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THE EFFECTIVENESS OF THE POLICY OF CONDITIONALITY AS THE MAIN INSTRUMENT FOR DEMOCRATIZATION IN CANDIDATE COUNTRIES.

THE EXPERIENCE WITH BULGARIA AND ROMANIA

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I. Introduction

More than ten years after the first wave of the Eastern enlargement, the transformative power of the EU and its ability to induce a democratic change is put into question more than ever (Dimitrova 2013; Epstein and Jacoby 2014; Agh 2015; Mendelski 2015; Slapin 2015). Today’s challenges in the international scene raise the attention to the problem of how the EU manages to strengthen the fragile democracies of the post-communist member states and to avoid democratic backsliding, as well as what are the lessons learned from the previous enlargement that could be applied to the potential new candidates. Although the opinion of some authors that the accession to the EU can improve the quality of democracy, under certain conditions (Dimitrova 2013), some of the major problems, related to the democracy and rule of law remain almost ten years after their accession to the EU, most overtly exposed in Hungary and Poland recently but in Bulgaria and Romania as well for the entire period of their EU membership. The participation of latter countries in the EU could be described as mostly problematic¹, for a number of different reasons: the low percentage of funds absorbed under EU programs, the exceptionally high share of corrupt practices and the ineffectiveness of the Cooperation and Verification Mechanism (Dimitrov et al. 2015). Bulgaria and Romania suffered severe political crises in 2013 and 2015 because of a broad public discontent against the corruption of the political class which led to the resignation of their prime ministers Plamen Oresharski and Viktor Ponta, respectively. In the

¹ It is important to mention that the critical orientation of the analysis does not depreciate the benefits of the European integration without which the situation in these countries would have been worse in every aspect. The aim of the critical analysis is to study the past experience in order to be able to improve the policies and the instruments that the EU applies for the preparation of potential candidate states.

post-accession period in Bulgaria and Romania an ensemble of rules and practices that ensured stability during the accession process was waived out, the process of state-building was blocked in Bulgaria and reversed in Romania and this is the time when relatively efficient corrupt practices that engendered tangible developmental effects were replaced by more inefficient corrupt practices that began to produce anti-developmental outcomes (Ganev 2012; Gateva 2013). Mungiu-Pippidi early enough forecasted the loss of EU's transformative power in post-accession period: "As for the day after accession, when conditionality has faded, the influence of the EU [will] vanish like a short-term anesthetic." (Mungiu-Pippidi 2007: 16)

As a result of the multifarious problematic integration of the countries from the Fifth enlargement and their questionable compatibility with the responsibilities of full-fledged membership in the EU we witness a paradigmatical shift in the study of the enlargement-led Europeanization. Its main characteristic is the reorientation from providing arguments for the understanding of the enlargement of the EU as an outstanding socio-political natural success towards explanations of the crisis in the Eastern enlargement and the reversibility of the process of Europeanisation (Dimitrov 2015; Agh 2015; Mendelski 2015).

An illustration of the paradigmatical differences is the methodological approach in interpreting seemingly "one and the same" social facts – for example, the developments in Bulgaria and Romania after their accession to the EU and the degree of efficiency of the implementation of the Cooperation and Verification Mechanism (CVM). While some authors see room for optimism because of the results, achieved through the CVM, arguing that the compliance in Romania is not only surprisingly good, but it has increased over time, reaching almost full compliance in 2015 (Sedelmeier/Lacatus 2016), others present the achievements of the CVM as a "mixed picture" at best because of the mechanism's incapability to achieve its own aims and suggest ways for the improvement of the implementation of the CVM on the bases of the identified shortcomings in its design as a post-accession policy instrument for Bulgaria and Romania (Dimitrov et al. 2016).

The differences in the interpretation of the degree of success of the integration of Bulgaria and Romania into the EU leads us to the need to test the relevance of the general conceptual framework provided by the academic literature on Europeanization with its major stake on the impact of EU political conditionality upon effective democracy promotion in the countries

accessing the EU. Notwithstanding the fact that democracy promotion and rule of law promotion do not coincide, democracy and rule of law are highly interdependent (Haralampiev et al. 2015), the more so in the countries under consideration here because of the crucial ingredient of the social life – an overwhelmingly corrupted political system. The rule of law is among the essential pillars upon which any high-quality democracy rests, because none of the other dimensions of the quality of democracy is possible without an independent judiciary, which prohibits violations of the institutional safeguards for vertical and horizontal accountability (Dimond/ Morlino 2004; Beetham 2004; O’Donnell 2004). This is why the case of CVM is so important as demonstration of the EU’s political approach in the form of a post-accession conditionality instrument (Gateva 2015).

What was the reason for the introduction of the CVM as an innovative instrument of post-accession conditionality (Gateva 2015)? What was the problem that needed to be resolved? When we define the problem we should ponder over whether the way the post-accession conditionality has been carried on presents an opportunity for the solution of the initial problem or it further complicates the situation?

In order to correctly identify the problem it is necessary to study the pre-accession phase of the implementation of EU conditionality because the main shortcoming of the post-accession conditionality could have derived from a misidentification of the problematic situation at the beginning. It has been argued that the political approach of the post-accession conditionality was inaccurate because the CVM was created in order to compensate for the relative temporal lagging of Bulgaria and Romania, implying that the political desire for these reforms is taken for granted, which the case was proved, in the course of events, to be not (Ganev 2012; Tanasoiu/Racovita 2012; Gateva 2013; Toneva-Metodieva 2014). Hence, there were no provisions to remedy that unrealistic assumption later on (Dimitrov et al. 2016). The analysis of the implementation of conditionality in the case of Bulgaria and Romania can be useful not only for their most desired full-fledged membership in the EU but also to be able to identify what lessons could be learned in order not to commit the same mistakes in future enlargements whenever they become EU’s priority again.

The paper will proceed as follows: first it gives explanation why Bulgaria and Romania deserve a joint consideration and what are the specific features of the 2007 phase of the EU

enlargement that have led to changes in the way the EU manages the expansion process. Then it proceeds with an analysis of what actually the EU conditionality aims to promote and how efficient is the implementation of EU conditionality, considering the specific socio-economic and political features of Bulgaria and Romania and the challenges that both countries face in their integration into the European political and socio-economic processes. The final part of the paper discusses whether the identified shortcomings in the pre-accession phase are translated also in the post-accession or there are some lessons learned.

II. The EU policy vis-à-vis Bulgaria and Romania

It is important to explain why Bulgaria and Romania deserve a joint consideration. The reason for this is not related just to the fact that both countries acceded to the EU in 2007 on common terms, i.e. they appear similar seen through the prism of the EC's political evaluation. An empirical quantitative approach for measuring the sociopolitical differences between EU member states and candidates, based on 34 indicators, concerning a broad variety of aspects of social life, finds out that the European societies could be divided into three clusters, which are persistent over the time, revealing substantial typological differences among the European countries that go beyond the clear cliché cleavages OMS/NMS, member states/applicants, East/West, post-communist countries/consolidated democracies, etc. (Haralampiev et al. 2015). The empirical analysis reveals that both Bulgaria and Romania not only form a separate part of the lower cluster but they invariably lie closest to each other and share similar directions of divergence from the conventional center of the European multi-dimensional socio-political space. Figuratively speaking, the two countries are socio-political twins, literally. This fact should be taken into account when analyzing their capacity for integration into the EU and the degree of efficiency of the conditionality tools applied by the European Commission (EC).

The 2007 phase of the Fifth EU enlargement has some specific features which deserve particular attention because it has led to changes in the way the EU manages the expansion process (Phinnemore 2009). The first specific feature is related to the fact that the two countries had to be accepted in the EU on overtly political reasons despite their relative unpreparedness for

the accession (Grabbe 2006). The accession of Bulgaria and Romania – has become far more contested at national parliamentary and popular levels throughout some major EU member states. There was increasing parliamentary and popular concerns about the enlargement and additional provisions were necessary ensuring that it neither damages the EU nor runs counter to public opinion (Phinnemore 2009; Gateva 2015). This necessitated the introduction of an unprecedented postponement clause in addition to the usual safeguard clauses – the accession of each one of the two countries could be postponed for one year - which marks the beginning of the flexibility in the decision of the EU about when the accession takes place. This provision is one of the instruments of the post-accession conditionality whose major lever, however, was the introduction of CVM.

Another important aspect of the Fifth enlargement is the leading role of the EC in managing the enlargement process (Grabbe 2006; Hughes et al. 2005). This feature deserves attention because it reveals that in the EU, which usually is considered as a single and monolithic entity, we can actually observe a complex geometry of institutional interests which are influenced by particular stakes and private country's interests. In the inter-system rivalry among the institutions the EC has its own motives for expanding its influence through prioritizing the integration process. But because of the risk of resistance from the governments or particular political parties the EC has developed a pattern of action in which neither governments nor any political parties could act independently. In order not to lose its influence the EC has designed the enlargement into a formally impartial, very sophisticated and detailed, purely bureaucratic process in which the national governments have no sufficient competences. In the context of a) a lack of conceptual clarity about the actual contents and the structural interlinking among the Copenhagen criteria and b) a necessity of factual control over the advancement to the EU accession, the introduction of technical and procedural instruments seemed the best method for inducing results. This is important because it reveals the extraordinary complexity of the enlargement policy. We have to grasp the specificity of this instrumentalized political approach in order to understand the reasons for the particular origin of the CVM. Within the context of rivalry among the applicant countries it could seem that the Commission-run monitoring is, out of itself, an efficient instrument fostering the local efforts for Europeanization and the EU accession. This statement needs some further clarifications.

Behind the introduction of the pre-accession EU conditionality of the Fifth Enlargement as a way of realization of the Eastern enlargement the academic literature has recognized a variety of institutional and political interests. Therefore, reforms on ground were not geared by policy feedback or impact evaluations. The Commission-led accession made the EC's accession reports a major tool for stimulating progress thus creating a sort of "prescription-based" evaluation mechanism. Subsequently the accessing countries were judged in the monitoring process not by the effectiveness or soundness of their reforms or even by their real potential for change but by the number of 'prescription pills' taken (Mungiu-Pippidi 2011: 6). However, the opposite is also valid – the specific context of the cross-country competition to access the EU as early as possible in acute rivalry with the other contestants, which contributed a real lot for the progress to accession, was disregarded because the advancement appeared as a result of the pre-accession conditionality mainly. Thus the EU conditionality in itself appeared as efficient and effective. The mere EC's monitoring of the preparation for EU accession seemed to effectively gear the latter. This is how a large share of political trust was invested in the very process of monitoring as a major EU conditionality instrument.

What emerges from Bulgaria's and Romania's trajectory towards EU membership is the evolutionary, but contested as well, nature of EU conditionality. The evolution of the EU enlargement conditionality towards Bulgaria and Romania has three significant aspects:

- a shift from broad uniform conditionality to differentiated conditionality and introduction of individual country-specific conditions;

- a shift from positive to negative conditionality and

- a growing relevance and multi-functionality of the monitoring reports (Gateva 2015).

In that sense Bulgaria and Romania, as "outliers" of the 2004–2007 EU enlargement, offer us critical tests of the enlargement-led Europeanisation thesis and provide useful conceptual insights into the transformative power of the EU in Central and Eastern Europe (Papadimitriou/Gateva 2009). The EU's approach vis-a-vis the accession of Bulgaria and Romania is characterized by a policy dualism: on the one hand the building of a strict rule-governed process structured around the principle of conditionality and, on the other, the preservation of a significant element of political discretion about the interpretation and implementation of these

rules, which is intrinsic to the nature of the Eastern Enlargement from the start (Maresceau 1997; Cremona 2003; Maniokas 2004). The EU policy towards Central and Eastern Europe always tried to balance between, on the one hand, the need for a single policy framework open to all countries in the region that sought to deepen their relations with the EC/EU and, on the other, the preservation of an element of differentiation which allowed the EU to regulate the range of rewards available to individual Central and East European (CEE) partners (Papadimitriou/ Gateva 2009).

III. The application of conditionality

In the literature on Europeanization there is no agreed upon definition for conditionality but it has become one of the main concepts in examining the enlargement policy of the EU towards the candidate states from Eastern Europe. The main feature of the enlargement conditionality is that it entails the linkage between fulfilling particular tasks (conditions) and receiving particular benefits (rewards) (Gateva 2015). It is assumed that the implementation of conditionality is effective due to the ability of the Union to exert pressure for changes and progress by exporting its own values and *acquis*. The key line of thinking behind the principle of conditionality is the separation of “those family members” who are ready to join the EU and those who are not. The tacit fear of the “other” is among the causes for the introduction of conditionality in the context of the preparation of the Eastern enlargement with the clear understanding of the indefiniteness of ‘Eastern Europe’. The danger is associated with the integration of countries which are completely different not only from the other member states, but also between them and the fears that the enlargement will lead to more costs for the budget and would affect key policies such as agriculture, structural funds and the free movement of people. The EU and the member states cannot afford another grand risk like the membership of Greece (Kochenov 2014; Maresceau 1997; Cremona 2003).

Seen in this way, the EU conditionality could not have negative aspects, it is an attempt to solve a number of pressing problems related to the integration of new countries, helping them to transform in a way that comply with the national interests of the applicant countries. With respect to the effectiveness of conditionality, studies have established that it functions better in countries

with favorable initial conditions such as Poland, Hungary, and the Czech Republic, where adaptation costs are not big, ethnic homogeneity is significant, accompanied by local traditions of democracy and capitalism, as well as peaceful international environment. By contrast, in countries with unfavorable initial conditions such as Bulgaria and Romania, as well as the other South-East European countries, where ethnic cleavages are significant, accompanied by a lack of strong democratic and capitalist traditions and insecure environment, conditionality works more slowly and less effectively (Spendzharova 2003; Spendzharova/ Vachudova 2012).

When analyzing the effectiveness of the implementation of conditionality an important initial question is what does actually the EU promote?

Democracy is perceived as a fundamental value and condition for achieving peace, stability and prosperity in Europe. The commitment for promoting democracy was introduced with the Treaty from Maastricht in 1992. In the following year with the Copenhagen criteria a condition for “*stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities*” was introduced. The conditions applied to the CEEC are stricter than those for the previous stages of enlargement. However, due to lack of more detailed specification it is difficult to assess whether these criteria are met beyond the minimum requirement for “free and fair elections”. Therefore a formal approach for assessing is applied and still there is no clarity on what the democracy presupposes and what the EU meant by democracy. According to De Ridder and Kochenov (2011) in the vagueness of the official membership criteria related to democracy, the Commission was de facto given a ‘carte blanche’ to fill these with substance – a task which it, in final account, failed to fulfill. The treatment of democracy in a purely procedural manner as “free and fair elections” is due to the fact that it is based on observations of cases where it exists and therefore there is no sense or explanations about the set of conditions for the validity of the observed.

According to Katrine Haukenes and Annette Freyberg-Inan (2012), the EU aims at promoting a specific model of democracy in the future member states- the Liphart’s model of consensus democracy. It is supposed that this model of democracy ensures inclusiveness, negotiation and compromise and functions better in a highly pluralized societies with increasing cleavages than the alternative model of majoritarian democracy. The problem is that the processes of democratization presented in this model are established based on the observation of

Western democracies and are not easily applicable in the hybrid democracies in Central and Eastern Europe. The legacy of the communism, combined with other factors such as heavy dependence on the state and the lack of a market economy, free mass media and active civil society, creates difficulties for the development of this type of political culture and institutional organization in CEE (Agh 2015; Toneva- Metodieva 2012; Dimitrov et al. 2015).

In Western Europe the modern representative democracy has been a natural, centuries-long historical process, while, in the CEEC the historical processes have been substantially different for well-known reasons and because of that these societies have to elaborate specific policies in order to reach the political standards of the contemporary Western societies. The way to achieve this goal could be mainly internal (where the national potentials are favorable for democracy promotion) or mainly external where the potentials for autonomous democratic development are weak. The external efforts for democratization which are conceived of as crucial for the peace, stability and prosperity of Europe are limited to assistance of the domestic actors and promotion of the indigenous pro-democratic tendencies. This is why there is a limit for the external influence for democratization, defined in any particular case by the specificity of the respective national society (Börzel / Risse 2012; Schimmelfennin / Sedelmeier 2004). The specificity encompasses the socio-economic structures and mechanisms and the cultural heritage (political and administrative culture) and the derivative forms and subjects of political life in the country. In this regard the most important domestic political players are the citizens, the structures of the civil society, the national elites (economic, political, intellectual and the government (plus the other institutions of political authority), responsible for the policy-making. Of course, not always those actors are presented in each society, and if they are, it doesn't mean that they are pro-democratic oriented (as the Orban's orientation towards i-liberal democracy demonstrates). This consideration urges us to focus our attention on the concrete situation in Bulgaria and Romania which sets the scene for the democracy promoting EU conditionality.²

² Although the aim of the introduction of conditionality is the democracy promotion in CEEC, at its core are the changes related to the institutional and legal environment for the free trade. Some authors state that the EU has had more effects on the economies of those countries, than on their democracies. Only after the crisis of the post-accession conditionality it becomes clear that conditionality has never become a functional principle in the context of the pre-accession promotion of democracy and the rule of law in the candidate countries and in the areas related to the Copenhagen political criteria, the conditionality principle remained without application. (Epstein 2014; Kochenov 2014; Papakostas 2012; Maresceau 1997; Cremona 2003)

1. The specific socio-economic and political features of Bulgaria and Romania

In the literature on Europeanization more attention is paid to the contemporary structures, institutions and actor dispositions such as power asymmetries between the EU and the candidates, the size and credibility of EU incentives for reform, the state of democratization, the composition of East European governments and the constellation of veto players in their political systems, than to the historical legacies as explanatory factors for the development and the integration of the countries to the EU (Cirtautas/ Schimmelfennig 2010).

This disproportional interest is easy to explain having in mind that in the traditional paradigm the legacies serve as a tool for explaining the degree of efficiency of the external incentive structures in shaping domestic outcomes – when the academic literature was focused on the success of the EU enlargement it was only natural that local legacies were depreciated. The resonance of EU rules usually has to do with how compatible they are with older domestic norms and political traditions in the candidate countries.

According to Ágh (2015) however, a new analytical framework is needed which takes into account the historical delay of the new member states with respect to the old member states, concentrating on their painful catching up process in the complex social progress. The candidate states from the Eastern enlargement had to go through an immense process of transformation. They became subject to Europeanization while undergoing large-scale regime change involving the installation of new democratic and market economy rules, and sometimes, even the creation of new states (Dimitrova 2004). Critical accounts state that it is important not to “overestimate the EU influence” (Grabbe 2003) and pay more attention to the domestic factors as the key to explain successful rule transfers in the post-communist space (Vachudova 2003; Jacoby 2004; Hughes et al. 2005; Noutcheva 2012). That is the reason why we can understand today’s problems of Bulgaria and Romania only if we analyze the structural character of the challenges that both countries face in their integration into the European political and socio-economic processes (Dimitrov 2015; Andreev 2009; Toneva- Metodieva 2012; Elbasani 2013). Neither the institutions nor the civil society can be an engine for transformation per se because of the structural character of the social life and because they are related to the specific nature of organization of the society under the communism (Toneva- Metodieva 2012).

One of the main aspects of the communism was the universal and unconditional dependency on the state and its immense growth, which has converted it in “mega-state” (Dimitrov et al. 2015; Dracker 2000) and has replaced all the horizontal relationships in the public sphere with hierarchical relationships of power (Toneva- Metodieva 2012). Another fundamental problem is that during the communism was built a completely non-market economy, which excluded all competition and was lagging a culture of contract. The result was the creation of an economic and institutional environment which was friendly for the expansion of fraud and corruption practices, lack of strategic political thinking, and forms of social life, completely incommensurable with the societies in the EU (Ganev 2007; Dimitrov et al. 2015).

All these problematic features which form part of the communist and post-communist legacy led to the inability of Bulgaria and Romania to deal with the political and social challenges after accession, as well as to adequately respond to the process of Europeanization (Andreev 2009). The main reason for this, according to Andreev, has been the unfinished political and social-economic transformation of both countries. The lack of change in the principles in the organization of the public life, and the civilizational difference of Bulgaria and Romania, compared to the other member states means that both countries could only formally accede to the EU, which has no benefits neither for the citizens, nor for the EU itself (Dimitrov 2008). The result is that the accession has served as a substitute for the unrealized post-communist transition to a market economy, authentic representative democracy and rule of law (Dimitrov 2015). The main problem in the Bulgarian case, as an example, was that the European integration was perceived as an end goal in itself and as an instrument for solving the local problems and for normalization. The idea was that the EU memberships is a foreign policy goal which could bring financial benefits and at the same time, on a domestic level things could continue as they were before.

The introduction from part of the EC of a purely technological and bureaucratic process of assessment of the advancement replaced the elaboration of a specified, realistic national strategy for integration, and so the whole preparation process was based on commitments assumed by the government and not on real progress. One of the reasons for this is that the “Copenhagen criteria in themselves are general enough to provide plenty of room for decisions on purely political grounds” (Dimitrov 2015). The bureaucratic accession process relies on the

presumption that the rule of law and a high capacity for implementation are already in place. But when they are not, as the case with Bulgaria and Romania is, then accession significantly increases the distance between formal rules and informal practices (Mungiu-Pippidi 2014; Mendelski 2015; Dimitrova 2010). The danger of formal application of the EU's norms and rules and the fact that the EC seems to accept these practices is in the basis for the lack of efficiency of the pre-accession conditionality, applied for the CEECs. Without taking into consideration the specific circumstances in the candidate countries, leading to the resistance of the entire socio-political system against the rule of law, the pre-accession conditionality would translate its shortcomings on the post-accession phase as well.

2. From pre- to post-accession conditionality

Among Central and Eastern European (CEE) candidate countries, Romania and Bulgaria registered the slowest progress in terms of transparency, accountability and rule enforcement and ability to reform (Racovita 2011, Dimitrova/ Dragneva 2001, Papadimitriou/ Gateva 2009). During the pre-accession period, the pressure exercised by the EU as part of its conditionality mechanism met the tacit resistance of successive government tactics of window dressing and backtracking and reluctance by national political elite to implement reforms and therefore delaying and sometime neutralizing Enlargement-led Europeanization upon the quality of democracy in these countries (Racovita 2011). Both countries continued to function as “pupils” and not as contractual partners, who implement the EU's norms not because of their responsibilities as part of the Union but because they would be rewarded for good behavior (Tanasoiu 2012). The actual preparedness of Bulgarian and Romanian society for effective membership was placed in a secondary rank of importance because the decision for their acceptance in the EU was rather the result of a situational accumulation of specific circumstances and the geo-political considerations in the second half of the 1990s (Dimitrov 2015). The fact that both countries were unprepared at the time of the accession implied the necessity of introduction of an instrument for post-accession conditionality- the Cooperation and Verification Mechanism (CVM)- that would guarantee to the old member states that the EU controls the situation and will counter-act the negative public opinion (Gateva 2015). Since in 2006 when the decision for the CVM had been taken the situation looked as if the two countries just could not comply with the

deadline but otherwise were wholeheartedly making their best to cope with the accession standards it seemed wise to continue with the pattern of the conditionality implemented so far.

Although that the inauguration of the CVM was seen as an opportunity to remedy the unaccomplished tasks, preserving the political approach unchanged, and to secure the commitments made in the pre-accession period, the application of the mechanism was not without shortcomings (Papakostas 2012). Later on, pondering over the accumulation of empirical facts which proved the lack of progress in the two countries, some authors even suggest that those shortcomings point to the fact that exactly the EU's approach towards post-accession conditionality urgently needs a change because it has remained mostly an instrument for monitoring and assessment and not for policy cooperation (Toneva- Metodieva 2014). The necessity of such a new policy and, respectively, a new form of the mechanism for post-accession conditionality on a first place derives out of the failure of the current instrument of EU conditionality in Bulgaria and Romania to achieve its own societal goals in a reasonable time-span of ten years (Dimitrov et al. 2016). The mechanism is meant to provide compensating measures that will enhance the rule of law in the two countries based on the encountered deficits by the monitoring process. The problem is that behind these "deficits" or "insufficient political will" stands the firm political will of a number of governments of various party affiliations to change not the political system of nepotism and politically patronized corruption. That is, what seemed as a procedural set of separate problems turned out to be a general problem of the quality of democracy in the two countries.

What we have here is an inadequacy of the EU-conditionality approach on two levels. First, the post-accession conditionality reproduces the policy approach of the pre-accession conditionality which has been designed to solve different tasks, i.e. the implicit political assumption is that the conditionality approach is universally valid. Second, the situation within which the pre-accession conditionality had worked has changed fundamentally. If in the pre-accession period the relative lagging of Bulgaria and Romania was compensated by the formal adaptation of the *aquis* in order to obtain the status of an EU member state in the post-accession period the conditionality has lost its credibility because of the lack of the main incentive - the membership perspective. But this fact did not impede the EC to rely on the naming-and-shaming approach for the design of the CVM. According to Toneva-Metodieva (2014) the inefficiency of

the CVM is related exactly to the intrinsic limits of the ‘rewards and sanction’ approach of the EU to the logic of the enlargement processes which are far more complex.

The contemporary literature on Europeanization recognizes the inefficiency of the pre-accession conditionality results in the fact that the pre-accession preparation was Europeanization on paper only (Dimitrova/ Buzogány 2013) which did not lead to substantive socio-structural changes in Bulgaria and Romania that would have guaranteed the respect of the rule of law and would have stimulated changes in the domestic political behavior towards authentic, accountable democracy.³ Hence, the post-accession conditionality is meant to provide the means for catching-up, for compensating the lagging in time with institutional and technical procedures; it is not supposed to change the pattern of ‘feckless democracies’ (Carothers 2002).

Under these circumstances the design of the CVM has taken for granted the local political desire for reforms. It continues the practices of ignoring the specificities of the societies in both countries in the post-accession period, relying on the reform results which were promised but were not achieved (Dimitrov et al. 2016). The EC continued to monitor and measure compliance in the post-accession application of conditionality by loosely defined benchmarks without clear links among themselves not recognizing that such an approach could be efficient if the problem of Bulgaria and Romania’s membership was partial, concerning technical, financial or procedural issues only that can be solved by applying a set of separate measures for curbing corruption. But in the case of Bulgaria and Romania the problem is not the anticorruption fight, as such, no matter that the benchmarks concerning the latter are exactly the half of the ten benchmarks which the CVM is comprised of. Actually, the real problem the CVM has to tackle is the system of rule of law which is mutually complementary to the one of true democracy. This is a systematic problem and requires a radical transformation in the entire structure of social relations (Toneva-Metodieva 2014). The policy design behind the CVM failed to comprehend and foresee the need for a comprehensive, far-reaching change in the mentalities, in the pattern of political behavior and so it continued to rely on the political will of the governments (Papakostas 2012). This practice could be qualified as a kind of continuity of the failure of the EU’s transformative power in the pre-accession period when the result was the emergence of a core national executive at the

³ It is important to highlight that the CVM continues to receive positive assessments only when the analyses are based on **its impact on compliance** – the extent to which a state meets the demands and recommendations made by the EC, and not on **its problem-solving impact** – the extent to which it diminishes corruption (Sedelmeier/ Lacatus 2016)

expense of other branches and levels of government– including the legislature and regional actors (Grabbe 2006).

Another sign for the inefficiency of the pre-accession conditionality is that the instrument for post-accession conditionality was introduced precisely for the field of the judiciary for which, was assumed that under the Copenhagen criteria, the rule of law should already exist before a country is accepted as a member in the Union. The possibilities for effective rule of law promotion in the post-accession period are limited also due to the fact that in this area there is no possibility for having a common European regulation (Alegre et al. 2009; Kochenov 2014; Kochenov/Pech 2015).

The dynamic of pre-accession has functioned with the perception that Europeanization is a one-way process, and that standards once achieved will be long lasting (Tanasoiu/ Racovtia 2012). On the one hand the application of post-accession conditionality has supported the reformist orientation by maintaining political pressure for reforms in the judicial system and by highlighting the necessity for result-oriented fight against corruption (Dimitrov et al. 2016). According to Sedelmeier and Lacatus (2016) the CVM has operated as an instrument of social pressure due to the strong legitimacy enjoyed by the EU among elites and publics and has created favorable conditions for the fight against corruption, which has led to surprisingly good compliance with EC's recommendations, at least in Romania. But on the other hand, the attention of the prevailing academic literature, as Sedelmeier and Lacatus themselves admit, is directed more towards the shortcomings of the application of the CVM for Bulgaria and Romania. First of all, the overall political concept of CVM and the mode of its operation has never been explicitly articulated (Dimitrov et al. 2014). The lack of concreteness and the unaddressed messages are evidence for the lack of a sound, strict and transparent methodology (Toneva- Metodieva 2014; Maniokas 2004; Kochenov 2014). Not last, because the specific instrument for post-accession conditionality was not meant to operate even 10 years after the accession of Bulgaria and Romania to the EU. The vagueness and the ambiguity that characterize the assessments in the reports, the will to see achievement even where there are none (Racovita 2011) are deliberately maintained for the reasons of political correctness which is the only due form of political partnership with the local governments because of the indefiniteness of the meaning of cooperation in the CVM relying on the assumption of “asymmetry of powers”.

The CVM was designed in accord with a temporary situation under the influence of the pre-accession conditionality – both the context of cross-country rivalry and the derivative illusion that the conditionality is efficient out of itself. The problem is that the incentives for compliance have changed after the accession. In the pre-accession period the mobilization for reforms was possible due to the intense competition between the candidate states and they were motivated by the assumed benefits of the membership. Before 2007 the recommendations of the EU were considered as a call for action, but after 2007 they were simply ignored (Ganev 2012). Ganev even highlights that after the accession of Bulgaria and Romania to the EU we witness an attitudinal shift in the political behavior of the elites, which he describes as “post-accession hooliganism”. The problem is that what is at stake is not the level of corruption only but the quality of the democracy in both countries. The fact that immediately after the accession to the EU Bulgaria was shaken by corruption scandals, related to the European funds is a clear demonstration for the inverted perception for the membership which was considered as an end goal at itself, omitting the necessity for reforms. It seems like at the moment of the accession the political elites felt free to go back to their “normalness”. When the national political elites were “released from the pressure of conditionality”, they were guided by a relaxed understanding of contractual obligations a country has as an EU member state (Tanasoiu 2012).

Actually, the failure of the CVM to achieve its own aims in reasonable time reveals the structural crisis of the post-accession conditionality as a legacy of the pre-accession EU conditionality. What happens to the CVM at present is a culminating phase of a longer process. The current developments are produced by the clash of contrary illusory expectations of the EC and the local governments. It has been expected that the reports of the CVM will have the same impact as the EC’s reports during the pre-accession period. But due to the lack of ability to identify the changes in the new situation and the broader lack of understanding of the fabrics of enlargement processes, the period when the conditionality has to substantially transform from pre-accession into post-accession in the literature is characterized as a crisis (Dimitrov et al. 2014; Ágh 2015). After the accession the new member states are formally and legally in the EU, but they have to “enter” the EU again in terms of competitive and effective membership (Ágh 2015).

Some authors warn that a new post-accession management is urgently needed because the stability of the integration process would be endangered if the rule of law does not function properly on the entire territory of the EU (Toneva- Metodieva 2014). In this regard, if the CVM is simply preserved in its present form there are no guarantees that the reforms will be at the center of the political agenda at national level. Although the opinion of some authors (Papakostas 2012) that the CVM managed to correct one of the main shortcomings of the principle of conditionality - its post-accession non-application, if it continues to function in its present form it risks losing its credibility in the near future.

A new political approach towards the interaction with the accessing countries and, subsequently, a structurally different design of the instruments for post-accession conditionality is needed. The particular forms of both the approach and its instrumentalization should be result of an open European public debate in order to guarantee the soundness of the new concept and the legitimacy of the decision. The new approach should rely on paradigm of political partnership and mutual responsibility between the EU and national governments and should take into account the historical experience and the lessons learned from the past action (Dimitrov et al. 2014, Toneva- Metodieva 2014).

Nevertheless the experience with Bulgaria and Romania provides evidence for the evolutionary nature of the enlargement conditionality and points to an important progress in the membership requirements - from the adoption of the aquis to the development of a sustainable track record of implementation (Gateva 2015). An evidence that there are some lessons learned from the application of conditionality for the fifth enlargement is the fact that the EU has given priority to the rule of law as the main condition for progress in the accession process of the countries from the Western Balkans (Gateva 2015; Fagan/ Sircar 2015). The new approach of the EU rests on the principle that issues relating to the judiciary and fundamental rights (Chapter 23 of the aquis) and justice, freedom, and security (Chapter 24) “should be tackled early in the accession process and the corresponding chapters opened accordingly on the basis of action plans, as they require the establishment of convincing track records” (European Commission 2011). Another important element of the new approach is that the EU is trying to avoid the top-down European integration process by involving other stakeholders like civil society organizations in addition to domestic governmental officials (Fagan/ Sircar 2015). This is a truly

fundamental change, because represents an opportunity to avoid the mistakes of the previous enlargements, for which Grabbe a decade ago warned - the result of the top-down process of integration is the Europeanization only on the upper layer of government officials (Grabbe 2006) and, hence, such shallow Europeanization is reversible. The involvement of non-governmental organizations could bring the integration process closer to the societies of the candidate countries, which somehow remain apart in the previous enlargement rounds.

IV. Conclusion: curbing the risks of the formal adaptation of rules

The introduction of a track record for the implementation of the aquis for the candidate states in the Western Balkans is indicative for the risk that the formal Europeanization could bring. When new formal rules are introduced from a different arena, as is the case with EU enlargement, they can be challenged by actors or simply ignored, while other, informal rules define practices on the ground. The contrast between formal and informal rules leads to a lack of institutionalization (Dimitrova 2010) which is the reason for the failure of a solid and authentic democratization in the new member states. In the context of weak state institutions, informal networks can take over part of their functions. When the preferences of veto players are in contradiction with the rules this could lead to a situation in which informal rules are respected and the formal ones are retained only for the external requirements, converting them in “empty shells” (Dimitrova 2010).

Attila Ágh describes the gap between the transfer of the Western institutional model and the lack of change in socio-cultural environment as a “façade without the building behind it” (Ágh 2015). An important observation that Ágh (2015) makes is that the unfinished Europeanization is related to lack of social consolidation which is the reason for the low satisfaction of the new member states even ten years after their membership in the EU. The formal adaptation of rules does not lead to substantive changes in the societies and the result is a lack of political mobilization. The societies are not engaged in the process of structural reforms. The main reason for this is that the preparation for the EU membership is converted in purely technological process, lacking a strategy for membership. The problem is that the technological

aspects can be easily imitated and this gives opportunity to accept the formal adoption of the rules, as well as the promises of the governments as an evidence for advancement in the accession process. The EU should no more give priority to the political elites to carry out the due reforms; it should actually be insisting on and investing in the creation of mechanisms that would lead to politically responsible behavior (Dimitrov et al. 2015).

The EU has come to be too much dependent on its own conditionality which has demonstrated to be ineffective in countries where the civil societies are weak or absent. Identifying the drivers of change requires a shift from the “prescription-based approach” to a political “economy minded approach” which seeks to understand who stands to gain from challenging this undesirable status quo and uses both rewards and sanctions in order to empower promoters of change to challenge (Mungiu-Pippidi 2011). The danger of the EU’s approach to the candidate states in its present form is that it does not pay due attention to the difficulties that those countries meet in the application of the required changes. When there is no societal consensus around the social norms that underpin EU law, international pressure may create perverse incentives for governments to draft laws that both they and their citizens have no intention of obeying. The existence of such laws, coupled by the lack of observable compliance with them, advertise to politicians, bureaucrats and citizens alike that they may safely ignore laws based on these norms. Rather than fostering new societal consensus, these laws undermine the ability of law to shape behaviour and reveal that it is acceptable to write laws only to violate them. The EU’s rules imposed from above may not function as internal rules, especially if the society is not ready to accept the values enshrined in the laws (“world of dead letters”- the new member states transpose the laws but do not manage to apply them) (Slapin 2015). This is no more a problem of the new member states only, it translates into severe risks to the entire EU and the European citizens.

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