

Bulgaria and Romania's EU Accession: Lessons Learned

Dimitar Bechev



Bulgaria and Romania's EU Accession: Lessons Learned

Dimitar Bechev

© Copyright 2020. European Movement Albania (EMA) and Hellenic Foundation for European & Foreign Policy (ELIAMEP).
All rights reserved.

This paper was prepared by: **Dr. Dimitar Bechev**

This paper is prepared as a result of the project “Deliberating socio-economic impact of EU Integration-Albania and shared regional experiences“ being implemented by EMA in partnership with ELIAMEP, Greece and with the support of Central Finance and Contracting Unit, Ministry of Finance and Economy in Albania under IPA funds of European Union

ISBN: 978-9928-131-96-1



REPUBLIKA E SHQIPËRISË
MINISTRIA E FINANCËVE DHE EKONOMISË
DREJTORIA E PËRGJITHSHME E FINANCIMEVE DHE KONTRAKTIMEVE
PËR FONDET E BE-SË, BB-SË DHE DONATORËVE TË TJERË
DREJTORIA PËR MENAXHIMIN E PROJEKTEVE IPA

Disclaimer:

“This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of European Movement in Albania, of Hellenic Foundation for European & Foreign Policy, and of the author(s) and can in no way be taken to reflect the views of the European Union.”

EXECUTIVE SUMMARY

Bulgaria and Romania's accession to the EU holds lessons for the countries of the Western Balkans. The road to Europe had a variable impact. It helped both countries implement market reforms which put them on a long-term growth trajectory. At the same time, the fight against corruption and the overhaul of the judicial systems delivered only partial results. In Romania, the National Anticorruption Directorate succeeded in holding to account high-profile politicians and business people. In Bulgaria, by contrast, opposition from within the judiciary thwarted any meaningful changes. The EU-instituted Cooperation and Verification Mechanism (CVM) intended to incentivize those two countries to carry further their reform efforts after 2007 proved inefficient. The paper argues that domestic politics play a decisive role with regards to EU conditionality's success rate. It also spells out several policy recommendations for the EU, the governments and civil society in the Western Balkans: (1) apply maximum pressure during the accession talks; (2) make sure the judiciary is free from political control but also accountable; (3) use EU funds as both a carrot and a stick in enforcing compliance ; (4) empower civil society and independent media during the membership talks.

ANALYSIS

Bulgaria and Romania joined the EU in 2007 yet neither the road to membership nor indeed the years that followed went by smoothly. Accession gave a boost to political, economic and institutional reform but the EU's much debated transformative power worked unevenly.¹ The two neighbours have failed to close the gap with their peers in Central Europe and the Baltics. The sense of unfinished business has been at the root of the Cooperation and Verification Mechanism (CVM) instituted by the EU. It puts Bulgaria and Romania in a separate basket from all other member states. Despite the efforts of successive governments, Sofia and Bucharest have not graduated from the mechanism. They also remain outside Schengen, the passport-free travel arrangement, entry into which is linked to meeting CVM's requirements. Neither country has made it into the eurozone's waiting room, the so-called Exchange Rate Mechanism II (ERM2), either. Problems such as corruption, state capture and the deficit of accountability continue to weigh upon Bulgaria and Romania. There is serious backsliding in some areas too. Reporters without Borders, an international watchdog, ranks Bulgaria 111th out of 180 countries worldwide in terms of media freedom. It occupied 38th position when the index was launched in 2002.² Corruption perceptions, measured by Transparency International, have scored slight improvement in Romania yet have deteriorated in Bulgaria.³ It is small wonder, therefore, that in past years both Bulgaria and Romania have seen one wave after the other of mass protest – driven by citizens' frustration with power elites and the concern about the rule of law. By any metric, both countries continue to fall short of what scholars describe as “consolidated democracy.”⁴

1 See Venelin Ganev, *Post-Accession Hooliganism: Democratic Governance in Bulgaria and Romania after 2007, East European Politics and Societies*, Vol. 27, Issue 1, 2013.

2 Reporters without Frontier, *Worldwide Freedom Index, 2019, 2002*. <https://rsf.org/en/reporters-without-borders-publishes-first-worldwide-press-freedom-index-october-2002>

3 Each year TI ranks 180 countries, with the least corrupt ones at the top of the table. Bulgaria and Romania's scores have changed as follows - Bulgaria: 77th (2019), 64 (2007) , 52 (2000); Romania 61 (2019), 69 (2007), 68 (2000). www.transparency.org

4 Andreas Schedler, *What is Democratic Consolidation?* *Journal of Democracy* 9/2 (April 1998), pp 91-107.

Yet EU membership should not be written off as a failure. On the contrary, it has delivered enormous economic benefits – fueled growth, expanded safety nets in times of recession (especially after 2008), improved competitiveness of the economy, opened new opportunities for entrepreneurship, cross-border labor and educational mobility, transfer of knowledge and skills. It is hardly surprising that EU continues to enjoy high levels of public support, irrespective of the multiple crises it has gone through during the 2010s. Political parties by and large back integration, though soft Euroscepticism has made inroads into society and politics. As in the pre-accession period, citizens continue to see European institutions as an essential outside corrective for the governance deficits at home. Last but not the least, Bulgaria and Romania have not slipped back into authoritarianism as is arguably the case of Hungary under Viktor Orbán which has been assigned a worse score by international monitors such as Freedom House.⁵

The Road to the EU

In the 1990s, Bulgaria and Romania became part of the so-called fifth enlargement along with the rest of CEE. However, despite the popular appeal of the “return to Europe” at the time, elites in both countries were ambivalent about reforms and in some cases pursued policies at odds with the stated goal to foster political pluralism and market economy. In 1990, the former nomenklatura won in the first democratic elections: the renamed Bulgarian Socialist Party (BSP) and the National Salvation Front (FSN) in Romania. Post-communist parties flirted with nationalism, delayed structural reforms in the economy, and, especially in the Bulgarian case, continued balancing between the West and USSR, and later the Russian Federation. Though they concluded association agreements with the EU, gained entry in all pre-accession programmes and ultimately applied for membership, the slow pace of reform and the economic turbulence they had to deal with set them apart, early on, from the frontrunners in Central Europe. That is why Bulgaria and Romania failed to be invited for membership talks with the EU at the Luxembourg Council in December 1997 and even in 1999 the European Commission was not convinced of the merits.

On the positive side, in 1996-97 the two countries passed through a turning point. The anti-communist, pro-Western opposition seized power: as a result of the election of President Emil Constantinescu in Romania and the hyperinflationary crisis in Bulgaria during the winter of 1996-97. At the crucial moment when the EU was taking the decision to move forward with the membership negotiations both countries were led by reform-minded forces aspiring to join the West no matter what. The Bulgarian and Romanian governments stood firm on NATO’s side during the 1999 Kosovo war, which on the whole was unpopular with large swathes within the societies. That helped their bid for the opening of accession talks. Influential member states and EU politicians, such as the British Prime Minister Tony Blair, argued in their favour. As a result, the Helsinki Council (December 1999) gave green light for the negotiations.

The negotiations, between 2000 and 2004, had a profound effect on national politics, the economy and society. Through instruments such as the annual Progress Reports, sectoral programs, funding and others, the European Commission set the domestic agenda. The consensus on membership consolidated. Former communists, the BSP and the Social Democratic Party (PSD) in Romania, embraced a social democratic identity and joined the Party of European Socialists (PES). Even populist formations, such as the party established by Bulgaria’s former king Simeon Saxe-Cobourg-Gotha (NDSV) which swept through the 2001 elections on the promise to clean up corruption,

⁵ *Freedom in the World 2019: Democracy in Retreat*, Freedom House, February 2019.

were keen to appear as exemplary Europeans. Across the political spectrum, parties subscribed the goal of membership. Nationalist forces, such as the Greater Romania Party and Ataka in Bulgaria, appeared as the exception proving the rule and even they, in truth, were not opposed to the EU. Integration drove forward economic interdependence and delivered high growth rates and FDI (see below). Though Bulgaria and Romania were once more separated from the rest of the CEE pack in December 2002 at the Copenhagen Summit which decided on the “big-bang” enlargement of 1 May 2004, they remained on track. In the Danish capital, EU leaders put forward 1 January 2007 as a target date for Bulgarian and Romanian membership. That gave momentum to the negotiations which were wrapped up in 2004. On 25 April 2005, the two countries’ leaders signed in Luxembourg the Accession Treaty with the EU.

Even at the time, it was clear that EU membership came short of being a panacea. The overhaul of the judiciaries, the campaigns targeting corruption, and, in the Bulgarian case, the fight against organized crime proved a job half-done. Many reforms remained only on paper, with little or no implementation. Brussels officials appreciated the problem. They sought ways to retain leverage once Bulgaria and Romania joined the club. The accession treaties signed in 2005 contained “safeguard clauses”, allowing the European Commission to monitor key governance areas. Chief amongst those was the so-called Cooperation and Verification Mechanism (CVM), a unique measure devised for the two entrants.⁶ The two countries had a choice: enter in 2008, year later than the target date, or join with strings attached. Symbolically if not in substance, Bulgaria and Romania formed an outer circle within the EU, on the understanding they fell short of the rule-of-law standards shared by all member states.

What worked and what didn't

Bulgaria and Romania’s has become a textbook example of the EU not living up to its promise. Only recently, given backsliding in Hungary and Poland, analysts and scholars came to appreciate the Balkan duo was not as exceptional as it originally appeared. Also, it is worth pointing out that that membership negotiations with Bucharest and Sofia delivered results, especially on the economic front. Between 2000 and 2007, Bulgaria and Romania succeeded in integrating into the Single Market and to fulfil the Union’s economic conditionality. Politically, however, EU-driven reforms were a mixed bag. As CVM testifies, areas such as the reform of the judiciary, administrative reform, and the fight against corruption lagged behind which necessitated post-accession conditionality.

What was the record of the 2000s?

The EU proved an engine for growth and economic restructuring. The situation in both countries in the late 1990s, before the accession talks, wasn’t bright. In Bulgaria, the recovery from the hyperinflationary crisis of 1996-97 didn’t happen until 2000. Equally, Romania went through negative growth between 1997-1999. The accession talks ushered in a period of economic expansion, with GDP up by 7-8% right at the time the two countries joined the EU. They implemented measures aimed at macroeconomic stabilisation but also structural reforms: privatisation, closure

⁶ Neither the CEE countries which joined in 2004 nor Croatia nine years thereafter had such a clause in their treaties. As of 2019, CVMs is still in place.

of loss-making enterprises inherited from the socialist period, overhaul of the tax system. As a result, FDI skyrocketed: from 3% to 10% of GDP in Romania between 1999 and 2006, and from 6 to a whopping 18% of GDP in Bulgaria. The year 2009 was a turning point because of the global economic crisis but by the mid-2010s the two economies bounced back, not least because of the EU funds substituting for the lower level of FDI. Access to the EU labour markets alleviated at least some of the pain resulting from restructuring, as low-skilled workers headed to western and south Europe. As of the present, Bulgaria and Romania are back on a growth trajectory, with exports playing a much more significant role than in the “golden era” in the mid-2000s. The two countries may be at the bottom of the table, but they are closing the gap with the rest of the EU nonetheless.⁷

The fight against corruption – and judicial reform as a key component thereof - told a different story. EU conditionality in the 2000s prioritized establishment of strong, independent judiciaries and anti-corruption executive agencies capable of holding high-profile politicians, officials and business people to account. In March 2006 for instance, Romania passed a law beefing up the anti-corruption body within the prosecutor’s office and allowing it to investigate members of parliament. Both countries took steps to strengthen the judicial administration bodies, the Superior Council of Magistrates (Consiliul Superior al Magistraturii, CSM) in Romania and the Supreme Judicial Council (Vissh sadeben savet, VSS) in Bulgaria. They modified their criminal legislation and introduced new norms on conflict of interest.

However, the two countries followed divergent trajectories.

Romania scored progress in clamping down on high-level corruption. In January 2012, Adrian Nastase, a former prime minister who had overseen negotiations with the EU in the early 2000s, was sentenced years in prison for misusing public money during his failed campaign in the 2004 presidential elections. The investigation was conducted by the National Anticorruption Directorate (Direcția Națională Anticorupțieor DNA). During Laura Codruta Kövesi’s tenure as head of DNA, from 2013 and 2018, as director, DNA secured sentences for scores of top officials, including members of parliament, mayors, and ministers.⁸ Importantly, DNA came after politicians from all stripes: both from PSD, the centre-right, and parties in the middle. Both PSD leader Victor Ponta and the allies of President Traian Basescu, his bitter rival, came under investigation or were sentenced. Basescu’s brother went to jail.⁹ Though initially it appeared the anti-corruption agency would be an extension of the centre-right in the fight against former communist elites, it turned out later than no politician or office-holder, irrespective of their affiliation or rank, was above the law.

Nothing similar happened in Bulgaria. To date, no prominent official, political leader or business person had been sentenced, much less served time in prison. The closest case thus far concerned

7 In 2010, Bulgaria’s GDP per capita (as purchasing power) stood at 44% of EU-28 average. In 2018, it rose to 58%. Romania’s figure grew from 51 to 64%. Data by Eurostat. <https://ec.europa.eu/eurostat/databrowser/view/tec00114/default/table?lang=en>

8 High-profile cases included Victor Ponta, prime minister between 2012-2015, and Liviu Dragnea, the president of PSD. While Ponta was acquitted in 2018, Dragnea has been convicted twice and, as of May 2019, is serving a prison sentence for abuse of power. Corruption investigations were the motive for the PSD-dominated government to have Kovesi fired in 2018.

9 In January 2016, Mircea Basescu was found guilty of influence peddling over the period 2011-12. The sentence put an end to Basescu’s political career.

Tsvetan Tsvetanov, a minister of interior between 2009 and 2013 and long-time Number 2 in the governing GERB (“Citizens for European Development of Bulgaria”) caucus. Though Tsvetanov was sentenced in May 2014 on charges of obstructing justice, an appeals court acquitted him the following year. Another prominent example, of Defence Minister Nikolay Tsonev (2008-9) was tried and acquitted.¹⁰ Mario Nikolov, a businessman charged with embezzling EUR 7.5 million of EU agricultural aid in 2008, was found not guilty.¹¹ The plethora of bodies, including the Illegal Asset Forfeiture Commission (2005), the Center for Prevention and Fight Against Corruption under the Council of Ministers (2010), the Specialized Criminal Court/Prosecution Service (2012) have failed to make a difference.

At the same time, the corruption issue provided fodder for political entrepreneurs. The current party in government, Citizens for European Development of Bulgaria (GERB), has its roots in its leader Boyko Borisov’s stint as secretary at the Interior Ministry in 2001-5. His trademark became show arrest of criminal figures as well as the accusations he routinely levelled at magistrates for not doing their job. (“We catch them, they let them go!”). Others have followed in his footsteps: most recently the popular talkshow host Slavi Trifonov who recently started his own party. Corruption scandals have been frequent, as have parties and politicians promising to stamp out the issue and kick the crooks out of power. But there is little evidence that either GERB, its opponents from BSP (in power 2013-14), much less the Movement of Rights and Freedoms (MRF) supported by ethnic Turks and Muslim, are likely to wage war against pervasive clientelism and state capture.

CVM: a missed opportunity?

At the time it was introduced into Romania and Bulgaria’s accession treaty (2005), CVM extended the promise of maintaining EU pressure for governance reform even after accession. The following year the European Commission introduced a set of benchmarks in the area of judicial reform, the fight against corruption, as well as – in the case of Bulgaria – on combatting organised crime. Starting from June 2007, the Commission would publish progress reports – usually on annual basis but occasionally twice a year. The EU Council (General Affairs) was tasked with overseeing the Commission and making recommendations.¹² In essence, CVM was a replica of the pre-accession process – irrespective of the fact that Romania and Bulgaria had become full-fledged members of the EU.¹³

Despite its stated ambitions, CVM’s impact turned out to be very limited. Though governments in Sofia and Bucharest were keen to have monitoring removed, the Union did not put forward sufficient incentives or wield robust enough punishments to make the mechanism work. Three

10 Tsonev’s televised arrest in 2010 was used by the government and the prosecutors to demonstrate resolve in the combat of corruption.

11 The investigation was launched in 2006. It involved Nikolov and 14 other defendants and was triggered by a signal by prosecutor’s office in Augsburg, Germany. The European Commission and the European Anti-Fraud Office (OLAF).

12 All reports along with the Council conclusions are accessible through the European Commission’s website: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en

13 Further on CVM, see Georgi Dimitrov, Kaloyan Haralampiev, and Stoycho Stoychev, (2016) ‘The Adventures of the CVM in Bulgaria and Romania’, MAXCAP Working Paper No. 29, “Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond” (MAXCAP), Berlin: Freie Universität Berlin.

years into membership, in 2010, the safeguard clauses tied to the Internal Market which the European Commission could trigger in response to CVM non-compliance lapsed.

To compensate for that, in 2011-12, hawkish member states led by the Netherlands and France linked Romania and Bulgaria's accession to the Schengen passport-free travel zone to meeting the mechanism's benchmarks. The linkage was formalized by the EU Council. Informally, it was clear that both countries would be excluded from the newly formed Banking Union and, in the Bulgarian case, the waiting room of the eurozone (ERM2 mechanism) so long as the CVM remained in place. However, none of these linkages proved capable of catalysing decisive reforms in the direction Brussels desired.

By comparison, the Commission's decision to curtail cohesion payments to Bulgaria, in 2009 and then in 2014, had a direct knock-on effect on national politics. In both cases, however, the temporary freeze had little to do with CVM conditionality. The 2014 decision for instance went back to Bulgaria's choice to set aside EU competition rules in connection to the South Stream gas pipeline advanced by Russia.

As of the end of 2019, CVM is facing the end of the road. It is being phased out in favour of the so-called Justice Scoreboard linked to the European Semester. In essence, the Commission will be watching all member states, instead of focusing on Romania and Bulgaria only. In other words, CVM is both ineffective and obsolete.

Explaining the EU's Variable Impact

Why does EU conditionality work better in the economic than in the political realm? What are the causes explaining Romania's superior performance than Bulgaria? There are a variety of factors at play: the initial conditions in the policy areas in focus, the strength of veto players, the configuration of domestic coalitions, and not least the intensity of EU pressure.

Initial conditions

The economic crisis the both countries lived through in the mid- and late 1990s opened the way for restructuring in the 2000s. Initially, the post-communist politicians advocated a more gradual move to the market, with the state retaining ownership stakes in key enterprises as well as in the financial sector. This model went bankrupt by the end of the decade, not least because it fell prey to vested interests. Well-connected businesses drew profit from disadvantageous contracts with state-owned companies with resultant losses passed to the public purse. The slump the late 1990s left no alternative and facilitated the push by the EU and the International Financial Institutions towards liberalization.

While there was an opening in the economy, the state machine was much more resistant to change. The case in point was the judiciary in both countries. In Bulgaria, one of the early decisions reached by the former communists and the opposition was to empower magistrates and shield them as much as possible from political interference. The makers of the 1991 constitution were clearly driven by self-interest pure and simple. An independent judiciary provided the best guarantee for elites that they would avoid politically-motivated prosecutions if and when they would lose power. The firewall between the government and the judicial branch was a good idea in the sense

that it marked a clean departure from the communist era, too. But the problem in Bulgaria has always been that prosecutors are part of the judiciary along with judges. Worse still, the Prosecutor General¹⁴ who is elected for a term of seven years has full control over his colleagues down the hierarchical ladder and through their quota in VSS – over the entire judiciary. In Romania, the executive branch has more extensive influence over judiciary. Under the 1991 constitution, it is the President appointing judges and prosecutors on proposal by the magistrates' council.¹⁵ She or he has the right to attend meeting in which case she or he presides.¹⁶ His Bulgarian counterpart's powers are much more limited.¹⁷

In summary, the Romanian judiciary was vulnerable to influence by elected politicians. In Bulgaria, magistrates – and especially prosecutors – were autonomous but at the same time not sufficiently accountable and open to the highest bidder.

Veto actors

There were no powerful veto actors when it came to economic liberalization reforms in the 2000s. Political parties' positions converged. Post-communist parties opted for pro-market measures. For instance, the BSP-led cabinet of Sergey Stanishev introduced flat-tax regime in 2007. A similar reform had taken place in Romania in 2005 under the centrist Prime Minister Calin Popescu-Tariceanu (National Liberal Party). Trade unions were not influential. The Jiu valley miners which had been a disruptive force in Romanian politics throughout the 1990s had been emasculated after a last wave of protests in early 1999. Rather than resist, Rent-seeking elites adapted to privatization and the arrival of foreign investors. They retained privileged access to areas of the economy where state continued to play an outsize role such as the energy sector.

Judicial reforms, the core of anti-corruption efforts, encountered much greater resistance. The scope of judicial reforms in Bulgaria was limited by a Constitutional Court ruling in 2003 that any overhaul would amount to “change in the form of government” and therefore could be passed by a specially convened Great National Assembly.¹⁸ The European Commission and the member states wanted a root-and-branch reorganization of criminal justice. The ruling cemented the Prosecutor General's central role in both the judiciary and the political system as a whole. In Romania, resistance occurred through political manoeuvres. In 2007, Romania's Prime Minister Popescu-Tariceanu famously fired Justice Minister Monica Macovei who had been credited, both domestically and in Brussels, for the sweeping anti-corruption reforms, including the strengthening of DNA. Macovei's critics, for instance in the Romanian Senate, argued at the time that the Justice Minister's powers had to be curtailed in favour of the CSM (the magistrates council). Such a reform would have brought Romania closer to the Bulgarian model and empowered conservative forces within the judiciary.

14 The Prosecutor General's institution was introduced by the 1947 constitution inspired by the Soviet Union.

15 Article 134 para 1 of the Romanian Constitution.

16 Article 133 para 2 point 6 of Romania's Constitution.

17 President appoints the chairs of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court and the Prosecutor General but cannot oppose the Judicial Council in case it repeats its proposal for appointment or removal. Article 129 para 2 of the Bulgarian Constitution.

18 A later ruling, from 2006, struck down constitutional amendment which would have made it possible to remove from office the Prosecutor General along with the heads of the two top courts by two-thirds of the MPs and the president.

Domestic coalitions

EU-driven reforms succeeded where a powerful domestic coalition pushed for their implementation. Romania illustrates the point. In November-December 2004, power passed from the hands of PSD to President Traian Basescu. Basescu was behind the appointment of Macovei as justice minister and he did his utmost to shield her from the political attacks that ensued. Her initiatives, DNA first and foremost, gave him advantage against his rivals from the PSD. Anti-corruption investigations damaged the social democrats, the hitherto established elite, and resulted to the jail sentence for Adrian Nastase, Basescu's competitor in the 2004 presidential elections. DNA later turned into a Damocles' sword for Prime Minister Popescu-Tariceanu, another rival of the head of state. At the same time, Macovei's reforms earned support from the EU and therefore Basescu killed two birds with one stone. It was later, after the legislative elections in 2008 bringing to office a government aligned with the president, that Basescu's own partisans came under investigation by the anti-corruption agency and in some cases went to prison.

In contrast, Bulgaria was governed in the 2000s by broad coalitions, including BSP, the Movement of Rights and Freedoms (supported by ethnic Turks), and NDSV. No government had a strong incentive to take on the judiciary, especially the all-powerful Prosecutor General. Nikola Filchev, whose term ran between 1999 and 2006, came to personify and lead the conservative lobby amongst the magistrates. He stamped out opposition within the Prosecutor's Office, spearheaded efforts to cement the status quo, notably the aforementioned Constitutional Court's ruling from 2003. Filchev's successor Boris Velchev favoured modernization yet took no bold steps to investigate and bring to justice high-profile cases of corruption, other than that of Mario Nikolov et al. (see above). In contrast to Romania, incrementalism and oftentimes tokenism became the norm in Bulgaria. The constitutional amendments passed in 2006, under EU pressure proved the point. The heads of the two high courts and the Prosecutor General were required to attend annual report and attend hearings at parliament. That made no difference in terms of accountability.

EU conditionality

One critical variable concerned the clarity and robustness of EU conditionality. At the outset of the accession talks with Bulgaria and Romania, the EU standards with respect to judicial reform were rather vague. It took sustained effort to formulate benchmarks beyond the general principles concerning the rule of law, due process and separation of powers. The Commission had to learn on the job, figuratively speaking. The window of opportunity proved narrow. The EU opened the chapter on Justice and Home affairs in 2001 and closed it two years afterwards. By contrast, in later negotiations starting with Montenegro, the corresponding dossiers ("Judiciary and Fundamental Rights" and "Justice, Freedom and Security") are opened at the very outset and finalized at the finish of the talks. But in fairness the main stumbling block EU faced was not the short timeline but rather domestic veto actors.

When it came to market governance, the EU put at its disposal much stronger and clearly defined set of conditions. The Single Market forms the core of EU legislation and arguably of European integration as a whole. The regulation of the four freedoms is spelled out in the primary and secondary law which, on 1 January 2007, became part of the Bulgarian and Romanian legal

order. Areas of economic governance falling outside the remit of the Single Market – e.g. fiscal policy – were subject to other external anchors which worked in coordination with the European Commission, first and foremost the IMF but also other international financial institutions. In short, governments had much less wiggle room with regard to economic reform in comparison to the political areas such as the overhaul of the judiciary and fighting corruption.

Lessons learned from the Bulgarian and the Romanian Experience

Lesson 1: Domestic politics are decisive

To succeed reforms need to be backed by domestic momentum. Political elites would normally conform with the EU conditions in order to advance on the pre-accession path but would do their best to minimize the cost and avoid damage to their power at home. They will find ways to deflect or dilute EU demands, either at the moment these are put forward or at a later date. Economic reforms in Bulgaria and Romania moved forward because gains for incumbent governments far outweighed the negatives. Judicial reforms moved forward in fits and starts and but encountered serious roadblocks. In Romania they went further than in Bulgaria because the president had a clear-cut interest in empowering bona fide reformers resolved to implement the EU agenda in earnest.

Lesson 2: The more stakeholders the better

The pace and quality of pro-EU changes is dependent on the relative power of the domestic coalition driving forward institutional and policy reforms. We can assume that part of the government negotiating with the European Commission would be invested but also that there would be other factions opposed. Resistance could also come from the side of the bureaucracy and the judicial apparatus, or for that matter from any group of insiders with formal or informal connections to the state institutions and the governing elites. That is why reformers should look for outside allies. The European Commission and the EU member states are the first port of call but in the long term civil society matters more.

Lesson 3: Citizens' participation means long-term success

Bulgaria and Romania's accession in the 2000s was a top-down affair. Governments negotiated with the EU, then had legislation passed through parliament, often by way of bargain between different factions where political interests were at stake and countries had sufficient leeway. Civil society was engaged to a great extent but back than it was represented by the 1990s crop of NGOs – professionalized, Western-funded, and integrated in various transnational networks. A good example is furnished by the Coalition for Clean Parliament (CCP) active in Romania in 2004-2005. It was assembled by the Romanian Academic Society (SAR), a leading research and

advocacy think tank. CCP started as an initiative to vet candidates in the local and parliamentary/presidential elections (May and November/December 2004). Later it assisted Minister Monica Macovei in designing her anti-corruption strategy (see above). It added to the reform momentum at this critical juncture.¹⁹

What we have now in both Bulgaria and Romania is a new generation of activists – mobilizing in a bottom-up fashion with the help of social media. Rule-of-law issues are central: e.g. the 2017-2018 protests in Romania gains the government’s attempts to roll back anti-corruption reforms, rein in DNA and pardon officials sentenced for corruption; the 2013-14 protests in Bulgaria triggered by the appointment of Delyan Peevski, a controversial politician and media tycoon, as head of the National Security Agency. Grassroots activists are no replacement for NGOs and think tanks with expertise in technical areas such as constitutional law or economic affairs but they contribute to accountability, raise awareness about the centrality of good governance and the rule of law, and ultimately are guarantor for the sustainability of reforms.

Lesson 4: Post-accession conditionality is ineffective

The make-or-break moment for Bulgaria and Romania was in the early and mid-2000s. It was then that the key economic reforms took place, when gains in the rule of law were made and when opportunities were squandered. CVM proved a poor substitute, largely because the EU could not offer anything of significance to motivate the main players to implement reforms. The main challenge post-2007 has been to safeguard the progress made in the previous period rather than build additional momentum.

POLICY RECOMMENDATIONS

1. Apply maximum pressure on the executive and the legislative branch during the accession negotiations. That includes formal conditionality through the European Commission and campaigns “from below”, involving civil society;
2. Ensure the judiciary is freed from political control but at the same time build in accountability mechanisms. Empowering magistrates without the corresponding checks and balances may entrench corruption instead of containing it.
3. EU funds should be used as both carrot and stick to induce compliance and reform. Corruption should be sanctioned by cutting financial support, a principle which is likely to play a beneficial role after membership too.
4. Civil society and independent media should be integral part of the membership negotiations. It is a guarantee for long-term success of Europeanization, both during and after the accession talks.

¹⁹ See Alina Mungiu Pippidi, The Coalition for Clean Parliament, *Journal of Democracy* 16 (2), April 2005, pp. 154-5. Mungiu Pippidi was SAR’s president at the time.

CONSULTED LITERATURE:

Bechev, Dimitar. "Bulgaria and the European Union." Oxford Encyclopedia of European Union Politics, 2018. <https://oxfordre.com/politics/page/european-union-politics/the-oxford-encyclopedia-of-european-union-politics>

Bechev, Dimitar and Guergana Noutcheva. "The Successful Laggards: Bulgaria and Romania's Accession to the EU." *East European Politics and Societies* 22/1 (2008), pp. 114-44.

Ganev, Venelin. "Post-Accession Hooliganism: Democratic Governance in Bulgaria and Romania after 2007." *East European Politics and Societies and Cultures* 27/1 (February 2013), pp. 26-44.

Mungiu-Pippidi, Alina. "The Transformative Power of Europe Revisited." *Journal of Democracy* 25/1 (2014), pp. 20-32.

Tansoiu, Cosmina and Mihaela Racotiva. "Post-Accession (Anti-)Corruption Record in Romania and Bulgaria", *L'Europe en Formation* 2012/2 (n° 364), pp. 243-263

Toneva-Metodieva, Linka. "Beyond the Carrots and Sticks Paradigm: Rethinking the Cooperation and Verification Mechanism Experience of Bulgaria and Romania." *Perspectives on European Politics and Society* 15/4 (2014), pp. 534-51.

* * *

Dimitar Bechev is Research Fellow at the Center for Slavic, Eurasian and East European Studies at the University of North Carolina at Chapel Hill. He has written extensively on EU external relations, the politics of the Balkans and Turkey. Dr. Bechev is the author of *Rival Power: Russia in Southeast Europe* (Yale University Press, 2017). He holds a D.Phil (PhD) in International Relations from the University of Oxford.

