



THE ADVENTURES OF THE CVM IN BULGARIA AND ROMANIA

Georgi Dimitrov, Kaloyan Haralampiev and Stoycho Stoychev

No. 29 | August 2016

MAXCAP Working Paper Series

Edited by the MAXCAP Project “Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond” (MAXCAP)

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Editorial assistance and production: Laura Milchmeyer, Jakob Wigand

Dimitrov, Georgi/Haralampiev, Kaloyan/Stoychev, Stoycho: The Adventures of the CVM in Bulgaria and Romania, No. 29, August 2016, “Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond” (MAXCAP).

ISSN 2198-7653

This publication has been funded by the European Union under the 7th Framework Programme.

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This project has received funding from the European Union's Seventh Framework Programme for research, technological development and demonstration under grant agreement no 320115.

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Georgi Dimitrov, Kaloyan Haralampiev and Stoycho Stoychev

Abstract

The paper reports the findings of a comprehensive study of the European Commission's reports under the Cooperation and Verification Mechanism (CVM) regarding Bulgaria and Romania for the period from 2007 to 2012 focusing on comparative dynamics. The main question is to what extent the policy of the European Union (EU) as practiced so far, instrumentalized in the form of the CVM, does justify the explicit assumption implied in the mechanism's name that it is more than mere monitoring, and also a form of cooperation? We do not confine our research to tracing the extent to which Bulgaria or Romania comply to the recommendations of the European Commission but investigate broader developments in these two specific cases. We studied the Commission's findings, comments, and assessments in all fields covered by the CVM (and not only compliance with the anti-corruption recommendations), using an analytical instrument comprised of 133 different indicators concerning the broadest possible spectrum of substantive, structural, and evaluative dimensions of this specific bilateral relationship.

The empirical evidence supports several major conclusions: a) if the overall achievements of the two countries regarding rule of law promotion, the fight against corruption included, are compared, the differences between the two cases are so marginal that it is, in fact, pointless to underline the difference; b) the maximum final advancement up to 2012, amounting to 0.17 point of interval from 0 to 3, is truly negligible and does not count as 'progress'; c) for the period under scrutiny Romania was performing only relatively better than Bulgaria in terms of getting more (but qualified) appraisals for higher results under the CVM.

A hypothetical assumption, implicit at least in the labeling of the 'progress reports', that there has been a sustained tendency towards progress in bringing Bulgaria and Romania up to the standards of the other EU member states, does not find any empirical proof. What we encounter is rather an oscillation around a conventional line of a maintained status quo of a blocked judicial reform, which is both derivative from and conducive to a meager anti-corruption fight at a high political level. It should be stressed that this comprehensive quantitative study of all reports for the first six years of the CVM's implementation provides proof for the Commission's political assessment given both in the introduction and in the recommendations for Bulgaria and Romania in the July reports of 2012.

The implementation of the CVM for the last ten years is essentially a 'mixed picture'. This crucial ambivalence is due, on the one hand, to the undoubted positive pressure over local authorities to systematically carry out pro-rule of law reforms and achieve the standards of EU membership and due to some limited progress to this major goal, on the other hand. The latter should count as a substantial advancement when checked against the initial situation in Bulgaria and Romania at the moment of their EU accession, but it is still insufficient in making both countries compatible with EU members. The present paper should be read as providing arguments which may help the reader to think on what can be done in order for the CVM to achieve its explicitly defined goals and how.

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1. The CVM as the EU's innovative post-accession conditionality tool

1.1 Introduction

It is not the aim of this paper to take sides - either with those comparatively enthusiastic regarding the Cooperation and Verification Mechanism (CVM) (Vachudova/Spenderova 2012; Chiva/Phinnemore 2012; Gateva 2015; Sedelmeier/Lacatus 2016) or those who are explicitly skeptical concerning its implementation (Tanasoiu 2012; Racoviță 2011; Tanasoiu/Racoviță 2012; Papakostas 2012; Ganev 2012). The main aim is to report the findings of empirical research, which started in 2012 as a comprehensive study of the technical and political reports¹ under the CVM regarding Bulgaria and Romania for the period from 2007 to 2012 focusing on comparative dynamics (Dimitrov et al. 2014; Dimitrov et al. 2015). This endeavor later evolved into a study under the research project MAXCAP (2013-2016) of European Union (EU) post-accession conditionality, which the CVM is an element of. The transformation of the study's scope was necessitated both by MAXCAP's broader conceptual framework dealing with the EU's enlargement policy and by the interim results of the research process's first stage, which identified a large number of 'oddities' in the reports that could not be explained through local developments alone (Dimitrov et al. 2014; Dimitrov et al. 2015).

There is a serious question, neglected by other researchers, but requiring an analytical answer: How can one explain that - even though there exist different benchmarks (four for Romania and six for Bulgaria) and different respective observations and recommendations for the two countries varying in content and scope - every other year the political evaluations in the July reports' introductions and conclusions on Romania and Bulgaria tend to look like written under carbon paper? How come that a mechanism, which was meant to be in use for only a couple of years (a fact to be discussed below), has been in operation for ten years?

In order to provide the answers to these questions we do not confine our research to tracing the extent to which Bulgaria or Romania comply to the recommendations of the European Commission (EC) (Sedelmeier/Lacatus 2016), taking into account that the bigger bulk of compliances has been subsequently revoked by parliamentary acts (Racoviță 2011). We investigate broader developments in these two specific societies. The local sustained practices, historically defined by economic and political structures, set the scene for the drama of the EC's good-willed efforts to promote rule of law (in order to successfully combat systemic corruption), encountering the diffuse but powerful resistance of all governments in both societies. This raises the question to what extent the EU's policy as practiced so far, instrumentalized in the form of the CVM (Chiva/Phinnemore 2012; Gateva 2015), does justify the explicit assumption implied in the mechanism's name that it is more than mere monitoring, and also a form of cooperation? The present paper should be read as providing arguments which may help the reader to find answers to the questions of what can be done in order for the CVM to achieve its explicitly defined goals and how. Taking into account the severe struggle in Romania and Bulgaria on behalf of local politicians as well as magistrates concerning a potential banning of the CVM, utilizing its shortcomings and current ineffectiveness, we have to emphasize that this study's main aim is to encourage thinking regarding ways to improve the CVM's implementation, which is something that has been neglected by other studies.

1.2 History

The CVM has been recognized as an innovative instrument of post-accession conditionality.² The latter has been necessitated by relative ‘lagging’ of Bulgaria and Romania in terms of structural compatibility with the responsibilities of full-fledged EU membership.³ The explicitly highlighted point of concern was rule of law in the two countries as a means of protection of citizens’ and businesses’ rights.⁴ Yet it took years of investigation and a series of interviews behind closed doors with actual participants in the process of the mechanism’s establishment in order to find that the CVM was “a recognition of the failure of the negotiations for accession of the two countries”, as a senior official from the EC’s DG for Enlargement bluntly put it.⁵ The *ad hoc* conjured up mechanism was meant mainly to soothe the negative public opinion in some of the old EU member states (Chiva/Phinnemore 2012; Gateva 2015)⁶ and eventually to help local authorities accomplish the promised reforms if they wished so. Later, some high-ranking officials from Brussels admitted that no one would have expected the CVM to be a long-lasting venture.⁷ Participants in the pre-accession process have testified that the decisions for both starting the negotiations and signing the Accession Treaty in April 2005 were taken under strong political pressure from various stake-holders, ranging from NATO representatives to Social Democratic Party supporters⁸, against clear empirical evidence that the two countries, rivaling between themselves to uncouple from the respective other laggard, were more unprepared for membership even if compared with other Central and Eastern European countries (CEECs) (Grabbe 2006; Vachudova 2012). This *ad hoc* and hasty construction of the CVM accounts for the mechanism’s character and substantially predetermined its potential and limits - it was more a political invention⁹ than an institutional instrument for the promotion of genuine reform policies.

1.3 The well-known shortcomings of the CVM

The rapidly growing body of academic literature on post-accession performance of Bulgaria and Romania¹⁰ has raised serious concerns regarding the potential and effectiveness of the CVM. It was clear from the beginning that the legal framework for the introduction of such a mechanism was fuzzy and controversial, to say the least (Alegre et al. 2009; Ivanov 2012).

Far more important is the loose theoretical justification of the overall idea of the CVM which has never been explicitly articulated (Dimitrov et al. 2014). The implicit ‘conceptual justification’ of the mechanism was derived from the notorious fact, consistently confirmed by international studies, that the two societies were heavily affected by endemic corruption (Mungiu-Pippidi 2011a, 2011b), supposed to be effectively diminished by bringing perpetrators to court. Hence, there is an emphasis on the improvement of the national judicial systems, i.e. high-profile political corruption is seen as a derivative from the fact that politicians are not prosecuted exactly because of the political corruption within the judicial system. We argue that neither the contents, nor the scope or the interlinking of the CVM’s benchmarks (and even the wording of the latter) are clear and logically consistent. Moreover, there has been no official justification of the number of benchmarks, which are six for Bulgaria and four for Romania. Despite the reports including short sections titled ‘Methodology’, these contain a mere statement that the reports are based on diverse expert opinions. Hence, in the strict sense of social science, the official documents are not based on a particular

methodology and, actually, in this respect the EC does not claim to have applied a rigorous approach of assessment (Dimitrov et al. 2014).

Finally, the bulk of empirical research on the developments in Bulgaria and Romania after EU accession¹¹ almost unanimously claims the situation in the two countries has substantially worsened - exactly in terms of counteraction to corruption and judicial system reforms. In the overview reports of 2012 the EC itself explicitly emphasized that the reversibility of the development under the CVM was a major concern. As early as 2011, Mihaela Racoviță found that in Romania about 80 percent of the measures taken as responses to the CVM's recommendations were subsequently revoked (Racoviță 2011). After the political outbursts in Bulgaria in the summer of 2013¹² and in Romania in November 2015, where tens of thousands gathered to demonstrate against large-scale corruption and brought down the government, it has become obvious that the CVM has not achieved its aims. Hence, the study of the CVM's nature, implementation and outcomes becomes a necessity.

1.4 *What has so far been achieved by the CVM?*

If we adopt the jargon of the EC reports, we can confidently say that **the CVM presents a 'mixed picture' because of its positive achievements and some important flaws which conduce to the modest fulfillment of its own explicit goals**. There are, on the one hand, some undoubtedly positive results:

- It has maintained sustained political pressure for reforms in the judicial system;
- It has facilitated a domestic public debate on the necessity of a result-oriented fight against corruption;
- It has exposed to the broader public the political opposition to reforms pursued by all parties (Dimitrov et al. 2014; Toneva-Metodieva 2014; Dimitrov et al. 2015).

Besides, there can be no doubt in the practical efforts undertaken by the EC and its numerous associates to identify, understand and remedy the vast spectrum of particular shortcomings in both countries. A large amount of resources has been invested in support of reform policies in the two countries, direct financial investments in magistrates' training, modernization of judicial logistics and institution building, in particular.¹³ As Milada Vachudova and Aneta Spendzharova rightly argue, "the CVM process has clearly helped push through positive reforms" (Vachudova/Spendzharova 2012: 13).¹⁴

On the other hand, it is understandable that the European political community, at various ranks and institutions, has grown disappointed by the fact that these investments and political support have not fully produced the expected results: There is no tangible progress in establishing rule of law in either of the two countries as evidenced by the annual results of the Catch-up Index.¹⁵ The major goals of the CVM, beyond the procedural amendments and separate measures, are still as distant now as they were in 2005, when it was first introduced (Ivanov 2012: 108; Ganev 2012; Tanasoiu/Racoviță 2012). Moreover, the achieved progress has proved to be reversible in light of the events in Romania in 2012¹⁶ and in late 2015 as well as

in Bulgaria in the summer of 2013.¹⁷ Our findings also take into account later developments, rest on more detailed analysis and are more complex, but, essentially, are in line with the conventional diagnosis: “EU conditionality as applied to the new Member States and Eastern Balkan applicants does not seem to work very well” (Mungiu-Pippidi 2011a: 149).

That said, the implementation of **the mechanism, in its current form, is somewhat successful in so far as it has not completely failed**. It has been legitimized as an instrument for useful foreign pressure for local reforms. However, against expectations and the explicit policy purposes stated initially, it has failed to act as a mechanism which would practically induce some real progress, particularly regarding actual control of corruption (Dimitrov et al. 2014; Dimitrov et al. 2015; Sedelmeier/Lacatus 2016). That is because the CVM, as it has been implemented so far, turned out to be mostly:

- A monitoring instrument that registers the transformations/shifts in the resistance against reforms¹⁸, and
- A provider of legitimacy to the habitualization of persistent reform imitations by the national governments manifested in the partial fulfillment of fruitless, ill-targeted measures.¹⁹

We assert that the current institutional design of the CVM is flawed, since it does not take into account the routine interactions between local governments and the EC while implementing the set of European programs. In other words, **the major weakness of the mechanism is that it not only remains external to the course of socio-political life in the monitored countries but is external to the actual policy partnership between EC and the local governments**. Yet, there is a vast number of other important shortcomings regarding the CVM which drastically limit the effectiveness of its implementation. Here we summarize these shortcomings, which we have studied in detail and explained at length elsewhere (Dimitrov et al. 2014).

Firstly, the use of the CVM is discretionary due to the general lack of a concept, strategy and methodology in the implementation of EU conditionality in general (Grabbe 2006: 28-32; Maniokas 2004; Hughes et al. 2005; Kochenov 2014). In various years the package of monitoring benchmarks has been used selectively with an arbitrary muting of certain aspects and highlighting of others.

Secondly, there are some evident deficiencies in the reports - compositional, stylistic as well as conceptual - and they pass unnoticed as being due to the initial lack of a clear conception and standards for the application of post-accession conditionality.²⁰ When the goal is far-reaching comprehensive reform, such flaws cannot be omitted, as they give grounds for political elites to disregard the reports' recommendations.

Thirdly, the reports for 2012 (especially the report on Bulgaria) and for 2015 quite obtrusively assert that the success of reforms is the result of the CVM, while the failures are attributed solely to the Bulgarian and Romanian governments, respectively.²¹

Here is a short list of particular shortcomings predetermining the CVM's limited effectiveness:

- One important weakness is that numerous recommendations tacitly imply the existence of crucial socio-political preconditions which, if they were indeed at hand, would make the recommendations unnecessary.²² The same applies to appeals to activate local civil societies - were there real and sound civil society structures, there would have been no need of the CVM in the first place.
- More often than not the CVM reports formulate unaddressed messages: Countries as such are not subjects of action and cannot be expected to carry out anything. The addressees of the EC's criticism, who however remain hidden, are actually the governments but, since the criticism is diversified among various subjects of action, the former feel free to disregard these tacit inferences.²³
- Insufficient attention has been paid when applying the CVM to the connection of three seemingly separate phenomena: large (semi-)criminal business, pseudo-democratic politics and politically patronized corruption. That is, the turf which nurtures systematic corruption is radically ignored by the monitoring process itself. Besides, the overall conceptual integrity of the reports is of low quality. The promise that local stakeholders would be helped to understand the nature of challenges and to master reforms, which figured in the opening pages of the first July reports in 2007, has not been fulfilled. The underestimation of the specific local mechanisms of systematic resistance against reforms is only the most striking example among many (Dimitrov et al. 2014).
- In the July reports for 2012, which were supposed to give a general overview and appraisals of the overall achievement in the fight against corruption and in rule of law promotion, the EC lowered its guard. This becomes evident by the minimal expectations the EC expressed vis-à-vis Bulgaria and Romania, i.e. that the countries should merely cover the benchmarks in a satisfactory way.²⁴ By contrast, in earlier reports the goal was defined by full compliance with the respective benchmarks for the sake of full-fledged EU membership and the subsequent benefits for European citizens and business.²⁵

1.5 *Manipulative self-defense of the CVM by means of selected data on public opinion*

There is a telling episode in the CVM's history of implementation. On the eve of the announcement of the latest reports in 2015 the EC launched a public relations campaign in support of the post-accession instrument by reporting to the press the results of the Flash Eurobarometer 406.²⁶ The aim was to show that the CVM enjoyed broad and stable public support in the two countries. The major stake was the fact that the vast majority of citizens in the two countries approved the mechanism and would have liked to have it maintained further.²⁷ This is undoubtedly correct, but actually the publicized report is extraordinarily selective in its usage of empirical data. Several examples suffice: 1) Despite the assumed improvements regarding judicial reforms and the counteraction of corruption in the two countries, more tangible in Romania, the level of support for the CVM has not changed compared to the results of the previous Eurobarometer wave in 2012 - the difference in percentage points remains within the statistical margin of error. 2) There is a clear trend - the younger, i.e. the less socially experienced, the respondents are (the sample includes 15

years+), the more positive is their attitude towards the CVM. The elder the respondents are, the less positive is their attitude. 3) The same concerns the knowledge about the CVM as a factor influencing attitudes towards the mechanism: The more the respondents know about the CVM, the less positive their esteem is. The less they know, the more positive their attitude. These facts are duly presented in the appendix to the Eurobarometer's report. Due to the selective interpretation of public opinion data in the summary of the Eurobarometer report the public attitudes towards the CVM were presented in a far more positive light than the raw data gives ground for. To say the least, neither the better performance of the CVM in Romania nor the generally improved situation in the monitored countries should be considered empirically proven by the Eurobarometer 406. This is why far more careful and methodologically sophisticated research is needed if we are to provide a fair evaluation of the progress under the CVM's implementation.

First, we have to identify the extent to which the implementation of a single mechanism with regards to two nationally different but typologically very similar situations provides the same or, at least, commensurable results. If the latter are different, they certainly should not be attributed directly to the effects of the implementation of the common mechanism. Alternatively, the eventual commonality of results, beyond the differences of the two national cases, would justify a study of the instrument (and the policy approach behind it) whose implementation substantially conducted to these results.

2. The rule of law promotion in Bulgaria and Romania - empirical results

2.1 The research project

The work on this research task was conducted between 2013 and 2015.²⁸ The subject matter of study were all the EC's reports - technical (issued usually in February) and political (issued usually in July) - from 2007 up to 2012²⁹ for both countries in regard of all ten benchmarks, just half of which concern anti-corruption measures.³⁰ We studied the EC's findings, comments and assessments of the progress of Bulgaria and Romania in all fields covered by the CVM (and not only the compliance with the anti-corruption recommendations) using an analytical instrument comprised of 133 different indicators. Since the claim of the mechanism is that it performs a cooperation between the EC and the respective country, we attempted to cover the broadest possible spectrum of substantive, structural and evaluative dimensions of this specific bilateral relationship. These dimensions include, but are not restricted to: *substantive nature of the achievement; pace of the achievement; 'magnitude' of the achievement; explicit evaluation; degree of conditional/unconditional evaluation; coverage (sector) of the evaluation; sustainability of the evaluation; degree of clarity of the addressee of the evaluation; who has or has not fulfilled one's duties in the fight against corruption; types of deficiencies in the fight; explicit focus on dynamics of advancement; types of recommendations; scope of corruption, etc.*, but also *levels of vagueness, ambivalence and self-contradiction in the comments and recommendations, expressions of dissatisfaction or enthusiasm on behalf of the EC*, and so on. The unit of analysis was a paragraph, not the separate sentence, because very often the EC would prefer to state its evaluations in a very complex way, spreading it over several sentences, which would sometimes contradict one another. The main aim was to capture exactly the complexity, subtlety, ambivalence and ambiguity of

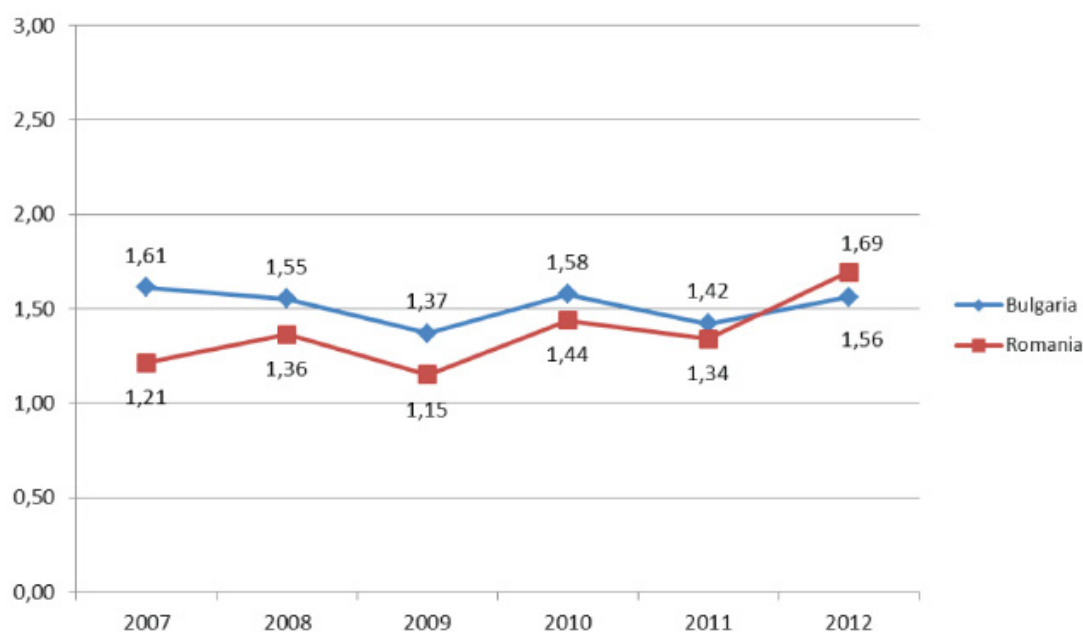
the EC's comments. The comparison between the two national cases was a prime focus of interest. The full set of findings of this study has already been published in Bulgarian language as an academic study of nearly 100 pages, plus appendixes (Dimitrov et al. 2015).

The 133 dichotomous indicators are grouped in 19 dimensions. We count how many times each of these is present in every report, i.e. we count the occurrences. In an attempt to reduce the number of indications in a simplified composite metric, for the purpose of this particular publication, we assign numerical values to some indicators within every dimension (the assumption is that although being dichotomous separately, some indicators within the dimension appear as ordinal, which allows us to ascribe conventional numeric values to these indicators). The numerical value range varies for each dimension. The scales applied are from 0 to 3, from 0 to 5, from -5 to 4 and from -2 to 2. The procedure is applied only in these dimensions, where we can assume that the indicators could be interpreted as ordinal. For the sake of compatibility of our results with those of Sedelmeier/Lacatus (2016), which are based on a simplified, mono-dimensional scale for the EC's assessments, we further on normalize all the numerical values in a scale from 0 to 3. Then we combine the normalized values with the number of their appearances and calculate a weighted average for the specific dimension for each country in every year, integrating the technical and political reports. The first five figures show the separate results obtained. Finally, out of the five dimensions we calculate an unweighted average to obtain the integral indicator 'EC's level of assessment of the country's progress'.³¹

2.2 *Typological commensurability of the two cases and their inner dynamics*

In general, the situation of rule of law promotion monitored through the CVM in the two countries is of a high level of similarity. When looking closer at several of the key dimensions of the bilateral EC-Bulgaria (EC-BG)/EC-Romania (EC-Ro) relationship we come to the following important observations:

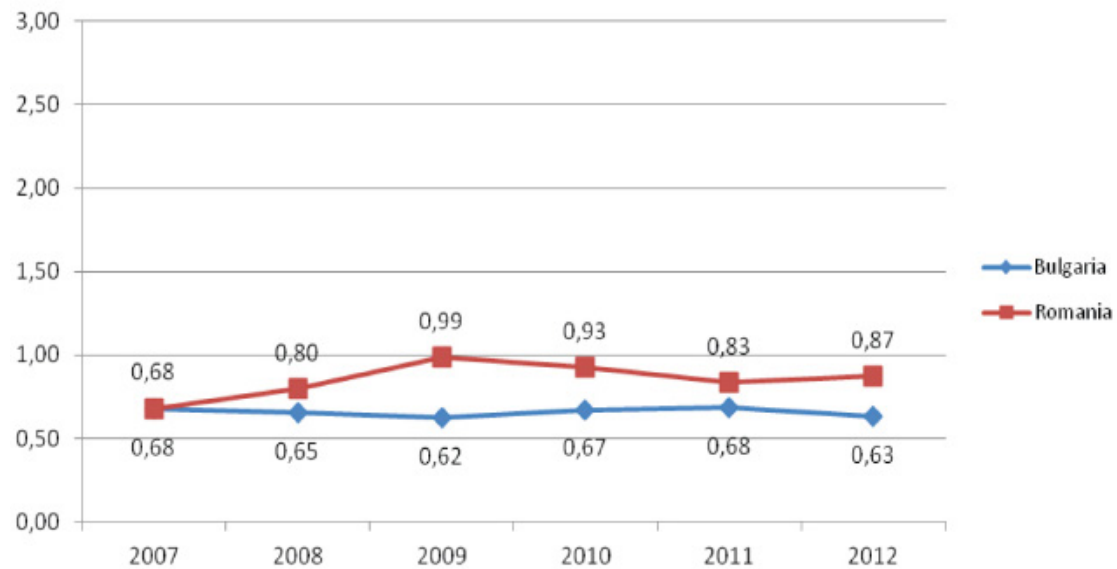
Figure 1: Substantive nature of the achievement



Source: Authors

The data presented in Figure 1³² resemble tracks of figure skaters, meaning that, although not identical, the movements of the two countries/'partners' are more or less 'synchronized', with Bulgaria holding the upper hand in this particular regard.

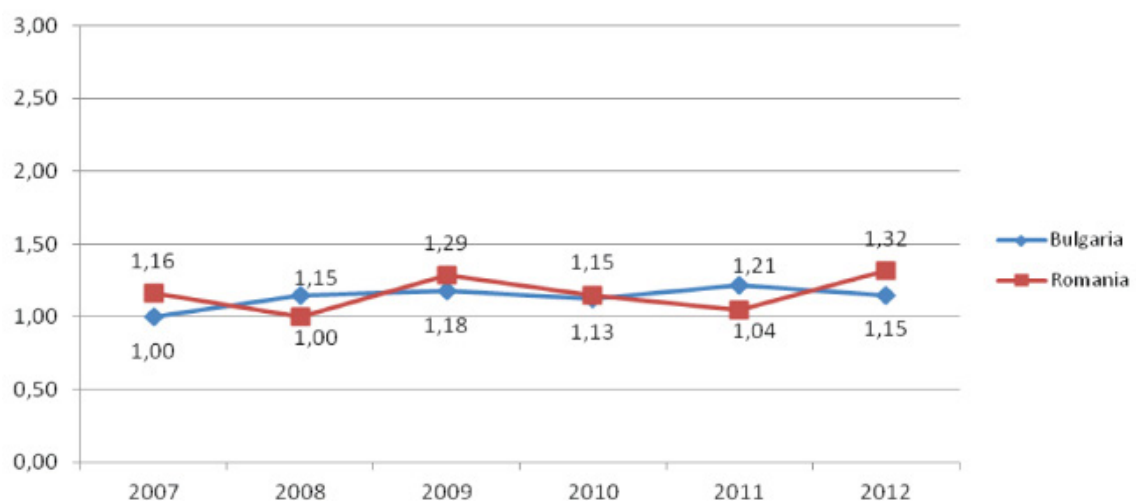
Figure 2: Pace of the achievement



Source: Authors

The data presented in Figure 2³³ reveal the very same picture but this time Romania holds the upper hand. This means that the Romanian changes are quicker and more intensive

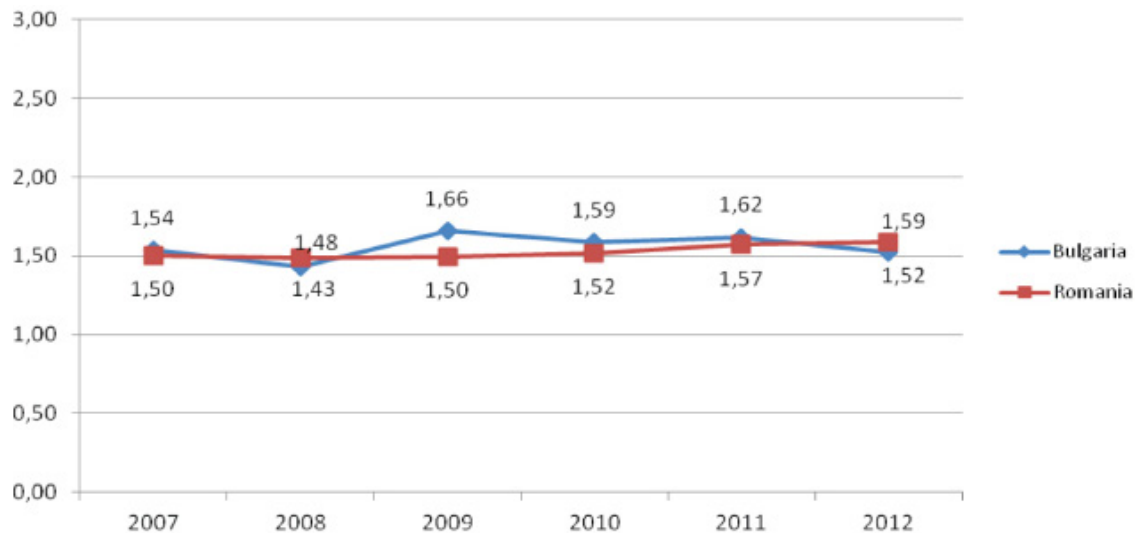
Figure 3: 'Magnitude' of the achievement



Source: Authors

The time series illustrated in Figure 3³⁴ shows a different picture - either the one or the other country over-scores the competitor year by year, Romania being somewhat better in final account. However the overall progress for the first six years is minimal, amounting to 0.16 out of 3 points, that is about 5 percent.

Figure 4: Evaluations

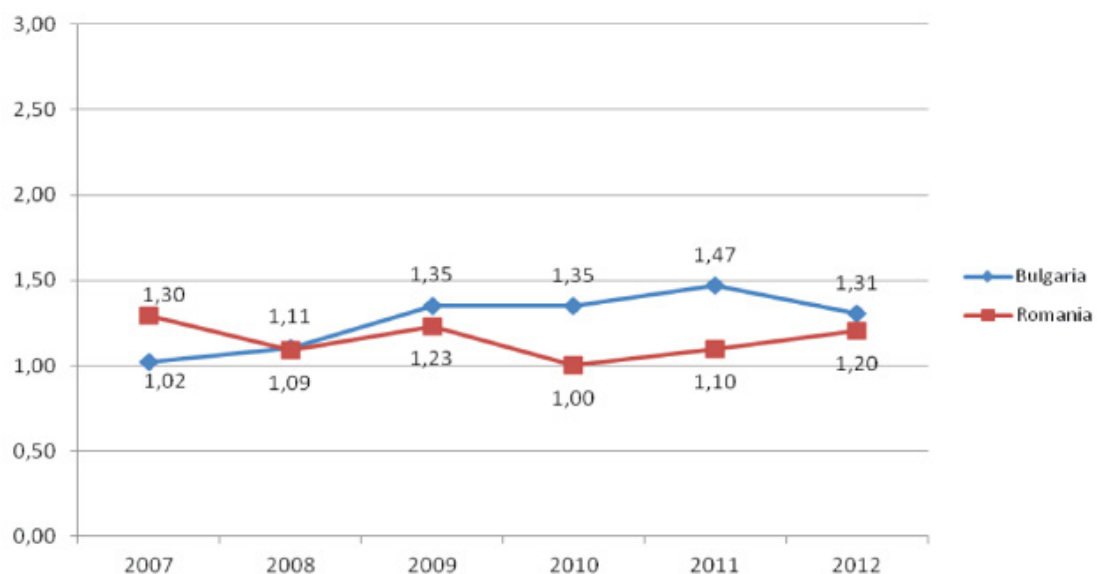


Source: Authors

Figure 4³⁵ clearly shows that there are no substantial differences between Bulgaria and Romania in terms of explicit evaluations by the EC for the period from 2007 to 2012. The actual advancement is negligible - about 0.05 points at maximum.

Yet, the evaluations are not identical, especially if we take a look at the next figure:

Figure 5: Degree of conditional/unconditional evaluation

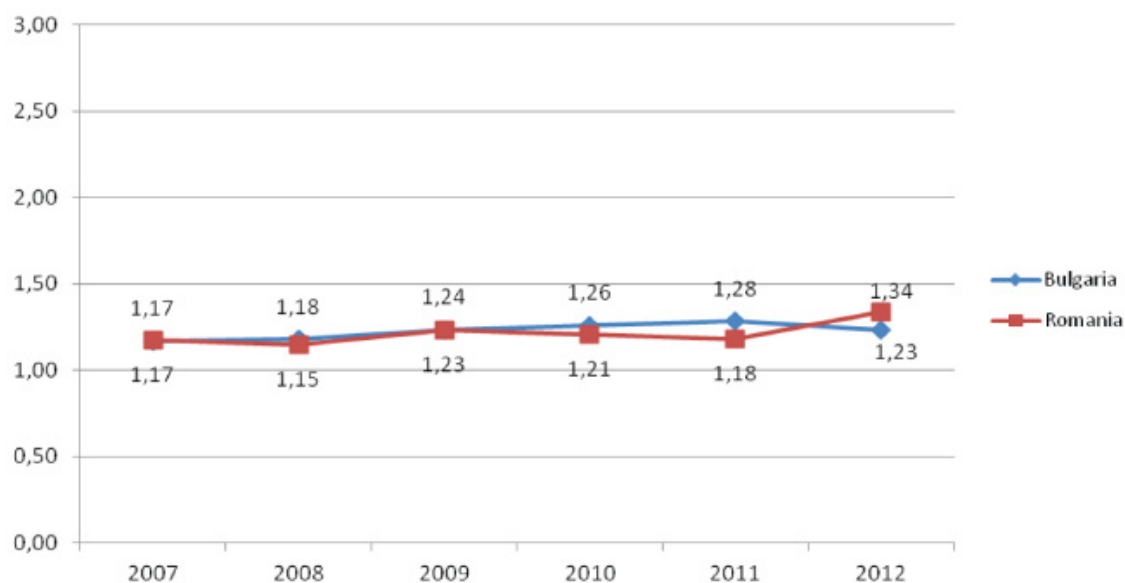


Source: Authors

In terms of degrees of conditionality of the evaluations - ranging from unconditional negative through conditional negative, conditional positive to unconditional positive - Bulgaria somewhat trumps Romania but ending at the point Romania started from.

In Figure 6 we present the empirical results from the integration of all the re-coded data used above in a single composite indicator.

Figure 6: Integral indicator



Source: Authors

Based on the findings presented in Figure 6, we can make two conclusions:

- a) If the overall achievements of the two countries regarding the rule of law promotion, the fight against corruption included, are compared, the differences between the two cases are so marginal that it is, in fact, pointless to underline the difference;
- b) The maximal final advancement in 2012, amounting to 0.17 point of interval from 0 to 3, is truly negligible and such a result certainly does not count as a 'progress'.³⁶

In order to avoid any suspicions that the above cited results are deliberately chosen to emphasize a biased argument let us look at the entire dataset. It represents an empirical picture of the dynamics for a total of 133 indicators for all of the EC's reports, describing their scope and character, on the basis of the above mentioned quantitative instrument that was developed for analysis of the technical and political reports for two countries under the six-year period of CVM implementation (2007-2012). Here we may provide an elaborate quote:

“We exclude those indicators for which at least one of the two countries has less than 15 cases registered for the entire period due to which the correlation analysis would be problematic. After the reduction we still have 92 indicators which describe consistently enough the substantive diversity and the crucial peculiarities of the national societies. Based on these indicators a correlation of the developments of the respective tendencies was studied for the six years. Table 1 shows the findings of the correlation analysis.

Table 1: Strength and direction of the correlation between the registered trends in the Bulgarian and Romanian reports under the CVM (2007-2012)

Pearson r		Frequency of cases	Relative frequency
-1,00 - 0,67	Strong negative	1	1,1
-0,67 - 0,33	Average negative	8	8,7
-0,33 - 0,00	Weak negative	9	9,8
0,00 up to 0,33	Weak positive	15	16,3
0,33 up to 0,67	Average positive	22	23,9
0,67 up to 1,00	Strong positive	37	40,2
Total		92	100,0

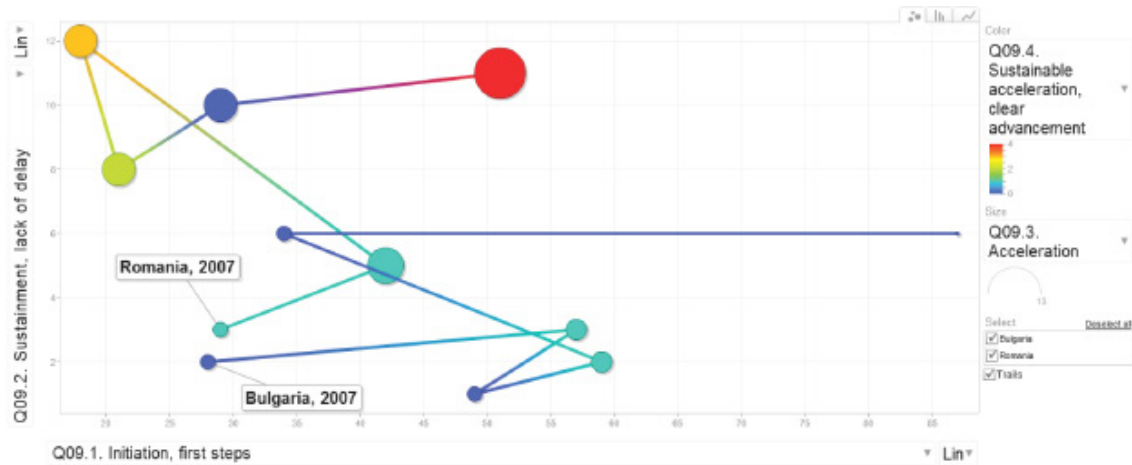
Source: our own data and calculations.

This entire picture depicted by the table is very telling. The diametrically opposite tendencies (positive for the one and negative for the other country) have been registered just in one case.³⁷ Some substantially negative correlations (below -0.33) have been found in about ten percent of all cases. On the contrary, strong positive correlations (at the respective point in time the assessments of the two countries are similar if not identical) have been found in about two thirds of all cases, including the very strong correlations (above +0.67) which have been found in 40 percent of the cases. The structural pattern of proportional positive correlations is obvious. The ongoing processes in the two countries, without being identical, are nevertheless typologically similar to an extraordinary high degree. The picture is clear: **The Bulgarian and Romanian cases, seen through the optics of the CVM, vary in details and specific contexts but in both of them the similarity in the pace and advancement in judicial reforms is overwhelmingly strong because of a lack of real progress in the fight against corruption**” (Dimitrov et al. 2015: 45; italic from the original).³⁸

2.3 Some substantial variations

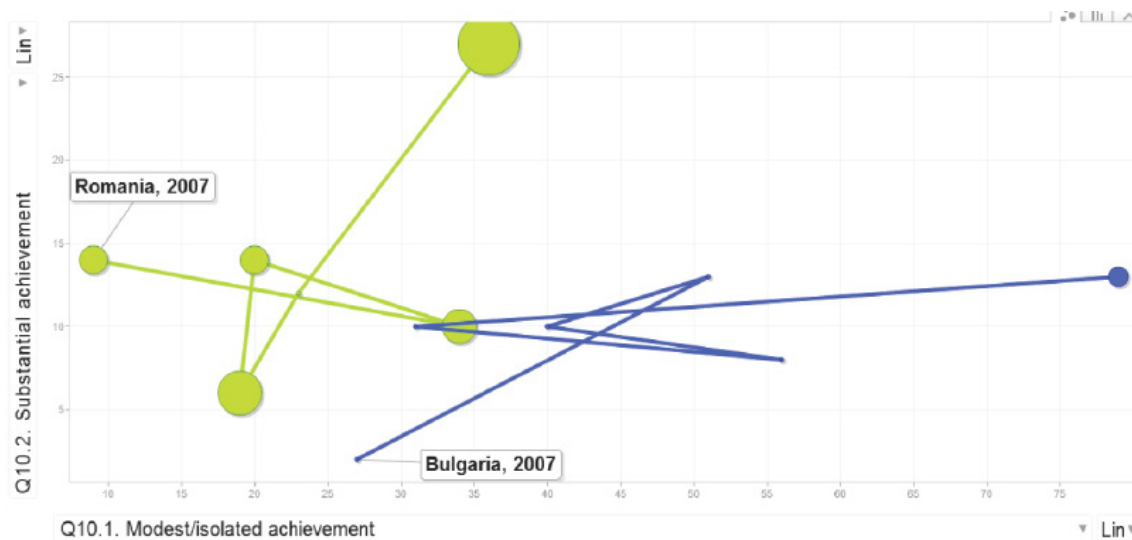
However, we have no intention to underestimate the differences (of some minute particularities) between the national cases within the general common trend. As the Figures 7 and 8 show, they are important in themselves and even striking in some aspects.

Figure 7: Correlated dynamics of the registered changes in the CVM reports for Bulgaria and Romania by indicators within the dimension 'Pace of the achievement' (2007-2012)



Source: Authors

Figure 8: Correlated dynamics of the registered changes in the CVM reports by indicators within the dimension 'Magnitude of the achievement' (2007-2017)



Source: Authors

This is a multi-dimensional visualization which simultaneously illustrates a) the structure of the process - whether it is straight forward toward advancement or a trajectory of some important backslides; b) the conventional 'size' of the advancement demonstrated by the size of the balloons of the assessments in the reports of the respective years; c) the colors which change from 'cold' to 'hot' which stand for the transition from negative to positive evaluations for the undergone progress. Were the story of the monitored

countries one of real progress in rule of law promotion, the picture should be that of a movement from the left bottom in 2007 to the right upper corner in 2012 with bigger and bigger balloons changing from blue, through green and yellow to orange and red. Of course, the lines should not necessarily follow a record of steady upward linear progress but, at least, the averaged line of progress, beyond some up and down oscillations, should move from the left bottom to the right upper corner. The actual trajectory of 'reform movement' is far more complex and ambivalent.

As Figures 7 and 8 illustrate, the Romanian balloons are certainly bigger (and sometimes 'hotter') than the Bulgarian ones. Yet the backslides are far more pronounced, too - a fact that cannot be captured in a simplified two-dimensional space as in Figures 1-6.³⁹ Thus, the developments in the two countries are not fully identical, in some particular respects they are not even similar. More importantly, however, these developments do not follow a straight forward trend of improvement. For the academic purpose of grasping the actual complexity of the national situations these details (and numerous others) in our empirical findings are not less essential than the general picture, already presented in Figure 6, where the overall implicit political evaluation of the advancement has been demonstrated. **It should be stressed that this comprehensive study of all reports for the first six years of the CVM's implementation provides an analytical picture, which fully complies with the EC's political assessment provided both in the introduction and in the recommendations for Bulgaria and Romania in the July reports of 2012.**

Summing up, we make two key arguments:

- For the period under scrutiny Romania was performing only relatively better than Bulgaria in terms of getting more (but qualified) appraisals for higher results under the CVM. Yet essentially:
- The time elapsed by that point does not give proof of a hypothetical assumption, implicit at least in the labeling of the 'progress reports', that there has been a sustained tendency towards progress in bringing Bulgaria and Romania up to the standards of the other EU member states⁴⁰; what we encounter is rather an oscillation around a conventional line of a maintained status quo of a blocked judicial reform which is both derivative from and conducive to a meager anti-corruption fight at a high political level.

The important question, of course, is: What does the empirical data say about the CVM itself in addition to the pictures describing the concrete situations in the two countries? If the empirical findings have proven that neither the difference in the implementation of the CVM has been that spectacular (beyond the variations in details) nor that this implementation has achieved the aspired goals of post-accession conditionality (the progress to matching the standards of the other EU member states for the sake of protecting the interests of the European citizens), should we not pay some more attention to the mechanism itself - more attention to its premises, its mode of functioning and, most importantly, to the alternatives for its improvement, which eventually could lead to the fulfillment of its mission in a foreseeable future?

We have claimed elsewhere at large (Dimitrov et al. 2014, 2015) that, whatever the eventual shortcomings of the CVM in its current form of implementation, it could tremendously help the reform efforts of the local

governments were the latter truly dedicated to those reforms. Why, then, are the results so far insufficient and, more importantly, what should be done next if there is a negligible chance that the character of the local governments will be radically changed? These are the questions whose answers could bring us to an alternative for better effectiveness of the CVM.

The short answer could be that the CVM's design was not tailored to the specificities of the Bulgarian and Romanian societies and to the need to counteract the respective dominant political behavior. The CVM was meant to help the pro-reform policies, implying that the political desire for these reforms is taken for granted and that there were no provisions to remedy this unrealistic assumption. However, this is a too general statement, which needs clarification.

3. Hindrances faced by the CVM

3.1 *The pre-accession conditionality inertia*

Having in mind the *ad hoc* character of the CVM, it is of no surprise that we can find far too many traits of the previous pre-accession conditionality approach, in drastic contrast with the fact that the very necessity of such a mechanism derived out of the failure of the pre-accession conditionality in Bulgaria and Romania. Perfectly in line with the basic assumptions of the mainstream academic literature on Europeanization of the CEECs, which highlights rational cost-benefit analysis, the socialization of elites, know-how transfer and normative harmonization, the EC continued to view the two Balkan societies as mere laggards that did not cope with the time-frame but, otherwise, were of the same quality, not special cases of the Eastern enlargement. This is why the CVM was designed on the premises that naming-and-shaming, institution building, twinning and, in general, the entire conditionality apparatus of the pre-accession process (Grabbe 2006) would work after the accession, despite the strong warnings by Bernard Steunenberg and Antoaneta Dimitrova regarding the limits of conditionality (Steunenberg/Dimitrova 2007) as well as the appeal for methodological re-thinking of the myth of conditionality (Hughes et al. 2005).⁴¹

The inertia concerns both the very structural pattern of interaction between the EU and the new countries through conditionality⁴² and the traditional flaws of this approach.⁴³ However, we repeat: The inertia from the previous period is not a main problem of the CVM's design and its subsequent implementation. Were the local authorities truly devoted to the obligations taken to fulfil the preparations needed for full-fledged EU membership, the mechanism would have achieved qualitatively different results. Were the authorities willing to achieve the reform goals they would have benefited from the CVM's implementation. Yet the case actually happened to be very bizarre.

3.2 *Underestimated local political resistance against the reforms*

For all societies in South-Eastern Europe (SEE) the tasks of Europeanization (Elbasani 2013; Chiva/Phinnemore 2012; Gateva 2015; Fagan/Sircar 2015; Vachudova 2012) are far greater in number, relate to

a far greater range of domains of social life, and imply far more difficult challenges.⁴⁴ In brief, tasks of such depth and range are practically unachievable (except on paper only). But the very deficiency of rule of law in these countries makes it relatively simple to adopt the *acquis* (as it does not matter whether the laws one will *not implement* in practice are part of the national or of the 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 measured progress in preparation for EU membership. On the basis of the EC's past experience of taking some progress as proof of Europeanization, the EC can be deceived by imitation of successful Europeanization in these two neighboring, typologically similar countries.

However, since after the previous stage of the fifth enlargement the EC *has now learned* how real the problem of law-enforcement is and it has begun to insist on receiving proofs, specifically of implementation (meaning results). This is far from being the only aspect of the fundamentally changed context of partnership. The shift 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 irreversible⁴⁵ and, hence, it had previously seemed inappropriate to penalize non-fulfilment. But when Europeanization has in fact occurred only on paper, the assignment of a country to the status of EU member entails a major loss of incentives for respecting the rules and complying with them (Gateva 2013; Ganev 2012; Papakostas 2012). Apart from this, very little has really changed inside these countries in terms of quality of life; no genuine Europeanization through the effective rule of law occurred and no additional domestic political support for pro-European reforms was generated.

With the accession of Bulgaria and Romania to the EU, for the first time the unprecedented task to change the entire system *of the judiciary* and, hence, *the power distribution* has arisen. This is a particularly delicate issue for two reasons. First, as numerous studies have established, the post-accession conditionality is productive with regard to policies based on the clear *acquis* and for which progress can actually be proven. This is not the case in the sphere of justice. An effectively functioning judiciary is a structural precondition for the rule of law, and under the Copenhagen criteria *it is assumed that 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 rule of law in the EU-15*. Moreover, the judiciary is a too sensitive field in each national society and, therefore, in this area *there is no possibility for having a common European regulation* (Alegre et al. 2009). Together, these two factors explain the lack of imperative norms in this particular sphere (Sedelmeier 2011; Mendelski 2015; Ivanov 2012; Buzogáni 2012; Papakostas 2012; etc.).⁴⁶ Hence, the possibilities for post-accession conditionality to be effective in rule of law promotion are quite limited from the start.

Secondly, we concur with Mendelski's (2015) observation that post-accession conditionality in terms of following the EC recommendations works only when the recommendations refer mainly to *technical-procedural changes*. As a general rule, the EU can achieve only little results with regard to the kind of structural reforms that might lead to a redistribution of power. The changes proposed by the CVM in the judicial systems of the two countries refer to these structural reforms: These changes would redistribute power not only within the judicial system but in the entire society.

This brings us to a listing of the key components of the local governments' expectations which have been *shaped during the previous years of cooperation with the EC*⁴⁷:

- 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 are in no hurry to gain administrative capacity (even though they have previously absorbed billions of Euros for this purpose). We would not speculate about Romania, but it is a common stance among Bulgarian experts on political corruption at least (Tihomir Bezlov, Ognjan Minchev, Krasen Stanchev, Duhomir Minev, etc.) that this is because if the governments did build the capacity, the beneficiaries of European funding would be the citizens themselves and the economic subjects, not the governments, whose power of nepotistic 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 (especially in Bulgaria) without practical consequences and so they naturally view the requirements for concrete results as an unfair 'change of the rules' or as an application of a 'double standard'. However, for the governments, the achievement of the CVM's goals would amount to a change of the whole social model, which would disempower exactly them; therefore, they are rightly sure that any other party that comes to power will continue the same course of resistance against reforms and the same imitation of Europeanization.
- The governments expect that the EC will take advantage of the previous practice of discretionary political bonuses awarded for loyalty (for example, 'the gift for Kosovo' - Grabbe 2006; Smith 2003)⁴⁸ and will invest efforts in merely supporting pro-European discourse (under the constant real threat of turning towards Russia, a threat that naturally does not exist in Poland or Hungary or the Baltic countries).
- The governments seem to be confident in their stubborn resistance against recommendations received that the EC will not even use its limited resources of sanctioning mechanisms, since this would constitute a precedent later applicable towards other member states as well.
- The governments, judging to some extent from past experience, expect that the EC is as irresponsible in its conduct as they are, and will simply continue to 'play the political game' by closing its eyes to the lack of various European standards in each of the monitored societies, as it did in the previous decade. (However, this expectation has proven very unrealistic in the wake of the socio-economic impact of the world crisis of 2008.) The governments' convictions derive 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 or even Italy).⁴⁹

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

We see that in this case the stumbling block is the fact that the policies for social change the EC expects to be followed in SEE have in the course of time come up against the root of the structural social problem. We assert that the reform policies are obstructed by the structural characteristics of the social systems in the two countries, in particular, that make the latter typologically different compared to the previous EU candidate countries (Andreev 2009; Ivanov 2012; Ganev 2012; Vachudova 2012; Papakostas 2012). This is why the EC's reports in 2012 contain the discovery that "fundamental reforms"⁵⁰ and "comprehensive reforms"⁵¹ in both countries are needed.

3.3 *The penalist paradigm*

The problem with the CVM, in its current form, is further aggravated by the fact that the phenomenon of corruption is seen as a social pathology, which could be remedied mainly by means of penalizing the personal perpetrators of corrupt practices but not through policies that will structurally reduce the sources of these practices. This is why the sheer number of convicted persons is taken as a major indicator of progress. However, despite the fact that Romania radically outscores Bulgaria in terms of convicted politicians⁵² the 'success' in fulfilling this major CVM recommendation does not lead to a substantial qualitative improvement regarding the level of actual control over corruption (see also Sedelmeier/Lacatus 2016). This should raise strong concerns of the EC and the Council which have recently begun to consider the possibility of ceasing the CVM for Romania in 2017.

3.4 *The recent changes in the pre-accession conditionality as an evidence for some lessons learned*

The structural changes in the pre-accession conditionality for the countries of the Western Balkans prioritize rule of law promotion as a *conditio sine qua non* for any progress of EU accession (Gateva 2015; Fagan/Sircar 2015). They provide sound evidence that the EC understands the gravity of the problem concerning rule of law in SEE countries as a lesson learned through the experience under the CVM (Chiva/Phinnemore 2012; Gateva 2015). Given the capability of the EC regarding serious political innovations in its conditionality tools, it should be possible to restructure and redefine the CVM, which could improve its effectiveness. The truly important counterfactual question is not what would have been if the CVM was not there but what would have been if the CVM from the very start was designed to meet the specificity of the socio-political resistance against its implementation.⁵³

4. **Conclusion - What could be done to improve the effectiveness of post-accession conditionality?**

We emphasize once again: The implementation of the CVM for the last ten years is essentially a 'mixed picture'. This crucial ambivalence is due to the undoubted positive pressure over local authorities to systematically carry out pro-rule of law reforms and achieve the standards of EU membership, on the one hand, and due to some limited progress to this major goal, on the other hand. The latter should count as a substantial

advancement when checked against the initial situation in Bulgaria and Romania at the moment of their EU accession, but it is still insufficient in making both countries compatible with other members. The complexity of the local situation makes the text of the monitoring reports, at places, far too ambiguous, inconsistent and controversial. This is why we carried out a quantitative study of the evaluative complexity of all the reports till 2012, when the EC issued an overall assessment of the state of play in the two countries. The research findings in quantitative terms justify the sober and concerned tone of the general political evaluation by the EC. The problem, however, is that some of the recommendations in the reports, and the policy approach behind them, contribute, at least to an extent, to the limited effectiveness of the CVM. Assuming that thinking about improvement of the EU's post-accession conditionality is a legitimate venture we would suggest a couple of preliminary steps of obligatory nature:

4.1 *Recognition of the problem*

First and foremost, the limited and partial effectiveness of the CVM, in its current form, should be recognized publicly. Any further preservation of the CVM in its current form will only lead to an escalation of the broad public resentment. It is a matter of common sense to understand that if, given ten years of treatment, the ailment worsens either the cure or the diagnosis or both need to be changed. A right step in the right direction would be the understanding that the ineffectiveness derives logically, in the very last resort, from the specificity of the political approach embodied in the CVM (Dimitrov et al. 2014, 2015). The shift in the approach is the focal point of political innovation.

4.2 *The changes in the approach*

The change in the approach implies a set of at least four major shifts (Dimitrov et al. 2014):

- A shift from penalist expectations for convicted corrupt officials to an elaboration of sustainable institutional mechanisms for responsible political behavior;
- A shift from laud appeals to the civil society to focused policies for its creation and enhancement by making its structure a mandatory partner in all EU integration activities;
- A shift from accent on monitoring to actual political and policy cooperation through the EC's involvement in 'post-accession management' (Ágh 2008: 27) in the new member states⁵⁴;
- Improved understanding of the local contexts and more relevant policy recommendations for reforms based on international academic expertise as a component of the EC's expertise.

Since the EC has so far given sound proofs that it can innovate in its efforts to enhance the effectiveness of EU conditionality (Gateva 2015; Fagan/Sircar 2015; Kochenov/Pech 2015), we may believe that it should also be capable of a reorientation of the CVM, making it suited to achieve its own goals.

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6. Notes

- 1 Whereas the reports which are issued in the beginning of the year are specified as 'technical' by the EC itself (because they contain more factual material and less political evaluations and policy recommendations) the July reports bear no label. However, because of the far more pronounced political aspect in these reports we will call them 'political'. It is important to mention that since 2014 the EC issues just both the technical and the political reports in late January and the technical reports for Bulgaria are revised in early February.
- 2 Alegre et al. (2009), Chiva/Phinnemore (2012), Dimitrov et al. (2014), Toneva-Metodieva (2014), Gateva (2015).
- 3 A number of major caveats is due at this point:
 - (1) On the eve of the actual entry into the EU, less than six months prior to the accession date of 1 January 2007, the Bulgarian Minister of EU Affairs, Meglena Kuneva, complained in a series of public statements that there were 766 unaccomplished tasks by the Bulgarian authorities, which had been promised to the EC as the premise for accession. The very first progress report reads as follows: "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 CVM 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 organised crime" (Report from the Commission to the European Parliament and the Council on Bulgaria's Progress on Accompanying Measures Following Accession, Brussels, 27 June 2007, COM(2007) 377 final, p. 2, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52007DC0377>, accessed on 29 April 2016). Please, note that the fight against corruption is mentioned 'inter alia'. As for Romania the text is: "In addition, in line with the arrangements made for those countries which joined the EU in 2004, provisions were made in the Accession Treaty for safeguards and transitional arrangements (for example, restrictions on free movement of workers, on access to road transport networks; provisions on veterinary, phytosanitary and food safety rules). 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. Romania's accession was also accompanied by a set of specific accompanying measures, put in place to prevent or remedy shortcomings in the areas of food safety, agricultural funds, the judicial reform and the fight against corruption. For the last two a CVM was established, setting out benchmarks to provide the framework for monitoring progress in this area" (Report from the Commission to the European Parliament and the Council on Romania's Progress on Accompanying Measures following Accession, Brussels, 27 June 2007, COM(2007) 378 final, p. 2, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52007DC0377> accessed on 29 April 2016).

(2) In fact, all the CEECs have some ‘unfinished business of the fifth enlargement’ (Kavrakova 2009; Steunenberg/Dimitrova 2007; Kopecký/Spirova 2011; Dimitrova 2004), i.e. the disadvantages of the two Balkan countries are only relative. The opening pages of the first reports under the CVM in 2007 clearly state that the unpreparedness of the two countries has been a matter of fact that has been politically acknowledged by the respective governments, hence justifying the introduction of the mechanism. The fact was reiterated in the reports of 2012 which provided a five-year overview of the state of play. (“In the run-up to the accession of Romania to the EU in 2007, it was agreed that further work was needed in key areas to address shortcomings in judicial reform and in the fight against corruption. This led to the establishment of a framework to support Romania and to monitor progress in these areas, the CVM. Benchmarks were established in four areas: Judicial reform, integrity, the fight against high-level corruption, and the prevention and fight against corruption in the public sector. The Decision included regular reporting from the Commission, and provided that the mechanism will continue until the objectives of the CVM are met and all four benchmarks are satisfactorily fulfilled. Five years after accession is an appropriate time to assess whether the objectives of the CVM have been fulfilled. [...] During these five years there have been periods of progress and setbacks, times when co-operation has worked well and times when the mechanism has been resented and resisted. So this report recognizes the overall progress made since accession. Nevertheless, this report is adopted at a time when important questions are raised with regard to respect for rule of law and the independence of the judiciary in Romania. [...] The Commission considers that recent steps by the Romanian Government raise serious concerns about the respect of these fundamental principles” (Report from the Commission to the European Parliament and the Council on the Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 18 July 2012, COM(2012) 410 final, p. 2, available at http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf, accessed on 08 January 2016).) The opening page in the Bulgarian report reads almost the same except for the number and the contents of benchmarks. This official statement of the international obviousness of the political issue concerned is due because some experts, in Romania and Bulgaria predominantly but not exclusively, claim that the CVM was unnecessary from the very beginning, since there were no particular grounds for its introduction.

- 4 “The purpose of the Cooperation and Verification Mechanism is to ensure that measures are taken to provide assurance to Romanians and to the other Member States that administrative and judicial decisions, legislation and practices in Romania are in line with the rest of the EU. Progress on judicial reform and the fight against corruption will allow Romanian citizens and business to enjoy the rights they are due as EU citizens. Without irreversible progress in these areas, Romania risks being unable to correctly apply EU law” (Report from the Commission to the European Parliament and the Council on Romania’s Progress on Accompanying Measures following Accession, Brussels, 27 June 2007, COM(2007) 378 final, p. 2, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52007DC0377>, accessed on 29 April 2016). “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 June 2007, COM(2007) 377 final, pp. 2-3, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52007DC0377>, accessed on 29 April 2016).

- 5 Interview with official from DG NEAR.
- 6 Actually, this is a matter of common sense knowledge among the participants in the process of the Bulgarian accession to the EU and was mentioned several times in our interviews with them. The interviews were undertaken in the context of the MAXCAP Work Package on in-depth study of the Bulgarian EU accession strategy in 2014 and early 2015. The results of the study will appear as a chapter under the title ‘The Bulgarian Route through the EU Integration Maze. The Specificity of Bulgaria’s Integration Strategy and Its Implementation’ in the volume Dimitrova, A. L. and Dimitrov, G. (eds.) (2016) *Has the EU’s Eastern Enlargement Brought Europe Together/South Eastern Perspectives*, Sofia: St. Kl. Ohridski University Press.
- 7 In a special interview for the Bulgarian National Radio in the autumn of 2014, Mark Gray, the EC ex-spokesperson, explicitly pointed out that the CVM was conceived of and introduced in the expectation that it would yield results in the first few years of its implementation. (Gray, M. (2014) ‘Nothing Has Changed Since the CVM Report in February’, 2 November, available at <http://bnr.bg/post/100480298/mark-grei-monitoringat-na-pravosadieto-i-vatreshnite-raboti-ne-e-bshe-zamislen-da-prodalji-tolkova>, accessed on 29 April 2016). In Bulgaria the Ministry of Justice runs all processes relating to the CVM and this is why it is important that the very same fact has been reported several times in public by ex-ministers and deputy-ministers of justice, most recently by Hristo Ivanov on 9 March 2016 in a public deliberation under the title ‘The CVM, Juncker and the Safeguard of Rule of Law in the EU’ (Information Center of Representation of EC in Sofia). Ivanov, prior to his appointment as minister of justice, was a prominent pro-judicial reform NGO activist, regularly consulted by EC experts for years.
- 8 These are comments cross-checked by interviews with both EC functionaries and Bulgarian diplomats (see endnote 6 above). The then commissioner of enlargement, ex-activist of the Social Democratic Party of Germany, supported the respective Bulgarian and Romanian socialist party leaders and this support was crucial for their rise to power. In Romania, Adrian Năstase was head of government from 2000 to 2004. The current president of PES (Party of European Socialists), Sergei Stanishev (in office since 2011), became leader of BSP (Bulgarian Socialist Party) in 2001 and later prime minister of Bulgaria (2005-09, 2013-14) exactly because of his strong European connections. At present Verheugen (2013) regrets the hasty enlargement of the EU.
- 9 For instance, the reports on the CVM’s implementation are addressed officially only to the European Council and the European Parliament. The national authorities who are supposed to make use of the recommendations in the reports are not officially among the addressees of these reports.

- 10 Andreev (2009), Trauner (2009), Mendelski (2015, 2012, 2011, 2009), Mungiu-Pippidi (2011a, 2011b), Ganev (2012), Papadimitiu/Gateva (2011), Racoviță (2011), Tanasoiu (2011), Tanasoiu/Racoviță (2012), Papakostas (2012), Ivanov (2012), Toneva-Metodieva (2014), Dimitrov et al. (2014, 2015).
- 11 Andreev (2009), Ganev (2012), Ivanov (2012), Racoviță (2011), Tanasoiu (2011), Papakostas (2012), Mendelski (2012, 2011), Slapin (2015).
- 12 In early June 2013, a notorious Bulgarian oligarch Delyan Peevski, who is considered the personal embodiment of political corruption, presided 'the Bulgarian FBI' (DANS), which caused a massive public protest. Thousands of citizens marched the streets of Sofia till October, day after day, angry against the entire political class in the country. This is what makes the events compatible with the Romanian mass anti-corruption protests in November 2015, which brought down the government.
- 13 The detailed figures of these investments for Bulgaria and Romania are available at the end of the introduction sections of the EC's July reports of 2012.
- 14 According to Alina Mungiu-Pippidi (2011a: 161), "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". We agree as well 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).
- 15 The data concern the period from 2011 to 2015, available at <http://www.thecatchupindex.eu/TheCatchUpIndex/>, accessed on 29 April 2016.
- 16 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 reports of 2012.
- 17 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.
- 18 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 generalizations about the Europeanization of the Western Balkans can be directly extended to the other countries of SEE as well.
- 19 The reviewers of the paper insisted that examples should be cited here. The examples are actually

countless and just two of them would suffice. They are from the July report 2012 for Bulgaria: “Bulgaria lacks independent institutions in the area of anti-corruption with the authority and the obligation to make proposals and to drive action. This limits their freedom of action to intervene in a pro-active way and to deliver independent monitoring. As a result, many administrative activities in this area tend to be reactive and to focus on formal compliance alone. The lack 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.⁷⁰ [Footnote 70: The National Audit Office and the Conflict of Interest Commission cannot sanction if cooperation is refused. Inspectorates have the right to sanction non-compliance with corruption prevention rules but in reality have not exercised this right” (Report from the Commission to the European Parliament and the Council on the Progress in Bulgaria under the Cooperation and Verification Mechanism, Brussels, 18 July 2012, COM(2012) 411 final, p. 15, available at http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf, accessed on 29 April 2016). The only meaningful question is ‘why is this so?’, but this has never been asked. The very same question comes to mind when reading the statement “Despite the various legal and procedural instruments developed to address high-level corruption, the continuing difficulties of such cases in court raise questions about the capacity and resolve of the judiciary. High-level corruption cases typically involve influential public personalities; they are therefore a test for the capacity and independence of the Bulgarian judicial system. As corruption and organised 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 organised crime and politics. These aspects have not received appropriate attention in Bulgaria” (Report from the Commission to the European Parliament and the Council on the Progress in Bulgaria under the Cooperation and Verification Mechanism, Brussels, 18 July 2012, COM(2012) 411 final, p. 17, available at http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf, accessed on 29 April 2016). ‘Why?’ – again, no answer. The European citizens hardly need the CVM to learn that “high-level corruption cases typically involve influential public personalities” (Ibid.: 15).

This is why when we come to the otherwise seemingly sensible recommendation “Make transparency, objectivity and integrity the top priority in appraisals, promotions, appointments and disciplinary decisions for the judiciary” (Ibid.: 21), we need an intelligent explanation - if this is feasible under the current sociopolitical conditions in the country why did it not happen so far? For other examples see Dimitrov et al. (2014).

- 20 What Heather Grabbe (2006: 83, italics added) has written regarding the experience of the EU until 2005 is valid here as well: “[...] *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*”.

- 21 “The Commission’s assessment shows the progress that Bulgaria has made in the five years since its accession to the EU. The CVM has made a positive contribution to this progress” (Report from the Commission to the European Parliament and the Council on the Progress in Bulgaria under the Cooperation and Verification Mechanism, Brussels, 18 July 2012, COM(2012) 411 final, p. 20, available at http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf, accessed on 28 March 2016). Compare with Attila Ágh’s (2008: 21) 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”.
- 22 For instance: “Deepening reforms will need a stronger ownership of reform, particularly in the leadership of the judiciary. It will also need a clear common direction by the authorities, and a comprehensive approach to implementing change, joining the work of different institutions together more effectively than in the past. This implies a stronger effort to demonstrate, that integrity is valued and that corruption and organised crime is effectively punished” (Report from the Commission to the European Parliament and the Council on the Progress in Bulgaria under the Cooperation and Verification Mechanism, Brussels, 18 July 2012, COM(2012) 411 final, p. 20, available at http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf, accessed on 28 March 2016).
- 23 The vague comments which do not have concrete addressees comprise 44 percent of all comments in the reports for Bulgaria.
- 24 “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” (European Commission (2012) ‘Report from the Commission to the European Parliament and the Council on the Progress in Bulgaria under the Cooperation and Verification Mechanism’, Brussels, 18 July, COM(2012) 411 final, p. 1).
- 25 It would not be hard to demonstrate the systematic mutual co-determination among the highlighted shortcomings of the CVM because they are integral elements of a specific paradigmatic approach. Our observations have led to similar empirical findings as those indicated in the study of Hughes et al. (2005) regarding “the consistent inconsistency” (Simon Duke) of the EU and, next, the intentionally vague wording of the EC’s assessments in the accession conditionality. The persistent package of these ‘particularities’ indicates the presence of a sustained policy approach. 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 rationalist considers to be a ‘pathology’, for a historical sociologist is a key element of social ‘normality’. In the literature on Eurointegration, this different paradigm is present but not in the mainstream literature - see, for instance, Attila Ágh (2008a: 17): “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 (2008: 19, italics added) 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*". See Dimitrov (2015) for a more detailed analysis of the paradigmatic premises of the EU's conditionality and its reproduction in the literature on Europeanization.

26 The Cooperation and Verification Mechanism for Bulgaria and Romania - Second Wave, Eurobarometer 406, available at <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/yearFrom/1973/yearTo/2016/surveyKy/2035>, accessed on 11 January 2016.

27 "In both countries there was strong and growing support for the EU to have a role in tackling these problems", The CVM for Bulgaria and Romania, Flash Eurobarometer 406, p. 7.

28 It started as a research project under the research program of Sofia University in 2012-2013 (under the title "The role of anti-corruption fight in the EU-Bulgaria relationships") and continued as a study of Work Package 4 of the MAXCAP project (2014-2015).

29 Because of the political turbulence in the country in 2013 the EC decided not to present any report on Bulgaria and there was no point to study the Romanian report only.

30 There are important differences between our study and the one carried out by Sedelmeier and Lacatus (2016). Although the two studies both address the CVM, the focus of attention and the scope of research interests are very different and, hence, the methodology of study is incommensurable. The very title of their work is instructive - Sedelmeier and Lacatus focus mainly on the levels of compliance with the CVM's anti-corruption recommendations identified in the EC's reports. The paradigmatic difference between the two studies concerns all aspects of the research work starting from the subject matter and ending with the scale for coding. We treat the CVM, in accordance with its explicitly stated goals, as a political instrument of cooperation between the EC and the local governments, which has to promote pro-rule of law reforms, anti-corruption measures inter alia, for the sake of protecting the interests of European citizens and businesses. This implies a number of due analytical priorities: a) the phenomenon of corruption is considered in line with GRECO's definition as a societal harm concerning the roots of free market, democracy and human rights and not just as individual acts of bribery or conflict of interests. Hence, we study the levels of relevance of the measure recommended to the national authorities in Bulgaria and Romania. This implies b) the subject of study is the EC's point of view

and the level of partnership in helping the local governments to promote the rule of law and this is why we study the way of articulation of facts and recommendations about all ten benchmarks and not only the levels of compliance with the recommended anti-corruption measures. Since we study the relationship between the EC and the national authorities we take into account the political approach of the post-accession conditionality behind the particular form of the CVM, on the one hand, and of the socio-structural premises behind the governmental behavior, on the other, which is nothing else but the standard sociological approach to the problem. This is why c) we study the interaction between the partners under the CVM in multi-dimensional space, described below. Finally, having in mind the EC's repeatedly expressed concerns about the regress in the reform policies in both countries we devised scales which would be capable to register the progress as well as backsliding whenever and wherever this occurs. Since, when conducted, the study was unprecedented in its purpose, it initially, was purely descriptive - we wanted to structurally identify the state of play in quantitative terms, not to (dis)prove any success or failure of the CVM or interpretations of these developments by someone else.

- 31 However, even after this re-coding of our data there is a high level of incommensurability between Sedelmeier/Lacatus' (2016) study and ours because our colleagues have started their metric with 'zero progress' equaled to 0, which is why the cases of 'no progress' and 'areas of serious concerns' seem the same and all the cases of regress and backsliding are nullified.
- 32 The initial dichotomous indicators are *improved personnel capacity; adopted normative innovation; created institution; concrete particular results; general statement about results; unambiguous proofs of governmental engagement for results.*
- 33 The initial dichotomous indicators are *first steps; sustained results/no delays; acceleration; impressive acceleration; progress, quantum leap; substantial development.*
- 34 The initial dichotomous indicators are *humble, separate achievement; substantial achievement; huge, systemic, impressive achievement.*
- 35 The initial dichotomous indicators are *overt appraisal for good will; appraisal for advancement; appraisal for a particular result; appraisal for a new stage/level or systematic result; no appraisal but just comments; criticism for the lack of good will; criticism for the lack of (real) advancement; criticism for the lack of systematic result.*
- 36 Remember that the very title of the reports is 'report on progress', that is exactly progress is the major stake of the CVM. However, from the very start the Bulgarian translation of the reports downgraded the expectation to mere advancements labeling the reports 'report on Bulgaria's advancement'.
- 37 This tendency concerns the scope of the EC's evaluation - when in Bulgaria the scope broadens, in Romania it shrinks and vice versa.
- 38 For the purposes of the current paper we would supplement the quotation with an emphasis on

the vicious circle: because the judicial system is corrupted by politicians it cannot counteract the systematic corruption among the latter. This is exactly why the partial measures, which could improve the effectiveness of the judicial system and make it a major lever in combating corruption elsewhere, are impotents in SEE. This is why it is the rule of law that is at stake here, not the fight against corruption as such.

39 It is self-obvious that if we nullify the negative developments by equalizing regress to no progress Romania will appear as radically better, outperforming Bulgaria, but this would be an instrumental trick only.

40 See the introduction sections of the July reports both in 2007 and 2012.

41 In this regard special attention should be paid to Martin Mendelski's (2015) and Alina Mungiu-Pipidi's (2011) recommendations for a paradigmatic change in the EC's approach toward rule of law promotion and the anticorruption fight.

42 "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). In Bulgaria and Romania after 2007 there was a long sequence of unwilling regimes.

43 A methodological deficit characterizes EU conditionality in general. What Grabbe (2006) has written regarding the experience of the EU until 2005 is valid regarding the CVM's implementation: "[...] 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).

44 It is important to recall Attila Ágh's (2007) 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 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 the 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).

45 We should not forget that Bulgaria and Romania are *certainly not the only cases where we observe backsliding in the post-accession period*. The study by Martin Mendelski (2009), which compares developments in the new member states across numerous quantitative indicators, comes to the following conclusion: “The reform reversals after accession in most first wave countries confirm the limited (unsustainable) impact of the EU” (Mendelski 2009: 62). Developments in Hungary and more recently in Poland sustain this claim.

46 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” (Buzogány 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).

47 For a detailed justification of these observations see Dimitrov et al. (2014).

48 As the time elapses less and less people would recall the fact so obvious to the observers of the events at the turn of the century: Bulgaria and Romania did not allow the Russian air forces to use their space to counteract the NATO bombing during the Kosovo crisis and because of this they received intensive support for the start of their EU accession negotiations despite the relative unpreparedness.

- 49 All these analytical observations listed above figure in our work on the CVM from 2014 (Dimitrov et al. 2014) but they received strong support from the findings of our in-depth study of the Bulgarian strategy for EU accession and of the actual process of accession which was carried out under the WP 5 of the MAXCAP project (2014-2015). This particular work included in-depth, unstructured interviews with 23 participants in the process - ex-ministers and deputy-ministers, high rank governmental official involved in the accession negotiations, EC experts, diplomats -, a literature review of academic texts in Bulgarian language, analyses of governmental documents, party programs, etc.
- 50 European Commission (2012) 'Report from the Commission to the European Parliament and the Council on the Progress in Bulgaria under the Cooperation and Verification Mechanism', Brussels, 18 July, COM(2012) 411 final, p. 9; 18.
- 51 European Commission (2012) 'Report from the Commission to the European Parliament and the Council on the Progress in Bulgaria under the Cooperation and Verification Mechanism', Brussels, 18 July, COM(2012) 411 final, p. 4; 9.
- 52 See the EC's progress reports for 2014, 2015 and 2016.
- 53 For a detailed discussion of this point see Dimitrov et al. (2014).
- 54 The EC's initiative for a framework to safeguard the rule of law in the EU is a very positive example and most pertinent first step in this regard (Kochenov/Pech 2015).



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

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