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The Impact of EU Conditionality

The case of Bulgaria

Bachelor Thesis

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I hereby declare that this Bachelor Thesis has been completed by myself independently without outside help and only the defined sources and study aids were used. Sections that reflect the thoughts or works of others are made known through the definition of sources.

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List of Acronyms

BSP - Bulgarian Socialist Party

CEE - Central and Eastern- Europe

CEEC - Central and Eastern European Countries

EU - European Union

GDP - Gross Domestic Product

ISPA - Instrument for Structural Policies for Pre-Accession

JHA - Justice and Home Affairs

NGO - Non-governmental organization

PHARE - Poland and Hungary: Assistance for Restructuring their Economies

SAPARD - Special Accession Programme for Agriculture and Rural Development

TEU - Treaty of the European Union

SJC - Supreme Judicial Council

UDF - United Democratic Forces

VAT - Value Added Tax

1. Introduction

Enlargement was never set out as the end goal of the European Union.¹ However, promoting peace and freedom and uniting the people of Europe was a core idea among the long way for more than half a decade, leading to ever deeper integration.

On January 1, 2007 the European Union opened its doors for two further Members, which were always considered as the ‘lagers’. With the accession of Bulgaria and Romania, the European Union has grown to 27 Member States, uniting 498 Million of the people of Europe in their choice of peace, prosperity and freedom.

Yet, some twenty years ago, Europe looked quite different and was very far away from unity. Encouraged by the historical event of the fall of the Berlin Wall, former communist countries just started what turned out to be a long way to democracy, facing tremendous challenges of concurrent political and economic transition. Meanwhile, the desire of the people of these countries to ‘return to Europe’ after more than 40 years of separation, put a further challenge on their agenda, requiring unexpected efforts – Accession to the European Union

Bulgaria was one of the most faithful supporters of the Soviet Union for many decades with almost no dissident movements. Bulgarians had the experience of neither 1956 like the Hungarians, nor 1968 like the Czechs and had for many years no history of fighting for rights and freedoms. As the Berlin Wall fell people were just opening their eyes for the possibility to live in a democratic state, where they and not the party take decisions for themselves.

On November 10, 1989 Plenum of the Central Committee of the Communist Party willfully voted Todor Zhivkov's resignation as Secretary General. Bulgarians welcomed this decision, as they were demanding it on the streets for mounts, singing ‘45 years are enough, time is ours’². In the early 1990’s Bulgaria among several other post – communist states, applied to join the European Union, which turned out to be the beginning of time of transformation that required a tremendous adaptation from the candidates.

¹ Nowhere in the treaties is enlargement pointed as a goal of the EU (Inglis 2008, p. 61)

² ‘45 years are enough, time is ours’ (*bulgarian*: ‘45 години стигат, времето е наше’) is an emblematic song for the transition period in Bulgaria and becomes a hymn of the opposition

2. Central research question

The European Union welcomed the desire of former communist countries to become part of united Europe and was willing to support them on the hard way they had to go to. Yet, if this was to be achieved, they had to respect the fundamental rights on which the union is based.

Thus, 1993 The European Union introduced the ‘Copenhagen criteria’, adopted by the June Copenhagen European Council, offering full membership to the CEECs only if they fulfill them.³

As the European Commission presented its opinion on the membership applications that had been submitted by the CEECs, in the case of Bulgaria the opinion was negative.⁴ The political criteria, as presented by the Copenhagen council, were considered as fulfilled from the very beginning. Nevertheless, the Commission pointed out that the creation of market economy has been limited, due to the absence of market orientated economic policies, expressing a doubt, if the country would be capable of coping with competitive market forces within the European Union.⁵ Furthermore serious problems in the fulfillment of law approximation were present at that stage. Moreover, Bulgaria did not dispose over institutional capacity to address the shortcomings under the economic criteria and the approximation of laws, due to its weak public administration⁶

Bulgaria is a particularly interesting case for the impact of EU conditionality on transition states, as the country was considered as a less likely case for deep and fast reforms from the beginning. However, the country managed to become a Member of The European Union on January 1, 2007. Therefore, the central research question, which is a matter of interest of the following thesis, is:

What is the impact of EU conditionality on Bulgaria?

³ Noutcheva, G/ Bechev, D.(2008): The Successful Laggards: Bulgaria and Romania's Accession to the EU, in: East European Politics and Societies, Vol. 22, No. 1, p. 114

⁴ The European Commission: Commission Opinion on Bulgaria's Application for Membership of the European Union, DOC/97/11, Brussels, 15th July 1997, pp. 117 - 122

⁵ Łazowski, A. / Yosifova, S. (2006): Bulgaria, in: Blockmans, S. / Łazowski, A. (2006): The European Union and its Neighbours, A legal appraisal of the EU's policies of stabilization, partnership and integration, The Hague, p. 213

⁶ The European Commission: Commission Opinion on Bulgaria's Application for Membership of the European Union, *op.cit.*, pp. 120 - 121

From the theoretical background of transformation theory I analyze the transformative power of EU conditionality on the example of Bulgaria. I argue that as a result of the efforts to fulfill conditions set by the EU in order to qualify for Membership, a process of Europeanization is taking place in Bulgaria, which in turn leads to further consolidation of democracy.

To address the main research question, I, initially elaborate on the specifics of EU conditionality as seen in the fifth enlargement and present transformation theory as the theoretical approach of the thesis. Thereby, I make a linkage between transformation theory and Europeanization literature, due to the specific challenge of transformation and accession, and draw criteria, on which I assess in the impact of EU conditionality on Bulgaria in the further chapters of the thesis. Finally, I come to a conclusion that EU conditionality is the main driving force for democratization in Bulgaria, as it motivated domestic politics, reforms, elite's behavior and changes in the country.

3. What do we mean by conditionality?

Human rights, liberal democracy and the rule of law are the fundamental rules on which the European Union rests.⁷ These are as well the core conditions that a state is to fulfill before it is eligible to make an application for membership.⁸ Therefore, the European Union developed Political conditionality as a core strategy to promote these fundamental rules in potential Member states.⁹

As already pointed out, the aim of this thesis is to assess the impact of EU conditionality in the case of Bulgaria. For this reason, I find it important to briefly specify the meaning of political conditionality in the case of the European Union. Thus, the following chapter is concerned with the specifics of the pre – accession conditionality of the EU as seen in the fifth enlargement. Further on, I elaborate on

⁷ Art. 6 TEU, in: Official Journal of the European Communities (OJEC). 24.12.2002, Nr. C 325, S. 1.

⁸ Art. 49 TEU, in: Official Journal of the European Communities (OJEC). 24.12.2002, Nr. C 325, S. 1.

⁹ Schimmelfennig, F./ Engert, S./ Knobel, H. (2005): The Impact of EU Political Conditionality, in: Schimmelfennig, F./ Sedelmeier, U. (2005): The Europeanization of Central and Eastern Europe, Cornell University Press, New York, p. 29

the postponement clause as a specific instrument for leverage over Bulgaria. Eventually, I present the safeguard clauses of the Accession treaty of Bulgaria as the legal basis for ‘disciplining’ the new Member state post – accession.

3. 1. Pre – accession conditionality

The current membership conditionality for any country that is eligible for accession to the EU, according to Art. 49 TEU¹⁰ began 1993 with the introduction of the ‘Copenhagen criteria’, adopted by the June Copenhagen European Council.¹¹ These are the criteria that appealed to the fifth enlargement of the European Union, whereby the major trust of the EU’s integration policy vis – á – vis the CEECs is the conditionality principle of offering full membership only if the Copenhagen criteria are fulfilled.¹²

Thus, to join the EU, a new Member State must meet three types of criteria: political, economic and the so called *acquis* (legal and administrative) criterion. The political criteria require stability of institutions in terms of guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The economic criteria imply the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union. Last, but not least the acceptance of the Community *acquis* is set out as a condition, so that a state has the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.¹³ For the European Council to decide to open negotiations, the political criterion must be fulfilled. The economic and legal criteria are more flexible than the political, as accession negotiations may begin, if the candidate country had taken its initial steps in meeting their requirements.¹⁴

The economic criteria set out the existence of liberalized trade and prices, legally enforceable economic rights and contracts and macroeconomic stability, as well as

¹⁰ Art. 49 TEU establishes the conditions of eligibility to apply for EU membership, as well as the procedure for becoming a member.

¹¹ Inglis, K. (2006): EU Enlargement: Membership conditions applied to future and potential Member states, in: Blockmans, S. / Łazowski, A. (2006): *The European Union and its Neighbours, A legal appraisal of the EU’s policies of stabilization, partnership and integration*, T. M. C. Asser Press, The Hague, p. 62

¹² Noutcheva, G/ Bechev, D.(2008): *opcit.*, p. 115

¹³ Inglis, K., *op.cit.*, p. 63

¹⁴ *ibid.*, pp. 76 – 82

the absence of significant barriers to market entry and exit. In addition, Agenda 2000 specifies that infrastructure should be developed, the role of the state in the economy should be modest and trade integration with the Union should be advanced.¹⁵

The legal dimension of the Copenhagen criteria is related to the acceptance of the rights and obligations of the Community system and its institutional framework by adopting the *aquis communautaire*. In order to properly transpose, implement and then enforce these, administrative capacity is necessary.¹⁶

The pre – accession conditionality is carried by a set of pre – accession strategy instruments. The Commission is managing, monitoring and evaluating the pre – accession progress of candidate countries. Priorities and objectives of the candidate countries are set in terms of the Accession Partnership and are annually updated on the basis of the recommendations in the Commission’ s annual progress reports. Three financial instruments are used in the case of Bulgaria: PHARE, SAPARD and ISPA.¹⁷

On November 13, 2002, the European Commission proposes detailed roadmaps for the accession of Bulgaria and Romania to the European Union, including timetables and increased pre-accession assistance in order to advance the accession process with these countries. The aim of the introduced roadmaps is to specify the main steps that the country has to consider, in order to be ready for membership. They are based on the commitments made in the negotiations and on what needs to be done to fulfill the Copenhagen and Madrid criteria for membership.¹⁸

3. 2. The postponement clause

According to Art. 39 of the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union, Brussels has the possibility to delay Bulgaria’ s entry by one year, if it fails to meet the commitments made during negotiations. This is a legal instrument at EU’ s disposal for keeping the pressure on Bulgaria, so that the country will continue with domestic

¹⁵ *Ibid.*, pp. 82 - 83

¹⁶ *Ibid.*, pp. 83 - 84

¹⁷ *Ibid.*, pp. 85 - 87

¹⁸ The European Commission: Communication from the Commission to the Council and the European parliament - Roadmaps for Bulgaria and Romania, COM (2002) 624 final. Brussels: 13.11.2002.

reforms.¹⁹ However, both 2007 and 2008 were very near as possible accession date. Furthermore, the postponement clause was more difficult to activate in the case of Bulgaria, as unanimity in the Council is needed for postponing the accession date.²⁰ The postponement clause works therefore rather as a credible threat of delay.²¹

3.3. Safeguards post – accession

The Accession treaty with Bulgaria and Romania provides three safeguard clauses in matters of the economy, the internal market and in the area of justice, security and liberty, for three years.²² The introduction of the safeguard clauses is an added conditionality tool for taking protective measures against the countries post – accession.²³

4. Theoretical approach

Prior to the analysis of the impact of EU conditionality on the process of democratization in Bulgaria, it is important to clarify the theoretical approach of the thesis.

The early 1990's are marked by variety of changes for the states of Central and Eastern Europe. These changes are generally characterized as a process of political, economic, societal and state – administrative transformation with broad affect on the shapes of statehood, economy and political system.²⁴ However, in the early 1990's several post – communist states, among which Bulgaria as well, also applied to join the European Union and were at the beginning of a long road of deeper transformation that required a tremendous adaptation from the candidates.²⁵

Therefore, in the following chapter I present transformation theory as a theoretical approach of the thesis and elaborate on the terms conducive for successful

¹⁹ Noutcheva, G. (2006): Bulgaria and Romania's Accession to EU: Postponement, Safeguards and the Rule of law, in: Policy Brief No. 102/ May 2006, Centre for European Policy Studies, Sofia, p. 1

²⁰ Art. 39 of the Protocol concerning the conditions and arrangements for admission of the republic of Bulgaria and Romania to the European Union, in: Official Journal of the European Union, 21.6.2005, L 157/29

²¹ Noutcheva, G. (2006), *op. cit.*, p.1

²² *ibid.*, p. 2

²³ Inglis, K., *op.cit.*, p. 90

²⁴ Dimitrova, A.L. (2004): Driven to change, The European Union's Enlargement viewed from the East, Manchester University Press, Manchester, p. 2

²⁵ *Ibid.*, p. 1

democratization in the transformation theory. I take into consideration the specifics of the transition in East Europe and eventually present a framework that links transformation research and Europeanization literature.

4. 1. Explaining democratization – definitions, approaches and phases

When speaking about Transformation as defined in the transformation theory, one means a system transition from autocratic to democratic governance.²⁶ To put it in other words, a process of democratization is taking place.²⁷

There are different approaches to explaining democratization. The different theory schools, however, identify different conditions conducive or unfavorable for successful democratization. The literature differentiates on the one hand a macro perspective - Modernization theory, Power - resources approach and Structuralist theory.²⁸ They have a structural nature and point out objective circumstances as economical development and power constellations as conditions of successful democratization.

Modernization theory for example, which can be lead back to Martin Lipset, points out economical development as the determining factor for democratization.²⁹ Scholars of the modernization school claim that democracy will, at some point, follow on from an ongoing economic growth. On condition that improvements are broadly distributed among the population, they would lead to ‘human development’ and democracy will be more likely to sustain, as societies turn into a complex entities, which are less likely to be run by command.³⁰

Contrary to classical modernization theory, scholars of the Structuralist theory argue that there are multiple trails which can lead to the modernization of a society. Determining is the change in the power structure of a society and thereupon in the relations between the social classes and their possibility to achieve their interests.

²⁶ Merkel, W./ Phule, H. J.(1999): Von der diktatur zur Demokratie, Transformationen, Erfolgsbedingungen, Entwicklungspfade, Westdeutscher Verlag, Opladen/ Wiesbaden, p. 13

²⁷ Merkel, W. (2007): Systemtransformation, FernUniversität in Hagen, p. 66

²⁸ *ibid.*, pp. 69- 87

²⁹ Merkel, W./ Phule, H. J., *op cit.*, pp. 21 -23

³⁰ Schmitz, H.P./ Sell, K. (1999): International factors in the processes of political democratization, in: Grugel, J. (1999): Democracy without borders, Transnationalization and conditionality in new democracies, Routledge, London, p. 27

This can lead to the establishment of a democracy, but it is not necessarily the outcome.³¹

These approaches are concerned with structures and show a number of weaknesses, as they assume that agent's behavior has a secondary role in whether the process of democratization will be successful or not.³² Furthermore they usually fail to explain similar results emanating from different material conditions as well as contradictory evidence.³³

On the other hand, literature offers a micro view of the agency – based theory.³⁴ This puts an emphasis on the role of agents and their actions for initiating and managing political transition to democracy.³⁵ The agency – based view of democratization sees political change and the process of democratization as an outcome of the choices made by individuals or groups.³⁶ Elites are the relevant agents and their decisions, strategies and actions shape the decision in favor or against democracy.³⁷ Yet, the agency – based approach is silent on why elites would initially support democracy under such an uncertainty on whether it would sustain or not.³⁸

Moreover, both approaches fail to identify the role of international factors, whereby scholars point out that the agency – based approach at least gives a promising start in linkage between the inside and the outside of domestic change.³⁹ Therefore, for the further analysis, this approach is appropriate for explaining democratization in Bulgaria, due to the specifics of concurrent transition and accession to the EU and more importantly the impact of accession on democratization.

Generally, scholars identify three phases of the change from autocratic to democratic system: end of the autocratic regime, institutionalization of democracy and eventually democracy consolidation. This periodization covers the liberalization of the final phase of the autocratic system up to the beginning of the consolidation of

³¹ Merkel, W./ Phule, H. J., *op cit.*, pp. 44 - 45

³² Schmitz, H.P./ Sell, K., *op.cit.*, p. 24

³³ *ibid.*, pp. 24 - 27

³⁴ Merkel, W., *op.cit.*, p. 87

³⁵ Schmitz, H.P./ Sell, K., *op.cit.*, p. 23

³⁶ *ibid.*, p. 24

³⁷ Merkel, W./ Phule, H. J., *op. cit.*, pp. 48 – 49

³⁸ Schmitz, H.P./ Sell, K., *op.cit.*, p. 25

³⁹ *ibid.*, p. 24

democracy.⁴⁰ A separation of these phases is analytically possible. In reality, however, they overlap.⁴¹

In the third phase, consolidation, the new political regime is established, institutionalized and legitimized so that democracy is durable and resistant to crisis. This supposes more than formal aspects to be achieved, so that democracy becomes meaningful for the majority of citizens.⁴²

To sum up, democratization is to be understood here as an ongoing process of regime change aiming to the establishment and stabilization of a substantive democracy. This goes beyond the formal establishment of a set of institutions; namely to the dissemination of meaningful rights to all citizens, that these institutions are able to guarantee.⁴³

4. 2. Linking transformation research and Europeanization literature

The desire to ‘return to Europe’ promoted the prospective of EU membership as a way to secure the emerging democracies. Early on the democratic transition, people in the transition countries would sense a link between democratization and accession to the EU.⁴⁴

Yet, to address the dual challenge of transition and accession, one needs a framework linking transformation research and Europeanization, in order to assess how the process of accession to the EU shapes public institutions and public policy – making in CEE candidate countries.

After the fall of communism, the European Union had a tremendous impact on the political and economic transformation of CEECs, as it became strongly involved in this process.⁴⁵

⁴⁰ Merckel, W., *op.cit.*, p. 114

⁴¹ *ibid.*, pp. 101 - 105

⁴² Schmitz, H.P./ Sell, K., *op.cit.*, p. 25

⁴³ *ibid.*, p. 25

⁴⁴ Dimitrova, A. L., *op. cit.*, p. 3

⁴⁵ Schimmelfennig, F./ Sedelmeier, U. (2005): Conceptualizing the Europeanization of Central and Eastern Europe, in: Schimmelfennig, F./ Sedelmeier, U. (2005): The Europeanization of Central and Eastern Europe, Cornell University Press, New York, p. 1

Claudio Radaelli adopts a definition of Europeanization, in order to refer to the broad domestic impact of the European Union in these countries:

“Processes of construction, diffusion, institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies.” (Featherstone/ Radaelli 2003 p. 30)

As the scholar himself argues, the adopted definition emphasizes on *change* as a domestic assimilation of EU policy and politics.⁴⁶ Thus, Europeanization is concerned with the impact of EU policy outcomes, on facilitating transformation of domestic institutions and policies, as candidate countries would comply with EU rules in order to achieve membership.⁴⁷

There are several effects of Europeanization one can expect in a candidate country. First of all, it can be assumed that the distinction between EU and domestic policy requirements would be abolished, as Europeanization would facilitate a process of absorbing of EU imperatives, logic and norms into domestic policy.⁴⁸

Secondly, domestic elites would use the wish to join the EU to enforce policies and to shape domestic political and administrative systems in a way that would not be otherwise accepted. Thus, Europeanization has an effect of empowering elites to reform and modernize policies and political institutions.⁴⁹

Last, but not least, it is to be expected that new initiatives on the policy agenda would emerge by causing institutional adaptation with permanent effect on the policy making process. Thus, EU political and economic agenda becomes a part of the logic of national policy – making.⁵⁰

Consequently, if a process of Europeanization is taking place, it would lead to a deeper consolidation of democracy.

⁴⁶ Featherstone, F./ Radaelli, C.(2003): The politics of Europeanization, Oxford University Press, Oxford, p.30

⁴⁷ Schimmelfennig, F./ Sedelmeier, U., *op. cit.*, p. 5

⁴⁸ Grabbe, H. (2006): The EU’s transformative power, Europeanization through Conditionality in Central and Eastern Europe, Palgrave Macmillan, New York, p. 51

⁴⁹ *ibid.*, p 51

⁵⁰ *ibid.*, pp. 51 - 52

Referring to the definitions of democratization and Europeanization, provided earlier in this chapter, I draw public institutions and public policies as criteria, on which to assess the impact of EU conditionality in Bulgaria. For this reason, I investigate if a process of Europeanization of public institutions and public policy, and then in turn of consolidation of democracy, is taking place in the country. On the basis of the agency based approach for explaining democratization, I take a closer look at the role of elites in (non)reforms. Therefore, I concentrate on public administration, judiciary, corruption and economic reforms, as being especially problematic areas in Bulgaria.⁵¹

5. The impact of pre – accession conditionality and the safeguard clause

Scholars have for some time now identified the determining role of EU' s conditionality to encourage the transform of the CEECs in terms of political changes (Vachudova, 2004; Schimmelfennig, 2007) and strengthened administrative capacity (Dimitrova, 2002). In that sense, it is widely acknowledged that EU' s enlargement policy was very successful in supporting democratization and democratic consolidation in post – communist candidate countries so that they would become adequate member states.

As underlined in Art 6 of the Treaty on the European Union, it is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, with these principles being common to the Member States. Bulgaria was from the very beginning considered as an unlikely case for deep and fast reforms and political elites were doubted to handle the dual challenge of transition and accession.⁵² Nevertheless, the EU included the country in its enlargement strategy. Even though Bulgaria and Romania had proven to be the laggards of the CEEC group, both countries eventually became EU members on January 1, 2007. They managed to bring their institutions and policies broadly in line

⁵¹ Commission Opinion on Bulgaria's Application for Membership of the European Union, *op.cit.*, pp. 117- 122

⁵² Noutcheva, G/ Bechev, D., *op.cit.*, p. 114

with the EU requirements, especially in the last eight years of accession preparation.⁵³

In the following chapter I elaborate on how conditionality shaped reforms in Bulgaria, in order to transform the country into a credible member state. I concentrate on the problematic areas for the country, as pointed out earlier in this thesis: Public administration, Judiciary, Corruption and Anticorruption policies and Economic reforms. I show that indeed a process of Europeanization of public institutions and public policy is taking place in Bulgaria, which in turn leads to a deeper consolidation of democracy in the country.

To put the discussion in a time framework I adopt the model of EU leverage over the CCECs, introduced by M. Vachudova. She argues that in the period 1989 – 1994 the EU exerts what she calls passive leverage over accession countries, which results in invigorating the quest of liberal pattern states to join the EU. It however, did not change the course of democratization in these countries.⁵⁴ The period 1994 – 2004 brought the ‘active leverage’ over accession countries, initially making political systems more competitive and thereupon reforming the state and the economy.⁵⁵ The active leverage involved strategies reinforcing democratization reforms and establishment of a functioning market economy.⁵⁶ Thus, a matter of interest of this thesis is the period of active leverage of the EU over Bulgaria.

5. 1. Public administration

The purpose of the administrative state is to deliver public goods and services. There are no successful economies without successful administrative states.⁵⁷

Yet, having in mind the legacy of communism past, in which Bulgaria is administered under central planning, it is hardly surprising that the reform of the public administration and the judiciary in the country is a main concern of the EU. These two areas are of huge importance for the construction of a functioning

⁵³ *ibid.*, p. 116

⁵⁴ Vachudova, M. A.: *Europe Undivided, Democracy, Leverage, and Integration After Communism*, Oxford University Press, Oxford, p. 104

⁵⁵ *ibid.*, pp. 139 - 221

⁵⁶ Spendzharova, A. B. (2003): *Bringing Europe In? The Impact of EU Conditionality on Bulgarian and Romanian Politics*, in: *Southeast European Politics*, Vol. IV, NO. 2- 3, pp. 147 - 148

⁵⁷ Ellison, B. A.(2007): *Public Administration Reform in Eastern Europe, A Research Note and a Look at Bulgaria*, in: *Administration and Society*, Volume 39, Number 2, April 2007 , pp. 221

Member state.⁵⁸ Furthermore, the public administration and the core civil service within it cannot function effectively and efficiently without international best practice processes to be in place and operate in key areas.⁵⁹

The Commission recognized on a rather early stage the importance of straitening administrative capacity, for not simply adopting but more importantly implementing and enforcing the *acquis communautaire*. Thus, it formulated the requirements of an independent, efficient and functional civil service under the Copenhagen political criteria.⁶⁰ Nevertheless, Public administration is an area where the EU has rather indirect requirements and no *acquis* could be appealed to the candidate country, as there is no checklist of 'best practices'.⁶¹

For Bulgaria, however, public administration reform is seen as a precondition for even starting negotiations for membership.⁶² There by, several points are especially to be taken into consideration. Civil service legislation is pointed out as a determining issue, as central administration has a significant part in managing EU affairs and coordination of not only daily issues but also in the decision-making procedures. The emphasis is on independence of civil servants and how this independence is guaranteed by existing norms. Moreover, a need of improvement of civil servants' job skills and of launching appropriate training initiatives both at a general level and in the specific sectors in which the *acquis* should be applied is identified.⁶³

As a result there upon, Public administration reform is recognized by the Government of Bulgaria as one of the major priorities for PHARE assistance in 1993-1994.⁶⁴ Two inter-related structures are created in order to manage the administrative reform process: an interministerial Working group on Administrative Reform, which is part of the EU co-ordination structure, and a Department of Administrative Reform at the Council of Ministers. Furthermore, the Government

⁵⁸ Noutcheva, G/ Bechev, D., *opcit.*, p. 127

⁵⁹ The World Bank (2001): Bulgaria the dual challenge of transition and accession, Washington, D. C., p. 31

⁶⁰ Noutcheva, G/ Bechev, D., *opcit.*, p. 130

⁶¹ The World Bank, *opcit.*, p. 33

⁶² Noutcheva, G/ Bechev, D., *opcit.*, p. 130

⁶³ Borissova, O. (1999): Public administration reform in Bulgaria, in: von Breseka, E./ Brusis, M. (1999): Central and Eastern Europe on the way into the European Union, Reform of regional administration in Bulgaria, the Czech Republic, Estonia, Hungary, Poland and Slovakia, Bertelsmann Science Foundation and the Research Group on European Affairs, Centre for Applied Policy Research, p. 122

⁶⁴ *ibid.*, p. 123

adopts a Strategy of Administration Reform. It concentrates on reforming central and local administration, but its implementation is delayed because of the economic crisis, which emerged in Bulgaria in 1996.⁶⁵ As a result of the crisis, the caretaker government of S. Sofianski closed the department for administrative reform.

The new UDF-led government, that had the aim to overcome the severe crisis, indicated administrative reform as one of its priorities. A Law on Administration, addressing the allocation of powers across all levels and agencies in the executive, is introduced in Bulgaria.⁶⁶ Furthermore, a Law on the civil service is adopted.⁶⁷ Civil service legislation is a particularly problematic area as this is a highly political issue in Bulgaria. The public servants were not considered to secure continuity and expertise from one political change to another. Every new government changed not only deputy-ministers and heads of departments but also the level of experts.⁶⁸ Thus, the Law on civil service aims to protect civil servants from political pressure and to regulate career progress in the area, so that public servants and political appointees at the top of the administration are demarcated and politicization of the government bureaucracy can be stopped.⁶⁹

In order to enhance transparency and accountability of the civil service, a further important law, the Law on Access to Official Information is adopted.⁷⁰ However, implementation turns out to be a difficult task, partly due to lack of training of civil servants regarding their obligations under the new legislation.⁷¹

A direct payoff of the EU followed and the country was able to open negotiations for membership. In the same time the UDF government of Ivan Kostov ratified the introduced legislative package, backed up by a solid majority.⁷²

The public administration of Bulgaria faced a further transformation during the process of accession to the EU, as the national administrative structures, originally

⁶⁵ Noutcheva, G/ Bechev, D., *op.cit.*, p. 131

⁶⁶ Borissova, O., *op.cit.*, p. 124

⁶⁷ Noutcheva, G/ Bechev, D., *op.cit.*, p. 131

⁶⁸ Borissova, O., *op.cit.*, p. 129

⁶⁹ Noutcheva, G/ Bechev, D., *op.cit.*, pp. 131 - 132

⁷⁰ Dimitrova, A. (2002) 'Enlargement, Institution-Building and the EU's Administrative Capacity Requirement', in: *West European Politics*, 25: 4, p. 184

⁷¹ *ibid.*, p. 184

⁷² Noutcheva, G/ Bechev, D., *op.cit.*, p. 131

designed for the implementation of the Europe Agreement, are transformed into structures for the management of EU affairs in the pre-accession period.⁷³

According to the amendments to the Act on Local Self-Government and Local Administration of 1999, there are two levels of central administration in the country—the regional and the district level. The former nine regions are restructured in twenty-eight regions governed by a Regional Governor, who is a civil servant appointed by the Council of Ministers. The Governor implements the government policies in the regions, assumes responsibility for the implementation of the administrative and territorial reform, and coordinates the work of government agencies within the regions, as well as their interaction with local authorities.⁷⁴ Thus, the structures of the central administration are increasingly involved in the priority setting during the pre-accession phase, as the institution of the Regional Governor is a very strong layer in the administrative structure of the country.⁷⁵

In its effort to meet the Copenhagen criteria the Council of Ministers adopts by 2001 a National program for the Adoption of the Acquis.⁷⁶ Consequently, public administration started to become more aware of the internal EU policies and the way these policies are managed.⁷⁷

As accession negotiations progresses, administrative know-how is further transferred from EU practices to Bulgarian institutions, as a National institute of Administration is set up.⁷⁸ It is concerned with the improvement of the qualification of civil servants. However, Institution-building, in the sense of developing professional and independent civil service, is hindered by the lack of consensus on a model for the administration.⁷⁹ The laws defining the state administration and the status of civil servants are immediately contested with the change of government in June 2001, which resulted in a significant change in the status of agency directors. This allows the appointment of directors with qualifications lower than the requirements for civil servants.⁸⁰

⁷³ Borissova, O., *op.cit.*, p. 123

⁷⁴ *ibid.*, p. 124

⁷⁵ *ibid.*, p. 125

⁷⁶ Commission of the European Communities: 2001 Regular report on Bulgaria's progress towards accession, Brussels, p. 106

⁷⁷ Borissova, O., *op.cit.*, p. 123

⁷⁸ *ibid.*, p. 127

⁷⁹ Dimitrova, A., *op.cit.*, p. 185

⁸⁰ *ibid.*, p. 185

A strategy on modernization of the country's public administration is adopted since 2002.⁸¹ Nevertheless, according to the Commission, Bulgaria is still experiencing insufficient openness and transparency as well as low civil servants qualification.⁸² In the roadmap to accession, after taking into account the critics in the 2002 report, the Commission points out that Bulgaria should continue to develop administrative capacity. Moreover, the Commission sees necessity for developing a comprehensive reform strategy and action plan, in order to achieve an efficient, transparent and accountable public administration. PHARE is set out as a financial instrument for fulfilling these goals.⁸³

As a respond to the 2002 report of the Commission and considering the recommendations of the Roadmap to accession, the strategy on modernization of the public administration is a subject of a broad discussion. It is reformulated in the coming year taking in consideration the recommendations of the 2002 Commission's progress report.⁸⁴

The strategy is improved as rests on key principles of good governance: *Legality* - management and administration activities of governing by the Constitution and law; *Reliability and predictability* - actions and decisions of the administration aimed at eliminating arbitrariness and leading to a legal certainty; *Openness and transparency* - the management and administration, available for external monitoring; *Partnership* - the process of developing national policies are open to broad participation of social partners, private sector representatives and civil society, thereby ensuring trust and commitment in implementing the proposed measures; *Accountability* - clearly distinct rights and obligations of institutions, systems and public accountability create conditions of transparency at all levels of government; *Effectiveness* - to develop national policies based on clear objectives and analysis of immediate needs and anticipated impacts, thus creating conditions for systematic monitoring of their implementation, and assess the results and any adjustments when admitted shortcomings; *Efficiency* - Management, which maintains good relationship between resources and results; *Coherence* - the diversity of democratic societies requires strict

⁸¹ Commission of the European Communities: 2002 Regular report on Bulgaria's progress towards accession, Brussels, p. 117

⁸² Commission of the European Communities (2002): 2002 Regular report on Bulgaria's progress towards accession, Brussels, p. 106

⁸³ Communication from the Commission to the Council and the European parliament - Roadmaps for Bulgaria and Romania, *op.cit.*

⁸⁴ Council of Ministers of Republic of Bulgaria (2003): Strategy for modernization of the state administration 2003 – 2006, adopted with Decision Nr. 671, on 24. 09. 2003

internal logic of interdependence and develop national policies, making them understandable to the public; coherence implies political commitment and accountability by institutions in the implementation of national policies.⁸⁵

Already in 2001 the government under former King Simeon Saksgoburgotski appointed a minister without portfolio, responsible for state administration. The coalition under BSP, coming in power in August 2005, even set up a special Ministry of State administration and administrative reform. Nevertheless, both governments did not manage to provide sufficient human capital and finances to secure the functions of the ministry. They even failed to specify the functions of the new ministry.⁸⁶

A major problem in the area of public administration that is constantly pointed out by the Commission's reports in the period of negotiation is administrative corruption.⁸⁷ Thus, ethical standards are introduced as an additional mechanism to address corruption in the public sector and enhance public confidence in state institutions. In its effort to achieve membership by January 1, 2007 and avoid the possibility of postponement, the country uses the Code of Conduct of the Administration, adopted by the European Parliament, as a basis to improve ethical standards, after being criticized for failing to do so in the previous version.⁸⁸

Bulgaria faced a number of challenges in the field of public administration. First of all, the country's actions are directed in meeting the requirements for strengthening and developing the policy framework and administrative capacity of the country's public administration, in order to properly implement and enforce the Aqius Communautaire. The country has made some progress in terms of harmonization of laws in the area and strengthening administrative capacity.

Furthermore, the central administration is restructured in order to be involved in the priority setting during the pre-accession phase. In the same time the country had to

⁸⁵ *ibid.*, pp. 3 - 12

⁸⁶ Noutcheva, G/ Bechev, D., *opcit.*, p. 132

⁸⁷ Commission of the European Communities: 2000 - 2005 Regular reports on Bulgaria's progress towards accession

⁸⁸ Centre for Study of Democracy(2006): Антикорупционните реформи в България на прага на членството в ЕС, Sofia, p. 55

complete the transition in this area from a command economy state service to market economy client – orientated public and civil service.⁸⁹

Yet, EU practices were increasingly transferred to Bulgarian institutions, due to the introduction of relevant laws. Further on, governmental bodies in charge of the administrative reform are established, in order to ensure that EU standards are met and ‘best practices’ are involved in the way of ‘doing things’. However, their efficiency is often questionable.

As a whole, reforms in the area appear to be slow and incomplete. However, the role of the European Union in fostering the process of transition of public administration is determining. Reforms depend on the pressure by the Commission. Contrary, political will of elites in the country to complete the modernization of public administration appears to be rather weak, as there is no consensus on this matter. Every time when the Commission criticizes the slow process of modernization of public administration, they react to the criticism by adopting measures to address the pointed shortcomings as soon as possible. Yet, laws adopted in a hurry soon become contested, which leads to further lagging. However, the Commission has indeed a driving role in the reform of public administration in the country. Moreover, institution – building seems less likely to continue successfully without the ongoing pressure of the Commission.

5. 2. Judiciary

Similarly to public administration, Judiciary was identified by the Commission as a major handicap for Bulgaria on its way to become a credible Member state of the EU.⁹⁰ Yet, similarly to the area of public administration, in the case of judiciary reform the Commission did not offer a universal model to be followed by the candidate states.⁹¹ Nevertheless, EU qualified judicial reform in two distant ways – first as a political criterion and second under chapter 24 of the Aquis Communautaire, Justice and Home Affairs.⁹² Moreover, in the case of Bulgaria the Commission was rather precise in its demanding, as it pointed out an urgent necessity for the country

⁸⁹ The World Bank, *op.cit.*, p. 33

⁹⁰ Commission Opinion on Bulgaria’s Application for Membership of the European Union, *op.cit.*, p. 120

⁹¹Bozhilova, D. (2008): Bulgaria’ s Quest for EU Membership, The Europeanization of Policies in Transition, Author House, Bloomington, p. 47

⁹² *ibid.*, p. 50

to address inefficiency of the courts and prosecution agencies, increase accountability, limit political control enable clear recruitment for magistrates and improve training. The main emphasis was on enhancing accountability due to the fact that the judiciary tended to use its independence for political purposes.⁹³

Scholars divide judiciary reform in Bulgaria in two phases: the first one starting in the late 1990s until 2003 and the second - after 2003 (Noutcheva/ Bechev 2008; Bozhilova 2008). Main efforts in the first phase are rather directed towards the establishment of institutional capacity and legislative changes than structural reforms. That period is characterized by the introduction of special schools for training magistrates, which were funded by EU funds. However, Bulgaria, managed to amend provisions on the Civil Procedure Code on a rather early stage of its way to The EU. By 1997, as the amendments are introduced, the country is attempting to set limits of prosecutors' interaction in civil matters and to address the backlog of cases in courts, in order to increase their efficiency.⁹⁴

First important amendments to the law on the judiciary are proposed to the Parliament soon after the opening of the accession talks with the EU.⁹⁵ Within the framework of Judicial reform strategy, serious changes in the governance structures of the judiciary regarding the sharing of legislative and administrative responsibilities between the Ministry of Justice and the SJC are discussed. These proposals, however, are overturned by the Constitutional court's decisions in December 2002 and April 2003. Their interpretation of the constitutional text points out that any change in the governance structure of the judiciary could be enacted only by an act of a Grand National Assembly which is first supposed to amend the Constitution, in order to allow a vote on proposals for new law on the judiciary.⁹⁶

The Commission takes into consideration the progress of the country as it points out the judicial reform strategy and its emphasis on the adoption of major amendments to the Law on the Judicial System. Yet, overall the judicial system of the country is assessed as weak with insufficient change in its functioning.⁹⁷ The roadmap for

⁹³ Noutcheva, G/ Bechev, D., *op.cit.*, p. 133

⁹⁴ *ibid.*, p. 134

⁹⁵ Bozhilova, D., *op.cit.*, p.54

⁹⁶ *ibid.*, p. 54

⁹⁷ Commission of the European Communities: 2002 Regular report on Bulgaria's progress towards accession

Bulgaria explicitly underlines the necessity of further reforms of the Bulgarian judicial system, in order to be able to play its role in the further development of the economy and future enforcement of the *acquis*.⁹⁸ The commission is emphasizing on reforms of the structure of the Bulgarian judiciary, in particular how investigations are carried out. Moreover, the issue of immunity is identified as an area that needs to be addressed.⁹⁹

Due to the rising pressure of the EU, Bulgaria initiated a constitutional change, in order to meet accession conditions. A way to by – pass the Constitutional court is found by setting up a parliamentary committee to elaborate the required amendments to the constitution. The Committee pushed on the process of judicial reform in the country and its proposals are adopted by ordinary parliament by September 2003.¹⁰⁰ Bulgaria amended its Constitution for the first time, marking the first significant step in the reform of the judiciary. The scope of magistrates' immunity is limited. At the same time the power of the SJC (Supreme Judicial Council) to dismiss them for professional misconduct and involvement in criminal activity is extended.¹⁰¹ Furthermore, two previously alien to the Bulgarian judicial system court positions are introduced, making the work of the courts more transparent and accountable. Positions of a court administrator to organize the courts and a court assistant to help judges with the preparation of cases and the drafting of decisions are established.¹⁰²

However, the legality of the reforms is questioned on the basis of the earlier rulings of the Constitutional court and its requirement all amendments to the Constitution to be made by a Grand National Assembly.¹⁰³ Moreover, the pre – trial phase, the work of the prosecutors and investigators and the deliberations of the SJC remain non – transparent, as no information on their proceeding is made public.¹⁰⁴

Although Bulgaria has maintained a judicial reform strategy for the period of EU membership negotiations, its implementation in terms of reforms remains rather narrow, as the Commission points out in the 2005 Comprehensive Monitoring Report. At the end of accession process the necessity of further efforts for improving

⁹⁸ Communication from the Commission to the Council and the European parliament - Roadmaps for Bulgaria and Romania, *op.cit.*

⁹⁹ *ibid.*

¹⁰⁰ Bozhilova, D., *op.cit.*, p. 54

¹⁰¹ Noutcheva, G/ Bechev, D., *op.cit.*, p. 134

¹⁰² Bozhilova, D., *op.cit.*, p. 54

¹⁰³ *ibid.*, p. 54

¹⁰⁴ *ibid.*, p. 54

the functioning of the justice system is identified, particularly in regard to the pre-trial phase. Furthermore, Bulgaria needs to reduce the backlogs at courts.¹⁰⁵

A key disadvantage of the situation of the Judiciary in Bulgaria is the strong position of various veto players that tend to interact in the case of possible change of established balances. As previously mentioned, in April 2003 the Constitutional Court rules against changes in the governance structures of the judiciary, The Prosecutor General Filchev, who was the main oppose of shifting the Investigation Service from the judiciary to the executive, aimed to maintain control over the Investigation Service, even though the Commission required exactly the opposite in accord with the best practices.¹⁰⁶ Yet, the possibility of postponing Bulgaria's membership with one year due to the failure to reform the judiciary, affected the perception of magistrates. The threat of the postponement clause was the factor which facilitated structural changes of the judicial system. By the beginning of September 2005 the Constitutional Court revised its previous decision and ruled out that an ordinary Parliament could change the status of the prosecution and the investigation.¹⁰⁷

Shortly before the Monitoring Report of the Commission on the fulfillment of Bulgaria's Commitments in the pre – accession period, the National Parliament adopts a new Criminal Code and a new Penal Procedure Code, whereby no concerns exist for the introduced amendments to be challenged before the Constitutional Court. There upon the judiciary is composed of judges and prosecutors with functional immunity only. The investigation is transferred to the executive branch of governance following the best practice of EU member states.¹⁰⁸

Nevertheless a number of shortcomings appear as only junior magistrates are appointed by means of open competition and six months of training, whereas all other appointments are a matter of SJC without competition or consultation being involved.¹⁰⁹ Furthermore, despite the introduction of new Criminal code, the severe hierarchical structure of the procession maintains with a ruling of the Constitutional court, refusing to interpret the limitation of powers of the Chief Public Prosecutor

¹⁰⁵ MEMO/05/395, Brussels, 25 October 2005, Key findings of the 2005 Comprehensive Monitoring Reports on Bulgaria and Romania

¹⁰⁶ Noutcheva, G/ Bechev, D, *op.cit* p 134

¹⁰⁷ *ibid* p. 134

¹⁰⁸ Bozhilova, D., p. 53

¹⁰⁹ *ibid.*, 53

resulting from the Constitutional text. As a consequence the competences of the Chief Public Prosecutor become unaccountable and without defined boundaries.¹¹⁰

If January 1, 2007 was to be achieved as a membership date for Bulgaria, the country was to fulfill further structural reforms. Prior to the last Comprehensive Monitoring Report of the Commission, further constitutional amendments followed, giving more power to the executive. The heads of the Supreme Administrative Court, Supreme Court of Cassation, and Prosecutor General, who are the three top magistrates in the country, have to report to SJC annually. Moreover the Justice Minister gains more power over the judiciary in regard to budgeting, which is hard criticized by the Commission.¹¹¹

In the period 1999 – 2007 in the field of Justice, a total of 14 projects are carried out, funded by PHARE.¹¹² However, institution – building is neglected in terms of the projects. Their main emphasis is on technical assistance and supply. Meanwhile, only one project has the direct target of fighting corruption, but its end – date is overdue like most of the other projects as well, leading compulsory to the conclusion that PHARE is not as successful as hoped in terms of capacity building in Justice in the case of Bulgaria¹¹³

The Commission assessed the overall performance of Bulgaria in terms of judicial reform rather critically. Even though, improvement in regard of transparency and accountability of judges and the trial phase can be seen, a number of shortcomings still appear.¹¹⁴ After eight years of accession negotiations and monitoring and over fifteen years of transition the judiciary system still deals with corruption on high levels, violation of ethical codes of magistrates and existence of organized crime. Therefore the Commission points out that the rule of law is put into question in the country, which is an issue that affects directly all citizens in their rights.¹¹⁵

The European Integration of Bulgaria has a broad affect in the area of judiciary, as there is a constant external pressure coming from the Commission driving the reform of the judiciary in the country. Moreover, similarly to the reform of Public

¹¹⁰ Bozhilova, D., *op.cit.*, p. 58

¹¹¹ Noutcheva, G/ Bechev, D, *op.cit.*, p. 134

¹¹² Bozhilova, D., *op.cit.*, p. 67

¹¹³ *ibid.*, p. 68

¹¹⁴ Key findings of the may 2006 Monitoring Report , MEMO /06/201, Brussels 16/5/2006, p.2

¹¹⁵ *ibid.*, p.2

administration, the reform of the judiciary appeared less likely to continue successfully without the ongoing pressure of the Commission. However, the effective outcome of EU leverage over the judiciary in Bulgaria depends on various internal factors. Domestic veto players have a determining role in this area, as they were very likely to interact if the status quo was to be changed in their disadvantage. This turns out to be a significant hindrance for the country to meet the requirements of EU, as reforms in key matters stalled for years.

5. 3. Corruption and anti – corruption policies

Corruption at various levels became a widespread problem of the transition period in Bulgaria. Each government since the beginning of the democratization process in Bulgaria had to struggle with public corruption scandals on more or less higher level. However, they reached their apogee by the end of the nineties, because of the forced privatization process and shock social transformation and continued in regard to EU funds in various areas.¹¹⁶ Moreover, everyday corruption on rather low levels of public administration and all forms of public services including healthcare, education and police services developed to being business as usual and part of everyday life in the perception of the broad public.

Yet, at this point one should take into consideration that many of the measures the Commission outlined for implementation are not addressed properly neither by the applicants legal framework nor by the ‘best practices’ of the EU, due to ‘thinness’ of the acquires in JHA.¹¹⁷ Corruption and anti – corruption is a classical example, as The Commission failed to formulate concrete targets for applicant countries over a National Strategy to fight corruption and organized crime, which is to be monitored. Moreover, the EU itself still has not formulated clear instruments and policies to fight corruption.¹¹⁸

Nevertheless, the EU exerts a constant pressure on Bulgaria to take measures to fight corruption, outlining in the Regular Reports the severe deficits of state’ s actions in the area. The main emphasis thereby is on corruption in judiciary and public

¹¹⁶ Noutcheva, G/ Bechev, D, *op.cit.*, p. 138

¹¹⁷ Bozhilova, D., *op.cit.*, p. 59

¹¹⁸ *ibid.*, p. 59

administration, due to the high public relevance of both areas and the potential threat of failure to guarantee a set of meaningful rights for each citizen of the country.¹¹⁹

Due to the deep political, economic and social problems in Bulgaria in the beginning of the nineties, corruption does not attract strong public attention and often is not a subject to examination and evaluation. However, after 1997 it emerged as an important topic in social, political and economic life of Bulgaria, as it is pointed out as one of the most serious hindrances on the way to EU membership of the country.

Initially a national anti-corruption infrastructure in Bulgaria is launched through the efforts of the civil society. Several Bulgarian NGOs initiated a public debate on corruption and placed anticorruption in the center of its activities. Leading role in this process since 1997 has Coalition 2000.¹²⁰ Coalition 2000 is one of the most famous examples of public-private partnership in the field of anti-corruption in Southeast Europe. It was founded in 1997 by Bulgarian non-governmental organizations to create a platform for cooperation of public and private institutions. This initiative united for the first time NGOs, representatives of state institutions and media, in order to fight corruption.¹²¹ The Anti-Corruption Initiative encourages the participation of civil society for implementation of mechanisms for civilian control over the state, especially in terms of implementing the National Strategy for Combating Corruption.

For the first time anti-corruption policy is included in the agenda for the accession of Bulgaria to the European Union in the Partnership for Accession in 1999. The partnership addresses the problem of corruption in the system of Justice and Interior and sets as its top priority the short-term adoption of a government anti-corruption strategy and its enforcement by the end of 2000.¹²² The Commission subsequently criticized the Bulgarian government for its failure in implementing such a strategy. In its 2000 Regular Report the Commission points out that corruption continues to be an acute problem in Bulgaria. Yet, thereby only a reference to constant rumors and

¹¹⁹ Commission of the European Communities: 2000 – 2004 Regular reports on Bulgaria's progress towards accession

¹²⁰ Noutcheva, G/ Bechev, D, *op.cit.*, p.138

¹²¹ Centre for the Study of Democracy (2005): Антикорупционните реформи в България, Sofia, p. 6

¹²² Open Society Institute (2002): Мониторинг на процеса на присъединяване към Европейския съюз, Корупция и антикорупционна политика, Budapest, p. 70

corruption allegations is provided. The Commission did not include analysis of the causes of corruption or reference to existing national and international surveys.¹²³

However, Since 2001 Bulgaria has an Anti – corruption Strategy, implemented by accompanying agencies.¹²⁴ The strategy is prepared with the active participation of Coalition 2000 and outlines the key objectives and targets for anti-corruption reforms in public institutions and their administrations, the judiciary and criminal law, the economic sphere, in particular areas in which most public and private interests cross.¹²⁵ It aims to create an institutional and legal environment for tackling and preventing corruption. The Bulgarian government explicitly states joining the EU as one of the most important reasons for adopting a national anti-corruption policy. The preamble of Strategy states that efforts to introduce advanced international standards of transparency and publicity are an essential prerequisite to ensure the EU Membership.¹²⁶

Specialized bodies are introduced as well – Anti - corruption agency with the Council of Ministers, a PHARE funded interministerial committee under the interior minister to coordinate action and a commission within the SJC to monitor the judiciary.¹²⁷ Furthermore, hotlines in key ministries and with SJC are established.¹²⁸

All this measures are welcomed by the Commission. However, despite the approval of some of them, especially the introduction of an anticorruption strategy, the Commission is ongoingly concerned that corruption remains a very serious problem in Bulgaria.¹²⁹

By The Organization of the enforcement of the program for implementing the government's strategy as major issues emerge the insufficient administrative capacity of the specialized bodies for combating corruption, the weak internal control of the program implementation and especially the lack of sufficient financial resources.¹³⁰

Statistics on criminal cases for corruption crimes for the period 1999 - 2004, shows an extremely small number of cases of bribery and other crimes related to

¹²³ *ibid.*, p. 70

¹²⁴ Bozhilova, D., *op.cit.*, p. 60

¹²⁵ Centre for the Study of Democracy (2005), *op.cit.*, p. 29

¹²⁶ Open Society Institute (2002), *op.cit.*, p. 70

¹²⁷ Noutcheva, G/ Bechev, D, *op.cit.*, p. 137

¹²⁸ Bozhilova, D., *op.cit.*, p. 60

¹²⁹ Commission of the European Communities: 2001 Regular reports on Bulgaria' s progress towards accession, p. 17 - 18

¹³⁰ Centre for the Study of Democracy (2005): *op.cit.*, p. 30

corruption.¹³¹ However, a comparison with results of studies of the actual number of corruption transactions leads to a conclusion of an unsatisfactory performance of the judiciary bodies and their interaction with the executive authorities in the investigation and prosecution of corruption offenses.¹³²

Although the penalties for corruption offenses provided in the Penal Code are significant in size, in the few cases of such crimes, which end with a conviction, imposed by the courts punishments are extremely mild.¹³³ This indicates that state law effectively exercise its criminal policy only in terms of more minor cases of corruption, while severe cases, in which significantly greater concern for public interest, remain unpunished. For example, the period from early 2002 until mid-2004, only 7 cases of bribery ended with a sentence of imprisonment for more than 3 years. In only one of these cases the punishment exceeds 10 years.¹³⁴

The Low efficiency of the judicial bodies in the fight against corruption results from frequent changes in legislation, marked by transfer of powers and functions between different bodies. Furthermore, a lack of adequate coordination between different departments of the judiciary and other authorities is apparent and the constant shift of responsibilities. Not to forget is the existence of internal corruption and relations of individuals of these institutions with organized crime.¹³⁵

Data by the international anti-corruption organization Transparency International for the period 1998 - 2004 shows that Bulgaria developed from a country with systemic corruption problems (index less than 3) to a country with moderate prevalence of corruption (index 4.1).¹³⁶ Comparison between the indexes in the years of accession clearly indicates that the state had made sufficient progress from the start of EU accession to the end of negotiation. However, this progress remains limited, as the public sector in the country is perceived by the Commission at the end of the accession process as most corrupt with political parties and the judiciary ranked at the top and followed by customs agencies and the police.¹³⁷

¹³¹ Bozhilova, D, *op.cit.*, p. 61

¹³² Centre for the Study of Democracy (2005): *op.cit.*, p. 38

¹³³ *ibid.*, p. 39

¹³⁴ *ibid.*, p. 39

¹³⁵ *ibid.*, p. 41

¹³⁶ *ibid.*, p. 6

¹³⁷ Bozhilova, D., *op.cit.*, p. 61

The pressure of the postponement clause, however once again enhances the leverage of civil society on elites in Bulgaria to trickle down corruption, as it systematically restricts the citizens in their rights.¹³⁸ Worrying signs of increasing number of corruption transactions is registered.¹³⁹

In the beginning of 2006 the government adopts a Strategy for Transparent Governance, Prevention and Countering of Corruption for the period 2006-2008, under the pressure of a number of civil campaigns against corruption in the country.¹⁴⁰

Cooperation with civil society is institutionalized, as Under the Commission on Combating Corruption a civil council is established. Its main task is to support coordination and interaction between the Commission and civil society. The Civil Council discusses, develops and proposes concrete measures to combat and curb corruption, assists and support the legislative work of the commission by proposing amendments to the existing regulations acts.¹⁴¹ Thereupon, long pending laws are adopted.

New Law on Political Parties provides a number of anti-corruption measures: stricter requirements for the formation of political parties, linking the existence of parties with participation in elections, a comprehensive enumeration of the sources of party funding, strict rules on donations, including a complete ban on anonymous grants, increased financial and stricter penalties for violations.¹⁴² In order to curb economic roots of crime and corruption, a Law on Forfeiture of property acquired by Crime is introduced.¹⁴³

The European Union placed a constant pressure on elites in Bulgaria to fight corruption, which in turn lead to the introduction of a considerable anti – corruption measures in the country. While an overall decline of corruption rates in Bulgaria can be seen, Anticorruption Reforms so far affect primarily administrative, but not political corruption. Moreover, their long term effectiveness is still questioned by

¹³⁸ Centre for Study of Democracy (2006), *op.cit.*, p. 9

¹³⁹ *ibid.*, pp. 9 - 20

¹⁴⁰ *ibid.*, p. 49

¹⁴¹ *ibid.*, p 50

¹⁴² *ibid.*, p 51

¹⁴³ *ibid.*, p 51

the Commission. Corruption is still a problem, particularly in local government and borders.¹⁴⁴

However, this story has a success aspect as well. Even though civil initiatives are an exception in Bulgaria in the transition period, the desire to become a Member of the European Union and thus to 'return to Europe', woke up the civil society in the country in regard to the fight against corruption.

5. 4. Economic reforms

The challenges for Bulgaria on its way to accession to the European Union acquire multiple aspects. Along with the essential political criteria, which the country is supposed to fulfil, a great importance has the economic criteria, which are of crucial significance because of the serious difficulties being experienced in the country's economy during the transition period. The Copenhagen economic criteria require the implementation of two general conditions: the presence of a functioning market economy and medium-term ability to meet competitive pressures of market forces within the EU.

In 1996 Bulgaria entered into severe economic and financial crises, which led to a tremendous setback in the country's progress to join the EU. By mid-1996 Bulgaria's currency had started an ongoing free – fall, leading to its collapse and total depreciation in February 1997. Moreover, due to the macroeconomic instability, financial intermediation was stalled. The banking system collapsed overnight, as depositors ran to withdraw their savings to convert them into hard currency.¹⁴⁵

The economic collapse, followed by massive demonstrations brought the socialist government down. The response of the policy – makers to the economic crises followed in form of an introduction of a currency board by the caretaker government of S. Sofianski, supported by international financial institutions. In order to avoid anti – inflationary effects in the country to be generated, the Bulgarian lev was effectively pegged to the German Mark and the government's fiscal activity was restricted.¹⁴⁶

¹⁴⁴ Key findings of the May 2006 Monitoring Report, MEMO /06/201, Brussels 16/5/2006

¹⁴⁵ Vincelette, G. A. (2004): Challenges to Bulgarian monetary policy on its way to Europe, in: Dimitrova, A. L. (2004): Driven to change, The European Union's Enlargement viewed from the East, Manchester University Press, p. 99

¹⁴⁶ *ibid.*, p. 100

The coming UDF – government lead by Ivan Kostov enjoyed a sufficient legitimacy among the population, as it declared its euro – atlantic orientation constantly. Under the EU’s leverage Kostov and his Ministers focused most actively on economic reforms leading from a hyperinflation to 9 percent inflation and 5 percent growth by 1998.

Initially, under the constant pressure of the Commission structural reforms are introduced, leading to the start of restructuring of the banks and state – owned enterprises.¹⁴⁷ Substantial stage of the structural reform is the privatization of state enterprises in major economic sectors. Yet, the process of privatization has a weak start determining the future course of reform because the state is forced to pour money into losing enterprises. Thereupon, Bulgaria forced privatization at any cost and by any purchaser that appeared, hoping that the change of ownership will automatically generate economic dynamism and economic rationality without requiring state regulations. It is assumed that any State regulation is harmful for the economic growth and the state must be banished from the economy.¹⁴⁸

On the other hand, large-scale price liberalization takes place in the period 1997 – 1998, which gives rise to conclude that prices in Bulgaria are formed freely on the basis of the balance between supply and demand. Control is performed for a limited range of goods.

An important element of price liberalization is equalization and unification of VAT rates, which completely eliminated the administrative impact on relative prices. Bulgaria pursues a consistent policy of liberalizing foreign trade, as well. The changes towards the reduction of both average custom tariffs and the maximum rates on imports are introduced by 1999.¹⁴⁹

By that time, Data on registration of companies in Bulgaria show that practically significant barriers to market entry for companies are absent - both the number and

¹⁴⁷ Vachudova, opcit., p203

¹⁴⁸ Kalinova, E/ Baeva, I: Българските преходи 1939 – 2005, Sofia 2006, p. 113

¹⁴⁹ Ruscheva, D. (2002): България – Европейски съюз: състояние, проблеми, перспективи (Bulgaria – the European Union: Condition, problems, perspectives) , in: Икономическа мисъл Economic Thought (Economic Thought), issue: 4 / 2002, p. 116 - 122

proportion of production to private companies in Bulgaria have risen significantly in recent years.¹⁵⁰

Law on Protection of Competition is introduced. It is completely aligned with European standards and requirements. As a result of a series of actions by the end of 1999 the institutional framework for small and medium enterprises is strengthened and is now fully operational in Bulgaria.¹⁵¹

The respond of the European Union came after taking into consideration the progress made under the UDF government. In December 1999 as Bulgaria became formal candidate for EU membership.¹⁵²

The main efforts of the UDF government in terms of economic reforms result directly from the requirements of the Union, as the ‘return to Europe’ is its main legitimacy source from the beginning. Indeed, by the end of its mandate, it managed to put Bulgaria forward on qualifying for membership, because addressing the deficiencies pointed out in The Commission’s Regular reports had become its main priority.¹⁵³ Moreover, it had actually launched Bulgaria’s first real transition to competitive markets and started to introduce the concept of best practices.¹⁵⁴

Yet, it wasn’t until 2002 that Bulgaria was recognized as a functioning market economy, but still only near to the ability to cope with the competitive pressures of market forces within the EU.¹⁵⁵ The Sakskoburgotski government, wining the elections with a promise of an 800 – day economic miracle, accelerates the country’s adaption to EU norms, achieving an economic recovery of regular 5 % annual growth.¹⁵⁶ The budget is thereupon balanced, the foreign debt is reduced to 17 % of GDP and a flat corporate tax rate is introduced.¹⁵⁷

The Commission assesses that Bulgaria has achieved a high degree of macroeconomic stability and market mechanisms operate in the country good

¹⁵⁰ *ibid.*, p. 119

¹⁵¹ *ibid.*, p. 122

¹⁵² Pond, E.(2006): Endgame in the Balkans, Regime change European Style, The Brookings Institution, Washington D. C., p. 51

¹⁵³ Vachudova, *op.cit.*, p. 204

¹⁵⁴ Pond, *op.cit.*, p. 55

¹⁵⁵ Commission of the European Communities: 2002 Regular reports on Bulgaria’s progress towards accession

¹⁵⁶ Pond, *op.cit.*, p. 56

¹⁵⁷ *ibid.*, p. 57

enough, allowing better allocation of resources. Consequently, the country can cope with competitive pressure forces within the Union in medium term, provided that it continues to implement its reform program.¹⁵⁸

Indeed, the share of the private sector rises to 77 % of gross value added, despite the fact that due to abuses, huge amount of funds of privatization transactions never reached the state's exchequer.¹⁵⁹ Furthermore, bank privatization is completed, reaching 22 % of foreign owned banks.¹⁶⁰

Meanwhile foreign investments only started growing after the Helsinki invitation to join, more than doubled during negotiations, and continued to grow strongly after 2005.¹⁶¹

Economic reforms in Bulgaria were always percept as rather slow. Furthermore, forced privatization of large state enterprises at any price and in short terms turns out to be a favorable economic environment for corruption, crime and informal economy. However, over the past years, Bulgaria has made significant economical progress, based on the efforts of the governments to meet the economical criteria for EU membership. Consequently, measures for implementing radical liberalization, macroeconomic stabilization, market restructuring and harmonization of legislation and institutions with the EU are introduced. There upon, important economic indicators improved in the period between 1998 and 2005. The inflation rate is reduced from 18, 7 % in 1998, to 6, 5 % in 2005, the growth of the Gross domestic product of the country is stabilized at 5. 6 %.¹⁶² The Bulgarian economy ongoing recognized as a functioning market economy, able to cope with competitive pressure forces in the European Union.¹⁶³

5. 5. Overall assessment

Bulgaria became a Member of the European Union on January 1, 2009 after managing to shape its institutional framework and the logic of public policies in accordance with EU's 'best practices' to a sufficient extend. Determined by the

¹⁵⁸ Commission of the European Communities: 2003 Regular reports on Bulgaria's progress towards accession

¹⁵⁹ Pond., opcit., p. 57

¹⁶⁰ Pond., opcit., p. 57

¹⁶¹ Vankin, S.(2001): On the Way to the EU , Bulgaria's economy and the challenge of accession, in: Central Europe Review, Vol. 3, No 18, 21 May 2001

¹⁶² Kalinova, E/ Baeva, I: op.cit., p. 200

¹⁶³ Key findings of the may 2006 Monitoring Report , MEMO /06/201, Brussels 16/5/2006

desire among the broad public ‘to return to Europe’ and thus secure democracy, the main efforts of elites in the country are directed towards meeting the Copenhagen criteria, in order to qualify for Membership as soon as possible. The progress towards Membership is thereby the main source of legitimacy for them and predominantly motivates reforms of public institutions and public policies.

However, pre – accession conditionality, plays a tremendous role in the process of democratization in the country, as reforms in the most problematic areas are facilitated only under the direct pressure of the European Commission. Moreover, in particular cases they were less likely to continue without the threat of postponing Membership by one year.

Nevertheless, a number of shortcomings still appear, due to domestic factors. The combination of bad initial conditions, lack of consensus among elites on key issues and missing political will to enforce introduced reforms, whenever they are likely to change the balance of powers and are not in interest of key veto players, make the process of consolidation of democracy in Bulgaria even more difficult.

6. January 1, 2007 – The End of a good Beginning?

Becoming a Member of the European Union on January 1, 2007 is an event with historical meaning for Bulgaria. The achievement of this crucial task is welcomed by thousands of people on the same squares where the transition to democracy began almost two decades ago. However, after the euphoria, this event with historical value gave way to every – day life as people know it. The big question of what happens next was on the current agenda.

Scholars have for some time now expressed concern, that with the end of political conditionality and the pressure it puts on CEECs, these countries might take the wrong turn, as they would show some signs of backsliding (Rupnik, 2007, Mungiu-Pippidi, 2007) Contrary others do not see actual evidence therefore, as they argue that facts show an ongoing record of measures addressing various shortcomings and that literally a slowing down of reforms can be claimed (Levitz/ Pop-Eleches ,2008).

The situation in Bulgaria after January 1, 2007 is indeed somehow strange. The presidential elections in October 2006, that took place just on the front door of the EU, turned out to a choice between an ex-communist and a populist protofascist who openly voices his hatred of Turks and Gypsies.¹⁶⁴ In the same time, the ruling coalition, composed after a political crisis in the summer of 2005, which is a historic compromise uniting the party of ex-king Simeon with the ex-communists and the party of the Turkish minority, is just in the middle of its mandate.¹⁶⁵ Moreover, the coalition is struggling with severe corruption scandals. As this internal oddness extensively holds the attention of the broad public and elites, further progress might be a justified question.

Nevertheless, in the case of Bulgaria the European Union introduced an added conditionality tool for taking protective measures against the country post – accession, grounded in the Accession treaty in the form of safeguard clauses.¹⁶⁶

The Accession Treaty provides three measures to discipline Bulgaria post – accession in regard to the economy, the internal market and the area of justice, security and liberty for a period for three years.¹⁶⁷

In the past two years the safeguard in the area of justice and home affairs is often disposed in the public space as an actual threat for Bulgaria, leaving a feeling in the country of being treated as a ‘second class’ Member. If Bulgaria fails to ensure that effective functioning of its judicial system and law enforcement structure, the decisions of the Bulgarian courts on EU law cases may not be recognized in the rest of the Member States. Moreover, if there is not sufficient trust in the police structures of the country, it is not likely for the rest of the EU to act upon European arrests.¹⁶⁸

In order to ensure the rule of law is respected EU has both legal means and political authority to monitor internal developments in the key areas of judiciary and law enforcement, as certain weaknesses remained in the areas of judicial reform, the fight against corruption and organized crime that could prevent an effective application of

¹⁶⁴ Rupnik, J. (2007): Is East-Central Europe Backsliding? From Democracy Fatigue to Populist Backlash, in: Journal of Democracy Volume 18, Number 4, October 2007, p. 17

¹⁶⁵ *ibid.*, p. 18

¹⁶⁶ Inglis, K., *op.cit.*, p. 90

¹⁶⁷ Noutcheva, G., *op.cit.*, p. 2

¹⁶⁸ *ibid.*, p. 2

EU-laws and policies and prevent Bulgarians from enjoying their full rights as EU citizens.¹⁶⁹

As Bulgaria might actually be facing the potential threat of the safeguard clause in the field of Justice and Home Affairs, the Commission insists on further reforms. Under the pressure coming once again from Brussels an Article aiming to dismiss the top magistrates on the initiative of the parliament is adopted. Yet, the Constitutional Court rules against such amendments. Thereby, it once again refers to the form of governance principle known from previous years.¹⁷⁰ As a result, a fourth round of amendments to the constitution is adopted. The main priority thereby is to establish a judiciary inspectorate under the supervision of the SJC. Thus, the role of SJC is strengthened.¹⁷¹

Meanwhile, more serious problems are emerging in Bulgaria. By the beginning of 2008, the European Commission requests a temporary suspension of payments under the PHARE for all projects managed by two agencies in charge in Bulgaria - the Central Finance and Contracts Unit in the Ministry of Finance and the PHARE Executive Agency at the Ministry of Regional Development. The total amount of the restricted funds reaches 50 million euro. Bulgaria is supposed to undertake significant action in the period until 16 June addressing all problem areas if the country wants Brussels to release the funds under PHARE.¹⁷²

The Government adopts an action plan to implement the recommendations of the European Commission. By June 16 a report on measures addressing the criticism for irregularities by the absorption of pre-accession funds is sent to the Commission and the Bulgarian side stops the funding of 10 projects under the PHARE program with potential conflict of interest and established procedural shortcomings.¹⁷³

Nevertheless, the European Commission confirms the withdrawal of accreditation of the two agencies working with PHARE money. The Country is given four months to propose corrective measures.¹⁷⁴

¹⁶⁹ *ibid.*, p. 3

¹⁷⁰ Noutcheva, G./ Bechev, D., *opcit.*, p. 135

¹⁷¹ *ibid.*, p. 135

¹⁷² Aleksandrova., G. (2008): Точка на замръзване, Какво значи спирането на еврофондовете, in: Капитал, Vol. 11, 14 March 2008

¹⁷³ *ibid.*

¹⁷⁴ 2008 Extraordinary Report to the Management of EU Funds in Bulgaria

As a result the Council of Ministers approves a 200-page Action Plan to overcome problems in regard to PHARE, ISPA and SAPARD and 80 additional steps to address the second critical document in the field of justice and home affairs, based on the observations in the report.¹⁷⁵ However, the Plan is broadly criticized as just full of clichés and not suggesting adequate measures for overcoming the problem.

Consequently the critical answer of the European Commission followed, as on 25 November 2008 it announced that the accreditation of the two agencies working with PHARE money will not be restored. Thus, Bulgaria permanently lost more than 220 million euro, as payments of contracts signed from July to 25 November will not be paid from Brussels. As one of the reasons for its decision the European Commission indicates the risk of political interference in the absorption of EU funds, but without giving concrete examples. The remaining 340 million euro under PHARE for already signed contracts Remain suspended as well.¹⁷⁶

In the same time the European Commission suspended 144 million euro, allocated to two projects under ISPA, due to a corruption scandal in the Fund for Regional Road Infrastructure. Such measures are used for the first time in the history of the EU.¹⁷⁷

The argument that EU loses leverage over new Member states post accession is not true in the case of Bulgaria, due to the specifics of the legal provisions of the Accession treaty. Moreover, a public opinion survey in Bulgaria shows that actually an increase in EU influence can be noted after the country became Member of the European Union.¹⁷⁸

Reforms in problematic areas and measures for addressing diverse shortcomings in the country still emerge under the explicit pressure of the European Commission, as it was typical for the pre – accession period. However, how effective are these reforms and measures, is still an opened question to find its answer in the time to come. Regrettably, by the End of 2008, 75 % of the Bulgarian people believe that EU membership does not really reflect on their life.¹⁷⁹

¹⁷⁵ Iordanova, L. (2008): План за бездействие, in: Капитал, Vol. 33, 15. 08. 2008,

¹⁷⁶ Novakova, I. (2008): 220 милиона причини, Еврокомисията спаси от България парите на европейските данькоплатци, in: Капитал, Vol. 48, 28. 10. 2008

¹⁷⁷ *ibid.*

¹⁷⁸ Pop-Eleches, G / Levitz , P. : Why No Backsliding? The EU's Impact on Democracy and Governance Before and After Accession, p. 19

¹⁷⁹ Ssurvey by Alpha Research at: http://www.aresearch.org/bg/european_union.html (Last called 15. 11. 2009)

7. Conclusion

The case of Bulgaria is a successful example of how EU conditionality manages to transform post – communist countries into credible Member States of the European Union. However, this is as well a good example for the limits of EU conditionality.

Under the pressure of pre – accession conditionality and the threat of the postponement clause, Bulgaria managed to facilitate a sufficient change in its institutional framework and in the logic of public policies on domestic level, to an acceptable extend for becoming a Member of the European Union.

Moreover, the main efforts of the country’ s elites are directed towards complying with EU rules in order to achieve membership, as the ‘return to Europe’ is the dominant source of legitimacy for them in the transition years.

January 1, 2009 did not decrease the leverage of the European Union over Bulgaria, as the logic of reforms and measures for addressing shortcomings in problem areas continues to follow the model of the pre – accession period. Reforms are continuously facilitated under the pressure of the Commission and the threat of the safeguard clauses of the Accession treaty.

Influenced by EU conditionality, Bulgaria is introducing a considerable number of rules and practices, consolidated by the European Union, in its domestic agenda. Consequently, transformation of public institutions and public policies in the country follows the logic of EU requirements. The distinction between EU and domestic policy emphasis is abolished stage by stage. Thus, a process of Europeanization is taking place in the country, which in turn leads to further consolidation of democracy.

Thus, EU conditionality is the main driving force for democratization in Bulgaria, as it significantly shapes reforms, logic of domestic policies, changes in the institutional set up and is the key reference of elite’ s decisions.

Nevertheless, the case of Bulgaria illustrates the limits of EU conditionality, as well, as reforms are slow and often incomplete. A number of shortcomings, resulting from domestic context, still exist and continue to restrict citizens in their rights. Further

improvement in key areas as the judiciary and anti – corruption policies are still pending, as EU conditionality fails to address problems emerging from the existence of strong veto players and weak political will to enforce introduced reforms, whenever the balance of powers in the country is challenged.

However, the European Union is already addressing this problem, as unprecedented measures like the suspension of funds on PHARE and ISPA projects are undertaken against Bulgaria, due to abuses and corruption scandals.

What remains is the hope for further efforts both on domestic and European level, so that the people of Bulgaria will no longer feel as a ‘second hand’ Member of the European Union that in their perception, used to be and still is, the only way towards securing democracy.

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