

Bachelor thesis:

EU political conditionality and compliance in the accession process of the European Union



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Abbreviations:

CEE = Central Easter European

CEEC = Central and Eastern European Countries

EU = European Union

ISPA = Instrument for Structural Policies for Pre-Accession

Phare = The Programme of Community aid to the CEECs which have applied for EU membership

SAPARD = The Community framework for sustainable agricultural and rural development in the central and eastern European applicant countries

TACIS = an EU programme aimed to promote the transition to a market economy and to reinforce democracy and the rule of law in the partner states in Eastern Europ

Abstract:

This bachelor thesis' research plans to answer the question: Which policy instruments of the EU lead to compliance with the EU's conditions of the EU membership candidate states? This will happen with regard to the different policy areas in which the EU wants to see compliance from the EU membership candidate states from Romania and Bulgaria in the area of the fight against corruption. Sub-questions to answer this research question are: What is political conditionality and what characteristics does it have? How does it work and under which circumstances and in which policy areas does it lead to compliance. All these questions are crucial for the success of future enlargements of the European Union. This research will with the questions it seeks to answer try to contribute to making conditionality and rule transfer from the EU to the candidate states more effective. This knowledge would help the EU in preparing the candidate states for membership and help the candidate states to comply with the EU's conditions. With the proposed research the aim is to clarify the nature and workings of EU conditionality make clear what factors have an influence on the effectiveness of it.

In order to answer my research questions I will make use of a comparative case study in which it will be made clear how the different factors that are said to influence compliance - such as positive and negative conditionality, and the safeguard clauses have an on impact conditionality, and ultimately compliance of the candidate states.

In my research in each case dealt with the dependent variable is going to be compliance and the kind of conditionality or rather the factor influencing compliance is the independent variable.

In the countries of Romania and Bulgaria the workings of conditionality and hence brought about compliance or non-compliance with EU rules in the time before and after accession to the European Union will be analyzed and compared.

Moreover in order to measure the level of compliance with the EU's rules concerning the fight against corruption in Romania and Bulgaria I will analyze the regular reports of 2001 and 2002(pre-accession phase) for both countries as well as the verification reports from 2007 and 2008 (post-accession phase). This should help in determining if compliance changed before and after accession to the European Union.

Hence the main focus of this study will lie on examining the different policy instruments of conditionality, especially the safeguard clauses and on comparing compliance over time.

1. Introduction:

Political conditionality is regarded as the success story of the EU's enlargement policy. The accession to the European Union is a process of massive policy transfer under which the candidate states have to transpose the full *acquis communautaire* (Schimmelfennig & Schwellnuss (2006), p.1). The main research question to be answered in this bachelor thesis is: Which policy instruments of the EU lead to compliance of the EU membership candidate states with the EU's conditions?

Since the 1990s the EU's political conditionality has become a powerful strategy of transformation aimed at policy change and the conditions have been developed into demands, an evaluation model, rewards and possible sanctions (Anastasakis (2008), p.365, Veebel (2009), p. 208). The conditions that were set out at the Copenhagen European Council should ensure that the risk of new members of the EU becoming politically unstable and economically burdensome to the existing EU would be minimal

(Grabbe (1999), p.2). Democratic standards and the Copenhagen criteria had to be met before accession would take place. How conditionality influences the transposition of the Copenhagen criteria (below) into national legislation will among others also be the topic of the bachelor thesis.

“The Copenhagen Conditions are:

1. Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights for and protection of minorities.
2. Membership requires the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
3. Membership presupposes the candidate’s ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.
4. The Union’s capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries. “

(Grabbe (1999), p.4)

Conditionality was systematically activated in 1997-1998 when the Commission stated its avis on the applicant states and its first annual Regular Report on progress with conditionality (Pridham (2007), p. 3). From the year 2000 onwards the significance of the EU’s conditionality increased due to addressing the enlargement process concerning the Western Balkans, the CEE countries and Turkey (Anastasakis (2008), p. 365). The European Commission has also added a number of areas such as human rights, nuclear safety so that it is possible to “claim that a new enlargement method has been developed and a separate enlargement *acquis* has emerged” which includes many requirements like for example reform of the judiciary, minority rights, horizontal administrative reform, regionalization and so on (Steunenbergh & Dimitrova (2007), p. 4). During the 2004 enlargement the EU’s leverage over third countries seeking membership was reinforced and priority was given to positive conditionality (Pridham (2007), p. 4). Conditionality is aimed at integrating the candidate states into the EU and is intended to promote reform and to prescribe criteria to which EU granted benefits are attached. It presents the candidate state with a situation in which they have to fulfill the EU’s conditions in order to finally receive the ultimate reward of EU membership for it.

To bring about compliance the EU uses the strategies of positive and negative conditionality. Positive conditionality works the way that when the status quo does not satisfy one party (the imposing EU) it thus motivates the other actors (the candidate states) to change it (Veebel (2009), p. 209,210). The influence to change the status quo is usually based on the strategy to provide incentives so that the targeted actors succeed in meeting the conditions (ibid.). Positive conditionality entails such measures as reducing trade barriers or providing financial aid (ibid.). It is moreover asymmetric by nature and is demanding of its pre-conditions, since it can only succeed in situations in which the awaited benefits are greater than the cost of political change (ibid.). Negative conditionality on the other hand is aimed at influencing an already existing situation such as trade regimes or diplomatic relations which is likely to be changed if the candidate country does not meet certain requirements (ibid.). Negative conditionality then implies that certain sanctions such as reducing, suspending or withdrawing or terminating a reward will be imposed unless the targeted state does comply with the criteria set by the EU (ibid.).

Other policy instruments of conditionality are the safeguard clauses operated against Romania and Bulgaria. These safeguard clauses are provisions which allow the European Union to remedy difficulties encountered as a result of accession (MEMO/05/396). Additionally there is a clause according to which accession of any or both countries may be delayed by one year should they be vastly unprepared for accession (ibid.). Of the three safeguard clauses included (economic, market and justice and home affairs safeguard clause) the one of interest to this bachelor thesis is the justice and home affairs safeguard clause which may be applied if there are serious risks or shortcoming in the transposition or implementation of EU rules regarding the area of criminal law or civil matters, thus also relating to the fight against corruption (ibid.). The safeguard measures the European Commission

may take are temporarily suspending specific rights under the EU acquis, such as funding of different EU programs which Bulgaria or Romania receive (ibid.).

The empirical strategy that will be used to answer the research question and to find out which policy instruments of the EU lead to compliance of the EU membership candidate states with the EU's conditions is as follows. It will be made use of a comparative case study which is to show how the different variables that are said to influence compliance and conditionality work such as positive and negative conditionality. It will be attempted to identify the causal process between the independent variable of conditionality or rather the factor influencing compliance and the dependent variable compliance. It will furthermore be made use of process tracing meaning examining events in history chronologically in order to map the process of rule adoption. This will include an analysis of regular reports and verification mechanism reports from the European Commission for Bulgaria and Romania for the years of 2001 and 2002(pre-accession phase) and for the years of 2007 and 2008(post-accession phase).

Thus the focus of this study will lie on comparing compliance over time and examining the different policy instruments that induce compliance, especially the safeguard clauses.

Empirical findings show that for the pre-accession phase and the post-accession phase both countries, Bulgaria and Romania, show inconsistent compliance with the EU rules regarding the fight against corruption. One can say that after accession the EU mainly used negative conditionality trying to embarrass the former candidate states of Bulgaria and Romania by way of verification reports and trying to show the negative developments which often times overshadowed the positive developments in the fight against corruption. The verification reports criticized and identified as well as demanded results reducing the level of corruption. The safeguard clause, a negative conditionality policy tool was employed against both, Bulgaria and Romania. It provided for much tighter provisions, benchmarking and a much easier procedure for interrupting negotiations as well as for suspending certain benefits to membership. Yet, neither in Bulgaria nor in Romania and breakthrough could be achieved due to this. The post-accession reports all in all reflect that neither Bulgaria nor Romania were believed to have yet completed the until then unfinished preparations for EU membership. Compliance in the field of fighting corruption was over the time period 2000 to 2001 and over the time period 2007 to 2008 in both states inconsistent. Some good progress was made in different fields, but overall progress has been limited and commission judgment is often times negative or mixed.

Moreover could several hypotheses be confirmed and it could be shown that domestic political cost as well as determinacy and the safeguard clauses have an effect on the effectiveness of conditionality and consequently on compliance, just like the factors of economic exchange and strengthening of civil society.

2. Research questions:

The main research question is: Which policy instruments of the EU lead to compliance of the EU membership candidate states with the EU's conditions? This will happen with regard to the different policy areas in which the EU wants to see compliance the EU membership candidate states of Bulgaria and Romania

This question and the following sub-questions are crucial for the success of future enlargements of the European Union. This proposal aims to clarify the nature and workings of EU conditionality make clear what factors have an influence on it and consequently compliance.

Sub-questions to answer this research question are:

- What is political conditionality and what characteristics does it have?
- How does it work and under which circumstances and in which policy areas does it lead to compliance?

In the next part the theories and concepts most central to this bachelor thesis will be explored and explained.

3. Theory and concepts:

This section will present the concepts and theories that are most important to this research such as compliance and the factors influencing conditionality. It will begin with describing and explaining the multifaceted concept of conditionality but first the dependent and independent variables to my research will be mentioned.

The dependent variable is going to be compliance and the kind of policy instrument. Policy instruments are positive conditionality and negative conditionality or in other words the factor influencing it such as strength, credibility and determinacy of conditionality, the size of national adoption costs and the safeguard clause is the independent variable.

Compliance can be described as the extent to which the candidate states act in accordance with and fulfill the conditions for accession prescribed by the EU (Erdogan (2006), p.3). When the EU wants to bring about compliance in the candidate states its main policy instrument is conditionality and in turn the main strategy for this is reinforcement by reward according to which an international organization, in our case the EU, reacts to the fulfillment or non-fulfillment of its conditions or in other words compliance by granting or withholding rewards (Engert, Knobel, and Schimmelfennig (2003), p. 469). Conditionality then leads to compliance in case the EU has enough leverage and negotiation power and if the domestic conditions of the candidate state are in favor of conditionality (ibid.).

One can also describe this as an external incentives model which is a rationalist bargaining model in which 'the actors involved are assumed to be strategic utility-maximizers interested in the maximization of their own power and welfare' (Schimmelfennig & Sedelmeier (2004), p. 671). The actors exchange information, promises and threats and in the end the outcome depends on their relative bargaining power (ibid.). By way of applying conditionality a social actor such as the EU uses reinforcement to change the behavior of another actor (ibid.). In other words: The EU offers and withholds carrots but it does not carry a big stick; its conditionality is mainly positive (Schimmelfennig (2010), p. 5). Reinforcement then is a form of social control, rewarding pro-social behavior and punishing anti-social behavior expecting that through this after a certain time the actor(s) which are subject to reinforcement will keep to pro-social behavior in order to further receive rewards and to avoid being punished (Engert, Knobel, and Schimmelfennig (2003), p. 469).

One could also say that conditionality is aimed at inducing behavioral adaptation as instrumentally and strategically calculated reaction by the target government in response to external incentives (Freyburg & Richter (2008), p. 2). There are two kinds of rewards that the EU grants the candidate states: assistance and institutional ties of which the most important programs are Tacis and Phare, offering technical and financial assistance, institutional ties ranging from trade to cooperation agreements to eventually full membership and inclusion to the EU market and increasing participation in EU decision making (Engert, Knobel, and Schimmelfennig (2003), p. 469).

When talking about conditionality one differentiates between political conditionality and *acquis* conditionality on the one hand and positive and negative conditionality on the other hand (Anastasakis (2008), p. 366, Veebel (2009), p. 210). Political conditionality will then be the focus of the proposed research. It is connected with a broadly defined *acquis politique* of political standards, norms and practices as well as it is connected to the technical *acquis communautaire* which consists of a growing number of laws, agreements, resolutions, declarations, and judicial decisions and takes place during the negotiations of the 35 chapters (Anastasakis (2008), p. 367). Political conditionality moreover

refers to the political criteria of membership as well as to the way this instrument functions through deadlines, thresholds, and the practice of pressure from the EU such as the safeguard clause (ibid.). Acquis conditionality then is concerned with the harmonization of the candidate states with the specific regulations, legislations, and treaties of the EU which is aimed at the technical preparedness of the candidate states as can be found in the third Copenhagen criteria which describes it as ‘the ability of the candidate countries to take on the obligations of membership including adherence to the aims of political, economic and monetary union’ (ibid.).

Negative conditionality is aimed at influencing an already existing situation such as trade regimes or diplomatic relations which is likely to be changed if the candidate country does not meet certain requirements (Veebel (2009), p. 209, 210). Negative conditionality then implies that certain sanctions such as reducing, suspending or withdrawing or terminating a reward will be imposed unless the targeted state does comply with the criteria set by the EU (ibid.). Positive conditionality works the other way around. When the status quo does not satisfy one party (the imposing EU) it thus motivates the other actors (the candidate states) to change it (ibid.). The influence to change the status quo is usually based on the aforementioned strategy to provide incentives so that the targeted actors succeed in meeting the conditions (ibid.). Positive conditionality entails such measures as reducing trade barriers or providing financial aid (ibid.). It is moreover asymmetric by nature and is demanding of its pre-conditions, since it can only succeed in situations in which the awaited benefits are greater than the cost of political change (ibid.).

A reward such as material or tangible political rewards are offered in return for compliance and the political actors in the target states then calculate if the rewards offered are worth the cost of adaption – a cost-benefit calculation takes place (Engert, Knobel and Schimmelfennig (2003), p. 497). Generally speaking do the adaption costs for the candidate state increase the more the EU conditions have a negative effect on the security and integrity of the state, the government’s power base and its most important political practices used for power preservation (ibid., p. 499). We then can derive from the mechanism of material bargaining and the cost- benefit calculation a *hypothesis*:

“ *The lower the domestic political costs of compliance for the target government, the more likely conditionality will be effective* ” (ibid., p. 499).

The aforementioned cost-benefit balance depends on several factors such as the determinacy of conditions, the credibility of threats and promises as well as the size of adoption costs (Schimmelfennig & Sedelmeier (2004), p. 672).

Determinacy of conditions as a factor influencing conditionality and the cost-benefit calculations of the membership candidates refers to the clarity and the formality of a rule (Schimmelfennig & Sedelmeier (2004), p. 672). In general one starts from the premise that the clearer the behavioral meaning of a rule and the more legalized and legitimate it is to the target state, the higher its determinacy is going to be (ibid.). Determinacy is of great importance with regard to conditionality and rule transfer and ultimately compliance because it aids the target governments to know what exactly they have to do to receive the offered rewards (ibid.). In addition to that does determinacy function as a signal to the target states and lets them know that they cannot avoid the adoption of EU rules by changing or manipulating the interpretation of what exactly constitutes compliance to their advantage (ibid.). Yet, simultaneously determinacy binds the EU, since if a condition is determinate it is not as easy anymore to claim unjustly that it has not been fulfilled so that the EU would withhold the reward (ibid.). One can assume that ‘the clearer the conditions demand a specific transposition of EU rules into national rules and policy instruments, and the more explicit the EU demands their implementation, the higher the convergence will be on the part of the target governments with the EU’ (Schimmelfennig & Schweltnus (2006), p.5). It thus furthermore works to the advantage of the candidate states. From this one can formulate the additional *hypothesis* that

“ *the more determinate rules that need to be fulfilled in order to receive rewards are the more effective conditionality and the rule transfer will be* ” (Schimmelfennig & Sedelmeier (2004), p. 672).

When talking about conditionality with regard to EU membership there are three phases: phase one, before the establishment of a credible EU membership perspective, phase two, when and after a credible and conditional membership perspective has been brought about and phase three, the time after the accession to the Union (Schimmelfennig & Schweltnus (2006), p. 5,6,7). This research will focus on phase two and phase three, the time period after which a credible and conditional membership perspective has been established. Here one can again distinguish four possible constellations in which the strength of the conditionality is the dominant factor which determines in turn the effectiveness of conditionality (ibid., p. 6).

In case of the first constellation there is strong conditionality and determinate conditions so that optimal conditions for effective conditionality are present (ibid., p. 6). In this case the target government knows that it has to change its policies and in what way (ibid.). If there is strong and credible incentives of EU membership present as in this situation it is assumed that the domestic veto players lose their influence over the target government and opposing traditions and veto players should at best only delay compliance with the EU's conditions, but not prevent it (ibid.). Therefore one can expect the highest degree of convergence in this situation (ibid.).

In the second constellation there is strong conditionality but indeterminate conditions, e.g. the EU's condition to institutionalize minority rights (ibid.). Yet, in case the conditions are not sufficiently clear, formalized and binding one first has to clarify through communication and negotiation what exactly is supposed to constitute acceptable compliance from the EU's point of view (ibid.). Therefore under such conditions one cannot expect a high degree of convergence, but still different, but workable and country specific solutions that are oriented towards the EU's preferences (ibid.). Under these circumstances with strong conditionality by means of strong and repeated insistence of EU demands will national factors only come back into play if the EU demands left room for interpretation (ibid.).

The third possible constellation is a combination of weak conditionality and determinate conditions grounded in EU law also including the *acquis communautaire* so that (ibid.). So, with regard to the vast amount of EU rules that need to be adopted and implemented into national law there is the possibility that parts of the *acquis* were not explicitly named or clear to the target governments causing their adoption to be postponed (ibid.). Only in the final phase of the accession process will these rules be adopted due to the increased pressure of the approaching accession date (ibid.). Therefore one can expect a jump in rule adoption and convergence shortly/intermediately before the accession date (ibid.).

The final and fourth constellation of conditionality and determinacy of conditions sees a combination of weak conditionality and indeterminate conditions which brings about extremely adverse conditions for policy transfer and convergence (ibid., p. 7). One could even say that this situation in no way differs from the situation before the establishment of a credible EU membership perspective due to which domestic factors are decisive with regard to rule adoption and compliance (ibid.).

In phase 3, after accession, conditionality is said to largely disappear as a mechanism of policy transfer and domestic factors become more important again (ibid., p.7). Yet, for Romania and Bulgaria special provisions were made upon entering the EU in 2007 so as to keep monitoring them and to keep conditionality high by means of the mechanism for cooperation and verification. Still in this third phase one can distinguish between the situations in which domestic opposition against policy transfer is weak or its supporters are relatively powerless so that the policy transfer will be stable and the situation in which the result depends on the type of rule (ibid., p. 7). Here the breaking of membership conditions is subject to control of the sanction mechanism of the EU so that "temporarily instable but in the end successful policy transfer is to be expected" or domestic conditions are unfavorable and EU rules are revoked after accession so that only political pressure from other member states applies (ibid., p.8).

What is more is that determinacy also enhances the credibility of conditionality (ibid.). In order to achieve compliance it is necessary that EU has high credibility in threatening to withhold rewards in case of non-compliance and, on the other hand also has high credibility in promising the delivery of

the reward in case of compliance and rule adoption (ibid. p.673). So for conditionality to be effective when following a strategy of reinforcement by reward one needs superior bargaining power of the EU, because otherwise threats would not be credible, and certainty about the payment of the rewards, because otherwise promises would not be credible (ibid.). From this one can derive the *hypothesis* that

“the likelihood of rule adoption increases with greater credibility of conditional threats and promises” (ibid., p.674).

In addition to these factors costs of course play a role in the process of rule adaptation. First, when offering rewards to the candidate states in exchange for compliance and rule adoption the EU must be able to withhold rewards at no or low costs to itself and at the same time it has to be less interested in giving the reward than the target states are interested in receiving it (ibid.). Similarly the EU must also be able to pay the rewards at a low cost to itself, yet the more the pre-accession process progresses and the closer one gets to the final date of the accession the higher the costs of withholding the reward get and so that consequently already incurred costs and investments would be lost if the accession process were to be stopped or postponed (ibid., p.674). Therefore one can say that over time the credibility of promises in the enlargement process increases and the credibility of threats decreases (ibid.).

Assuming that adoption is always costly, since it otherwise would already have taken place without conditionality, there are two sources of it (ibid.). One is the opportunity cost of not receiving alternative rewards offered by adopting rules other than those of the EU and the other costs are welfare or power costs for private and public actors (ibid.). Adoption costs then are balanced by the benefits of the EU rewards and consequently they become negative and turn into net benefits for the domestic actors (ibid.). Because it's governments who adopt the rules and implement them the effectiveness of conditionality then also depends on the governments and other veto players' preferences (ibid.). Generally speaking does difficulty of changing the status quo go up with increasing numbers of veto players, but e.g. in the CEECs it is considered small.

The last factor or instrument which has an influence on conditionality and compliance which will be presented before explaining the different constellations of conditionality and determinacy is the safeguard clause. The European Union uses the safeguard clause, which allows for a one-year delay in the accession process in the event that the obligations for becoming member state are not met, to exert additional pressure on the candidate states and to emphasize the importance of fulfilling the conditions (Pridham (2007), p.4). In the accession process the safeguard clause can be the decisive factor in bringing about change in the candidate state and bringing it (back) on the road to membership.

This leads to the *hypothesis* that:

In case the safeguard clause is employed the targeted candidate country will speed up reforms and comply with the EU's conditions in order to receive the desired reward of EU membership.

Still next to these main hypotheses there are also alternative hypotheses that seek to explain the workings of EU conditionality.

The first *alternative hypothesis* contends that:

“The higher the economic exchange between the EU and a target country, the more likely conditionality will be effective.” (Engert, Knobel, Schimmelfennig (2003), p.501).

The second *alternative hypothesis* holds that:

“EU conditionality contributes to the strengthening of the civil society in the applicant state and therefore to the diffusion of European norms”; this in turn leads to compliance with the EU's rules. (Ianan (2010), p.5). This means more concretely that the civil society acts as a norm entrepreneur at the domestic level both by trying to influence governments to adopt the new norms conveyed by the EU and to adopt new norms via social learning which can take form e.g. in the case of the fight against corruption in protests or public awareness campaigns (ibid.).

Now after having laid down the most important theories of conditionality and compliance let us turn to the methods section of this thesis.

4. Methods:

In order to answer my research questions I will make use of a comparative case study in which it will be made clear how the different factors or rather variables that are said to influence compliance - such as positive and negative conditionality, size, strength, credibility and determinacy of conditionality, the size of national adoption costs and the safeguard clause have an impact on conditionality, convergence and rule transfer and ultimately compliance of the candidate states.

In my research in each case I deal with the dependent variable is going to be compliance and the kind of conditionality or rather the factor influencing compliance is the independent variable.

I will thus attempt to identify the causal process between the independent variable of conditionality and its variables and the outcome of the dependent variable, the compliance on the side of the candidate states of Bulgaria and Romania.

I will go event by event in history to show this and thus factor by factor influencing compliance, each time with reference to examples of the working of conditionality and its impact on compliance in the different EU membership candidates Romania and Bulgaria.

In other words I will attempt to map the process of rule adoption by way of conditionality which is supposed to lead to compliance and explore the extent to which it fits with the previously and theoretically derived expectations about the mechanism.

In the two countries of Romania and Bulgaria I will analyze and compare the workings of conditionality and hence brought about compliance or non-compliance with EU rules in the time before and after accession to the European Union; to be clearer in the pre- and post-accession phase.

Thus I will take the issue of fighting corruption and show how factors such as weak conditionality or domestic political costs have an impact on rule transfer or on the effectiveness of conditionality itself in order to bring about compliance in the time when pre-accession conditionality was used and in the time after accession when the EU cooperation and verification mechanism was being employed.

Moreover I will take events in time and try to show if conditionality had an impact on the outcome of compliance and I will additionally take the regular and verification reports to see if compliance was high or not and if by any chance the encountered level of compliance can be linked back to EU conditionality.

To clarify this I will select a class of events and focus on the aforementioned independent variable of factors influencing the compliance in order to find casual explanations for the working of conditionality. I will furthermore test my hypotheses in the comparative case study and as mentioned try to find explanations for the series of events that produce a certain outcome like for example convergence with the EU's conditions or in other words compliance. This is a process of tracing whether the intervening variables between the hypothesized outcome of convergence or non-convergence predicted by the earlier mentioned theories and hypothesis actually takes place. The goal in this is to find out explanations for the historical outcomes in which conditionality had a part.

In order to do this a deductive course of reasoning will be used in which the theory and hypotheses come first and then an observation takes place in each cases study so as to reject or confirm them.

Moreover as mentioned already order to measure the level of compliance with the EU's rules concerning the fight against corruption in Romania and Bulgaria I will analyze the regular reports of 2001 and 2002(pre-accession phase) for both countries as well as the verification reports from 2007 and 2008 (post-accession phase). This should help in determining if compliance changed before and

after accession to the European Union. The question is are these reports are true representation of reality or possibly subject to bias because they were written by the Commission that could possibly view the achievements by Bulgaria and Romania as not sufficient e.g. because they have always been laggards or because they generally feel that what these two states did on the fight against corruption does not live up to their standards. There is of course no way to know for certain and the Commission's reports should be viewed and regarded as impartial. If however this were true it would affect the findings in a way that maybe positive developments on the side of Bulgaria and Romania are not stressed enough and one would have to draw the conclusion that EU conditionality works less well. Yet, because this cannot be in the interest of the EU rule this out. A way to know if the Commission's reports were really impartial would be to ask the policy makers of the two states in question if they think that they have been treated fairly, but this also bears the danger of bias and it would go beyond the scope of this bachelor thesis

Virtues of this case study and process tracing approach are that I can find out if a variable has an impact on the workings of conditionality and consequently compliance and I can furthermore compare compliance over time in order to be able to make inferences about the workings of conditionality.

An obvious limit to my study which is due to the research design is however that the research only deals with one policy field out of many, fight against corruption, and that it only deals with two candidate states out of the many states in the EU enlargement round of 2005/2007. Therefore generalization is restricted.

The countries I chose for my comparative case study are Romania and Bulgaria from the 2007 enlargement round of the European Union. These two countries are chosen because they have been commonly described as the two laggards of the enlargement to the EU and thus have allegedly only been brought on the path to accession because of EU conditionality. By choosing these countries I try to find out the most recent effects and workings of conditionality and hope to maybe be able to give some advice for current or still to come processes of accession to the EU. This happens so as to answer how democratic conditionality works and under which conditions it can be found to be effective. The policy field I chose in order to analyze the effects of conditionality and the level of compliance is the fight against corruption in the years 2001, 2002, and 2007 and 2008.

This selection of the candidate countries of Romania and Bulgaria who as previously mentioned were the laggards of EU reforms most likely influences my results in the way that I will see no compliance or inconsistent compliance and possibly bad results of compliance induced by conditionality.

Moreover are these only two out of several states that acceded to the EU and thus generalization will be limited.

Concerning data collection it is pretty clear that only qualitative data and no quantitative data will be used in order to examine the research questions of what conditionality and compliance are, how it works, what leads to compliance and what factors influence it and other questions named above.

In order to achieve results concerning compliance the comparative case study outlined above will draw on journal articles in which compliance is examined and these will be used to refute or confirm my hypothesis. Moreover I will make use of the Commission's regular reports and verification reports from 2001, 2002 and from 2007 and 2008 as explained earlier.

After having explained the methodology of the research of this bachelor thesis let us turn to the empirical evaluation of the regular and verification reports.

5. Pre-accession phase – Conditionality and compliance in Bulgaria and Romania

As has been mentioned before the main research question is: Which policy instruments of the EU lead to compliance of the EU membership candidate states with the EU's conditions? Simplified the main theoretical explanations would be that positive and negative conditionality lead to compliance. Further explained there are several ways that conditionality is said to be more effective. For one the rules that

need to be fulfilled in order to receive a certain reward such as membership are to be determinate and threats and promises credible. It is also assumed that the safe guard clauses employed against candidate states will speed up reforms and compliance with the EU's conditions. Moreover there are alternative explanations like a high rate of economic exchange which is said to have a beneficial impact on rule compliance just like a strengthened civil society by means of diffusion of European norms.

What I expect to find out is that indeed these aforementioned factors have an impact on rule compliance, yet the strength is still to be determined, and that the instrument of reports as a means of conditionality will actually contribute to rule compliance of the targeted states of Bulgaria and Romania.

When one talks about the case of Bulgaria and Romania lagging behind in meeting the EU accession criteria one has to consider that from the very start they were considered unlikely cases for deep and fast reforms in which powerful veto players like the countries presidents and institutional structures hindered these reforms in the sector of fighting against corruption (Bechev & Noutcheva (2008), p.114). Only the EU's leverage then helped to explain why the two laggards in the end succeeded in "breaking the vicious circle of semi reforms and in ultimately qualifying for EU membership" (ibid.). It is also highly noteworthy to take into account that Bulgaria and Romania belonged to those countries that did not start reforming in an honest way before they were sanctioned by exclusion effects of the EU's conditionality machine (ibid., p. 119,120). In getting Bulgaria and Romania on their way to membership the EU devoted a lot of formerly unprecedented attention to the problem of corruption in these two states and faced a complex challenge in using its various system of carrots and sticks, in other words positive and negative conditionality to bring about reforms in the sector of corruption (Ivanov (2010), p.210). Things even went so far that a safeguard clause was included in the accession treaty which allowed the European Union to postpone accession of Bulgaria and Romania by one year in case they failed to tackle the issue of corruption satisfactorily (Ivanov (2010), p.211). Also following accession the EU's Commission reserved the right for itself to monitor Bulgaria and Romania in the fight against corruption and organized crime and to possibly invoke safeguard measures against them (Trauner (2009), p.1).

Therefore this paper is going to examine and analyze the process of how EU conditionality brought about reform and how it lead to changing conditionality levels in these two countries in the time before and after accession.

In the pre-accession time from 1997-2004 the European Commission had progressively specified and tightened its conditions for Bulgaria and Romania and it was clearly not impressed by the commitments these two states had made on paper and by their adoption of new laws (Bechev & Noutcheva (2008), p.120). Thus, the EU made further use of its monitoring capacities and criticized institutional practices of Bulgaria and Romania as well as it demanded improvements in the quality of governance and the rule of law (ibid., p. 121). Specifically the Commission made use of political conditionality concerning Bulgaria and Romania by monitoring the reform process through its regular reports which criticized and identified as well as demanded results in reducing the level of corruption in the state structures in both states (ibid.).

In 2004 then Bulgaria and Romania were left out of the so called 'big bang' enlargement which on the one hand was supposed to embarrass them in public and on the other hand was meant to motivate them for serious efforts of reform (ibid., p. 123).

On 15 June 2004, Bulgaria completed the accession negotiations and by December 2004, the Romanian government also provisionally closed all *acquis* chapters (ibid., p. 124). The Brussels European Council of 16-17 December 2004 then confirmed the accession date of 2007 for Bulgaria and Romania while stressing the conditional nature of this commitment and it specified that the necessary reforms of the two countries would still have to be completed by 2007 (ibid.).

However did Bulgaria and Romania not only not qualify for enlargement in 2004 but in 2005 they also became subject to closer conditionality so that safeguard clauses were operated against them after the entry negotiations were concluded (Pridham (2007), p. 1 and Official Journal of the European Union, L157/29 ,p. 13)As a condition for allowing entry in 2007 the EU introduced a new sanctions regime which allowed for a one year postponement of accession in case obligations were not implemented(*ibid.*). This approach then provided for much tighter provisions, benchmarking and a much easier procedure for interrupting negotiations (*ibid.*, p. 4). This safeguard clause was an unprecedented extension of conditionality beyond the end of the negotiations intended to preserve leverage on the part of the EU to maintain pressure even after the accession treaty is signed (*ibid.*, p.5). In addition to that did the treaty with Bulgaria and Romania contain specific safeguard clauses in areas such as the economy and justice and home affairs which allowed the Commission to suspend certain benefits of membership up to three years after the accession (Bechev & Noutcheva (2008), p. 125).

Even if we go further back in time corruption at different levels has always been one of the key issues faced by Bulgaria and Romania in the transition period and scandals involving corruption in high places has been common in both countries (*ibid.*, p.135).

In Bulgaria in 1999-2001 the then ruling UDF fell apart after different factions traded accusations of bribery that were mainly connected to the ongoing privatization process and Prime Minister Kostov was pitted against several of his ministers and President Petar Stoyanov who came from the UDF himself (*ibid.*, p.136). Thus, fighting corruption had high domestic political costs for the government. The Saxe-Coburg-Gotha government of Bulgaria did fairly better even though major scandals e.g. involving large infrastructure projects were not rare (*ibid.*).

In Romania the situation was quite similar. In 2003 three ministers, including the Minister for European integration, Hildegard Puwak, who was accused of embezzling EU money, resigned (*ibid.*) Moreover did a contract worth €2 billion awarded by the PSD government to the American Bechtel cooperation in contravening EU tendering rules result in a massive domestic uproar (*ibid.*). This so called high level corruption was, yet, only one part of the problem since citizens in Bulgaria and Romania expressed concern about petty corruption in governmental agencies, the health service and the police (*ibid.*).

Therefore the EU put considerably strong pressure on both countries in the form of regular reports and top EU civil servants who attacked again and again ineffectiveness of the state to limit corruption at various levels, including the judiciary and the public administration so as to take more serious measures to fight corruption (*ibid.*, p.137)

In the 2001 Regular Report on Bulgaria's progress towards accession it can be read that while Bulgaria made some improvements since the last year corruption continued to be a very serious problem and one of the main problems facing Bulgarian society (SEC (2001) 1744, p.19). It was still unfortunately seen as an efficient means of addressing private problems while at the same time the Commission noted that there was a decrease in public acceptance of corruption in civil society which was active in raising awareness of corruption and putting it on the political agenda (*ibid.*). The new government of 2001 had made a commitment to combat corruption but corruption remained a serious obstacle to business development and the investment climate (*ibid.*). A positive development was however the adoption of the national Strategy for Combating Corruption which had the goals of creating an institutional and legal environment which would curb corruption, anti-corruption reform in the judiciary, curbing corruption in the economy and ant-corruption co-operation between the government institutions, non-governmental organizations and the mass media (*ibid.*). Yet, the Commission also noted that while the legal framework for combating corruption was coming into place, enforcement of the legal framework was still a problem and there was not yet sufficient focus on preventing corruption so that a Code of Ethics for Civil Servants had to be approved and new Political Parties Act came into force which introduced clearer rules for financing political parties (*ibid.*).

Therefore one can say that even though the Commission had put pressure on Bulgaria by means of progress reports and even though there were some positive developments like the adoption of the national strategy for combating corruption overall compliance in the field of fighting corruption was inconsistent and EU conditionality could only partly achieve progress in this area for the time of 2000 till 2001. What can be seen also is that the civil society's acceptance of corruption decreased and turned into awareness campaigns putting corruption on the political agenda which may be related to the progress reports of the EU's Commission also, yet there is no certain link between the two. Thus, one cannot refute nor confirm the alternative hypothesis that *"EU conditionality contributes to the strengthening of the civil society in the applicant state and therefore to the diffusion of European norms"*; *this in turn leads to compliance with the EU's rules.* (Ianan (2010), p.5). We can however look for signs in the next progress report of 2002 that conditionality had an impact on civil society and civil society in turn had an impact on the government's policy in the fight against corruption.

In Romania's Regular Report on Progress towards accession the Commission noted concerning anti-corruption measures that "despite a general recognition of the seriousness of this problem by the government there has been no noticeable reduction in levels of corruption and measures taken to tackle corruption have been limited" (SEC(2001) 1753, p.21). Moreover did the Commission negatively note that even though the General Prosecutor's office was established in October 2000 it had never been functional due to a lack of staff and equipment (ibid.). In addition to that was the co-ordination between the various bodies that are charged with tackling organized crime and corruption still a problem and administrative changes had not led to any improvement (ibid.). Yet, there were also positive developments concerning the fight against corruption like the adoption of an ordinance in April 2001 which introduced public procurement procedures and established the right to appeal against the award of public contracts (ibid., p.22). In conclusion, and with the important exception of public procurement legislation, there has been no substantial progress in the fight against corruption in Romania since the report of 2000 and conditionality obviously could not induce enough or consistent improvements in the fight against corruption.

This perception was shared by many Romanians was however that what the Romanian government did were only structures that were meant to demonstrate to the EU that something was being done ((Bechev & Noutcheva (2008), p. 137). Along with this they pointed out that only a handful of junior figures had been convicted of corruption due to the anti-corruption measures employed (ibid.). The same perception was being shared by the EU representatives assigned to Bulgaria and Romania so that in its 2005 regular report the Commission stated that most indictments concerned business people and not governmental officeholders or even top-ranking civil servants (ibid.).

What brought about change in this matter in Romania was the victory of the centre-right opposition in late 2004 which created new momentum for reform (ibid.). Accordingly did the new government in 2005 streamline institutions, assign more clearly their tasks and it abolished the immunity from criminal prosecution which was until then enjoyed by former ministers (ibid.). 137

Bulgaria on the other hand did not undertake major institutional changes but concentrated on improving legislation (ibid.)

This can be seen in the 2001 regular report on Bulgaria's progress towards accession. Moreover did the Bulgarian Parliament in 2003 amend its Civil Service Law to add provisions on conflict of interest and disclosure of assets just like Romania did at about the same time (ibid., p.138). In 2005 then it also passed a new law on "political parties requiring them to list their big donor" which was a measure that Romania had already introduced in 2003.

In the Bulgarian regular report on its progress towards accession from 2002 the Commission positively mentions that good progress had been made with the adaption of an Action Plan for Implementation of the National Anti-Corruption Strategy (SEC(2002) 1409, p.26). A further good effort was the set up of a committee to coordinate activities in the fight against corruption (ibid.). The overall strategy to

combat corruption is multifaceted; like this financial and fiscal control should be improved, customs agency improved, and anti-corruption measures should be implemented which related to the judicial system (ibid.). Moreover did the Bulgarian government in 2002 aim at increasing transparency and at simplification of procedures (ibid.). However surveys indicated that at the time at which the regular report was written corruption remained a serious problem (ibid.). The public for example listed corruption as one of the most serious problems facing Bulgaria. Therefore one can again say that compliance with the EU's rules concerning the fight against corruption was inconsistent and that conditionality if assumed to have an impact through the previous regular report did only have a limited impact on Bulgaria's policy changes in the fight against corruption. Furthermore did the civil society judging from the progress report not have any further impact on the government's anti-corruption policy

In Romania's case the content of the Commission's regular report on progress towards accession was quite similar. Here surveys indicated that corruption remained a large and widespread as well as systemic problem in Romania that largely remained unresolved (SEC(2002) 1409, p.26). Law enforcement remained weak and institutional structures had been created but were not yet fully operational (ibid.). Furthermore did independent observers conclude that there had been no noticeable reduction of corruption in during the reporting period (ibid.). Important developments were the adoption of the National Plan for Prevention of Corruption which was adopted in October 2001 along with the National Programme for the Prevention of Corruption which both established target dates for the ratification of international legal instruments relation to the fight against corruption, aimed to complete the existing legal framework and set out plans for elaborating sectoral strategies for fighting corruption and promotion of Romania's active participation in international anti-corruption programmes (ibid., p. 27). A major institutional development over the reporting period was the setting up of the National Anti-Corruption Prosecutor's Office (ibid.). However, even though there were some positive developments no progress had been made in making the funding of political parties more transparent or in addressing potential conflicts of interest of politicians and civil servants (ibid., p. 28). In addition to that was it the case that the concept of criminal liability of legal persons still needed to be introduced into Romanian Penal Code and further secondary legislation needed to be fully implement the 2000 anti-corruption law (ibid.). Thus, overall compliance with the EU's rules concerning anti-corruption measures appears inconsistent again till bad. While corruption remained large, widespread and a systemic problem the government tried to remedy this problem by adopting the national plan for prevention of corruption and the national programme for prevention of corruption as well as the setting up of the national anti-corruption prosecutor's office. However there had been no noticeable reduction in corruption and thus EU conditionality must be regarded as a failure in this case.

Still what really counted for the EU's Commission was the determination to prosecute high-profile corruption cases (ibid.).

A big case in Romania was that in 2006 the ex-Prime Minister Nastase was brought to court over charges of unlawful enrichment and bribery (ibid.). In Bulgaria an important development was that the Prosecutor-General Boris Velchev managed to push forward corruption indictments against former colleagues on grounds of obstructing justice and against top managers of public utility companies (ibid.). In addition to that did he obtain the lifting of immunity of several parliamentarians (ibid.).

Another important development at the time was the emergence of vocal civil society actors who are active in monitoring and advocacy campaigns against high-profile corruption (ibid.). An example of this is the Coalition 2000, an association of Bulgarian NGOs and media established in 1997 and also the Coalition for Clean Parliament in Romania which blacklisted more than 200 candidates involved in corrupt activities prior to the 2004 elections (ibid.). Therefore it appears that the alternative hypothesis that *EU conditionality contributes to the strengthening of the civil society in the applicant state and therefore to the diffusion of European norms*"; this in turn leads to compliance with the EU's rules. (Ianan (2010), p.5) has found some ground and seems plausible.

All of this does not necessarily mean that the EU could claim success in bringing about change in the fight against corruption in Bulgaria and Romania and it is still doubtful if the EU-driven measures have been effective in the short term. However did the European Commission conclude in its final report before accession in September 2006 that corruption remained a problem in both states in local government and at the borders of Bulgaria (ibid.).

“ The transition of Bulgaria and Romania illustrates the importance as well as the limits of the EU’s leverage on domestic governance in candidate countries of the CEEC” (ibid., p. 139) and this is exactly where the EU as a factor becomes important. On the one hand we have domestic factors which can account for the poor performance of Bulgaria and Romania in comparison with other candidate states but on the other hand there is the EU leverage which helps to explain how the two laggards of EU enlargement could move out of the post-communist limbo and qualify for EU membership (ibid., p. 140). Since 1997, the EU had stepped up pressure on all candidate states and was especially strict with Bulgaria and Romania and sanctioning them twice for underperformance by way of exclusion, thus raising the cost of nonreform, depriving them of interim benefits but also in this way pushing them towards new reforms so that they could in the end become member states (ibid.).

Preliminary summary of findings:

So far concerning the pre-accession phase there are several points that are worth noting. First of all did the Commission make use of political conditionality concerning Bulgaria and Romania by monitoring the reform process through its regular reports which criticized and identified as well as demanded results in reducing the level of corruption in the state structures in both states and safeguard clauses were operated against the two states after entry negotiations were concluded. The EU put considerably strong pressure on both countries in the form of regular reports and top EU civil servants who attacked again and again ineffectiveness of the state to limit corruption at various levels, including the judiciary and the public administration so as to take more serious measures to fight corruption

In 2001 Bulgaria made some improvements but corruption continued to be a very serious problem. While there were some positive developments like the adoption of the national strategy for combating corruption overall compliance in the field of fighting corruption was inconsistent and EU conditionality could only partly achieve progress in this area for the time of 2000 till 2001.

In 2002 there had been despite a general recognition of the seriousness of this problem by the government there has been no noticeable reduction in levels of corruption and measures taken to tackle corruption have been limited and there was no substantial progress in the fight against corruption in Romania since the report of 2000 and conditionality obviously could not induce enough or consistent improvements in the fight against corruption.

Furthermore it is noteworthy that compliance with the EU’s rules concerning the fight against corruption was inconsistent and that conditionality if assumed to have an impact through the previous regular report did only have a limited impact on Bulgaria’s policy changes in the fight against corruption. In addition to that did the civil society judging from the progress report not have any further impact on the government’s anti-corruption policy.

For Romania independent observers concluded. that there had been no noticeable reduction of corruption in during the reporting period.

Overall compliance with the EU’s rules concerning anti-corruption measures appears inconsistent again till bad. While corruption remained large, widespread and a systemic problem the government tried to remedy this problem by adopting the national plan for prevention of corruption and the national programme for prevention of corruption as well as the setting up of the national anti-corruption prosecutor’s office. However there had been no noticeable reduction in corruption and thus EU conditionality must be regarded as a failure in this case.

Moreover did Bulgarian NGOs blacklist more than 200 candidates involved in corrupt activities prior to the 2004 elections (ibid.). Therefore it appears that the alternative hypothesis that *EU conditionality contributes to the strengthening of the civil society in the applicant state and therefore to the diffusion of European norms*; this in turn leads to compliance with the EU's rules. (Ianan (2010), p.5) has found some ground and seems plausible.

Now after this recapture of the findings of the pre-accession phase of Bulgaria and Romania let us turn to the post-accession phase.

6. Post-accession phase - Conditionality and compliance in Bulgaria and Romania:

After accession to the European Union Bulgaria and Romania were the only two member states where the Commission kept for itself the right to monitor key reforms in areas such as the fight against corruption following the accession (Trauner (2009), p.1). Moreover the Commission preserved for itself the right to invoke so-called safeguard measures against Bulgaria and Romania (ibid., p. 2). This incentive-based governance model of EU accession, however, gives a rather pessimistic outlook for compliance with EU law in a post-accession setting (ibid., p. 3). In the time after the accession to the EU it is expected that since the incentives for the now former candidate states, like EU membership are missing the implementation process of EU policy should significantly slow down or even stop (ibid.). Steunberg and Dimitrova showed in a similar manner that EU conditionality loses its effectiveness once the date for accession is set which in turn can lead to “potential problems with the transposition of EU directives just before and after accession” (ibid.). Thus, with regard to these assumptions the question is whether or not compliance with EU law has been reduced now that Bulgaria and Romania shifted from being candidate states to member states with a post-accession context of fulfilling the EU's rules (ibid.). What is more is that the assumption that the extension of conditionality beyond accession may indicate that post-accession compliance with EU law may not decrease in Bulgaria and Romania (ibid., p. 6). Experience shows that when the EU called for enhanced reform efforts the two countries reacted to it and whenever they felt the so-called stick of conditionality they accelerated reforms and each time the EU penalized them for lagging behind the other candidate states their governments quickly responded by revising reform strategies and making pledges for additional measures (ibid., p. 5). Like this the two countries gradually moved closer to the objective of joining the EU (ibid.). Therefore George Pridham supports the thesis that “extended conditionality could be significant in compelling further progress. As the poorest member state, Romania would find the blocking of EU funds a painful experience” (ibid, p.6). This argument goes along with Levitz and Pop-Eleches argument that the back-sliding hypothesis – that Bulgaria and Romania have abandoned or reversed the reforms they introduced in order to qualify for EU membership – does not hold (Levitz & Pop-Eleches (2010), p. 467). Levitz and Pop-Eleches assert that if the economic costs of non-compliance are relatively high then one should expect the threat of sanctions against the governments of Bulgaria and Romania to have a much greater effect since they would deprive the governments of important additional revenues and because this could be used by the domestic opposition to show the real costs of the government's policy failure (p.471). In addition to this do Levitz and Pop-Eleches allege that from a leverage perspective the EU seems to be ideally positioned to influence political decisions in the new member states, because Bulgaria and Romania are significantly poorer than the EU average (p. 471). Therefore it appears that Bulgaria and Romania are highly dependent on EU financial support and this strong compliance incentive should be important against the backsliding tendencies as long as the EU willingly monitors implementation and sanction non-compliance with regard to the fight against corruption in these two states (Levitz & Pop-Eleches (2010), p.472).

Overall it however was the case according to Ivanov that after accession Romania regressed from its previous achievements against corruption and Bulgaria remained reluctant to prosecute senior officials or confront organized crime (p.210). Yet, the European Commission continued its monitoring activities and for example monitored the action plans drafted by Bulgaria and Romania, listing detailed anti corruption measures (ibid., p.210,211). Under the so called ‘cooperation and verification

mechanism' which was intended to ensure compliance of both countries with their commitments reports were continuously published on Bulgaria and Romania (ibid., p.215).

In Bulgaria the Commission pressured for results in the fight against corruption and it continued to impact domestic politics, yet, not sufficiently enough to achieve a breakthrough (ibid). Then as in January 2008 two road agency officials were arrested for bribery in Bulgaria the Commission for the first time let Bulgaria feel the stick and it used negative conditionality in cutting of Bulgaria's funding for road construction (ibid., p.216). Also it continued to freeze further Phare funding about concerns about corruption at two agencies within Bulgaria's ministries of finance in late February of 2008 so that for the first time after accession Bulgaria could experience what negative costs non-compliance with the EU's rules on the fight against corruption feels like (ibid.). In March then the freezing of funding was being extended to the SAPARD agricultural funds, which raised the total frozen resources to over 30 million Euros (ibid.). Further measures of the European Commission due to not complying with the EU's rules concerning anti-corruption measures included the Commission's decision of November of 2008 to revoke the accreditation of two Bulgarian government agencies from disbursing Phare funds which resulted in the irreversible loss of 220 million Euro of pre-accession funding and a further 340 million Euro remained frozen because the Commission charged that Bulgaria had failed to follow up to its commitments (ibid.). All in all the Commission suspended 560 million Euro from the Phare program, 121 million Euro from the SAPARD program and 144 million Euro from the ISPA program, resulting in a total of 825 million Euro of suspended assistance to Bulgaria (Trauner (2009), p.10).

The loss of EU funds marked a low in the EU-Bulgaria relations which led to Bulgaria stepping up its reforms (ibid). In an interim report of 2009 it was being noted that Bulgaria had made some significant developments in combating corruption and this progress was confirmed in July 2009 when the Commission noted that there has been a positive change of attitude and a new momentum of the country's efforts to improve combating corruption (ibid.). This shows that the hypothesis that "*the likelihood of rule adoption increases with greater credibility of conditional threats and promises*" (Schimmelfennig & Sedelmeier (2004), p.674) is true and it furthermore also proves the hypothesis that *In case the safeguard clause is employed the targeted candidate country will speed up reforms and comply with the EU's conditions in order to receive the desired reward of EU membership.* Yet is also seems to prove the alternative hypothesis that "*The higher the economic exchange between the EU and a target country, the more likely conditionality will be effective.*" (Engert, Knobel, Schimmelfennig (2003), p.501).

In the case of Romania the Commission was more satisfied with the results that were produced (MEMO/07/262). In the first report published in July 2007 the Commission noted that the Romanian government is committed to cleansing the system of corruption and that in all areas the Romania authorities demonstrate good will and determination (ibid.). What was also positively mentioned by the Commission was the Romania fight against local-government corruption, yet it also pointed to shortcoming in the judicial treatment of high-level corruption (ibid.). All in all the Commission concluded that in the first six months of after accession Romania has continued to make progress in remedying weaknesses that could prevent an effective application of EU laws and policies and programs (ibid.). In a third report the Commissions assessment remained positive, yet Romania was encouraged to do more in several areas to show that investigations into corruption lead arrests, prosecution and possibly depending on the court's judgment to convictions with dissuasive effect and seizure of assets (ibid.).

To sum up preliminarily one can say that the Commission's post-accession monitoring reports reflect that neither Bulgaria nor Romania were believed to have yet completed the until then unfinished preparations for EU membership (ibid., p.11).

The Commission's ability to freeze funds and the resulting embarrassment for the government can however be said to maintain a degree of conditionality (Ivanov (2010), p.217). However, Bulgaria

replaced frozen EU funds with its own resources which in a way created the impression that corruption was more tolerable at the expense of the Bulgarian taxpayers (ibid.).

For the governments of Bulgaria and Romania fighting corruption entailed high domestic cost of compliance e.g. in the form of cut funds, particularly in the case of Bulgaria, with no convenient predecessor to accuse of corruption (ibid., p.219). When after 1 January 2007, the European Union could no longer wield its most crucial weapon, the carrot of accession it retained its ability to embarrass Bulgaria and Romania through its critical monitoring reports or by freezing funds (ibid.). Still, Romanian reformists lost ground while Bulgaria continued to frustrate EU officials by tolerating high-level corruption against organized crime (ibid.). Thus the inconsistent till bad compliance seems to be able to be explained as well by the first hypothesis which states “ *The lower the domestic political costs of compliance for the target government, the more likely conditionality will be effective* ” (ibid., p. 499), because if just these domestic political costs in form of accusing politicians of its own government are high to the government it is understandable that at least at first there will be relatively few cases of for example high-level corruption brought to court.

In order to find out what the level of compliance of the two new member states of Bulgaria and Romania was shortly after accession two verification reports of the European Commission from 2007 and a year later from 2008 will be analyzed.

When Bulgaria joined the EU on 1 January 2007 special provisions were made to ensure that and support a smooth accession and to at the same time safeguard the proper functioning of the EU's policies and institutions (COM (2007) 377 final, p.2). In Bulgaria's case accession was especially accompanied by specific measures that were put in place to prevent or remedy shortcoming in several areas, among those the fight against corruption (ibid.). The Accession Treaty made clear that if there were serious shortcomings in the transposition and implementation of the acquis safeguard measures could be taken for up to three years after accession (ibid.). Therefore the Commission closely monitored the fight against corruption and organized crime under the Cooperation and Verification mechanism which should ensure that Bulgaria would be able to deliver on all the obligations as well as to benefit from the rights of membership (ibid., p.5). Overall it has been noted that Bulgaria “stepped up efforts at the highest levels in the fight against corruption and organized crime” (ibid.). While the Commission recognized these efforts it still saw the situation the way that still much remained to be done in 2007 (ibid.). According to the Commission deeply rooted problems like corruption “require the irreversible establishment and effective functioning of sustainable structures at investigative and enforcement level capable of sending strong dissuasive signals” (ibid.). In order to measure how well the fight against corruption went certain benchmarks against which the work of Bulgaria was measured were set up. Benchmark 4 dealt with the “Conduct and report on professional, non-partisan investigations into allegations of high-level corruption” and the “Report on internal inspections of public institutions and on the publication of assets of high-level officials” (ibid., p. 13). From the benchmark 4 report several items are taken to illustrate what has been done and what still needs to be done by the Bulgarian authorities in the fight against corruption. Multiple committees and the Council of Ministers and the Supreme Judiciary Council carry the responsibility of the fight against high-level corruption in the Bulgarian public institutions and an implementation programme to fight corruption has been adopted in the time following accession till June 2007 (ibid.). Yet, the Commission noted that this programme's implementation lacked clear lines of responsibility and an efficient coordination mechanism (ibid.). Moreover did it remain unclear whether measures to protect potential whistleblowers have been effectively implemented and thus more legislation was needed (ibid.). The Commission's overall verdict on benchmark 4 was therefore that “Overall, progress achieved in the judicial treatment of high-level corruption cases in Bulgaria is still insufficient” (ibid.). It therefore recommended “streamlining and coordinating the institutional set-up of bodies empowered to fight corruption” (ibid.). Benchmark 5 of the Commission's Report on Bulgaria from June 2007 dealt with taking further measures to prevent and fight corruption, in particular at the borders and within local government (ibid., p.16). Here it's been noted by the Commission that Bulgaria had successfully stepped up its efforts to curb corruption at some border stations and that it had increased the number of

preventive controls and sanctions (ibid.). In addition to that did the establishment of electronic payment systems and a system of random shifts at some border stations contribute to a decline of corruption measures (ibid.). Thus the Commission noted that this good practice should be extended and that the “specific training and corruption awareness measures aimed at local administration coupled with increased administrative transparency and simplification have started to produce results” (ibid.). Therefore the Commission’s judgment on benchmark 5 for Bulgaria was that “Overall, substantial progress has been achieved in preventing and fighting corruption at the border and within local government (ibid.). Thus it seems that EU conditionality could only partly induce compliance in Bulgaria for the time of one year after accession.

Now let us turn to the Commission report under the Co—operation and Verification Mechanism on Bulgaria from about a year later in July 2008 to compare the situation in the fight against corruption and to see if any further progress had been made or if compliance was for example inconsistent.

In the past year from June 2007 till July 2008 a state agency for national security has been set up to fight against corruption and organized crime and Bulgaria made progress on local corruption by introducing new administrative procedures, especially for the border police (COM (2008) 495 final, p. 3). Moreover did Bulgaria close down duty-free shops and duty free patrol stations which were allegedly focal points for local corruption (ibid.). However, did the Commission note that the fight against high-level corruption and organized crime is not producing enough results and allegations of corruption and fraud are affecting the delivery of EU financial assistance programmes (ibid., p. 4). What needed to be done from the point of view of the Commission was to substantially strengthen Bulgaria’s capacity to correctly manage EU funding which meant that several EU funding programmes had to suspend or freeze activities. It also negatively appeared in the report that procedural blockages, slow progress of cases through the judiciary, leaks of confidential information and alleged influence on the administration and judiciary were impeding the rapid and effective resolution of corruption and fraud cases (ibid.).

So all in all one can say for the time period of 2007 till the end of 2008 there has been mixed progress and inconsistent compliance in the new member state of Bulgaria. There were positive developments like the setting up of committees and plans to fight against corruption, but overall the results were insufficient from the point of view of the EU Commission. This can for example be attributed to the fact that in the fight against corruption are very indeterminate and countries’ have to act on their own initiative. There’s no blue-print of legislation for fighting corruption. This makes compliance difficult.

As with Bulgaria there were also special provisions made for Romania upon entering the EU on 1 January 2007 so as to facilitate and support a smooth accession and to at the same time safeguard the proper functioning of EU policies and institutions and the accession was also as in the case of Bulgaria accompanied by a set of specific measures which were put in place to remedy shortcomings in for example the area of the fight against corruption. Thus a Cooperation and Verification Mechanism was put into place which should ensure that Romania would be able to deliver on all the obligations as well as to benefit from the rights of membership.

The Commission states in the Verification report that the Romanian government is committed to cleansing the system of corruption and that in all areas the Romanian authorities demonstrated good will and determination (MEMO/07/262). Yet, there was still a clear weakness in translating these intentions into actions on the ground and while the Commission recognized the efforts of Romania much remained to be done (ibid.). It was important to the Commission that deeply rooted problems such as corruption require the irreversible establishment and effective functioning of sustainable structures at investigative and enforcement level which are capable of sending strong dissuasive signals (ibid.).

In the verification report on Romania from June 2007 there are two benchmarks which deal with corruption – benchmark 3 and benchmark 4 (ibid.). In benchmark 3 which deals with tackling high-level corruption it is being noted that there has been continued progress in the prosecution of high-level corruption cases and that the new specialized prosecution services for corruption showed a

positive track record concerning investigations and indictments for high-level corruption (ibid.). Yet, the Commission states that the rigour in prosecution was not being reflected in judicial decisions and that there are too many suspensions of penalties in cases of high-level corruption so that the attitudes among the judiciary towards dissuasive sentences of cases of high-level corruption needs to be clarified (ibid.). Overall, the Commission judged that the progress in the judicial treatment of high-level corruption was still insufficient (ibid.).

Benchmark 4 of the Verification report from June 2007 dealt with fighting corruption within the local government. Here it is positively being noted by the Commission that Romania has made progress with so-called flagship projects to raise public awareness on corruption such as the National Integrity Centre and in addition to that Romania organized several corruption awareness campaigns (ibid.). Moreover did the General Anti-corruption Directorate of the Ministry of Administration and the Interior take a number of pro active measures such as integrity tests and inspections and training programmes for public officials were organized just as preventive measures were established in areas such as health and education (ibid.). Therefore the Commission was content with the progress Romania had made against the benchmark of fighting corruption within the local government (ibid.).

Thus because on benchmark 3 there has been continued progress in fighting high level corruption, but the overall judicial treatment was insufficient and because on benchmark 4 it was positively being noted that Romania made progress with public awareness campaigns so that the commission was content with the progress against benchmark 4 one can say that Romania's track record in fighting corruption in 2007 and its compliance with the EU's rules in this field was all in all mixed.

Now let us turn to the Commission report under the Co—operation and Verification Mechanism on Romania from about a year later in July 2008 to compare the situation in the fight against corruption and to see if any further progress had been made or if compliance was for example inconsistent.

In the past year from June 2007 till July 2008 Romania took a number of steps to fight against high-level corruption (COM (2008) 494 final, p.3). The Public Ministry and the National- Anti Corruption Directorate established a good track record of prosecution of cases and started procedures for starting investigations on several high-level cases (ibid.). Moreover were more awareness campaigns held and Romania continued to introduce preventive measures to counteract local corruption and more specifically a corruption strategy to combat corruption in local public administration was adopted in June 2008 (ibid.). Yet, despite the good progress on the investigative side Romania can only show few tangible results in the fight against high-level corruption, because court sentences remain lenient and inconsistent and in addition to that have measures that could be taken to improve the way corruption cases are handled been delayed or not been started so that for example no real progress was made in ten key cases involving former ministers (ibid., p.4). Also, even though public awareness campaigns and other preventive measures had been carried out the Commission still felt that too few measures had been take in such areas as health and education where there are clear indicators for corruption (ibid., p.4). So, overall on can say that in the fight against high-level corruption and against corruption at the local level Romania's measures were not sufficient and compliance insufficient. What was positive however was that the Romanian government had launched a national strategy on counteracting local corruption in June 2008 which has the aim of developing a more transparent and efficient local administration (ibid., p.5).

Concerning the post-accession phase in Bulgaria and Romania there are some points worth noting.

It has been said that after accession Romania regressed from its previous achievements against corruption and Bulgaria remained reluctant to prosecute senior officials or confront organized crime. In Bulgaria the Commission pressured for results in the fight against corruption and it continued to impact domestic politics, yet, not sufficiently enough to achieve a breakthrough. As a means of negative conditionality the Commission suspended a total of 825 million Euro of suspended assistance to Bulgaria. The loss of EU funds marked a low in the EU-Bulgaria relations which led to Bulgaria stepping up its reforms. In addition to that the hypothesis that *“the likelihood of rule adoption increases with greater credibility of conditional threats and promises”* can be regarded as true as well

as there is proof the hypothesis which states that “ *In case the safeguard clause is employed the targeted candidate country will speed up reforms and comply with the EU’s conditions in order to receive the desired reward of EU membership*”. Yet, it also seems that there is proof for the alternative hypothesis that “*The higher the economic exchange between the EU and a target country, the more likely conditionality will be effective*”.

Overall it has been noted that Bulgaria stepped up efforts at the highest levels in the fight against corruption and organized crime. While the Commission recognized these efforts it still saw the situation the way that still much remained to be done in 2007. In the verification report of 2007 on Bulgaria the Commission noted that overall, progress achieved in the judicial treatment of high-level corruption cases in Bulgaria is still insufficient and that substantial progress has been achieved in preventing and fighting corruption at the border and within local government. Thus it seems that EU conditionality could only partly induce compliance in Bulgaria for the time of one year after accession.

Regarding Romania it is worth remembering that the Commission stated in its verification report that the Romanian government is committed to cleansing the system of corruption and that in all areas the Romanian authorities demonstrated good will and determination. Yet, there was still a clear weakness in translating these intentions into actions on the ground and while the Commission recognized the efforts of Romania much remained to be done. Still, overall, the Commission judged that the progress in the judicial treatment of high-level corruption was still insufficient and yet it was also content with the progress Romania had made against the benchmark of fighting corruption within the local government. Therefore one can say that Romania’s track record in fighting.

In 2008 then one can say that in the fight against high-level corruption and against corruption at the local level Romania’s measures were not sufficient and compliance insufficient.

So, if one compares the track record of Romania in the fight against corruption from the years of 2007 and 2008 one can clearly say that there have been attempts to make progress but overall compliance remained insufficient.

After having evaluated the empirical parts of this thesis the conclusion is this.

7. Conclusion

With the research of the bachelor thesis the goal was to find answers for the questions: What is political conditionality and what characteristics does it have? And: How does it work and under which circumstances and in which policy areas does it lead to compliance?

The answer is that by way of applying conditionality a social actor such as the EU uses reinforcement to change the behavior of another actor (ibid.). In other words: The EU offers and withholds carrots but it does not carry a big stick; its conditionality is mainly positive (Schimmelfennig (2010), p. 5). Reinforcement then is a form of social control, rewarding pro-social behavior and punishing anti-social behavior expecting that through this after a certain time the actor(s) which are subject to reinforcement will keep to pro-social behavior in order to further receive rewards and to avoid being punished (Engert, Knobel, and Schimmelfennig (2003), p. 469). One could also say that conditionality is aimed at inducing behavioral adaptation as instrumentally and strategically calculated reaction by the target government in response to external incentives (Freyburg & Richter (2008), p. 2). There are two kinds of rewards that the EU grants the candidate states: assistance and institutional ties of which the most important programs are Tacis and Phare, offering technical and financial assistance, institutional ties ranging from trade to cooperation agreements to eventually full membership and inclusion to the EU market and increasing participation in EU decision making (Engert, Knobel, and Schimmelfennig (2003), p. 469).

Political conditionality moreover refers to the political criteria of membership as well as to the way this instrument functions through deadlines, thresholds, and the practice of pressure from the EU such

as the safeguard clause (Anastasakis (2008), p. 367). Acquis conditionality then is concerned with the harmonization of the candidate states with the specific regulations, legislations, and treaties of the EU which is aimed at the technical preparedness of the candidate states as can be found in the third Copenhagen criteria which describes it as ‘the ability of the candidate countries to take on the obligations of membership including adherence to the aims of political, economic and monetary union’ (ibid.).

Negative conditionality is aimed at influencing an already existing situation such as trade regimes or diplomatic relations which is likely to be changed if the candidate country does not meet certain requirements (Veebel (2009), p. 209,210). Negative conditionality then implies that certain sanctions such as reducing, suspending or withdrawing or terminating a reward will be imposed unless the targeted state does comply with the criteria set by the EU (ibid.). Positive conditionality works the other way around. When the status quo does not satisfy one party (the imposing EU) it thus motivates the other actors (the candidate states) to change it (ibid.). The influence to change the status quo is usually based on the aforementioned strategy to provide incentives so that the targeted actors succeed in meeting the conditions (ibid.). Positive conditionality entails such measures as reducing trade barriers or providing financial aid (ibid.). It is moreover asymmetric by nature and is demanding of its pre-conditions, since it can only succeed in situations in which the awaited benefits are greater than the cost of political change (ibid.).

Moreover was the research of this bachelor thesis supposed to answer the main research question:

Which policy instruments of the EU lead to compliance with the EU’s conditions of the EU membership candidate states?

From the empirical part of the pre accession phase one can say that the regular reports show inconsistent compliance. In 2004 then Bulgaria and Romania were left out of the so called ‘big bang’ enlargement which on the one hand was supposed to embarrass them and on the other hand was supposed to lead them to speed up reforms

After accession it seems that the EU used mainly negative conditionality trying to embarrass the former candidate states of Bulgaria and Romania by way of verification reports and trying to show the negative developments which often times overshadowed the positive developments in the fight against corruption. The verification reports criticized and identified as well as demanded results reducing the level of corruption. The safeguard clause, a negative conditionality policy tool was employed against both, Bulgaria and Romania. It provided for much tighter provisions, benchmarking and a much easier procedure for interrupting negotiations. This safeguard clause was an unprecedented extension of conditionality beyond the end of the negotiations intended to preserve leverage on the part of the EU to maintain pressure even after the accession treaty is signed. The safeguard clauses allowed the Commission to suspend certain benefits of membership for up to three years after accession. Moreover were several funds cut for Bulgaria which is a clear measure of negative conditionality. In Bulgaria the Commission pressured for results in the fight against corruption and it continued to impact domestic politics, yet, not sufficiently enough to achieve a breakthrough. All in all the Commission concluded that in the first six months of after accession Romania has continued to make progress in remedying weaknesses that could prevent an effective application of EU laws and policies and programs (ibid.).

To sum up one can say that the Commission’s post-accession monitoring reports reflect that neither Bulgaria nor Romania were believed to have yet completed the until then unfinished preparations for EU membership

Compliance in the field of fighting corruption was over the time period 2000 to 2001 and over the time period 2007 to 2008 in both states inconsistent. Some good progress was made in different fields, but overall progress has been limited and commission judgment is often times negative or mixed.

Fight against corruption rules are very indeterminate and country’s have to act on their own initiative. There’s no blue-print of legislation for fighting corruption. This makes compliance difficult. Therefore one advice to the Commission is that rules by EU should be more determinate and clearer.

Other than that there were several hypotheses that in the course of the study could be either confirmed or partly be confirmed.

“ *The lower the domestic political costs of compliance for the target government, the more likely conditionality will be effective* ” “ was confirmed just as well as the hypothesis that “ *the more determinate rules that need to be fulfilled in order to receive rewards are the more effective conditionality and the rule transfer will be* ” was confirmed by inference, meaning that one could tell that if the rules in the fight against the corruption had been more determinate and clearer they would have been applied in implied better. From the cutting of funding against Bulgaria in several occasions one could see that afterwards the fight against corruption picked up momentum. Therefore one can declare the hypothesis that “ *the likelihood of rule adoption increases with greater credibility of conditional threats and promises* ” to be confirmed. From the material in the empirical study part it is plain to see that the hypothesis *In case the safeguard clause is employed the targeted candidate country will speed up reforms and comply with the EU's conditions in order to receive the desired reward of EU membership* ” is confirmed.

In addition to that can one say that the hypothesis that “ *The higher the economic exchange between the EU and a target country, the more likely conditionality will be effective* ” can be partly confirmed, for example also from the fact that the Commission cut funding to Bulgaria and Bulgaria afterwards sped up reforms.

The *alternative hypothesis* which holds that: “ *EU conditionality contributes to the strengthening of the civil society in the applicant state and therefore to the diffusion of European norms* ”; *this in turn leads to compliance with the EU's rules* ” can be partly confirmed by the empirical findings section since civil society organizations in both Romania and Bulgaria contributed to awareness rising of corruption, but one cannot be sure if this was due to EU influence.

Another possible alternative explanation for compliance of Bulgaria and Romania with the EU's rules concerning the fight against corruption which however would in its entirety go beyond the scope of this bachelor thesis goes as follows. For one Levitz and Pop-Eleches see both travel and work abroad as a factor for compliance and view it as a strong predictor of political reform progress in the new CEEC member states (Levitz & Pop-Eleches (2010), p.473). According to Levitz and Pop-Eleches international exposure was particularly strong for rule of law and corruption and Bulgaria and Romania had more than twice as large a proportion of their population living in the EU-15 as the 2004 entrants (e.g. their July 2008 survey indicates that almost 11% of Bulgarians had worked abroad at some point of time in the post communist period) (ibid., p.473,474). Levitz and Pop-Eleches also assert that as the temporary migrants return home they interact with family and friends and are likely to shape the political culture in positive ways, having experienced higher standards of governance and corruption control in the Western EU states (ibid., p.475). Thus they also bring home higher expectations for their own governments and e.g. 35% of Bulgarians who had travelled to the West identified corruption as their country's most important problem whereas on the other hand only 22% of those who had not traveled to the West had the same concern (ibid.). Moreover did Levitz and Pop-Eleches assert that it appears that exposure to the West brings about greater dissatisfaction with the status quo and also a greater willingness to engage in the political process to bring about change.

All in all one can say that in the case of Bulgaria and Romania political conditionality by means of regular reports and verification reports, safeguard clauses and pressure from the Commission has produced mixed results with overall inconsistent compliance with the EU's rules in the field of the fight against corruption. The use of negative conditionality by means of cutting funding or the consistent pressuring by means of reports can be effective tools to bring about compliance just like the safeguard clauses. Therefore the advice to the Commission would be to keep doing what it did with

regard to inducing compliance in candidate and former candidate states after accession, and to especially keep using the safeguard clauses after accession as well in order to keep conditionality on a high level.

An obvious limit to my study which is due to the research design is however that the research only deals with one policy field out of many, fight against corruption, and that it only deals with two candidate states out of the many states in the EU enlargement round of 2005/2007. Therefore generalization is restricted.

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