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Looking to the EU Conditionality for the Eastern Candidates from a Different Perspective.

The case of European Commission Progress Reports in the area of corruption. Case-study for Bulgaria and Romania (2000-2004)

Introduction

Corruption is included in the Copenhagen Political conditionality, Democracy and the rule of law, together with the three pillars of a democratic state: the parliament, the executive and the judiciary. The preeminence of Copenhagen political criteria, in particular, democracy and the rule of law, has been stated long before the Eastern Enlargement. These principles can be found in the preamble of every important EU legal document: The Treaty Establishing a Constitution for Europe (OJ C 169, 2003), in the Treaty on European Union which provides the legal basis for sanctioning MS that are found to be in breach of "the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States" (art. 6 of the Treaty on EU), Opinions of the Commission in the case of Greece, Spain and Portugal Accession (Commission 1979; Commission 1985), ECJ jurisprudence (Kochenov 2004). Their preeminence over the economic criteria was demonstrated on the occasion of Greece accession when the Commission negative economic assessment of Greece's application for membership was simply ignored by the Council. Coming closer, Romania's, Bulgaria's and, in particular, Slovakia's start for negotiations was delayed on the basis of a pure democratic record. In fact during the Eastern Enlargement the importance of democracy and rule of law was further stressed in the Presidency Conclusions of Luxembourg on 11-13 December 1997, when the political criteria (democracy and rule of law) become the prerequisite for opening of any accession negotiations. From that time on it was recommended to open negotiations with those countries that were satisfying **only** the Copenhagen criteria.

Corruption, the last element of the Copenhagen political criterion, strikes me as logically unfit with the other criteria (functioning of the executive, parliament and the judicial), as it is a phenomenon and **not** an institution, moreover it is a phenomenon affecting the three institutions which he is counted together with, not withstanding its role in undermining the health of a national economy. Corruption is outlined as a separate subject in all the Commissions Strategy Papers (Commission 1998, 3; 1999, 15; 2000, 16; 2001, 10; 2002, 13) and all the Regular Reports. Nevertheless the European Commission gives some explanations in its Papers and Reports which come to outline the utter importance of this issue: "The Regular reports noted that corruption was a widespread and systemic problem that undermined the legal system, the economy and public confidence in government" (Commission 2000b; 2001b; 2002b; 2003b; 2004b; 2005a, b). Its seriousness is stressed by the fact that, in Commission's view corruption is widely spread in all the candidate countries

and that the domestic authorities do not respond to it adequately, as was the case for Poland in 1998 (Commission 1998c) and as was the case for other candidates, in particular for Bulgaria and Romania. Consequently the lack of progress in the area of fight against corruption and organized crime could trigger, according to the art.6 of the Treaty on EU, measures against the states which breach the rule. From this point of view, the Bulgarian/Romanian case illustrates perfectly what happens if the progress in this area continues to be unsatisfactory.

Why the Romanian/Bulgarian case?

Although corruption was pointed out as a problem for all eastern candidates, yet, only in the Bulgarian/ Romanian case became a hot issue which generated, together with another one, the competition, a series of "novelties" in the Commission's attitude concerning the two candidates. This is the so-called "enhanced conditionality" which hunted the Bulgarian/Romanian tandem and which was their legacy for the future enlargement of Western Balkans. The two countries were from the beginning labeled away from the other candidates, when in their Association agreements, was included a specific "human rights clause" that made explicit reference to the protection of minority rights. It was also followed by "a unilateral suspension clause", that allowed either party to suspend co-operation in case of failure (of the opposite party) to fulfill the obligations prescribed in the agreement. This was new if compared with the European Agreements concluded with the Visegrad Countries. It was, of course, the perceived poor situation of Hungarian and Turkish minorities in Bulgaria and Romania that generated it.
But "the enhanced conditionality" case became more obvious during the accession negotiations andcCorruption was at the heart of it.

Corruption was spotted, in the first evaluations released by the Commission (Opinions of 1997 and Agenda 2000), as a "serious problem" for both countries and it would stay as such in the Romanian case till the end of negotiations in 2004, while Bulgaria managed during 2001-2004 to get more positive evaluations only to register a blow to the end. Two years before the accession in its 2005 Comprehensive Report for Romania and Bulgaria (Commission 2005a, b) the Commission would put the fight against corruption not only among the issues of serious concern but it would also require "urgent action". It should be noticed that in this case, corruption is mentioned as a part of the acquis communautaire and NOT as a part of Copenhagen criteria, being included in the Justice and Home Affair chapter: " Finally, **urgent action** is required in the field of Justice and Home Affairs, **in particular** as regards preparations for applying the Schengen acquis and for the management of the future EU external border, as well as **the fight against fraud and corruption**, if Romania is to be ready for membership by the envisaged date". The same phrase is inserted for Bulgaria also. The lack of progress in this area, Justice and Home Affairs could trigger a safeguard clause that was inserted in the Treaty of Accession signed with all eastern candidates. In case of "serious shortcomings in the transposition or implementation of EU rules" in the JHA area, the Commission or individual member states could take "appropriate measures" (Title VI and Title IV of the EU Treaty). In the 2004 case it was not specified what "appropriate measures" mean. The Commission published its Comprehensive Monitoring Reports in November 2003

which raised a serious of outstanding issues, they were not taken as serious threats, but rather as "tidying up exercise".
In the Romanian-Bulgarian case things were different in two ways. Firstly, the vagueness of the "appropriateness measures" was replaced with the tangible threat of "postponement clause". In case of "clear evidence" of shortcomings the date of accession would be postponed with one year. The decision is taken by the Council, unanimously, on the basis of Commission's recommendation. For Romania, the screw was tighter as the Council needed only a qualified majority voting to postpone its entrance.

A second provision which represents another departure from the previous enlargement was the imposition of post-accession conditionality that allowed the Commission to monitor Bulgaria's and Romania's compliance to the acquis even after their accession. This was the so-called "cooperation and verification system", whose full operational details were finalised by two Commission decisions in December 2006 (European Commission 2006 a,b). It had its legal basis in the safeguarded clauses provided for in the Accession Treaties (particularly prescribed in articles 37 and 38). It set up a series of benchmarks which were checked twice per year by the Commission. Failure to comply with these benchmarks carried the threat of major sanctions, concluding the withdrawal of EU funding and the unilateral suspension of bilateral cooperation with other EU member states on judicial matters. The relevant aspect here is that this post-accession mechanism was designed specifically to address benchmarks in the areas of judicial reform and the fight against corruption. In the Romanian case these were four, from which two were directly referring to high-level corruption and corruption in the local government, while a third one was hinting in the same direction when was requiring the establishment of an integrity agency to check upon the political decision factors (Commission 2006 b). In the Bulgarian case these benchmarks were six from which two were regarding the fight against corruption at the high-level, at the local government level and at the borders (the customs), one was addressing the fight against organised crime while the other three were regarding the accountability of the judicial system, which it is closely linked to the corruption issue as only an impartial judicial system could resolve the corruption cases properly. The fact that, from all the aspects of conditionality, in the end what remained the subject of post-accession monitoring, was corruption (together with the reform of judicial and the fight against organized crime) enhances my choice for the Bulgarian/Romanian case as it demonstrates that the issue of corruption was not just an important topic in the conditionality hierarchy but it was one of the main causes of Commission's decisions for a "tight conditionality".

Inconsistencies, Omissions, Comparison

The Bulgarian/Romanian case is also interesting because, even at a cursory glance it displays an important inconsistency

Although in its Reports the Commission pointed that both countries Romania and Bulgaria had a serious problem with corruption and fighting against organized crime, yet, Bulgaria was regarded as making much more improvements in this area than Romania. In the 2002 Regular Report Bulgaria was considered as doing "further good progress" and although corruption still remains "a serious problem", "however, Bulgaria's ranking in indexes of International perceptions has improved". This was coming in contrast with Romania where the, by now, trite phrase indicating that "corruption remains widespread and systemic" was enhanced by the clear and tough statement that "no progress has been achieved" and the issue of corruption is "largely unresolved".

Perhaps the most relevant aspect which comes to strengthen the idea that Bulgaria was indeed regarded as a more promising candidate than Romania in the field of JHA and in particular regarding corruption was that when the postponement clause was introduced, Bulgaria needed unanimity for activating it, while Romania needed only a Qualify Majority Vote (QMV) in the Council. The important aspect was that QMV was required in case Romania failed to comply with eleven points. In the Annex IX of the Accession Treaty with Romania, the "specific commitments" were divided in two categories. The first one and the largest, concerns JHA. From the seven requirements, two regarded corruption (one high-level corruption, the other was requiring an independent audit for the results of the Anti-corruption Strategy), one was dealing with the organized crime (which in the JHA chapter from Commission Reports is placed in the same section together with corruption, giving understand that they are inextricably linked). The reform of judiciary) is the subject of another point. The second part of the list with "the specific requirements and commitments" concerns the Competition chapter.
In contrast, for Bulgaria there were no special requirements or commitments to make, which implicitly signifies that the corruption issue in this country, it was not serious enough to be singled out in this way, and consequently **Bulgaria had a significantly less problem in this area compared to Romania.**

Two years later, in 2006, the Commission displayed a substantial change of heart when it introduced a post-accession mechanism of monitoring Bulgaria's achievements exclusively for corruption, organized crime and reforming the judicial system. Worse than this, was the fact that while Romania had to address only four issues, Bulgaria's homework was bigger and more difficult. Both countries had three benchmarks in common: the fight against high-level corruption; the corruption within the local government; and a more transparent, accountable and efficient judicial system. Not only the quantity but also the quality of requirements shows a noticeable difference between the two candidates. Unlike Romania, Bulgaria's organized crime is spotted as a big enough issue to be monitored and after the accession. This comes as a surprise from the consistency of evaluation point of view, since organized crime, though mentioned as a problem in the Regular Reports, it had never been spotted as something that might impinge upon the Bulgaria's accession. Moreover, the requirements for the judicial system are indeed overwhelming as they occupy half of the annex. Somehow, ironically is that Bulgaria and not Romania (although it was very close too) felt on its own skin the consequences of this arrangement when in 2008 suffered the withdrawal of 220 million of EU funding because of persistent failure to tackle corruption (European Commission 2008).

Neither corruption nor organized crime are phenomena which appear, disappear, radicalize, or improve overnight, but they are deeply rooted in a society where the institutional democratic framework exists but it works with many flaws (I specify this, because, paradoxically, only dictatorships and only the tough ones can put a quick halt to this phenomena unless they use it for its own benefice: e.g. organized crime was an unknown phenomenon in all East Europe during the communist period).

So, how comes that while, in 2004 Bulgaria's achievements in the fight against corruption were considered sufficient enough not to necessitate an Annex IX like in the Romanian case only two years later the same country was spotted as having problems in the same area?
Why all of a sudden (in one year), Romania becomes capable to tackle its deep-rooted corruption allowing it to jump from the ever-laggard of the 2007 Enlargement to a kind of frontrunner (if compared to Bulgaria)?

The way organized crime was evaluated by the Commission is a source of further inconsistencies, even without a detailed analysis of the evaluation texts. The organized crime is much interlinked with corruption as one cannot get organized without the other, and the Commission sensed that an evaluation of corruption as a separate chunk is not appropriate, therefore, although **not** from the very beginning of its monitoring it placed it in the JHA chapter, sharing the same niche with organized crime. Racketeering and killing contracts are among the most (if not the most) violent, dangerous and spectacular forms of organized crime. So, in its Regular Report from 2005, for the first time since the beginning of the monitoring process in 1997, the Commission was stating "the frequent contract killing" which "represents a significant challenge to the rule of law" and they raise "serious concern". Moreover, starting with this report from now on, organized crime would accompany corruption as an aggravating factor and, as we have already seen it was one of the six benchmarks mentioned in the post-accession mechanism. It is hard to believe that organized crime radicalized in one year (not with all the measures that Bulgaria had already taken till that moment and for which it had been praised) or that killing contracts became from an inconspicuous phenomenon a sky-rocketing problem. For the fact that this phenomena had existed for long time and on a large scale, gave account various sources such as the analyst Ilija Trojanov or the German investigator sent by Commission in Bulgaria, Klaus Jensen. [1] Even media from outside Bulgaria, in Greece and Romania, reported yearly on several cases in which Greek and Romanian tourists were stopped on high-ways, midday, and subjected to robbery by racketeers' gangs a unique phenomenon, not met in any other Eastern candidate country (including Romania)[2]. Consequently, the question which, by necessity, popes out again is: why the Commission mentions so late a phenomenon that was not even named until that moment in its Reports- killing contracts (and racketeering) and why after seven years of monitoring the situation in the JHA it expressed for the first time its "serious concerns" regarding the organized crime in Bulgaria?

The European Parliament

But the chain of inadvertencies does not stop with the Commission's Reports. We know that the European Parliament itself had a contribution of its own to the evaluation process through its MEPs Rapporteurs. It was the Commission's duty to take into consideration these reports as well as the Parliament requests. The two MEPs Rapporterurs were both British: for Bulgaria Geoffrey van Orden (Christian Democrats Party) and Baroness Nicholson of Winterbourne (Liberal Democrats) for Romania. They were appointed Rapporteurs in September 1999 and they were members of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy. Unlike the Member States whose eventual

[1] Trojanow, Iliya, "Bulgaria: The Mafia's dance to Europe", on *http://www.esiweb.org/pdf/bulgaria_Trojanow-mafias%20dance%20to%20Europe.pdf*; Jensen, Klaus, "Peer Review – Justice and Home Affairs- Bulgaria – 22-24 February- Focus area: Fight against organized crime" on *http://www.esiweb.org/index.php?lang=en&id=381#3*

[2] I monitored the following newspapers for Romania: " Adevarul" and "Evenimentul Zilei" and for Greece "TA NEA" and "Athens News" (engl.) for the period of 2003-2005. The criterion used in choosing these Newspapers was their importance, accountability and the fact that they could be read and in English on line, while Athens News is a newspaper written in this language.

evaluation/reports/analysis for the candidate countries have not been displayed, in the Parliament case we have the advantage of free and open access to its reports, resolutions and debates in relation with this topic.

No other political arena captured better the growing image gap between Romania and Bulgaria inside the EU, than the European Parliament. Also the Parliament displayed even more striking contradictions and inadvertencies in its evaluation towards the two candidates than Commission itself and the corruption (and fight against organized crime) was again at the centre of all these, although it was not the only one.

Like in the Commission case, Bulgaria was considered as being the frontrunner of the two, with more chapters closed and with lesser problems than Romania to solve. Romania had an additional formidable stumble block to face coming from its own Rapporteur, Baroness Nicholson who managed to transform the issue of international adoptions in a hot topic between of EU, US and Romania.

In 2004 Romania "enjoyed" the most damning EP's Report ever, at the end of its negotiations for accession and two years before joining the EU.
Before starting its analysis in brief it should be said that the European Parliament was releasing two types of reports in regard to the achievements of candidate countries. One type was a document released for each country. The Committee on Foreign Affairs, Human Rights , Common Security and Defence Policy was in charge with the Enlargement as a whole. The Rapporteurs were appointed from among its members and the Reports had to be firstly approved by its members and only after submitted for approval and discussion in the plenary. Such a document had two parts. The first part was a Motion for Resolution. The motion was a common text voted by all members of the Committee, where were stated the main conclusions in regard to the evaluation of a certain candidate. They were explicitly addressing/ commenting the Commission's Regular Reports, and they were containing a mixture between suggestions and requests addressed both to Commission and to the Council in regard to enlargement negotiations and to diverse aspects of evaluation. But most essentially it contained its conclusions regarding the candidate achievements. Unlike the Commission's reports, the Motion of Resolution was not addressing all aspects of conditionality but only whatever was considered as being worthy to be pointed out, therefore more problematic. The structure such a text was very loosely divided in political and economic criteria followed by the acquis and sometimes a special section called "other issue". The second part, the "Explanatory Statement" was in fact the very Report of the Rapporteur which the first part, the Resolution, was based on. The explanatory statement is a detailed assessment of those aspects that the Rapporteur considered more significant to focus on.

The second type of reports released by the EP is a collective one, for all the candidates. These reports contained as a first part, a Motion of Resolution addressing diverse aspects of accession in general without necessary mentioning a specific a country unless there is considered a very serious issue which is specific for a certain candidate (see international adoptions for Romania). It is followed by an explanatory statement for each candidate and is based on the Rapporteur's Reports. There is a third part, the so-called "opinion of all committees", where each committee addresses those areas from the conditionality which concerns them. These collective reports were released until 2002, when the first group of Enlargement finalized its negotiations. After this Romania and Bulgaria received their usual individual reports without being accompanied by any other such assessments. They are useful

in the present analysis as they enhance the conclusion of individual Reports and sometimes they might even bring fresh information. Nevertheless, their main scope was to provide the MEPs with a comparative and comprehensive view upon a process of enlargement with an unprecedented large number of candidates applying in the same time.

Broadly speaking, the Parliament's Reports were not exceeding either through the originality of the information or through the quality of analysis. Mostly they were emphasizing one aspect or the other of the evaluation, which had been already mentioned in the Commission Reports (that's why they were released always after the Commission's Progress Reports, at the end of the year or the beginning of the next year, December or February). From time to time, they were adding some bits of info gathered either from their (Rapporteurs) visits in the candidate countries or from diverse reports and analysis of international organizations (such as Transparency International). In general, they were not brining an important twist to the Commission's conclusions. Their importance rests mainly in the fact they indicate both the position of Parliament towards the respective candidate and which aspects of the negotiations were of interests for the MEPs (in a negative and positive way). But there were also instances, when the MEPs Rapporteurs were coming either with new and challenging info/analysis which had not been considered before by the European Commission- this was the case of Baroness Nicholson and her campaign against international adoptions in Romania- or they were taking a different stance than that of Commission's in some specific areas – this was the case for van Orden the Rapporteur for Bulgaria and his support for the Bulgarian government in the Kozloduy atomic plant affair. Yet, in the 2007 enlargement case the Parliament will step up in an unprecedented way. In its Motion for Resolution for Bulgaria, released at the beginning of 2004 as a reaction to the Commission's own Report from 2003, and approved in the plenary of the Parliament, it was introduced the concept "of decoupling" Bulgaria from Romania based on the fact that Romania's backwardness might jeopardy the more advanced Bulgaria's goal of joining the EU in 2007: "Calls on the Council and the Commission to reward the progress and achievements made by Bulgaria in its preparations by adhering to the principle of **'own merits'** and concluding negotiations... as early as possible in 2005". This comes as logic conclusion of Romania's and Bulgaria's evaluations done by the EP's Committee. The opening paragraph of the Bulgarian's report starts brightly:" **Congratulates** Bulgaria on having closed twenty –six out of thirty one new chapters". The assertion is amusingly inaccurate as it is placed in the section regarding Copenhagen political criteria and not in the acquis section. The Report for Romania cannot be more contrasting in its first statement: "**Deplores** that despite progress in a number of areas, Romania currently faces **serious difficulties** fulfilling the requirements of the **political Copenhagen criteria**; states that finalising accession negotiations at the end of 2004 and **becoming a member in 2007 is impossible** unless Romania fully implements the following.." (Report 24 febr. A5 0103/2004). This is a highly serious statement which threatens in unmitigated terms Romania with the postponement clause. Against this background Bulgaria's evaluation seems even more positive and, essentially, it provides a strong argument for the EP's proposition for decoupling.

So, what role played corruption in these contrasting evaluations? In the Romanian case, a very important one. When the EP enumerates the problems that Romania has to solve them in order to avoid a postponement of accession, the first one is: "anti-corruption measures, especially addressing corruption at the political level and implementing anti-corruption laws". The list continues with other two conditions: independence and functioning of the judiciary; and freedom of media. Now, although the last two items might seem independent or not connected with corruption in fact they are very much so, not just "by the book" but

because the Opinion of the Committee on Citizen's freedoms and rights , Justice and Home Affair from 2002 says so in the section tackling the fight against corruption **for all candidate countries**: "stresses the transparency of society (e.g. freedom of media) and the independence of the judiciary are essential in the fight against corruption; in particular court procedure should be more transparent and effectively controlled by the media and so called watchdog groups" (European Parliament A5-0190/2002). Consequently, from four issues spotted by the Parliament as the main problems that may make Romania's accession in 2007 "impossible", one is explicitly addressing corruption and the other three are connected to it. The fourth one, regarding international adoptions would be discussed later in the context of Baroness Nicholson campaign against international adoptions.

In contrast with Romania, Bulgaria receives a bright assessment of its achievements in the same sector:" **underlines the positive steps** which have been taken to adopt anticorruption legislation; calls for even more systematic measures against fraud and bribery; **expects to see more progress in implementation and enforcement of anti-corruption measures**". It is important and relevant to mention that the Report gives understand that in the crucial aspect of "implementation" of the above mentioned legislation Bulgaria still had not delivered satisfactory till that moment (2003). The fact that the paragraph starts with a standard wording which indicates a positive assessment, even if after this is followed by a series of less flattering ones, transmits the message that the Parliament dominant opinion is a positive one and that the main aspect that triggered the opinion is the one mentioned in the first paragraph. So, another question that could be raised here is: why the Parliament chose as the main criteria for assessing Bulgaria's progress in the field of corruption its formal, "on the paper" achievements and why not the first results in their implementation?

With only few differences, the tone of EP's Resolutions would be maintained almost unchanged and in 2004 and in 2005. For Bulgaria, the EP would unabatedly require to be applied "the decoupling": "whereas the accession process must be based on its own merits principle and the timing of Bulgaria's accession should not be linked to that of any other candidate country and Bulgaria should therefore accede to the EU on the basis of an individual accession treaty"(EP A6-0065/2004). Romania continues to be castigated, though in milder tones, for its underscoring in fighting against corruption: "whereas further efforts are needed, especially in the sphere of justice and home affairs with a view to combating corruption and organized crime..."(EP A6-0061/2004) and, as usual, by now, its accession in 2007 is doubted: " whereas progress has not been satisfactory in certain areas and whereas Romania must take immediate steps to make good these shortcomings in order to join the Union on 1 January 2007"; "whereas the actual date of accession will be determined on the basis of a Commission recommendation after rigorous analysis of Romania's states of readiness".(European Parliament A6- 0077/2005). The EP's report for Bulgaria in 2005 was coming after a highly critical Commission's evaluation where, for the first time, was mentioned the worrying phenomenon of killing contracts and, where, again for the first time, was noticed that "the high levels of organized crimes" represent "a significant challenge to the rule of law" and that they "raise serious concerns". Therefore would have been logically for the EP's evaluation to change its usual congratulatory tone, to give up to its claim for "decoupling", as it was pretty much clear that this would not have worked in the favour of Bulgaria, quite the contrary, and, to have a more critical view regarding the phenomenon of corruption and organized crime. Surprisingly, this would not happen, at least, not exactly. In the first paragraphs of the Resolution, which in the hierarchy of the text are the most

important as they epitomize the essential position of the EP towards the candidate accession[3], the EP endorses its claim for "decoupling" :" whereas as the European Parliament has repeatedly emphasised that the accession of Bulgaria should depend exclusively on its own merits and should not be linked to the candidacy of any other country"(European Parliament A6-0078/2005). The difference is that this time the Parliament is more condescending on the chances of Romania to join "the frontrunner" Bulgaria in 2007 as it states in the same paragraph that :"... nevertheless expresses its continued hope that the accession of Romania and Bulgaria will be able to take place in the same time". Further on, Bulgaria is again congratulated for its progress towards EU accession. In the second part of the Resolution at the section of political criteria, Parliament's evaluation is, at best, puzzling. In contrast with the Commission's "serious concern for organized crime" and killing contracts which are considered serious enough to jeopardize one of the most important Copenhagen political criteria, the rule of law, the EP considers that: "due to the progress that has been made in combating certain categories of serious crime such as drug trafficking and currency counterfeiting, **crime rates have been lowered at the level of Member States** and encourages Bulgaria to continue its efforts". Let's see what the Commission says about drug trafficking in its 2005 Report for this country: " as far as drug smuggling is concerned, controlled delivers and undercover operations for the purposes of the international legal co-operation were introduced in the Criminal Procedure Code....**However, so far, these tools cannot be used to collect valid evidence admissible in Bulgarian courts. The above amendments have thus not simplified the complex approach in the Bulgarian pre-trial phase..., and there have been only limited results prosecuting major drug smugglers**". In "translation" this means that although Bulgaria did create the institutional/administrative mechanism for fighting the drug smuggling they either do not function or they do not function well. Consequently, Bulgaria's results in this area cannot be otherwise than unsatisfactory in Commission's view and thus contrasting with the EP's conclusions.
However the next paragraph of the EP's resolution takes a more critical tone when "expresses concern at the brazen nature of Bulgarian organized criminal elements... and their involvement ... in a series of high- profile murderers in recent years; notes with concern the small proportion of serious criminal cases result in penal convictions". It also "regrets" that in spite of being ranked by Transparency International than other three EU candidates (Croatia, Romania, Turkey) and one Member States (Poland), "there have been few successful convictions of high-level officials for corruption". Perhaps, the Committee for Foreign Affairs should have reversed the question: How comes that with such poor results in fighting corruption, Bulgaria is still ranking higher than Poland in Transparency's CPI?

These are enough arguments to demonstrate the importance of corruption in the EP's evaluation as it is one of the main conditionality issues (although not the only one) to legitimate the EP's tough stance regarding Romania, in particular its claim for decoupling it from Bulgaria.

The logic question exposing the inconsistency of Parliament's position in this case is:
Why Bulgaria's faults in fighting against corruption and organized crime were not considered a stumbling block for its accession as it happened in the Romanian case? Moreover, they did not seem important enough to change Parliament's opinion regarding the status of

[3] the paragraphs from this section are differently marked with capital letters, while the rest of the resolution which presents the EP's position in regard to diverse items of conditionality in more details, the paragraphs are marked with the usual Arabic numbers

"frontrunner" of Bulgaria, since in 2005, the EP was still supporting the principle of "accession on its own merits".

Also the question: why the Rapporteur for Bulgaria, van Orden, did not signal the issue of racketeering and killing contracts, not even after they were mentioned by the Commissioner for Enlargement Olli Rehn, might be a legitimate question particularly if it can be proved that he was exposed to this information but he chose to ignore it.

All in all, the evaluation of corruption in Bulgaria and Romania fulfils the conditions necessary for a valid case-study: corruption ranked high in the conditionality; it had important consequences in the Bulgarian/ Romanian case during accession and post-accession; it displayed numerous inconsistencies and omissions in the way both the Commission and the Parliament chose to evaluate it; it cannot be studied without comparing the Bulgarian case with Romania; it allows comparison between the Commission's evaluation and the Parliament.

A methodological approach in two steps

The research questions suggest that there are actually two analytical steps to be taken.
The primary fundamental question here, without which the research cannot be articulated or started, is the one regarding the criteria used by the Commission in judging the progress of each candidate. It has been noticed that although a vast number of documents were drafted in relation with the implementation of the Copenhagen criteria, yet there is no single document to clarify the meaning of the criteria (Kochenov 2004). **Therefore only a complex analysis of these documents can help with the discovery of the actual set of concrete developments necessary in order to meet the criteria.** Without this first step it is not possible to answer to the next questions: was the lack of progress in one area of conditionality more important than in a similarly important other?; where the criteria of evaluation evenly applied from country to country; there was information at hand that was ignored in the evaluation process and which could have changed the perspective upon the achievements of a candidate in a certain sector, etc?
Answering to these questions is a confirmation of the existence of important inconsistencies in the evaluation process, and therefore it provides us with the rationality for this research topic

The second part is in fact the main research body of this study and its scope is to answer to the questions: **why-** why these inconsistencies happened? This would trigger other two important questions to answer at: which is the bureaucratic mechanism and the methodology that the Commission used in doing the evaluation and when writing up its progress Reports; and who influenced the Commission's monitoring work and why?

Corruption in Commission's Regular Reports for Bulgaria and Romania
Applying Discourse Analysis on EU's official texts

From the methodological point of view regarding the first step – finding the inconsistency of Commission's (if is the case, Parliament's) evaluation- I argue that Critical Discourse Analysis applied on Commission's evaluation texts (Opinions, Regular Reports, Comprehensive Monitoring Reports, etc) is the suitable methodology in this respect.

Critical discourse analysis became nowadays an increasingly sophisticated method whose rather ancient role, which is perhaps an organic characteristic of human beings, of doubting, questioning, comparing and trying to find the hidden side of various human discourses, has been upgraded in our modern times to a veritable philosophy of life, an encompassing framework for judging every aspect of our society from a relativist perspective. In this case, the research needs to appeal to the basic, ancient function of CDA which questions the overt/official/ message of a text (discourse, etc) by discovering inadvertencies, inconsistencies inside the argumentation of the text or by comparison with the context. CDA is needed here as a method for validating the rationality of the present study, in other words it is needed to demonstrate that the issue exists rather than to give an answer to it. A more modern definition of CDA states that it "systematically explore often opaque relationship of causality and determination between:

a) Discursive practices, events and texts

and

b) Wider social, cultural, political and economic structures relations.

Applying the CDA to the official texts of evaluation issued by the Commission with the narrow scope of validating the main research questions, fits into the first category.

The problem with the CDA is that there is no one or several clear recipes, let alone a method which can be applied as there are too many variables involved: there are different types of discourses (oral/conversation or written text; official or colloquial; technical, historical, political, etc) and a huge variety of contexts. CDA does have a series of tools which can be used entirely, or selectively and partially as the need of the case-study requires.

What kind of Discourse Analysis?

What kind of texts

Progress Reports are:

1. **Official texts** addressed both to the decisional factors inside the EU but also to candidate countries, outside it, something that enhances its official character Consequently the language is restrained, absolute adverbs or adjectives with a hyperbolized meaning are avoided (such as:"impossible", "disastrous", "huge problems", etc). In exchange, nuances and subtle differences in wording might make a big differences (e.g. "no substantial progress" which means in fact, "no satisfactory progress "or, in extremis, no progress at all –depending on the context -might be damning if compared with the innocuous "some progress has been done" which means that although there is not much progress yet, this progress exists).

2. **Technocratic.** The language will try to communicate that the position of the author is neutral, non-emotional, that the conclusions are true and based on rational/logic arguments and, above all, they are objective because they have a scientific fundament.

3. **Evaluation text**. It is a text which evaluates the progress done from one year to the other of a candidate country.

Which criteria?

The crucial aspect is finding out which were the criteria used by the Commission to assess the progress of Romania and BUglaria in the area of fighting against corruption.

Apart from the logic of the evaluation, the technocratic and official character of the text indicate that the author, is compelled to use the same set of general criteria for each country when judging its results for the same phenomenon, in order to enhance its claims of objectivity. In fact the Commission itself states this clearly in its "Composite Paper" on "Reports on progress towards accession by each of the candidate countries" from November 1998: "In these Reports[4] the Commission has used exactly the same objective criteria to assess the candidate countries that were applied in the Opinions last year[5] . This ensures equal treatment for all the candidate countries. There are not additional factors or new criteria altering the neutral framework used in the Opinions."

So, the simplest and logic way to determine the pattern of Commission's judgment is to determine the repetitive features of these texts. What complicates the issue is that each country has its own peculiarities and the phenomenon of corruption may display different features, thus suggesting different approaches. What complicates it even further is that corruption is a phenomenon which does not even have a standard definition, it has many faces and different levels of gravity and even scholars cannot come to an agreement on this aspect. Essentially, is very difficult to have an accurate view upon it, due to its hidden character. Also when it comes of fight against it, there are again no standard recipes due the changing peculiarities of the phenomenon from country to country. Of course, this might seem a difficulty not just for the Commission but for the present study itself if it wishes to compare the Commission's logic of evaluation for corruption with a standard, scientific independent one. The good news is that, there is no need for this comparison (for the moment at least) as the scope here is to understand Commission's logic and therefore we have to stick to the classification to be found in Regular Reports.

Following the repetitive nature of diverse elements used by the Commission to judge a candidate's progress in the area of fighting against corruption the results indicate the following.

Summing up the results of the text micro-analysis 2000-2004

[4] the progress reports from 1998

[5] it refers to the Agenda 2000 issued in 1997 and the first evaluation for the actual situation from the candidate countries

2004 is an important year in the Commission's evaluation not only because is the year when the accession negotiations are closed but because it marks an important change in the way the Commission approached the two countries. There are two main aspects that can be detached from the analysis of these Reports from 2000 till 2004.

In 1998 the Commission announced that it "has used exactly the same objective criteria to assess the candidate countries ". The quantitative and qualitative analysis shows that this does not apply in the Bulgarian/Romanian case. The imbalance is striking in regard to two criteria: the implementation and enforcement of the legislation in general, and the prosecution of corrupted politicians in particular.

If we leave aside the perceptions and quantitative rankings of NGOs such is Transparency International, the situation of corruption in both countries does not seem to differ significantly. In both cases the corruption is rampant and in both cases it is spread at the high political levels and in key institutions designed to fight with it- police and justice. As for their achievements it can be noticed that both countries have a quite satisfactory legislative framework in 2003 already. For the administrative institutional framework Bulgaria scores by omission because there is no evaluation or information about its institutional setting. In contrast, there is sufficient information about the anti-corruption institutions in Romania which triggers a negative score also. Consequently the situation from the two countries in this are cannot be compared as the information is missing for one of them.

The National Program against corruption has been adopted by both countries in the same year (2002) and nothing from the Commission's evaluation indicates that the content of one was superior to the other.

The only criterion where, Bulgaria complied faster with than Romania was the one regarding the international actions (the ratification of diverse international conventions in the area of corruption). It is also true that in the hierarchy of criteria this is the least important one, as it has never been taken into consideration by the Commission in its overall conclusions.

Two of the practical criteria, the implementation and bringing to court high-profile corruption cases, reveal that, again, the differences between the two countries do not justify the gap in their evaluation. Bulgaria's results in the implementation are very difficult to be assessed because the Commission does not offer too many information about them and when it does is negative most of the time. In 2004, with the exception of one mild negative statement regarding this criterion there is no other reference to it. So, the fact that Romania scores negatively in this area it does not mean that the situation is indeed worse than in the Bulgarian case since there is no information to confirm this.

The second criterion, prosecuting corrupted persons in general and high-level politicians in particular, has a similar history. Starting with 2000, there is little or almost no reference to it. The Commission complains distinctly about the lack of info in this area in 2000 and particularly in 2002: "it is still difficult to obtain a full and objective picture of the situation in the country and clear info on investigation, prosecution and sentencing in corruption cases. Nevertheless in 2004 we understand that Bulgaria had not managed to get not even a comprehensible legislative and institutional framework for dealing with high-profile corruption. In contrast, the reports on Romania shows quite clearly what steps this country did or did not in this area.

All in all, for those criteria where there is a certain information (the formal ones) Bulgaria did not perform better than Romania, while for the practical criteria the comparison cannot be properly done since there is no sufficient information on one side- the Bulgarian one.

We have two countries, with one problem displaying similar features and getting not very different reactions from these countries. So, we might expect a similar approach on the Commission side in both cases. If between 1998-2001 the evaluation gap between the two countries was insignificant, in 2002 we see a clear distinction between the two countries with Bulgaria getting for the first time a more positive evaluation and the gap gets even deeper till 2004:

Commission's Conclusions	BULGARIA		ROMANIA	
2001	TOTAL = 24.25 Positive =10.25 Negative = 14	**Positive ≈40%**	TOTAL = 16 Positive = 6 Negative = 10	**Positive≈37%**
2002	TOTAL = 12.5 Positive = 10 Negative 2.5	**Positive≈80%**	TOTAL = 8 Positive = 1 Negative = 7	**Positive≈12%**
2003	TOTAL = 4 Positive = 2 Negative = 2	**Positive = 50%**	TOTAL = 9 Positive = 1 Negative = 8	**Positive ≈ 11%**
2004	TOTAL = 7.5 Positive = 3.5 Negative = 4	**Positive = 46%**	TOTAL = 11 Positive = 1 Negative = 10	**Positive = 9%**

If the quantitative analysis only shows us the evaluation gap , the quantitative approach demonstrates and why this happened.

In 2001, in the first paragraph Romania was criticized for the fact that there were" no noticeable reductions in levels of corruption" and, later in the text, that "**no substantial progress** in **implementing** the anti-corruption law". In the general evaluation, Bulgaria is praised for its formal achievements, namely the adoption of legislation against corruption which are considered "significant developments" but when it comes for their implementation, the Commission sees it as a challenge, yes, but as a challenge yet to come, " the challenge now is to implement this". In other words, it cannot assess progress for something that is expected to come.

In 2002 in the first paragraph of the Progress Report for Romania, the Commission complains that : "**despite** a legal framework that is reasonably comprehensive, law **enforcement remains weak".** In the first paragraph from Bulgaria's report we find out that "further good progress has been made with the adoption of an Action Plan for the implementation of the

Strategy. The **challenge** now will be to ensure **the full implementation** of the program". So, in the Romanian case the lack of implementation of legislative framework was more important than the fact that the framework was "reasonably comprehensive". On the contrary, for Bulgaria, the legislative framework receives all the praises, while its implementation is again, something that should be given time to happen, a time that in Romanian case was not granted.

2003 is practically a repetition of 2002. Again, Romania's achievements in the formal criteria area are shadowed by its underscoring in the implementation of its legislative and administrative framework: "A number of high-profile measures were launched **but** the **implementation** of anti-corruption policy has been limited". Bulgaria also, receives the usual praises for consolidating "on the paper", its institutional set-up against corruption and, again, as usual the issue of its implementation is sunk in a foggy future:" the impact of these measures needs to be assessed". This means also that the Commission has trouble with getting information on this line and this is no news either.

2004 is the year, when, as I have already commented it above the Commission's refusal to acknowledge Bulgaria's lack of concrete results in the implementation of its legislative/administrative framework becomes more obvious than ever, although this time Bulgaria receives its most negative evaluation since 2001. On the other hand the gloomy assessment for Romania does not change, nor the criticism brought for its under achievements in the practical aspects of fighting against corruption.

The key factor revealed by the quantitative and qualitative analysis and which makes the difference has little to do with the candidate's performances. It is the massive trust that the European Commission displays in the international and domestic non-governmental organizations. The credibility that this actor enjoys at Brussels is also bestowed upon the Bulgarian government. Although at this point it is too early to for a definite conclusion it is pretty much clear that it played a very important role in the Commissions voluntary blindness towards its faults and in the great patience with which the Commission was still waiting for practical results two years before the accession. In contrast, with Bulgaria, Romania did not manage or did not want to attract the support of this independent actor well-credited in Brussels. On the contrary, many of the negative statements are triggered by the gloomy quantitative and qualitative reports of diverse international NGOs. In fact, this actor plays also a very important role in the Romanian assessments but in the opposite direction than in the Bulgarian case.

Conclusion

1.The analysis on 2000-2004 Regular reports shows that the Commission's claim for objectivity does not sustain itself. Commission applied a different spin in both cases by ignoring negative aspects and emphasizing the positive ones in the Bulgarian case while doing the opposite in the Romanian case.

2.The text analysis shows that one reason for this bias can be attributed to the influence and credibility of the national and international NGOs and, supposedly, epistemic communities at Brussels and to the fact that they were allowed access to power points by the Bulgarian government.

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