under the Copenhagen criteria, *it is assumed rule of law already exists before a country is accepted as a member in the Union*. There simply cannot be an *acquis* relevant to *building the rule of law in EU-15*. Moreover, the sphere of the judiciary is too sensitive in each national society and therefore in this area *there is no possibility for having a common European regulation* (Alegre, Ivanova, Denis-Smith 2009). Together, these two factors explain the lack of imperative norms in this particular sphere (Sedelmeier, Mendelski, Ivanov, Busogani, Papakostas, etc.), a lack that has proven crucial for the fundamental structural change in South-Eastern European societies.<sup>134</sup> Hence the possibilities for the post-accession conditionality to be effective are quite limited from the start, and the CVM keeps moving on from the momentum of its supposed universality and with the memory of former successes in other sector policies.

- Secondly, we should radicalize the observation repeated time and again by M. Mendelski that post-accession conditionality in terms of following the EC recommendations really works when the recommendations refer mainly to *technical-procedural changes*. But as a general rule, the EC can achieve little results with regard to the kind of structural reforms that might lead to a redistribution of power. The proposed by CVM changes to be made in

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<sup>134</sup> This completely applies as well to the whole sphere of public administration that should provide the capacity for conducting reforms and public policies: “The lacking sustainability of most public administration reforms can often be traced back to a deficient implementation pre-accession. During the pre-accession process, time pressure and the top-down and elite-driven policy process hindered potential reform entrepreneurs to develop sufficient political clout necessary to bolster sustainable reforms. At the same time, the European Commission lacked transparent criteria to assess *administrative capacity*, but rather stressed the importance of independent regulatory authorities that would ‘lock-in’ a depoliticized civil service and protect the independence of top-level civil servants against political ‘rent-seeking’. However, five years after accession, most of these goals seem to have fallen into oblivion.” (Buzogany 2012: 122). “In sum, with the partial exception of the Baltic States, post-accession backsliding in public administration reform and politicization of administration has been rather typical for the CEE countries. While the accession process stalled extensive (party) politicization witnessed during the 1990s, political actors have regained influence over public administration, as their power resource, after accession.” (Ibid. 123).

the judiciary systems of the two countries are precisely of the second type: these changes redistribute power not only within the judiciary system but in the whole political system. It could have been foreseen from the start that the change would not work in precisely this sphere. Chances to achieve its objectives are quite meak due to the superimposition of both the effects of the features of the 'sector' context of application of the post-accession conditionality and the pattern for the application inherited from the past

- The design of the CVM itself incorporates the basic assumption that governments will respond to the conditionality mechanism with *continuous enthusiasm, mobilization for progress during the period of preparation for EU membership* – whether because they feel “those are the rules” or out of sheer inertia. It is at this point that the EC’s illusions about post-accession conditionality, illusions shaped by experience from the path traveled in the pre-accession conditionality, become especially harmful. Because the governments too, whatever their personal or party composition, *have their own counter illusions, a fact of which EC certainly should be aware*. The governments are no longer guided by the “proposed incentives” of EU membership, which have now disappeared, but by their own, habitual value attitudes and party interests (Ágh, Ganev, Ivanov, Tanasoiu, Racovita).

This brings us to a new order of listing of the key components of the Utopian expectations of the local governments, *expectations shaped during the previous years of cooperation with the EC*:

- The governments expect, as evidenced by the persistent lack of public debate on the budgetary structure of the operational programs, that the EC *will continue to finance capacity building* and so... they are in no hurry to build by themselves (even though they have previously absorbed funds for this purpose to the amount of billions of Euros). For if they did build the capacity, the beneficiaries of European funding would be the citizens

themselves and the economic entities, *not the governments, whose power of redistribution would be drastically reduced.*

- The governments expect that *the EC will continue to count achievements on paper as actual progress, as evidenced by the effort for fabricating a large number of program documents without practical consequences and so they naturally view the requirements for application and concrete results as an unfair “change of the rules” or as the application of a “double standard”.* However, for the governments, the achievement of the goals of the CVM would amount to a change of the whole social model, which would disempower the governments; hence, they are sure that *any other party that comes to power would continue the same course of resistance against reforms and the same imitation of Europeanization.*
- The governments of Bulgaria expect that *the EC will take advantage of the previous practice of discretionary political bonuses awarded for loyalty (“the gift for Kosovo”) and will invest efforts in merely supporting pro-European discourse (under the constant *real threat of a turn of political interests towards Russia*, a threat that naturally does not exist in Poland or Hungary or the Baltic countries).*
- The governments are confident, as shown in the "bravery" in the stubborn resistance against recommendations received, that *the EC will not use even its limited resources of sanctioning mechanisms, because this would constitute a precedent later applicable towards other member states as well.*
- The governments, judging to some extent from past experience, rely that *the EC is as irresponsible in its conduct as they are, and will simply continue to “play the political game” (to close its eyes to the lack of various European standards in each of the monitored societies) like it did in the previous decade (this expectation has proven very unrealistic in*

the wake of the social-economic impact of the world crisis of 2008). Their certainty derives from the logical argument that be it otherwise their countries should not even have become members of the EU (as it should be the case with some other of the older member states, not just some post-communist countries but Greece, and even Italy).

In brief, the governments also made extrapolations for the future based on CVM experience from the pre-accession stage; they did so because, from their point of view, “nothing has really changed”.

However, since 2007 the situation has been completely different – globally, within the EU and for the newly admitted countries – and this mechanism cannot possibly be a simple continuation of the pre-accession framework of mutual relations between the EC and the national governments. The collision between contrary illusions was inevitable, and it was simply a matter of time before the crisis of post-accession conditionality surfaced: the Romanian crisis anticipated the Bulgarian one by nearly a year, but remained enclosed within the boundaries of relations between Brussels and Bucharest, while the Bulgarian one proved deeper and of longer duration, and spilled out of the framework of Brussels-Sofia relations and into the form of months-long street protests of citizens against the general political model of the country.

We see that in this case the stumbling block is the fact that the policies for social change that EC expects to be followed have in the course of time come up against the root of the problem. Reform policies are obstructed by the structural characteristics of the social systems in the two countries that make the latter different typologically compared with the previous EU candidate countries. Thus, the recent the EC reports contain the discovery that what are needed are “fundamental and all-embracing reforms” in both countries. We thus come to the question of the key historical definition of the nature of the national societies in South-eastern Europe, a nature that is typologically the same for these two countries and hence has produced the same kind of problem

with regard to fighting corruption, similar mentalities, similar expectations and/or illusions, and a common model of political culture that reproduces those expectations and illusions.

We shall find the explanation for the problem we are interested in if we look upon the CVM in the horizon of the *longue durée* of modernisation reforms in Bulgaria. It is not a new or an extravagant suggestion to look at the EU accession process in the long-term perspective of modernisation:

“Europeanization has the effect of *empowering modernizers* to change specific policies (particularly macro-economic policies) and also to reform political institutions; this effect has been observed not only in the case of later acceders to the EU like Greece [...], but also in founder-members like France [...] and Italy [...]” (Grabbe 2006: 51) “[...] the goal of joining the EU was not just based on a calculated motivation of receiving specific benefits, but was seen as a way of becoming ‘modern’ and ‘civilized’. Identification with ‘Europe’ as an ideal of civilization, embodying a distinct set of values and standards of political behavior and socio-economic organisation, provided a crucial component of the motivation to press on with painful and divisive reforms [...]” (Ibid. 53). “However, there was a very widespread perception in Central and Eastern Europe that the process of ‘EU-ization’ – meaning the meeting of accession requirements and the adoption of EU norms, policies and institutional models – was strongly connected to the wider processes of modernisation and post-communist transition. For many people in the region, EU-isation was part of, and even a pre-requisite for, the wider Europeanization of their countries, which meant moving beyond communist legacies and regaining a full role in the European political and economic space. The ambiguity of the term ‘Europeanization’ thus usefully captures an important ambiguity in the CEE candidates’ attitudes towards alignment with EU norms.” (Ibid. 5) “The quest for good government includes the creation of a more professional civil service, the modernization of local and/or regional self-governments, judicial reforms and establishing a more constructive dialogue with civil society.” (Ágh 2008b: 310 .) “[...] It can be paralleled ‘internally’ with the transition from ‘democratization’ to ‘modernization’, since the transition from EU compatibility to EU conformity brings about the completion of the democratic institution-building in order to produce a new system of institutions with high performance. It is more difficult, since the further political harmonization presupposes a deeper penetration of EU politics and policy into the ECE politics and it demands a more radical and more detailed transformation of the legal and political systems than before.” (ibid. 347-348) “Namely in democratic transition the main task was to democratize the whole society and to establish the constitutional state. In democratic consolidation cum adaptive Europeanization the performance of these institutions as modernization, i.e. the improvement of the quality of democracy comes to the fore. It is not enough any

longer to ‘import’ an institution from the West; the major issue is how it can work properly or efficiently as ‘good governance’. For the full implementation of the *acquis* it is not the political will that is missing but the administrative capacity to domesticate and implement them properly.” (ibid. 315). (See also Mendelski 2009, and many other researchers of Europeanization).

Looking through the prism of the modernisational processes we can easily identify that the essential problem lies in the systematic resistance to the civilizational transformation hidden behind a purely declarative compliance with the course of reforms imposed by external creditors, a situation that has gone on and on in the form of mutual outwitting, of which corrupt practices are an inseparable part:

“During almost its entire post-Liberation economic history, Bulgaria was a country in a position of economic guardianship. Access to capital markets was always problematic and required mediation, the price of which was economic conditionality. The immediate aim of the latter was to protect the creditor’s investment. But the actual influence exercised far surpassed the technical aspect. It turned into a large code of rules, traditions, and mechanisms that predetermined the framework between creditors and debtors.

This world was complicated and overpopulated. It included multiple players, contradictory functions and “Byzantine” interests. It built a particular institutional context. It devised its own tools – instruments and levers for exercising, but also for resisting, pressure. The world of economic conditionality creates its own language and signs. It generates theoretical paradigms and canons of economic policy. It bursts and intervenes into the media, political life and the public consciousness of the “recipient” country.

What is involved is far more than customary rules of trade law regulating relationships between creditors and debtors. Economic conditionality is the core of the asymmetrical (hierarchical) relationships between the metropolis and the peripheral (dependent) economy. To generalize it completely, conditionality embodies the divide between the mentality and behavior in mature market economies and in a transition economy (whatever that may mean). All this makes of economic conditionality a specific kind of culture, and its clash with the local reality becomes a series of *cultural shocks*. The basic formula of conditionality – “money in exchange for reforms” – is an essential catalyst of modernisation. *The history of debts is the core of the history of Bulgarian modernisation.*

[...]This process concerns different layers: it marked the procedures of decision making, the “material” aspects of the economy, the purely mental self-reflection and self-identification of the nation [...].” (Аврамов 2007: 538, italics R.A.).

Avramov's fundamental study ought to be a mandatory reference guide for anyone<sup>135</sup> who wishes to deliver opinions on the reform policies in Bulgaria. Drawing on factual material going back over a century, the author has explained the connection between the undeveloped market economy, the non-investment-minded attitude to capital, and the resulting partisan party political practices, based on mentality models of constant struggle for personal and group benefits obtainable through access to and abuse of power, a situation where corruption is a norm. In this context, external creditors have insisted on reforms as a preliminary condition for national absorption of loans. As a result, Avramov repeatedly reminds the reader, four fifths of the roads and harbors of the country were built under external pressure, but at the cost of party-supported plundering of state resources, and especially at the cost of a permanent incapacity to establish a mechanism for sustainable socioeconomic development that might eliminate the dependence on foreign funding. Thus, there is a century-long tradition of systematic resistance to reforms that might break down all aspects of the local habits, which are now deeply and widely embedded in the status quo. The historical failure of reforms has been engendered not by private, however powerful, interests of separate individuals or groups. What is working against reforms is the spontaneous and synchronized response of the systematic institutional and cultural structure of the status quo, in which all public agents are entrenched to some degree or another.

In this perspective, it is important to point out that our position is not a completely new one. In response to the crisis of relationships between the EU and Bulgaria in 2008, the Prime Minister S. Stanishev (2005-2009) entrusted an international team of experts to investigate the issue. They were to clarify the causes of the catastrophe that took place in the first two years of Bulgaria's membership in the EU, leading to the freezing of funds amounting to approximately half a billion

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<sup>135</sup> We trust the reader will easily detect the paradigmatic similarity between Avramov's study and the present investigation: to see the methodological commonality it is enough to trace the connection between problem situation defined by a system of interacting participants, their peculiar stakes, "manoeuvres", and mentality models, including language tricks.

Euro. It is very symptomatic that the team, chaired by Dominique de Villepin, made an *integral assessment of the social-political system of the country*, and did more than simply provide a diagnosis of a momentary state. The report provided proofs that the rule of law in this country was still at a “proto-embryonic stage of development” and that, even more importantly:

“The risk was high on both sides to consider the page turned on the day of Bulgaria’s accession to the EU, effective as of January 1<sup>st</sup> 2007. Surely, it was the conclusion of a process that had begun in 1999. But it was also, for both sides, the beginning of a new one. The lack of perception of the dynamics of the relationship has led to deep misunderstandings. That is why it seems necessary to consider all the efforts, promises and shortcomings of Bulgaria and of the European Union in the construction of a solid partnership, since 2007, in a historical, social and political perspective, so as to avoid errors of the past. Moreover, in order to properly assess the current critical momentum in the accession process of Bulgaria in the EU, *the deep cultural gap between both realities constitutes a key factor.*” (italics added).<sup>136</sup>

The political and partisan context of the elaboration of this in-depth analysis partially explains why it received very little publicity. But what is hardly excusable is the disregard for this external assessment on the part of the numerous experts that the EU claims to have consulted while preparing its regular reports. Not a single line in any of the monitoring reports indicates that the results of this comprehensive in-depth analysis have been taken into account.

If they had been, it would have become clear that the pertinent civilizational tasks cannot be achieved by any package of momentary actions or measures aimed at rectifying the (partial) omissions and shortcomings – the kind of package that is the end product of each annual

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<sup>136</sup> International Advisory Board Report. 2009. Bulgaria in the EU: Building a New Partnership. [http://www.capital.bg/getatt.php?filename=o\\_764292.pdf](http://www.capital.bg/getatt.php?filename=o_764292.pdf), p. 2, accessed on 17.08.2009). This turns into a generally shared knowledge: “Both for the observers and citizens of these countries it is clear that between them and most of the old EU member states there are serious differences, that range from low income, to the size and quality of public services (especially education and healthcare) and to the character of the political process and economic competition. Democracy in our country and in Romania is stable and even consolidated (in the sense of being “the only game in town”), but it is a low-quality democracy that cannot generate trust among citizens for its key institutions. Ours is a market and competitive economy, but in it, being close to those in government is still an important (perhaps the most important) precondition for enrichment and for preserving one’s economic positions.” (Смилов 2012). “Obviously, the three regions – Central Europe, the Balkans and Eastern Europe proper – were so markedly different at the very start of systemic change. The long term historical trend lines have come back even more strongly later, so these divergences have increased since then. [...]it is enough to emphasize that their historical background, economic level of development and institutional system is basically different. The basic differences have also appeared in the different treatments by the EU.” (Ágh 2008b: 307-308).



monitoring of Bulgaria and Romania. It should be kept in mind that the policy for which the CVM is expected to provide orientation does indeed tackle truly fundamental tasks related to the overall transformation of the institutional design and of the ways of conducting public policies. These tasks may generally be defined, following the tradition of the 19<sup>th</sup> and 20<sup>th</sup> century, as the continuing modernisation of Balkan countries<sup>137</sup>. The tasks are not very different, nor are the instruments used to achieve them, or the successful resistance demonstrated against change. The social-cultural context of these tasks is persistent and continuously plays a decisive role in the course of implementation of the social-economic and political projects. Hence it is imperative that we understand this context and take it into account in designing reform policies, lest the failure of reforms also prove constant.

At this point it is necessary to consider another local tradition of political reform – a case that occurred long before the application of the CVM. More than 10 years ago the World Bank attempted to assist the Bulgarian governments to change the quality of social life in our country by modernising the national education system in order not simply to raise the education level and quality of human resources but more generally to permanently enhance the economic capacity for development of Bulgarian society. For this purpose, a nine-year project for modernisation of education was designed and put into action; by the third year of implementation, it was canceled due to “lack of progress”.

In many aspects, the observations relative to the implementation and failure of this project fully coincide with the findings of the CVM reports: they indicate a substitution of the goals of reform by activities aimed at perfecting the system as an end in itself; imitation of reforms in order to absorb funds for “other purposes”; spontaneous but systematic resistance against the change, including at the level of language usage and way of thinking; the deep civilizational and social

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<sup>137</sup> On this question, see: Mishkova 2000; Ivanov 2009; Avramov 2007; Daskalov 2005; Jelavic 2003.

roots (in terms of institutions, mentality, and norms) of this resistance. Gradually it became clear that the problem of quality of administration and policy-making was crucial to the efficacy of reforms and that political responsibility plays a decisive role for the success of the reforms (Dimitrov 2012).

But the case of the CVM is definitely *not identical* with the earlier Education Modernization project: there is one fundamental difference here. The World Bank was not a real stakeholder in reforms of Bulgarian society. Whereas with accession to the EU, Bulgaria, represented by its governments, assumes of its own accord the obligation to achieve certain standards of public life that guarantee the social homogeneity of the common European area. Respectively, the EC is not foreign and external to Bulgarian society but is a stakeholder in the upholding of principles and values that make the EU possible, inasmuch as Bulgarian society is supposed to be part of the common European social-economic, political and values area. However, this directly implies that both the Commission and the country carry shared responsibilities, that the former is not a side observer but a participant in partnership with the Bulgarian governments. For, we recall once again that, as the reports for 2012 have stressed, “Today's European Union is highly interdependent”.

In addition, the *EC, unlike the World Bank, is able to exert influence through political tools, legal and financial levers*. Moreover, at present the EC has at hand a considerably more adequate and powerful tool-box for influencing the member states than it did at the time it had to deal with the problems of countries like Italy or Greece; yet the Commission is still not inclined to use these tools (Mungiu-Pippidi 2011: 161, see also Grabbe 2006). The EC *carries shared responsibility for the quality and results of the CVM* (on this issue we are of the same mind as D. Smilov). However, here this is a question of political approaches or political ownership. Hughes et al. and Maniokas were the first, more than a decade ago, to assert that the *way of implementation* (and respectively

the efficacy of the mechanisms) of accession conditionality by the EU is foremost a *question of political approach*.

Let us not forget - at present, reforms are more imperatively needed than ever. Upon their outcome will depend whether Bulgaria (and Romania) will become part of a homogenous European social space not divided by territorial boundaries – with equally guaranteed free market economy and competitive capacity, a genuine democratic representation, rule of law, viable and active civil society; a common social space where the rights and personal dignity of citizens are also guaranteed. (For this is the unquestionably necessary foundation of values and institutions of today's uniting Europe, a foundation that will enable the principle of "Unity in diversity" to develop and achieve positive results.) The problem is that when the treaty for EU membership of Bulgaria and Romania came into force, none of these requirements had been sufficiently fulfilled by the two countries, due to some key specificities in all the elements of their socio-cultural system (Dimitrov 2012). This is why right here the paradigmatic problem discussed in this section becomes of decisive importance.

Hence comes the big question: are the particularities of the CVM registered by our study ("omissions" and "shortcomings" of the reports) a sign of an ad hoc approach used in the course of the continuing self-training of the EC, or are they *a manifestation of an intentional political course of action*? In other words, are the problems of the CVM, established by the study, simply a result of continuing inertia from past years, from a time when *EU conditionality did not need* to be very clearly defined (for it was leading to successful enlargement and Europeanization anyway)? Or, on the contrary, is the EC maintaining a high degree of deliberate ambivalence, ambiguities, and inconsistency in implementing conditionality in order to have political flexibility and discretionary possibilities for political decision making; is that why monitoring is being conducted in this way, too frivolous, methodological indefinite way?

The fundamental importance of this distinction derives from the political consequences of the possible answers to these questions: if the answer to the first question is positive, ways may be sought to enhance the efficacy of the CVM, and if the positive answer goes to the second, then it would be practically impossible to improve the mechanism, for EU conditionality would generally be serving completely different political goals from those officially stated.

## 5. The great social-political challenge to the CVM

### 5.1. Lack of experience as an excuse

Undoubtedly the tasks facing the CVM are an unprecedented challenge for the EC and the national governments of the monitored countries. On the one hand, as Hughes et al. have explained in detail, the EU accession conditionality applied in the Central and East European countries *are unprecedented with regard to the scope and complexity of the task to bring about systematic and co-ordinated social-economic and political change in societies that, together, make up nearly one fourth of Europe* and reflect the whole national-historical and cultural variety of Europe.

At the same time, there is a *hidden contradiction* in the approach underlying conditionality. The contradiction has had traditionally at least two levels. At a verbal level, priority is given to *democratization* (and establishing the rule of law), but in fact what is being done is primarily *the preparation of the economic preconditions* for effective integration. This shows the utter lack of experience of the EU in managing non-economic transformations “and the consolidation of democratic accountability over state decision making in these nascent democracies” (Hughes et al 2005: 18-23). Also, it shows it is impossible to practice a publicly transparent, accountable democracy in the interaction between EC (which, in general, is not that much democratically accountable in its work) and governments that are inexperienced in democracy. In this situation, there is simply no way that the EU approach can be intrinsically coordinated, stable and consistent<sup>138</sup> (the Union itself has appeared rather recently, already has had extended to 15 member states and is now radically, constantly changing).

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<sup>138</sup> The classical shortcomings of pre-accession conditionality are well-known: “The main shortcomings of both *Regular Reports* and the *Accession Partnerships* had to do first, with the fact that they used a generic, universal phrasing for all assessments and they refrained from providing specific solutions and recommendations. Second, they were highly politically charged due to their impact on domestic politics, thus, necessitating that the Commission used

Apart from this, it is understandable that post-accession conditionality for the post-communist societies has been designed in the course of, and under the influence of, *pre-accession conditionality*. The problem here is, we emphasize it again, in the mechanical extrapolation based on past experience. The post-accession conditionality takes it for granted that the kind of government mobilization that existed when the countries were preparing for EU membership will continue in the future as a natural process. This powerful mobilization of the governmental apparatus, especially in the case of Bulgaria and Romania, was possible at the time, but mainly a) due to the intense competition between the two rivaling candidate countries, b) in expectation of the direct benefits of membership, and c) when the task was chiefly limited to adopting the *acquis*. These temporary preconditions in the pre-accession period tended, understandably, to obscure the other side of the coin, i.e. a) the governing politicians' personal stakes in lack of reforms; and b) the perfect appropriateness of the institutional infrastructure to serve illicit policies, which seen from abroad seems as the notorious "poor institutional capacity". The CVM design was tailored in accord with *a temporary situation* that, meanwhile, has completely changed: after the accession, *with the disappearance of the above-mentioned three favourable circumstances*, the two above-mentioned *negative circumstances*, that had hitherto been marginalized, *have become of decisive importance*.

In a third aspect,

"[...] the Commission had to act blindly, as instruments to monitor progress were not yet quite in place. Judicial statistics were meaningless, as the monitoring categories were a legacy of the communist era; corruption is notoriously difficult to measure, the impact of anti-corruption even more so in the absence of thorough research. The timeframe, with six monthly intervals between monitoring reports, left little

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a carefully balanced language.<sup>20</sup> Third, the *Regular Reports* and the *Accession Partnerships* were published throughout a period when massive vertical reforms were taking place in each candidate country, thus, barring the risk of being overtaken by developments. Finally, the *Accession Partnerships* and, consequently, the *Regular Reports* did not imprint a steady EU framework, which the CEEC should have implemented. Reversely, they imprinted the ever-changing nature of the European Union, thus being rendered a 'moving target' for candidates." (Papakostas 2012: 223).

alternative but to rely on input indicators and to set performance targets as qualitative ‘benchmarks’.” (Mungiu-Pippidi 2011: 153) [...] “A systematic effort to develop a comprehensive set of impact indicators for Europeanization was never made. Designing governance and rule-of-law benchmarks is also a difficult art, especially if it is not anchored in a sound, evidence-based policy understanding. For instance, if Judicial Councils are in fact unable to deliver the expected goods (an accountable magistracy), creating further benchmarks in relation to such Judicial Councils risks becoming irrelevant, even though their monitoring may be both accurate and regular.” (Ibid. 154).

The paradox is all too obvious: the goal of modernization is to bring about a *qualitative transformation of the overall system of public life* on one hand, yet on the other hand this transformation must be effectuated by the same people who are the embodiment of that system, by people who have vested interest in the status quo and who must therefore change themselves without having any guarantees they would preserve their positions after this change. The only chance, and not a big one at that (though scholarly literature sees it as the only one possible) lies in society’s not being holistic but consisting of multiple groups with varying interests, so that the task would be reduced to finding a mechanism for drawing the marginalized subjects into a comparatively more privileged pro-reform position compared with the representatives of the status quo (Mungiu-Pippidi).

This is not to deny the gravity of the circumstances in which the CVM has to be implemented. It has become clear that nobody in the EU, but also in the two Balkan countries were aware of the depth of the problems.

It should be underscored once again that researchers from South-Eastern Europe have displayed much greater sensitivity to the historical roots of the problems related to the region’s European integration:

“The drive towards Europe has been part of Romanian and Bulgarian political agenda, the syncope of communism apart, since the early days of state building and nation-building in the nineteenth century.[...]. Post-1989 however, these aspirations did not automatically translate into ability to change and conform to European standards. The road to EU membership was rocky for both Romania and Bulgaria. Political

instability and lack of political will, despite public consensus across party lines over EU accession, led to relative slower economic and political reforms and poorer record of *acquis* implementation [...]The two neighboring countries made all too often the headlines in Western media not because of their Europeanness but because of corruption. [...]As their notoriety as corruption heavens increased, so did the scrutiny of the European Union as part of the integration process. Since mid-1990s, the European Commission annual reports repeatedly pointed at the inefficiency and lack of will of national actors, spread across branches of power, to curb corruption.” (Racovita 2011: 27-28).

But this legacy turns into an insurmountable barrier for post-accession conditionality, because:

“In other words, due to the tight accession calendar, conditionality had to rely on promises: the content and general impact of the proposed action could not be checked in time and later frequently proved to be disappointing.” (Mungiu-Pippidi 2011: 152).

No one in the Commission would believe how good the governments of South-East Europe can be at promising, especially when leaning on the prevailing political culture here of not carrying responsibility for assumed but unfulfilled promises.

We should also take into account that this depth, being a result of systematic resistance against reform, could not possibly have been visible at the beginning, when the instrument for impacting on these particular national environments has been designed. We should recall that the subjects of reform policies, fixed in the six benchmarks, are given “*inter alia*”.

Moreover, at the start, the objective lack of various resources was so great that it easily seemed a valid explanation for the absence of rule of law and the poor results achieved by the public institutions. These lacks are striking even at a mere listing. Not to mention the shortage of financial resources for overcoming them - including shortage of material technical means (a justified complaint on the part of the law enforcement institutions; it even includes the lack of courtrooms in the case of Romania); lack of personnel, shortage of specialized know-how, lack of information systems, etc. Clearly, these resource needs must be met before it can become clear the



problem does not lie in their shortage but in something else, entirely different and underlying this vast “shortage”.

When the laws are passed and the institutions set up, a new challenge suddenly becomes evident: the laws must be applied and the institutions must act for the purpose they were made for. When this is done the next problem arises: the objective is not merely to act but to achieve the results expected by society.

And only *after* this whole road of the unfolding problems has been covered, it then becomes evident that, though results are achieved, their effect may turn out different from, and even quite contrary to, the desired one. At that point, the major problem mistakenly appears to be the lack of synchronicity between the activities of the various institutions implementing pro-reform policies as a shared strategy for the modernising task of establishing rule of law. Still more time must pass before it becomes clear that what actually underlies this lack of synchronicity, synergy and expected results is “lack of political will” to achieve the goals. The reverse side of this unwillingness is the persisting will of the governments to maintain the status quo through systematic resistance, at first at the level of parliamentary legislation, and then in the mode of operation of institutions whose function it is to apply the laws that eventually came under pressure from abroad. We are talking about resistance against all those institutional mechanisms that might lead to the political responsibility for the conducted policies, especially responsibility for the public results of policies (Racovita 2011).

But even this observation is still far from the actual problem. As the study on the failure of the Education Modernisation Project (Dimitrov 2012) has shown that every reform policy is doomed to failure if it does not take into account the fact that *systematic resistance* against reform is a key characteristic of the situation that has to be changed. This includes resistance against the EC’s integration policy (Agh 2008a: 21).

In the case in question this is particularly important, for our document analysis of the CVM reports shows they demonstrate no awareness that resistance against the reforms is a key factor in the problems to be solved. And this is not merely a cognitive shortcoming. *The paradigm with which the problem of the rule of law is viewed is related foremost to the issue of shared political responsibility.* This responsibility is essentially shared between the EC and the national governments, especially in the light of the claim that we are talking about *co-operation* between subjects of political action. Here we fully agree with Ágh, that

“[...] the *post-accession management* in the new member states has become more important than before, since both reform directions would influence drastically the maturing of the new member states to the effective membership.” (Ágh 2007: 10).

## **5.2 The share of political irresponsibility of the EC and the question of the alternatives**

We have taken the liberty to formulate the results of our analysis in such sharp terms because we are not simply indicating separate facts but are generalizing a whole package of integral characteristics of the use of the CVM:

- The complete lack of critical reflection on the instrument is simply shocking – this lack is evident in a number of typical practices:

Firstly, we should recall once again, as frequently mentioned in this analysis, that the use of the CVM is discretionary (due to the general lack, throughout its whole history, of a concept, strategy and methodology, in the strict sense of the word, in the implementation of the EU conditionality in its entire history– see Grabbe 2006: 28-32, Maniokas 2004). In various years the package of monitoring benchmarks has been used selectively (at the very least, with an arbitrary

muting of certain aspects and highlighting of others, as concerns the internal stages of application of the law and relevant to the three branches of government as well).

Secondly, and likewise importantly, there are some evident deficiencies in the reports – compositional, stylistic, and conceptual – which do not seem to bother anyone: they pass unnoticed as being due to the initial lack of a clear conception and standards for the application of post-accession conditionality<sup>139</sup>.

Thirdly, the reports for 2012 (especially the report for Bulgaria) quite obtrusively assert that the success of the reforms are the result of the reports themselves, while the failures are those of the Bulgarian/Romanian governments<sup>140</sup>. Also, the fact that the reports find it necessary to refer to the support of local public opinion for the CVM and its formulations, as registered by surveys, is more an indication of uneasy conscience than of correct policies realized through this instrument. Support for the CVM does not stem from society's acquaintance with the contents of the reports and approval of the instruments applied in implementation of the mechanism. What the regrettably superficial and uninformed public opinion in the two countries sees in the CVM is only that it is a *source of external pressure for reforms*.<sup>141</sup> This is a case of the primitive association

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<sup>139</sup> This is not a matter of unfinished work as regards the problems of Bulgaria and Romania in the post-accession period, but a methodological deficit that characterizes EU conditionality in general. What Grabbe has written regarding the experience of EU until 2005 is valid here as well: “*Partnerships – and the assessments jumped from description to prescription without a detailed analysis of the problems and how to overcome them. The goals set were often vague, for example declaring a need for ‘increasing capacity’ or ‘improving training’, rather than stating detailed institutional preferences.* For example, on data protection for the internal market *acquis*, Bulgaria was told to ‘adopt national legislation and establish a monitoring body’ in 1999 – with no indication of what the legislation should contain or what an appropriate monitoring body might look like. Candidates were often asked to ‘prepare a national strategy’ in a particular area, with no further details on what it should contain or what the features of particular institutions should be. *That made it difficult to use the reports as a detailed guide to EU-compatible public policy.*” (Grabbe 2006: 83, italics added).

<sup>140</sup> We must not leave the impression that this is a premeditated stance. To the contrary, it is a logical consequence of the main approach underlying CVM. Compare with Ágh's diagnosis from 2008: the post-accession conditionality practiced at the moment implements a sustainable approach derived from “the Western conceptualization for the post-accession crisis putting all the blame on the new member states and identifying the reasons for all new difficulties in the non-compliance of the new member states, first of all their elites.” (Ágh 2008a: 21).

<sup>141</sup> Again, there is nothing new or specific to Bulgaria and Romania here: “the new member states are more favourably disposed to European political institutions than to national ones. In large part, this is probably driven more by negative

people make, according to which “the enemy of my enemy is my friend” and since the executive branch (and generally all branches of government, including the judiciary) are categorically disapproved of by public opinion, the Eurobarometer survey serves as a safety valve for this discontent (Harteveld et al. 2013). We should point out the sobering fact that V. Ponta’s party, which brought relations between the EC and Romania to an unprecedented state of crisis in 2012, won the parliamentary elections soon after that. The leader of the Bulgarian Socialist Party S. Stanishev, who, as head of the Bulgarian government brought relations between Bulgaria and EC to a freezing point, later was chosen leader of the Party of European Socialists.

- An even more important weakness in our opinion are the numerous recommendations implying the existence of crucial preconditions which, if they were indeed at hand, would make the recommendations unnecessary (for instance: “the leadership of the judiciary has yet to show a real commitment to thorough judicial reform” or “empowering an independent institution to investigate the assets of senior officials and politicians”). In all too many cases the EC seems to be in the role of an orchestra conductor who has only to give the signal with his baton to the virtuosos waiting with their instruments in the dark orchestra, and they will do their best to perform the

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feelings about domestic political systems and politicians than about European institutions, about which they have insufficient knowledge and experience to make a judgement. As yet, there are few signs of developing concerns about democratic deficits in the EU.” (Johnson, 2005:128); “the ECE populations have perceived the weak performance and low capacity of their national institutions and they hope that the further EU democracy transfer can turn their countries from a low capacity to a high capacity state [...] This deep distrust in their own political system is characteristic for new democracies, it was - and to a great extent still it is - the case with Greece, Portugal and Spain ....

Namely, the EU level democracy is appreciated more in the EU10 than the national one. It is not new, again, because it is still the case in some former member states as well, for instance in Portugal where respect for the EU democracy is still much bigger than the national one.”(Ágh 2008b: 344).

Summing up the results of previous empirical surveys, Beaudonnet and Di Mauro conclude: “[...]when the analysis takes into account country-level characteristics, the level of corruption assumes a crucial role in explaining trust for EU institutions: the higher is corruption in national contexts the higher is trust towards EU institutions. These findings demonstrate that citizens sometimes perceive the EU’s institutions as an alternative to corrupt domestic political bodies [...]” (Beaudonnet, Di Mauro 2012: 21-22).

symphony of reform efforts. After five years of waving the baton the best results is a discordant medley of sounds; and yet it would appear the conductor is not to blame for this.

- We cannot assume it is normal that the CVM reports formulate unaddressed messages: the countries or societies are not subjects of action and cannot be expected to carry out anything, *especially if the hidden addressees of the EC criticism are the governments.*<sup>142</sup> Such an approach would not be serious if the recommendations are really meant to be useful.

- Characteristic examples of excessively belated action are the appeal for pressure to be put on the local governments by the local civil societies (cf Vachudova, Spendzharova 2012: 7) and that the EC focuses on the need for possible civic participation in the reforms *only when a reform crisis has already happened* - the idea of civic participation was not stipulated in the initial design of the mechanism.<sup>143</sup>

- We definitely cannot believe that sufficient attention has been given, when applying the CVM, to the connection between three seemingly separate phenomena: “large criminal business – pseudo-democratic politics – institutional resistances against reforms.” To put it quite bluntly: *the conceptual analysis in the reports is of low quality, and the promise has not been fulfilled that local political stakeholders would be helped to understand the nature of the challenges to reforms.* Underestimating the systematic resistance against reforms is only the most striking example among many (another example, closely connected with the first, is the failure to understand the decisive role of the historical legacy in institutional and political culture). We should also recall

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<sup>142</sup> The vague comments which do not address anyone comprise 44 percent of all comments in the reports for Bulgaria.

<sup>143</sup> Only 3 percent from all the references in the reports concern the Bulgarian citizens and the Bulgarian civil society and about 60 percent of these references appear in the report from July 2012. This fact proves a kind of explosive interest on behalf of the EC in this particular stakeholder in the policies for enhancement of the rule of law in Bulgaria at the point of the recognized crisis of the CVM.

that the low quality of the document is a *serious reason for a noncommittal answer* on the part of the authorities in the two countries.

- In *the reports for 2012 the EC has lowered its guard*, as evident in the minimal expectations expressed that Bulgaria and Romania *should merely cover the benchmarks in a satisfactory way*; we feel this amounts to capitulation before the status quo and *a betrayal of the interests of European citizens, which Bulgarians have been over the the past 7 years at least*.

It would not be hard to demonstrate the systematic mutual co-determination of the highlighted shortcomings of CVM implementation and the respective reports, for these shortcomings are the *signs and consequences of a specific paradigmatic approach*<sup>144</sup>, but the demonstration would unnecessarily burden the present text and would distract us from a more important question.

In listing these important shortcomings of the *EC approach, which overlap with the faults of the local governments*, the question inevitably arises: *what could be the effective alternative forms of post-accession conditionality?* The answer to this crucial question should be generally sought in the direction already indicated: unlike the variant of the CVM used until now, in which monitoring and assessment are given priority and cooperation is *left with a high degree of institutional*

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<sup>144</sup> Our observations have led to similar empirical findings as those indicated in the study of Hughes et al. regarding “the consistent inconsistency” (Simon Duke) of the EU and the intentionally vague wording of the assessments. The persistent package of these “particularities” indicates the presence of an approach, and as the cited British researchers have found before us, this approach is shared by practitioners and theoreticians of European integration alike. This is indeed a completely different way of looking at social reality: what an institutional rationalism considers to be a “pathology”, for a dialectical, historical way of thought is a key element of social “normality”. In the literature on Eurointegration, this different paradigm is present but not in the mainstream – see, for instance, Ágh: The ***parallel conceptual framework*** is the external and internal Europeanization, or the external and internal governance, which indicates that the new member states have been asymmetrically Europeanized, since they have developed some institutions for the contacts with the EU institutions but their corresponding domestic international structure is weak or missing.” Ágh 2008a : 17., italics added). Ágh continues: “In the case of the new member states [Bulgaria and Romania] the issue of conditionality has been basically formulated as a question whether the conditionality that worked well in the accession process, would stop working after the EU entry. In fact, *this approach has reflected the disappointment of the old member states over the newly emerging difficulties in the new member states described above. In my view, it is a false approach, since it neglects both the real difficulties of the new member states after the accession and the lack of the EU accession management or the Road Map to completing membership (joining the euro and the Lisbon Strategy). Instead, it theorizes the problems through questioning the future of conditionality and puts the blame for the emerging difficulties on the new member states without even raising the question about the missing role and understanding of the EU transnational organizations as well as the old member states in the complex situation that I have called post-accession crisis.*” (Ágh 2008a: 19, italics added).

*indeterminacy* and frivolity in the conducting of reform policies, ***a productive alternative would involve giving priority to cooperation in order to overcome resistance against reforms.*** This would mean assuming shared political responsibility ***by institutionalising the public mechanisms for exerting pressure towards reform by all internal and external stakeholders***<sup>145</sup>. We need not hesitate to repeat quite frankly: post-accession conditionality would have a greater chance of success if ***a specific form were found for introducing a soft “political board”*** (in this respect the experience of the EU in working with the governments of Greece and Cyprus in recent years might prove useful). This would mean devising a more complicated tool that would be flexible enough to take into account the changes taking place in the object to be impacted on, as well as the differences possibly arising in the national situations, and ***that would be a much more rigorously regulated mechanism for impact.*** Curiously, recommendations of a similar kind have been made already in the first years of CVM implementation:

“The experience of the CVM in Bulgaria and Romania demonstrates the need for tailored benchmarks to address rule of law issues in member states with very different problems, enhanced assessment of the rule of law cannot usefully apply a ‘one-size-fits-all’ approach. Enhanced assessment of the rule of law in the EU will need to be a rolling process, assessing information and reports on particular member states as they are published in order to identify country specific acute problems. Monitoring of the rule of law in the EU should take a twin track approach, being able to identify and address acute failures in the rule of law in member states which need to be addressed (perhaps through a more in depth assessment such as the CVM mechanism) and also monitoring for thematic issues that could benefit from EU level policy development. The benefits of a CVM style approach can only be maintained if the mechanism is used to address specifically identified failures in particular member states but not as a general monitoring mechanism for all member states.” (Alegre et al. 2009: 18).

We should underline the novelty of our recommendation: what is necessary is an institutionalized supranational responsibility for the course of reforms, which would provide an incentive for the

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<sup>145</sup> One of the most important benefits from CVM for Bulgaria according to Papakostas as well is that the mechanism “[...] underline[s] the necessity for integrating the institutional framework for existing Member States that would enable more effective cooperation.” (Papakostas 2012: 232).

internal carriers of the impulse towards reforms. The EC itself reminds us that surveys of Bulgarian and Romanian citizens' attitudes, conducted by Eurobarometer, indicate that about three fourths of the citizens insist on active engagement of the EU in solving the problems that the CVM has so far only been observing and assessing<sup>146</sup>. The expectations of these citizens should not be disappointed.

To conclude, let us summarize our diagnosis of the political challenges facing the EU today by paraphrasing a well-known statement of a recognized authority in Europeanization studies: *Is the EU likely to deploy much transformative power in its troublesome member-states as long as it should adjust its 'post-accession tool box' (to countries whose statehood is seriously flawed) in a truly innovative manner?*<sup>147</sup>

### 5.3. A key to success: a change in the addressee of the CVM reports

In the present version of the CVM, its political potential for strengthening democracy is considerably weakened due to formal procedural causes. Undoubtedly the fact that the EC reports are addressed to the European Parliament and the Council is a direct consequence of the institutional-legal geometry in the EU's general structural design. Still, the logic of institutional structure is no reason to wash our hands of due *shared* political responsibility. Formally the

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<sup>146</sup> See the July reports 2012 for Bulgaria and Romania.

<sup>147</sup> The findings of Tanya Börzel is that: "*The EU is unlikely to deploy much transformative power in its neighborhood as long as it does not adjust its 'accession tool box' to countries whose statehood is seriously limited.*" (Börzel 2011: 6). The real problem, however, is that there are basic shortcomings lying deep in the very methodology of the tool-box that make the goals for which the tools were devised unfulfillable: "Moreover, the *Regular Reports* suffered from significant methodological limitations. The European Commission lacked a specific mechanism for evaluating progress of individual candidate states in relation to the criteria for membership. They relied on *ad hoc* parameterization and lacked coordination regarding the areas, which were most important and needed particular attention. Moreover, they utilized diverse sets of evaluation practices and methodologies of other international organizations' evaluations (for example the Council of Europe's Group of States Against Corruption) with different competences and mandates, which, despite being helpful at charting an ever more comprehensive strategy, they simultaneously generated a notion of 'chaos' that induced candidate states governments' confusion and frustration." (Papakostas 2012: 228). Overall, the article of Papakostas systematizes very well the strong and weak points of EU conditionality applied to the countries of Central and Eastern Europe, displaying the need for a constructive change of the principle of this conditionality.



reports are addressed to two institutions that have no way of understanding their factual contents, because the contents are correctly comprehensible only at a very concrete level of specific national sociopolitical contexts. Hence, logically, no one expects the two institutions to which the reports are addressed to use them for political and policy purposes. And obversely, since the reports are not directly addressed to Bulgarian/Romanian institutions, *it is seems as if natural* there is no *due* political response through reform actions coming from the respective national authorities.

The alternative would have been to expect in advance resistance against the reforms at the very start, in view of the exceptional difficulties that had arisen in the course of negotiations and of the unconvincing results, the imitation of reforms, during the preparatory period (Racovita 2011). Corresponding to this initial expectation, the CVM should have set much higher and differentiated standards for political responsibility, *thus establishing a kind of – soft – political board*<sup>148</sup>.

Without trying to suggest any simple formula for its mechanism, we would like to give some food for thought. For instance, the official reports could officially be addressed to the Parliament and the Council, but with a copy for the *national parliaments and governments of the two countries*. The mechanism itself could envisage an imperative invitation to the heads of state of the monitored countries to comment on the reports at a plenary session of the European Parliament,

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<sup>148</sup> “As a result of the establishment of a monetary board in 1997, Bulgaria is now an island of fiscal stability amidst the south European countries. This is not a sufficient basis for the successful development of the country as a member of the European family. A decisive change of the social-political model is needed in order to overcome obstacles like the corrupt judiciary system, organized crime, unpredictable laws, etc. The problem is that the institutions, built as they are now, are not capable of effectively making this change, due to the incapacity for a vision going beyond party interests. In this case, after the monetary board, probably a “political board” should be established [...] After the stabilising success of the monetary board, it seems Bulgaria should take the next step and adopt a “political board” in some form or other.

Without some additional political measures, the relative financial stability remains an incomplete basis for serious European integration. Political reforms are stagnant, and the country seems to be incapable of dealing by itself with the corrupt judiciary system and organized crime.” (Таhev 2012, p. 109). The author correctly points out that *the idea of a political board is not at all new; it has recurred periodically in recent years*.

after which *debates might be held on the report and a resolution passed by the Parliament*. This would set a very different level of political mobilisation and responsibility both for the monitored countries and for the EU in general, for the visibility of the discussed problems and political commitment regarding these problems would be enhanced.

Not to mention that it could have been possible for each of the government institutions in the monitored countries to deliver their assessment of the reports. And, respectively, - to make public their strategic and program documents *by which they assumed concrete responsibility for the measures taken to ensure fulfillment of the recommendations contained in the reports*. This public commitment of the different branches of authorities in the form of official documents would be a precondition for *putting the structures of civil society in an active position*. Becoming an actor in the public deliberation of the reform policies would make both NGOs and academic institution sustainable parties to the mechanism for implementing the reforms. Thus qualitatively new level of political involvement could become possible through total mobilisation of all internal and external stakeholders. This would be an adequate form of commitment of the European public that would match the gravity of the problems and the important consequences that the lack of rule of law in the monitored countries might have for the whole EU and its perspectives of further enlargement.

## Conclusion

If we adopt the style of parlance of the EC reports, we can confidently say the CVM presents a “mixed picture”. There can be no doubt as to the goodwill, diligence, and efforts the Commission and its numerous associates have invested. And we should never forget the resource investments made in support of reform policies in the two countries, the direct financial investments in particular. What has been achieved through these good intentions and goodwill, professional conscientiousness and political persistence to withstand the pressure of local resistance, deserves the sincere gratitude of the citizenship of the two countries. We emphasize once again, that the observation of Vachudova and Spendzharova is true: “the CVM process has clearly helped push through positive reforms.” (Vachudova/Spendzharova 2012: 13)<sup>149</sup>. It is understandable that the EC is disappointed the investments have not produced the expected results: we still cannot say there has been real progress in establishing rule of law in either of the two countries. The targets of the CVM are still as distant now as they were in 2005, when it was first decided to use these tools to support and enhance reforms in the two societies (cf Ivanov 2012: 108, Ganev 2012, Tanasoiu, Racovita 2012); moreover, the achieved progress has proved to be reversible in the light of the events in Romania in 2012<sup>150</sup> and in Bulgaria in the summer of 2013<sup>151</sup>. Our generalisation comes later in time and rests on more concrete, and hence more striking, material, and because of that it is more complex but in its essence it is a next phase of the A. Mungiu-Pippidi’s diagnosis:

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<sup>149</sup> Doubt was cast recently on the efficiency of the CVM for Romania and Bulgaria. Yet the mechanism has not been totally ineffective: a simulation of where the countries would be today without it shows that it did play a positive, albeit limited, role.” (Mungiu-Pippidi 2011: 161). We must as well agree that “Overall, it is safe to say that the application of the principle of conditionality, either directly or indirectly, bared multiple benefits for the CEEC fight against corruption.”(Papakostas 2012: 225).

<sup>150</sup> They consist of a series of actions – it is not just a matter of a disregard for the decisions of the Constitutional Court on the part of the government but more generally of a war of the executive branch against the foundations of the rule of law, as noted in the memorandum by M. Barroso, accompanying the July Report of 2012.

<sup>151</sup> This refers to a series of government decisions made by order of certain circles – persons and structures – connected to the country’s shady and criminal economy, and which provoked an unprecedented wave of civic protests against the whole fundamentally corrupt political system of the country.

“EU conditionality as applied to the new Member States and Eastern Balkan applicants does not seem to work very well.” (Mungiu-Pippidi 2011: 149).

We are convinced that the CVM requires to be deeply, qualitatively changed, despite the proverbial flexibility in its application, which Klaudijus Maniokas has described as “a striking Byzantine complexity”.

The implementation of the mechanism is somewhat successful insofar as it has not completely failed. It has been legitimized as an instrument for support for the reforms and it in itself legitimizes the political course towards fundamental and encompassing reform. But it rather does not provide proofs for its own expectations to be a mechanism which will practically enhance reforms and conduce some real progress. This is because the CVM is mostly

a) an instrument that registers the transformations/shifts in the resistance against reforms<sup>152</sup> ,  
and

b) it legitimizes before the EU the persistent government policies of imitation of reforms by the partial fulfillment of fruitless, ill-targeted measures.

If the CVM is simply preserved in its present form, we may rightly foresee the coming surprise at the “discovery” that:

a) the *all-encompassing reform* is not in the center of the political agenda of any of the current political parties;

b) the true problem encountered by the implementation of the post-accession conditionality lies in the existence of vested political interests in resisting reforms, interests that stem

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<sup>152</sup> In fact, it continues to be true that “Europeanization has remained largely shallow giving rise to formalistic, short-term and technocratic reforms rather than sustainable and transformative domestic change.” (Börzel 2011: 13), as well as that “EU pressure for adaptation and capacity-building mostly results in formal institutional change, while it is not sufficient to transform informal institutions and behavioral practices.” (Ibid.: 14). These generalisations about the Europeanization of the Western Balkans can be directly extended to the other countries of South-eastern Europe as well.

from the complex interlinks between the criminalized economy and property, the modes of pseudo-democratic representation, and the specific institutional design of the institutions of state power.<sup>153</sup>

The empirical and the conceptional analysis carried out above brought us to a major discovery. The fruitlessness of the CVM's implementation so far is a logical consequence from the specific pattern of post-accession conditionality construction by the interaction between the EC and the local governments of Bulgaria and Romania. Stemming out from an unrealistic "definition of the situation" (W. I. Thomas' theorem) which has been devised by an extrapolation ahead of the pre-accession experience the EC made its stake on the governments' unconditional cooperation and because of that based its strategy on a minimalistic and loose engagement of its own. The EC reduced its role to monitoring by a fuzzy methodology which mainly recites the partial and perfunctory observations of local practitioners/experts. As a result of this approach it gives recommendations of techno-procedural nature following the notorious "piecemeal approach". This approach is incompatible with the task of a fundamental reconstruction of all institutional mechanisms for power redistribution as required by the justice system reforms. More to that, the local governments are the sole addressee of the recommendations but they are the embodiment of the problem which is supposed to be solved by... them.

On their turn the local governments make use of the shortcomings and the narrowness of this pattern of political interaction in order to imitated reforms by fulfilling procedural recommendations. And to effectively sabotage the essential reforms through a stubborn non-implementation of all measures that could eventually change the institutional model which hinders the rule of law in their societies. Yet their position seems legitimate since it is in accord with the

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<sup>153</sup> Cf Tanasoiu and Racovita: "The unfinished political and socioeconomic transformation of both countries, accompanied by the consolidation of certain 'reserve domains', occupied by the former secret services and semi-mafia structures, restricted both countries ability to assume full responsibility of membership." (Tanasoiu/Racovita 2012 : 246). See also Andreev 2009.

local political and institutional culture of opposition to reforms and *as far as the scope of CVM makes it helpless because it does not concern the routine interactions between the governments and the EC while implementing the various European programs*. In other words ***the major weakness of the Mechanism is that it not only remains external to the course of life in the monitored countries but is external to the actual policy partnership between EC and the member-states that are within the reach of the CVM.***

What could be a conceivable solution to this very grave situation, what is the “recipe”?

If we look politically responsibly on the expected results of implementation of the CVM, we have no reason to expect that its mere preservation for any length of time in the future would lead to anything other than growing disappointment at its helplessness<sup>154</sup>. *It would be sensible to preserve the CVM only if its effectiveness increases sharply and qualitatively, so that conditionality can yield the expected results: full-fledged EU membership through efficient and effective rule of law.*

This could happen only if the ***mechanism of its implementation were reformatted towards real political co-operation between the national governments and the EU***. If we believe that *the capacity for evolution is intrinsic to the post-accession conditionality of the EU membership*

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<sup>154</sup> Then it will be said in even more European countries and in more publications that “Bulgarian corruption is a cancer in the EU’s body politic that will only grow more serious. Bulgaria’s experience reveals the lie in the European Union’s claim to have a transformative, purifying effect on the politics of new member states.” (Popham 2013). We are not the only ones to make this warning about a looming threat to approval for the EU itself (even though it still enjoys the approval of the majority of people primarily in the newly admitted countries): “The dynamics of pre-accession has functioned with the perception that Europeanization is a one-way process, and that standards once achieved will be long-lasting. In practice, clientelistic politics and the override of public policy by private interests means that Europeanization has been incorporated in domestic politics, mainly as a strategy/mechanism to score against opponents rather than structural change. In response to Brussels’ demands, reactions from national establishments to EU criticism were reactive rather than pre-emptive. When reform moved ahead too quickly or too far, one can observe either legislative backtracking or foot-dragging in implementation. While progress is registered in terms of institution building (special anticorruption prosecutorial bodies), depolitisation of judiciary [...] and energizing anticorruption mechanisms, the pressure exercised by the EU is countered and even sidetracked by domestic tactics, from backtracking (in the form of amendments) to smoke-screening or politicizing anticorruption measures. Corruption triggers a phenomenon of containment of anticorruption efforts led by the EC or domestic actors, effectively stalling or inverting them. This diminishes public trust in national political elite and state institutions as well as explaining the electoral success of politicians posing as outsiders to a corrupt establishment. *Given that the opinion polls have linked, in past, public expectations of good governance with EU accession, the limited impact might in time also erode public support for the EU.*” (Tanasoiu/Racovita 2012: 261, italics added).

(Gateva 2013; Börzel 2011) then there should basically be no obstacles to such a course of development.

What should its new design be? - this is the vital question that must at all costs be addressed and answered in *an open European public debate regarding the grounds, authority, and instruments that would lead to results*. The need for debate is not based on any supposed wisdom of public deliberations as such, but stems from the need to provide political ownership and legitimacy of the decision (Habermas). (In the main text we offered some concrete ideas what might guide the search for the new forms of interaction between the Commission, the EP and the national authorities, but only as examples of ways in which to look for opportunities to expand the participants and sustainable institutionalization of mechanisms for political accountability in the partnership.)

The following should be priority issues in this debate: the change of the present paradigm into a paradigm that takes into account the historical experience and lessons learned from past action; a radically new approach that would create possibilities for all stakeholders within the national societies and more generally in Europe to carry much greater responsibility for the course of the reforms. The new approach implies much stronger institutional tools and a higher level of complexity designed to impact on the holders of responsibility. It is on the results of this public debate that the future of European citizens will depend. They are for whose sake the EU has been formed, develops and is enlarging. We fully agree with the prediction made by Attila Ágh:

*“[...] the ‘definition’ of the EU has been even more a social construction that has changed radically after each wave of enlargement. After the Eastern enlargement from the EU15 to the EU27, however, this definition has changed beyond recognition. At the earlier enlargements the subsequent redefinitions of the EU were present-oriented as conceptual frameworks for the existing Union. With the Eastern enlargement the EU seems to have reached its internal and external limits for a long time, neither widening nor deepening cannot continue as before. Nowadays the EU needs a new, future oriented definition. The EU is*

*not 'given', it has be 'reinvented' or redefined, and this new definition as a social construct depends on our decision or on our vision where to go.*" (Ágh 2008: 11-12).

We have encountered a threshold beyond which *we ought* to go.

It will not be easy. Because the expectation that the local governments would behave much more responsibly to their relationship with the EC implies that the EC would be engaged in it in an unprecedented way as well. It will be normal to require the baring of much higher political responsibility by the governments in the implementation of the recommendations for fundamental reforms *only as far as the EC's analyses go much deeper in the core of the issues and would provide advice at much higher level of definitiveness based on sound methodology which could stand any critical testing.* This cannot be done unless the academic expertise would be mobilized in the course of the EC's assessments being carried out. *The reform recommendations based on the authority of the international academic community will be much more imperative for political fulfillment.* It is high time for the EU to stop the mere talking about "knowledge-based society", it is time to take the walking towards its practical construction.



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