

# Overcoming the Crisis of Post-Accession Conditionality of the EU: Lessons Learned from the CVM's Failure

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On the 3<sup>th</sup> of February 2014 the European Commission published an unprecedented report on the state of the rule of law in the EU and the related quality and effectiveness of the anti-corruption policies in each Member State. It is extremely important that for the first time the EC officially recognizes the existence of this key problem which the sustainability of the democracy and the economic development depends on. Even more important is that this problem is seen as a priority common task for the development of targeted anti-corruption policies, which in each national case should be resolved by applying a set of specific measures. A month later the EC introduced to the European public a new Framework to safeguard the rule of law in EU<sup>1</sup> (FSRL) which made clear that the EU anti-corruption report is a component of this new political instrument. At this point it is beyond any doubt that the EC's concerns about the abuses of the rule of law, which is 'at the heart of EU'<sup>2</sup>, are serious and the Commission is ready to respond adequately.

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<sup>1</sup> For details of the new framework see [http://europa.eu/rapid/press-release\\_IP-14-237\\_en.htm](http://europa.eu/rapid/press-release_IP-14-237_en.htm). Accessed on 15.04.2014.

<sup>2</sup> This is a central statement of the EC in its reports on Bulgaria and on Romania to the European Parliament and the Council from July 2008. 'The Bulgarian authorities and the other Member States recognized that far reaching judicial reform and a concerted effort to fight corruption and organized crime were necessary if Bulgarians were to be able to exercise their rights as EU citizens and benefit from all the opportunities, including financial support, which EU membership would bring. More broadly, they recognized that principles which are at the heart of the EU - respect for the rule of law, mutual recognition and cooperating on the basis of a fundamental bargain of trust - could only be put into practice if these problems were tackled at source.' (Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism {SEC(2008) 2350} [http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=PrxzTPmWtNGDMqNI2\\_kby6C4CHXM6P4fL6GvcF4hpNt1k8fnNmhtjl-490668795?uri=CELEX:52008DC0495](http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=PrxzTPmWtNGDMqNI2_kby6C4CHXM6P4fL6GvcF4hpNt1k8fnNmhtjl-490668795?uri=CELEX:52008DC0495). Accessed on 15=04=2014).

In order to understand and appreciate properly this political novelty it should be checked against the background of the EC's previous experience of a post-accession conditionality crises in the CEECs. It is the latter that has been exemplified by the profound failure in the attempt to enhance the establishment of the rule of law in Bulgaria and Romania by means of the Mechanism of Cooperation and Verification (CVM).<sup>3</sup> The mechanism is a specification of the post-accession conditionality of the EU to the needs of the two South-East European countries. It is important to stress that the CVM's failure to induce judicial reforms and any substantial advancement in the anti-corruption combat is simply a culminating stage of a more general process identified by the renowned Hungarian social scientist Attila Agh as the 'post-accession crisis of the EU'.<sup>4</sup> He was not alone in his critical assessment of the post-accession conditionality<sup>5</sup> and until recently the mainstream academic literature of Europeanization was predominantly over optimistic about the unchallenged transformative power of EU<sup>6</sup>. This is why the experience gained through the implementation of the CVM is very important - by understanding it we will acquire a more sophisticated view on the broader process of current and future EU enlargements.

First of all, let us explain the predetermined, yet politically constructed failure of the CVM. Our approach intentionally gives priority to the ***complexity, the internal dynamics and contradictions in the relationships between the parties involved, the contextuality and historical legacies, all seen as active constituents of the model for interaction of the process of European integration and Europeanization*** - especially when studying the development of EU conditionality.<sup>7</sup>

<sup>3</sup> For details of the CVM see Alegre et al. 2009; Gateva 2013; Papakostas 2012; Vachudova/Spendzharova 2012. For a comprehensive and meticulous analysis of the empirical proofs of the CVM's failure see Dimitrov et al. 2014.

<sup>4</sup> See Agh 2007; 2008a; 2008b.

<sup>5</sup> As early as 2009 D. Kochenov summarized his critical study of the post-accession conditionality under the telling title of „resounding failure“. Today we may find numerous examples of critical examination of the post-accession conditionality, especially in Bulgaria and Romania (Alegre et al. 2009; Buzogany 2012; Ganev 2012; Gateva 2013; Ivanov 2012; Mendelski 2009, 2010; Mungiu-Pippidi 2011; Papakostas 2012; Racoviță 2011; Tanasoiu/Racovita 2012; Trauner 2009; Vachudova./Spendzharova. 2012).

<sup>6</sup> See for example the works of Sedelmeier and Borzel.

<sup>7</sup> Here we follow the methodological approach of Hughes and his associates: 'EU enlargement conditionality is more usefully analysed as an interactive and dynamic process rather than one that should be examined only in terms of clear causative effects within a narrowly positivist framework. By investigating how EU conditionality operated in a key policy area during enlargement we have demonstrated the dynamic and fluid nature of both the concept and its impact on the candidates. [...] the application of conditionality must be analysed on a case-by-case basis with regard to policy domain and country, paying attention to the multi-level actors involved both on the side of the EU and the candidate countries, their perceptions, the signalling of different rewards and sanctions, the interactions

In brief, the crisis of post-accession conditionality in Bulgaria and Romania has *built up as a result* of the clash of two long-term historical trends, which have produced *contrary but equally unrealistic expectations with regard to the CVM*. In this sense, the practical implementation of this *innovative EU mechanism* has been largely doomed to failure due to the paradigmatic particularities of the approach it is based on. The two different pre-histories, which pre-determine the different political approaches, values, and mental patterns of the parties involved, are what engender the counter, equally *Utopian expectations*.

The EC extrapolates on the basis of a) its experience from past years, from past enlargements and b) from the preparation for accession of the two South-eastern European countries. Now, this extrapolation amounts to projecting an unchanging model onto a future which now proves to be a time of significantly different, structurally deteriorated conditions - for both countries and globally. The national governments of the two countries are likewise projecting, but they do so in prioritising a package of opposite properties of the pre-accession conditionality already familiar to them (moreover, they project in the context of problems that are aggravating their situation)<sup>8</sup>. The high degree of vagueness and inner inconsistency of the EC's conditionality is very favorable for the emergence of these illusions. But it is also conducive to their clash and this is how the initial misinterpretation of the CVM and its current failure were politically constructed. Let us look into the details.

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over compliance, and how as a process it develops over time.' (Hughes et al. 2005: 173-174). We should point out that in the literature specially devoted to Europeanization through conditionality for EU membership, *the question as to the approach to reforms for establishing rule of law* is treated very rarely (Hughes et al., Maniokas, Mungiu-Pippidi, Ágh, Sedelmeier, Kochenov), so these exceptions are extraordinary valuable: 'I argue that *the EUs approach to rule of law reform is not appropriate under the prevailing conditions in South Eastern Europe*. While the EU (together with its domestic change agents and other international donors) fights the rule of law reform battle with *de jure* and capacity-related reform weapons based on a technocratic and short-term approach, which focuses more on election outcomes than on the democratic process (Stewart 'The interplay of domestic contexts and external democracy promotion: lessons from Eastern Europe and the South Caucasus, in: *Democratization*, 16: 804-824. 2009), domestic veto players (reform opponents) use flexible guerrilla strategies which seem to be more successful in the long-run. Veto players employ an informal, flexible and non-democratic approach of resistance, which is based on influence, violence and licit and illicit actions by clientelistic power structures of political and economic actors (e.g. oligarchs), less formalized actors from the secret service, semi-mafia and criminal structures. Last but not least there are pressures and hidden actions by non-democratic countries (e.g. Russia) which hinder democratization in Ukraine and Moldova. The struggle over reforms resembles an asymmetric war, in which the EU pretends to reform (especially in the neighborhood countries) and the clientelistic powerful domestic actors pretend to be reformed. *Without changing the present reform approach of the EU, reform actions based on external conditionality will produce at best redistributive, capacity-related and short-term outcomes, rather than transformative and sustainable change.*' (Mendelski 2010: 15, italics added).

<sup>8</sup> For instance, in 2008 Bulgaria had a budget surplus of 4 billion Euros, so the loss of EU funding did not seem very menacing for the government, which had only a one-term horizon of acting and thinking.

First, we will look at the processes in the aspect of EC-led conditionality. In-depth studies of this unprecedented political practice (Maniokas, Hughes et al., Grabbe, Ágh, Kochenov, Buzogány, Papakostas) have convincingly shown that its development over the decades of the EU history has had a distinctly *political character*.<sup>9</sup> Its distinguishing features have the following fundamental *assumptions*:

- Conditionality is a universal EU instrument, i.e. it is applied by the EU to all candidate members and is thought to have a guaranteed impact, because, in typological terms, the EU is a voluntary union of societies of a same order. Hence, no deep social and institutional restructuring has been needed.
- The advantages of membership in the Union are so considerable and self-obvious that the national governments will do anything to achieve them. And once achieved, the norms and quality of social life of the Union, required by the countries' status as Member States, become self-sustained. Consequently, Europeanization is an irreversible process, and the only problem is once to become a member of the Union (which seems to happen automatically). That is why the *process of implementing the acquis* does not involve a strict regulation of rights and duties for preserving the status of EU membership, (broadly speaking, there is a discrepancy between the detailed regulation of the behavior of private agencies and the sporadic regulation of the behavior of governments in the *acquis*). The importance of forceful protecting the rule of law as a specific Commission political task arose only in recent years.
- Conditionality is invariably constructed as an asymmetrical power relationship, and this asymmetry is so conspicuous (Maniokas, Grabbe, Sedelmeier, Börzel and Risse, Papakostas) that it *excludes* the eventuality of resistance of the local elites that have chosen the course of EU accession. The pre-accession conditionality europeize successfully and permanently the major local political players. In other words, the post-

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<sup>9</sup> 'The comparative analysis of the Commission's reports cannot provide very clear and convincing arguments to support the choices made. There is no justification for the argument that only five countries had passed the line. The reports themselves have been written using different basis for evaluation and evaluation techniques.<sup>11</sup> Instead of clear methodology, the Commission used certain approaches which favoured certain countries and discriminated against others. It seems that the conclusions were made from the general impression about and the trust in a country rather than from the careful examination of its internal preparation [...] Later comments made by those who were involved in the particular decision-making suggest, for instance, that decision on Slovenia and Estonia made in 1997 was based more on geopolitical considerations. However, the decision was presented as an objective choice based on the Copenhagen criteria.' (Maniokas 2004: 5).

accession conditionality as a continuation of the former is in itself a guarantee that the rules will be obeyed, especially as EU *membership has no alternative*.

- Another assumption is that no one stands to lose from Europeanization and hence one cannot expect to meet with serious, systematic resistance against it, except by generally surmountable single 'veto players'. Apart from that, Europeanization is a natural process carried out through evolution, adaptation, diffusion, training, and socialisation, negotiating of opposed interests, calculation of benefits. It is a *normal way of development of European societies* (despite the excessive and/or disproportional focus on the economic, distinctly neo-liberal foundations of social life interpreted in specifically neo-liberal terms - something that was registered ten years ago by researchers Hughes, Grabbe, Ágh, and others). This necessarily leads to the political circumstance that the set of sanction instruments is very poorly developed, and also to a permanent disinclination to *apply even the existing sanctions*.
- Since it is hard to define what strictly constitutes fulfillment of the tasks involved in Europeanization, and the application of precise measures of fulfillment is impossible, the EC sets a priority on *measuring the success in terms of transposition of the acquis to the local normative basis*; from there on it is assumed that the mechanisms of rule of law, required under the Copenhagen criteria (Grabbe, Mendelski, Ivanov, etc.), begin to operate automatically. Heather Grabbe, however, is *very precise when she asserts that the minimalistic expectations of the Commission* derive from the 'fluctuating' content and scope of the *acquis* themselves (Grabbe 2006: 33-34).
- The policies for applying the EU conditionality are always impregnated with a considerable dose of intentional vagueness and ambiguity, even inconsistency, so as to leave *ample leeway for political discretion* (Hughes et al. 2005; Grabbe 2006; Ivanov 2012; Buzogany 2012; Maniokas 2004)<sup>10</sup>.

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<sup>10</sup> 'The Accession Partnerships left the rules of the game uncertain for applicants: what exactly would count as a 'failure to respect the Europe Agreements' or to make progress in fulfilling the Copenhagen criteria? The EU was still left with a large margin in interpreting whether applicants had met the conditions and whether or not relations were satisfactory in the period prior to accession.' (Grabbe 2006: 16, see also pp 19-20). 'However, no explicit rationale was presented for this agenda, even though it covered so many functions of the modern state. The conditions were presented as if they were self-evident, with no acknowledgement of the policy debates going on in the EU and outside...' (Ibid. 24) 'Even though this was such a wide agenda from such an important external influence, there was no detailed justification for these demands beyond the fact that they came in the name of joining the EU.' (Ibid. 25). The linkage between fulfilling particular tasks and receiving particular benefits was much less clear than in IFI conditionality because the tasks were complex and many of them were not amenable to quantitative targets that showed explicitly when they had been fulfilled.' (Ibid. 32).

- The fact that the EU conditionality efficacy widely varies on the specific country, sector policies, as well as on the historical point in time when it is applied is revealed at a very late stage of its historical development. Even more importantly, this variance still continues to be interpreted as a difference in degree and scope, not in principle (Sedelmeier 2011; Borzel & Risse 2012; Mendelski 2009; Toshkov 2012).
- As a result of all this, the *constant political innovativeness*, which the EU/EC accession conditionality has been achieving for nearly a quarter of a century (Hughes et al., Grabbe, Sedelmeier, Ágh, Borzel), is mostly a *spontaneous process* of learning from one's mistakes and *intuitive experimentation* rather than a political approach, understood and implemented as an operationalized strategy (Grabbe 2006). The non-occurrence of any major mistakes and failures so far (Europeanization is a constant „success story“) has justified this way of development and made it possible for conditionality to be continued persistently in its key characteristics, including its intentional vagueness<sup>11</sup>. On the basis of this persistent political character of EU conditionality, at the point when it has to turn from *pre-accession* into *post-accession*, a critical period looms ahead. It is not coincidental that Ágh believes *that the whole period after the beginning of the Fifth enlargement is a period of EU crisis*. He is referring to the fact that post-accession conditionality ought to *be solving completely different tasks*, while in fact *it is continuing to follow its characteristics from the pre-accession phase*. Very briefly, this contradiction between the new nature of the tasks and the old nature of the solutions proposed by EU conditionality can be reduced to the contrary functioning of three trends:
  - a) the disappearance of the expected benefits from membership,
  - b) the change of the context (and the status of the former candidate countries), which results in a *growing change in the gravity of the inner motivation for conduct* under the conditions of full membership, while the context actually decrease this motivation, and, hence,
  - c) the question of the instruments to be applied for exercising influence in this new context becomes far more significant; however, these

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<sup>11</sup> 'The EU's policy agenda for CEE was innovative in the history of European integration in that it went further than the agenda for any previous applicant. However, its development was an iterated process whereby the conditions were changed and reshaped over the pre-accession period. It was an often ambiguous conditionality, because the EU is a complex constellation of actors who often maintain ambiguity to gain agreement among themselves. For these two reasons, the conditionality was difficult to interpret for the applicants, and the researcher has to go to some lengths to 'deconstruct' the EU's agenda for the candidates before trying to analyse its impact.' (Grabbe 2006: 37).

instruments have deteriorated and have decreased in number (Gateva 2013). This is how the post-accession hooliganism in Bulgaria and Romania (Ganev) bursts out.

More importantly, in this way a new key characteristic of post-accession conditionality is constituted: an acute internal contradiction that, however, remains invisible or misunderstood by the agents of this political process. In fact, the failure of the CVM in Bulgaria and Romania has shown something that is not new in itself. ***The on-going course of political events reveals the structural crisis of the post-accession conditionality which has now been highlighted as a fundamental feature of the process because it has abruptly come starkly to the surface.***

This next *culminating phase of the crisis* is now produced by the clash of *contradiction, equally illusory expectations of the EC and the local governments*. The *illusion* underlying the EC's expectations from the application of the CVM consists in the EC's hope that the periodical reports will be as influential of impact as the reports of the pre-accession period used to be. Sustainability of the illusory hope is astonishing in light of the accumulated disproofs after the second year of mechanism application in both countries observed. Its key position in the EC's approach is evidenced by, for instance, the mere enumeration of the areas of existing social problems as if sufficient incentive for the local governments to focus their efforts on reforms in those specific areas. Also, the expectation is that the EC's 'naming and shaming' would be a sufficient warning for the governments to get back on the due and correct course of action. These expectations *were valid and were producing results* for nearly 10-15 years. It was only natural for the impression to arise, at that time, that these tacit assumptions regarding Europeanization are „universally valid“ (not to mention that the positivistic social researches are constantly confirming the assumptions both as facts and as slogans).

These expectations were illusory, due to the situation that was in fact quite different:

- Each successive wave of EU enlargement involves countries that differ significantly from the previous; the countries of the fourth and fifth enlargement different in type, but even within the overall set of 'East European' countries there were significant differences between Poland, Hungary, Czech Republic and Slovakia on one hand, and Bulgaria and Romania on the other, while the Baltic countries are also a separate and internally differentiated case (Estonia and Lithuania proved to be following quite different trajectories of development after their accession to the EU). This is not only a matter of differences in 'speed' of progress

or of some single trait by which the countries differ from one another in quantitative terms. Deep typological disparities exist between societies that prove to be qualitatively different so that separate subgroups are defined; for instance, Bulgaria and Romania are countries in which different languages are spoken, that has quite different history, yet hardly distinguishable in their typological aspect: they fell out together from the top ranks of the fifth enlargement, unlike the lagging Baltic countries that despite all managed to outdistance them.

- The causes of these typological differences lie in the *deep structural foundations of the social life*. (For instance, Bulgaria and Romania have a distinctly agrarian character of their economies and societies, that results in weak commercialisation, weak social cohesion, undeveloped civil society, a superficial Christianisation where the social bonds are constituted by the state power; hence, the 'first free elections' held after the internal communist party coups in both countries were won by the former communists; the central role of the state continues to be maintained, but the state is purposely kept in a condition of helplessness and is plagued by clienteles, quasi-patriarchal relationships, etc. - there is a huge and still growing amount of literature on these questions.)
- All this means that for this type of societies the tasks of Europeanization are numerous, relate to a far greater range of social life domains, and have to deal with far more difficult challenges. In brief, tasks of such depth and range are practically unachievable, except - on paper only. But the lack of rule of law in these countries makes it very simple to adopt the *acquis* (as it is all the same whether the laws you will, in any case, *not* be applying in practice are part of national or of transposed legislation). Thus, it becomes possible to create the realistic illusion that these two countries are rapidly making up for their lag by adopting the *acquis*, a process by which the EC measures progress in EU membership preparation. On the basis of the EC's past experience, the Commission can be deceived in imitation of successful Europeanization of these two neighboring, typologically similar countries.
- Since there have been previous waves of enlargement, the EC *has now learned* how real the problem of law-implementation is, and has begun to insist on receiving precisely proof of *application* (meaning results). And this is far from being the only aspect of the fundamentally changed context of partnership. The change is due to the fact that the momentum for social change accumulated in the pre-accession period had confirmed seemingly the assumption that Europeanization is universal and



irreversible<sup>12</sup> and respectively made it seem inappropriate to penalize non-fulfillment. But when Europeanization has been in fact only on paper, the passage of a country to the status of EU member entails a major loss of incentives for respecting the rules and complying with them (Gateva; Ganev; Papakostas). The fundamental change implies several things: a) *expected benefits* of membership, and b) a *competitive environment* of other candidates, but also c) *the (im)possibility for parties to draw electoral advantages from mere membership in the EU for its own sake*. Apart from this, very little has really changed inside the countries in terms of quality of life; i.e., genuine Europeanization through the effective rule of law still has not happened.

- With the accession of Bulgaria and Romania to the EU, for the first time the unprecedented task that *the nature of the judiciary in the two societies be changed* through social transformations arose. This is a particularly delicate issue for two reasons. First, as numerous studies have established, the post-accession conditionality is productive with regard to policies that lean on clear *acquis* and for which progress can actually be proven. This is not the case in the sphere of justice, for an effectively functioning judiciary is a structural precondition for the rule of law, and under the Copenhagen criteria, *it is assumed rule of law already exists before a country is accepted as a member in the Union*. There simply cannot be an *acquis* relevant to *building the rule of law in EU-15*. Moreover, the sphere of the judiciary is too sensitive in each national society and therefore in this area *there is no possibility for having a common European regulation* (Alegre et al. 2009). Together, these two factors explain the lack of imperative norms in this particular sphere (Sedelmeier, Mendelski, Ivanov, Busogani, Papakostas, etc.), a lack that has proven crucial for the fundamental structural change in South-Eastern European societies.<sup>13</sup> Hence the possibilities for the post-accession conditionality to be effective are quite limited from the beginning, and the CVM keeps moving on from the momentum of its supposed universality and with the memory of former successes in other sector policies.

<sup>12</sup> We should not forget that the Bulgarian-Romanian case is *certainly not the first case of reversibility in Europeanization in a post-accession period*: a precise empirical scrutiny based on complex quantitative indicators, leads to the conclusion that: 'The reform reversals after accession in most firstwave countries confirm the limited (unsustainable) impact of the EU.' (Mendelski 2009: 62).

<sup>13</sup> 'In sum, with the partial exception of the Baltic States, post-accession backsliding in public administration reform and politicization of administration has been rather typical for the CEE countries. While the accession process stalled extensive (party) politicization witnessed during the 1990s, political actors have regained influence over public administration, as their power resource, after accession.' (Buzogany 2012: 1223).

- Secondly, we should radicalize the observation repeated time and again by M. Mendelski that post-accession conditionality in terms of following the EC recommendations really works when the recommendations refer mainly to *technical-procedural changes*. But as a general rule, the EC can achieve little results with regard to the kind of *structural reforms that might lead to a redistribution of power*. The proposed by CVM changes to be made in the judiciary systems of the two countries are precisely of the second type: these changes redistribute power not only within the judiciary system but also in the whole political system. It could have been foreseen from the start that the change would not work precisely in this sphere. Chances to achieve its objectives are quite exiguous due to the superimposition of both a) the effects of the 'sector' context of application of the post-accession conditionality and b) the pattern for the application of the accession conditionality inherited from the past focused only on external monitoring.
- The design of the CVM itself incorporates the basic assumption that governments will respond to the conditionality mechanism with *continuous enthusiasm, mobilization for progress during the period of preparation for EU membership* - either because they feel 'those are the rules' or out of sheer inertia. It is at this point that the EC's illusions about post-accession conditionality, shaped by experience from the path traversed in the pre-accession conditionality, become especially harmful. Since the governments, whatever their personal or party composition, *have their own counter illusions too, a fact of which EC certainly should be aware*. The governments are no longer guided by the 'proposed incentives' of the EU membership, which have now disappeared, but by their own habitual attitudes and party interests (Ágh, Ganev, Ivanov, Tanasoiu, Racovita).

This brings us to a new order of listing the key components of the Utopian expectations of the local governments, *expectations shaped during the previous years of cooperation with the EC*:

- The governments expect, as evidenced by the persistent lack of public debate on the budgetary structure of the operational programs, that the EC *will continue to finance capacity building* and so - they are in no hurry to build it by themselves (even though they have previously absorbed funds for this purpose to the amount of billions Euro). If they had built the capacity, the beneficiaries of European funding would have been the citizens themselves and the economic entities, *not the governments, whose power of redistribution would be drastically reduced*.

- The governments expect that *the EC will continue to count achievements on paper* as actual progress, evidenced by the effort for fabricating a large number of programme documents without practical consequences and so they naturally understand the application requirements and concrete results as an unfair 'change of the rules' or the application of a 'double standard'. However, for the governments, the achievement as the goals of the CVM would amount to a change of the whole social model, which would disempower the governments themselves; hence, they are sure that *any other party that comes to power would continue the same course of resistance against reforms* and the same imitation of Europeanization.
- The governments of Bulgaria expect that *the EC will take advantage of the previous practice of discretionary political bonuses awarded for loyalty* ('the gift for Kosovo') and will invest efforts in merely supporting pro-European discourse (under the constant *real threat of a turn of political interests towards Russia*, a threat that naturally does not exist in Poland or Hungary or the Baltic countries).
- The governments are confident, as shown in the 'bravery' in the stubborn resistance against the received recommendations, that *the EC will not use even its limited resources of sanctioning mechanisms*, because this would constitute a precedent later applicable towards the other member states.
- The governments, judging to some extent from past experience, rely on the fact that *the EC is as irresponsible in its conduct as they are, and will simply continue to 'play the political game'* (to close its eyes to the lack of various European standards in each of the monitored societies) like it did in the previous decade (this expectation has proven very unrealistic with a view to the social-economic impact of the world crisis of 2008). Their certainty derives from the logical argument that if it was otherwise their countries should not even have become members of the EU (as it should be the case with some other of the older member states, not just some post-communist countries but also Greece, and even Italy).

In brief, the governments also made extrapolations for the future based on CVM experience from the pre-accession stage; they did so because from their point of view, 'nothing has really changed'.

It becomes clear that the clash of these two types of opposite expectations was inevitable. The more serious problem beneath this particular situation was the lack of a *strict, legitimate and flexible* mechanism of the EC for coping with national regimes reluctant in cooperation. The large-scale spread of the

latter in many countries beyond the boundaries of CEECs is the real problem... The other side of the same problem is the need of a *far more active, permanent and deep involvement of the EC in domestic rule of law and reform affairs* surmounting the limits of mere monitoring.

This is exactly why the new Framework to safeguard the rule of law in EU is so important. It is a manifestation of qualitatively different methodological approach. First of all it introduces a radical change in *the pattern of interaction among the institutions of the Union* making the rule of law protection an issue of common concern and shared responsibility among the Council, the Parliament, the Commission, the national governments and the broader European public opinion. Second, the FSRL *is legally legitimate* being correspondent to the European Law and provides the specific normative base for universal, no matter how diversified, EU policies for safeguarding the rule of law. It is carefully designed to be both impartial and narrowly country-targeted: this mechanism will be enforced only where and when there are proofs of *systematic abuses of the rule of law*. Third, the new mechanism is strict yet flexible: it is meant to apply harsh sanctions on the Member States only if a series of intermediary warning signals of escalating seriousness of the problems would turn out to be disregarded. Here we find evidence that the EC has learned an important lesson - without a legitimate tool for effective political sanctioning, applicable to all Member States (and, hence, case-sensitive), it would be helpless and its powerlessness would continue to encourage disrespectful practices. The advantage of the new mechanism, finally, derives from the well-maintained balance - on one hand, the EC remains good-willed and cooperative with the respective national governments and yet, on the other hand, there is a clear three-step procedure leading to the gravest sanction (implementation of Article 7 of the Lisbon Treaty) which will be enforced eventually in case the previous warning measures do not work.

Nevertheless, there is a liability in the new political instrument. It is quite certain that FSRL is meant to be a preventive mechanism in first place - it is presumed that the governments, knowing that a sanctioning procedure is at hand, would comply with the rule of law and will act in a responsible manner. This assumption gravely underestimates the deep structural roots of the systematic corruption and the regular abuses of the rule of law in many European societies.

Notwithstanding this important liability, the FSRL is an important power resource and a new incentive for a responsible political behavior on behalf of the national governments. Therefore, it is worth of being academically and publicly supported.

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