
**Bulgaria and the EU: The Role of Conditionality
Before and After Accession**

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Abstract

The thesis examines the effect of pre-accession and post-accession EU conditionality in Bulgaria. It analyzes the impact conditionality has had on the development of political and economic reform in the country in three periods. From 1995 until 2004 pre-accession conditionality was important for the implementation of legislative and institutional changes necessary for Bulgaria to comply with the political and economic aspects of the Copenhagen criteria. From 2004 until 2007 EU conditionality facilitated reforms for the fight against corruption, the improvement of the judicial system and changes in the public administration. Post-accession conditionality has had a lesser impact, successfully enabling amendments for the judicial reform, but failing to ensure the efficient implementation of anti-corruption measures. Based on the analysis the paper has found that EU conditionality is successful in encouraging efficient reforms with minor differences between the influence of pre-accession conditionality compared to post-accession conditionality.

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List of Abbreviations

BNB	Bulgarian National Bank
CACCIPE	Parliamentary Committee on Anti-Corruption, Conflict of Interest and Parliamentary ethics
CEEC	Central and Eastern European Countries
DPS	Movement for Rights and Freedoms
CVM	Cooperation and Verification Mechanism
EU	European Union
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
IMF	International Monetary Fund
NGO	Non- Governmental Organization
PHARE	Poland and Hungary: Assistance for Restructuring their Economies
SJC	Supreme Judicial Council

Introduction

Bulgaria has been a part of the European Union (EU) since the 1st of January, 2007. Being a part of the political, economic and social union mandates that countries adhere to European law outlined in the treaties and ratified by the states before accession in order to ensure that the values and norms of the union are respected. Bulgaria applied for European membership in 1995 and through the 12 years until it actually became part of the union, there were certain requirements it had to fulfill.¹ Being a communist state until 1989, Bulgaria had democratic deficits, economic problems and institutional inefficiencies exemplified mainly by the presence of organized crime in high levels of government, corruption in different sectors of the economy and in government as well as rule of law deficits. Taken together they represented economic and political inefficiencies, which had to be addressed in order for the EU to accept Bulgaria as a member. In order to ensure this the EU's enlargement policy sees the implementation of conditionality on candidates. This process facilitates the gradual enforcement of reforms which address these problems, as the country would move closer and closer to EU membership and will see more and more benefits from the EU: a type of carrots and sticks mechanism.² As Bulgaria (and Romania) were not able to fully resolve their main problems prior to the Big Bang enlargement in 2004, they had to wait three more years in which the European Commission could be positive that the integration process would go smoothly and that the countries had successfully adopted EU norms and values. However even after 2007 and to this day questions about Bulgaria's fit in the EU and its respect for the unions values and laws are prevalent. Thus, it leads to the question of how effective EU conditionality is in stimulating political and economic reform in a country before and after accession in order to not only prepare it for EU membership, but to contribute to the actual solution of the specific political and economic problems? To answer this question this paper will examine the effectiveness of EU conditionality both before and after

¹ Antoaneta Dimitrova and Rilka Dragneva. 2001. "Bulgaria's road to the European Union: Progress, problems and perspectives" *Perspectives on European Politics and Society*, pp. 81-82

² Linka Toneva-Metodieva. 2008. "Beyond the Carrots and Sticks Paradigm: Rethinking the Cooperation and Verification Mechanism Experience of Bulgaria and Romania". *Perspectives on European Politics and Society*, p. 535

the accession of Bulgaria in the EU in ensuring that European political and economic norms and the *acquis communautaire* are adequately applied and that the reforms which have occurred have had a beneficial effect for the country. It will have a qualitative method of analysis and it will chronologically look at the period from 1995 until today and analyze the major political and economic changes which have occurred in Bulgaria due to the EU. The analysis will be based on relevant literature already written by academics such as Antoaneta Dimitrova, Rilka Dragneva Gergana Noutcheva and Aneta Spendzharova, who have analyzed the impact of EU conditionality on Bulgaria. Furthermore, relevant EU documents such as Commission reports will also be referred to and analyzed. It is important for this question to be addressed and answered because even though EU membership in Bulgaria has been viewed as a success and a symbol of the country's ability to overcome its communist legacy, many of the then existing problems are still evident. Thus, the effectiveness of conditionality is important to be explored in order to see why these problems still occur and to further understand whether the process has to be changed for future candidates. In order to answer these questions, the paper will be divided into three separate sections, each dealing with a specific time period. It will start with the negotiation phase from 1995 until 2004, then it will examine the pre-accession phase from 2004 until 2007 and finally the paper will analyze conditionality after Bulgaria's accession to the EU in the form of the Cooperation and Verification Mechanism.

The first chapter will discuss the conditionality for Bulgaria in the period between 1995 and 2004. It will address the political criteria of the EU before and during the formal accession negotiations and the legislative changes, which were motivated by it. It will examine to what extent Bulgaria adhered to the political aspects of the Copenhagen criteria and how the progress had occurred. Secondly, it will also examine the economic development the country has experienced due to the reforms implemented so that Bulgaria would meet the economic aspect of the Copenhagen criteria. It will also analyze the adoption of the chapters of the *acquis communautaire* concerned with the four freedoms of the EU and to what extent the implementation of EU legislation was successful. Based on this analysis the first

chapter will conclude whether EU conditionality was able to positively impact the political and economic development of Bulgaria in the period from 1995 until 2004. The second chapter will look at the interval between 2004 and 2007 and the issues which led to the country's exclusion from the 2004 enlargement. It will analyze the persisting issue of corruption in the country and the anti-corruption measures which were taken in the form of legislative and institutional reform. Furthermore, the chapter will examine the judicial reforms undertaken in the period, which were implemented to ensure the supremacy of the rule of law in the country. Finally, the changes concerned with the public administration will be discussed and how they attempted to facilitate the decentralization of the political system and make it more efficient. These three key policy fields were identified as the main problems which were poorly addressed prior to 2004. The Commission stressed the importance of these conditions, which needed to be met if Bulgaria wanted to join the EU in 2007.

The third chapter will address the post-accession conditionality implemented by the EU, which is called the Cooperation and Verification Mechanism (CVM). It will examine its structure and purpose for facilitating reform in Bulgaria. Furthermore, the chapter will discuss the developments which have been made in Bulgaria after 2007 and attempt to prove their connection to the CVM and the six benchmarks outlined in it. It will analyze the progress of the country in strengthening the efficiency and accountability of the judicial system as well as the implementation of anti-corruption measures and the fight against organized crime from 2007 until 2018. Finally, it will conclude whether the CVM has been effective in stimulating the implementation of effective reforms in Bulgaria and to what extent those reforms have been successful.

The comprehensive qualitative analysis of the effects of EU conditionality before and after accession in Bulgaria presents the issue of a limited connection to theoretical frameworks. Having a case-study based approach, which attempts to identify the effectiveness of policy recommendations and their ability to facilitate reform implementation presents a realistic examination of the situation, but does not allow for its application on a broader scale. Furthermore, questions of whether

EU conditionality was the main stimulator of the reform process in the country or whether the main reasons behind the changes were the political, social and economic climates during the examined periods can be difficult to answer, as it is difficult to evaluate the respective share in the restructuring process. Nevertheless, the paper does have value in exploring the role of EU conditionality in the way it is being used to encourage legislative and institutional improvement. The comprehensive analysis of a case study contributes to evaluation of the practical value of conditionality.

1. Bulgaria and EU political and economic conditionality between 1995 and 2004

Following EU conditionality led to the accession of Bulgaria into the EU which in itself is viewed as a success for the country, however the question which will be discussed relate more to whether this conditionality had a positive effect on Bulgaria's democratization process and economic development in the period from when it applied for EU membership until the Big Bang enlargement. In order to do this a definition and understanding of what EU conditionality is will be needed. Firstly, it is the main tool of the European enlargement process which is used to shape the domestic structure of the state prior to an eventual membership. It is implemented through progressive attempts to transfer EU laws and norms to a specific country, in this case Bulgaria.³ Schimmelfennig and Sedelmeier describe it as a system in which a state is rewarded in various ways, usually financially or through trade access, for completing the conditions put forward by the EU.⁴ In this way a type of learning process is created in which EU norms and laws are adopted and a state is primed to join the union. Moreover, the EU specifies that a country is only eligible to become a member if and when it has a sustainable democratic political system and a functioning market economy. Thus, in the case of a post-communist country like Bulgaria, the aspects of conditionality addressed democratic deficits and the economy of the country, both of which had to be improved in order for the country to fulfill the Copenhagen criteria.⁵ The biggest reward which Bulgaria would receive in return was EU membership. This incentive was powerful normatively as well, as joining the EU would mark Bulgaria's successful transition from a communist legacy to a country, which is a part of the West. Therefore, this chapter of the paper will deal with the impact EU conditionality for Bulgaria had on the political system of the country, or more broadly the democratization of the country, and the impact on the economy,

³ Frank Schimmelfennig and Ulrich Sedelmeier. 2004 "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe". *Journal of European Public Policy.*, p. 662

⁴ Ibid.

⁵ Aneta Spendzharova. 2003. "Bringing Europe in? The Impact of EU Conditionality on Bulgarian and Romanian Politics". *Southeast European Politics.*, p. 145

meaning the transition to a functioning market economy. It will examine the legislative changes undertaken during the Videnov government, the Kostov government and the Simeon II government, which meant to ensure democracy in the country is sustainable and protected. It will also examine the main legislative changes enacted in order to facilitate the transition of the country to a functioning market economy capable of dealing with competitive pressure in the EU as well as the implementation and the importance of the four freedoms in their role to solidify the success economic transition and the ability of Bulgaria to adopt EU law effectively.

1.1 Impacts of EU democratic conditionality in Bulgaria from 1995 until 2004

EU democratic conditionality for Bulgaria meant to address the most pressing issues related to the communist legacy. Adherence to these conditions was mandatory, because it facilitated and ensured the successful adaptation of the *acquis communautaire*, the most crucial process on the road towards EU membership. The EU identified several major areas which Bulgaria had to address in order to fulfill the conditions. They included problems like corruption in high levels of government, administrative and institutional reform and the creation of civil service law, ensuring transparency and accountability in government and the improvement of the efficiency of the public service.⁶ Furthermore, issues relating to the respect for human rights and the rights of minorities, the independence of the judiciary and the supremacy of the rule of law as well as the division and balance of power between the three branches of the state (legislative, executive, judiciary) were also main points of concern.⁷ As EU membership was a top priority for any government in power in the country, starting from the Socialist government of Zhan Videnov in 1995 which initiated the process of EU membership up until the government of Simeon II which completed the process. Furthermore, pre-accession economic assistance funds such as the PHARE plan (Poland and Hungary: Assistance for

⁶ Stanimir Alexandrov and Lachezar Petkov. 1997. "Paving the Way for Bulgaria's Accession to the European Union". *Fordham International Law Journal.*, p. 595

⁷ Ivan Nechev. 2004. "The Political Challenges Facing the Integration of Bulgaria into the European Union". *Papeles del Este.*, p. 9

Restructuring their Economies), which was expanded to include Bulgaria, Romania and the other Central and Eastern European Countries (CEEC) as well, also had a political conditionality to it. Despite the fact it was mainly a tool to aid the transition to a functioning market economy, assistance was granted depending on the fulfillment of some political conditions as well, such as respect for human rights and a constitutional reform.⁸ Given these important aspects of the position of the country, measures towards complying with the democratic conditionality of the EU were taken immediately after the application process began in 1995. The new constitution Bulgaria had adapted in 1991 had to be revisited and amended in order for these issues to be solved.

On the surface, the efficient implementation of the 1991 constitution and the discussions of possible amendments to bring it closer to EU law seemed to be a key priority for the state governments from 1995 onwards. The newly adopted constitution did serve as a guarantor of democracy and free and fair elections were held without the occurrence of problems. However, there were issues which needed to be addressed in order to ensure that democracy will hold up in Bulgaria in the future. Thus, discussions on amendments and efficient implementation were common both for politicians and academics. The areas in which negotiations occurred related mostly to the institutions, the balance of power and the judiciary. Firstly, in 1995, there were questions about the role of the president and the strengthening of his power, so that he could serve as a balance between the government and the people.⁹ For example, there were discussions about whether he should be able to call for referendums and whether his veto power should be immune to overruling by the parliament. By doing so, it would allow the head of state to be a part of the legislative process.¹⁰ This was believed to be a possible step towards making sure the governments in power can be held accountable are

⁸ Antoaneta Dimitrova. 2015. "The Effectiveness and Limitations of Political Integration in Central and Eastern European Member States: Lessons from Bulgaria and Romania". *MAXCAP*, pp. 8-9

⁹ Evgeni Tantchev. 1997. "Constitutional Implications of Bulgaria's Accession to the European Union (The Constitution of 1991 and the Accession of Bulgaria to the European Union)". *Sofia: Sofia University "St. Kl. Ohridski" Law School*, p.13

¹⁰ *Ibid.*, p. 14

restricted from holding too much power. However, these propositions were not accepted as it was believed they would change the political system of the country, moving it away from being a constitutional parliamentary democracy to a more presidential one or a type of hybrid system.¹¹ By doing so, the actual problems of the inefficiency of institutions and the checks and balances in the system would not be addressed properly. Furthermore, these early discussions were used more as a political tool by the different political parties to gain support before an upcoming presidential election in 1996. They did not carry much weight and it was still the very first stage of EU negotiations. The period from 1995 up until the Zhan Videnov governments resignation in 1996 can be characterized more as a time when the ideas of reforms and possible EU membership were used by political elites to gain legitimacy. This was problematic, as no real development towards fulfilling EU conditionality were made. After the early 1997 elections, more substantial dialogue was possible.

The new government of Ivan Kostov truly began a reform process in order to comply with the Copenhagen criteria and move Bulgaria closer to EU membership. Firstly, the balance of power and checks and balances had to be addressed, as their efficiency were a main concern for the EU. This led to the proposition for the creation of an Ombudsman, who would allow for both a strengthening of individual rights as well as the creation of a constitutional check to the powers of the government.¹² What is more, most member-states had an Ombudsman in their constitution and it seemed as an elegant step in the right direction for the country, bringing it closer to EU norms.¹³ Bulgaria would begin to resemble a state which would fit in the organization and at the same time would actually effectively address an issue within its democratic system. The Ombudsman amendment was very slowly introduced, with the constitutional amendment being adopted in 2003, however it was very effective in addressing democratic conditionality.¹⁴ It was a big step towards the further strengthening of the Bulgarian democracy and a policy,

¹¹ Ibid.

¹² Ibid., p.1

¹³ Ibid.

¹⁴ Bulgarian Parliament. 1991. "Народно събрание на Република България – Конституция". Available at: <https://www.parliament.bg/bg/const> [Accessed 10th of April, 2019].

which brought the country closer to fulfilling the Copenhagen criteria. Even though it was a simple amendment, it carried a lot of weight, as an Ombudsman directly deals with individual rights. Moreover, being an independent political organ, the Ombudsman had the power to hold government accountable on behalf of the population. Thus, it improved the efficiency of the political system, as the power of the people was strengthened. In this sense EU conditionality was effective and positive for the country in the early stages of Bulgaria's application to the organization. It motivated the implementation of reforms, which solidified the democratic political system.

In order to further strengthen democracy in the country and tackle the issues outlined previously, administrative reforms were also needed. More efficiency and transparency in the system had to be realized. It was also important for economic reasons because administrative efficiency was essential in order for Bulgaria to receive financial "rewards" from the EU for completing conditions. The public administration had to have the ability to effectively absorb funds.¹⁵ Again, the Kostov government managed to implement such reform even though they had been in discussion since 1995. The administration was depoliticized in order to completely separate it from the possible influence of political elites.¹⁶ This guaranteed that people working in the bureaucracy would have the necessary qualities needed for their profession, it guaranteed professionalism in the system as well as independence. By doing so a more effective administration was created which in itself makes a democracy more sustainable. What is more, four additional legislative acts, the Administration Act of 1998, the Civil Service Act of 1999 and the 1999 Local Self-Rule and Local Administration Act, further specified penalizing rules for civil servants under specific situation, their particular competences and most importantly placed their work under the supervision of a new institution, the State Administrative Commission.¹⁷ This was a major improvement of the administration which introduced more transparency and

¹⁵ Aneta Spendzharova. 2003. "Bringing Europe in? The Impact of EU Conditionality on Bulgarian and Romanian Politics". *Southeast European Politics.*, p. 149

¹⁶ Antoaneta Dimitrova and Rilka Dragneva. 2001. "Bulgaria's road to the European Union: Progress, problems and perspectives" *Perspectives on European Politics and Society.*, p.92

¹⁷ Ibid.

accountability to the system. Accompanied by the creation of a new institution with the power to oversee the administration, the fragile democracy in place since 1989 was further strengthened. What is more, these reforms illustrated the commitment of Bulgaria to comply with EU political conditionality and the Copenhagen criteria. Again, the EU's conditionality proved to be effective and served as a positive transforming actor for democracy in Bulgaria, as the implemented reforms were directly linked to the attempts of accomplishing the goal of membership.

The advancements Bulgaria made towards fulfilling EU conditionality and moving closer to formal accession negotiations with the EU could be best measured through the European Commission's regular reports on Bulgaria. The first report was released in 1997.¹⁸ Although it did signify that the democratic nature of the country was strengthened, there were serious concerns about the lack of reform in the judiciary system, the protection of the rights of minorities and the biggest problem: corruption.¹⁹ Thus, the Commission decided to monitor the developments concerned with the EU conditionality more closely. Unfortunately, this meant that for Bulgaria the formal accession negotiations were postponed and they did not begin in 1997 the same way they did for the other CEEC's.²⁰ After the change in government in 1997 and the implementation of the reforms by the Kostov administration outlined previously, alongside other reforms as well, the situation changed drastically. In the reports issued from 1999 through 2003 Bulgaria was acknowledged for making substantial advancements in the problematic policy fields. For example, the largest minority in the country, the Turkish minority, was politically represented with the creation of a party (The Movement for Rights and Freedoms) which has been a part of all ruling coalitions after.²¹ The 2003 report also stated that since the Kostov government and the Simeon II government have been in power significant advancements in one of the most crucial problems of the country, the judiciary, had also occurred. Legislation passed from 2000 until 2003

¹⁸ Gergana Noutcheva and Dimitar Bachev. 2008. "The Successful Laggards: Bulgaria and Romania's Accession to the EU". *East European Politics and Societies: and Cultures.*, p. 121

¹⁹ Ibid.

²⁰ Ibid., 122

²¹ Antoaneta Dimitrova and Rilka Dragneva. 2001. "Bulgaria's road to the European Union: Progress, problems and perspectives" *Perspectives on European Politics and Society.*, p.90

under the Simeon II government, coming to power in 2001, has made the process of electing magistrates more transparent by specifying the criteria under which their appointment was made as well as the circumstances under which they can be dismissed or promoted.²² Furthermore, the creation of the Committee of Attestations and the Committee on Proposals ensured a system of control and oversight.²³ What was still needed according to the report however was the assurance that the judicial system is properly functioning in practice. More was needed in order to guarantee there were no political links and preferences.²⁴ The other significant issue still not resolved by 2004 relating to the democratic conditionality of the EU was the concern for corruption. The reports once again state that gradual progress from 1997 until 2004 to tackle corruption has been made, but still more was required. A National Strategy against Corruption was implemented in 2001 and in 2003 an Action Plan to act against it extended the legislation.²⁵ Nevertheless, bribery, abuse of official positions, corruption in the private sector and tax evasion were identified as main problems which still have not been solved. This presented a limitation both for the ability of Bulgaria to address serious concerns, but also for EU conditionality, which did not seem to have the ability of encouraging transformation of deeply rooted problems.

Despite the remaining difficulties, the Commission reports from 1999 onwards state that Bulgaria was able to fulfill the democratic conditions of the Copenhagen criteria and that the government in power since 1997 was committed to joining the EU. This could be further confirmed by the fact that Bulgaria began formal negotiations after the Helsinki summit at the end of 1999, with six chapters of the *acquis communautaire* being opened.²⁶ This symbolized a recognition of the progress Bulgaria has made, especially during the Kostov government. The democratic conditionality of the EU is a major part of the Copenhagen criteria and

²² European Commission. 2004. "Regular Report on Bulgaria's Progress towards accession", pp. 16-19

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid., p. 20

²⁶ Antoaneta Dimitrova and Rilka Dragneva. 2001. "Bulgaria's road to the European Union: Progress, problems and perspectives" *Perspectives on European Politics and Society*, pp. 85-86

the beginning of the official negotiations certifies that according to the EU democracy was guaranteed and safeguarded in Bulgaria. Thus, EU conditionality was successful in facilitating political development. Economically, however, things were different. The economic conditionality of the EU meant that a country which wanted to join the union had to have a functioning market economy, as described in the Copenhagen criteria.²⁷ This presented more persistent problems for Bulgaria, which would have implications for why it was not able to join the EU in 2004.

1.2 Impacts of EU economic conditionality and the four freedoms in Bulgaria from 1995 until 2004

EU economic conditionality is understood in terms of two aspects of the Copenhagen criteria: a country can become a member state only if and when it has (1) a functioning market economy and (2) the ability to handle the competitive pressure within the EU.²⁸ At the moment of Bulgaria's application in 1995, the country had six years of democracy in which structural reforms to the economy have been stagnant, with a lack of commitment of the political elites to reform the banking sector and banking supervision, to support the transparent and fair privatization and to attract Foreign Direct Investment (FDI).²⁹ Furthermore, the slow economic development resulting from the post-communist negligence culminated in an economic crisis in 1996 and 1997, which further crippled the Bulgarian economy and made the enforcement of reforms needed to adhere to EU economic criteria even more difficult to realize.³⁰ The crisis saw inflation rise to 1200% in 1997 and GDP growth declined by 10% in 1996 and 7% in 1997.³¹ This by itself made it much more difficult to conform to EU conditionality and was the main reason for why formal negotiations had to be postponed for two years. What

²⁷ Aneta Spendzharova. 2003. "Bringing Europe in? The Impact of EU Conditionality on Bulgarian and Romanian Politics". *Southeast European Politics*, p.145

²⁸ European Commission. 2004. "Regular Report on Bulgaria's Progress towards accession", p. 24

²⁹ Stanimir Alexandrov and Latchezar Petkov. 1997. "Paving the Way for Bulgaria's Accession to the European Union". *Fordham International Law Journal*, pp. 594-598

³⁰ World Bank. 2005. "Bulgaria: The road to successful EU integration", p. 26-28

³¹ European Commission. 2000. "Regular Report on Bulgaria's Progress towards accession", p. 25

calmed the economic crisis was the interference of the IMF in 1997 and the creation of a currency board, fixing the Bulgarian lev to the German mark.³² The positive impact of this development was evident the following year, as inflation was down to 40% and further down to 3% in 1999, while GDP growth was 3,5% and 2,9% in those years, respectively.³³ These initial stages of economic recovery were accompanied by the change in leadership, with the Kostov government coming to power in 1997, making it possible for real economic reform to begin in the framework of EU conditionality.

The structural reforms composed of an initial price liberalization and privatization of previous nationally owned establishments.³⁴ This stimulated the development of the private sector and of businesses, which further contributed to economic growth. Economic development was evident in 1999 and 2000 when the private sector in the economy contributed more than 60% to growth and more than 50% of state-owned enterprises had been privatized, with a large percentage of them being in the industrial sector.³⁵ Furthermore, with the implementation of the currency board in 1997 stability was ensured through rigorous fiscal policy. The budget deficit under the Kostov government had also been handled efficiently, with it being 12% during the crisis and 0,9% in 1999.³⁶ All of these reforms pointed to the fact that the economic crisis had been solved, however its effects were severe enough to significantly slow down Bulgaria's development of a functioning market economy which would be able to cope with the competition in the EU. Thus, the country report by the Commission in 2000 concluded that despite the improvements, Bulgaria still had a long way to go in achieving the economic conditionality outlined in the Copenhagen criteria. Nevertheless, the immediate measures taken under the Kostov government to effectively implement economic reform were stimulated not only by the crisis, but by the EU's support mostly in the form of conditionality. The incentive of the possibility to join the EU sooner rather than

³² Antoaneta Dimitrova and Rilka Dragneva. 2001. "Bulgaria's road to the European Union: Progress, problems and perspectives" *Perspectives on European Politics and Society*., pp. 86-87

³³ World Bank. 2005. "Bulgaria: The road to successful EU integration"., p. 25

³⁴ *Ibid.*, p. 30

³⁵ European Commission. 2000. "Regular Report on Bulgaria's Progress towards accession"., p. 28

³⁶ *Ibid.*, p. 27

later was a priority for the Kostov government and for the Simeon II government following it. Thus, EU conditionality had an important role in Bulgaria's economic development.

With the Simeon II government coming to power in 2001 the economic situation was further enhanced and to stimulate its growth more reforms took place. At this stage however, economic transformation was related more to implementing and preparing the country for the four freedoms of the EU. Once again this included the evaluation of the existing legislation and the introduction of new legislation, which would ensure that the free movement of goods, services, people and capital will not be a problem once Bulgaria joined the EU. The adoption of the *acquis communautaire* required the synchronization of Bulgarian law and EU law. Therefore, these four freedoms were important for three main factors: firstly, they were needed to ensure Bulgaria's economic development, secondly, they are an important part of certifying Bulgaria has a functioning market economy and has the ability to cope with competitive pressure in the EU and lastly, they are an essential part of adopting EU law, the main condition to be completed by a candidate before accession.

On the free movement of goods Bulgaria had to introduce reforms mostly related the norms and standards of products, which meant that coordination with the EU norms and standards was needed.³⁷ Reforms were introduced steadily from 2001 until 2004, mainly due to two factors. Firstly, due to time pressure to cope with EU conditionality and avoid scrutiny by the Commission by going through these reforms unproblematically and quickly. Secondly, to potentially being able to join other CEE countries which (at the time) were preparing to close negotiations in 2002 and sign an accession treaty in 2003.³⁸ The later did not happen, however legislation on food production (the Foodstuffs Act) and pharmaceuticals (the Act on Humanitarian Medicine and Pharmaceuticals and Pharmacies), which were two

³⁷ Kamen Velichkov. 2003. "Bulgaria's EU accession negotiations: achievements and challenges". *Papeles del Este.*, p. 4

³⁸ Gergana Noutcheva and Dimitar Bachev. 2008. "The Successful Laggards: Bulgaria and Romania's Accession to the EU". *East European Politics and Societies: and Cultures.*, p.123

of the main “risk groups of goods” identified by the Commission in 2000, were implemented effortlessly by 2003.³⁹ Most importantly however was the introduction of legislation concerned with technical legislation (packaging, labeling, production process, etc.). This was also the area with the most laws in Bulgaria and where the most synchronization with the EU was needed.⁴⁰ The Act on the Technical Requirements of goods was the main reform, however a set of accompanying legislatures had to be introduced as well. They were important for the completion of the Single Market and the adequate integration of Bulgaria in the Single Market once it joined the EU. The laws were known as the New Approach and Old Approach. They made sure that standards across the market are synchronized so that trade can happen smoothly without any barriers.⁴¹ In this section Bulgaria had introduced twelve directives concerned with the New Approach and eight concerned with the Old Approach by 2004.⁴² With regards to the free movement of goods EU conditionality and scrutiny has stimulated the Kostov government and the Simeon II government to efficiently implement legislative reform which contributed to the creation of a market economy. What is more, with a legislature mirroring that of the other member states of the EU Bulgaria had come one step closer to also being able to deal with competitive pressure in the EU. Thus, economic conditionality for Bulgaria has been a substantial factor in Bulgaria’s economic development up until 2004. The clear adoption of laws in line with EU conditionality is an indicator of the positive and successful effect of conditionality.

Ensuring the free movement of capital has been mostly guaranteed in Bulgaria since the first Commission report in 1997. The problems which existed were concerned with the limits to the possibility of outside capital coming into the country, but that was mostly due to the financial crisis.⁴³ After the currency board had been

³⁹ Kamen Velichkov. 2003. “Bulgaria's EU accession negotiations: achievements and challenges”. *Papeles del Este.*, p. 3

⁴⁰ Ibid.

⁴¹ Ibid., pp. 3-4

⁴² Ibid.

⁴³ European Commission. 1997. “Commission Opinion on Bulgaria’s Application for Membership of the European Union”, p. 47

introduced and the government had taken measures to deal with the crisis this problem had been mostly solved, as Commission reports since 2003 have stated.⁴⁴ Another problem was money laundering, which by itself is connected to one of the biggest criticisms of the EU against Bulgaria: corruption. However, by 2003 reports specified that with the introduction of the Money Laundering Act in 1996 and its strengthening in 2003, the law was able to grant banks and institutions more overseeing power, which addressed the issue.⁴⁵ This contributed to the transparency and efficiency of the economic system and put measures in place which would prevent misbehavior and the possibility of a crisis. In 2001 and 2002 Bulgaria removed the final barriers in the way of free capital flows, as with them land ownership by non-Bulgarian citizens was allowed and capital exchange between citizens and non-citizens would be done at no additional cost.⁴⁶ Judging by the conclusion made by the Commission at the end of 2003 and the legislation introduced by Bulgaria for the synchronization of Bulgarian movement of capital law with the *acquis communautaire* legislation, EU conditionality has supported Bulgaria's economic development. FDI increased from 480 million Euros in 1998 to 1,1 billion Euros in 2000 to 1,8 billion Euros in 2003.⁴⁷ This indicated a major increase in investment from abroad, which contributed to the economy and exemplified that foreign businesses and individuals have begun to trust Bulgaria more in this time span. Without implementing new legislature, which is a process stimulated by EU conditionality, Bulgaria's economy would not have become more attractive for FDI inflows so quick.

Concerning the freedom to provide services the main issues related to the financial sector. Legislation on the banking sector and security, as well as protection of personal data, had to be brought in accordance with EU law. More bank regulations were needed to ensure transparency and prevent any future financial crisis, like the

⁴⁴ European Commission. 2003. "Regular Report on Bulgaria's Progress towards accession", p.48

⁴⁵ European Commission. 2004. "Regular Report on Bulgaria's Progress towards accession", p. 55

⁴⁶ Kamen Velichkov. 2003. "Bulgaria's EU accession negotiations: achievements and challenges". *Papeles del Este.*, p. 6

⁴⁷ Giuliana Tulino. 2019. "Bulgaria - main challenges in the process of integration in the European Union". *I Mediterranei.*, p. 4

one experienced in 1996.⁴⁸ For this reason the main institution concerned with finance, the Bulgarian National bank (BNB), went through the most changes. The internal rules governing BNB had to be updated. Mainly, alterations to the way banking licenses were issued changed in order to make the process more rigid and translucent.⁴⁹ Furthermore, more supervision was introduced when loans were given out, especially loans with a lot of capital at stake. Additional institutions like the Supervision Consultative Council and the National Insurance Council were created in order to enforce more control on banks.⁵⁰ All of these changes were initiated in order to strengthen the banking sector, which was very important for ensuring Bulgaria developed a functioning market economy. In terms of legislature connected to protection of personal data, advancements were only made after the election of the Simeon II government in 2001. A big part in the reform was played by the implementation of “the Council of Europe’s Convention of protection of individuals in respect of automatic data processing”.⁵¹ This was a major step towards harmonizing Bulgarian laws with EU laws, since the protection of the consumer is a very important aspect of the EU. Thus, the modernization of legislature connected to it had important implications for separating Bulgaria from its communist legacy and moving the country into a situation in which the sustainable market economy could thrive. For this to be possible consumer protection was vital. Overall, progression in the field of services occurred between 2001 and 2003. The Commission did conclude in its regular report for 2004 that adoption of this part of the *acquis communautaire* has been mostly reached, however even more was needed to be done in data protection as well as investor compensation schemes.⁵² The report states that a time period until 2009 has been established for the country to fully reach the standards for the freedom to provide services set out in EU legislation.⁵³ Despite this provisional time period progression had been made. EU conditionality and the incentive of joining the EU played the

⁴⁸ Kamen Velichkov. 2003. “Bulgaria’s EU accession negotiations: achievements and challenges”. *Papeles del Este.*, p. 5

⁴⁹ *Ibid.*, p. 6

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² European Commission. 2003. “Regular Report on Bulgaria’s Progress towards accession”. pp. 48-49

⁵³ *Ibid.*

most important role in the implementation of these reforms, which had positive effects on the economic development of Bulgaria. Having secure and strong financial institutions signifies there is more trust in the economy, which by itself is a positive.

The free movement of people was the last of the four freedoms in the *acquis communautaire* which needed to be implemented in Bulgaria. Although it is not as clearly linked to the economy as capital, goods or services it essential was in order to ensure the workings of the Single Market. It is important for certifying that Bulgaria had the ability to deal with the competitive pressures of the EU, as workers from Bulgaria will be competing with workers from other member states and vice-versa once Bulgaria became a member. Thus, the possibility for workers to move and compete in a larger market drives competitiveness which in turn drives economic development. In 1997 the Commission ruled that there was no synchronization between the *acquis* and Bulgarian law in this aspect.⁵⁴ A large part of this is the possibility to recognize educational and professional qualifications in different countries, which required Bulgaria to coordinate its laws with EU laws. What existed prior to 1997 was the National Accreditation and Assessment Agency set up in 1995, which dealt with educational recognition, but still had a long way to go in order to reach the level of harmonization with EU law required.⁵⁵ Furthermore, there was nothing connected to professional training synchronization, which meant that a lot of changes would have been required.⁵⁶ In terms of education two main legislative acts had been modified by 2002: The Public Education Act and the Higher Education Act.⁵⁷ They made it possible for foreigners to study in Bulgaria as long as their education certificate was recognized in their country of origin.⁵⁸ This was a major development, as it especially allowed EU students to easily attend Bulgarian universities. However more work was needed to fully align

⁵⁴ European Commission. 1997. "Commission Opinion on Bulgaria's Application for Membership of the European Union", p. 51

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Kamen Velichkov. 2003. "Bulgaria's EU accession negotiations: achievements and challenges", *Papeles del Este.*, p. 4

⁵⁸ Ibid.

Bulgarian legislation with EU legislation in this matter, since academic and training requirements for the equal recognition of diplomas was not entirely clear.⁵⁹ The main legislative act to facilitate the free movement of workers was signed in 2002 and was called the Act of Employment Promotion.⁶⁰ It removed the necessity to have a work permit if someone was an EU resident and not a Bulgarian resident, which was very important.⁶¹ By doing so Bulgarian legislation moved a lot closer to successfully adopting EU legislation, which would allow for efficient and sustainable free movement of workers once Bulgaria joined. According to the Commission report for Bulgaria in 2003, further development was needed in adopting the *acquis communautaire* mainly in the field of diploma recognition and administrative manners. Nevertheless, the chapter had been provisionally closed in 2003, but it was specified that Bulgaria had agreed to approve a temporary condition on restriction of the free movement of Bulgarian workers to the EU once it joins the EU. It stated other member states may decide to deny access to Bulgarian workers for a period between two and seven years.⁶² Despite the progress made this signified that there was a sense of concern for the lower working standards and requirements (such as working wage, safety requirements, break and vacation standards etc.) of Bulgarian workers compared to EU workers. The solution however was not for other member states' standards to be decreased, but rather for Bulgarian standards to be improved in time, after Bulgaria joins. Due to this assumption and the progress described in the Commission report in 2003, EU conditionality in terms of adopting the *acquis communautaire* had been successful in facilitating legislative reform on the free movement of people. By doing so and making it possible for workers, students and other members of society to freely move and work in other countries, EU conditionality has contributed to making the Bulgarian economy more competitive in the long term, as well as more open and thus contributing to the creation of a functioning market economy. The adoption of

⁵⁹ European Commission. 2003. "Regular Report on Bulgaria's Progress towards accession", pp. 48-49

⁶⁰ Kamen Velichkov. 2003. "Bulgaria's EU accession negotiations: achievements and challenges". *Papeles del Este.*, p. 4

⁶¹ Ibid.

⁶² European Commission. 2003. "Regular Report on Bulgaria's Progress towards accession", p. 48

EU legislature in Bulgaria would not have been a priority without the importance of its implementation for EU membership. The link between the reasoning of the government for bringing Bulgarian law closer to EU law is proof of the success EU conditionality has had in accelerating Bulgaria's economic development.

Conclusion of Chapter 1

This chapter has examined the effects which EU political and economic conditionality had on the democratization process in Bulgaria and the transition to a sustainable market economy capable of dealing with the competitive pressure in the EU in the period from 1995 until 2004. It has concluded that the legislative changes to the political reality during the Kostov government and the Simeon II government from 1997 until 2004 have been strongly motivated by the incentive of joining the EU and. The law amendments have had a positive effect on dealing with the democratic problems Bulgaria faced after the communist times. Conditionality has contributed to making institutions more transparent and efficient, ensuring checks and balances between the three branches of power are functioning and in ensuring that the rights of all citizens are protected. Furthermore, economic conditionality has positively supported the changes made in order to handle the economic crisis in 1996 and 1997 and then further helped in the growth of the Bulgarian economy. Combined with the implementation of the *acquis communautaire* and specifically the four freedoms, EU conditionality has made it possible for Bulgaria to become a functioning market economy capable of dealing with the competitive pressure of the EU. According to the Commission report in 2003, Bulgaria meets both the political and economic aspects of the Copenhagen criteria, which means conditionality was successful in facilitating the necessary changes in the country.⁶³ However, there was more Bulgaria had to achieve and change both politically and economically in order for the EU to accept it as a member, which is why it was not included in the Big Bang enlargement.

⁶³ Ibid.

2. Bulgaria from 2004 until 2007: dealing with EU conditionality and scrutiny before accession

Despite the progress Bulgaria had made until 2004, the Commission was still not entirely satisfied with Bulgaria's performance. This was the reason for why Bulgaria (and Romania) were left out of the decision made in 2002 for the countries, which would be a part of the Big Bang enlargement in 2004. The new target date for Bulgaria to join was 2007.⁶⁴ The political and economic reforms which were undergoing in Bulgaria were very closely monitored, closer than the other countries, and the fact that Bulgaria was left out of the 2004 enlargement was a way of shaming government and to push the state towards implementing more effective reform.⁶⁵ It illustrated the Commissions dissatisfaction with the adoption of adequate reform and placed even more pressure on the country, also showing that there will not be an easy way to become a member of the elite club. The main reasons identified for the postponement of accession were inefficient reforms in several policy fields. Firstly, the presence of corruption and organized crime, including in high levels of government, was very prominent.⁶⁶ Secondly, reforms in the justice system and the supremacy of the rule of law were not sufficient and there was concern for the independence of the judiciary.⁶⁷ Thirdly, there were administrative inefficiencies mostly connected to the centralization of power which needed to be addressed and solved in order to ensure further transparency.⁶⁸ These three aspects were the main parts of a larger scrutiny by the EU on the political and democratic nature of Bulgaria. They were the most important conditions to be addressed prior to the 2007 accession

⁶⁴ Bistra Velichkova, 2011. "Bulgaria's Accession in the Context of the European Union Enlargement". University of Twente., p. 100

⁶⁵ Stefanos Katsikas. 2014. "Bulgaria and Romania at Europe's Edge". *World History.*, p. 120

⁶⁶ Kalin Ivanov. 2010. "The 2007 accession of Bulgaria and Romania: ritual and reality". *Global Crime.*, p. 104

⁶⁷ Aneta Spendzherova and Milada Anna Vachudova. 2012. "Catching Up? Consolidating Liberal Democracy in Bulgaria and Romania after EU Accession". *West European Politics.*, p. 40.

⁶⁸ European Commission. 2005. "BULGARIA: 2005 Comprehensive Monitoring Report"., p. 7

Nevertheless, Bulgaria concluded formal accession negotiations with the EU in June, 2004 with a target of joining the organization on the 1st of January, 2007.⁶⁹ However, Bulgaria's planned accession to the EU in 2007 depended on addressing the previously specified issues seriously, not simply on the surface. The EU had made sure to closely monitor the implementation of reforms by issuing the so-called Comprehensive monitoring reports each year, which would outline the progress made, the remaining issues as well as policy recommendations.⁷⁰ This report would be used to illustrate whether or not Bulgaria was becoming democratically suitable to join the EU in 2007. The incentive of becoming a member should have been enough to stimulate Bulgaria to adequately address the remaining issues, however to further strengthen the country's motivation the Commission also introduced a safeguard clause in the Treaty of Accession signed in 2005, which was called "the postponement clause".⁷¹ According to this clause the EU had the right to delay the accession of Bulgaria until 2008, 2009 or 2010 if the Commission and the Council concluded that not enough progress was made in addressing the remaining political and economic issues.⁷² The EU wanted to make sure that the Copenhagen criteria and the *acquis communautaire* were efficiently implemented by the time of accession and was making no compromises. By analyzing the political and economic reforms which were undertaken by Bulgaria in the period from 2004 until accession in 2007, this chapter will identify whether or not EU conditionality was effective in pushing Bulgaria towards actively and adequately addressing its political issues and thus positively impacting its development. It will look at corruption, the state of the judiciary, administrative reform and economic reform.

⁶⁹ Tim Haughton. 2007. "When does the EU Make a Difference? Conditionality and the Accession Process in Central and Eastern Europe", *Political Studies Review.*, p. 243

⁷⁰ David Phinnemore. 2009. "From Negotiations to Accession: Lessons from the 2007 Enlargement". *Perspectives on European Politics and Society.*, p. 245

⁷¹ Eli Gateva. 2010. "Post-Accession Conditionality: Support Instrument for Continuous Pressure?". *KFG Working Paper Series.*, p. 8

⁷² David Phinnemore. 2009. "From Negotiations to Accession: Lessons from the 2007 Enlargement". *Perspectives on European Politics and Society.*, p. 244

2.1 Addressing the issue of corruption and organized crime in Bulgaria between 2004 and 2007

The problem of corruption had been the most pressing for the EU in the negotiations with Bulgaria. Even though it is hard to measure its impact it was evident that it is present in high levels of government and the administration, which in turn could affect the development of the country in the long term.⁷³ Furthermore, the presence of corruption threatened the legal and adequate use of future EU funds from the budget, which would have a direct effect on the integrity of the EU.⁷⁴ Thus, the condition to actively fight corruption in Bulgaria was very closely monitored by the Commission, more so than it was in previous rounds of enlargement.⁷⁵ Because of this close monitoring, outlined in the yearly reports, and the further incentive of the postponement clause the Bulgarian government had to implement legislative reform to address corruption. The first Comprehensive monitoring report was released in October, 2005, and it outlined the fact that very little progress had been made, only in the field of administrative corruption, which is far from satisfactory.⁷⁶ With continuous pressure from the EU throughout the years some reforms for higher level corruption were introduced. One of the main problems with the government implementing anti-corruption legislation is that most of the same political parties which were in power from 1997 until 2004 were also in power until 2007, in different coalitions. The general election in Bulgaria in 2005 saw the socialist party winning and it formed a triple coalition with the party of Simeon II and the Movement for Rights and Freedoms (DPS). The Simeon II government was in power until 2005 and the socialist and DPS were the opposition at the time. The same people were still in power, only in a different arrangement. This leads to a situation in which an effective anti-corruption policy is difficult, because the political elites do not want to infringe themselves. Thus, the reforms which were undertaken were mostly legislative and their implementation was problematic, but nevertheless the scrutiny of the EU and the membership on the line pushed the

⁷³ Diana Bozhilova. 2007. "Measuring Successes and Failure of EU-Europeanization in the Eastern Enlargement: Judicial Reform in Bulgaria". *European Journal of Law Reform.*, p.292

⁷⁴ Ibid.

⁷⁵ Stefanos Kastikas. 2014. "Bulgaria and Romania at Europe's Edge". *World History.*, p. 119

⁷⁶ European Commission. 2005. "BULGARIA: 2005 Comprehensive Monitoring Report", p. 7

government to it adopting changes. There were positive effects which could be observed, as new legislation was introduced, old legislation was reformed and even some supervisory bodies were created. The most development was made however prior to the releases of Commission reports.⁷⁷ That is when the government talked the most about anti-corruption measures and tried to present an image of itself dedicated to working vigorously against the issue, when the reality was that the changes were not sufficient by 2007. Nevertheless, at least minimal progress was made.

To facilitate the reforms two Anti-Corruption Action Plans were adopted for the period of 2004-2005 and then for 2005-2006, which outlined the approach of the government for fighting against corruption.⁷⁸ The first plan was more focused on administrative reforms, whereas the second, due to Commission scrutiny, attempted to address high-level corruption. One of the first improvements to be implemented was the Law on Political Parties in 2005.⁷⁹ It stated that political parties had to disclose information about their largest financial contributors and thus reduce the risk of having people in government be dependent on someone else's agenda.⁸⁰ Furthermore, the law also stated that political parties were not allowed to accept anonymous contributions which made it easier to supervise their activities and motivations.⁸¹ This law was meant to make the political process more transparent, especially around election time and to illuminate any possible outside motivations for specific agendas of political parties and their members. Furthermore, in order to ensure there was no conflict of interests in the branches of government, a Code of Ethics introduced in the end of 2005 stated that members of the executive must present their financial details and are forbidden from participating in private businesses or undertaking other professions while being a public servant.⁸² The reforms were accompanied by a change in the constitution in 2006, which allowed

⁷⁷ Kalin Ivanov. 2010. "The 2007 accession of Bulgaria and Romania: ritual and reality". *Global Crime.*, p. 105

⁷⁸ European Commission. 2006. "BULGARIA: May 2006 Monitoring Report", p. 7

⁷⁹ Gergana Noutcheva and Dimitar Bachev. 2008. "The Successful Laggards: Bulgaria and Romania's Accession to the EU". *East European Politics and Societies: and Cultures.*, p. 137

⁸⁰ Ibid.

⁸¹ European Commission. 2005. "BULGARIA: 2005 Comprehensive Monitoring Report", p. 7

⁸² European Commission. 2006. BULGARIA: May 2006 Monitoring Report., p. 7

the immunity of parliament members to be lifted if there was substantial evidence of a crime of corruption and a case was being formed against them.⁸³ These developments, especially the constitutional change, did have an impact in fighting against corruption. It has led to the lifting of immunity of fifteen members of the parliament (out of 240) only in the first half of 2006 in relation to corruption charges.⁸⁴ This proves that pressure from EU conditionality to adhere to conditionality did work in Bulgaria, because these changes in the law were only implemented after severe scrutiny by the Commission. The incentives of EU membership or possible postponement of it were effective in driving change in Bulgaria and the practical results for the transformative process was evident.

Legislative reform was not enough to successfully address corruption in its entirety, as functioning anti-corruption bodies were also necessary to ensure the laws were being implemented and respected. Despite the fact Bulgaria focused mostly on legislation, some institutional changes also took place. A committee within the Council of Ministers was created, which had the task of monitoring institutions and also could coordinate action against a corruption case if such was opened.⁸⁵ It was also connected to the other monitoring committees of the two most important institutions of the legislature and the judiciary: The National Assembly and the Supreme Judicial Council (SJC).⁸⁶ By linking the three monitoring committees together, the possibility of back-door deals or oversight of an incident was reduced, allowing for more comprehensive and thorough control against corruption. What is more, in this way the three branches of government could all be monitored and combined with the legislative reforms could be held accountable for corruption. The National Audit office's powers were also strengthened, as it was required to announce the names of people in the administration, who failed to declare their properties and thus avoided taxation.⁸⁷ Not only were the charges for this increased, but they would publicly be scrutinized, which was expected to curb behavior and

⁸³ Ibid., p. 8

⁸⁴ Ibid., p. 8

⁸⁵ Gergana Noutcheva and Dimitar Bachev. 2008. "The Successful Laggards: Bulgaria and Romania's Accession to the EU". *East European Politics and Societies: and Cultures.*, p. 138

⁸⁶ European Commission. 2006. "BULGARIA: May 2006 Monitoring Report", p. 7

⁸⁷ Ibid.

implicate corruption related to property assets. The customs agencies were a part of the administration with a troubling record of corruption. In order to address it a special section within it was created called “Customs Intelligence and Investigation” and it immediately showed results: in 2005 there were 32 instances of disciplinary measures.⁸⁸ These institutional developments, although minor, were motivated by the scrutiny of Bulgaria not being able to meet EU conditionality in the annual monitoring reports. However, the reach of the reports and the conditions went beyond only the government, as more social groups became familiarized with the corruption issues of the country and tried to hold the government accountable. The regular reports issued by the EU and the emphasis of the importance of conditionality, especially fighting against corruption, for the accession of Bulgaria did not go unnoticed by the population.⁸⁹ Ever since 1997 and the first reports were issued, which highlighted the level of corruption in Bulgaria, there has been a rise in civil society groups, mostly NGO’s, which serve the purpose of further monitoring and scrutiny.⁹⁰ This development illuminates the fact that the monitoring reports concerned with the level of adherence to conditionality have an effect beyond simply the political elites. Society was able to learn about what the conditions for EU membership were and what the consequences of not respecting them could have led to. Ultimately EU membership benefits the population the most and knowing this, civil society was able to put more pressure on the government to match the EU conditions for membership. The role of EU conditionality in this respected cannot be underestimated.

According to reports from Transparency International, in 2006 at the time right before accession Bulgaria held the 57th position out of 159 countries in terms of the level of corruption, with a higher number meaning a country is more corrupt.⁹¹ In

⁸⁸ European Commission. 2005. “BULGARIA: 2005 Comprehensive Monitoring Report”, p. 12

⁸⁹ Nikolaos Papakostas. 2012. “Deconstructing the Notion of EU Conditionality as a Panacea in the Context of Enlargement”. *L'Europe en Formation.*, pp. 224-225

⁹⁰ Gergana Noutcheva and Dimitar Bachev. 2008. “The Successful Laggards: Bulgaria and Romania's Accession to the EU”. *East European Politics and Societies: and Cultures.*, p. 138

⁹¹ *Ibid.*, p. 136

2004 the position was 54 and in 2005 it was 55.⁹² ⁹³ There has been virtually no change in the position, only slightly in a negative direction, however the actual index indicating the level of corruption has been improving.⁹⁴ Despite the small differences, there has been a positive change towards the reduction of corruption in the period from 2004 until accession. The final monitoring report by the Commission issued in September, 2006, acknowledged that there has been an effort against corruption both legislatively and institutionally, citing the developments previously analyzed.⁹⁵ Nevertheless, it also points to the fact that corruption remained a prominent problem in the country and the enforcement of the changes needed to be improved, as there is not a sufficient amount of evidence pointing to actual results.⁹⁶ Nevertheless, the answer to the question of whether there have been progressive developments of the anti-corruption laws and the institutions motivated by EU conditionality should be positive. The incentives provided by the Commission to stimulate anti-corruption measures in Bulgaria have been successful, as the EU decided to accept Bulgaria in the originally specified date of the 1st of January, 2007. Thus, EU conditionality did contribute to the progressive development of the country and was successful in contributing to the adoption of anti-corruption measures.

2.2 Addressing the issue of the justice system and the supremacy of the rule of law in Bulgaria between 2004 and 2007

According to the first comprehensive monitoring report on Bulgaria in 2005, one of the major problems which had to be addressed was the inefficiency of the judiciary. Most importantly the transparency of the way magistrates were elected had to be ensured and its independence from the government and outside influence

⁹² Transparency International. 2004. "Research - CPI - Corruption Perceptions Index 2004". Available at: https://www.transparency.org/research/cpi/cpi_2004/0 [Accessed 18th of May, 2019].

⁹³ Transparency International. 2005. "Research - CPI - Corruption Perceptions Index 2005". Available at: https://www.transparency.org/research/cpi/cpi_2005/0 [Accessed 18th of May, 2019].

⁹⁴ Gergana Noutcheva and Dimitar Bachev. 2008. "The Successful Laggards: Bulgaria and Romania's Accession to the EU". *East European Politics and Societies: and Cultures.*, p. 138

⁹⁵ European Commission. 2006. "Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania", p. 16

⁹⁶ *Ibid.*, p. 17

had to be guaranteed. The first changes took place in the end of 2004 under the so called “National Concept for the Reform of Penal Justice” which meant to address the problem with holding magistrates accountable.⁹⁷ The actual reform of the Penal Procedure Code happened a year later and it saw the specification of the competences of the investigating magistrates, which now had transferred their power of investigation to the police.⁹⁸ In fact, this was accompanied by a change in the Criminal Code as well, by which the competences of investigating magistrates were transferred from the judicial branch to the executive, which was motivated by the analysis of the justice systems of other EU member-states.⁹⁹ The reform meant that now the judiciary shared more power with the executive, balancing their competences and lowering the possibility for the abuse of power. The amendment also tried to address one of the biggest criticisms of the EU about the judicial system, namely the non-transparent way the pre-trial phase of cases and investigations was conducted.¹⁰⁰ All capabilities relating to its process were essentially a part of the judiciary branch, which meant no control or monitoring was exercised. By dividing the responsibilities and allowing other institutions to conduct investigations in the pre-trial phase the procedure became clearer, more translucent. What is more, by copying the way EU countries have developed their judiciary, Bulgaria moved closer to properly fitting in with an efficient, European judicial system common in the union. In 2006 the updated Penal Procedure Code was strengthened with the introduction of a mechanism to monitor its implementation and it was further supported by a training program which had the goal of teaching new magistrates how to ensure the execution of the law.¹⁰¹ These extensions to the law were meant to strengthen it and make sure that the changes were effectively imbedded in the judiciary. If older magistrates were not respecting the new laws and the presence of corruption was detected, new oversight mechanisms would address them. Furthermore, newly selected magistrates will be

⁹⁷ European Commission. 2005. “BULGARIA: 2005 Comprehensive Monitoring Report”, p. 9

⁹⁸ Ibid.

⁹⁹ Diana Bozhilova. 2007. “Measuring Successes and Failure of EU-Europeanization in the Eastern Enlargement: Judicial Reform in Bulgaria”. *European Journal of Law Reform.*, p. 291

¹⁰⁰ European Commission. 2005. “BULGARIA: 2005 Comprehensive Monitoring Report”, p. 9

¹⁰¹ European Commission. 2006. “BULGARIA: May 2006 Monitoring Report”, pp. 5-6

able to adopt these changes in the Penal Code even further, since they will have come in the judiciary and immediately be trained to implement them.

Further reform was needed in order to increase the transparency on how magistrates were elected and what qualifications they needed. Up until 2003 the SJC was responsible for selecting magistrates in all positions, without an outline of what their qualifications were or what the requirements for the position were.¹⁰² This was a major problem as it created a possibility of selecting people due to political reasons or personal reasons, which threatens the credibility and efficiency of the justice system. Furthermore, it allowed for cover ups of certain people, namely political elites, and selection of cases which supported specific agendas. The judicial system has to be objective, independent and transparent. The EU understood the problem and thus this aspect of the conditionality was also central to the reforms Bulgaria had to introduce. There were attempts to make the system more transparent without legislative reform, but through practice. In 2004 the SJC conducted an open competition for magistrates and actually selected over 40 judges and prosecutors, as well as more than 50 investigators in a very translucent way.¹⁰³ However, later in the same year, another 30 magistrates were also selected by the SCJ without any competition or transparency.¹⁰⁴ The scrutiny of the EU in the Regular Reports up until 2004 and the stress on the importance to introduce a clearer process of selecting staff for the judiciary in order to comply with the conditions of EU membership successfully pushed towards a reform in 2005. The Law on the Judiciary was amended, prohibiting selection of magistrates without there being a job vacancy announce or in instances where a position is taken without there being record of an applicant's bid.¹⁰⁵ To even further strengthen this amendment it was required for the director of the directory, where the available position was, to issue a document specifying the competences of the selected

¹⁰² Diana Bozhilova. 2007. "Measuring Successes and Failure of EU-Europeanization in the Eastern Enlargement: Judicial Reform in Bulgaria". *European Journal of Law Reform.*, pp. 291-292

¹⁰³ European Commission. 2005. "BULGARIA: 2005 Comprehensive Monitoring Report"., p. 9

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

candidate.¹⁰⁶ Despite these changes people were still chosen without record of an adequate competition being held, which was present in the reports of the EU.

An administrative reform of the justice system which introduced more transparency and credibility was the next legislative change. Thus, two new bodies were created, which had the power of oversight in the courts. The first one was a court administrator and the second was a court assistant for judges.¹⁰⁷ The court administrators manages the courts, which means he does the administrative work and keeps track of it, so that there is documentation and a record of what has been done.¹⁰⁸ The assistant to the judges aids the work of judges and by doing so ensures everything is in order with the ethical code and the law.¹⁰⁹ The two positions supported administrative work and functioned as a tool which would increase the level of monitoring in the judiciary. Something very important in order to increase the reach and efficiency of the judicial system was the budget of the institutions. By doing so the administrative capacity will be increased and the ability to conduct thorough investigations and put forward cases would be increased. In 2005 the budget of the judicial branch was increased by 12%, which by itself was a large increase.¹¹⁰ In the following year there was a further 18% increase and the SJC alone saw their budget increase three times.¹¹¹ With these increases of the budget the judiciary not only improved its capabilities, but salaries rose as well. With the rise of salaries, it becomes more difficult to bribe officials, which contributes to the efficiency of the courts and reduces corruption. Technological innovations were also introduced with the intention of reducing the probability of preferential treatment or judges and prosecutors selecting cases to work on in a preferential manner. A system which randomly assigns magistrates to random cases was created in 2005 and began working in 2006.¹¹² By having such a system it became easier to ensure that procedures and sentences were conducted and enforced objectively.

¹⁰⁶ Ibid.

¹⁰⁷ Diana Bozhilova. 2007. "Measuring Successes and Failure of EU-Europeanization in the Eastern Enlargement: Judicial Reform in Bulgaria". *European Journal of Law Reform.*, p. 292

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ European Commission. 2005. "BULGARIA: 2005 Comprehensive Monitoring Report"., p. 10

¹¹¹ European Commission. 2006. "BULGARIA: May 2006 Monitoring Report"., p. 6

¹¹² Ibid.

Also, the judicial system becomes more decentralized and transparent, which contributes to its efficiency. The administration was also improved with the implementation of a training system for both magistrates and clerks in 2005.¹¹³ The procedure continued through 2006 with more funding and there were around 2000 members of the administration of the judicial system who had been trained.¹¹⁴ This system of training increased the level of competence of the administration. It made the people working in it more familiar and prepared for their work and the adequate execution of the law, which allowed them to do their job better. The administrative reforms implemented in the period before accession were important, as they showed Bulgaria was capable of complying with EU conditionality and addressing the biggest issues of the country. The improvement of the judiciary was a crucial point in the conditions put forth by the Commission, which had to be respected in order for Bulgaria to join the EU in 2007. According to the final Comprehensive monitoring report in September, 2006, the Commission concluded that progress was made and it will not trigger the postponement clause, however a lot more was needed in order to completely ensure the supremacy of the rule of law in Bulgaria.¹¹⁵ Nevertheless, the amendments implemented were motivated by the conditionality of the EU and they did have an effect on the improvement of the judicial system. The transparency, efficiency and administration of the justice system were strengthened and these changes have contributed to a constructive development of the Bulgarian political system. Thus, the importance of adhering to conditionality became a priority for Bulgaria, which leads to the observation that its role in being a driving force for reform cannot be undermined.

2.3 Addressing the issue of the Public Administration in Bulgaria between 2004 and 2007

The regular report for Bulgaria in 2004 noted that the changes to the public administration had to address the competences of different actors, the transparency of the work in the administration and its decentralization. The legislative

¹¹³ European Commission. 2005. "BULGARIA: 2005 Comprehensive Monitoring Report", p. 10

¹¹⁴ European Commission. 2006. "BULGARIA: May 2006 Monitoring Report", p. 6

¹¹⁵ Ibid., p. 15

amendments introduced prior to 2004 were not effectively implemented even though Bulgaria did fulfill the political (democratic) conditions of the Copenhagen criteria.¹¹⁶ If these conditions were met then the presumption was that the administration would have become more efficient in its work and thus the political system of the country would have begun worked better. However, that is not the only issue. Conditionality concerning this part of the political system was important because having a functioning administration was essential for being able to absorb and successfully apply European law in the country. It is needed so that EU funds and structures can be adopted without any legal problems.¹¹⁷ Therefore scrutinizing the Bulgarian government for only reforming the public administration on the surface was a serious accusation and if no actual progress was made EU membership by 2007 would have been questionable.

In 2003 a Strategy for the Administrative reform was introduced and it included amendments to the Law on Administration and Civil Service Laws.¹¹⁸ These changes aimed at defining the competences of the civil service, making the bureaucracy more transparent and easier to access and defining the qualifications under which civil employees will be appointed¹¹⁹ If these three aspects are summarized the legislative reforms aimed mostly at transparency and accountability, ensuring the administration was objectively chosen and its work could be easily followed by the public. The Law on Administration was only introduced in the middle of 2006; however, it did serve a very important purpose. It distinguished between the competences of the politically chosen members of the administration, namely ministers, and the actual bureaucracy which carried out the day-to-day work.¹²⁰ By doing so there was a clearer structure in the administration and with the division of competences political motivations, at least in theory, should not have been an influence on the daily work of the civil servants. This is important

¹¹⁶ Gergana Noutcheva and Dimitar Bachev. 2008. "The Successful Laggards: Bulgaria and Romania's Accession to the EU". *East European Politics and Societies: and Cultures.*, pp.130-131

¹¹⁷ Ibid., p. 130

¹¹⁸ Gergana Noutcheva and Dimitar Bachev. 2008. "The Successful Laggards: Bulgaria and Romania's Accession to the EU". *East European Politics and Societies: and Cultures.*, pp. 90-91

¹¹⁹ Ibid.

¹²⁰ European Commission. 2006. "BULGARIA: May 2006 Monitoring Report"., p. 5

because now different actors could be held accountable for either politically motivated decisions or pure administrative work. What is more, the same law placed more control on the involvement of civil servants in the private sector by introducing more monitoring and ensuring there was no conflict of interest.¹²¹ Once again, this was an important development as it not only contributed to the transparency of the administration, but it also served as a measure against corruption.

The main point of the amendments to the Civil Service Law was to guarantee the quality of performance of the civil service and undertake necessary measures if there were problems. The amendments announced in 2003 led to the introduction of tests, which examined the performances of the bureaucracy in the ministry departments.¹²² The system did identify a problem initially, as in 2003 the percentage of so-called “competitive recruitment” was around 15% of the entire system.¹²³ This was a serious problem, as it suggested that the vast majority of the civil service were not suited to do carry out their professional responsibilities. Thus, the amended law also made it compulsory for there to be professional training in order to address such issues and in 2004 more than 20 000 employees from both central and local governments attended training courses.¹²⁴ The courses were offered not only for new employees, but also for higher-placed civil servants.¹²⁵ By doing so the training system could solve problems both at the bottom of the structure, as well as the top. There was an immediate effect as only a year after the first “assessment” in 2003 there was a dramatic increase in the percentage of “competitive recruitment”, reaching a 100% in 2004.¹²⁶ In 2006 the Civil Service Law was further amended to now include training for more EU related matters. The administration was supposed to become competent in the implementation of the *acquis communautaire*, making it easier for the integration of Bulgaria in the EU.¹²⁷

¹²¹ Ibid.

¹²² World Bank. 2005. “Bulgaria: The road to successful EU integration”, pp. 90-91

¹²³ Ibid., p. 91

¹²⁴ European Commission. 2006. “Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania”, p. 8

¹²⁵ Ibid.

¹²⁶ World Bank. 2005. “Bulgaria: The road to successful EU integration”, p. 91

¹²⁷ European Commission. 2006. “BULGARIA: May 2006 Monitoring Report”, p. 5

The improvement of the civil service was a priority for complying with the conditionality of the EU prior to accession. The system had to become more transparent and efficient, with a civil service capable of dealing with EU related issues. With the implemented changes, Bulgaria moved closer to fulfilling EU conditionality.

Finally, there were two very important developments into the change of the administration, which contributed to the democratization of the country, its transparency and the establishment of communication channels between the government and the population. Firstly, in 2005 the first Ombudsman of the country was selected almost two years after the constitutional amendment was introduced.¹²⁸ The importance of an Ombudsman in the public administration is crucial, as the position provides a platform for civil complaints, which are not restricted by a heavy bureaucratic system or political barriers. An Ombudsman is a symbol of transparency and democracy, which was a very important point for Bulgaria to make before EU accession. The second important development refers to the introduction of an electronic system, which would allow the public to easily inform themselves of the competences of different administrative bodies and of the civil service working in them.¹²⁹ The process for the implementation of such a system began in 2004 and once again it was very important for the transparency of the administration. It also contributed to the perceived centralization of the administration, as with an electronic database people had the ability of finding the most important information they needed with ease. The Ombudsman and the introduction of the electronic system contributed to Bulgaria's attempts to comply with EU conditionality and had an effect on the further democratization of the country and its image abroad, identifying the importance of conditionality in facilitating the adequate implementation of political reform.

¹²⁸ European Commission. 2005. "BULGARIA: 2005 Comprehensive Monitoring Report", p. 7

¹²⁹ World Bank. 2005. "Bulgaria: The road to successful EU integration", p. 91

Conclusion of Chapter 2

This chapter has analyzed the attempts by the Bulgarian government to comply with EU conditionality in the period from 2004 until 2007 and examined the extent to which the legislative and institution reforms introduced have been motivated by the conditionality and the overarching incentive of joining the EU. The chapter looked extensively at the anti-corruption measures which have been implemented and how effective they were in the actual fight against corruption. Furthermore, the chapter exemplified the reforms in the judicial system and the level to which they guaranteed the supremacy of the rule of law. Finally, the chapter discussed the reforms in the public administration and the changes to the law and the civil service to prove there was a democratizing effect complying with EU conditionality. All of these developments contributed to Bulgaria's successful accession to the EU in 2007. The impact of EU conditionality has had a positive effect on the country so far and in theory it had prepared the country for membership. Nevertheless, the Commission expected more to be done. After accession it introduced a new set of conditions, which the country had to comply with in order to fully integrate itself in the EU.

3. Bulgaria and post-accession conditionality: The Cooperation and Verification Mechanism

On the 1st of January, 2007 Bulgaria officially became a member of the European Union. Joining the political, economic and social union was a milestone for Bulgaria, which marked the success of the country in separating itself from the communist legacy. What is more, EU membership meant that Bulgaria will be eligible to receive funding for all types of development, will have a greater say in the world political theater and the population will benefit the most, with their life choices having been increased and an expectation of a rise in standards of living. However, despite the fact Bulgaria had joined the union there were still concerns about some of the persisting issues present in the country prior to accession. Most notably corruption and organized crime, as well as the question of the supremacy of the rule of law were still a problem despite Bulgaria's adherence to EU conditionality in the pre-accession phase. Thus, the country was subject to a monitoring system called the Cooperation and Verification Mechanism (CVM) which intended to observe and potentially guide the progress made towards dealing with the remaining issues.¹³⁰ This chapter will examine the CVM by explaining its purpose and structure. Furthermore, it will specifically look at its effects and its role in motivating the implementation of further reform for anti-corruption measures and the rule of law. The chapter will analyze the Commission reports on the progress of Bulgaria in dealing with the problems and finally it will conclude whether the CVM has been effective in stimulating effective policy changes in addressing the remaining problems.

3.1 The structure and purpose of the Cooperation and Verification Mechanism

The Commission's stress on the importance of judicial reform and the implementation of anti-corruption measures in Bulgaria has been evident in all monitoring reports throughout the pre-accession phase of the country. Despite the

¹³⁰ Eli Gateva. 2013. "Post-Accession Conditionality – Translating Benchmarks into Political Pressure?". *East European Politics.*, pp. 420-421

fact Bulgaria complied with the Copenhagen criteria there were still many issues remaining, most notably the presence of corruption in the political system and the inefficiency of the judicial system. The EU did not want Bulgaria to simply become a member and abandon the attempts to address these problems and therefore risk the possibility of the weak implementation of EU law. Hence, in the last monitoring report in October, 2006, the Council had decided to implement a new monitoring system, the CVM, which would observe the progress made in the remaining areas of concern post-accession.¹³¹ Bulgaria was required to submit information on the developments of these issues each year, alongside the Commission's control and guidance.¹³² By closely following the different stages the Commission would release two reports each year, which outline the measures that have been implemented during the past year and further recommendations on how to proceed and what remains to be addressed. The second report released in July was more detailed than the first and after 2012 the Commission began to issue only one comprehensive document.¹³³ More importantly however the EU had outlined six benchmarks for Bulgaria in the CVM, which were the main problems the country had to address. The first one mandated the adoption of constitutional amendments which would remove the ambiguity concerned with the independence and accountability of the judicial system, the second one required the adoption and implementation of new legislative acts for the judicial system and a new civil procedure code and the third one simply stated that the reform of the judicial system should continue and it should strive to improve its efficiency, accountability and professionalism.¹³⁴ The first three benchmarks could be understood more broadly together as representing the part of the CVM concerned with the judicial reform. The second three taken collectively represent the recommendations concerned with

¹³¹ Martina Spornbauer. 2007. "Benchmarking, Safeguard Clauses and Verification Mechanisms - What's in a Name? Recent Developments in Pre- and Post-Accession Conditionality and Compliance with EU Law". *Croatian Yearbook of European Law and Policy.*, p. 298

¹³² Ibid.

¹³³ Ulrich Sedelmeier and Corina Lacatus. 2016. "Post-accession Compliance with the EU's Anti-Corruption Conditions in the 'Cooperation and Verification Mechanism': Bite without Teeth". *MAXCAP.*, pp. 4-5

¹³⁴ Georgi Dimitrov, Kaloyan Haralampiev, Stoycho Stoychev and Linka Toneva-Metodieva. 2013. "The Cooperation and Verification Mechanism: Shared Political Irresponsibility between the European Commission and the Bulgarian Governments (Results of Analytical Observations on the July Reports on Bulgaria)"., p. 68

the fight against corruption. The fourth benchmark directed the examination of high-level corruption in the government, the fifth one stated that further measures against corruption in the administration have to be taken, especially at the borders and in local governments, and finally the sixth one related to the fight against organized crime and money laundering.¹³⁵ By looking at these benchmarks it could be concluded that they do not offer a very specific target to be achieved, but are rather more in line with what the criticisms towards Bulgaria were even before accession. What was needed was the actual enactment of reforms, not simply legislative amendment and the CVM stressed this importance. However, the incentives the EU used to push Bulgaria towards the implementation of reform had changed, as the biggest enticement prior to 2007 to comply with conditionality was EU accession, or the threat of its delay. Now, the Commission's approach had slightly differed. The shaming of the government through the reports still remained a tool to motivate political actors, as the reports which were issued were public and were discussed both in the EU and in the public sphere.¹³⁶ This tactic did not carry much weight without the support of a stricter, more concrete punishment to accompany the scrutiny. Thus, the Commission cited a specific safe-guard clause in the Act of Accession, which specified that if Bulgaria is not able to effectively implement the part of the *acquis* concerned with Justice and Home Affairs, disciplinary measures against the country could be taken.¹³⁷ These "measures" may relate to the freezing of funds for Bulgaria if the Commission decides that attempts to address the six benchmarks are not sufficient enough, as they are closely related to Justice and Home Affairs. However, the actual CVM does not state whether actual sanctions will be applied legally if it is not respected.¹³⁸ What is more, the activation of the safe-guard is only possible in the first three years after accession, so the leverage the Commission has expires after 2010.¹³⁹ The only possible

¹³⁵ Ibid.

¹³⁶ Antoaneta Dimitrova, 2015. "The Effectiveness and Limitations of Political Integration in Central and Eastern European Member States: Lessons from Bulgaria and Romania". *MAXCAP.*, p. 14

¹³⁷ Eli Gateva. 2013. "Post-Accession Conditionality – Translating Benchmarks into Political Pressure?". *East European Politics.*, p. 433-434

¹³⁸ Ulrich Sedelmeier and Corina Lacatus. 2016. "Post-accession Compliance with the EU's Anti-Corruption Conditions in the 'Cooperation and Verification Mechanism': Bite without Teeth". *MAXCAP.*, p. 5

¹³⁹ Ibid.

sanction after that is related to the other member states, not the Commission. They might decide that if Bulgaria is not effectively addressing the CVM, they will not cooperate with Bulgaria and will not officially accept decisions made by Bulgaria.¹⁴⁰ However these measures are very weak and normative and in reality, do not offer a serious legal incentive for Bulgaria to comply with the conditionality. Nevertheless, the CVM has proved to have some effect in promoting legislative and institutional change, but it has not always led to effective implementation of reforms and to a change in the behavior of the country.

3.2 Addressing the issues with the judicial system described by the CVM

Reforms of the judicial system began immediately after accession. The first benchmark was addressed by a constitutional amendment as soon as February, which confirmed the independence of the judiciary by acknowledging and differentiating between the differences in competences of the Ministry of Justice and the judiciary.¹⁴¹ By doing so the checks and balances of the system were strengthened and the amendment guaranteed that politics will not be able to influence court decisions, at least in theory. Furthermore, the independence of the judiciary was additionally reinforced in 2008 when an inspectorate under the control of the SJC was established, with the obligation to review the work of magistrates and ensure that it was done morally and objectively. It had to respond to signals for corruption or misbehavior in the judicial system and if needed investigates them thoroughly and decide whether a case against them should be opened.¹⁴² Finally, the inspectorate had the obligation of reviewing older cases, which have been closed on suspicious grounds.¹⁴³ By 2010 the inspectorate had reviewed the work and structure of all courts in the country and had recommended the disciplinary measures for the ones which it found to have obstructed the

¹⁴⁰ Ibid.

¹⁴¹ European Commission. 2007. "Report on Bulgaria's progress on accompanying measures following Accession", p. 6

¹⁴² European Commission. 2008. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", pp. 3-4

¹⁴³ Ibid.

independence of the judicial system in any way.¹⁴⁴ This was a very important development, as with the inspectorate the SJC became capable of understanding where there were problems in the system and to dedicate measures to resolve them. By having a specialized body to do so the possibility of there being conflict of interest was minimized. The people doing the inspections are not a traditional part of the judiciary working on civil cases and thus they can objectively review courts in the country. Five years after the implementation of the CVM, the 2012 report confirmed that there has been progress made in Bulgaria on the independence and accountability of the judiciary. It states that the constitutional amendment has contributed to the independence of the courts by giving the judiciary and especially the SJC more power to control itself.¹⁴⁵ The creation of the inspectorate on the other hand balances the centralization of the judiciary and the investigations which it has conducted have helped to hold the judiciary accountable. Furthermore, the report stated that the immunity of the judicial staff has been limited, so that it is easier to blame them if they have been a part of illegal or immoral practices.¹⁴⁶ This was crucial for fighting against corruption in the judiciary and ensuring that magistrates themselves were not above the law. What remained to be amended and improved was the process of carrying out corrective measures against members of the judiciary. By 2015 research in Bulgaria had been conducted on how effective disciplinary measures were and whether or not the circumstances under which they are implemented should be changed.¹⁴⁷ After introducing several amendments to the internal rules of the judiciary the SJC also set up an inventory of former disciplinary cases and introduced an administrative team to assist them in the review of cases.¹⁴⁸ These changes to the structure and laws of the judiciary contribute to making it more efficient, having clearer guidelines by which they can

¹⁴⁴ European Commission. 2010. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism". pp. 4-5

¹⁴⁵ European Commission. 2012. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism"., pp. 6-7

¹⁴⁶ Ibid.

¹⁴⁷ European Commission. 2015. "REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Cooperation and Verification Mechanism"., p. 6

¹⁴⁸ Ibid.

hold magistrates accountable and improves the transparency of the judicial system. Overall positive developments on the first benchmark of the CVM have been documented. The last report from 2018 stated that more attention needs to be placed on the way the members of the SJC are elected. The National Assembly was involved in the election process in 2018, which was an improvement based on the recommendations of the CVM report from 2017.¹⁴⁹ With the input of the National Assembly the process is more transparent and it indirectly involves the population in the choices of the SJC. This contributes to the transparency and accountability of the judicial system from the perspective of civilians. Their votes affect not only the legislative and executive branch of government, but also the judiciary. The report states that the remaining problems concerned with the first benchmark are the strengthening of the power of the inspectorate and the creation of a registry, which outlines how and why high-positioned magistrates are selected by specifying their competences and making them public.¹⁵⁰ Overall, twelve years after the implementation of the CVM, the Commission reports show progress in the way the first benchmark has been addressed. The issues have progressively become more and more specific, concerning more sophisticated parts of the judicial system, which is a sign of progress. The biggest issues outlined in 2007 have been mostly addressed. More remains to be done, but the constitutional amendments and the legislative improvements have successfully addressed the ambiguity of the accountability in the judicial system and the role of the CVM in facilitating this development has been positive.

In 2008 a new Civil Procedure Code was implemented with a goal of making civil procedures faster and cheaper, thus making the judicial system more efficient.¹⁵¹ Furthermore, according to the 2008 reported monitoring systems had to be implemented for the amended Civil, Administrative and Penal procedure codes

¹⁴⁹ European Commission. 2018. "REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Cooperation and Verification Mechanism", p. 3

¹⁵⁰ Ibid., p. 2

¹⁵¹ European Commission. 2008. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 8

once all of them were improved.¹⁵² This happened gradually, as in 2009 the Penal Procedure Code was amended to do several things. Firstly, it simplified the procedure and attempted to prevent unjustified delays to the hearing.¹⁵³ Secondly, investigative police officers were able to submit evidence more easily without there being a minimum level needed for it to be admissible.¹⁵⁴ Thus, there are less channels through which evidence can be removed, hidden or tampered with. Finally, the rights of defendants had been increased, as after the amendment they were allowed to receive translated documents, which makes the procedures more robust and transparent. In this way the defendant's abilities to be sentenced wrongfully due to misunderstanding were reduced. The 2012 report highlighted the fact that the reforms implemented regarding the second benchmark of the CVM since 2007 were not satisfactory. There have been improvements to the Civil, Administrative and Penal procedural codes, but they have not been implemented properly.¹⁵⁵ There have been persisting concerns for subjective promotion and hiring of staff as well as intentional inefficiencies in the cases relating to high-level government corruption.¹⁵⁶ Based on the fifth monitoring report, the CVM has not been as successful at promoting reforms concerned with the second benchmark. This shows a weakness of the post-accession conditionality, as five years have not shown a lot of progress in contrast to the first benchmark. The development since 2012 has been mostly concerned with the monitoring of the adequate implementation of the new codes. In 2015 the monitoring report exemplified the fact that there should have been more discussion of further amending the Penal procedural code, since there have been problems during the debates in the National Assembly.¹⁵⁷ After many discussions and evaluations an agreement had not been reached.¹⁵⁸ Once again this is not a positive outcome for the ability of the CVM to

¹⁵² Ibid.

¹⁵³ European Commission. 2010. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 5

¹⁵⁴ Ibid.

¹⁵⁵ European Commission. 2012. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 8

¹⁵⁶ Ibid.

¹⁵⁷ European Commission. 2015. "BULGARIA: Technical Report", pp. 9-10

¹⁵⁸ Ibid.

promote efficient reform in this regard. The lack of incentives and possible punishments if benchmarks are not met means that the motivation for the government to undertake serious measures on matters not in their interest is low. However, since 2015 there has been progress, especially in the reforms of the Criminal procedure code. In 2017 it was decided that cases relating to high-level corruption in the government will be transferred to the Specialized Court for Organize Crime.¹⁵⁹ The amendment is also very important for the adequate resolution to the problems described in the sixth benchmark. This is very important as with this development it becomes more difficult for elites to be protected by politically influenced courts. Furthermore, the amendment addresses one of the major concerns of the Commission which has persisted since 2007, namely the fact that the investigation and prosecution of high-level corruption cases in the country is too ambiguous. Cases were closed without clear reasons and there have been suspicions of cover ups. Addressing this issue has been defined as a priority by the Commission. The 2018 report also concludes that the legislative amendments, which have been problematic since the activation of the CVM, have been effectively implemented and are in force.¹⁶⁰ The 2018 report has determined that benchmark two can be temporarily closed. If they are persuaded that the reforms are sustainable and completely implemented after monitoring their impact, the benchmark can entirely be closed.¹⁶¹ Bulgaria has been slower in addressing benchmark two, however the reports after 2015 have been positive. There have been legislative changes to the legal codes, which have contributed to the transparency and efficiency of the judicial system. Thus, post-accession conditionality has been able to contribute to the improvement of the judicial system, even though it has been more problematic than other areas. It does shows limitations to the CVM in ensuring the enforcement of amendments, however there are achievements in the improvement of legal measures.

¹⁵⁹ European Commission. 2018. "REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Cooperation and Verification Mechanism"., p. 4

¹⁶⁰ Ibid.

¹⁶¹ Ibid., p. 5

The third benchmark encompasses a broader description, as it calls for the continuation of the judicial reform as a whole in order to increase its efficiency and professionalism. Reforms related to it have attempted to address the recruitment and promotion process in the judiciary and the ethical and professional behavior within the system. The third benchmark's recommendations are similar to the first two, as they all indicate the importance of having an efficient, objective judiciary which can be held accountable. The most important development in the first five years after the adoption of the CVM was the implementation of a strategy and action plan for the reform of the judicial system.¹⁶² It specifically referred to the importance of the reform being directed towards achieving full EU membership and complying with the post-accession conditionality.¹⁶³ The importance of this description is that it directly connects the reform process to EU conditionality, which suggests that the CVM does have an effect. The action plan also described a process of involving more members of civil society as consultants in the discussions of the reform.¹⁶⁴ This will guarantee the transparency of the reforms and convince civil society that it is not simply a shallow, on-the-surface change of the judiciary, but that it actually has merit. Despite the CVM's relatively weak aspect of not having the legal power to sanction non-compliance, the normative value of it guiding a process for the sufficient adoption of EU values and laws seems to be sufficient for motivating a reform process. The system for employing new judges and prosecutors was strengthened, as the action plan called for more transparency. The SJC would select magistrates for high positions with an open voting system and judges who are at risk of having conflicting interests would be excluded from the process.¹⁶⁵ Furthermore, the process began to require more documents from applicants for higher positions such as motivation letters, as well as detailed recommendation letters with specified competences from magistrates who have

¹⁶² European Commission. 2010. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 7

¹⁶³ Ibid.

¹⁶⁴ European Commission. 2012. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 6

¹⁶⁵ European Commission. 2010. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 8

endorsed an applicant.¹⁶⁶ The selection of judges and prosecutors has to be transparent and thorough in order to ensure both a level of professionalism of the judicial system and the assurance of the supremacy of its moral standards. This was further guaranteed by the implementation of a Code of Ethics for magistrates in the judiciary, which applied to all members of the justice system equally and was monitored by a special committee.¹⁶⁷ In order for the code to have weight and ensure that magistrates respect it, a legislation requiring an ethical assessment of a candidate before promotion was created.¹⁶⁸ Linking professional development with the ethical code was vital for ensuring it was respected. Having a transparent judicial system requires such an ethical code in order to resolve the obscure practices of both hiring magistrates and the assignment of cases to favorable judges. The 2015 report also noted the further development of the software system introduced in 2006, which randomly allocates judges to cases in order to prevent subjective and politically motivated decision making. The system was not yet deployed nationwide almost ten years after its creation and there were concerns of tampering by running it multiple times until a favorable matching between a case and a judge was chosen.¹⁶⁹ On the recommendation of the Commission, in 2014 the structure was improved by including a system of alerts which would notify the SJC every time it was used.¹⁷⁰ This would contribute to the transparency of the software and combined with the introduction of balancers to the SJC's administrative power, such as the inspectorate and the National Assembly involvement in the election of its members, the accountability of the judiciary is better guaranteed. Furthermore, 2014 saw the supplemental development of the judicial reform strategy, which build upon the consultation aspect of it and would be in place until 2020.¹⁷¹ The most important part of it was the formation of a Judicial Reform Council, which further enhanced the consultative role of the inclusion of relevant members of society, like

¹⁶⁶ Ibid.

¹⁶⁷ European Commission. 2012. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 6

¹⁶⁸ Ibid.

¹⁶⁹ European Commission. 2015. "BULGARIA: Technical Report", p. 11

¹⁷⁰ Ibid.

¹⁷¹ European Commission. 2018. "REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Cooperation and Verification Mechanism", p. 6

judges and lawyers, in the process of the judicial reform.¹⁷² The report in 2018 had declared that there have been substantial improvements on the third benchmark of the CVM, which have been properly implemented. The judicial reform has been effective in improving the professionalism, transparency and efficiency of the system and more importantly has created the opportunity for the population to be involved in the process, which is a democratizing and decentralizing advance. In this regard it can be assumed that post-accession conditionality in the form of the CVM has stimulated the effective implementation of judicial reform. The stable improvements described in the reports from 2007 until 2018 prove there has been a strengthening of the rule of law in Bulgaria, which in turn can be identified as a direct result of the normative power of the CVM and the EU to positively influence the political development of the country.

3.3 Addressing the issues of corruption and organized crime described by the CVM

The fourth benchmark addresses one of the most serious and persisting issues Bulgaria has experienced since 1989 and one which the EU has found the Bulgarian government to have had the most difficulties in solving: high-level corruption. It was a deeply rooted problem which required both legislative and institutional change in order to be addressed. More importantly, the political elites in the government had to be dedicated to seriously solving the issue. The first major developments began in 2007 when the State Agency of National Security was created, which had a division specifically tasked with investigative and counter-corruption measures.¹⁷³ This institution was supposed to work closely with the Council on Counter-Corruption Activities and together they had the responsibility of implementing the anti-corruption strategy adopted by parliament in 2008.¹⁷⁴ In 2009 an additional body was created, the Parliamentary Committee on Anti-Corruption, Conflict of Interest and Parliamentary Ethics (CACCIPE), which

¹⁷² Ibid.

¹⁷³ European Commission. 2008. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 13

¹⁷⁴ Ibid.

focused mostly on the members of parliament.¹⁷⁵ The creation of such institutions and the implementation of legislature against corruption in such a short period of time suggests that there is an acknowledgement of the problem and positive results should be expected. However, after a year had passed the advancements made were disappointing. Due to the deficiency of administrative coordination with other institutions and the inability of those same institutions to take responsibility for the absence of counter-corruption measures resulted in the lack of the formation of sufficient legal cases.¹⁷⁶ The 2010 CVM monitoring report accounted that in a period of nine months ten investigations out of three hundred reports in the Parliament have been conducted by CACCIPE and in eight of them nothing abnormal was found.¹⁷⁷ What is more, by 2012 most of the reported cases of high-level corruption have not been able to reach the judiciary and those which have reached the courts have either been moving very slow or have been cleared.¹⁷⁸ This development combined with the fact that accounts of high-level corruption had dropped in 2011 compared to 2009 and 2010 without there being actual consequences reported was a cause of concern for how effective the anti-corruption measures were.¹⁷⁹ It is implausible that the issue of high-level corruption had been solved and properly addressed without there being actual documented proof or reasons for it. Furthermore, the ambiguity in the way reports were being settled or investigated and the changing number of reports in the specific timespan created a feeling of unsatisfactory, quasi reforms meant to create an illusion of a reform. The 2012 report does conclude that high-level corruption has been inadequately addressed and no sufficient advancements have been made.¹⁸⁰ This was problematic, as it demonstrated that in the first five years of the CVM the post-accession conditionality has not been successful in encouraging change. In 2013 the strategy for counter-corruption measures had been restructured, with

¹⁷⁵ European Commission. 2010. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 10

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ European Commission. 2012. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", 16

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

government officials acknowledging that key deficiencies existed in the coordination of anti-corruption policy and institutions.¹⁸¹ However, once again, the results of corruption cases have been disappointing. The cases which have reached the courts have increased, but the numbers of actual sentences being enforced remain low, especially when the number of cases is compared to the number of reported instances.¹⁸² Discussions on the amendments of anti-corruption legislature have continued from 2015 until 2018. In 2018 there was an amendment to the law, which granted the Prosecutor's Office the right to review former cases closed on suspicious grounds.¹⁸³ The amendment also includes an increase in the investigative powers of the anti-corruption bodies, however not enough time has passed to assess whether this has been successful.¹⁸⁴ The 2018 reports concluded that the legislative acts concerned with the fourth benchmark have been addressed successfully.¹⁸⁵ However the problem of the lack of sufficient practical results of anti-corruption measures twelve years after the CVM has been enforced leads to the assumption that post-accession conditionality has not been very effective in promoting practical development in this regard. Legislature has been changed, but similarly to 2012 it seems the reforms are without substance. Thus, the fourth benchmark of the CVM has remained problematic and does not seem to have been successful in driving change in Bulgaria, which would result in the actual implementation of anti-corruption measures in high-levels of government.

The fifth benchmark of the CVM addressed corruption in the public administration and by 2008 there had already been positive development. According to the CVM report, low-level corruption particularly in the Customs Agency has been successfully addressed, with the closing of stores at the borders which have been used for money laundering.¹⁸⁶ This was crucial, as the fifth benchmark specifically

¹⁸¹ European Commission. 2015. "BULGARIA: Technical Report", p. 17

¹⁸² Ibid.

¹⁸³ European Commission. 2018. "REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Cooperation and Verification Mechanism", p. 9

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ European Commission. 2018. "REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Cooperation and Verification Mechanism", p. 18

referenced the issues at the borders and dealing with them immediately showed dedication by the government to implement actual changes. Problems remained in reports of vote-buying and vote-selling during local elections in several districts, without adequate consequences being enforced.¹⁸⁷ However, the government developed a strategy and an action plan for fighting against low-level corruption in 2010 which saw the strengthening of local anti-corruption bodies.¹⁸⁸ Furthermore, the National Revenue Agency and the Customs Agency were also addressed. They were required to provide access for inspections of their databases and information in order to ensure that no financial corruption has taken place.¹⁸⁹ Similar to the efforts to fight against high-level corruption, positive result of these reforms have been limited. The amount of continuation on investigations in the public administration and the number of civil servants who have had disciplinary measures enacted against them have been insufficient.¹⁹⁰ This is problematic as even though there have been successes since 2007 in reducing the level of corruption at the borders, sufficient measures to address the root of the problem in the administration are still lacking. Democratic challenges have also not been addressed properly, as the issue of vote-buying has persisted through 2009, including in a European election.¹⁹¹ Eighty-seven cases had been reported but only eleven have had legal measures enforced on them.¹⁹² By 2012 the Bulgarian government had not demonstrated success in dealing with corruption in the public administration. This points to the weakness of the CVM. Not having an effective method of punishment for non-compliance with conditionality limits its reach. The issue with the trading of votes has been especially worrying, as it presents a problem in the democratic system in which such practices seem to be ineffectively handled. Not much had changed by 2015 in the way anti-corruption measures have been implemented. Due

¹⁸⁷ Ibid.

¹⁸⁸ European Commission. 2010. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 13

¹⁸⁹ Ibid.

¹⁹⁰ European Commission. 2012. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 18

¹⁹¹ European Commission. 2010. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 13

¹⁹² Ibid.

to the concerns of corrupting practices in the police force and the Ministry of Interior a reform in 2013 was put in place, which allowed the internal anti-corruption committee of the Ministry of Interior to both investigate cases of possible misbehavior and also act as a preventive body.¹⁹³ Furthermore, in order to strengthen the efficiency of the system, the cooperation between the internal anti-corruption body and the national inspectorate for conflict of interests was enhanced.¹⁹⁴ By 2017 there had been an administrative reform of the Ministry of Interior resulting from these developments.¹⁹⁵ This was an important improvement, because it demonstrates that adequate reform can be implemented in one of the central administrative bodies and it can have an effect. The adoption of such anti-corruption measures however was slower in other parts of the public administration. In 2017 the Anti-Corruption Council initiated an evaluation of the anti-corruption practices adopted by the public administration and based on the results formulated an action plan for how to improve them.¹⁹⁶ To a large degree these recommendations were motivated by the success of the Ministry of Interior and thus may lead to sufficient anti-corruption measures and actual positive results, however no development has been presented to this point. The late developments of the measures against corruption in the public administration exemplify the possibility of adequate reform. The role of the CVM has been limited since 2007 in motivating such change, as sufficient results have been lacking. The presence of corruption throughout the public administration has persisted and post-accession conditionality has not been able to affect this issue, despite early success on measures in the Customs Agency and recent developments within the Ministry of Interior. Major results showing the progress of Bulgaria in issues relating to the fifth benchmark remain to be seen.

The first key development towards addressing the sixth and final benchmark of the CVM was the creation of the State Agency of National Security. One of its

¹⁹³ European Commission. 2015. "BULGARIA: Technical Report", p. 22

¹⁹⁴ Ibid.

¹⁹⁵ European Commission. 2017. "BULGARIA: Technical Report", p. 17

¹⁹⁶ European Commission. 2018. "REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Cooperation and Verification Mechanism", p. 10

responsibilities is the protection of the internal security of the country and thus the fight against organized crime is a part of the agency's competences¹⁹⁷. However almost no progress towards the resolution of this issue had occurred in the first two years of the CVM. The number of people prosecuted and the number of criminal cases initiated were very low compared to the extent of the problem.¹⁹⁸ This indicated that organized crime was still very prevalent in Bulgaria and no measures had been put in place to deal with the issue effectively. Thus, the image of the country in the EU was tarnished due to this inability to deal with such a serious problem. What is more, the populations confidence in the government to guarantee its security had also suffered, as the presence of organized crime groups affects their daily lives. The government began to implement serious measures only in 2010, when a large number of criminals were arrested and sentenced.¹⁹⁹ This was due to new legislation, which clarified the competences of institutions such as the State Agency of National Security and the Ministry of Interior.²⁰⁰ Thus, the efficiency of their improved cooperation immediately showed results. The large-scale operations in 2010 were important for the government, as it proved it can manage to enforce measures against organized crime. Ensuring the security of the population is the main responsibility of a state and a government which fails to respect this principle is subject to immense criticism. But organized crime continued to be a problem according to the Commission reports. A possible solution was implemented in 2012 with the creation of a court specifically established for dealing with organized crime.²⁰¹ This contributed to the length of court cases being shortened and the efficiency of prosecuting criminals improved. In the first three years after the establishment of the court the number of cases had increased, but the number of convictions had not changed.²⁰² This presented a problem, as the reports identified a large number of cases being suspended or settled and at the same time the

¹⁹⁷ European Commission. 2008. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 20

¹⁹⁸ Ibid.

¹⁹⁹ European Commission. 2010. "SUPPORTING DOCUMENT ACCOMPANYING THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification Mechanism", p. 14

²⁰⁰ Ibid.

²⁰¹ European Commission. 2015. "BULGARIA: Technical Report", p. 25

²⁰² Ibid.

ambiguous definition of organized crime contributes to an inefficacy in the procedures.²⁰³ However with the continued reforms of legislation and amendments to ambiguities in the judicial system, the efficiency of the court improved and the fight against organized crime showed improvement. According to the 2017 CVM report Bulgaria had managed to create a system of dealing with organized crime similar to what it is in many other member-states.²⁰⁴ It further specified that the achievements in dealing with organized crime have increased, with more criminals being effectively sentenced.²⁰⁵ The progress was evident and the 2018 report concluded that the sixth benchmark of the CVM can be provisionally closed.²⁰⁶ The late success of Bulgaria in addressing the problem of organized crime was important for proving that effective amendments to a persisting problem can be implemented. What is more, it proved that the CVM can have an effect in contributing to the implementation of reforms capable of fighting corruption related issues. The sixth benchmark is connected to the fourth and fifth one, as legislation and institutional change enacted in order to combat organized crime can also be used to combat corruption in the government and the public administration. In this regard, the CVM has had at least a limited role in facilitating the measures against organized crime.

Conclusion of Chapter 3

This chapter has examined the EU post-accession conditionality for Bulgaria in the form of the CVM. It has analyzed its structure and purpose, as well as the problem of a lack of punishment methods in case of non-compliance. What is more, the six benchmarks of the CVM have been examined in the context of how they have affected the implementation of reforms in Bulgaria. Dividing them in two broader categories, the first three addressing the issues in the rule of law and the second three the corruption problems in the country, the chapter had concluded that the

²⁰³ Ibid.

²⁰⁴ European Commission. 2017. "BULGARIA: Technical Report", p. 18

²⁰⁵ Ibid.

²⁰⁶ European Commission. 2018. "REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Cooperation and Verification Mechanism", p. 11

CVM has had a greater influence in driving judicial reforms and the implementation of rule of law related measures compared to the reforms dealing with high-level and administrative corruption. However, it was also exemplified that with regards to organized crime the CVM has had a lot of success, although recently. Overall, post-accession conditionality can be identified as motivating the Bulgarian government to implement reforms in the problematic policy fields, however the lack of sufficient incentives and possibilities for legal sanctions have deprived the CVM of having a greater role in guaranteeing their adequate implementation and efficient result. It has served a limited purpose in contributing to discussions relating to the issue and mostly legislative amendments, however practical results to the corruption-related benchmarks are missing.

Conclusion

This paper has examined the role of EU conditionality in Bulgaria before and after accession in order to evaluate its impact on policy implementation and the political and economic development of the country. In order to answer the question of whether conditionality has actively contributed to Bulgaria's efforts to resolve many of the political and economic issues it, the paper has explored the most significant legislative and institutional changes meant to address the EU conditions for membership placed on Bulgaria. Furthermore, the thesis was divided in three separate parts, each exemplifying a different time period in which EU conditionality has had a different approach and structure in Bulgaria. Starting from 1995 when the country filed its membership application to the EU and going through the period up to the Big Bang enlargement in 2004, the paper analyzed the attempts by the Bulgarian government to comply with the political and economic conditions of the Copenhagen criteria. Following the failure of Bulgaria to be included in the 2004 enlargement, the thesis discussed the stricter conditions assigned to the country by the EU. They referred to the remaining problems of the rule of law, corruption and administrative reform, which had to be addressed before Bulgaria could become a member in 2007. Finally, after accession, the thesis discussed post-accession conditionality in Bulgaria in the form of the Cooperation and Verification Mechanism. The persisting issues of corruption and the inefficiency of the rule of law were a concern for the EU and thus post-accession conditionality was implemented in order to encourage a sustainable and efficient reform process in Bulgaria.

The period from 1995 until 2004 was depicted as a time of comprehensive legislative and institutional reform under the Kostov government and the Simeon II government. Politically, the constitution was amended and reforms were implemented more efficiently. Institutions like the Ombudsman were created to address democratic deficiency and the balance of power, while at the same time the transparency and efficiency of the administration were improved through legislative enhancement. Economically, the priority following the crisis in 1996 and 1997 was the adoption of a number of legislative acts to prevent a second crisis

from occurring. Additionally, Bulgaria strived towards complying with the economic conditions of the Copenhagen criteria by creating a functioning market economy and preparing the country for the competitive pressure in the EU market. The implementation of the four freedoms in the *acquis communautaire* was great importance as well, since the adoption of EU law is the most essential process before accession. By 2004 Bulgaria had complied with the political and economic conditions of the Copenhagen criteria and the paper concluded that the dedicated effort to fulfilling European conditionality by the governments was motivated by the incentive of joining the EU. Thus, conditionality had a prominent role in encouraging legislative and institutional reform, which addressed the political and economic inefficiencies in Bulgaria.

The failure of Bulgaria to be a part of the 2004 enlargement resulted from the ineffective measures the government had adopted in three main policy areas: firstly, fighting against corruption and organized crime, secondly guaranteeing the independence, accountability and efficiency of the judicial system and finally addressing the transparency and efficiency of the Public Administration. The incentive of joining the EU in 2007 and the fear of the activation of a postponement clause had an effect on legislative and institutional reform. Both were better implemented, resulting in in advancements in all problematic policy areas defined by the Commission. By 2007 the judiciary had become more transparent and professional, the public administration was more efficient and the fight against corruption was enabled through legislative reforms. EU conditionality had a legal mechanism through which it could punish noncompliance and thus served as a driving factor in the political development of the country. Bulgaria was able to become a member in 2007 and the role of EU conditionality in preparing the country for membership, as well as the impact it had on driving the reform process for the main problems in the country was significant. The role of the incentives and sanctions was an important factor for making EU conditionality effective.

Post-accession conditionality in the form of the CVM had a more specific application, namely to address the continuing problems of the inefficient judicial

system and corruption in the political system and organized crime. The CVM identified six benchmarks, three relating to either the transparency, accountability or efficiency of the judicial system and three relating to either high-level corruption, corruption in the public administration or the fight against organized crime. The annual monitoring report outlined the advancements Bulgaria had made in each benchmark and the remaining measures it had yet to implement. The lack of providing a mechanism for sanctioning non-compliance, the CVM had only partial success in facilitating practical change in the country concerned with the specified issues. Legal reforms were made, however their implementation was inefficient and unsatisfactory. In this sense post-accession conditionality has not had the same impact on the political and economic development of Bulgaria as pre-accession conditionality.

After thorough examination of academic literature relating to EU conditionality in Bulgaria, the analysis of European Commission reports on Bulgaria and the legislative and institutional reforms implemented in the country the paper has concluded that EU conditionality is effective. It has both prepared Bulgaria for EU membership and further assisted the necessary changes to stimulate political and economic reform leading to the development of the country. However, there is a difference in the level of effectiveness between pre-accession and post-accession conditionality. Pre-accession conditionality has a more efficient legal framework, which facilitates the practical implementation of reforms through a clear “reward and punishment” system depending on the level of compliance. Post-accession conditionality is more limited due to its inability to impose a consistent sanctioning mechanism and thus is unable to apply the same amount of pressure for reform on a government. Bulgaria has been able to improve politically and economically, gradually addressing the main problems it has and EU conditionality has been a significant factor in the process.

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