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**THE EUROPEAN UNION, CONDITIONALITY AND
CORRUPTION CONTROL DURING
ENLARGEMENT: THE CZECH REPUBLIC,
ROMANIA AND MACEDONIA**

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Thesis submitted for the degree of Doctor of Philosophy

University of Sussex

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I hereby declare that this thesis has not been previously submitted, either in the same or different form, to this or any other University for a degree.

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The European Union, conditionality, and corruption control during accession: The Czech Republic, Romania and Macedonia

Summary

Despite the European Union's (EU) efforts to curb corruption during recent accession rounds, it remains a serious problem. The main aim of this thesis is to examine (1) the conditions under which the EU has been able to influence the control of corruption in candidate countries, (2) the reasons for the limited EU impact on corruption control and (3) the role of domestic factors in helping/ hindering the control of corruption.

This thesis looks in particular at the control of corruption in Central and Eastern Europe. Drawing on theoretical insights from the Europeanization and corruption literatures, it is argued that while the EU can influence the adoption of anti-corruption laws and the formal creation of institutions of accountability, effective EU conditionality and sustainable positive changes to better control corruption are predominantly dependent on case-specific factors. The thesis adopts a comparative approach and traces the EU accession process related to anti-corruption in three Central and Eastern European countries: the Czech Republic, Macedonia and Romania. It employs documentary analysis and semi-structured elite interviews with over 100 national and EU experts on corruption and enlargement. The thesis uses Schimmelfennig and Sedelmeier's (2005) external incentives model to examine the determinacy of anti-corruption conditions, the size and speed of rewards awarded by the EU if anti-corruption conditions were fulfilled and the credibility of threats and promises delivered by the EU when anti-corruption criteria failed to be adopted and/or implemented, as well as the size of the adoption costs for domestic political elites in the three cases. The final argument is that the EU's ability to influence corruption control during accession is dependent on the size of the domestic

costs for political elites to implement reforms compared with the benefits of joining the EU.

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Table of contents

CHAPTER ONE: INTRODUCTION.....	12
1. AIM AND SCOPE OF THE RESEARCH.....	12
1.1. Research questions.....	13
1.2. Why the specific focus on EU anti-corruption conditionality during accession?	14
2. ISSUES WITH DEFINING AND MEASURING CORRUPTION	17
2.1. Defining corruption	17
2.2. Worldwide Governance Indicators and the Control of Corruption. What trends have emerged across time and space?.....	21
2.3. Control of corruption trends in CEECs.....	25
4. METHODS AND CASE SELECTION	28
5. THEORETICAL FRAMEWORK.....	39
5.1. The EU's interests in promoting anti-corruption changes among candidates.....	39
5.2. The EU's anti-corruption standards for candidate countries.....	39
5.3. Assumptions that inform the theoretical framework.....	42
CHAPTER TWO: SETTING THE SCENE: THEORISING THE EU'S ENLARGEMENT CONDITIONALITY AND THE CONTROL OF CORRUPTION	48
3.1. EU conditionality and anti-corruption in accession states	48
3.2. Scholarship on enlargement conditionality.....	52
3.2.1. Pre-accession conditionality	59
3.2.2. Post-accession conditionality.....	62
3.3. Analysing corruption from a rational choice perspective	66
3.4. Causes of corruption literature.....	73
3.5. Systemic corruption as a collective action problem.....	76
3.6. Literature on EU and international actors' influence on domestic corruption	78

CHAPTER THREE: THE INFLUENCE OF EU ENLARGEMENT CONDITIONALITY ON THE CONTROL OF CORRUPTION: THE CASE OF THE CZECH REPUBLIC	83
1. INTRODUCTION	83
2. GENERAL REMARKS	85
3. DETERMINACY OF THE CONDITIONS	87
4. SIZE AND SPEED OF REWARDS AND CREDIBILITY OF THREATS AND PROMISES	94
5. DOMESTIC ADOPTION COSTS	101
6. ANALYSIS	106
6.1. Determinacy of the conditions	106
6.2. Size and speed of rewards and credibility of threats and punishments	108
6.3 Domestic costs	110
7. CONCLUSION	111
CHAPTER FOUR: THE INFLUENCE OF EU ENLARGEMENT CONDITIONALITY ON THE CONTROL OF CORRUPTION: THE CASE OF ROMANIA	115
1. INTRODUCTION	115
2. GENERAL REMARKS	116
3. DETERMINACY OF CONDITIONS	117
4. SIZE AND SPEED OF REWARDS AND CREDIBILITY OF THREATS AND PROMISES	122
4.1. What happened after the start of negotiations?	125
4.2. What happened after the negotiations were concluded?	129
5. DOMESTIC ADOPTION COSTS	137
6. ANALYSIS	139
6.1. Determinacy of the conditions	139
6.2. Size and speed of rewards and credibility of threats and punishments	140
6.3. Domestic adoption costs	143

7. CONCLUSIONS	148
CHAPTER FIVE: THE ROLE OF THE EU IN CORRUPTION CONTROL DURING THE ACCESSION PROCESS OF MACEDONIA	151
1. INTRODUCTION	151
2. GENERAL REMARKS	153
2.1. Political parties, the Albanian minority and the Ohrid Agreement.....	155
2.2. Macedonia- EU relations	157
2.3.The VMRO-DPMNE period.....	158
3. DETERMINACY OF THE CONDITIONS	168
3.1. Impact limited to the adoption of anti-corruption legislation	173
4. SIZE AND SPEED OF REWARDS AND CREDIBILITY OF THREATS AND PROMISES	180
4.1. Secondary importance of anti-corruption success in Macedonia for the EU	181
5. DOMESTIC ADOPTION COSTS	187
6. ANALYSIS	191
6.1. Determinacy of the conditions	191
6.2. Size and speed of rewards and credibility of threats and promises.....	194
6.3.Domestic adoption costs	198
7. CONCLUSION	199
CHAPTER SIX: THE EU’S ANTI-CORRUPTION ENLARGEMENT CONDITIONALITY IN A COMPARATIVE CONTEXT: HAVE THE CRITERIA EVOLVED OVER TIME?.....	203
1. INTRODUCTION	203
2. DETERMINACY OF CONDITIONS.....	204
3. SIZE AND SPEED OF REWARDS AND CREDIBILITY OF THREATS AND PROMISES	213
4. SIZE OF DOMESTIC COSTS	221
5. CONCLUSION	226

CHAPTER 7: CONCLUSIONS	230
1. MAIN ASSUMPTIONS AND CASE SELECTION.....	230
2. KEY FINDINGS FOR RESEARCH QUESTION 1: HOW FAR AND IN WHAT CIRCUMSTANCES CAN THE EU INFLUENCE CORRUPTION CONTROL DURING THE ACCESSION PROCESS?	232
3. KEY FINDINGS FOR RESEARCH QUESTION 2: WHY DID THE EU HAVE A LIMITED IMPACT ON THE CONTROL OF CORRUPTION IN CANDIDATE COUNTRIES?.....	234
3.1. The lack of clarity and suitability of anti-corruption criteria	234
3.2. The difficulties with adequately measuring success	238
3.3. The secondary importance of corruption control for the EU	239
4. KEY FINDINGS FOR RESEARCH QUESTION 3: WHAT FACTORS, BOTH EXTERNAL AND INTERNAL (DOMESTIC), ARE RELEVANT FOR CONTROLLING CORRUPTION IN CEECs?	244
5. REVISITING THE LITERATURE	246
5.1. The literature on EU conditionality	247
5.2. Revisiting the corruption literature	252
6. KEY FINDINGS AND FURTHER RESEARCH.....	256
APPENDIXES.....	262
APPENDIX 1: LIST OF INTERVIEWEES	262
APPENDIX 2: GUIDING INTERVIEW QUESTIONS.....	269
APPENDIX 3: ANTI-CORRUPTION FRAMEWORKS AND EU RELATIONS ON THE CASES OF INTEREST	270
3.1. ANTI-CORRUPTION FRAMEWORK AND EU RELATIONS: CZECH REPUBLIC	270
3.2. ANTI-CORRUPTION FRAMEWORK AND EU RELATIONS: ROMANIA	273
3.3. ANTI-CORRUPTION FRAMEWORK AND EU RELATIONS: MACEDONIA.....	276
BIBLIOGRAPHY	280

List of abbreviations

CEE- Central and Eastern Europe

CSOs- Civil Society Organizations

CVM- Cooperation and Verification Mechanism

DG- Directorate General

DNA- National Anticorruption Directorate, Romania

DPA- Democratic Party of the Albanians, Macedonia (Demokratska Partija na Albancite)

DUI- Democratic Union for Integration, Macedonia (Demokratska Unija za Integracija)

EC- European Commission

EU- European Union

GRECO- Group of States against Corruption

HLAD- High Level Accession Dialogue

IPA- Instrument for Pre-accession Assistance

MEP- Member of the European Parliament

NATO- North Atlantic Treaty Organisation

OSCE- Organisation for Cooperation and Security in Europe

PHARE – Poland and Hungary Assistance for Restructuring of the Economy

PP- Public Prosecutor

SAA- Stabilisation and Association Agreement

SAO- State Audit Office

SCPC- State Commission for the Prevention of Corruption, Macedonia

SDSM- Social Democratic Union of Macedonia, Macedonia (Socijaldemokratski Sojuz na Makedonija)

UNCAC- United Nations Convention against Corruption

VMRO-DPMNE- Internal Macedonian Revolutionary Organization- Democratic Party for Macedonian National Unity, Macedonia (Vnatresna Makedonska Revolucionerna Organizacija Demokratska Partija za Makedonsko Nacionalno Edinstvo)

WB- Western Balkans

Chapter One: Introduction

1. Aim and scope of the research

Before the 1990s, the enlargement policy of the European Union (EU) mainly consisted of two sets of decisions concerning the conditions under which new members could join. These decisions were related to the general conditions that a country had to meet in order to be considered a candidate for membership and decisions on the concrete terms of accession (Sedelmeier 2010: 405). After the end of the Cold War, post-communist countries in CEE introduced democratic regimes and expressed a strong interest in joining the EU. However, neither the countries themselves nor the EU were immediately ready for such a step. The former were democracies in the making, with many political, social and economic challenges. The latter were not prepared to let these countries in before being reassured that new members would not be a heavy burden on the functioning of the EU. How to provide support to post-communist countries for their transition to market economies and democracies, whether to use the prospect of eventual EU membership to support such reforms, and how, and to what extent, aspiring candidates should be assisted to adjust to specific EU membership conditions were the key questions of the Union's enlargement policy (Sedelmeier 2010: 406–407). As a result, a set of rules and requirements were drawn up to guide those who showed interest, and to reassure 'members of the club' that post-communist countries would cope with the many challenges that EU membership would bring. Since then, a comprehensive enlargement policy has been practised, improved and extended to accommodate the accession of post-communist countries. Around the same time, corruption rose up on the agenda of domestic and international actors and the ability of candidate countries to control corruption became an important requirement of the accession process. In the sphere of anti-corruption, the aim of the accession process was to bring about sustained positive changes in candidate countries before they joined the EU. This is because the Union's impact on anti-corruption policy in its Member States was limited

to a small number of areas,¹ and after accession it was very difficult for the EU to influence national anti-corruption policies (Mitsilegas 2013: 194–195). In other words, after a candidate joins, the EU loses the ability to use membership as a tool to promote change.

Yet, the EU anti-corruption enlargement requirements have mainly focused on the harmonization of legislation in candidate countries. This has led to a focus on the creation of ‘EU conform’ laws² and institutional structures for external consumption, with little or no impact on the actual control of corruption. Consequently, the incentive of membership as an anti-corruption tool was either not used to its fullest potential, or it was not, in itself, sufficient to enforce the application of anti-corruption laws prior to accession. As a result, many CEECs continued to face serious difficulties in controlling corruption after accession and struggled with implementing anti-corruption measures in practice.

1.1. Research questions

EU enlargement policy has been developed and broadened for the purpose of regulating the accession process of post-communist countries. This thesis therefore focuses on CEECs, that is, members, candidates and potential candidates. In light of the above, the main aim of this research is to connect the topics of enlargement conditionality and corruption in order to investigate and answer the following questions:

- (i) How far and in what circumstances can the EU influence corruption control during the accession process?
- (ii) What role does EU conditionality play on control of corruption in candidate countries?
- (iii) What factors, both external (EU-related) and internal (domestic), are relevant for controlling corruption in CEECs?

¹ The EU’s limits regarding anti-corruption are restricted to safeguarding a variety of Union objectives ranging from protection of the EU budget to the rule of law (Mitsilegas 2013: 161).

² Laws that were introduced to improve compliance with EU anti-corruption requirements, but which were limited in their implementation.

This thesis will look specifically at control of corruption in CEECs during the EU accession process. The focus is on conditionality regarding corruption control during the enlargement process only, because after candidates join the EU the nature of the relationship between the EU and a country (Member State) changes, that is, post-accession conditionality regarding corruption control is different, and, arguably a weaker instrument compared to accession conditionality. The research questions are answered by employing a focused comparative approach and tracing the EU accession process related to anti-corruption in three CEECs: the Czech Republic, North Macedonia³ and Romania. It is important to stress that even though this research is concerned with corruption in CEECs, the main focus of the thesis will be on ‘control of corruption’, because corruption control is a broad concept and it is more feasible to get a robust measure of this concept as opposed to corruption per se. Issues with defining corruption and the rationale for focusing on corruption control are elaborated in Section 2.1.⁴

1.2. Why the specific focus on EU anti-corruption conditionality during accession?

Overall, the general EU conditions for accession have remained the same since the introduction of the Copenhagen Criteria in 1993 and the Madrid Criteria in 1995. They provide political, economic, legal and administrative criteria based on which the EU judges whether or not a candidate is climbing up the accession scale. However, the accession conditions allow for discretion both when interpreting the EU accession requirements by candidates and when assessing the success of the results achieved by the EU: *“the Copenhagen conditions are extensive, and what constitutes meeting them is open to interpretation, giving the EU considerable discretion in deciding what has to be done before compliance is achieved”*

³ Since the independence of Macedonia in 1991, the country has had a dispute with Greece over the use of its name. Greece opposed the constitutional name Republic of Macedonia and uses the provisional reference Former Yugoslav Republic of Macedonia (FYROM) instead. In June 2018, an agreement was reached to change the country’s name to North Macedonia (The Guardian, 2018). As large portion of the thesis and analysis was written prior to the name change, for reasons of consistency, I will simply use the term Macedonia in this thesis.

⁴ The World Bank’s Worldwide Governance Indicators on the control of corruption will be used within this thesis. For further information please refer to Section 2.1.

(Grabbe 2001: 1015). In other words, the accession criteria on the one hand allow for candidate countries to select the means for fulfilling the EU's requirements, and on the other hand clear benchmarks for success were not always provided by the EU.

The EU accession criteria on anti-corruption were at the forefront of the enlargement process due to the seriousness of the corruption issue for the EU and the challenges that CEECs faced in controlling corruption. Interestingly, while the accession conditions have remained the same overall, the EU's anti-corruption policy towards candidate countries has been evolving with every new enlargement cycle. For example, in May 2003, only a year before the 2004 accession took place, the Commission presented the candidate countries with the most comprehensive set of anti-corruption criteria thus far, entitled 'Ten Principles for Improving the Fight against Corruption in Acceding, Candidate and other Third Countries' (Szarek-Mason 2010: 196). However, these had only a negligible effect in practice and candidates were only invited to take them into account when devising their national anti-corruption strategies, there was no follow-up mechanism to determine their successful implementation (Szarek-Mason 2010: 197). This was an indication of the lack of focus on corruption control and that the EU lacked suitable mechanisms for assessing progress in candidates.

The main instruments for assessing progress in the accession process are the European Commission's Annual Progress Reports.⁵ Their main aim is to examine the performance of candidate countries vis-à-vis the Copenhagen Criteria. They were introduced in 1993 and the EU has used them since then in the accession processes of all CEECs. However, the Progress Reports suffered from similar criticisms to the accession criteria. They were not specific and did not provide particular recommendations for concrete actions in order to improve a policy area. Grabbe (2001: 1022) points this out when discussing the Progress Reports as evaluation tools: *"The goals are often vague, citing a need for 'increasing capacity' or 'improving*

⁵ These were initially called Regular Reports during the 2004 and 2007 enlargements, but were later renamed to Progress Reports. This did not affect their content.

training', rather than stating detailed institutional preferences''. In addition, Szarek-Mason (2010: 195) points out that there were many inconsistencies in spotting problem areas relevant to the control of corruption, as issues that were very important for all CEE candidates, such as the development of civil society organizations or the regulation of lobbying, were selectively emphasised in only a few Annual Reports of some (but not all) candidates.

Therefore, after the 2004 enlargement, the EU started to change its strategy for tackling these issues for subsequent enlargement rounds. New strategies to the enlargement process, such as improved consistency in measuring candidates' progress, benchmarks, and particular emphasis on rule of law issues, were introduced to ensure better functioning of the accession process in this high-priority area. This is especially the case for the WB countries for which the EC proposed a "new approach" for tackling issues related to the judiciary and fundamental rights. These issues require a reform of the judicial system which is considered to have important implications for social stability and sustainable growth (Fagan and Sircar 2015: 6). Moreover, judicial reform is crucial for improving corruption control overall, due to the opportunities for both bribery and political influences over judges and prosecutors.

The EU also allowed more time for candidates to implement the necessary reforms. The evolving character of EU anti-corruption conditionality and the importance of the domestic control of corruption by candidates for the accession process suggest that the anti-corruption criteria are a very important aspect of the enlargement process and therefore differ from other EU conditions. Anti-corruption and rule of law issues were serious enough to stall the enlargement process overall and could directly affect the fulfilment of democratic accession conditions in general. Therefore, corruption control was considered one of the most challenging areas for improvement during the accession process. This thesis, therefore, focuses specifically on EU anti-corruption conditionality and examines how important corruption problems were

for the accession process, whether any actual progress was achieved in practice and what influences the success of EU conditionality in this area.

2. Issues with defining and measuring corruption

2.1. Defining corruption

Corruption is a contested concept with many different definitions. Corruption can therefore mean different things in different contexts. There has also been a tendency to understand corruption too broadly (Hough 2017: 33–34). Therefore, before examining the relationship between corruption and EU accession conditionality, it is important to explore the main definitional challenges surrounding this concept and to explain how the issue of corruption will be conceptualised for the purposes of this research.

Definitions of corruption are not scarce. Dan Hough (2017: 35) differentiates between four types of contemporary corruption definitions: (1) definitions based on legal understandings of corruption, (2) corruption as an abuse of power for private gain, (3) business-orientated definitions of corruption and (4) legal corruption. The first approach is a positivist one. Corruption occurs when an anti-corruption legal norm has been breached and if an action, regardless of how immoral it may be, is not illegal it is not considered corrupt (Hough 2017: 36). The privatisation process in CEECs offers a plethora of examples relevant for such definitions. The legal systems in many of these countries were ill-equipped to deal with the new forms of corruption that the process of privatisation engendered (Kaufmann and Siegelbaum 1997: 423). Therefore, even if some transactions were morally questionable they could not be legally considered corrupt acts due to the lack of an adequate legal framework. Defining corruption from this perspective can be problematic. Corrupt acts mean different things in different legal systems, corruption can be too narrowly defined, and often there are

ways of bending the law or of finding legal loopholes so as to avoid corruption charges, prosecution and/or sanctions (Hough 2017: 36–37).

The second set of definitions argue that corruption is an abuse of entrusted power. The many forms and varieties of corruption have resulted in something approaching a consensus to define corruption as broadly as possible in order to fit the many varieties of corrupt behaviours. Such broad definitions are very commonly used by political scientists and economists, NGOs, governments and international organizations.

Susan Rose-Ackerman conceptualises corruption as “*the use of public office for private economic gain*” (1999: 75). Similarly, Leslie Holmes defines corruption as “*the abuse or misuse of public power for private gain or advantage*” (2006: 20). These, and similar definitions, were derived from Joe Nye’s definition of corruption as a “*behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence*” (1967: 419). Transparency International, meanwhile, defines corruption as the “*use of entrusted power for private gain*” (2014). The World Bank settled on a similar definition, “*the abuse of public office for private gain*”. Grey and Kaufmann, who are part of the team behind the World Governance Indicators, give a general definition of corruption, the “*use of public office for private gain*” (1998: 7). Such definitions arise from Western norms of what is acceptable behaviour and are imposed as universal assumptions about the way politics is and should be conducted (Hough 2017: 40). This is the main issue with these definitions. It is difficult to universally agree what constitutes an abuse of power, especially as corruption occurs in different settings and contexts. This clash between universalism and relativism, as Hough puts it: “*leads to one of the most longstanding problems in the world of corruption analysis; ultimately, one’s understanding of the corrupt will be indelibly linked with one’s understanding of the political*” (Hough 2017: 41).

Another set of corruption definitions revolve around what Kaufmann and Vicente (2005) calls ‘legal corruption’. ‘Legal corruption’ occurs when the elite prefer to hide corruption from the population by legalizing it (Kaufmann and Vicente 2005: 4). Hough (2017) develops Kaufmann’s argument by linking ‘legal corruption’ to state capture. State capture occurs “*when ostensibly legal processes and transactions take place that are widely regarded as corrupting the norms and values that should underpin an upstanding political process*” (Hough 2017: 44). Examples of such corruption include the so-called Panama Papers, the Gupta brothers’ links to South Africa and the parliamentary expenses scandal in the UK (Hough 2017: 43–45). This term was coined by researchers at the World Bank and a number of scholars (such as Grzymala-Busse 2008, Hellman, Jones and Kaufmann 2000, Lessig 2013, Wallis 2006) have introduced definitions of state capture. Primarily the focus was on how economics corrupts politics. Consequently, it was defined as a type of corruption where economic actors are “*shaping the formation of the basic rules of the game (i.e. laws, rules, decrees and regulations) through illicit and nontransparent private payments to public officials*” (Hellman, Jones and Kaufmann 2000: 3), or:

...systemic and strategic influence which is legal, or even currently ethical, that undermines the institution’s effectiveness by diverting it from its purpose or weakening its ability to achieve its purpose, including, to the extent relevant to its purpose, weakening either the public’s trust in that institution or the institution’s inherent trustworthiness. (Lessig, 2013, p. 2)

However, other scholars such as Grzymala-Bysse (2008) have shifted the focus from economic agents to agents within a state: “*elite state capture is the appropriation of state resources by political actors for their own ends: either private or political benefit*” (Grzymala-Busse 2008). Wallis (2006: 25) distinguishes between systematic corruption (when politics corrupts economics) and venal corruption (when economics corrupt politics). The overall argument here is that those who hold power are the ones making the rules. According to rational choice theories, it is expected that ruling elites will shape the rules to suit their own interests if the benefits of being corrupt are higher than the costs of not being corrupt (see Section 3.3.). This

thesis employs a rational choice approach to corruption and such an understanding of corruption is very important for the purposes of this research because of the use of the external incentives model. Nevertheless, it is important to note that such ‘legal corruption’ is particularly difficult to identify and tackle as it occurs at the highest levels of government.⁶

Business-oriented definitions aim to broaden the scope by considering the links between corruption and the private sector. Initially, corruption has been seen to originate from public officials and businesses have been perceived as actors responding to corrupt demands, but recently such perceptions have changed (Hough 2017: 42). In addition, business-oriented definitions allow for a broader understanding of corruption outside of the state, that is, *“although the state has nothing to do with the [corrupt] transactions in question, it is clearly affected by them”* (Hough 2017: 42). Collusion is a good illustration of such actions. Collusion is *“any conduct adopted by a group of firms that aims at reproducing or approximating the market outcome, induced by a single, dominant firm”* (Albano, Buccirossi, Spagnolo and Zanza 2006). Colluding firms coordinate their strategies, and examples include price-fixing where firms preselect the winner, submit fake bids and get paid off by the winner, or market-sharing agreements where customers are divided and assigned to a predetermined bidder. In such cases there may be no involvement of a public official who abuses their entrusted power for private gain, but it still affects the public budget and distorts market competition. Such instances of abuse of power are closely related to state capture by business elites and private interests. Therefore, a broad understanding of corruption is required for the purposes of this research. Such a broad understanding of corruption has been advocated by Daniel Kaufmann, former head of the World Bank’s governance team. Kaufmann, together with Aart Kraay, has developed the World Bank World Governance Indicators (WGI), which focus on six dimensions of governance. Control of corruption is one of these dimensions. Kaufmann, Kraay

⁶ See Rose-Ackerman and Palifka (2016: 415–445) on successful efforts to tackle political corruption.

and Mastruzzi (2010: 4) explain that the ‘control of corruption’ indicator “*captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests*”. This definition was developed and used for gathering and measuring data for the World Bank World Governance Indicators. It does not aim to define corruption per se, but rather to measure a country’s ability to control its corruption levels. Mungiu-Pippidi offers a narrower definition: “*corruption control is the ability to constrain particularism and defend the state from being an instrument serving particular private interests rather than the public one*” (2015: 18). It is actually corruption control not corruption itself that is being measured and assessed when generating countries’ rankings (Mungiu-Pippidi 2015: 18). This thesis will therefore focus on corruption control as opposed to corruption.

Corruption control encompasses the broadest understanding of corrupt practices and looks at the ability of a society to control its corruption levels. It is very difficult to assess how much corruption there is, and in order to get round this problem one needs to look at more tangible concepts. Given the problems with defining corruption, the concept of ‘corruption control’ will be used for this thesis. By using the WGI data I will be able to get a grasp of the ability of candidates to control corruption, instead of trying to comprehend how much corruption there actually is in CEECs.

2.2. Worldwide Governance Indicators and the Control of Corruption. What trends have emerged across time and space?

There are several global attempts to measure corruption. Transparency International’s Corruption Perceptions Index (CPI) and the World Bank’s Worldwide Governance Indicators, which include a “control of corruption” measurement, are the most notable. TI’s CPI ranks around 180 countries (the exact number changes every year) on an annual basis based on their

perceived level of corruption in the public sphere (TI 2018). The WGI have been produced by Daniel Kaufmann and Aart Kraay and they use perceptions to measure six dimensions of governance⁷ in over 200 countries, including a corruption control dimension (World Bank 2018). This thesis utilises the WGI to follow trends in corruption control in 17 CEECs between 1996–2012. Even though the CPI and the WGI have both positives and negatives (see Hough 2017: 50–61, Mungiu-Pippidi 2015: 40–56, Rose-Ackerman and Palifka 2016: 15–23), the WGI have been selected over the CPI for a number of reasons.

First, the CPI index does not actually measure corruption, but rather perceptions of corruption. The WGI look at “corruption control”. They also capture perceptions, not those of corruption, but “of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests” (Kaufmann, Kraay and Mastruzzi 2010: 4). The CPI looks at perceptions of how corrupt a country is. Unlike the CPI, the WGI’s main aim is to offer insights in to how successful countries are in controlling corruption, not only how corrupt countries are perceived to be. Considering that one of the main aims of EU conditionality is to improve the rule of law (corruption plays a big role in this), using the WGI will allow for a more comprehensive overview of how successful CEECs were in controlling domestic corruption.

Second, the WGI cover a broader scope of corruption-related issues and use a wider range of sources compared to the CPI. The CPI’s focus is on public-sector corruption. It uses experts and business people’s perceptions to rank around 180 countries and territories on a scale of 0 (highly corrupt) to 100 (very clean) according to perceived public corruption levels (Transparency International 2018). The WGI, on the other hand, focus on both public- and private-sector corruption. They use over 30 sources for the purposes of data gathering, which is far more than the sources used by the CPI. Unlike the CPI, the WGI not only focus on

⁷ The following six dimensions are measured: Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, Control of Corruption (World Bank 2018).

experts' and business people's perceptions. They include data sources provided by a number of survey institutes with enterprise, citizen and expert survey respondents and sources from the private and non-for-profit sectors, as well as international organizations (World Bank 2018).

Third, the focus on both public and private sector corruption is an important aspect of measuring contested concepts, such as corruption, and can have an impact on the data collected. Public sector corruption, that is – grand corruption, represents only one aspect of corruption problems in a country. TI defines public sector corruption as “any kind of abuse of entrusted power for private gain that takes place within the government or government bodies” (TI 2013). However, this does not account for corrupt acts where power has been entrusted to individuals outside government agencies, such as in sport, business (especially when collusion takes place) or private-led media outlets. Moreover, the CPI's focus on public-sector corruption perceptions can be problematic, as corruption can mean different things in different contexts. What is perceived as corrupt behaviour in one context may not be perceived as corrupt in another. Respondents may not always be able to make a distinction between “public” and “private” sector corruption, which would affect the data gathered. Moreover, often the terms “corruption” and “bribery” are seen as one and the same (Hough 2017: 53). This is not always the case, as bribery is only one of the many forms in which corruption may occur and corruption does not only exist in the public sector. As the WGI encompass both public and private state corruption and give a broader overview of issues with corruption control, it is a more appropriate data set and will be used for this thesis.

Fourth, both these indices compress countries' scores to a simple number with the aim of comparing over time and space. Comparing countries' progress based on a single number is problematic, even without the changes to methodologies that these indices have endured. The new CPI methodology (post-2012) allows for comparisons over time, but this was not the case

with the old, pre-2012, methodology.⁸ The CPI has other flaws as well, such as high non-response rates to some questions, different countries being included in different years and changes to the wording of questions, which traditionally made it unsuitable for measuring trends (Mungiu-Pippidi 2015: 41). The WGI were also revised over the years, such as changes in the data sources used, but the way the indicators were reported remained the same (Hough 2017: 54). The WGI report on margins of errors so as to avoid wrong interpretations when looking at differences across countries and over time (Kaufmann, Kraay and Mastruzzi 2010: 2).

This thesis considers corruption-control trends in CEECs starting from the mid-1990s, and it uses differences in trends as one of the bases for case selection, making the CPI an obsolete tool for the purposes of this research. WGI scores on the other hand, can be compared both across countries over time and for specific countries over time, as they use comparable methodologies (Kaufmann, Kraay and Mastruzzi 2010: 15). Even though Kaufmann, Kraay and Mastruzzi recognise that these types of comparisons have a margin of error, they take precautions and adjust for them (2010: 8). Kaufmann acknowledges that WGI data are particularly useful for noting trends in governance over time, such as trends over a decade, and that year-on-year changes in a country's governance should be handled with caution (World Bank 2018). The WGI do allow for a margin of error and even though there is a certain level of imprecision present, as with all perceptions-based data, this index is the most suitable indicator for cross-country and over time comparisons (Mungiu-Pippidi 2015: 45–46).

Much of the political economy literature uses measurements when analysing corruption, and the CPI and the WGI are among the ones most commonly used. As illustrated above, both the CPI and the WGI offer perceptions-based measurements of corruption-related issues, but the

⁸ Before 2012, the CPI was based on perceptions relative to other countries that were present in the index. This meant that “country scores very highly dependent on the changes in scores of the countries around it in the index” (Transparency International 2012). Also, countries were scored on a scale from 0 (highly corrupt) to 10 (very clean), whereas after 2012 they have been scored on a scale of 0–100. Finally, after 2012, countries can be compared over time.

CPI is a more problematic tool due to definitional challenges, the fewer data used, the change in methodology and the narrower focus on public-sector corruption. As a result, for this thesis, I will use data from the WGI on corruption control. The WGI have three main uses in this thesis, they are used: (i) to operationalise ‘corruption control’, (ii) to examine whether there is a correlation between EU conditionality and corruption control in CEECs and (iii) to justify case selection. The ‘control of corruption’ concept and the rationale for using this for the purposes of this thesis have been elaborated in Sections 2.1. and 2.2. The next section will identify whether there is a correlation between corruption control in CEECs and EU influence. The rationale for the case selection is examined in Section 5.

2.3. Control of corruption trends in CEECs

In the following section I will examine control of corruption trends in 17 CEECs. The prospect of EU membership was considered as a driving force for many domestic reforms in CEECs. Potential EU membership has been on the table for all of the examined cases. Therefore, by looking at corruption trends and keeping in mind the importance that the EU attaches to the fight against corruption, this initial analysis will shed light on whether there appears to be a correlation between EU conditionality and corruption control. Through its conditionality mechanism, the EU attempts to improve corruption control in CEECs, so I start by looking at whether trends in corruption control have increased over time in the 17 cases. I will then briefly analyse corruption trends in CEECs, which will later on help me with the case selection.

Table 1. gives an overview of trends in controlling corruption in CEECs (member states, candidates and potential candidates for EU accession). In the table, the countries’ names are listed based on their success in controlling corruption in 2012 in the first row. The second row illustrates the control of corruption score for each country for the year 2012. The third row illustrates the control of corruption score for each country for the year 1996. The fourth row

assigns a score from highest to lowest (one being the highest) for each of the 17 examined countries. For example, Estonia had the highest control of corruption score in 2012, whereas Albania had the lowest one. The fifth row ranks countries based on their ability to control corruption in 1996 (100 being the highest). The sixth row illustrates the difference in scores from 1996 to 2012. It shows how much a country had improved (or declined) in controlling corruption at the end of that period. Row seven ranks countries based on the overall progress achieved between 1996 and 2012. For example, Macedonia managed to achieve progress from 17.1% in 1996 to 59.3% in 2012. It means that the country managed to improve its control of corruption by 42.2% between 1996 and 2012. This is the greatest improvement in scores out of all CEECs during the time period in question.

Table 1: CEECs ranked by control of corruption scores for 2012 and 1996

Country Name	2012	1996	Ranking for 2012, highest to lowest	Ranking for 1996, highest to lowest	Discrepancy	Ranking based on progress achieved between 1996-2012
Estonia	80.4	57.6	1	6	22.8	6
Slovenia	74.6	86.8	2	1	-12.2	14
Poland	71.8	72.7	3	4	-0.9	11
Lithuania	66.0	57.6	4	7	8.4	8
Hungary	64.6	74.1	5	3	-9.5	13
Czech Republic	63.6	76.6	6	2	-13	15
Latvia	62.7	23.9	7	11	38.8	2
Slovak Republic	60.3	66.3	8	5	-6.0	12
Macedonia, FYR	59.3	17.1	9	13	42.2	1
Croatia	57.4	23.9	10	12	33.5	3
Montenegro	55.0	N/A	11	N/A	55.0	N/A
Bulgaria	52.2	25.9	12	10	26.3	5
Romania	50.7	49.3	13	8	1.4	10
Bosnia and Herzegovina	49.3	42.0	14	9	7.3	9
Serbia	48.3	15.1	15	14	33.2	4
Kosovo	30.1	N/A	16	N/A	30.1	N/A
Albania	26.8	11.7	17	15	15.1	7

Source: World Bank worldwide Governance Indicators: Control of Corruption (2013)

This thesis starts from the assumption that the EU tried to influence the control of corruption in CEECs during accession. However, considering the above data on corruption control in CEECs between 1996–2012, it is evident that there is no correlation between corruption control trends and EU anti-corruption conditionality. Some cases were more successful than others in

controlling their corruption over time. As is evident from Table 1., Macedonia, Latvia and Croatia achieved the greatest progress in the control of corruption, with increases of 42.2%, 38.7% and 33.5%, respectively, between 1996 and 2012. Albania, Serbia and Kosovo had the lowest scores in 1996 and continued to do so until 2012. Control of corruption in the Czech Republic decreased from 76.5% in 1996 to 63.6% in 2012. On the other hand, control of corruption in Romania remained virtually unchanged (49.2% in 1996 as opposed to 50.7% in 2012). Based on these scores is it reasonable to assume that there does not appear to be a causal relationship between corruption control and EU enlargement in CEEC, with regard to both new CEE Member States and candidates.

Furthermore, Graph 1 illustrates that countries with relatively high control of corruption scores either registered a decrease in their control of corruption scores between 1996 and 2012, or their scores remained more or less the same. In other words, there was no further significant increase in the control of corruption in cases with initially high scores. As an illustration, out of all of CEECs, the Czech Republic and Slovenia had the highest scores in 1996, 76.5% and 86.8%, respectively. By 2012, the score of the Czech Republic had dropped to 63.6%, and Slovenia's score to 74.6%. In fact, even though Slovenia was among the highest ranked countries in both 1996 and in 2012, it had one of the lowest scores for the progress achieved over time (-12.1%). This further suggests that there is no causal connection between control of corruption scores and EU influence. This thesis, therefore, aims to determine why this is the case.

4. Methods and case selection

This thesis uses a small N-study design. As Yin (2009: 9) observes, a case-study method should be used for studies that focus mainly on explanatory questions and those that deal with operational links that need to be traced over time, rather than with mere frequencies or incidence. This thesis aims to explain the role of a major international actor (the EU) in

controlling corruption in candidate countries for EU accession. A case-study approach is therefore a suitable approach for this study as it helps to explain how the EU influences the control of corruption in candidates and whether it succeeds or fails to exert significant influence by the use of its conditionality mechanism. A cross-country comparative approach has been chosen, as comparison is a crucial part of empirical research. One of the main purposes of a comparative method is to explain how different problems are addressed in different contexts, to test theories, and to assess whether a particular political phenomenon is just a local issue or part of a broader trend (Hopkin 2010). Introducing a comparative case-study approach will therefore enrich this study and allow for greater generalisation.

A small-N case-study approach is widely used in political research, it involves the comparison of two or more cases, but it rarely exceeds a dozen (Halperin and Heath 2012: 208). Small N-studies allow the researcher to consider – and, to a certain extent, include – both the general and the particular by allowing for an in-depth and detailed investigation of the selected units of analysis, while at the same time providing greater scope for contextualisation (Halperin and Heath 2012: 209). Hopkin (2010: 289) argues that, “*if political science is to generate general propositions about political life, there is no alternative to comparison*”. Moreover, employing a comparative approach assists in assessing the validity of our interpretations (King, Keohane and Verba 1994 in Hopkin 2010: 290). Still, one has to be very cautious when selecting cases for a small N-design. An emphasis on a single case or on a small number of cases mainly allows for an in-depth examination, but it lacks the cross-country comparative element that a quantitative analysis can offer (Liebersohn 1991, Rohlfing 2012). Therefore, choosing good cases for small-N studies is an extremely challenging task, and crucial for the research, as the validity of causal inferences is largely based on the properties of the selected cases (Blatter and Haverland 2012: 41). A methodological justification is, therefore, needed to avoid bias in case selection and to prevent misleading results (Seawright and Gerring 2008: 295).

For this small-N study comparison I have chosen to compare three CEECs: the Czech Republic, Macedonia and Romania. When selecting the cases I used the ‘diverse cases’ strategy. According to Seawright and Gerring (2008: 300), the main goal of this strategy is to achieve maximum variance along relevant dimensions and this requires the selection of a minimum of two cases which are intended to represent the full range of values characterising X,Y, or some particular X/Y relationship. According to this strategy for case selection, the researcher selects a case from each different category, which usually includes choosing cases representing high, low and, possibly, a median value. Following this argument, I have selected: a case in which the control of corruption improved during the accession process (Macedonia), a case in which there have been no significant changes (Romania), and a case in which the control of corruption worsened during and after the accession process (Czech Republic), according to the WGI. This selection will allow for diversity as it represents different outcomes in the fight against corruption in CEE countries.

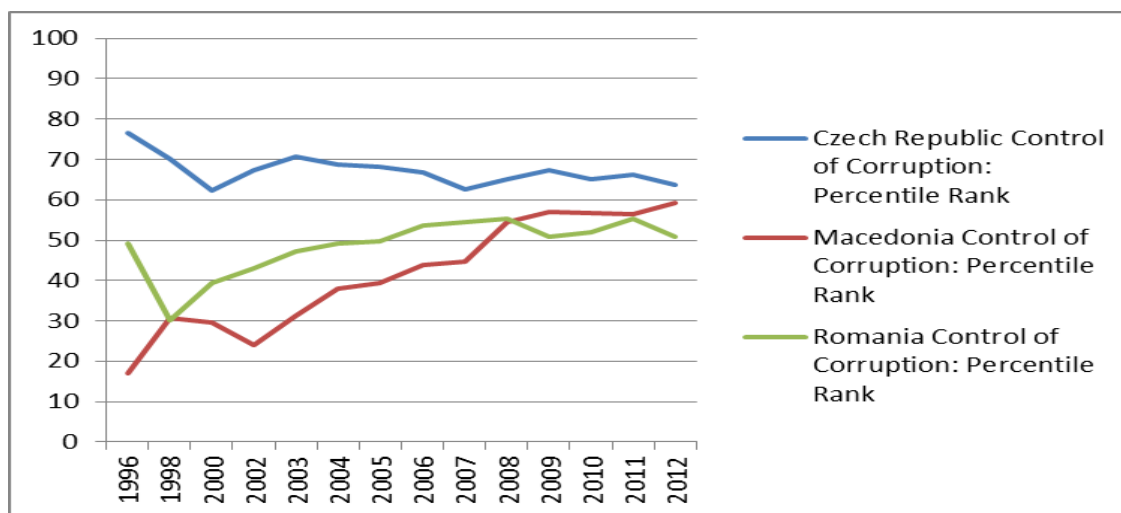
I selected the cases based on an analysis of the World’s Bank WGI on the control of corruption (see Chapter 1.). I analysed the control of corruption scores of 17 CEE countries between 1996 and 2012 (see Chapter 1). According to these findings, in some cases, such as Macedonia and Estonia, corruption control increased over time; in other cases, such as the Czech Republic and Slovenia, the scores decreased; and in yet more cases, such as Romania and Poland, the scores have remained the same⁹ (see Graph 1.1). This suggests that besides the EU’s influence and pressure on CEECs, there have been different levels of control of corruption trends. Therefore, I selected a representative case of each of the three different trends within the control of corruption scores in CEECs.

When selecting the cases for this small-N comparison I wanted to assure diversity in both the ability to control corruption and enlargement cycles, that is, I included cases from different

⁹ The lower the control of corruption score is, the lower a country’s ability to control corruption is.

enlargement cycles while maintaining variation in the countries' ability to control corruption. I selected three cases from three different enlargement cycles in order to assess whether – and if so, to what extent – the EU's anti-corruption requirements have evolved over time. It is crucial to assess whether the different outcomes in the fight against corruption in different cases were the result of changes in the accession criteria (that is, in the way the EU exerted pressure) or of some other country-specific factors (or both), and so including cases from different cycles will facilitate answering these questions.

Graph 1.2. Control of corruption in the Czech Republic, Macedonia and Romania 1996-2012



0 corresponds to the lowest score and 100 corresponds to the highest score in controlling corruption

Source: World Bank Control of Corruption Scores between 1996 and 2012

In this thesis I will also provide insights into the importance of the issue of corruption for the EU during the accession process. At the time of writing, candidates such as Macedonia were expected to make more efforts to tackle corruption if they want to join the EU. On the other hand, Macedonia in particular was recommended for negotiations in 2009, which leads me to the conclusion that the country fulfilled the democratic criteria for accession and was ready to move on to transposition of the acquis. The negotiations phase was blocked by the EU Council in 2009 due to the country's name dispute with Greece, not because of its failure to meet democratic conditionality. Moreover, although the accession process for Macedonia was

blocked, the country still continued to record positive increases in its control of corruption scores.¹⁰ This, together with the country's highest increase in the control of corruption scores among CEECs, makes Macedonia a very interesting case for further analysis.¹¹

I shall combine this small-N study with process tracing. Comparison is also often used to illustrate that large-scale social, economic and political forces can have divergent outcomes in different countries as a result of the diversity of domestic institutional arrangements (Hopkin 2010: 303). The process-tracing approach can capture causal mechanisms which are too subtle to be observed through analyses of large numbers of cases. A small number of cases can tell us more about causal relationships than large Ns can (Pierson 2004 in Hopkin 2010: 303). Hence, introducing the process-tracing method will possibly solve the previously mentioned issue about overseeing country-specific factors.

George and Bennett (2005: 206) define process-tracing as a “*method [that] attempts to identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable*”. Process tracing has three different uses depending on the goal of the researcher: testing whether a causal mechanism is present in a case, building a theoretical mechanism, and crafting an explanation that accounts for a particular outcome (Beach and Pedersen 2013: 11). For the purposes of this thesis, process-tracing is used for theory-building, as well as to craft an explanation for a particular outcome. According to Beach and Pedersen (2013: 16), theory-building process-tracing as an inductive method seeks to build a mid-range theory describing a causal mechanism that is generalizable outside of the individual case, whereas explaining-outcomes process-tracing provides a minimally sufficient explanation of an outcome in an individual case. This thesis will both explain the different outcomes in the control of corruption trends in

¹⁰ This may question the validity of big aggregate indicators, but this will be addressed in the conclusion of this thesis, after conducting a qualitative analysis on the control of corruption in the case of Macedonia

¹¹ See p. 12 and p. 23 for additional arguments for selecting Macedonia as a case, even though the country has not yet opened negotiations with the EU.

the three cases and draw more general conclusions on the causes of the variations in the trends. One of the research situations where theory-building process-tracing is used is when we know an outcome but are unsure about the cause(s) (Beach and Pedersen 2013: 16). As it is known that the control of corruption has been a serious problem in CEECs (the outcome is known), but it is unknown whether the domestic control of corruption was actually dependent on the EU's influence or on something else (we are unsure about the causes), the analysis will first trace backwards from the outcomes to uncover the causes.

In other words, for this thesis, the influence of EU enlargement conditionality on the control of corruption is the independent variable, whereas the different outcomes in the control of corruption in candidates are the dependent variable. Also, variations in the type and intensity of the EU's influence are expected to result in changes in the control of corruption in the selected cases. Domestic circumstances both influence and are influenced by EU conditionality and will, therefore, also be considered as an intervening (moderating) variable, because they influence the control of corruption independently from the EU. In turn, domestic circumstances are also influenced by the prospect of EU membership, thus, this dimension will also be explored.

As previously argued (see Section 2), scholars merely assume that just because the EU imposed pressures on candidates to control their corruption levels, domestic changes occurred because of the EU itself. Whether the EU has actually been the cause of different control of corruption outcomes in candidate countries is a question that still needs to be answered. It is true that the EU uses its bargaining power and, through its conditionality mechanism, tries to influence the control of corruption in candidates, but we lack proof that changes (both positive and negative) in the corruption control of candidates are as a result of the EU's attempts to impose pressure. It is difficult to ascertain whether these changes would not have occurred anyway and if the EU was the actual catalyst for changes in corruption control. By closely tracing developments

in different CEE countries, it will be possible to answer these questions and to better understand whether certain preconditions need to be present in candidate countries for EU pressure on the control of corruption to be effective, or whether candidates would have responded to their domestic corruption problems in the same manner regardless of EU conditionality.

The enlargement process will be traced by looking at each case individually, followed by a cross-time and cross-country comparison. However, cases will be cross-compared according to their different phases in the accession process. In other words, both the process at the intersection between the EU and prospective member states, and the process of policy implementation within prospective member states will be traced. Sedelmeier differentiates three phases in the process of EU accession. The first phase is associate status, the second is recognition as a potential candidate for accession, and the final phase is accession negotiations (Sedelmeier 2010: 407). The intensity of the EU's influence – that is, conditionality – is dependent on the specific phase of the accession process, which for the effective control of corruption seems to culminate in an invitation to open negotiations. For this reason, when analysing the cases, I will divide the analysis and look at the control of corruption within all three stages of the accession process, and also compare the differences between the different stages in the specific cases. Next, I will compare the different cases with each other, within the different accession stages, in order to understand the similarities and differences among them. These kinds of comparison will also help to explain whether the EU allowed candidates from the first enlargement cycle to start negotiations even though the democratic anti-corruption criteria were not fully accomplished, or whether the anti-corruption requirements were consistent across different cycles.

This small-N study consists of documentary analysis and over 80 elite interviews with experts and practitioners in the field. I have looked into laws, policy papers and action plans, national reports on corruption, NGOs' reports and international organizations' reports, as well as

existing scholarly research on corruption in candidate countries. Analysis of relevant documents and reports is combined with interviews which, in turn, will further help to avoid bias and selectivity of data in the documentary research i.e. ‘method triangulation’ has been applied (Mogalakwe 2006: 228).

I have conducted over 20 interviews per case with national experts on corruption and/or enlargement, such as academic experts, policymakers and other government officials, members of the judiciary, MPs, journalists, think-tank researchers and NGO representatives, and with European experts on these issues. In addition, to further validate the data gathered from the three national cases, I have conducted additional interviews with EU experts and officials, including Members of the European Parliament, former European Commissioners (both those responsible for enlargement and for other areas), Officers in the Directorate General for Enlargement and Neighbouring Policy, European officials responsible for the preparation of the Cooperation and Verification Mechanisms, a former Director of the Directorate General for Enlargement, a former Head of European Union Delegations in candidate countries, the EU negotiators who negotiated the accession of Romania and the Czech Republic, as well as researchers and activists from international think-tanks and not-for profit organisations¹². See Appendix 2 for a list of interviewees.

The events that were discussed during the interviews took place between 1995 and 2015. It is acknowledged that the time lag may have had an impact on the reflections of interviewees. To mitigate for this, efforts were made to conduct interviews with professionals directly involved in the accession process of the cases examined in this thesis. For example, an interview with European Commission for Enlargement during the accession for all three cases was conducted, as well as interviews with two negotiators of the Czech and Romanian accession, interview

¹² Please note that the majority of interviews have been conducted in English language, except interviews conducted in Macedonia. These interviews have been translated into English by the author. All other direct quotations have been presented in their original form, regardless of language errors. Language errors were not acknowledged by using “sic” as this impacted the readability of the direct quotations.

with the Minister for Justice during the Romanian accession, the Prime Minister during the Czech accession, Senior Adviser for Rule of Law throughout the accession of all three cases etc. Considering the importance of the roles of these professional during the accession process, and their involvement in the accession of the cases examined in this thesis, it is expected that they will be able to have an accurate recollection of the events that took place. Moreover, interviewees were not asked to discuss specific laws, regulations and policy issues, but were asked to provide their experiences on the importance of corruption control during accession. They were not asked to reflect if a certain corruption related law or policy was approved or rejected by candidate countries. They were asked if corruption control was a determining factor for allowing accession. This is a question of general nature and it is expected that this will be remembered by respondents. However, to make sure that reflections were representing realities, interviews were conducted with over 80 professionals, many of which remained to work in the enlargement/anti-corruption sphere and have a current grasp at the matter at hand which also allowed to obtain an up to date information on the significance of corruption control for the accession process.

The interviews were semi-structured and used to obtain individual views and accounts on the factors that impact on the control of corruption in the Czech Republic, Macedonia and Romania. These qualitative interviews add an additional dimension by helping to get different perspectives on the problems around corruption. Some of these problems may not have been written down. Accordingly, introducing semi-structured interviews proved vital for answering the research questions thoroughly and comprehensively. Even though some of the issues discussed during the interviews occurred some years earlier for the Czech and Romanian case, many of the interviewees were very much involved in the accession process and had an in-depth knowledge about the processes, for example EU enlargement commissioners, EU and country negotiators, prime ministers and ministers at the time of accession etc. Interviewees

were not asked to provide very specific details but to discuss processes in a general way, for example to provide an overview of whether corruption control was at the core of the negotiations, without going into specific details, or, if specifics were discussed, efforts were made to cross check the data provided through the documentary analysis. As per Flick's (2011: 112–113) suggestions, I developed an interview guide as an orientation, but interviewees were also allowed to deviate from the sequence of the questions. For a list of common interview questions, see Appendix 1.

The interviews have been analysed with the aim of finding common traits and patterns. Based on this analysis, I have identified specific problems for each of the examined cases, as well as common factors that were present during the accession process in all three cases. All interviews were conducted between August 2014- May 2016. The interviews relevant for the Macedonian case were conducted before the political crisis including the so-called “bombs” that the opposition SDSM party started releasing in February 2016¹³ and for this reason any developments after February 2016 in all three cases will not be considered in this thesis.

The analysis was guided by the factors in the external incentives model. The data was first coded based on whether it involved information on corruption control, enlargement conditionality, or enlargement conditionality regarding corruption control. Also, whether the information was general about the enlargement process overall or whether it was about a specific candidate was considered. Based on this, adequate subcategories were created to select the data that was relevant to conditionality on corruption control during accession for the cases examined, before correlating it for the comparative chapter. Data that was relevant to the CEE context, or enlargement in general, but not specifically related to corruption control, as well as data about the social learning aspects of Europeanisation, and post-accession conditionality,

¹³ For more info on the Macedonian political crisis, see Bechev 2017; Cvetanoska and Hough 2016.

was only used exceptionally, and where relevant, because this was beyond the focus of the research questions. Finally, the interview data was correlated to the data from the documentary analysis to produce the empirical chapters.

The empirical chapters follow a similar structure, individually analysing the accession process of the three cases. It is necessary to initially understand the specifics of the three cases and the role that the EU played in corruption control in each individual case, together with the evolution of the enlargement policy of the EU, before considering similarities and differences among the cases examined. Chapter 3 focuses on corruption control during the accession process of the Czech Republic. It starts by asking how clear were the EU anti-corruption criteria during the Czech accession. It then looks at the EU's rewards and punishment system during accession, before moving on to examine the level of domestic costs for improving corruption control. A similar structure was used when examining the Romanian case in Chapter 4, and the Macedonian case in Chapter 5. The common factors of the three cases are analysed in Chapter 6 by following the structure provided by the external incentives model, and these are summarised in the conclusion in Chapter 7. Finally, this thesis provides key findings about the conditions that affect the influence of EU enlargement conditionality on corruption control and suggests new avenues for research on anti-corruption conditionality.

5. Theoretical framework

5.1. The EU's interests in promoting anti-corruption changes among candidates

How does the EU influence the control of corruption in CEECs? To answer this question, one first has to establish whether the EU has an interest in, and available instruments to attempt to influence, the control of corruption. Furthermore, if these instruments exist one should investigate what and how effective they are.

The EU has strong reasons to strive for anti-corruption reforms in candidate countries (Szarek-Mason 2010: 144–145). It sees corruption as a potential threat to the Copenhagen Criteria, and believes it to be a serious danger for free-market economies in candidate countries. Bearing in mind that *“the primary goal of the EU is to create a single market”* (Szarek-Mason 2010: 206), it is understandable why the EU wants to make sure that corruption will not undermine new Members' ability to assume the economic obligations of membership. Also, as argued before, the EU has limited ability to influence Member States as regards the control of corruption and so it uses pressure to influence countries during the accession process, while it still has credible bargaining power vis-à-vis CEE candidates.

5.2. The EU's anti-corruption standards for candidate countries

The EU main efforts to influence the control of corruption in CEECs were supported by its conditionality tool. The conditionality mechanism was introduced for the enlargement process for the CEECs and was initially used to influence necessary changes in these countries during the accession process, i.e. before they joined the EU. Later on, after the 2004 and 2007 enlargements, a post-accession conditionality mechanism was introduced as the new Member States started to backslide in their reforms. Pre-accession conditionality, that is, enlargement conditionality, is in the main focus of this thesis.

In the first wave of enlargement in 2004, eight CEECs joined the EU simultaneously. Even though all these countries were exposed to the EU enlargement conditionality mechanism and were subjected to thorough scrutiny as to whether they fulfilled the accession criteria, many CEECs continued to face serious problems with corruption control (see Table 1.). This suggests that EU conditionality was not in itself sufficient to help these countries control their corruption problems. Moreover, in the second enlargement wave, the Union allowed Bulgaria and Romania to join, despite their serious inability to control domestic corruption. Again, even though EU conditionality was exercised to improve Bulgaria's and Romania's anti-corruption infrastructure, it had little effect in practice. As a result, the EU decided to impose post-verification mechanisms to further oversee the anti-corruption efforts of the two new Members. Bearing in mind the importance of the control of corruption for the EU and the limited ability of the Union to have an impact on this policy area after accession, it is questionable why it granted membership to Bulgaria and Romania in the first place. However, this thesis does not conduct a comprehensive analysis of the wide-ranging political reasons for granting membership to candidate countries as its main focus is on the control of corruption and its importance during the accession process. Nevertheless, it is important to emphasise that granting politically motivated membership based on the adoption of legal anti-corruption requirements for accession without a significant improvement in the situation in practice does undermine the credibility of the conditionality mechanism, and it sends a message to countries that membership is potentially achievable, regardless of a candidate's ability to effectively improve their performance in controlling corruption in practice.

The anti-corruption standards set for candidates can be divided into two different categories. One category comprises those standards developed by the Commission and the Council under the political criteria derived mainly from Regular Reports and Accession Partnerships. These are only applicable to candidate countries, whereas the second category includes standards

derived from the *acquis* criteria,¹⁴ including the EU anti-corruption instruments applicable to all Member States (Szarek-Mason 2010: 185). In other words, there was a body of law that all EU candidate countries were obliged to introduce in their national legislation prior to joining the Union, with little room for manoeuvre. The EU democratic criteria, on the other hand, were open for debate while there was no possibility for any debate when it came to the *acquis* (legal) anti-corruption standards. Szarek-Mason (2010: 187) points to a very important distinction between these categories:

Whereas the stress during the negotiations was on meeting the requirements of the formal acquis, and the candidate countries had to fully comply with the acquis before the accession, the compliance with other anti-corruption standards depended to a large extent on the existence of EU pressure and the political will of the candidate countries.

Consequently, a distinction between two different types of conditionality can be made: democratic conditionality and *acquis* conditionality. Democratic conditionality focuses on compliance with the EU's criteria for democracy, rule of law and human rights, which are mainly not included in the *acquis*. A candidate country cannot progress to the negotiations stage if it does not satisfy the EU's political criteria. *Acquis* conditionality is concentrated on the transposition of specific rules of the EU *acquis communautaire* (approximately 80,000 pages) into national laws and "candidate countries are not expected to debate the introduction of the *acquis* because it is non-negotiable and community law takes priority over national law for member states" (Grabbe 2001: 1017). Specifically, as fulfilment of the democratic criteria on anti-corruption is a precondition for recommending the opening of negotiations, a candidate should be considered to have completed the democratic anti-corruption requirements and only be left with transposing anti-corruption *acquis* during the negotiations phase. This, in turn, allows a comparison of Macedonia with the Czech Republic and Romania, even though the

¹⁴ The *Acquis* are the rights and obligations that are obligatory for all member states. Candidate countries are obliged to introduce the *acquis* as part of their national legislation before they join the EU, mainly during accession negotiations (European Commission 2016).

former was not a member at the time of writing.¹⁵ Whether candidates have actually fulfilled the democratic anti-corruption criteria before the opening of negotiations in practice is another issue which will be considered as part of this thesis when analysing the control of corruption in specific cases.

5.3. Assumptions that inform the theoretical framework

For the purposes of this thesis, when analysing the EU's influence on the control of corruption in candidate countries during the accession process, the external incentives model on conditionality will be used to guide the analysis. The model, as developed by Schimmelfennig and Sedelmeier (2005),¹⁶ is designed to cover all policy areas but, for the purposes of this thesis, it will be further adapted to allow a more comprehensive analysis of the EU's influence on the effective control of corruption in CEECs. This model will be used to examine the adoption and implementation of anti-corruption laws and programmes, and the specific domestic circumstances in each of the cases examined, and to discuss whether EU anti-corruption conditionality has evolved across countries and over time.

To be more specific, this thesis does not focus on conditionality overall, but only on anti-corruption conditionality during the enlargement process. It does not focus on post-accession conditionality either in general or in regards to anti-corruption, because this is a different kind of conditionality and the EU has much more limited influence on anti-corruption after accession and that this influence is limited because of the EU treaties and that the EU cannot intervene in member states unless the EU financial interests are affected. This is because the EU can only intervene if its budget is jeopardised by corruption (Mitsilegas 2013).

In addition, the focus of the thesis is not on poor implementation. However, implementation of anti-corruption laws and policies during accession is examined to a certain extent. This because

¹⁵ A full rationale for case selection is provided later as part of this introduction.

¹⁶ See the literature review.

it is needed to understand if candidates implemented the anti-corruption reforms demanded by the EU and if the EU rewarded/ punished candidates for adoption and/ or implementation or lack thereof. The examination does not go beyond what has been asked by the EU as part of the accession process as framed in the Progress Reports.

This thesis does not aim to offer a comprehensive critique of how the EU conceptualises corruption control. However, this issue needs to be tackled because according to the determinacy of the conditions factor the adoption and implementation of EU imposed rules depends, among other, on how clear and adequate anti-corruption requirements were. Therefore, this thesis does not aim to suggest to the EU how to conceptualise corruption, but to only illustrate that this is important and that how countries implement EU rules depends on what rules the EU asks them to adopt and implement in the first place.

In light of the above, the main aim of this thesis is to generate theoretical explanations about the role of the EU's enlargement conditionality in the control of corruption in CEECs during the accession process. To examine this topic fully it is necessary to consider both the EU's external influence and internal circumstances that may have impacted on the control of corruption in the selected cases. Also, it should be kept in mind that domestic factors relevant to the control of corruption may have differed from one country to another. These differences in domestic circumstances could possibly explain the lack of a causal relationship between the influence of the EU and domestic corruption control – and they cannot, therefore, be excluded from this study. Based on these presumptions, and on the data on corruption control in CEECs presented in Table 1 and Graph 1., I have extracted five hypotheses.

A. The EU conditionality tool when applied to corruption control has differed across time and space.

As part of my case selection, I have analysed the control of corruption scores of 17 CEE countries based on data provided by the World Bank's Worldwide Governance Indicators

between 1996 (when the WGI scores were first introduced) and 2012.¹⁷ My initial findings on examining the control of corruption trends in CEECs showed that there appears to be no correlation between the EU accession process and changes in the control of corruption scores in CEE countries. Namely, in some cases –such as Macedonia, Estonia and Bulgaria – corruption control appears to have increased over time; in other cases, such as the Czech Republic and Slovenia, it has decreased; and in cases such as Romania and Poland there has been little change and we see what can best be described as trendless fluctuation. This suggests that, in spite of the application of EU conditionality, countries have had different outcomes in their corruption trends. Therefore, an investigation is necessary to assess the validity of this claim, and to explain why this is the case. Such an investigation will help to answer if EU anti-corruption conditionality differed from one enlargement cycle to another, or even from one candidate to another.

B: The EU lacked clarity and consistency when applying conditionality to improve corruption control.

The thesis will examine how clear and concise the EU was in its expectations and demands with regard to corruption control. Initially, each empirical chapter will start with an examination of the determinacy of the conditions for accession to answer how clear were the anti-corruption criteria in the selected cases. It will also consider if these criteria evolved over time and, if so, if that evolution had an impact on anti-corruption conditionality. This thesis will consider the evolving character of the enlargement conditions imposed on the candidate countries at the time of writing, that is, the Western Balkans,¹⁸ and the conditions for the 2004 and 2007 enlargements. This research will assess whether EU anti-corruption criteria have

¹⁷ See Section 2.3. for further details;

¹⁸ After it acceded to the EU in 2013, Croatia was excluded from the list of Western Balkan states from the EC (see European Commission 2016). However, at the start of the Western Balkans enlargement process, Croatia was considered part of the Western Balkan region (Thessaloniki Agenda 2003). As this thesis looks at corruption control during accession, Croatia is considered to be a Western Balkan state for the purposes of this research

evolved, and how important the fulfilment of additional conditions, if any, was for the accession process.

This thesis will also consider whether the EU has shifted its focus from formal compliance to actual progress in practice, and whether this is sufficient to explain why some candidates, such as Macedonia, achieved notable increases in their control of corruption scores. To sum up, this thesis will assess the EU's anti-corruption enlargement conditionality during the accession process among different candidates to answer the question of whether the evolution of the EU's anti-corruption policy resulted in improved control of corruption in these countries.

C: Candidates were not always rewarded after anti-corruption conditions were fulfilled, or they were not rewarded in a timely and appropriate matter.

Another set of questions that will provide additional answers to the EU's influence on the control of corruption during the accession process are related to the size and speed of rewards and the credibility of threats and promises. This thesis, therefore, also seeks to answer how credible was exclusion from the accession process if candidates were lagging in anti-corruption progress. In other words, was a candidate's ability to control corruption was a deciding factor to move from one stage to another in the accession process? To illustrate whether this was actually the case, this thesis will trace the accession process in three CEECs. It will seek to answer whether the EU accession process progressed even though candidates did not fully comply with the accession criteria. By examining these assumptions, the thesis will answer the question of whether the EU undermines the credibility of its conditionality mechanism when it comes to corruption control in candidates.

D. The impact of the EU conditionality tool is primarily limited to the adoption of anti-corruption legislation.

Until now, EU conditionality in the sphere of anti-corruption has mainly contributed to the adoption of anti-corruption legislation. Consequently, the ability of the EU to influence the

control of corruption has been mainly limited to the adoption of *acquis* conditionality, as opposed to democratic anti-corruption conditionality. This expectation complements the previous assumption about the limited capability of anti-corruption conditionality and it speaks further to the ineffectiveness of EU conditionality in making an impact on what really matters as regards corruption, that is: the implementation of laws in practice. The adoption of anti-corruption rules means very little if those rules are not being enforced. The existence of anti-corruption laws and regulations is not an automatic guarantee for increased control of corruption. Consequently, focusing on whether candidate countries have adopted the anti-corruption *acquis* does not say much about candidates' actual ability to control their corruption levels. For that reason, how candidates implement anti-corruption requirements during the accession process will also be analysed. Precisely, the anti-corruption laws and programmes that were adopted in response to EU requirements will be identified and their development and implementation scrutinised. This analysis will not only include the accession process, it will also investigate post-accession performance, where applicable. This is because the implementation of anti-corruption reforms is not always immediately achievable and investigating how pre-accession changes continue to be implemented in countries also tells us about the long-term influence of enlargement conditionality.

E. The EU anti-corruption conditionality is dependent on domestic factors within a particular candidate.

It is crucial to emphasise that not all CEECs in the 2004 enlargement cycle saw their control of corruption worsen. On the contrary, some candidates, such as Estonia, noted remarkable positive changes and increased their ability to control corruption. This further suggests that CEECs' control of corruption scores do not ultimately depend on EU enlargement conditionality and that one should seek additional explanations to account for the different results from different candidates. In other words, regardless of the evolving character of anti-

corruption conditionality, there does not appear to be a correlation between the EU and control of corruption developments in CEE. Specific domestic conditions in different countries could, therefore, have been decisive for the success (or lack of it) as regards control of corruption. What factors existed in different CEE countries and how important these were for controlling domestic corruption are precisely what this thesis will explain.

This thesis, therefore, will also seek to explain whether specific domestic circumstances in each of the examined cases affected corruption control during accession. According to the external incentives model and in line with rational choice theories, changes in domestic circumstances are dependent on the costs and benefits for ruling elites to introduce changes. Elites are more likely to introduce EU requirements if the benefits of joining the EU surpass the costs of introducing necessary reforms. Thus, this thesis will also examine how costly it was for domestic political actors to adopt and implement anti-corruption EU requirements.

This thesis will employ a mixture between an inductive and deductive approach to answer these questions and it will use the empirical findings from the cases to identify circumstances that are relevant for the control of corruption in specific CEECs. This allows us to consider the main arguments identified in the literature while at the same time allowing for other, context specific factors to emerge from the data collection process.

Chapter Two: Setting the Scene: Theorising the EU's enlargement conditionality and the control of corruption

3.1. EU conditionality and anti-corruption in accession states

The research in this area consists of studies that look at the domestic transformation of CEECs as a result of the prospect of EU membership, and scholarship on corruption in these countries (including causes and factors that influence the control of corruption, and CEE countries' ability to tackle corruption). Therefore, this thesis needs to consider the literature in both of these areas. Studies linking EU enlargement and anti-corruption began to emerge, especially after the accession of Romania and Bulgaria. Many studies that seek to investigate the influence of the EU on candidates during the accession process assume either that achieving EU membership is the milestone for measuring actual success, or that domestic changes simply occur because of the presence of EU enlargement conditionality. As for corruption, there are limited comprehensive studies that seek to explain the different trends among CEECs by considering both domestic factors and the EU, with mainly single case studies on this issue or comparative studies from one enlargement wave, focusing either on pre-accession or post-accession conditionality overall, or on corruption and/ or rule of law related conditionality specifically pre or post accession (Dimitrova 2011; Dimitrova and Kortenska 2017; Dimitrova 2018; Gateva 2016; Elbasani 2019; Noutcheva 2015).

There are studies that look at the processes of democratization overall, or at the enlargement process of CEECs in general, but without a specific focus on the control of corruption (including both domestic factors and an assessment of the ability of the EU to exert influence). Some recent studies considered post-accession conditionality related to rule of law and anti-corruption, especially the 2007 enlargement of Bulgaria and Romania (Gateva 2016; Dimitrova and Buzogany 2014; Dimitrova 2010), but these do not extensively compare the different

enlargement waves of CEECs. This is the gap – the relationship between EU conditionality and corruption control – that this thesis aims to fill and a contribution that it seeks to make.

The prevailing political and legal scholarship that focuses on the EU's influence during the accession process agrees that the EU has been successful in influencing democratisation processes in CEECs, and managed to successfully encourage political, economic and legal changes in candidate countries prior to accession. The scholarship that looks at the domestic transformation of CEECs as a result of the prospect of EU membership mainly employs a rational choice approach and uses the principle of conditionality to study and explain the impact of the EU on domestic changes in CEECs (Schimmelfennig and Sedelmeier 2005). Conditionality, as part of the broader literature on EU influence on candidate countries, is defined as *"the strategic use of the incentive of membership in order to induce or preserve specific policy changes in non-member states"* (Sedelmeier 2010). At present, conditionality is considered to be the central focus when studying the impact of the EU on domestic change in candidate countries seeking EU accession (Schimmelfennig and Sedelmeier 2005). Schimmelfennig and Sedelmeier's (2005) model has been adapted by the aforementioned studies to examine specific CEE cases to determine how conditionality works pre/ post accession and is the starting point when examining the role of the EU during accession as it sets up the core assumptions of the conditionality tool.

The wide spectrum of literature relevant to the present thesis consists of studies with general (theoretical) aspects of conditionality, studies with a focus on specific cases and/or policy areas and various combinations of the two.¹⁹

However, aside from providing theoretical frameworks, many studies that focus on the EU's influence on candidate countries go further into a specific analysis of whether the EU has been successful in initiating changes in specific cases and policy areas. Therefore, a further

¹⁹ For a slightly different division of the present literature according to its substantive focus see Sedelmeier (2011).

classification can be made which divides the majority of relevant studies into two opposite streams. The first stream consists of scholars who consider EU influence generally or conditionality more specifically to be an effective tool for influencing changes in candidate countries (Fagan and Dimitrova 2019; Grabbe 2006; Gugiu, 2012; Epstein 2012; Nouthceva 2015; Schimmelfennig and Sedelmeier 2005; Schimmelfennig and Sedelmeier 2005a; Sedelmeier 2010; Vachudova 2005; Vachudova 2009). Even though the majority of scholars researching the effects of conditionality consider it to be a highly effective tool for initiating change, the number of studies that are critical of the claims that the EU has been successful in initiating change has increased in recent years (Bickerton, 2012; Bauer et al., 2007; Borzel and Risse 2007; Dimitrova 2010; Dimitrova and Buzogany 2014; Hughes, Sasse and Gordon 2004; Ionita, Nutu, Stefan and Mungiu-Pippidi 2011; Kochenov 2008; Mendelski 2015; Pridham 2005; Vuckovic and Gorgevik 2019). Furthermore, some scholars who previously claimed that the EU had been effective in initiating change developed different attitudes regarding the effectiveness of EU conditionality vis-à-vis candidate countries. For example, according to Sedelmeier (2011), the impact of the EU on candidate countries differs across countries and issue areas. Moreover, after the 2004 and 2007 enlargements, EU Member States were less able to agree on using membership as an incentive, and the domestic adjustment costs of the EU's political conditions for governments in candidate countries were overall higher than before (Sedelmeier, 2010: 427). This could have had an impact on the effectiveness of enlargement conditionality in these candidate countries.

Sedelmeier (2011: 9) argues that most studies focusing on EU influence in candidate countries were primarily concerned with analysing the EU's impact as opposed to domestic impact. Specifically, the majority of these different studies encompass research questions that try to ascertain under which conditions the EU's attempts to influence candidate countries were effective. Sedelmeier (2011: 9) continues by arguing that this research focuses on two parts:

“The first part is an empirical assessment of the extent to which the EU has a domestic impact. The second part is an analytical question: what factors account for this (lack of impact) and through which causal mechanism does the EU exercise its influence?” There are two issues with this. First, when it comes to the EU’s domestic impact on candidates, the problem is that there is no clear and straightforward way to pinpoint whether a change has occurred because of EU pressure or whether a change would have occurred anyway in a candidate country. Also, many studies overlook the important difference between rule adoption and rule implementation, which is crucial for many policy areas, and especially for the control of corruption. As a result, these questions have not been clearly answered (at least with regard to the control of corruption in candidates).

Second, the impact that the EU has on candidates includes factors (relevant for all policy areas) that are related to the adoption of EU rules and subsequent policy changes. It also includes factors related to specific policy areas, such as the fight against corruption. Moreover, EU-related demands are related to domestic conditions for fulfilling the EU’s requirements. Such domestic conditions include the domestic costs of adopting rules for governments. More specifically, this means understanding the relevance of the constellation of the party system, the quality of the political competition at the moment of regime change, the ethnic policy preferences in parliament, governments’ adjustment costs, budgetary constraints, administrative capacities and levels of societal mobilisation (Sedelmeier 2011: 14–15). However, in research on anti-corruption policies, the importance of these factors has been somewhat neglected. The studies that have looked at the EU’s anti-corruption conditionality during enlargement relate the EU’s efforts to influence corruption control with actual anti-corruption domestic changes without showing that changes occurred because of the EU (see Gugiù 2012; Vachudova 2009; Szzarek-Mason 2010). There is little comprehensive literature with a focal point on the control of corruption in CEE candidates during the accession process

and on the importance of specific domestic conditions for candidates' ability to implement EU anti-corruption requirements. Some exceptions have emerged, such as the work of Vuckovik and Gorgevik (2019) which focuses on the Western Balkans and demonstrates that rule of law reforms in the region have been confined at the formal level because of the complexity of domestic actors that are expected to implement such reforms, i.e. evidence of compliance without reform (Elbasani in Vuckovik and Gorgevik 2019). Yet, there is a need to conduct more detailed research in this field and to make further comparisons between different enlargement waves.

In the next section, the emphasis will be put on some of the most prominent studies that this thesis builds upon and which provide frameworks for analysing EU conditionality.

3.2. Scholarship on enlargement conditionality

One important element of the literature comprises studies that have a general focus on the issue of conditionality, including theoretical frameworks and explanatory models (Bieber 2013; Bohmelt and Freyburg 2012; Grabbe 2006; Hillion 2003; Morsavcsik and Vachudova 2003; Pridham 2002; Pridham 2005; Schimmelfennig and Sedelmeier 2005; Schimmelfennig and Sedelmeier 2005a; Sedelmeier 2010; Sedelmeier 2011; Vachudova 2005 et al.) These studies mainly provide a basis for understanding the enlargement conditionality mechanism and offer a framework for analysis that can be used for examining the application of conditionality over a certain period of time (pre-accession/ post-accession), or applied to particular case studies and/or in particular policy areas, as well as various combinations of the above.

The literature on the role of the EU accession process on the democratisation and transformation of CEECs is not scarce. Studies that focus on the EU's legal requirements and impact during accession have emerged, mainly suggesting that the Union has had a positive impact on democratisation and transformation of CEECs. Studies have also examined the

societal dimension of the EU influence (Nouthceva 2015). Yet, this and other similar research such as the work of Dimitrova (2010) on the unintended consequences of the EU' accession process are worth noting as they acknowledge that the EU can effectuate changes not only through imposing formal requirements but also through legitimization of domestic policies. Yet, this is beyond the scope of this thesis.

The most comprehensive explanation for understanding the concept of enlargement conditionality is provided by Schimmelfennig and Sedelmeier (2005). In their book "The Europeanization of Central and Eastern Europe", they provide theoretical assumptions for enlargement conditionality by introducing the external incentives model and explaining what enlargement conditionality is and under which conditions it operates. The EU conditionality mechanism developed by Schimmelfennig and Sedelmeier is one of the three main explanatory models about different EU²⁰ mechanisms that look at the conditions under which non-member states adopt EU rules. They differentiate between an external incentives model comprising conditionality, a social-learning model and a lesson-drawing model.²¹ The external incentives model *"follows a logic of consequences and is driven by the external rewards and sanctions that the EU adds to the cost-benefit calculations of the rule-adoption state"* (Schimmelfennig and Sedelmeier 2005: 9). This model is a rational bargaining model and the outcome of the bargaining process depends on the relative bargaining power of the actors involved (Schimmelfennig and Sedelmeier 2005: 10). According to the external incentives model, the EU sets the adoption of its rules as a condition that candidate countries need to fulfil in order to get rewards from the EU, with the ultimate reward being EU membership. This model is

²¹ The main differences between these models lie in the actor that drives the process of rule adoption (whether the adoption of rules is EU driven or domestically driven) and in the logic of action that the adoption of rules follows (which could be a 'logic of consequences' or a 'logic of appropriateness'). The logic of consequences assumes strategic, instrumentally rational actors that seek to maximise their own power and welfare, and the logic of appropriateness assumes actors to be motivated by internalized identities, values and norms (Schimmelfennig and Sedelmeier, 2005: 9). For further information on the social-learning model and the lesson-drawing model, see Schimmelfennig and Sedelmeier (2005: 9–10).

based on a strategy of reactive reinforcement or reinforcement by reward (Schimmelfennig and Sedelmeier 2005: 10). Therefore, at least in theory, if candidate countries fulfil the enlargement conditions, they will ultimately be rewarded with EU membership, but if they fail to fulfil the required conditions the EU will withhold the rewards. This model depends on four factors: the determinacy of conditions, the size and speed of awards, the credibility of threats and promises, and the size of adoption costs.

Schimmelfennig and Sedelmeier's conceptualisation of enlargement conditionality has been used to test EU influence in many different policy areas. Although their study provides a very significant starting point for analysing EU influence on candidate countries, it does have some limitations. When analysing rule adoption, Schimmelfennig and Sedelmeier (2005: 7) focus on: *"the institutionalization of EU rules at the domestic level – for instance, the transposition of EU law into domestic law, the restructuring of domestic institutions according to EU rules, or the change of domestic political practices according to EU standards"*. Schimmelfennig and Sedelmeier (2005: 7–8) acknowledge that the implementation of rules, rather than the legal adoption of norms, is crucial when assessing the influence of the EU on candidate countries and distinguish between different forms of adoption. When referring to rule adoption, they include both the transposition of EU rules into national legislation (formal adoption) and their implementation. By looking at corruption control, this thesis will not just focus on the adoption of EU rules but will also consider the implementation of those respective rules in practice. A predominant focus on the adoption of EU rules in the accession process, as opposed to their implementation, is an issue not only for anti-corruption policy but also for other policy areas. Both EU institutions and academic researchers should have this in mind when accessing various policy areas during the accession process, as results can differ significantly when comparing rules adoption as opposed to rules implementation. In other words, the EU initially demanded that candidates introduce new legislation and left little time to assess the

implementation of new laws in practice. Just because a law has been introduced it does not mean that it has been put into practice. Therefore, this thesis will not only seek to answer if relevant laws were in place, but also whether such laws were adequate to tackle corruption and whether they were implemented.

Another scholar who seeks to explain how CEE candidate countries are influenced by the EU during the accession process is Milada Anna Vachudova (2005). In 'Europe Undivided' (2005), Vachudova compares post-communist states that followed different patterns of change after 1989. She makes a distinction between 'liberal' patterns characterised by political competition and strong opposition, extensive marketization and effective rule of law, and 'illiberal' democratic patterns that lacked political competition and strong opposition, and were characterised by economic populism, control of the media and clientelism. Subsequently, she used the concepts of 'passive' and 'active' leverage to separate the types of influence that the EU could have on candidate countries (2005). Vachudova argues that passive leverage is the traction that the EU has on the domestic politics of candidate countries merely by its existence and usual conduct, and she considers this leverage, though limited, to be the foundation of the EU's active leverage, which is *"animated by the fact that the substantial benefits of EU membership create incentives for states to satisfy the enormous entry requirements"* (2005: 106). Vachudova argues that CEECs responded differently to EU leverage; those with 'liberal' patterns reinforced positive reforms, whereas those with 'illiberal' patterns demonstrated only superficial efforts to reinforce reforms. Nevertheless, Vachudova comes to the conclusion that it was the EU's leverage that mattered, and not the domestic factors in candidate countries because even though the examined cases that had different domestic conditions, they all succeeded in joining the EU. This suggests that regardless of what the domestic conditions are, EU pressure and the benefits of membership will be sufficient to initiate the changes required for accession.

Vachudova appears to equate successful reforms with EU accession and assumes that candidates joined the EU after already succeeding in initiating the necessary reforms. However, this is not necessarily the case. A look at the control of corruption trends in Vachudova's cases²² would suggest that some of these countries are far from perfect in controlling corruption. Therefore, the domestic factors that Vachudova identified are likely to be more important in explaining the variations between different CEECs than she initially suggests. In other words, while the EU may have allowed candidates to accede, this does not necessarily imply that candidates actually achieved significant progress in all of these policy areas in practice. Therefore, the EU requirements for controlling corruption need to be examined, together with whether these requirements were fulfilled at the time of accession.

How to measure success was another issue. The EU's main mechanism for measuring progress was the Regular (Progress) Reports. However, as discussed above, the Reports were not adequate tools for measuring success. These issues indicate that the EU lacks a mechanism for measuring success and are a reminder that scholars should not equate EU accession with actual success in various policy areas. Furthermore, this adds validity to the claim explored in this thesis about the lack of a causal relationship between EU enlargement conditionality and domestic corruption control. If one does not have the adequate tools to measure progress, it cannot be determined that progress has (or has not) been made. It also offers support for the notion that obtaining EU membership cannot be used as a measurement for success in controlling corruption in candidates.

When comparing Vachudova's research to Schimmelfennig and Sedelmeier's, it becomes evident that both have a very similar understanding of how EU conditionality works, that is, a higher probability of membership equals a higher probability of compliance. Vachudova's study, similar to that of Schimmelfennig and Sedelmeier, starts from the notion that rules are

²² Vachudova examines Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia. See Appendix 1 for the control of corruption trends in these countries between 1996–2012.

EU-driven, but she does not extensively analyse whether change might have happened even without the EU's influence. This is the main problem with the present literature. Current studies simply assume the existence of a correlation between the EU's enlargement policy and change in candidate countries. They take the existence of a relationship between the candidate and the EU as a given, that is, they do not consider that other factors, and not just the EU, may have driven change in candidate countries. Although these factors are sometimes acknowledged in the literature (for example, Pridham 2005, Vachudova 2005), their importance in the accession process, at least when analysing corruption, is not fully examined, and this thesis will contribute to filling this gap in the literature.

Vachudova's arguments about 'liberal' and 'illiberal' patterns are, however, very relevant here. Before concluding that it was EU influence that mattered, Vachudova (2005: 12–24) initially distinguishes between different domestic factors, with a main focus on the quality of domestic political competition, which largely depended on the presence of an opposition. She argues that by depending on these factors, the EU was able (or not) to initiate substantive change during accession. Thus, there is a need to further explore the role of domestic factors and to examine whether the EU initiated change in countries where domestic conditions were not favourable for EU accession. This thesis sheds light on this problem. However, the primary focus is not to analyse the existence and strength of political opposition, but to have an open mind and to identify specific factors present in the cases examined, the quality of the political opposition possibly being one of them.

In their study, Bohmelt and Freyberg (2012) seek to answer the question of when conditionality is at its peak during the accession process. They conclude that the success of the EU's influence is related to the probability of membership, and that the highest probability is at the beginning of the accession negotiations process. However, if we separate the anti-corruption requirements from the rest of the accession requirements, there may be different levels of bargaining power

in the different stages of the accession process. This is because of the importance that was placed on the control of corruption in the earlier process of accession. Therefore, this is an indication that the assumptions relevant for accession conditionality in general may differ when it comes to anti-corruption criteria. By further analysing the control of corruption in the selected cases, this thesis will thus shed light on when EU influence is at its peak and when it starts to decrease.

As previously mentioned, many scholars who research the effects of conditionality consider it to be a highly effective tool for initiating desired change. Nevertheless, the number of studies that have (more or fewer) reservations about the ability of EU enlargement conditionality to initiate change on the national level has increased in recent years. Pridham (2005) looks at the role of the EU enlargement process for post-communist democratisation. The aim of this study is to bring together both international and domestic factors to explain the emergence of new democracies in CEE and the role of the EU in this process. Pridham (2005: 22–23) argues that both regime change and integration theory are complementary and that, combined with the literature on EU pre-accession conditionality, allows us to draw conclusions about the impact of European integration on the democratization of CEE. He examines the role of various domestic factors in the accession process: how interested political elites are in joining the EU and the role of intermediary institutions (political parties and the media), as well as civil society and socio-economic factors. He argues that the effects of the EU accession process on the CEECs' democratisation have been limited and uneven. Pridham's work is empirically rich (based on interviews with elites and official EU documents) and offers an innovative approach by emphasising the importance of both domestic and international factors.

Even though the main focus of Pridham's research is not on corruption²³ per se, but on democratization overall, it is particularly important for this thesis. The majority of studies on

²³ The issue of corruption was raised as part of a series of examples to illustrate the problems with implementing conditionality, and cross-national variation across CEE (Pridham, 2005: 136–138).

EU accession conditionality, with some exceptions (such as: Grabbe and Hughes 1998; Grabbe 2001; Grabbe 2006), have neglected the importance of domestic factors by predominantly focusing on the role of the EU. Pridham's study, on the other hand, alludes to the differences among CEE candidates and emphasises the importance of domestic conditions during the accession process. This thesis will build upon these claims to analyse the particular situation as regards controlling corruption in CEECs.

Vuckovic and Dordevic (2019) seek to answer to what extent has the EU managed to generate domestic policy and institutional changes in the Western Balkans by focusing on the fight against corruption and regional relations in the region. The book operationalises change in terms of :”verbal commitments, formal compliance and more substantial or irreversible reforms resulting out of EU policies” (Elbasani 2019).

3.2.1. Pre-accession conditionality

Borzel, Dimitrova and Schimmelfennig (2017) examine integration capacity as part of the EU conditionality tool. They (2017: 158) define integration capacity as” the ability of the EU to prepare non-members for membership (external integration capacity) and [as the ability] to preserve its functioning and cohesion once they join (internal integration capacity)” and argue that it is an essential element of conditionality. The first element of integration capacity, that is - external integration capacity is relevant for the present research, because this aspect of integration capacity focuses on the role of the EU in preparing candidates for accession, which is a core question for this thesis. External integration capacity is further divided into political, administrative and economic capacity (Figure 1, Borzel, Dimitrova and Schimmelfennig 2017: 161) based on the Copenhagen criteria and ask the important question of how does the EU prepare candidates for accession (Borzel, Dimitrova and Schimmelfennig (2017: 163). They further argue that conditionality, mainly exercised during the enlargement process, is related

to assistance and dialogue, that is – assistance is offered when there is will for a change but there is lack of capacity to meet EU requirements, whereas dialogue is used to convince political actors to comply with EU rules (Borzel, Dimitrova and Schimmelfennig (2017: 164). Interestingly, by Borzel, Dimitrova and Schimmelfennig (2017), contrarily to the general discourse on accession conditionality, suggest that the EU had positive influence during accession and has helped in building new institutions.

Dimitrova (2011) seeks to learn lessons from the CEE enlargement that can be transposed to the case of Turkey. However, this may not be the case for all candidates and the Western Balkans may be facing different domestic challenges compared to Turkey. When examining lessons from previous enlargements that can be transposed to the Turkish accession, Dimitrova (2011) argues that the EU's approach is characterised by asymmetry, objectivity and conditionality. She concludes that conditionality depends on the credibility of the EU and the preferences of domestic actors. More specifically, Dimitrova (2011) suggests that if the credibility of the accession process is affected, that is, if rewards and punishments are not applied accordingly, compliance with EU requirements will suffer. For example, in the case of Macedonia, the credibility of the process was affected by the Greek veto, therefore, it is important to investigate how this how the EU's lack of credibility impacted the introduction of anti-corruption reforms.

In regards to the preferences of domestic actors, Dimitrova (2011) examines why even illiberal democracies (see Vachudova 2005 on the division between liberal and illiberal CEE democracies) followed the EU's requirements during the CEE 2004 enlargement round and concludes that the explanation lies in the determination of the majority of political players in candidates to join the EU. She argues that EU conditionality will work if political parties are united in the goal of achieving membership and that this goal was present in CEE (Dimitrova

2011: 222). Yet, whether this was the case for all candidates is not clear, therefore the interest of political actors to pursue EU enlargement will be examined in further detail in this thesis.

Fagan and Dimitrova (2019) examine the EU's success in institutionalising judicial reform in two Western Balkan countries: Serbia and Bosnia-Herzegovina. They acknowledge that institutionalisation, defined as "the alignment of new rules and rules-in-use" (Fagan and Dimitrova 2019: 223), crucial for improvements, and identify five scenarios of interaction between formal and informal: "full alignment, new rules are ignored, new rules are openly reverted, new rules are subverted, and partial compliance with new rules" (Fagan and Dimitrova 2019: 233). They demonstrate that in the two examined cases new, EU supported, rules were in place, but institutionalisation did not occur either because of interventions of domestic actors that were affected by the new rules, or because of incompatibility with already existing rules, both formal and informal (Fagan and Dimitrova 2019: 233). This study is crucial for the present research as it further supports this thesis' argument that domestic factors have a crucial role to play when the EU attempts to influence corruption control during accession. In the words of Fagan and Dimitrova (2019:222): *"We do not contest the importance of membership negotiations, or of civil society involvement. However, we suggest that these factors are secondary and not sufficient to explain progress or stagnation in the institutionalisation of important rules."* The present research builds on the argument of Fagan and Dimitrova by considering whether anti-corruption rules adopted during the accession process were institutionalised and argues that in cases where such institutionalisation is partial or non-existent, the EU influence has been limited because of domestic factors.

Subotic (2011) gives a good illustration of how country-specific factors can have a significant impact on the EU's ability to influence domestic policies. According to Subotic (2011: 328), an entirely incentives-based approach cannot explain why different CEECs achieved different levels of democratic transformation and Subotic suggests that such differences can be

explained by looking at domestic factors. Subotic argues that external incentives cannot explain the differences between the accession processes of Serbia and Croatia. Incentives were very much present in Serbia, even more so than was the case in Croatia, but Serbia still fell behind Croatia (Subotic 2011: 321). Her core argument revolves around the different attitudes towards EU conditionality of domestic political elites. In the case of Croatia, political elites persuaded the public that it was in their best interest to join the EU by constantly emphasising that they (the people) were European themselves, whereas in Serbia, the EU was portrayed as an enemy, as something that was not a friend, thus creating a reluctance to join the EU and to fulfil the respective accession criteria (Subotic 2011). Such variations in contexts could provide explanations as to why the EU influence was stronger in some cases as opposed to others.

3.2.2. Post-accession conditionality

Dimitrova and Buzogany (2014) investigate the role of the CVM in limiting state capture in Romania and Bulgaria after accession. By focusing on the forestry sector, they argue that under certain conditions the CVMs can help in improving the quality of democracies in these countries. Specifically, NGO actors, with EU support, managed to open up the policy process and prevented the inclusion of questionable law, that may have benefited a small number of elites, instead of the population as a whole (Dimitrova and Buzogany 2014). NGOs, as domestic actors have utilised EU tools and improved policy processes, suggesting that the role of the EU cannot be ignored as NGOs appealed to the EU when democratic processes were not followed in the two cases (Dimitrova and Buzogany 2014).

Dimitrova (2010) investigates if changes of formal rules during accession initiates changes in informal rules and practices after accession. She argues that conditionality depends on the interaction of domestic actors and proposes a theoretical framework for analysing the influence of domestic actors in institutionalising EU rules after accession. According to Dimitrova (2010)

formal and informal rules need to align for change to occur, and if this does not happen, institutionalisation will not take place as well. This study is important for the present research as it suggests that it may be difficult to achieve socialisation when rules are introduced externally and focus on the “formal”. This further supports the rational choice focus of the thesis, as it suggests that imposing changes via socialisation is difficult when rules are imported externally.

Sedelmeier (2008) also examines the role of post-accession conditionality in East Central Europe and argues that post-accession compliance with EU law in new member states has been “surprisingly good”. However, these studies focus on post-accession outcomes, and examine compliance overall, which is beyond the focus on this thesis. Moreover, this research does not specifically concentrate on the issue of corruption. Nevertheless, it is important to note that the legacy of pre-accession conditionality may have a role to play post-accession. This suggests that it is very important to “get conditionality right” during accession so as to ensure long lasting changes after accession. Moreover, Brunsson and Olsen (1997 in Dimitrova 2010) “have shown that organizations faced with external reform demands can create two parallel sets of structures of formal and informal rules, and continue to operate according to the informal rules while keeping the formal rules for external requirements.”

Dimitrova (2018) examines why CEE countries were backsliding after introducing democratic principles as part of the Europeanisation process. Even though backsliding occurs after a country has joined the EU, which is beyond the scope of this thesis, this article highlights the importance of state capacity and state resources. This is related to the notion of political will of elites to introduce and sustain reform (Brinkerhoff 2000). Even if ruling elites are willing to introduce anti-corruption measures, their quality and success will depend on state capacity and resources. An important contribution of Dimitrova’s (2018) work is the acknowledgement that backsliding goes beyond the weakening of formal institutions and that it also comprises of an

informal element. Dimitrova links back sliding to forms of state capture in CEE. She acknowledges that rent seeking elites were present in CEE candidates after the fall of communism, which resulted in the formation of parallel democratization and privatisation processes and argues that these structures remained in CEECs after accession (Dimitrova 2018). This is in line with the work of Innes (2014) who established two types of state capture in CEECs: party state capture and business state capture. Such findings suggest that issues with state capture (and within such capture, issues with corruption) remained unresolved after accession. This thesis does not focus on post-accession problems, but Dimitrova's study does raise concerns about state capture, as a serious form of corruption, being present prior to accession which poses the question of why countries were allowed to join the EU despite such problems as it was because of elites capturing the state, new members slid back into old practices (Dimitrova 2018).

Kartal (2014) argues that the EU's influence goes beyond conditionality and includes a so-called "political leverage" which is defined as "the EU's ability to offer electoral incentives to opposition parties in national legislatures and get them to pressure their governments to deliver governance reforms" (2014:

Noutcheva (2015:691-692) suggests that a flaw of the Europeanization literature is the limited focus to "the normative context" in which the EU operates and points out to studies that have moved away from the rational approach by suggesting that the impact of EU conditionality have been taken out of proportions. She (Noutcheva 2016: 692) points out that the role of society in the rational choice approaches has been somewhat overlooked: "the societal role in this process has been reduced to voting for the right candidates at election times" and raises the question about the (often indirect) role that "societal demand for change", in particular civil society, play in the Europeanization process (and democratization overall). Noutcheva (2016) argues that the indirect effect of the EU on society has been overlooked and proposes four

mechanisms for examining societal empowerment: empowerment of societal actors, legitimization of domestic policies and practices, legitimization of societal actions, and diffusion of ideas. Dimitrova and Buzogany (2014) also focused on how civil society used EU rules to legitimise social actions and improve democracy in MS. However, the focus is again on post accession which is beyond the scope of this thesis.

The aim of this thesis is to investigate the role of the EU on corruption control during the accession process whereas these mechanisms are likely to be established after the formal requirements of the EU have been set up. For example, Nouthcheva (2015: 697) argues that diffusion of ideas is dependent on strong democratic *acquis*, which are developed during accession, suggesting that diffusion of ideas can occur after the democratic requirements of the EU have been fulfilled, which usually occurs later in the accession process, and continues after accession. Moreover, even though the EU starts empowering societal actors during the enlargement process, for example PHARE and IPA funds are provided to support CSOs, as Nouthcheva (2015: 700) points out, this has failed to achieve citizen engagement in society, and even had a negative impact due to politicians abusing EU funds to create NGOs supporting sympathetic political views. Finally, this thesis does not go beyond examining the EU's anti-corruption requirements during accession, thus cannot expand on the indirect impact of the EU on civil society, but it would be an interesting topic for future research to link this indirect impact to anti-corruption requirements in the countries of interest.

In summary, the literature relevant to this thesis has several shortcomings. First, there is scope to further investigate the EU's influence on the control of corruption in candidate countries. Second, the existing literature on EU conditionality does not offer an extensive explanation of anti-corruption policy specifically, particularly across different enlargement waves and it is not equipped to answer why EU candidates have had different outcomes in their control of corruption trends over the years. Third, the literature that explores the concept of EU

conditionality (both generally and in specific policy areas) simply assumes the existence of a causal relationship between EU conditionality and policy changes in candidates as a given, without proving its existence. Fourth, scholars have not paid enough attention to factors at the domestic level to explain the implementation of the EU's anti-corruption accession requirements. Fifth, the literature that examines the impact of international actors on domestic anti-corruption programmes rarely considers the role of the EU as a factor.

Finally, when explaining the influence of EU anti-corruption measures on candidates, scholars traditionally argue that corruption was a serious problem in the region without unpacking the domestic responses from national governments. However, the role of specific domestic factors may have a determining role in the success of EU enlargement conditionality. Pridham (2005), Vachudova (2005, 2009), Vukovic and Gorgev (2019); Dimitrova (2011) consider certain domestic factors, such as the opposition and the existence of a communist party, as reasons for different transformations of candidate countries. However, this thesis examines whether other, additional factors, both domestic and EU-related, may have been key to the lack of a causal relationship between EU anti-corruption conditionality and domestic corruption control. By tracing the accession process in the sphere of anti-corruption, this thesis will seek to answer whether there were any factors that influenced EU conditionality, or lack thereof, in addition to what has already been identified in the literature.

3.3. Analysing corruption from a rational choice perspective

A significant body of the corruption literature adopts a rational choice approach in some shape or form. An approach that centres on institutional economics has dominated the field, but alternative explanations of what causes corruption and how we should counter it have also emerged. The main assumption of the institutional economics approach to corruption is that

humans are rational beings who calculate costs and benefits and shape their behaviour accordingly:

We begin with a basic fact of human motivation. Differences in culture and basic values exist across the world, but there is one human trait that is both universal and central to explaining the divergent experiences of different countries. That motivating trait is self-interest. Critics call it greed. Economists call it utility maximization. [...] Endemic corruption suggests a pervasive failure to tap self-interest for legitimate and productive purposes. (Rose-Ackerman and Palifka 2016: 6–7)

The expectation of rational choice theories is that the agent's primary interest is to maximize benefits that come from corrupt behaviour, whereas the principal's main interest is to minimize corruption costs (Hellmann 2017: 146). According to what has become known as the principal-agent approach, corruption regularly occurs where discretion is involved. Only if the potential costs are high enough will agents not engage in corrupt behaviour (Hough 2017: 76). This is exactly what Kunicova and Rose-Ackerman (2005) argue when examining how electoral rules and constitutional structures can influence the level of political corruption. They assume that "politicians trade off their re-election chances against illicit personal enrichment because revelations of corrupt rent-seeking reduce re-election chances" (Kunicova and Rose-Ackerman 2005: 573). Similarly, (Geddes 1996: 8). argues that state decisions reflect the interests of decision-makers and that their ultimate interest is to remain in office. Geddes (1996: 7–8) considers political elites to be rational individuals whose aim is to maximise their own interests instead of state autonomy. In other words, if systems that increase the costs of being corrupt are in place, agents (ruling elites) will be put off from being corrupt, as the costs of being caught and/or removed from office are too high compared to the benefits of the corrupt act.

Such assumptions are relevant for the present thesis. The principals (the electorate) in candidate countries have an additional expectation from the agents (the ruling elites), which is to comply with EU requirements and thus ensure EU membership. Therefore, in line with rational choice approaches, if agents do not comply with EU conditionality, it is to be expected that the electorate will punish them in the next election. Moreover, according to this logic, the EU has the power to demand improvements in corruption control, as ruling elites may be punished by the electorate for underachieving. Whether this was the case in practice will be examined in this thesis.

Rational choice theories also examine how anti-corruption conditions can be achieved and maintained. Rose-Ackerman and Palifka (2016) seek to answer “*under what conditions can anticorruption reforms become entrenched and broadly acceptable, rather than suffering a reverse?*” This thesis aims to answer a similar question, that is – under what conditions can the EU influence anti-corruption reforms during accession? By adding the EU element into the puzzle, this thesis will examine whether it is more likely to improve corruption control when EU conditionality is present. It will do so by using the external incentives model, which also has its basis in rational choice theories. According to Schimmelfennig and Sedelmeier (2005: 8–9), the external incentives model is an EU-driven one. The EU imposes pressure and initiates the process of rule adoption by asking candidates to fully comply with the *acquis*. They acknowledge that the EU has not been equally forceful in implementing conditionality in some policy areas (Schimmelfennig and Sedelmeier 2005: 9). Whether the EU has been forceful in ensuring anti-corruption reforms remain to be answered in this thesis.

Moreover, even if the EU has contributed to improved corruption control, considering that it loses a considerable part of its power after accession, there is a risk of anti-corruption policies in candidates being of a temporary nature. Dimitrova (2010) argues that there were a number of backsliding cases after the 2004 enlargement and that not all reforms have endured after

accession. For example, Gugu (2013) argues that in the case of Romania, anti-corruption reforms were introduced because of EU pressure, largely as ‘window dressing’ mechanisms, and were not maintained after accession. This is in line with Rose-Ackerman and Palifka’s (2016: 439) argument that reforms need more than the adoption of laws and the introduction of new policies. Likewise, Moene and Soreide (2016) argue that even when international organizations try to influence corruption control, fake reforms may be introduced to satisfy their demands. In their view, putting the emphasis on legal and institutional reform may even worsen the situation and lead to a decrease of trust in legislation (Moene and Soreide 2016: 47–48). They do acknowledge that “legal institutions are indeed important, but that they must be understood as part of a political and economic equilibrium” (Moene and Soreide 2016: 48). Similarly, Rose-Ackerman and Lagunas (2015: 4) acknowledge that some countries are still controlled by a small number of elites, even though they seem like success stories because of their improved rankings in anti-corruption indices. In such cases, petty corruption, especially bribery, is not a serious issue, but power, both political and economic, is concentrated in the hands of a few ruling elites (Rose-Ackerman and Lagunas 2015: 4). Such power being concentrated may contribute to great corruption. When a country is dependent on foreign relations – such as aid, or in the cases examined in this thesis, EU membership – then political elites may introduce anti-corruption policies to show that efforts are being made to tackle the problem. However, the existence of such institutions may not have a significant impact on state functioning and can simply be used as a disguise for superficial efforts, if not supported by political leadership, which may lead to the state being controlled by a few elites (Rose-Ackerman and Lagunas 2015: 6–7). Whether candidate countries focused on superficial anticorruption reforms during accession will be examined in further detail in the empirical chapters.

A significant part of the rational choice theory literature – such as Geddes (1996), Moane and Soreide (2016), Rose-Ackerman and Carrington (2013) – examines the impact of international organizations on corruption.²⁴ Geddes (1996) considers the role of the international community and potential threats from international actors as motivating factors for domestic elites. She acknowledges that state officials have the power to choose how to react to such threats and argues that their responses will depend on their own political interests (Geddes 1996: 9). She links political interests to controlling resources and staying in office. These arguments are important for this thesis. Political elites' control over state resources decreases once the EU starts imposing conditions for legal and political reforms as part of the accession process. Such control is diminished even further in certain areas once a country joins the EU. As a result, and in line with the external incentives model, if the benefits of progressing the accession process and/or joining the EU are less than the benefits of not doing so, it is likely that ruling elites will not strive for changes that may decrease their control over state resources. In other words, if legislators' re-election depends on furthering the accession process, it is to be expected that they will make efforts to introduce reforms as per the EU's requirements. The same goes for party leaders who are expected to make efforts to progress the accession process, providing it does not jeopardize their political power or that of their party.

Geddes's research will be particularly important when examining the size of the domestic costs for political elites of adopting and implementing anti-corruption reforms. The size of the domestic costs is one of the four factors of the external incentives model that, according to Schimmelfennig and Sedelemer (2005), affects the EU conditionality mechanism. Therefore, if political elites face the threat of weakening their own political power (or that of their party). or of not being re-elected because of not complying with EU requirements, it is to be expected that they will make efforts to introduce the required anti-corruption reforms. This is one of the

²⁴ An assessment of additional studies on the impact of international actors on corruption control is included in Section 3.2.

main assumptions of this thesis. In contrast, if the threat of losing political power because of not progressing the accession process is low, it is to be expected that ruling elites will make efforts to maintain control over state resources, rather than relinquish control for the sake of EU membership.

A group that has come to be known as neo-institutionalists are among the most prominent critics of the rational, institutional economics approach. They criticize principal-agent approaches on a number of points. Namely, according to neo-institutionalists, institutional economics approaches do not work well when analysing the non-Western world because of differences in contextual settings, and their contributions can mainly be limited to analysis of systems that have established the rule of law, transparency and accountability (Hough 2017: 81). Neo-institutionalists argue that only some (i.e. not all) preferences of agents are exogenous and that actions and interests are affected by interactions of agents with other individuals and institutions (Hellmann 2017: 147). This approach highlights the importance of context for identifying the causes of corruption, as well as for pursuing reforms for tackling it. According to the neo-institutionalist approach, context matters and it allows for targeted responses to particular corruption problems (Hough 2017: 81). This approach acknowledges qualitative differences in the institutionalisation of corruption and suggests tailor-made approaches for tackling the problem (Hellmann 2017: 148).

Both of these approaches are important for this thesis. The external incentives model that underpins this research is based on rational choice theory and is a bargaining model. It assumes that domestic elites are going to weigh up the pros and cons of joining the EU and expects agents (ruling elites) to act in accordance with rational choice theory. If the EU requires domestic elites to improve corruption control in order to join the club, agents will consider how costly is it for them to introduce the required reforms and will act in a manner that maximises their benefits. According to the neo-institutionalist approach, corrupt behaviour is context-

bound, and if corruption is widespread the risks for agents are lower because principals are incapable of effectively monitoring agents' behaviour (Hellmann 2017: 147). Thus, one cannot expect the same measures introduced in different settings to have the same effect.

Lambsdorff, Taube and Schramm (2005) adopt a fusion between a new institutional economics and a new institutional sociology approach to contribute to the understanding of humans as economic and social actors in corrupt transactions. They offer "*a sociological view of how norms and institutions arise, how they vary in different social settings and how they embed a corrupt transaction into a broader framework; [...] an economically oriented analysis of how they are purposefully designed by corrupt actors*" (Lambsdorff, Taube and Schramm, 2005: 7). Institutions are constructed by individuals, but they are also the outcome of social and economic processes and it is argued that individuals should not only be considered as homo economicus, but as social actors as well (Lambsdorff, Taube and Schramm, 2005: 6–7). They advance Rose-Ackerman's (1999) and Granovetter's (1985) arguments and suggest that when analysing corruption, one has to consider the institutional settings that enable corrupt transactions to take place (in Lambsdorff, Taube and Schramm, 2005: 6). For the present thesis this is of importance, as it draws attention to context-specific factors, that is, that different institutional settings that may enable corruption in some cases more than in others.

John Hopkin offers a view on a number of economic approaches to the study of corruption. He argues that such 'economic' approaches are unable to provide satisfactory explanations of variations in corruption control and has misconceptions about the causes of corruption (Hopkin 2002: 575). According to Hopkin "*economists run into serious difficulties in explaining the institutional dynamics behind the creation or elimination of such incentive structures, difficulties that reflect the obstacles in the way of economists successfully endogenizing government institutions*" (2002: 582). He goes on to conclude that these approaches can offer explanations of corruption, but cannot offer explanations as to its absence, or its variations

(Hopkin 2002: 586). He draws on the work of Hutchcroft (1997) to argue that economic approaches to corruption do not offer a theory of why in some cases individuals act collectively to reduce incentives for corruption (Hopkin 2002: 586). However, this thesis aims to address this issue by introducing the assumption that external actors may have an impact on attempts to control corruption. In the case of CEECs, EU accession could be a factor for individuals to act collectively to reduce corrupt incentives. Therefore, this thesis will contribute to the rational choice literature by answering whether variations in corruption in CEECs are a result of EU anti-corruption conditionality. The review also acknowledges that the concept of corrupt incentives structures can explain the differences in corruption levels in different countries (Hopkin 2002: 582), which supports the selection of the external incentive model when analysing corruption control in the selected cases. Finally, scholars have established that social learning is an important aspect of the Europeanisation process (Carlson, Eigmuller and Lueg 2018; Schimmelfennig and Sedelmeier 2005; Stepka 2015; . However, as this thesis focuses on the accession process only, i.e. a limited period of time, often short, such as for the Czech and Romanian cases, it is difficult for social learning to have taken place in this brief enlargement period. This is because social learning requires political will and time for learning to occur but it is also related to administrative and financial capacities which, if missing, may hamper the political will of actors to introduce changes. Moreover, this thesis is interested in the formal criteria regarding corruption control that the EU is imposing on candidate countries, that is – promoting integration from above (Carlson, Eigmuller, Lueg 2018), and rational choice is a suitable approach for examining the EU conditionality from this perspective.

3.4. Causes of corruption literature

Many political scholars have sought answers as to why corruption occurs. Efforts have been made to identify the causes of corruption globally (Rose-Ackerman and Palifka 2016;

Treismann 2000; 2007), regionally (Holmes 2000) as well as on the country level. Improving corruption control is challenging if it is not known what caused it in the first place. The aim of this thesis, however, is not to identify the causes of corruption in the CEEC's context. The main goal is to illustrate the EU's efforts in controlling corruption during the accession process. However, identifying the causes of corruption would allow for tailor-made approaches for tackling the issue. In order to improve corruption control in candidates, the EU should be familiar with the causes of corruption in CEECs. Therefore, this thesis will examine whether the EU adopted a one-size-fits-all approach or if it adjusted its EU anti-corruption conditionality based on the specific circumstances of each case.

Even though this thesis is not concerned with what the causes of corruption in CEECs are – but with what governments under EU tutelage have done to tackle it and whether they have been successful in doing so – it is worth acknowledging some of the causes of corruption in the region to better understand what some of the main problems with corruption in CEE are. Aside from these general causes of corruption, there are studies that have identified specific factors mainly been related to post-communist countries.

When looking at corruption in post-communist countries, scholars (Holmes 2000, Vachudova 2005, Rose-Ackerman and Palifka 2016) have paid particular attention to the privatization process. Rose-Ackerman and Palifka (2016) focus on privatization and argue that privatization is necessary for reducing corruption. Nevertheless, even though CEECs went through a process of democratization and transformation, in many of them corruption remained a serious problem. Considering that few data existed on corruption trends in CEECs prior to the mid-1990s, it is difficult to examine if corruption control improved with regime change. Nevertheless, comparing corruption control in CEECs between 1996 and 2012 illustrates that corruption decreased in some, but not all, CEECs. Therefore, contrary to what Rose-Ackerman and Palifka (2016) argue, there is no correlation between the process of privatization and levels

of corruption control. It is therefore important to examine what other factors may have helped or hindered corruption control in CEECs.

Holmes (2000) looks at factors causing corruption in post-communist Central and Eastern European countries. He argues that, aside from general factors that influence levels of corruption, there are factors specific to post-communist countries. Holmes identifies four causes of corruption in Central and Eastern Europe: (1) the combined effect of the legacy of communism (cultural determinist arguments)²⁵ and path-dependency;²⁶ (2) the transition of post-communist countries which included restructuring of their political, economic and legal systems; (3) taking advantage of the privatisation process by well-placed individuals together with a lack of conflict of interest and other anti-corruption laws; and (4) the international situation, i.e. the fact that post-communist states emerged at a time when economic liberalisation, free trade and open markets were the central focus of Western democracies. Holmes (2003: 194–199) argues that economic liberalization is conducive to corruption and CEECs embraced this model of governance as they had no other options.²⁷

Holmes identifies the causes of corruption in CEE, but these causes of corruption on their own cannot explain why there are different outcomes in the control of corruption in candidate countries. Without identifying what the difficulties with corruption in a specific context are, it is very difficult to suggest appropriate remedies. Understanding the causes of corruption is important for developing approaches to control it by national governments and the EU.

²⁵ In terms of the communist legacy, he further highlights six factors: the strictly hierarchical nature of the communist system meant that personal and moral responsibility was not encouraged as it would have been in Western systems; institutional blurring between the communist party and the state; the wider range of discretionary powers of state officials; the distinction between the state and the private, i.e. people were not comfortable to steal from other people but had no problems stealing from the state; high levels of patronage during and after the communist era; goal achievement instead of the rule of law, i.e. the ends of plan fulfilment were more important than the means (Holmes 2000: 193–206).

²⁶ The path-dependency approaches to the causes of corruption focus on structural constraints and possibilities, including institutional capacities. In other words, by rejecting the basic tenets of communism, many politicians were reluctant to use draconian measures to fight corruption, on the ground that this would be too reminiscent of the authoritarian past.

²⁷ Holmes' argument is that the Scandinavian model was not feasible for these countries, as it was both very expensive and these countries could not afford it, and it was also in decline in the West by the end of the 1980s.

Therefore, analysing the EU's anti-corruption conditionality during accession will shed light on whether the EU suggested context-specific responses to corruption problems in candidates. Holmes (2003) suggests that the prospect of EU membership had an impact on corruption control but cannot extensively explain how international actors (the EU in this particular case) have influenced domestic corruption control. Holmes (2003: 201–203) acknowledges the EU to be among the means used by countries to control their corruption levels, but he concludes that without the existence of domestic political will²⁸ not much can be done. Translated to this thesis, very few studies have examined comprehensively whether EU attempts to counter corruption in candidate countries yielded noteworthy results and, if so, how the EU actually affected corruption levels in those countries. Therefore, this thesis will not focus on testing hypotheses derived from the existing literature. As there is no existing body of theoretical explanation about the context-specific factors that influenced the EU's anti-corruption conditionality during accession, this thesis will start from the ground up and will employ an inductive approach to trace the control of corruption in CEE countries with different outcomes during accession. It will answer whether variations in corruption control have been a result of EU enlargement conditionality or the result of other factors.

3.5. Systemic corruption as a collective action problem

Marquette and Peiffer (2017) have examined contradicting arguments about the role of rational choice theory versus collective action for understanding corruption and how to tackle it. They argue that principal-agent theory complements collective action theory, and that combined with corruption as serving function approaches, will provide a better understanding of achieving the necessary political will for controlling the corruption problem. They acknowledge that rational choice, or principal-agent theory focuses on the individual, while collective action focuses on

²⁸ However, political will is an elusive concept, difficult (if not even impossible) to measure, and one should dig deeper and identify other, possibly context specific factors that may explain variances in corruption control in CEECs.

“the good for the group and the feasibility of members monitoring each other in contributing toward the collective good” (Marquette and Peiffer 2017: 500). Moreover, they raise the important issue of corruption being perceived as a problem, and acknowledge that corruption in some cases is actually the solution for problems, that is, people may not have other means to resolve everyday issues unless they engage in corruption.

Persson, Rothstein, & Teorell (2015) examine the lack of success of anti-corruption strategies. By focusing on Uganda and Kenya they argue that part of the problem is in how corruption is perceived. They propose that corruption should be perceived as a collective action problem as opposed to a principle-agent one. In their view, if the solution to a society’s problem is corrupt behaviour, the gains of corruption will, in the short term, outweigh the issues that come with it. According to Persson, Rothstein and Teorell (2015:454) having an anti-corruption legal framework is not only unhelpful but it may enhance corruption if implementation is missing. This claim is important for the present research as it supports the assumption that an anti-corruption framework may not be sufficient for addressing problems with corruption in a particular context.

While the aim of this thesis is to point out issues with the EU’s anti-corruption conditionality during accession, offering what are the best strategies to control corruption in candidates is beyond the focus of this thesis. Therefore, this research restrains from offering suggestions about how to tackle corruption (as this is not the focus of the thesis and there is insufficient data to allow for such claims to be made) but it does make efforts to acknowledge that there are different approaches to addressing the problem. However, making a note that corruption may be a collective action problem opens avenue for new research on best practices for addressing the problem during accession.

3.6. Literature on EU and international actors' influence on domestic corruption

This category of literature consists of studies that aim to analyse the impact that the EU as an international actor has on the domestic control of corruption. In other words, it comprises studies that analyse the influence of the EU as an international actor on the control of corruption, not only in CEE members and candidates for EU accession, but also in the 'old' 15 EU Member States, as well as in neighbouring and developing countries. The shortcomings of this rather limited literature (with a few exemptions that I will elaborate on below) are that these studies either focus on the impact of the EU on democratization overall, and not particularly on corruption (Jacoby 2004; Kochenov 2008; Pridham 2005; Vachudova 2007), or focus on the influence of other international actors, such as the Council of Europe, the Organisation for Economic Cooperation and Development and the United Nations, without particularly considering the influence of the EU on the domestic control of corruption in candidates.

Rose Ackerman (2013: 5–8) for instance, provides a taxonomy of international actors that play important roles in the control of corruption, but she does not include the EU as an actor at all. The EU's influence is briefly considered when looking at international non-profit institutions but she only refers to the EU's contributions to aid programmes in Africa (2013: 29). However, this type of influence is financial, and it differs from the role that the EU enlargement process plays in candidates during the accession process. Although the EU also provides candidates with financial assistance during accession, such as the former PHARE²⁹ programme and IPA³⁰ funds, the main goal of candidates is to be granted full access to the club as EU members. Even though candidates receive financial aid to fulfil EU requirements, the ultimate aim of the

²⁹ The PHARE Programme was the main financial instrument for supporting CEECs during accession. It was initially introduced to provide economic support to Poland and Hungary, but it was then used to provide funding for technical, economic and infrastructural assistance to other candidates as well (European Parliament 1998).

³⁰ The IPA fund was introduced in January 2007 and replaced previous EU financial instruments for candidates and potential candidates, including the PHARE Programme (European Commission 2018).

accession process is membership, not to simply gain financial aid. This is different when compared to other international organisations, such as the International Monetary Fund, where securing financial benefits is the ultimate goal. Therefore, conditionality, as it was traditionally understood by the World Bank and the IMF, was not the same in the context of the EU enlargement process. The peculiarity of the EU as an external actor, and the uniqueness of the benefits that the EU offered candidates, has not been fully explored and the existing literature in this area is not sufficient to explain how the Union influences the control of corruption in candidates for accession.

Within this context, studies that look at EU anti-corruption conditionality in the accession process are particularly important for this thesis. At present, there is limited literature in this area, although some efforts have been made by legal scholars (Batory 2012; Szarek-Mason 2010), but mainly by political scientists (Beblavy and Scakova-Beblava 2014; De Ridder 2009; Gugu 2012; Racovita 2011; Sandholtz and Gray 2003; Vachudova 2009), to get a firm handle on the problem.

Vachudova (2009) explores EU enlargement conditionality in the fight against corruption by specifically looking at Romania and Bulgaria, with the aim of drawing broader conclusions on the future measures that the EU is likely to take when tackling corruption in the enlargement process of the Western Balkans. The article first examines the reasons for corruption in post-communist members and candidates, then acknowledges issues with measuring corruption, and continues by analysing the EU's attitudes and actions towards corruption in candidates and how these attitudes have changed over time. Similar to other studies on this topic, this article assumes that EU leverage exists and does not go into further detail to illustrate the possible causal relationship between EU enlargement and the domestic control of corruption. Vachudova argues that the fight against corruption among post-communist candidates played a minor role until 2002, due to substantial corruption problems in EU member states. This

resulted in a lack of focus on anti-corruption issues in the annual Regular Reports. Vachudova continues by arguing that, by 2006, this attitude had changed. The EU recognised corruption to be a serious problem in Bulgaria and Romania. However, in reality, this was not necessarily the case. Other studies (see Gugiu 2012; Racovita, 2011) and national Progress Reports have actually shown that the EU had recorded problems with corruption and called for these problems to be tackled much earlier than 2006. Vachudova concludes that despite problems with the consistency and enforcement of membership requirements, EU enlargement conditionality had a greater impact on reforming states and economies than any other external actors. However, she only assumes the EU's impact, without actually revealing what it was and how it was achieved. In addition, she does not really look at the influence of any other factors, aside from the EU's influence on candidate countries, which raises questions as to how the conclusions were reached.

In addition, when analysing anti-corruption efforts, one should look beyond the willingness of political actors to implement change. Vachudova (2009) argues that different political parties will have different motivations for, and interest in, joining the EU, and liberal democratic parties are more likely to be willing to join the EU as their costs for meeting EU demands are not prohibitively high. She continues by arguing that the greater the benefits of membership, the greater the potential political will among candidates to satisfy the requirements, and that the potential political will³¹ to satisfy the entry requirements sets the stage for the effectiveness of conditionality. Vachudova's study is a useful source for analysing the specific effects of enlargement conditionality relevant to fighting corruption. It combines conditionality with the issue of political will, and domestic political will is considered to be an important factor of controlling corruption (Kpundeh 1998; Brinkerhoff 2000). However, other factors aside from

³¹ It is worth noting that it is very difficult to both conceptualise and measure political will. One of the studies that deals with conceptualising political will is by Kpundeh (1998), who distinguishes between rhetoric political will and effective political will. He also argues that political will depends on a number of factors, including institutional and human capacity.

domestic political will, such as capacity and resources for introducing and implementing change, are important for the effective control of corruption (Brinkerhoff 2000: 243–247). In other words, even if political actors are willing to improve the domestic control of corruption, their efforts may be limited by additional factors.

Sandholtz and Gray (2003: 794) examine the EC's Regular Reports and conclude that corruption-related issues were not as significant for the accession process as one might expect. They state that candidates from the 2004 and the 2007 enlargement waves were allowed to start negotiations despite their inability to effectively control corruption. Their argument is that controlling corruption is a crucial democratic criterion. However, before a country is invited to start negotiations it has to fully comply with all democratic criteria. The negotiation process focuses mainly on transposition of the *acquis*, with little ground for negotiation, thus this next stage in the accession process is not as important for the control of corruption in candidates as it is for other issues. In other words, the main corruption-related changes are supposed to occur before negotiations even start, and the argument that the level of compliance with EU requirements decreases as a candidate progresses through the accession process (Bohmelt and Freyberg 2012) does not fully apply to this particular policy. This study is very significant for my research as it has a specific focus on corruption rather than EU conditionality in general, and it suggests that outcomes for conditionality can differ in the sphere of anti-corruption. Moreover, this study supports the case selection for this thesis. If the main emphasis on corruption is on the period before negotiations start, then it may not be necessary to make sure that all three cases have gone through the negotiations phase. On the other hand, selecting cases from different enlargement cycles will allow me to examine if EU conditionality has evolved over time and if the EU has continued to undermine its own credibility. Corruption is mainly dealt with as one of the political criteria which, at least in theory, need to be fulfilled sufficiently in order for a country to start negotiations with the EU. As a result, it does not matter whether

all the cases have concluded negotiations with the EU, as the issue of corruption is meant to be dealt with in the pre-negotiation stage.

Thus far, the most prominent research contribution that combines EU enlargement conditionality and the control of corruption in candidate countries has been provided by Szarek-Mason (2010). In her book, *The European Union's fight against corruption: The evolving policy towards Member States*, Szarek-Mason focuses on EU anti-corruption policy towards both Member States and candidate countries. As regards candidate countries, her particular focus concerns the impact of the 2004 enlargement on the effectiveness of the fight against corruption in CEECs, and the impact that the enlargement conditionality of 2004 and 2007 has had on conditionality policy for subsequent candidates. Szarek-Mason looks at enlargement conditionality in the CEECs and argues that the main achievement of the EU in these countries was formal compliance rather than implementation in practice. She argues that as a result of the EU's focus on formal compliance, CEECs achieved relative progress in practice, which is particularly evident in the cases of Bulgaria and Romania.

Szarek-Mason draws several important conclusions in her book. She effectively illustrates that the EU's anti-corruption policy at the time of writing was still far from perfect and that the anti-corruption framework at the time was not sufficient to enhance and monitor the anti-corruption standards at the EU level and among Member States. The book demonstrates that the EU did not safeguard its own achievements in helping candidates to fight corruption, and it recommends that soft law measures are the way forward in the fight against corruption. This study, however, mainly comments on the existence, or lack, of relevant laws and policies. It also does not explain why the EU mainly focused on formal compliance. This thesis will further contribute to the literature on the fight against corruption and conditionality by answering why the EU impact was limited to the adoption of regulations and what factors hamper the success of EU anti-corruption conditionality in practice.

Chapter Three: The influence of EU enlargement conditionality on the control of corruption: the case of the Czech Republic

1. Introduction

A lot happened in the Czechoslovakia between regime change in 1989 and its accession to the EU in 2004. The country dissolved into two countries, the Czech Republic and Slovakia, in 1993 (Engelberg 1993). The transformation of the political regime-initiated changes in the corrupt environment in Czechoslovakia. Under the communist regime, Czechoslovakia was equipped with an appropriate legal framework to punish classical bribery and corrupt state officials, which were common at the time (Lizal and Kocenda 2000: 1). However, the country was completely unprepared to prevent the newly emerging forms of corruption that came with the change of regime and the privatization process. Since its independence and the dissolution in 1993, the Czech Republic has been challenged by relatively high levels of corruption and numerous scandals at various levels of government, including top level officials and politicians (De Ridder 2009: 64). The country demonstrated aspirations to join the EU but the EU wanted to make sure that the Czech Republic, together with other CEE aspiring EU members, was ready to take on the responsibilities that came with being a member state. How the accession process of the Czech Republic was conducted in the sphere of anti-corruption is examined in this chapter.

The aim of the chapter is (i) to analyse the impact of the EU's enlargement conditionality on the control of corruption in the Czech Republic, (ii) to examine how relevant and appropriate were the EU's anti-corruption requirements, and whether success in controlling corruption was a prevailing issue for granting EU membership to the Czech Republic, (iii) to assess how the EU used rewards, threats and punishments during the Czech accession, and (iv) to examine the role of domestic adoption costs. The analysis is guided by Schimmelfennig and Sedelmeier's

(2005) external incentives model. According to this model, the EU makes the adoption of its rules a condition that candidate countries need to fulfil in order to get rewards from the EU, with the ultimate reward being EU membership. Therefore, if candidate countries fulfil the enlargement conditions, they should ultimately be rewarded with EU membership, but if they lag behind in fulfilling the required conditions, the EU withholds its rewards. The chapter draws attention to the EU-related factors that shape EU conditionality regarding the control of corruption in the Czech Republic: the determinacy of anti-corruption criteria; the size and speed of awards based on progress made; and the credibility of threats and promises for furthering the accession process. While the first three factors are mainly controlled by the EU, the domestic adoption costs vary from case to case and depend on both what the EU has to offer (i.e. the EU's bargaining power) and whether that offer is more appealing to domestic elites compared to maintaining the current state of affairs.

The main argument is that, in the case of the Czech Republic, the EU did not use the full potential of its enlargement conditionality, at least not in the sphere of anti-corruption. By studying the country's accession process, it is possible to understand why the EU did not have a greater impact on the country's control of corruption. The chapter identifies the factors that affected the success (or lack thereof) of enlargement conditionality during the Czech accession on both the EU level and the domestic level. The argument is that EU membership was very important for domestic political elites, and those elites were prepared to fulfil EU requirements if that meant EU membership for the country. Yet, the EU did not use the full potential of its conditionality tool and did not require systemic changes to improve the control of corruption. By highlighting the domestic factors that shaped the control of corruption in the Czech Republic, it is argued that the domestic costs in the sphere of anti-corruption were lower for political actors than the costs of not joining the EU.

In the next sections, first, some of the general issues with corruption control in the Czech Republic are examined. Second, the focus is shifted to the determinacy of the EU anti-corruption criteria. Third, how the EU used its 'carrot and stick' tool during accession is considered. Finally, the chapter analyses how costly it was for domestic elites to implement EU anti-corruption requirements. In light of the above, the main aim of this chapter is to connect the topics of enlargement conditionality and corruption and to establish why the EU did not have a greater impact on the control of corruption during the accession of the Czech Republic.

2. General remarks

According to World Bank data on the control of corruption in CEE countries (Table 1, introduction), the Czech Republic had the second-highest score of all the CEE countries on the control of corruption indicator in 1996. At the start of the transition, the political and economic transformation of the Czech Republic was going well (Vachudova 2009: 45). Innovative voucher privatization allowed for a fast-paced structural transformation of the economy, from command to market, with minimum unemployment and no hyperinflation (World Bank Report 1999: 1). The type of privatization is one possible explanation for the country's initially high control of corruption scores. According to Holmes (2003: 205), those CEE countries that introduced the most radical economic and political changes were in general the ones with higher corruption control scores. However, in 1997, this so-called Czech miracle came to a halt and strict austere fiscal and monetary policies were introduced in order to stabilise the economy and recover from increased unemployment rates and inflation. In addition, that same year, Prime Minister Vaclav Klaus resigned and a caretaker government was appointed, followed by a general election in 1998 that brought down the government (Holmes 2003: 205).

On the domestic front there were no checks and balances between 1998 and 2002 because of the so-called “opposition agreement”. The close parliamentary elections in 1998 brought the centre-left Czech Social Democratic Party to power, through its “opposition agreement” with the centre-right Civic Democratic Party. In other words, the right-wing Civic Democratic Party and the Social Democrats on the left formed a coalition, which resulted in weak opposition because the two biggest parties were effectively working together, with the opposition only consisting of a few small parties with limited power in Parliament. This agreement restricted meaningful political competition and brought about several years of political gridlock in the Czech Republic (Freedom House 2012). Between 1998 and 2002, therefore, the lack of political competition was a domestic condition that influenced the control of corruption in the country (Ondrej Vondracek, Czech lawyer and corruption analyst in the European Commission, DG SANCO to Cvetanoska, 25.2.2015).

This finding is in line with Grzymala-Busse’s (2007) claim that party competition restrains corrupt practices of political parties. According to Grzymala-Busse (2007), if political competition is weak or non-existent, ruling parties in post-communist states are likely to abuse their power for private gain, including, but not limited to, the use of rents for party financing or abusing their power over the bureaucracy for electoral support. Similarly, Ekiert, Kubik and Vachudova (2007: 15) consider robust political competition to be an “indispensable element” of democracy in CEE. They argue that those CEECs that alternated in government and had balanced political competition were more successful in introducing and maintaining democratic institutions. It was to be expected, therefore, that weak political competition would have a negative effect on corruption control in the Czech case.

From 1996 to 2012, the Czech Republic’s score saw the greatest decline in controlling corruption out of all the CEE countries: the country scored 76.5% in 1996, as opposed to 63.6% in 2012. Such results suggest that, in the Czech case, EU accession did not improve the control

of corruption trend during and after accession. In other words, there is no correlation between EU accession and control of corruption scores, which suggests that there is no causal relationship EU conditionality and corruption control. This lack of a causal relationship was not only present in the case of the Czech Republic, but in other CEE countries, too (see Appendix 1). In addition, out of all the CEE countries, the Czech Republic had the second highest score in controlling corruption in 1996 (77.3%), just behind Slovenia (86.8%). By the time it joined the EU, the score dropped to 68.7% and 68.2% in 2004 and 2005, respectively. After it joined the EU, the Czech Republic's score never rose above 70% again, and by 2012 it had actually dropped to 63.6% according to Worldwide Governance Indicators (see the introduction for additional information on the WGI). Overall, the country's control of corruption score significantly decreased from 76.5% in 1996 to 63.6% in 2012 – a drop of approximately 13%. This implies that conditionality as an anti-corruption tool was not in itself sufficient to positively influence the control of corruption in the country. Whether this really was the case is examined in the next three sections.

3. Determinacy of the conditions

The main questions answered in this section are: **how clear were** the EU's anti-corruption criteria for the Czech Republic? **Did these criteria differ from** the anti-corruption requirements imposed during later enlargement cycles? **Were the criteria suitable** for effectively controlling corruption in the country?

The main instruments for monitoring progress in the Czech case were the Regular Reports published on annual basis. The EC published these on annual basis, the first report being published in 1998 when the country open accession negotiations. The Reports were a commentary of the fulfilment of the conditions that the Czech Republic was expected to introduce as part of the accession process. Controlling corruption, assessed mainly through the

democratic criteria, was among the requirements for the country to progress in the accession process and was included in the Regular Reports.

The Regular Report in 1998, published after it was already agreed that the Czech Republic will open negotiations, briefly assesses corruption as part of the democratic criteria in a paragraph. The Commission reiterates that according to the Czech government corruption is a serious problem, and refers to two legal improvements in this sphere (European Commission 1998: 9)³². Following this, the Commission has concluded that “insufficient manpower, equipment, financing and low pay for state employees continue to be serious obstacles to an effective approach [for the fight against corruption]” and does call for “additional sustained efforts over a considerable period of time”. There is no further information as to what such measures may entail.

According to interviewees, during the Czech accession, the main emphasis was on the country’s general progress: the control of corruption as a specific policy issue was often overlooked and at no point was it a real threat that could have stalled Czech accession to the EU (Telicka, Pavel, Chief Negotiator for the Czech Republic, and Former European Commissioner to Cvetanoska, 9.2.2015; Fule, Stefan, Former European Commissioner for enlargement to Cvetanoska, 12.5.2015).

Moreover, several interviewees who were directly involved in the Czech accession negotiations during the 2004 enlargement, were of the view that candidates’ ability to control corruption was not at the centre of the EU’s attention (Telicka to Cvetanoska, 9.2.2015; Anonymous interviewee 1, Former Prime-minister of the Czech Republic to Cvetanoska, 22.2.2015; Kavan, Former Minister for Foreign Affairs, 5.2.2015). Corruption was not a political priority at all, on neither the domestic agenda nor the EU accession agenda. The accession process was mainly

³² The Commission states that the Czech Republic has adopted a Resolution allocating different ministries with priority tasks relevant for the fight against corruption. It also acknowledges that sanctions for bribery have increased.

about re-establishing a geo-political connection, that is, bringing the Czech Republic back into Europe after the fall of the communist regime. According to Jakub Janda, Deputy Director for Public Affairs and Publication of European Values Think-Tank (26.2.2015), *“it was more or less about the bigger picture [...] it was more or less about formally passing some legislation [...] The whole narrative was that we are finally getting back to Europe.”*

As Pavel Telicka, the chief negotiator for the Czech Republic accession to the EU pointed out, anti-corruption requirements were *“not at all part of the negotiations [...] what was important for this period of time was that there is a trend, and that the trend is positive”* (Telicka to Cvetanoska, 9.2.2015). Mr Pert Kolar, Former Deputy Foreign Minister of the Czech Republic, and former Czech ambassador was of a similar opinion: *“It is about the trend. You need to persuade Brussels that you are doing well. That you understand what they expect from you, and that you are doing your best [...] and that there is no risk that once you are in you will be changing that”* (Kolar to Cvetanoska, 18.2.2015).

According to Professor Jiri Pehe, political analyst and former political advisor to the Czech President Vaclav Havel during the country's accession process:

Definitely there were, on the one hand, mechanical efforts to harmonize laws without really paying much attention to what it meant content wise, and there were some specific issues related to corruption which, of course, had some influence, although unfortunately Czech political elites have done their best to avoid the impact of some of those efforts. (Pehe to Cvetanoska, 27.10.2014)

The most prominent of these efforts was the Civil Service Act, which was adopted by the Czech Parliament in 2002, under pressure from the EU, because it was one of the conditions for membership. The Act was initially agreed to be implemented by 2004, but after the Czech Republic acceded to the EU, it managed to completely avoid implementation of this law agreed

prior to the country's accession to the EU. The EU did not use conditionality to impose implementation before accession, and the Czech Civil Service Code, an important piece of legislation for corruption control, remained a piece of paper for over a decade. Only in January 2015 did the Czech Parliament pass this Act again, but in an amended version that differed significantly from the original. According to Petr Selepa, Head of the Office of the Prime Minister of the Czech Republic (Selepa to Cvetanoska, 18.2.2015), the amended version was not an ideal solution but a mixed result of EU pressure and promises to the electorate that the Act would be enforced:

The old law was not compatible with the current state of affairs and it would have caused huge problems if it entered in vigour from 2015. Therefore, a 'novelisation' of the old law was prepared. The opposition in Parliament started to protest against the novelisation, so there was a compromise prepared [...]. There may be some heavy points [in] that the head of the civil service is practically a subordinate of the Ministry of Internal Affairs. We, before, wanted for him to be totally independent. But that was the accord with the opposition and we thought that it was more dangerous to let the old Law come into vigour[sic] than to transform our novelisation of this Law, and make an agreement with the opposition [...]. This was important because there were some dangers concerning the EU funds. There was a great danger that the EU would stop the programmes in the EU funds for development which would have caused great problems for the budget and for various development programmes. There were many people that criticized the new law, but I think this situation is better than what would have happened had the Law not been ratified. (Selepa to Cvetanoska, 18.2.2015)

Several other interviewees (Michal Fadrny, Lawyer at Frank Bold and Coordinator of the reconstruction of the State campaign³³, 31.10.2014; Pehe, 27.10.2014; Janda, Deputy Director of European Values Think Tank 26.2.2015; Kolar, Former Deputy Foreign Minister of the Czech Republic, and former Czech ambassador, 18.2.2015; Peake, Former Deputy Minister in the Ministry for Foreign Affairs, 23.2.2015) also pointed out that the main reason for passing and enforcing this Law was EU pressure. Namely, the EU threatened the Czech Republic with withdrawal of EU funds because of the threat that corruption posed to such funds being misused. According to a “Shadow report” on the misuse of EU funds by Czech, Polish and Slovakian civil society organisations:

The main imperfection of the Czech regulation is the ineffectiveness of the Civil Service Act [...] The Civil Service Act led to the awarding of public procurement contracts co-financed by EU funds to a narrow circle of companies whose co-owners belonged to a clientelist group. (Frank Bold 2013: 22)

A related problem was that, in the Czech Republic, anonymous companies were allowed to be beneficiaries of EU funds and there was almost nothing preventing politicians from owning such companies (Gotev 2014). Among companies winning public contracts in the Czech Republic (including EU-funded), 10 per cent had structures with unidentifiable owners and 15 per cent of owners formed tax havens (Gotev 2014). The EU, therefore, insisted on the Czech Republic having a transparent civil service system and public officials who would actually be able to implement EU standards on administering EU funds in a transparent fashion.

What is more, even law adoption was not always ensured during the accession process, such as in the area of the funding of political parties. According to Andrej Vondracek, the Czech

³³ The Reconstruction of the State was a national anticorruption platform whose aim was to advocate for the adoption of nine anti-corruption laws in the Czech Republic (Frank Bold 2015).

Republic continued to suffer from lack of regulation with regard to the funding of political parties after accession:

For financing of political parties, we need limits for the donations [...] but they [political elites] want limits only on the visible part of the campaign. [There are] two ways how you can finance a campaign. One is you send the money to the political party, and the political party buys a billboard here. There is only law for the presidential election [and no adequate regulation for parliamentary election funding]. But if this is not financed by a natural person, if it is financed by a company owned or controlled by an advocate in a law firm, and this is around 10–20 % of the campaign [sic]. The other 80–90% are [sic] done by indirect financing. If you are a politician you want to maybe give me [a political party] money, as if I win I will give you something in return. So, what do you do if you do not want to appear in the report? [...] You pay for the billboard directly. [...] If you pay for these billboards, these expenses do not appear on [sic] the finances of the parties. Therefore, their finances are ok. If you are doing a law on the financing of political campaigns, you need to tackle this problem, but this is very difficult to tackle. You can try to forbid the persons from doing this [indirect funding], but still, imagine if you are an offshore company, than [sic] no one will know that you have done this. Therefore, you need to list all the persons who created benefits on behalf of companies. You need to appear somewhere on the list, otherwise all the efforts on the financing of political parties are for nothing. (Vondracek to Cvetanoska, 25.2.2015)

Yet, the eventual passage of the Civil Service Code in early 2015 showed that the EU could have a certain influence over both candidates and Member States. According to Jiri Pehe:

There were recommendations and there was some pressure from Brussels to each candidate country, and certainly on the Czech Republic to implement laws which would

fight corruption, but on the other hand it turned out that Brussels didn't have the will or tools to put real pressure on its member countries once they became member countries, and it did so only in cases where corruption was so rampant, and so obvious and so threatening to the democratic system, so it was not possible to overlook anymore, such as in Bulgaria and Romania [...], but in the case of the Czech Republic I don't think that Brussels has done too much, with the exception of these last threats to stop paying the funds which, actually promoted Czech politicians to finally adopt the Civil Service Law. (Pehe to Cvetanoska, 27.10.2014)

Another question relating to the determinacy of the anti-corruption conditions was the one of measuring success. The main instruments for assessing progress were the European Commission's annual Regular Reports. The main aim of these was to examine the performance of candidate countries regarding the Copenhagen Criteria. These criteria were introduced in 1993 and the EU has used them since then in the accession process of all CEECSs. Yet, Grabbe (2001: 1022) points this out when discussing the Regular Reports as evaluation tools: *"the goals are often vague, citing a need for 'increasing capacity' or 'improving training', rather than stating detailed institutional preferences"*. In addition, Szarek-Mason (2010: 195) points out that there were many inconsistencies in spotting problem areas relevant for the control of corruption as there were issues that were very important for all CEE candidates, such as the development of civil society organisations or the regulation of lobbying, but these were emphasised selectively in only a few Annual Reports of some (but not all) candidates. As a senior officer from DG Near pointed out:

Our conditionality policy can be better articulated, some documents need to be broader, but we are facing the problem of [sic] absence of international anti-corruption standards, and no hard core anti-corruption acquis, as well as different systems, legal

and institutional frameworks, which do not allow us to be too prescriptive as to what constitutes a good anti-corruption policy. (Interviewee 1 to Cvetanoska, 18.9.2014)

4. Size and speed of rewards and credibility of threats and promises

Another set of questions that will provide additional answers as to why the EU had limited influence on the control of corruption during the accession process are related to the size and speed of rewards and the credibility of threats and promises. This section will therefore consider whether candidates were rewarded after anti-corruption conditions were fulfilled and, if so, if they were rewarded correspondingly and in a timely matter. And also, how credible exclusion from the accession process was if candidates were lagging behind in anti-corruption progress is considered.

Threats and promises are part of the EU's conditionality mechanism in the pre-accession process (Vachudova 2014: 214). However, the decision whether to use such instruments during a particular enlargement is in the hands of the EU, or more specifically MS when sitting in the Council. According to interviewees (Michael Leigh, Chief Negotiator for the EU during the accession of the Czech Republic, Director of Directorate General for Enlargement to Cvetanoska, 1.2.2016, Fouere to Cvetanoska, 26.2.2016, Senior Rule of Law Officer DG NEAR, to Cvetanoska, 18.1.2016), decisions on whether to use threats and punishments will impact future accession rounds, and the lack of usage of these mechanisms where usage is due may cause a so-called 'enlargement fatigue' which in turn may slow down later enlargement cycles. This because MS may not accept new members that have not been exposed to sanctions when failing to implement anti-corruption reforms. According to Michael Leigh:

As people were aware that state building and issues related to corruption and so on were serious problems with these [CEE] countries, there was a shift in the mood. But the shift in the mood was also because, on the EU side, there was, you know, quote

unquote, enlargement fatigue, and the only way to get member states to really support a new wave of enlargement was to show that the conditions have been toughened up.
(Leigh to Cvetanoska, 1.2.2016)

However, this was not an issue during the Czech accession and the interest to further expand the Union decreased significantly only after the 2007 enlargement. The overall EU interest in the Czech Republic becoming a member state was strongly present throughout the country's accession process. Interviewees argued that there was no doubt within the European institutions that the Czech Republic belonged in the EU and that this was the tone set by the European Commission throughout the entire accession process (Kavan, Former Minister for Foreign Affairs 5.2.2015; Dvorakova Head of the University of Economics, Prague 11.11.2014; Schneider, Former Deputy Minister in the Ministry for Foreign Affairs, 24.2.2015; Anonymous interviewee 1, Former Prime Minister of the Czech Republic, 23.2.2015; Telicka to Cvetanoska, 9.2.2015). In the words of Sir Michael Leigh:

The Czech Republic was not perceived as one of the countries where this [corruption] was an acute problem. [...] People were aware that there were dubious sides to the privatisation, for example of the banks, and [...] people were aware that everything is not as it should be, but I think that there was a feeling that this was just a phase the country had to go through in the early stages of transition. It is true that it was not as major a focus as it became later. (Leigh to Cvetanoska, 1.2.2016)

The main corruption related laws over which the Union showed concerns during the Czech accession were the Civil Service Act and funding of political parties. As briefly mentioned earlier, the Czech Republic did not have any restrictions on offshore companies with anonymous owners funding political campaigns. According to Ondrej Vondracek, Czech

lawyer and corruption analyst in the European Commission, DG SANCO (25.2.2015): *“The problem is that public companies with non-transparent ownership can finance political parties.”* What is more, anonymous companies are allowed to be beneficiaries of EU funds and there is almost nothing preventing politicians from owning such companies (Fadrny, 2014). A study based on reports on financing the political campaigns of Czech political parties illustrated that many political parties received an unusually large number of donations from offshore benefactors (Skuhrovec, Titl and Palansky 2015: 16). Furthermore, some parties, such as the Czech Social Democratic Party and the Civic Democratic Party (more traditional major parties), received up to a third of their total donations from companies that had been awarded public procurement contracts (Skuhrovec, Titl and Palansky 2015: 16). These issues were still present at the time of the Czech accession in the EU.

The Czech Republic submitted its application for EU membership early in 1996 and the first Regular Report of the European Commission on the country’s progress towards accession was for the year 1998 – when negotiations began. A candidate should move to the negotiations phase after fulfilling the requirements (including those focusing on corruption control) of the Copenhagen. According to the 1998 Czech Regular Report, the main obstacles to the control of corruption in the Czech Republic were insufficient manpower, equipment, financing and low pay for state employees (European Commission 1998: 9). The Commission pointed to serious shortcomings in the approach to tackling corruption in practice, but it did not raise serious concerns about the country’s anti-corruption legal framework and was invited to start negotiations. In the 1999 Report, the main corruption concerns were again related to the effectiveness of the fight against corruption and, to some extent, to insufficient legislation. According to the European Commission, the Government’s policy in this area remained *“seriously handicapped by the lack of personnel, equipment, and insufficient co-ordination between the agencies involved and insufficient legislation”* (European Commission 1999: 14).

The Czech Republic had not yet ratified the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and had not yet signed the Council of Europe Criminal Law Convention on Corruption of 1999. The main criticisms in the Report revolved around insufficient legislation and the signing and ratification of the aforementioned conventions. However, these were relatively new international instruments at the time, and the Czech Republic signed and ratified them in 2000, as per the European Commission's suggestions.

Meanwhile, the Czech government started to develop its own anti-corruption programme by initially focusing on corruption in the civil service in 1997. Later on, in 1999, the original task of targeting corruption in the civil service was extended by a Government Programme for Combating Corruption in the Czech Republic (Lizal and Kocenda 2000: 16). The fight against corruption was a major topic in the 1998 election, and after winning, the Social Democratic Party launched the 'Clean Hands' campaign with the aims of dealing with corruption, educating the population and raising awareness. The campaign drew an enormous number of bad reviews from opposition parties and the media for its very limited success (Newman 1999). The most significant result of the 'Clean Hands' campaign was the resignation of the Social Democratic Finance Minister, Ivo Svoboda, who resigned along with a colleague on charges of investment and shareholder fraud (Transparency International 2001: 130). Nevertheless, with only a few cases prosecuted – compared with the 1,000 or more criminal complaints issued by the government's anti-corruption investigative offices (Transparency International 2001: 130) – the campaign was not a success. The campaign's legitimacy and transparency were further questioned when it was announced that the composition of the Investigating Committee would be secret, and this campaign was terminated in early 2000, after it failed to reveal a significant number of corruption cases (Lizal and Kocenda 2000: 18). Still, the accession negotiations

continued as planned, and the EU did not make any serious threats that accession would be hampered due to corruption problems.

In the 2002 European Commission Regular Report, particularly serious concerns were raised regarding controlling corruption: *“Unfortunately, the effectiveness of the fight against fraud and corruption has not sufficiently improved”* (European Commission 2002: 117). To be more specific:

As regards the fight against fraud and corruption, no further progress in terms of legislative harmonisation can be reported on remaining issues. The[sic] further amendments to the Criminal Code concerning the criminal liability of legal persons and [a] redefinition of corruption in the private sector remain awaited. (European Commission 2002: 114).

Furthermore:

In April 2002, the Government approved a report on corruption which underlines that the situation is not improving. Data on bribery and crimes committed by public officials as well as data from public opinion research studies have shown that the number of corruption-related criminal offences detected has increased. It confirmed that latent corruption is still widespread, including in administrative police departments. On the other hand, the number of investigated and prosecuted bribery cases has also risen (especially in the areas of active corruption and credit fraud). (European Commission 2002: 114).

The main positive comments on the control of corruption were limited to the Supreme State Prosecutor’s Office in Brno signing a co-operation arrangement with OLAF and the Czech Republic’s accession to the Council of Europe Group of States against Corruption (European

Commission 2002: 114). Despite such concerns, the EU agreed to the Czech Republic becoming a Member State without these issues being addressed.

According to former Commissioner for EU enlargement Stefan Fule, during the initial enlargements, the EU had not been able to fully accommodate the accession process to the specific requirements and issues of the acceding countries:

We have the same requirements, same procedures, same techniques from Austria to the Czech Republic, and to a large extent the purpose was [one of] ticking the boxes. I mean there is in generally nothing bad in ticking the boxes, but particularly with countries with a certain democratic deficit and experience, and those undergoing transformation, it is extremely important not only to have a bill adopted, institution[s] established, but it is also important to see this law being implemented, it is important to see the institutions being established, financed, being independent and strong. (Fule to Cvetanoska, 14.5.2015).

This because the Czech Republic was part of the first enlargement cycle of CEE countries, and the EU did not have previous experience of or expertise in guiding the accession process of CEE countries. According to Former European Commission for Enlargement Fule: *“Despite certain democratic traditions of former Czechoslovakia, at that time, we did not have the enlargement process fully reflecting the tasks and challenges presented by enlarging of [sic] the EU with the former socialist countries”* (14.5.2015). In other words, during the first CEE enlargement, the EU did not have adequate information about the corruption levels in candidate countries, nor did it have adequate tools to tackle corruption during their accession. For example, the Czech Republic submitted its application for membership in 1996, received a positive response from the EU in December 1997 and shortly after that opened negotiations in

1998. In this limited period of time, between 1996 and 1997, the EU was assessing how well the ten applicants were performing with regard to the Copenhagen criteria.

For the later enlargements, especially after the accession of Bulgaria and Romania, the EU started learning from its mistakes, especially in the sphere of anti-corruption, and started making efforts to strengthen the enlargement process to reflect these past experiences. As a result, the EU strengthened the role of chapters 23 and 24 (Justice and home affairs, in which the fight against corruption is included) and gave the fight against corruption a very prominent place during the accession process unlike the Czech accession, for which interviewees have pointed out that the control of corruption was never at the core of the Czech Republic's accession debate (Kavan to Cvetanoska, Prague, 5.2.2015; Mansfeldova to Cvetanoska, 20.2.2015; Petrakova, Director of the Corruption-less Program NGO, to Cvetanoska, 4.11.2014; Schneider, Former Deputy Minister in the Ministry for Foreign Affairs, to Cvetanoska 24.2.2015; Anonymous interviewee, Former Prime Minister of the Czech Republic to Cvetanoska 23.2.2015; Telicka to Cvetanoska, 9.2.2015). When asked whether there was a threat that not enough progress in anticorruption would jeopardise the overall enlargement process, the EU negotiator for the Czech accession answered that, from what he remembered, this was not an issue (Leigh to Cvetanoska, 1.2.2016).

In re the EU did not use the threats and rewards mechanisms of its enlargement conditionality to attempt to influence the control of corruption in the Czech Republic. According to Former European Commissioner for Enlargement Fule, not applying conditionality creates a risk of undermining the credibility of the enlargement process, which was especially concerning after the second CEE accession wave when Bulgaria and Romania entered the EU, despite rampant corruption problems:

[The accession of Bulgaria and Romania] made the European Commission deeply reflect, because it has shown that the credibility of the enlargement process has been

questioned, and if you ask me what is the biggest danger and challenge of the enlargement process, I will tell you quite clearly that it is when you start questioning the credibility of the process. If you start to doubt [whether] the enlargement process could bring to [sic] the EU Member States who are fully prepared to meet the obligations streaming from membership, you just gave an excuse for some politicians accusing newcomers of being the source of all problems the EU is facing, which is far, far from the truth. (Fule to Cvetanoska, 14.5.2015)

5. Domestic adoption costs

It was expected that the impact of EU conditionality on the control of corruption in CEE countries would be dependent upon domestic factors within a particular state: there was no causal relationship between the EU and control of corruption scores in CEE, and specific domestic conditions in different countries were decisive for the success (or lack of it) as regards the control of corruption. The main aim of this section is to examine the specific domestic circumstances in the Czech Republic, their impact on the domestic control of corruption, and to assess how costly it was for domestic political actors to adopt and implement EU anti-corruption requirements.

The legitimacy of the EU's leverage was challenged by issues that impact on the national sovereignty and identity of candidates, and rent-seeking political elites had taken advantage of such issues (Vachudova 2014: 124). The main assumption of conditionality is that governments behave rationally, and this is also assumed for the control of corruption: if the benefits of corruption exceed the benefits of not being corrupt, then rent-seeking elites will have no incentive to control corruption. This is where the prospect of EU membership could have a potentially significant impact. Namely, if the importance of controlling corruption successfully

was secondary for the EU (i.e. if political elites understood that they could further the accession process by introducing piecemeal policies), control of corruption was likely to be limited. Moreover, even if the control of corruption is a priority for EU accession, if the benefits of corruption do not exceed the benefits of joining the EU, there will be no interest for political elites to strive for membership. Finally, if anti-corruption requirements are not appropriate to effectively tackle corruption, anti-corruption efforts are likely to be limited. Consequently, the desire of political elites to make serious and sustained attempts to effectively control corruption, as well as their benefits from the Czech Republic acceding to the EU, was very important for the country's success in controlling corruption.

However, it should be kept in mind that the domestic costs for joining the EU vis-à-vis maintaining corrupt practices were lower in the Czech case. Most of the Czech population wanted to join the EU, and it was expected that political elites would achieve this goal. Even Eurosceptic parties were pushing the EU agenda forward; if they wanted to stay in power, furthering the accession process was the only way. This was a window of opportunity for the EU to use strong conditionality on corruption issues, as domestic political elites would have benefited more by furthering the accession process and joining the EU, than from maintaining the status quo as regards controlling corruption. As illustrated in further detail below, the EU did not use this leverage to its fullest potential. Therefore, corruption control in the Czech Republic was mainly dependent on the country's domestic conditions, and it was not as a result of EU accession pressure in the specific policy area. The general consensus was that there was no option for the Czech Republic other than joining the EU. Leading the country towards EU membership was thus the ultimate goal. In such an environment, furthering the accession process was more beneficial for domestic political elites than maintaining the status quo in controlling corruption, which gave the EU the possibility for influence. Yet, the EU did not use

this situation to its advantage to improve the control of corruption in the Czech Republic during the accession process.

This, in turn, meant that domestic elites were not given sufficient incentives to improve the situation in practice, and they continued with superficial efforts in the sphere of anti-corruption, which were just enough to pass the EU threshold (which was significantly low at the time, especially when compared to the later enlargement of the Western Balkan countries), but not enough to bring about systemic changes in controlling domestic corruption.

As previously illustrated, EU anti-corruption requirements were mainly restricted to the adoption of legal provisions, with no real pressure over controlling corruption in practice. One of the arguments in this thesis is that the main preconditions for anti-corruption reforms in candidates lie in domestic factors and in the costs of joining the EU, compared with the costs of controlling corruption as required by the EU. Two aspects are important here. First, success in controlling corruption depends upon EU requirements (i.e. determinacy of the conditions); and second, the domestic adoption costs depend on both the determinacy of the conditions and the cost-benefit ratio of the domestic costs. In the Czech Republic, even though there was potential for impact because the cost-benefit ratio was in favour of becoming a Member State, the EU did not require substantial anti-corruption efforts. As a result, there were no significant costs for domestic rent-seeking elites, as they were able to obtain membership with superficial efforts, many of which were later reversed, as in the case of the Civil Service Act. Thus, it can be concluded that the EU did not take advantage of favourable domestic conditions in the Czech case.

During the Czech Republic's EU accession, and as a result of the Opposition Agreement, between 1998 and 2002 the lack of political competition was a domestic condition that influenced the control of corruption in the country (TI: 2002). According to Vaclav Stetka, Senior Researcher and Leader of the PolCoRe research group at the Institute of Communication

Studies at Charles University (Stetka to Cvetanoska, 20.2.2015), at the time, the media and civil society sectors were underdeveloped and unable to perform their roles of controllers of government and Parliament. This affected corruption control.

Czech political elites, regardless of political affiliation were determined to join the EU. Yet, interviewees identified lack of pressure from the EU. According to Mr. Pehe:

I don't think that the EU put too much pressure on the Czech Republic in areas where it should have [...] and could have made some difference, such as insisting on more transparency in the Czech Republic in administering public tenders, spending public money, and in fact some changes [...] came from pressure from within, because of Czech civil society and [an] outcry over rampant corruption, systemic corruption, and it wasn't really because of the EU. (Pehe to Cvetanoska, 27.10.2014)

Another point related to the control of corruption in the Czech Republic is that even though the country's ability to control corruption showed a decreasing trend as per the World Bank control of corruption scores, the qualitative data I have collected suggest that the country has improved its corruption control over time. Specifically, interviewees have argued (Pehe, political analyst and former political advisor of the Czech President during the country's accession process, 27.10.2014; Petrakova, Director of the Corruption-less Program NGO, Prague, 4.11.2014; Janda, Deputy Director of European Values Think Tank 26.2.2015; Konieczny, Project Manager at the Anticorruption Endowment NGO, 16.2.2015; Kolar, Former Deputy Foreign Minister of the Czech Republic, and former Czech ambassador, 18.2.2015; Ondracka, President of Transparency International Czech Republic 7.11.2014) that the control of corruption improved somewhat after EU accession, regardless of the Czech Republic's decreasing control of corruption scores as per the WGI. According to Mr. Kolar:

The situation has improved. I think this is not only because of the EU membership. It is also the attitudes of the citizens, [...] the emancipation of our police and judicial system. At the same time those corruption scandals that we had here really raised the temper of [the] people and [the] people are not as tolerant as they used to be. There was some role of the EU, but I do not think it was a crucial one. It is mostly about the cultivation of the society as such. Of course, if the EU is providing some subsidies they have instruments of control, and they had inspectors that do the checks, but I do not think that this is the main reason why things have improved. (Kolar to Cvetanoska, 18.02.2015)

A positive example was the arrest of Petr Necar in 2013 on corruption charges³⁴, while he held the position of Prime Minister of the Czech Republic, together with several other senior government officials, by the Czech Police Unit for Organized Crime. This said a lot about the independence of institutions in the country. If a country has institutions that are able to go against current political elites that is a positive indication of the independence of those institutions, and it speaks about the ability of the country to fight corruption. It is worth noting here that World Bank data may need a period of time to catch up with changes that have occurred in a specific context. As argued in this introduction, measuring corruption is challenging, and often corruption perceptions are measured which may differ.

³⁴ For further information see Bilefsky (2014).

6. Analysis

6.1. Determinacy of the conditions

The main argument of this chapter is that the Czech Republic case suggests that the EU did not have a specific anti-corruption strategy for the 2004 enlargement wave. EU accession requirements on anti-corruption were characterised by inconsistency, lack of expertise and lack of focus and interest in effective corruption control. In other words, the “determinacy of the conditions” factor (as per Schimelfennig and Sedelmeier’s model) with regard to controlling corruption was not applied correctly.

The interview data suggests that, during the Czech accession, the main emphasis was on the country’s general progress: issues with corruption control were not seen as a threat to the enlargement process of the country. I argue that this was a very serious oversight, as the EU did not use its conditionality tool to attempt to improve the control of corruption effectively before the Czech Republic joined the EU. Two issues are important here: the lack of a specific EU interest in problems with corruption control and the insufficient clarity of EU anti-corruption requirements, combined with limited tools for measuring success.

Even though unfavourable domestic conditions for the control of corruption, such as a lack of competition, were present in the late 1990s (see section 2), the EU did not offer clear and specific anti-corruption criteria to assist with the control of corruption. What is more, the main focus was on overall democratic and economic consolidation, and problems with corruption were not at the core of the accession process. Moreover, this chapter demonstrates that even if the EU had presented clear expectations for controlling corruption, the main trigger for reform was dependent on domestic conditions, and especially on the domestic costs for political actors to further the accession process (see section 5).

Overall, the EU’s impact was limited during the Czech accession. Yet, the EU accession requirements for anti-corruption improved significantly from the first enlargement wave of

2004 (Fule to Cvetanoska, 12.5.2015). Nevertheless, during the Czech accession, the main focus in the sphere of anti-corruption was on law adoption rather than law implementation. Even though the adoption of anti-corruption legislation is an important aspect of corruption control, without implementation, is not in itself sufficient to yield the desired results.

The findings in this chapter suggest that the EU did not have specific developed criteria, especially regarding the implementation of anti-corruption norms, and it was generally content with law adoption before accession. The Civil Service Act shows that this was not the right approach, as the Act's implementation was postponed for over a decade after the Czech Republic joined the EU.

This leads to the second argument that the EU had the option to have a certain influence over the control of corruption in the Czech Republic, but it did not use the potential of its conditionality mechanism for a long period of time, both before and after the country's accession. Guidance was available via the Regular Reports, but as the interview data suggests criteria were not specific and the EU did not make particular recommendations for concrete actions in order to improve policy areas.

In other words, even though the EU was aware that its influence would be limited after the Czech Republic's accession, it did not do enough to ensure that anti-corruption legislation would be adopted before, and implemented after, the country was granted membership. The EU could have threatened to limit EU funds to the Czech Republic after accession, but it did not do so for over a decade, even after the country did not follow up on its promises made during the accession period. The fact that the Czech Republic introduced the Civil Service Act after EU pressure illustrates the EU's potential impact and strengthens the argument that it did not use the full capacity of its conditionality tool both before and after accession.

In such a situation, domestic political actors opted for partial short-term reform, as opposed to long-term effective solutions for curbing corruption. As a result, efforts to effectively control

corruption in the country were fragmented, focused on legislation and technical reforms for improvement, but without substantive implementation in practice.

6.2. Size and speed of rewards and credibility of threats and punishments

As has been argued elsewhere (Grabbe 2001, Szarek-Mason 2010, Sandholtz and Gray 2003, Vachudova 2005 and Vachudova 2014), candidates' ability to control corruption was not a deciding factor when moving from one stage to another in the accession process. By illustrating that the EU accession process had progressed, even though candidates did not fully comply with the accession criteria, it is argued here that the EU itself undermined the credibility of its conditionality mechanism when it came to controlling corruption.

The Czech accession was, to a certain extent, about ticking EU checklists, particularly when compared to the later accession of the Western Balkan countries, when anti-corruption criteria were at the centre of attention. There was no serious threat of stalemate for the Czech accession due to problems with corruption. The interview data suggested that there was an assurance for the domestic political elites that it was very unlikely that the accession process would be stopped because of limited progress in controlling corruption, which undermined the EU conditionality mechanism.

In the Czech case, at no point was the fight against corruption a threat to the country's accession to the EU, regardless of the seriousness of the issues. Specifically, the threats and promises mechanism was non-existent in the Czech case and the Czech accession date was agreed despite all requirements not being fulfilled, which supports the explanation that the lack of effort to control corruption by the EU further contributed to limited progress in the adoption of anti-corruption legislation.

What is more, the Czech Republic was even rewarded with EU membership despite the serious criticisms in the sphere of anti-corruption, which also distorted the size and speed of the rewards aspect of the external incentives model. The main expectation was that a candidate was to be rewarded correspondingly and in a timely manner, upon successful completion of certain conditions, by the EU. Nevertheless, the EU granted membership to the Czech Republic due to political motives, and not as a result of relevant progress in controlling corruption. As the EU did not use conditionality to impose implementation before accession, in this particular case, implementing legislation important for controlling corruption was not a priority for the EU during the accession of the Czech Republic. Another point that this chapter makes is that the transformation process in CEE countries largely depended on which issues the EU saw as priorities that needed tackling during the accession process of a particular candidate. The effectiveness of enlargement conditionality also depended on the competence of the EU to determine the best way to tackle problematic issues, and on the level of tolerance that the EU had towards the fulfilment, or lack of it, of certain requirements.

The EU had a very high level of tolerance when it came to controlling corruption in the Czech Republic, which arguably had a negative impact on the country's success in this area. Granting politically motivated membership to countries with serious corruption problems sent a message that an effective fight against corruption was not the main 'ticket' for entry to the EU. If other political criteria were fulfilled, the EU would allow membership, regardless of anti-corruption progress. This undermined the legitimacy of enlargement conditionality and directly affected the control of corruption in the Czech case. Lacking effective anti-corruption progress was not perceived as a principal threat for denying accession, and therefore it had a demotivating impact on the political elites responsible for addressing this problem, resulting in short-term superficial efforts to control corruption. Going back to the example of political party funding, it can be

concluded that the EU did not use its conditionality mechanism to press for legal provisions that would restrict such funding.³⁵

The inconsistency of the credibility of threats and promises weakened the EU's conditionality mechanism in the pre-accession process (Vachudova 2014: 214) which, according to interviewees, resulted in the decreased interest in enlargement. This situation of 'enlargement fatigue' slowed down later accession in the view of many interviewees (Michael Leigh, Chief Negotiator for the EU during the accession of the Czech Republic, Director of Directorate General for Enlargement to Cvetanoska, 1.2.2016, Fouere to Cvetanoska, 26.2.2016, Senior Rule of Law Officer DG NEAR, to Cvetanoska, 18.1.2016).

6.3 Domestic costs

In the Czech case, domestic political elites were more interested in joining the EU than in maintaining corrupt practices, as the domestic costs of not joining the EU would have been higher, so the EU lost an opportunity to at least try to have a more significant influence. There were therefore a lot of areas for potential EU influence as regards the control of corruption, but the EU focus on law adoption, and the lack of the use of the threats and rewards mechanism, was the main reason for the ineffective EU influence on the control of corruption, regardless of the favourable domestic conditions.

To sum up, the EU did not have a significant influence during the accession process of the Czech Republic, and domestic conditions during the enlargement process further contributed to the limited control of corruption before EU accession. Favourable changes in domestic conditions contributed to a somewhat improved control of corruption in the Czech Republic

³⁵ It is worth noting that a comprehensive legal framework is not crucial for success in corruption control. However, the EU's focus was mainly on adopting legislation and it is a problem that the EU did not even aim to achieve this before allowing accession.

after its accession, which further strengthens the argument that effective control of corruption is mainly due to domestic factors present in each specific country. Even though some may argue that the EU did not significantly influence corruption control during the Czech accession, the fact remains that the EU did not have adequate tools to do so. In other words, with the anti-corruption criteria that the EU had at the time, it was very likely that it would have failed to impose any significant influence whatsoever, even though the potential was there.

7. Conclusion

This chapter has looked at the EU's influence on the control of corruption in the Czech Republic, and specified which factors, on both the domestic and EU levels, influenced the control of corruption during the country's accession process. It has also briefly reflected on the control of corruption in the aftermath of the Czech enlargement.

The main argument of this chapter is that EU conditionality played a limited role in the control of corruption in the Czech Republic during and after the accession process, but it could have played a greater one. The reasons for the limited impact have been explained in this chapter by using the four factors of the external incentives model. The general argument is that: (a) the EU's anti-corruption conditionality was limited to the adoption of legislation, and it was at times unable to influence the adoption of legal norms effectively (b) the EU's anti-corruption conditionality was distorted in the case of the Czech Republic because of a lack of interest from the EU in tackling the control of corruption before the country's accession; (c) even though the benefits of furthering the accession process surpassed the size of the adoption costs for domestic political elites, the EU did not use the incentive of membership to influence the control of corruption in the Czech case; and (d) success in controlling corruption in the Czech Republic mainly depended on domestic conditions.

The limited impact was related to the secondary importance of success in controlling corruption, as problems with controlling corruption never threatened the accession process of the Czech Republic. This in turn limited the scope of enlargement conditionality as the EU did not use threats and rewards to motivate the country to achieve substantial progress in this sphere.

The chapter has argued that there appeared to be no causal relationship between EU conditionality and control of corruption trends in the Czech Republic, and that the EU had limited influence on the control of corruption during the Czech enlargement process. This conclusion stems from the argument that, in the Czech case, the EU's influence on anti-corruption was uneven and limited as regards the adoption of anti-corruption legislation. The Civil Service Act and its delayed implementation for over a decade, as well as the inadequate provisions regarding political party funding and public procurements, illustrate the limited influence of the EU over anti-corruption legislation during the accession process. However, the EU's threat to stop its funds to the Czech Republic support the argument that the conditionality mechanism could have had an impact, at least when it comes to the adoption of legislation, in situations when the EU posed a real threat of cutting funds. However, in the Czech case, the EU was often reluctant to impose threats and sanctions, especially during the accession process. It is worth noting that conditionality as a mechanism, both pre-accession and post-accession, when applied appropriately may help in improving corruption control. Even though post-accession conditionality is more limited than pre-accession conditionality, in the Czech case it worked well. Namely, the EU threatened that it would cut EU funds to the Czech Republic if the postponed Civil Service Act was not implemented by 1 January 2016. As illustrated in this chapter, the Law was adopted as a result of these threats. Pre-accession conditionality, as argued by a number of scholars (Bohmelt and Freyburg 2012), is a stronger type of conditionality, as its reward is EU membership, which was the ultimate goal of the Czech

Republic, as shown in this chapter. It is therefore believed that the domestic ruling elites would have done what the EU asked them to do about improving corruption control as per rational choice theories (see Introduction). Nevertheless, the EU asked for very little, and it did not use the power of its conditionality, which can have a strong impact if the domestic costs of not joining the EU are high, as they were in the Czech case.

In the case of the Czech Republic, the EU's requirements were very superficial, (at least) when it came to controlling corruption. Generally, the EU did not insist on improved control of corruption in practice, so its policy and approach towards this issue had serious flaws, as they focused mainly on law adoption efforts. The argument suggests that the EU underestimated the problems with controlling corruption in the 2004 accession countries, and it was satisfied with the adoption of laws, without seriously requiring any implementation in practice before accession. This allowed the Czech Republic to postpone the start date for the implementation of certain regulations required by the EU. By showing that the Czech Republic joined the EU without having in place relevant anti-corruption legislation, and there were implementation issues, this chapter concludes that corruption control was not a priority for the EU during the accession of the Czech Republic.

The reason behind the lack of threats was seen in the secondary importance of the control of corruption for the EU. The EU's main emphasis was on the formal: on creating institutions and adopting laws, whereas the issue of implementation should have been given more serious consideration. It was argued that the EU had the ability to somewhat influence the adoption of legislation during the accession process, but it had limited impact on the control of corruption in practice. This statement was supported by the European Commission Progress Reports and data from interviews. Furthermore, the limited influence was related to the lack of determinacy of the anti-corruption criteria of the EU. The EU anti-corruption criteria lacked clarity and appropriateness and were not specifically tailored to effectively improve the control of

corruption in the Czech Republic or other CEECs. The conditions were determined very generally, and limited progress was often met with very mild criticism. The same issues were present in the mechanisms for monitoring success, as the Progress Report were inadequate tools for assessing effective progress in controlling corruption.

Another point this chapter makes is, therefore, that CEE transformation process largely depended on which issues the EU perceived as priorities. The effectiveness of enlargement conditionality also depended on the competence of the EU to determine the best way to tackle problematic issues, and on the level of tolerance that the EU had towards the fulfilment, or lack of it, of certain requirements.

Finally, it was argued that even in a case where the EU presented clear expectations as regards controlling corruption, the main trigger for reform was dependent on domestic conditions, and especially on the domestic costs of political actors to further the accession process. For Czech political elites it was more important to lead the country into the EU, rather than avoid fulfilling anti-corruption criteria. It was argued that the reasons for such a cost- benefit ratio were both a result of superficial EU requirements, as well as a consequence of the very high costs for domestic political elites, if the accession process was to be delayed. It was therefore surprising to conclude that the EU did not use this moment to attempt to bring about more substantive changes in the control of corruption in the Czech Republic. What is more, the Czech Republic was even rewarded with EU membership, despite serious criticisms in the sphere of anti-corruption. In a nutshell, weak anti-corruption conditionality was exercised as regards the Czech accession, and the EU reconsidered its anti-corruption policy for subsequent enlargement cycles.

Chapter Four: The influence of EU enlargement conditionality on the control of corruption: the case of Romania

1. Introduction

The ability of Romania to assume the obligations of EU membership was questioned long before it joined the EU in 2007. Its inability to control corruption was a serious concern throughout its entire EU accession process. The EU considered Romania, together with Bulgaria, as a candidate country most seriously affected by corruption out of all the CEE candidates. The EU, therefore, made additional efforts to effect corruption control after the country became a member state. It introduced a *sui generis* mechanism, the so-called CVM, in order to further monitor a number of issues of concern, including corruption control.

This chapter applies the external incentives model developed by Schimelfennig and Sedelmeier (2005) to assess the EU's anti-corruption conditionality in the case of Romania. It initially provides an overview of corruption-related issues in Romania during the enlargement process, in Section 2, before shifting the focus on the determinacy of the conditions in Section 3. The aim of this section is to answer the question: did the EU impose clear anti-corruption requirements on Romania, what were these criteria and was there a focus on the adoption of laws, their implementation, or both? Section 4 examines the size and speed of rewards and the credibility of threats and promises. The goal here is to answer the question: did the EU use these mechanisms at all, and if it did, did it use them in a timely and appropriate manner, and was there any threat of excluding Romania from the accession process? This chapter also answers the question of how important the control of corruption was in Romania for the EU accession process. Finally, section 5 of this chapter focuses on the domestic costs and seeks to determine how costly it was for political elites to adopt and implement anti-corruption criteria,

and it asks: what were the specific conditions in Romania that contributed towards the somewhat positive developments in the aftermath of the EU accession process?

2. General remarks

As regards Worldwide Governance Indicators, the country scored 49.2% in 1996, as opposed to 50.7% in 2012. This suggests that no significant progress was made with regard to corruption control in the Romanian case. With a few exceptions on a yearly basis, Romania's corruption control remained generally unchanged. Romania's score decreased drastically to 30.2% in 1998, followed by a gradual increase, reaching a peak of 55.3% in 2008 – one year after joining the EU, after which there were just slight variations in percentages up to 2012.

In the case of Romania, the anti-corruption legal framework was transposed but enforcement remained a serious problem. The country effectively employed different tactics to avoid compliance but gain membership. As Mihaela Racovita (2011: 36) has pointed out, Romania was simulating EU standards but had the real intention to maintain the status quo in the control of corruption and opted for adopting laws to meet EU standards that were later amended to restrain the fight against corruption, i.e. a “one step forward, two steps backwards track” (Racovita 2011: 38).

Yet, Romania entered the EU despite its incapacity to deal effectively with corruption, and the CVM was introduced to ensure that Romania was on track when it came to tackling corruption. This monitoring continued to reveal serious corruption problems, in that renowned ministers were involved in dramatic corruption scandals and citizens exhibited a serious lack of trust in national institutions to fight corruption (Vachudova, 2009). Scholars argued that the decision to grant Romania EU membership was on the basis of promises for change rather than on actual results in curbing corruption (Kochenov 2008; Vachudova 2009; Gugiu 2012), risked undermining the effectiveness of EU enlargement conditionality, as it suggested to other

candidates that EU membership could be achieved irrespective of whether enlargement conditions were fulfilled. This issue also raises questions about the reasons for granting membership to candidate countries, and it left space for a debate on the compromises that the EU was willing to make with regard to fulfilment of the accession criteria for some candidate countries. It was evident from the 2013 CVM report on Romania that the EU continued to raise concerns about: the levels of pressure on the judiciary, corruption scandals involving Ministers, and a lack of sanctions to address corrupt public procurements (European Commission 2013a). However, the success of judicial reform in Romania, together with the impressive track record in prosecutions of high-level corruption cases by the DNA, suggested that something was right in Romania, regardless of the limited EU conditionality.

3. Determinacy of conditions

The main questions tackled in this section are: (i) how clear were the anti-corruption criteria for Romania? (ii) did these criteria differ from the anti-corruption requirements imposed during other enlargement cycles? (iii) were the criteria suitable to address the corruption problems that Romania was facing?³⁶

The main hypothesis is that the EU did not have clearly determined anti-corruption requirements for Romania during the country's accession process. Conditions were insufficiently clear, lacked specification and depth, and did not target the implementation of anti-corruption laws and policies sufficiently.

Problems with corruption were mainly addressed when fulfilling political criteria, even during the negotiations, as a chapter on judiciary and fundamental rights did not exist at that time. Within the *acquis*, corruption was tackled partially, mostly through Chapter 24 on cooperation in the field of justice and home affairs.. In the view of Leonard Orban, Chief Negotiator with

³⁶ The purpose of this last question is not to assess how effective the EU was in tackling corruption, but to look at the appropriateness of the EU anti-corruption criteria vis-à-vis the problems with corruption in the country.

the EU for Romania during the accession negotiations and former European Commissioner for multilingualism, “*during the negotiations on Chapter 24, Justice and Home Affairs, the subject was raised very often but they [the criteria] were not clear at that time, [there were] no clear benchmarks concerning what it means to ‘fulfil’, [so as] to accede to the EU*” (Orban to Cvetanoska, 21.10.2015). According to Mr Leonard Orban:

The subject was discussed in detail, there were many debates, but there were not like this, like today, [there were no] clear benchmarks concerning the fight against corruption, and concerning other aspects. Now, there are benchmarks for opening the chapters, there are benchmarks for closing the chapters, but at that time there were no such kind of things. (Orban to Cvetanoska, 21.10.2015)

According to Mr Leonard Orban, “[...] *the negotiation was extremely difficult, in fact this chapter on justice and home affairs was closed towards the end of the process, in fact at the very end we closed the two chapters, justice and home affairs, and competition. It was really very much discussed*” (Orban to Cvetanoska, 21.10.2015). Also, as stated by anonymous interviewee 1, Senior EU official, DG Near- Neighbourhood and Enlargement Negotiations, European Commission:

Now we can be very clear in the results that we need to see and that is the whole new philosophy of the new approach. In previous time, the old approach that we call it wrongly, the focus was much more on transposing the legislation, making sure they had institutions, now we take it one step further. These institutions have to deliver, and only when they deliver and provide us with a sustainable track record of results, member states will say yes you can join, but not before. (Interviewee 1 to Cvetanoska, 18.01.2016)

It is worth noting that the above statements suggest that the new approach aimed to change the enlargement process for the Western Balkans considerably. Whether that was actually the case in practice is discussed in the chapter on Macedonia.

When examining the clarity of anti-corruption criteria and benchmarks one has to keep in mind the difficulty of measuring progress in controlling corruption. Moreover, the accession process is relatively short and trends in corruption control may take longer to mirror improvements (see Introduction for more on measuring corruption). As Leonard Orban put it:

It is very difficult. How can we measure corruption, the level of corruption? We measure the perceptions on [sic] corruption, but we are not measuring corruption, as simply it is not possible to do it. This is why it is extremely difficult to set benchmarks, to set clear criteria to be fulfilled in the fight against corruption. (Orban to Cvetanoska, 21.10.2015)

However, in 2008, the Commission (on behalf of the EU) became party to the United Nations Convention against Corruption. For the Western Balkan enlargement, this Convention was the main operational framework that the Directorate General for Neighbourhood Policies and Enlargement Negotiations used to set standards, and the basis on which they defined their recommendations for countries. As Interviewee 1 put it:

Since then we have a clear framework in which we operate. Of course, we still refer to the Criminal and Civil Conventions of the Council of Europe, and we have our little framework invention ourselves, but we did not have a lot of substance. So now [...] we can each time refer to an article in UNCAC when we ask them [countries] to establish an independent body, on the prevention side, to strengthen their respective authorities to work on asset recovery, at least we can each time easily refer to something, and in the meantime we have from 2014 a Directive on Assets Confiscation which is reinforcing all these issues, so the whole framework on anti-corruption became more robust, clearer for everyone to work in, so that was easier. (Interviewee 1 to Cvetanoska, 18.01.2016)

This resulted in stricter conditionality, with less ground for political manoeuvres in the accession of the Western Balkan countries. However, even though the criteria were refined and deepened, as I will argue later in the chapter on Macedonia, the EU had a limited effect, which varied from country to country, mainly due to the diverse domestic circumstances in the candidates concerned.

Another related question is whether EU's anti-corruption requirements have depth and substance and emphasised the need for implementation of relevant laws, or whether they mainly focused on the adoption of laws. A closer look at the objectives in the sphere of corruption set for Romania in the 1999 Accession Partnership (1999/852/EC) sheds light on this query. In the Accession Partnership (1999/852/EC), only the adoption of an anti-corruption

law, the establishment of an independent anti-corruption department,³⁷ the ratification of both the European Convention on Laundering the Proceeds of Crime and the European Criminal Law Convention on Corruption, and signing the OECD Convention on Bribery were listed as short-term priorities for Romania. The main purpose of these priorities was the adoption of anti-corruption legislation, which was very much missing in Romania at the time, as there was no legal framework on corruption until early 2000. However, law adoption and the setting up of institutions is only one step in the successful control of corruption. In the view of Interviewee 24, a Researcher in the Romanian Academy (the highest cultural forum of scientific recognition and fundamental research in Romania):

By early 2000 Romania had a pretty strong legal framework. But [sic], it was all good on paper, but it was not really doing anything in regard to visible cases of corruption and so on. The one factor that influenced anti-corruption measures was the creation of the Anti-Corruption Directorate. This started to work very timidly at first, but we only see results now, from the end of 2010. (Interviewee 24 to Cvetanoska, 15.10.2015)

It is worth noting here that Romania opened negotiations with the EU at a point when not even these criteria were fulfilled.

As will be discussed later (in the chapter on Macedonia), interviewees also questioned the clarity of the anti-corruption requirements and the emphasis on implementation on the European Commission's progress reports for later enlargement of the Western Balkans. When it came to the Romanian accession, interviewees were of the view that more could have been done. According to Interviewee 1 from DG Near-Neighbourhood and Enlargement Negotiations of the European Commission:

Our tools have evolved and are much stronger now with the new approach than they were 10, 15 years ago, especially with Romania, Bulgaria, Poland, Slovenia, we could have done more if we had better tools. Now we have so many conditionalities to work with and the negotiations last so much longer that it gives us more time to make sure that the country provides results. (Interviewee 1, 18.01.2016)

³⁷ This is a questionable requirement on its own because the evidence that an anti-corruption commission works is patchy at best.

This is consistent with the view of the Cospanaru, Director of the Head Unit for Corruption in the Romanian Ministry of Justice:

They [the EU] were pressuring for results but were unable to guide us. Now [referring to later enlargements] it is better, but in the phases that we went through, they were unable to tell us bluntly what the destination should be. This was a bad thing, we lost a lot of time and resources and it was frustrating for many of the officials. (Cospanaru to Cvetanoska, 23.10.2015)

By way of illustration, the EU set 84 interim benchmarks for the rule of law chapters for Montenegro. The pace of the negotiations, according to the European Commission, was dependent on the successful implementation of these benchmarks, many of which were aimed at targeting corruption (European Commission 2014a). However, such benchmarks did not exist when Romania was acceding to the EU. These benchmarks allowed the EU to stall the negotiations if progress was lacking. According to Interviewee 1, *“one [of the benchmarks] was a track record in [tackling] high level corruption, but there were no results and negotiations are not even started”* (Interviewee 1 to Cvetanoska, 18.01.2016). In line with this, Cospanaru, pointed out that they were continuously asked for a track record of investigations, prosecutions and court-rulings in anti-corruption cases, but were never told what track record actually meant (Cospanaru to Cvetanoska, 23.10.2015). This illustrates the lack of clarity, the lack of determinacy of the conditions and expectations in the Romanian case.

By 2002, it was clear that eight Central and Eastern European countries would join the EU in 2004. However, Romania and Bulgaria were not among these. Therefore, to ensure the two laggards that enlargement was still ongoing, that same year the Commission put forward detailed roadmaps for Bulgaria and Romania (Noucheva and Bechev 2008: 123). Nevertheless, these roadmaps did not contain detailed and clearly specified priorities. In the Romanian case, the short-term priorities with regard to anti-corruption in Chapter 24 called for the implementation of the National Anti-Corruption Strategy and emphasised the need for strengthening the autonomy of the Prosecutor's Office, together with the adoption of further

relevant laws (Communication from the Commission to the Council, 2002: 20). Continuing to implement a coherent anti-corruption policy with sufficient attention to prevention was the short-term priority for controlling corruption in Chapter 24 (Communication from the Commission to the Council, 2002: 40).

4. Size and speed of rewards and credibility of threats and promises

Another set of questions that will require additional answers as to whether the EU appeared to have limited influence over the control of corruption during the accession process, which is related to the size and speed of rewards and the credibility of threats and promises. Were candidates rewarded after anti-corruption conditions were fulfilled? If so, were they rewarded correspondingly and in a timely manner? How credible was the notion of exclusion from the accession process if candidates were falling behind in anti-corruption progress?

The size and speed of rewards, as well as the credibility of threats and promises, are the second and third factors that impact on the success of EU anti-corruption conditionality. Analysing the rewards that the EU offered to Romania during the accession process, and in particular looking at the size of the rewards and whether they corresponded to EU anti-corruption demands, is the focus of the first half of section 3.3. It is important to note that it is complicated to draw conclusions on the success of the ‘carrot and stick’ system of the EU in a case where the criteria are not clearly set out. However, the overall goal of the EU was to improve the control of corruption in Romania, even though the criteria for doing so were not specified clearly. The European Commission in its regular reports commented on the ability of the country to effectively implement anti-corruption regulations and policies. This makes it possible to draw conclusions on the size and speed of rewards based on both law and policy adoption, as well as implementation. The second part of this chapter looks closely at the threats of exclusion from the accession process in the case of Romania, as well as the promises made to the country

on achieving progress. It focuses on the delayed accession of Romania from 2004 to 2007, as well as on the safeguard clause that gave the EU the capability to postpone accession of the country for one more year. It also briefly discusses the CVM, a tool that was used in both Romania and Bulgaria to subsidise the lack of progress in the sphere of anti-corruption.

The first Regular Report from the European Commission on Romania's progress towards accession was issued in 1998. The Report pointed out numerous shortcomings in the country's control of corruption. It briefly tackled the issue of corruption under political criteria. It raised concerns that the legal basis for the fight against corruption in Romania was incomplete, as the country did not have legislation on preventing and sanctioning corrupt acts (European Commission Regular Report 1998a: 10). Romania also did not have a clear definition of corruption in its Penal Code, nor a Civil Service Act³⁸ (European Commission Regular Report 1998a: 10), nor did it have anti-corruption institutions with clearly defined functions. As there were no clear institutional responsibilities nor specialised bodies for fighting corruption, the EU required Romania to step up its efforts in rooting out corruption (European Commission Regular Report 1998a: 12).

The 1999 Regular Report started on a negative note. "*Corruption is still a widespread problem in Romania*" was the first sentence in the section on political criteria that focused on anti-corruption measures. Even though by 1999 a number of bodies relevant to the fight against corruption had been created (European Commission Regular Report 1999a: 13), the Regular Report questioned their functionality and was concerned about the lack of clear roles for anti-corruption institutions (European Commission 1999a: 13–14).

On 15 February 2000, Romania began accession negotiations with the EU, despite its various shortcomings in fulfilling the political criteria related to controlling corruption highlighted above. Ironically, Romania did not even have a law on the prevention and punishment of

³⁸ Civil service legislation is an important tool for controlling corruption, as it regulates the recruitment, conduct and dismissal of civil servants.

corruption at the time it began negotiations with the EU. The law entered into force in May 2000, and it was seen by the European Commission as the only positive progress in Romania's fight against corruption for that year:

As far as the fight against fraud and corruption is concerned, progress has been limited to the entry into force, in May 2000, of a new law on prevention and punishment of corruption. There has been no development with the other short-term priorities of the 1999 Accession Partnership – establishment of an independent anti-corruption department, ratification of both the European Convention on Laundering of Proceeds of Crime and the European Criminal Law Convention on Corruption, and signing of the OECD Convention on Bribery. (European Commission Regular Report 2000a: 75)

Furthermore, Romania's Criminal Code did not incriminate the liability of legal persons for corruption breaches, which would have held legal entities accountable for bribery and other corruption-related offences. In addition, the Commission called for major efforts to improve the implementation capacity of the bodies charged with the fight against corruption, as in their opinion there was a lack of qualified staff and serious shortcomings in the cooperation between institutions (European Commission Regular Report 2000a: 77). Overall, only months after opening negotiations in 2000, Romania was seriously criticised by the European Commission regarding problems with corruption: *corruption continues to be a widespread and systemic problem ... it undermines not only the functioning of the legal system but also has detrimental effects on the economy and has led to a loss of confidence in public authorities* (European Commission Regular Report 2000a: 16). This is important for two reasons.

Second, as there was no negotiating chapter that specifically dealt with corruption, Romania's obligations mainly arose from the Copenhagen political criteria in the broader sense. As a result, there was no way to negotiate specifically on its performance in controlling corruption, but it was still something that the EU monitored and commented on in regular reports. Having that in mind, in theory it was expected that candidates would comply sufficiently with the political criteria before opening negotiations, as corruption was not specifically part of the negotiations process.

4.1. What happened after the start of negotiations?

In the 2001 Regular Report, when assessing anti-corruption measures within the political criteria, the European Commission noted that there had been no noticeable reduction in levels of corruption, and only limited measures had been undertaken to tackle the problem (European Commission Regular Report 2001a: 21). The anti-corruption body within the General Prosecutor's Office was established in 2000 with the aim of leading the fight against corruption and was deemed by the European Commission not to be functional due to deficiencies in both staff and equipment (European Commission Regular Report 2001a: 21). Among other things, the Commission also observed that there was no substantial progress in implementing anti-corruption laws, as well as the fact that various international conventions were not yet ratified (European Commission Regular Report 2001a: 21–22). It also raised serious concerns about irregularities in the funding of political parties, where expenditure, and in particular election expenditure, was significantly higher than declared revenues (European Commission Regular Report 2001a: 21). In fact, the only positive development in the Commission's view was the adoption of an ordinance introducing public procurement procedures and establishing the right to appeal against awards of public contracts (European Commission Regular Report 2001a: 22). The Commission, therefore, reiterated the need for further progress regarding both law adoption and implementation. A report by the Open Society Foundation delivered similar conclusions to the Commission's Regular Reports. In their view, by 2001, the Romanian government had made major progress in developing a national anti-corruption strategy as well as some progress in further reforming anti-corruption institutions, but the main focus was on low-level corruption and tackling corruption at the highest levels was limited (Open Society Institute 2002: 463–464).

However, during the November 2000 presidential election campaign, the lack of success in rooting out corruption was suggested as a key factor contributing to the defeat of the former Romanian President Emil Constantinescu (Transparency International 2001: 125–126). Consequently, the former communist Ion Iliescu³⁹ was elected president for the third time. However, Constantinescu's failure to reform, and the return to power of an ex-communist leader under whom corruption had earlier flourished, threatened to prevent Romania pulling itself out of poverty and into the EU (Transparency International 2001: 125-126).

By 2002, Romania had developed its anti-corruption legal framework. However, in the view of the EC, *“despite a legal framework that is reasonably comprehensive, and which has been expanded over the last year, law enforcement remains weak. New institutional structures have been created but are not yet fully operational”* (European Commission Regular Report 2002a: 26). However, the Commission did note some progress, mainly due to the adoption of various conventions relevant to the fight against corruption, the adoption of a National Plan and Programme for the Prevention of Corruption, and the setting up of the National Anti-Corruption Prosecutor's Office (European Commission Regular Report 2002a: 27). The National Anti-corruption Prosecutor's Office was the predecessor to the later National Anti-corruption Directorate. However, according to Christi Danilet, Judge and Member of the Superior Council of the Magistracy of Romania⁴⁰ and former personal counsellor to the Minister for Justice during accession, until 2004, the judiciary, including prosecutors, was under the control of the minister of justice:

The justice system at that time was built to be under the control of the Ministry of Justice [...] an enormous mistake was that in that time the Ministry of Justice had a special unit, a secret service under the authority of the Ministry, to control corruption in the judiciary, but in fact it controlled judges and prosecutors, and collected data on the private life[sic] of judges and prosecutors.(Danilet to Cvetanoska, 13.10.2015)

³⁹ During his Presidential mandate Iliescu had pardoned a number of convicts, three of which were convicted for bribery (Associated Press 2002)

⁴⁰ The Superior Council of the Magistracy of Romania guarantees the independence of the judiciary, and it is the only body responsible for the appointment, professional evaluation, promotion, disciplinary sanctioning and dismissal of judges (see Council of Europe 2018).

The European Commission (2002: 113) expressed similar concerns in its 2002 Regular Report. It called for further reforms to strengthen the role of bodies in charge of combating fraud and corruption, together with the capacity and independence of the judiciary (European Commission Regular Report 2002a: 115).

During the Copenhagen European Council meeting in December 2002, ten accession countries expected to receive invitations to join the EU by 2004. Yet, the EU left Bulgaria and Romania out of the 2004 enlargement cycle. This came as no surprise, and even Bulgarian and Romanian officials set themselves the target of joining the EU in January 2007 (Noutcheva and Bechev 2008: 123). The EU decided that Romania and Bulgaria had not made sufficient progress, and thus postponed their accession for three more years. To initiate sufficient progress, the EU slowed down the speed of the accession process and did not reward Romania and Bulgaria with membership in 2004, that is, it decided to slow down the speed, as well as the size of the rewards. At the same time, this action had the potential to serve as a possible threat of additional delays in Romania and Bulgaria's accession should they continue to lag behind. At the same time, in order to reiterate its promise that Romania and Bulgaria were to join in 2007, the EU developed detailed roadmaps for both countries with expectations of what Romania and Bulgaria were to achieve prior to accession. (Communication from the Commission to the Council, 2002). With this, the EU set the tone for more serious progress; yet, in the next two years, as seen in the Regular Reports (2003; 2004), progress in controlling corruption continued to be very limited.

The 2003 Regular Report was not much different in its criticism from the 2002 Report. The Commission's conclusion was that:

Corruption in Romania continues to be widespread and affects all aspects of society. A number of high-profile measures were launched over the reporting period – but the implementation of anti-corruption policy as a whole has been limited. The measures taken have yet to have an impact and substantially increased efforts are needed. (European Commission Regular Report 2003a: 121)

The Commission acknowledged the new institutional structures created for fighting corruption but commented on their lack of impact (European Commission Regular Report 2003a: 13). It also praised further development in the legal framework for fighting corruption, which was yet to be completed, while simultaneously trying to shift the focus onto enforcing existing legislation (European Commission Regular Report 2003a: 20). The main issue with the legal framework concerned the legislation on conflict of interests. The Commission considered the limited definition of conflict of interests for politicians to be a particular weakness (European Commission Regular Report 2003a: 20). The concerns with regard to the National Anti-Corruption Prosecutor's Office, the body responsible for conducting investigations into high-level corruption or corruption involving state officials, were particularly severe. The criticisms were as follows:

Last year's Regular Report noted that filling NAPO's [the National Anticorruption Prosecutors' Office] posts would be a test of the government's commitment to the fight against corruption. One year later, NAPO still remains seriously understaffed, which means that prosecutors are responsible for an excessive number of cases (46 on average) and this limits the possibility for effective investigation. The operational independence of NAPO is jeopardised by the Minister of Justice's responsibility for anti-corruption enforcement and the 'co-ordination' role that the General Prosecutor has been given over NAPO activities. Only the Minister of Justice or the General Prosecutor may order an investigation into the wealth of national politicians or high-level officials. (EC Regular report 2003a: 20–21)

The Regular Reports for 2001 and 2002 emphasised the need for legal reform and implementation in practice. The extent of the executive's involvement in judicial affairs had not been reduced in practice (Pridham 2005: 136) and remained a serious concern. Romania continued to improve its anti-corruption legal framework. The Criminal Law Convention on Corruption was ratified and entered into force in 2002. Also, the country adopted the National Programme for the Prevention of Corruption and the National Action Plan against Corruption in 2002, combined with a series of laws against corruption (Pridham 2005: 138). Nevertheless,

the general inability of Romania to implement anti-corruption measures remained and was recognised by the European Commission.

The year 2004 was crucial for Romania (and Bulgaria for that matter). Eight post-communist countries, some of which started negotiations in the same year as Romania and Bulgaria, joined the EU, while the accession of the latter two was postponed for three more years. Yet, the Regular Report for 2004 continued to note serious shortcomings in fulfilment of the political criteria on controlling corruption: “*Much still remains to be done in rooting out corruption, improving the working of the courts and protecting individual liberties from the activities of the police and secret service campaign or in the course of criminal proceedings*” (European Commission Regular Report 2004a: 13). It is important to emphasise that these criticisms were part of the assessment of political criteria, which were meant to be fulfilled by then, arguably before negotiations were even open. By way of illustration, Macedonia received a recommendation to open negotiations in 2009, after being a candidate since 2005, only after the anti-corruption legal framework was in place. This was not the case for Romania, as the country did not even have a basic legal anti-corruption framework when it opened accession negotiations with the EU.

4.2. What happened after the negotiations were concluded?

Between December 2004 and December 2006, Romania had to fulfil a number of conditions clearly defined in the Accession Treaty. There were 11 measures, seven related to the Justice and Home Affairs Chapter, and four related to the Competition Chapter.

In the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union (2005), the obligation for Romania with regard to the control of corruption was to considerably step up the fight against high-level corruption. Romania was to do this by ensuring the rigorous enforcement of anti-corruption legislation, the effective independence of

the National Anticorruption Prosecutors' Office and by submitting, on a yearly basis, a convincing track record of the activities of the National Anti-corruption Prosecutors' Office in the fight against high-level corruption (Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union 2005: Annex IX (4)). The EU also expected that Romania would provide staff, finance and training resources to the National Anti-corruption Prosecutors' Office, as well as the equipment necessary for it to fulfil its vital function (Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union Annex IX (4)). Finally, the EU expected that Romania would adopt and implement an anti-corruption plan and strategy and would ensure that corruption cases were dealt with in a timely and transparent manner (Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union 2005: Annex IX (5)). In relation to these criteria, and very interestingly for this thesis, is the so-called 'safeguard clause' that was included for Romania and Bulgaria prior to accession, that is, the possibility to postpone accession for one additional year should satisfactory progress not be achieved.

The Commission was to monitor the success of the necessary improvements and reserved the right to postpone accession for one year depending on progress. Namely, the Commission continued monitoring Romania even after it closed the negotiations. The purpose of this monitoring was to assess whether the country was prepared to meet the requirements of membership by the date of accession, 1 January 2007. The Commission monitored a number of important areas, including specific commitments and requirements applicable to Romania in the areas of Justice and Home Affairs and Competition. The Commission reserved the right⁴¹ to present a proposal recommending postponing accession by one year to 1 January 2008 if there was a serious concern that Romania was manifestly unprepared to meet the requirements of membership (European Commission Opinion 2005: 2).

⁴¹ As set out in the Accession Treaty, in particular in Article 39 of the Accession Protocol.

Nevertheless, according to Mr Leonard Orban, there was no threat of Romania's accession being postponed, had the EU deemed that progress was unsatisfactory:

At that time there was a clear commitment from both sides. On our side to do everything that is possible to be better prepared, as as possible for the accession, on the other hand also on the openness of the Union to accept Romania and Bulgaria together with the other ten countries which joined the EU on the first of May 2004. (Orban to Cvetanoska, 21.10.2015)

According to Sir Michael Leigh, Chief Negotiator for the EU during the accession of the Czech Republic and Director of the Directorate General for Enlargement:

When Bulgaria and Romania did not join in 2004, the only options given were to delay the accession for one more year if they did not meet certain, specific conditions, and these conditions were really rather arbitrary and it was just seen as a way to address specific concerns. (Leigh to Cvetanoska, 1.2.2016)

This statement draws attention to the very important notion that accession could only be postponed for one year and poses the question of why the EU 'tie its own hands' and not leave additional room for manoeuvre? Why did it not try to use the 'threats and promises' tool to its full potential so as to ensure that Romania and Bulgaria would not join without significant progress?

Interviewees connected these issues with the interest of certain MS for a certain candidate to accede to the Union. Also, they referred to the increased presence of the notion of 'enlargement fatigue' in the enlargement debates: *"At that time also there were geostrategic decisions. The reason was to reunite the continent. A 'let's do it' [attitude was present]; of course we need to negotiate, we need to deal with very complicated issues, but, however, let's do it [...] now, this 'let's do it' no longer exists."* Orban to Cvetanoska, 21.10.2015). In the view of the senior official from DG-Near:

15 years ago, enlargement was like wow[sic], this Directorate General was the star Directorate General of the Commission, everyone wanted to work here, and now it is like[sic] the seventieth priority. Even member states are much more critical. I remember back in 1998 when I started to work here it was already clear that Gunter Verheugen was saying the countries will accede in 2004 [...] certainly not later with this political push. Now politicians leave us in peace. We can do our work and only when we come with a convincing file we can go to the council and then member states

maybe will say yes. Times have completely changed. (Interviewee 1 to Cvetanoska, 21.01.2016)

Michael Leigh agreed:

So you had the most powerful formula in which the Commission has been most effective in the past because you had a Commissioner backed up by a major member state's government. So it kind of forced the ten countries to join in, but then it was felt that Romania and Bulgaria were not ready, but then there was a botched formula in reality because it should have been left open-ended. But [sic] because of French support for Romania, and Tony Blair's strong support for Bulgaria they [Bulgaria and Romania] had to be kind of a package deal, and the deal was to have the possibility to delay their membership for up to a year. And then it seemed that there was no point in delaying membership for one more year until 2008 because it could not really achieve much more in just one year. (Leigh to Cvetanoska, 1.2.2016)

Similarly:

Accession had already been delayed for three years from the other Central and Eastern European countries, secondly there was already the CVM, the safeguard clause, so you could feel already that there was a lot of doubt about them [Romania and Bulgaria], but they were given the benefit of the doubt. (Interviewee 1 to Cvetanoska, 18.01.2016)

In the view of Interviewee 3 MEP, Former Romanian Minister of Justice:

Real anti-corruption reform can be done only before accession, EU accession, NATO accession, in the countries where there is no political will for [sic] real anti-corruption fight. And that's because the focus should be on the political corruption. And it's obvious that politicians will never take measures that will go against themselves, to go to prison, to have their assets confiscated, unless there is this pressure, international pressure, and also people's pressure ... There is a momentum in the accession when this can be done. (Interviewee 3 to Cvetanoska, 26.1.2016)

She continues that a second important point for the successful control of corruption is the existence of political will among relevant actors: “*you need to want to do it, no matter who will be investigated or convicted*” (Interviewee 3 to Cvetanoska, 26.1.2016). This is relevant for the domestic conditions that were present in Romania, which will be discussed in further detail in the section on domestic costs.

When Monica Macovei took office as a Minister of Justice in December 2004, Romania had already closed the last negotiating chapters, including the chapter on justice and home affairs, but a variety of issues still required attention, if the country was to join the EU in 2007 as planned (European Stability Initiative, 2010). A number of issues, known as the EU's “red

flags”, remained a challenge for Romania. These included judicial reform, the fight against corruption and anti-money laundering, all of them part of Macovei’s portfolio, on which Romania had to show “immediate and decisive action” if it wanted to join as planned on 1 January 2007 (European Stability Initiative, 2010). It is important to keep in mind that, at this point, the credibility of threats and promises was already limited, with the only threat being that, in a worst-case scenario, Romania would join one year later. Nevertheless, the former Minister for Justice of Romania argued that this is when the foundations for the later positive developments were created:

I had five red flags to eliminate, including the fight against corruption [...]. The Commission trusted me and said anytime you have an obstacle, any time the Prime Minister is trying to stop you, and there are problems and you cannot adopt something, you call us [...]. It was trust. (Interviewee 3 to Cvetanoska, 26.1.2016)

Yet, the EU still went ahead with the introduction of the CVM:

We joined with the CVM in place, which showed that although we managed to take out the red flags during the accession process, in the end, the EU considered that we did not do enough to fix our problems in justice. (Dan Turturica, Chief Editor of the daily newspaper Romania Libera to Cvetanoska, 15.10.2015).

With the accession treaty of 2005, there were 11 conditions to be fulfilled before 2007 in order to avoid the postponement of accession for one more year. But afterwards, in December 2006, the Commission set up the CVM. It contained four benchmarks but defined them very generally. One was to introduce judicial reform; the second was to establish an integrity agency that would verify assets, incompatibilities and potential conflicts of interest; the third required Romania to tackle high-level corruption, and the fourth benchmark focused on fighting corruption within local government (EC Press Release MEMO/ 07/ 262). As Leonard Orban put it, these were very general benchmarks that could be broadly interpreted:

At the beginning, there were only very general benchmarks. Because the benchmarks were very general the Commission can decide to prolong this mechanism for a very long period of time because there were not very clear criteria to say that everything is fulfilled, let’s drop this mechanism. (Orban to Cvetanoska, 21.10.2015)

Even though it was contested by many, according to Interviewee 3, the main role of the CVM was to ensure that progress achieved prior to 2007 would not be reversed after Romania joined the EU:

The CVM means that the Commission is coming twice in the countries and does a report based on some benchmarks. And the benchmarks for Romania are anti-corruption, and one of them says very clearly do not touch the DNA, do not change the law, do not touch the appointment and revocation procedure. (Interviewee 3 to Cvetanoska, 26.1.2016).

Leonard Orban was of the same opinion:

The CVM process on [sic] one hand had very beneficial outcomes for Romania because it was an incentive for Romania to continue the fight against corruption in Romania also after the accession. Because today there are no instruments at the European level to fight against corruption. (Orban to Cvetanoska, 21.10. 2015)

For some interviewees, the importance of the CVM was crucial for success in the aftermath of the Romanian accession. Even though they agreed that the main tool at the disposal of the CVM was ‘naming and shaming’, they did relate post-accession progress in Romania with maintaining external scrutiny performed by the EU. However, former European Commissioner for enlargement, Stefan Fule, noted that:

The CVM is something artificial, it is not systemic, and it is something that should not be part of the enlargement process because the CVM as a mechanism allows us to address the shortcomings of the enlargement process, the job not being done fully by candidate countries. (Fule to Cvetanoska, 15.05.2015).

However, MS started questioning the credibility of the accession process, and this was a very serious concern for Commissioner Fule:

If you start to doubt if the enlargement process could bring in the EU member states who are not fully prepared to meet the obligations stemming from membership, then you just gave an excuse to some politicians to accuse newcomers of being the source of all problems the EU is facing, which is far, far from the truth. (Fule to Cvetanoska, 15.10.2015)

It is for this reason that Mr Fule strongly advocated avoiding the CVM when Croatia was joining the EU.

The process has evolved since the accession of Romania and Bulgaria. In the words of the Senior official from DG Near:

There has been... I would not call it a trauma, but member states have been vastly disappointed by Bulgaria and Romania ... For Romania and Bulgaria there was doubt, so they said let's give them the benefit of the doubt, so maybe once within the EU they will get better, and especially Bulgaria hasn't, so now member states have become more critical (Interviewee 1 to Cvetanoska, 18.01.2016)

Also, for many of my interviewees, the second reason why additional criteria were added during accession was to slow down the accession process. According to Mr Pavel Telicka MEP, Chief Negotiator with the EU for the Czech Republic, and former European Commissioner:

There can be two reasons for this. First of all, it is fully justified [the efforts to bring anti-corruption and the rule of law to the forefront of the accession process], secondly, it may be a way to slow down the process, but it would not be happening if it would not be to a large extent justified [...] If you take Romania and Bulgaria, it is seen by some as a big issue, and, of course, they will be more cautious, as these countries are very problematic. (Telicka to Cvetanoska, 13.02.2015)

As a result, stricter criteria were put in place. In the view of Mr Leonard Orban:

This clearly reflects the attitudes especially of some member states who are less and less open to the enlargement of the EU. There are more and more stakeholders, even at the political level, saying in some member states that the Union is already too big, let's have a smaller Union, more integrated. (Orban to Cvetanoska, 21.10.2015)

Sir Michael Leigh also spoke about the prevailing ethos and mood in the EU vis-à-vis enlargement:

There was a shift after 2004, partly because Romania and Bulgaria had not been permitted to conclude the negotiations because of failures in [sic] number of areas, not only in this [control of corruption] area. But also, if you look at the Annual Progress Reports, there was awareness that these countries really had more acute problems, particularly, I would say, Bulgaria. (Leigh to Cvetanoska, 1.2.2016)

This change of mood arose around the same time that the Western Balkan countries were beginning their journey towards EU accession. These countries faced similar, if not even more serious, problems with corruption than Romania and Bulgaria. Consequently, there was a mood shift. But this mood shift was also because, on the EU side, there was enlargement fatigue, and the only way to get member states to really support a new wave of enlargement was to show

that the conditions had toughened up: “*Back in 2006 Olli Rehn⁴² referred to the renewed consensus on enlargement, which was meant to open the door to the new phase of the [Western] Balkan countries, and you know to keep all the member states on board*” (Michael Leigh, Chief Negotiator for the Czech Republic, Director of Directorate General for Enlargement, 1.2.2016). In order to get the approval of Member States where public opposition and incomprehension about enlargement was an issue,⁴³ the Commission came up with a strategy that involved procedural changes, such as opening benchmarks and closing benchmarks, and it introduced chapters 23 and 24 that had not really existed in that form before, so that the monitoring of issues – including corruption, but also the functioning and recruitment of the judiciary – was actually, for the first time, brought into the negotiations.

In a nutshell, the accession process, at least with regard to controlling corruption, had evolved since the enlargement in 2004. For Romania and Bulgaria, there were certain conditions.

According to Mr Orban:

There were several conditions and I remember that, for the first ten countries, there were no conditions, no additional conditions between the moment of closing the accession negotiation process and the moment of joining the EU. There were no conditions, while, for Bulgaria, there were conditions, but to be defined based on the unanimity of the member states, there was the possibility of postponing the accession of Bulgaria for one year but only based on the decision, unanimous decision, of all member states. For Romania, there were 11 conditions. (Orban to Cvetanoska, 21.10.2015)

However, while the postponement of Bulgaria's and Romania's accession was envisaged to be a unanimous decision, the one-year postponement for Romania was based on qualified majority voting. So, Romania's accession process and the application of threats and promises were significantly different compared not only to the first ten countries but also to Bulgaria.

⁴² The European Commissioner for enlargement from 2004 to 2010.

⁴³ See Karp and Bowler (2006).

5. Domestic adoption costs

According to rational choice theories, the impact of EU conditionality on the control of corruption in CEECs would be dependent upon domestic factors within a particular state: there was no correlation between the EU and control of corruption scores in CEE and the specific domestic conditions in different countries were decisive for the success (or lack of it) as regards control of corruption. The main questions that are addressed in this section are: what were the specific domestic circumstances in Romania? What was their impact on the domestic control of corruption? How costly was it for domestic political actors to adopt and implement EU anti-corruption requirements?

This section, considers the incentives of Romanian political elites for joining the EU, vis-a-vis the domestic political costs of postponing accession, maintaining corruption practices and staying outside the EU. I will first look at the domestic conditions in Romania, followed by anti-corruption developments, and the role of the CVM.

The 2004 Romanian election brought victory for the centre-right opposition. Traian Basescu, who ran on a strong anti-corruption platform, was elected president. He insisted that Monica Macovei be appointed Minister for Justice. Interviewees agreed that her appointment made a significant difference to Romania becoming an EU member. As Sir Michael Leigh put it:

I don't know if her appointment made a difference on the ground, I do not know what she was actually was able to achieve on the ground, but it certainly made all the difference in Romania becoming a member. She convinced everybody in Brussels that she was really doing what had to be done. She was seen as a person of genuine moral commitment and of good ethical standing who really was committed, so probably singlehandedly, yes. (Leigh to Cvetanoska, 1.2.2016)

The view of the Senior official from DG-Near further supports this:

What Macovei has done in Romania is something. I mean you needed such a person, and she was lucky to have Morar,⁴⁴ the team etc., and it was sufficient to lay the foundations of a good structure on which then, later on others, such as Koveci⁴⁵ etc., have built upon. (Interviewee 1 to Cvetanoska, 18.01.2016)

⁴⁴ Daniel Morar was the Chief Prosecutor of Romania's Anticorruption Directorate from 2005 to 2012.

⁴⁵ Laura Codruta Kovesi was the Chief Prosecutor of Romania's Anti-corruption Directorate from 2012 until 2018.

Similarly, former European Commissioner for enlargement, Olli Rehn (2006), told the European Parliament's Foreign Affairs Committee that:

Romania has made progress in the fight against corruption. Sound and solid structures have been set up for this purpose, and investigations into high-level corruption cases have been launched. This is immensely important. It gives a signal to the society that for the first time in the history of the country, nobody is above the law.

As Basescu was elected president mainly on an anti-corruption platform, he was expected to deliver results in this area. According a researcher at the Romanian Academy of Science, the new Anti-Corruption Directorate, was reinstated at the time both as a result of EU pressure and internal support from President Basescu (Interviewee 24 to Cvetanoska, 15.10.2015). Furthermore, according to the Senior officer from DG-Near, and in line with the argument above, Basescu made a real difference in the domestic context by appointing Macovei as Minister of Justice:

She [Macovei] was protected by Basescu, who at least did not oppose her, and she took benefit of the system who at times was not very democratic. She, as the Justice Minister, could appoint prosecutors, which is not the way it should be, but for Romania, it turned out for the better because she selected Morar, and Morar was then by her given all the trust [...] and he turned out to be a miracle for the country. Koveci is also doing [a] very good job. (Interviewee 1 to Cvetanoska, 18.1.2016)

In the opinion of the former Minister for Justice of Romania:

[Domestic political will] is the recipe. Because I was an independent minister, I did not belong to any party, and most of all I wanted [to introduce changes]. That is very important. I don't think people really understand. I did not care if it was anyone in the parties in the government or parties who supported me as a minister. I did not care if I got fired, which happened immediately after accession. (Interviewee 3 to Cvetanoska, 26.1.2016)

When discussing the interest of Romanian political actors to join the EU, Interviewee 25, a good governance and electoral processes expert in the Expert Forum, an NGO specialising in corruption-related issues in Romania, it was very important for politicians in Romania to join the EU: *"It was a huge debate at the time ... It was also a populist topic, you want to use this topic to win elections ... Politicians used this as an electoral topic and tried to take advantage*

of this moment of joining the EU, and also NATO” (14.10.2015). In such an environment, there was no other alternative than to further the accession process for domestic elites.

6. Analysis

6.1. Determinacy of the conditions

Seen through the theoretical prism of Schimelfennig and Sedelmeier (2005), the ‘determinacy of the conditions’ factor was not applied appropriately with regard to controlling corruption. The EU did not lay down clear conditions for Romania to fulfil so as to further the accession process. Even though rule of law issues were subject to increased conditionality during Romania’s accession (Mendelski, 2012: 23), the country joined the EU without achieving significant progress in implementation. The seriousness of corruption problems was reflected repeatedly in the EC Regular Reports on Romania’s progress. Yet, this yielded no significant results by the time that the negotiations were concluded in 2005. The main reasons for this were the lack of well-defined and appropriate criteria and expectations, as well as the EU’s decision to open negotiations without Romania fulfilling the anti-corruption requirements of the Copenhagen criteria.

The lack of chapter 24 contributed to the anti-corruption criteria being not particularly substantive, especially when compared to later enlargements when there was a specific chapter on the judiciary and fundamental rights, in which a lot of ground on corruption issues was covered. This is not to say that such issues were completely neglected. The argument here is that, in the case of Romania, the EU did not have a clear framework and was unable to lay down its conditions in a clear manner. In other words, such statements support the argument that the criteria for anti-corruption were not specific enough and were undetermined, not that they were not covered in Romania’s negotiations.

These have been the areas in which the EU has been able to both apply pressure and measure success.

As will be discussed later (in the chapter on Macedonia), even for the later enlargement of the Western Balkans, the European Commission's progress reports when addressing corruption were still not clear regarding what was expected from candidates, particularly with regard to implementation. The main emphasis was still on the adoption of legislation, or the formation of institutions, without clear expectations on successful implementation.

In addition, the roadmaps prepared for Bulgaria and Romania in 2002 are another illustration in favour of the argument about the lack of clarity and depth. These criteria were vague and difficult to measure, thus specific measures for fulfilment were left to be chosen by domestic actors, whereas whether they had been effectively fulfilled was a decision that was left to the EU. As the determinacy of the conditions was one of the factors that could have influenced the control of corruption during accession, it is no surprise that Romania did not achieve impressive results (as shown in this chapter) by the time it concluded accession negotiations. Why, in spite of this, was Romania in the end allowed to conclude negotiations? That question will be answered in the following sections.

6.2. Size and speed of rewards and credibility of threats and punishments

As illustrated in section 3.1., the EU faced difficulties in defining and clarifying its anti-corruption criteria. This weakened its ability to influence the control of corruption effectively before and during accession negotiations with Romania. In addition, the EU did not use its rewards system to push Romania towards substantive anti-corruption progress. In Romania, anti-corruption success or lack of it was overlooked before negotiations were opened, as well as when the negotiations were closed, which supports the claim, that in this case, 'the size and speed of rewards' factor was distorted. Romania was rewarded by the EU by concluding the negotiations, even though serious progress in controlling corruption was lacking.

First, opening negotiations after such negative criticisms by the European Commission, and at a point when Romania did not even have the most basic anti-corruption laws in place, illustrates the secondary nature of the fight against corruption for the EU. As Papadimitriou and Phinnemore (2008) argue, the EU's decision to allow Romania to open negotiations was influenced by political considerations and factors unrelated to the country's progress in establishing the rule of law and a market economy, or combating corruption (in Gugi, 2012: 434). It also demonstrated that the EU did not use the conditionality mechanism to achieve anything in regard to controlling corruption prior to opening negotiations. Moreover, in the case of Romania, the EU did not use the crucial moment of opening negotiations as leverage to at least impose the adoption of legislation and the ratification of relevant international instruments for the fight against corruption. It was clear that Romania did not fulfil the Copenhagen Criteria, or at least those referring to the political conditions regarding the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. As noted above, the Regular Report in 1999 seriously questioned the functioning of such institutions, yet Romania was allowed to open negotiations. Therefore, it is questionable why the EU opened them with Romania when these basic values were not in place.

The interview data also suggests that the EU closed negotiations with Romania even though the Regular Reports continued to note that progress in controlling corruption was rather limited. It is worth noting that by the time Macedonia received a recommendation to open negotiations in 2009 it had already had a comprehensive anti-corruption framework and the Progress Reports were noting positive changes (see chapter 6) which was not the case for the Romanian accession where a basic legal anti-corruption framework was lacking when negotiations commenced.

The interview data suggests that the EU did not use enlargement conditionality to sufficiently improve the control of corruption prior to Romania's accession, but that the effects of this premature accession changed the perceptions of the enlargement process among member states. This reflects both the evolving character of the EU's anti-corruption policy, as well as the so-called 'enlargement fatigue' of the EU, which was, among other things, a reason for deepening and slowing down the accession process for the Western Balkans. Finally, the lack of proven progress in controlling corruption in Romania did not stop the EU from concluding negotiations in 2004, nor did it trigger an additional slowdown (or possibility of a slowdown) of the process, at least not until 2005. The lack of EU success in anti-corruption during Romania and Bulgaria's accession was among the reasons that brought the issue of corruption to the forefront of the accession process.

Vachudova (2014: 214) argues that the inconsistency of the credibility of threats and promises weakened the EU's conditionality in the pre-accession process. The postponement of accession in the case of Bulgaria and Romania was a punishment and signalled the possibility of additional delays if the two candidates did not make an effort to improve as per the EU's requirements. When looking at the credibility of threats and promises, two things matter. First, as Romania did not join with the enlargement wave of 2004, this was, in a way, a threat that lack of progress might stall accession. However, there was a clear promise from the EU that Romania and Bulgaria would join by 2007. Second, while there was an additional threat to postpone the accession date for one more year if progress was lacking, this threat was undermined by the promise that by 2008 Romania would accede to the EU anyway. This was because there was no threat of further exclusion if sufficient progress was not achieved after the one-year postponement.

Interviewees pointed out that there was a possibility to postpone the Romanian accession for one additional year, from 2007 to 2008 if expectations regarding corruption control were not

met. Yet, it is not clear why did the EU not leave additional room for manoeuvre, that is allow for prolongation of more than one year if criteria were not met by using its ‘threats and promises’ tool.

The answer lies in the interests of member states for a certain candidate to accede to the Union. Interviewees suggested that the EU decisions were influenced by political considerations, and by the interests of member states to ensure the pace on accession was kept up and that the ten candidates would join by 2004 as planned.

The main point to be made is that the biggest success in Romania occurred after the country concluded the negotiations, that is, after 2004 by which time according to Borzel and Risse’s (2007) understanding of the power of conditionality, it was too late to employ conditionality due to the close proximity of Romania becoming an EU member.

6.3. Domestic adoption costs

Here the argument is that the EU helped Romania to lay down a legal and institutional basis, which was further developed later and used by Monica Macovei and her team to initiate change. However, the same was done for Bulgaria, including the CVM, but with much poorer results (Gateva 2016). This supports the argument that there were context-specific domestic conditions that differed between Romania and Bulgaria, which could explain the different paces of progress. Another point raised here is that the EU once again did not choose to exercise its influence to its full potential. This was illustrated in the previous two sections on the determinacy of conditions, and on the size and speed of rewards and the credibility of threats and promises. Yet, as argued in this This section, considers the incentives of Romanian political elites for joining the EU, vis-a-vi the domestic political costs of postponing accession were higher compared to maintaining corruption practices and staying outside the EU. Nonetheless, if one looks at progress in controlling corruption in Romania ten years after the country

concluded accession negotiations, then one can see several positive developments. These include: numerous high-level corruption prosecutions and convictions and a reformed judiciary. In this section,

Macovei was seen as a game-changer in Romania's fight against corruption, but she became a Minister after the seven benchmarks were created after Romania had finished negotiations. Even this time, conditionality was not used as it could have been. Negotiations were concluded only with the promise of future implementation, not actual results in implementation. Yet, somehow, with the change of political power in 2004 and the appointment of Macovei as Minister of Justice, Romania started noting positive trends. I argue, therefore, that the main driver of these changes was a shift in domestic circumstances.

The combination of these domestic factors – that is, a change in political power – answers why it was possible to initiate changes in the last few years prior to Romania's EU accession. P24 The main assumption of EU conditionality is that governments behave rationally. This is also true when looking specifically at anti-corruption conditionality. The main assumption is that if the benefits of corruption exceed the benefits of not being corrupt, then rent-seeking elites will have no incentives to control corruption. And this is where the potential of the prospect of EU membership lies. In other words, if the importance of controlling corruption was secondary for the EU, and if signals were sent to political elites that the accession progress was achievable by introducing pivotal results such as enacting legislation, success in controlling corruption was going to be limited. What is more, even if corruption was a priority for the EU accession process – if there was no clear promise of membership, and if the benefits of corruption exceeded the benefits of joining the EU – it would be expected that rent-seeking elites would not be interested in joining. As discussed in the next chapter, Macedonia is a good example of this. Consequently, the incentives for political elites to make serious and sustained efforts to

control corruption effectively, as well as their gains from Romania joining the EU, were very important for anti-corruption success.

In Romania, the benefits for political elites of joining the EU were higher than the domestic costs of not becoming an EU member. Hence, the EU could have used tougher conditionality on the very important issue of corruption, including appropriate rewards and punishments.

As argued previously, the threats to Romania were applied too late, only after the negotiations were concluded, and with a time limit of only one year. As a result, the most significant domestic cost for Romania was the postponement of accession for one year. Thus, it can be concluded that the EU did use its conditionality mechanism in the control of corruption effectively during the negotiations, apart from contributing to the adoption of legislation and the formation of institutions which were considered to be weak and understaffed. Such scenarios, where the lack of anti-corruption success did not stall the accession process, were ideal for rent-seeking elites. The case of Bulgaria is a good example of this:

I think the best possible scenario for the elites is the Bulgaria scenario. You do not change but, still, you join the EU, and you have three times more money after accession than before. And that money disappears in pockets. So, it is a very, very attractive prospect for the elites to stay in power, to do lip service and [make] cosmetic changes, and then when the big pot of money comes from Brussels, you know The Bulgarian case is ideal. People became very rich after accession, ever richer than ever before. This is something we want to avoid. And there is a lot of risk for Western Balkan countries, who are risk countries, as there is a lot of state capture. (Interviewee 1 to Cvetanoska, 1 18.01.2016)

Based on the qualitative data collected for this thesis through interviews, as well as by analysing the CVMs from 2007–2015 and the EC's anti-corruption progress report on Romania (2014b), it can be seen that Romania saw a positive trend in the control of corruption in

practice. For example, the 2014 CVM noted that the country's judicial and integrity institutions maintained a positive track record (European Commission 2014c: 12). Furthermore, the DNA is an excellent example of Romania's anti-corruption efforts. Until 2005 this institution was not very successful in the fight against corruption. According to Dan Turturica, Chief editor of the daily newspaper *Romana Libera*, a leading newspaper in Romania, based in Bucharest:

The DNA was initiated way before 2005, as well as other institutions [...] but these were forms without content. The forms, I think were established to a satisfactory, or to a close to satisfactory, level even before 2005. The problem was that we had an institution, but that institution was doing practically nothing to fight corruption. The ex-chief prosecutor at the time of the PNA ... in my own words did not do much.
(Turturica to Cvetanoska, 15.10.2015)

The DNA was reorganised in 2005, with reshaped powers and staffing, and renamed the National Anti-Corruption Directorate. The focus was shifted to high-level and particularly complex cases. The DNA started to investigate cases of high- and medium-level corruption and offences against the EU's financial interests. Apart from the central office, it also had fifteen regional services and four territorial offices (European Commission 2014b). According to Dan Turturica: *"In 2005 when Macovei came as a Minister of Justice the real reform started in parallel with the appointment of honest prosecutors as the head of DNA, like Daniel Morar, and in that moment, we could see a different dynamic."* (Turturica to Cvetanoska, 15.10.2015)

The EC Anti-corruption progress report on Romania (2014b) also agreed that, with a new leadership and political will to advance the fight against corruption, after 2006 the DNA started building what is today an impressive track record of high-level corruption cases. The CVM Report of July 2012 stated that:

The performance of the DNA in the investigation and prosecution of high-level corruption cases can be considered one of the most significant advances made in Romania since [EU] accession. [...] Since 2007, cases at the highest levels of political life and within the judiciary have been raised by the DNA against people from all major political parties. (European Commission 2012a)

In the view of Interviewee 5, special prosecutor from the DNA, the fact that the DNA's structure incorporated not only prosecutors but also judicial police⁴⁶ and other experts⁴⁷ was key for this body's success and independence (Interviewee to Cvetanoska, 16.10.2015). In other words, the DNA had sufficient capacity and support for its activities and investigations, which is likely to have had a positive effect on its work. The Chief Prosecutor pointed out that the structure and performance of the DNA were a joint result of domestic and EU requirements, and, interestingly enough, in their view:

Nastase did not realise that the DNA will gain so much power [...] It was not expected [by Nastase and domestic political elites] that the DNA will be more than a window-dressing mechanism. This was the case until 2005 [when there was a] change in political power and a Minister for Justice from the NGO sector was appointed. (Interviewee 5 to Cvetanoska, 16.10.2015)

The results in Romania after negotiations were a mixture of domestic conditions, coupled with EU support for changes, and the limited threat of exclusion. Also, the CVM was seen by many as an extended conditionality, that at least to some extent would help in maintaining progressive

⁴⁶ The judicial police officers are officers who are relocated from regular police duties to the judicial police of the DNA and they only work for the Directorate under their mandate under the supervision of the Chief Prosecutor of the DNA (National Anti-corruption Directorate 2018).

⁴⁷ These are highly qualified specialists, who are appointed by the Chief Prosecutor, and whose work mainly revolves around clarifying technical and specialist issues during criminal investigations (National Anti-corruption Directorate 2018).

trends. Yet, the CVM supports the argument that domestic context matters, as such positive results were not achieved in Bulgaria, even though the same mechanism was established there, too.

7. Conclusions

The main argument of this chapter is that EU conditionality had a limited role in the control of corruption in Romania during the accession process. The reasons for the limited impact were explained by using the four factors of the external incentives model. The overall argument is: (a) the EU's anti-corruption conditionality was limited to the adoption of legislation and was, at times, unable to influence even the adoption of legal norms effectively; (b) the EU's anti-corruption conditionality was distorted in the case of Romania because of a lack of interest from the EU in tackling the control of corruption before the country's accession; (c) even though the benefits of furthering the accession process exceeded the size of the adoption costs for domestic political elites, the EU did not use the incentive of membership to influence the control of corruption in the Romanian case; and (d) success in controlling corruption in Romania depended mainly on domestic conditions, whose positive development was supported by the EU before and in the aftermath of the country's accession.

In this chapter I have argued that there was no causal relationship between EU conditionality and control of corruption trends in Romania, and that the EU had limited influence on the control of corruption during Romania's accession. First, the EU did not impose clear and detailed criteria to guide the country on what was expected of it in the sphere of anti-corruption. The EU anti-corruption criteria lacked clarity and appropriateness, and they were not tailored specifically to effectively improve control of corruption in Romania. The conditions were determined very generally, and limited progress was often met by very mild criticism. The requirements for the adoption of legislation were an exception to this, to a certain extent, since, on some occasions, the EU demanded that specific provisions be introduced within certain

laws. However, when it came to success in practice, the EU kept referring to effective implementation and a proven track record, without actually explaining to Romania what this meant. This made it more difficult for the country to implement anti-corruption requirements. Second, in the Romanian case, the EU's influence on anti-corruption was uneven and limited, even as regards the adoption of anti-corruption legislation. The EU did not use its 'size and speed of rewards' tool to put pressure on Romania to improve the control of corruption. Even though the EU had this tool at its disposal, it actually allowed Romania to start negotiations without having a basic legal framework on anti-corruption in place. Moreover, the EU concluded negotiations with Romania even though corruption control was an area of serious concern. Also, in the Romanian case, the EU was often reluctant to impose threats and sanctions, with the exception of the threat to postpone the accession date for one year in case of no compliance.

The reason behind the lack of threats was seen in the secondary importance of the control of corruption for the EU. The EU's main emphasis was on the formal, on creating institutions, adopting laws, whereas the issue of implementation should have been given more serious consideration. It was argued that the EU had the ability to influence the adoption of legislation during the accession process somewhat, but it had limited impact on the control of corruption in practice. This statement was supported by the EC Progress Reports and data from interviews. Furthermore, the limited influence was related to the lack of determinacy of the EU's anti-corruption criteria. The limited impact was also related to the secondary importance of success in controlling corruption, as the decision for Romania to join the EU was ultimately a political one. This, in turn, limited the scope of the enlargement conditionality as the EU did not use threats and rewards to motivate the country to achieve substantial progress in this sphere.

Finally, even in a case where the EU posited clear expectations as regards controlling corruption, the main trigger for reform was domestic conditions, and especially the domestic

costs of political actors to further the accession process. For Romanian political elites, it was more important to lead the country into the EU, than to avoid fulfilling anti-corruption criteria. It was argued that the reasons for such a cost-benefit ratio were both a result of superficial EU requirements as well as the very high costs for domestic political elites if the accession process was delayed. It was therefore surprising to conclude that the EU did not use this moment to attempt to bring about more substantive, positive changes in the control of corruption in this case. What is more, Romania was even rewarded with EU membership despite the serious criticisms in the sphere of anti-corruption. In a nutshell, these actions affected the size and speed of rewards aspect of the external incentives model negatively, and the EU reconsidered its entire anti-corruption policy for subsequent enlargement cycles.

Chapter Five: The role of the EU in corruption control during the accession process of Macedonia

1. Introduction

Corruption in Macedonia had been a serious issue since the country's independence in 1991. The political and economic challenges that came with the change from socialism to democracy, and the lack of knowledge and experience about how to implement new reforms, created fertile ground and many opportunities for corruption. Macedonia, a country with no previous experience in democracy, showed aspirations to join the European Union. Yet, the shift from socialism to democracy in general, and the goal of obtaining EU membership in particular, required introducing a number of democratic, economic and legal reforms.

Nevertheless, even though Macedonia was the first Western Balkan country to sign a Stabilisation and Association Agreement with the EU in 2001 and was, together with Croatia, considered the most promising Western Balkan candidate (with candidate status since 2005), in 2018 the country was still far from joining the EU. The European Commission recommended opening accession negotiations with Macedonia in 2009, but that did not happen due to a veto by Greece⁴⁸ in the EU Council. The recommendation to open negotiations with Macedonia was reiterated by the EC for the next five years after 2009, but with no success as Greece⁴⁹ persisted in resolving its dispute before EU opened negotiations with the country.⁵⁰

⁴⁸ Before the end of 1991 Macedonia applied for recognition under its constitutional name by the then European Community. However, even though Macedonia fulfilled the European Community's criteria, it remained unrecognised due to a dispute over its name with Greece (Turk 1993: 69). Greece objected to Macedonia's name and state symbols and made a claim that the Republic of Macedonia might harbour intentions to reclaim part or all of Aegean Macedonia (Ramet, Listhaug and Simkus 2013: 3). As a result, the country changed its constitution to emphasise that it did not have any territorial pretensions towards its neighbours, but the dispute was not resolved.

For more on the protracted name dispute with Greece see Daskalovski (2017) and Tziampiris (2012).

⁴⁹ In 2012, Bulgaria also opposed the opening of negotiations with Macedonia due to poor bilateral relations (Fagan and Sircar 2015) and Bulgaria did not consider Macedonia was ready to open negotiations (Gotev 2012).

⁵⁰ Before the block on opening negotiations, in 2008 Greece also blocked a NATO invitation for Macedonia to join the EU over objections to the country's name. Following the vetoes for joining NATO and the EU, in 2009 Macedonia applied to the International Court of Justice in The Hague for a ruling on its dispute with Greece over the country's name. In December 2011, the International Court of Justice in The Hague ruled that Greece was wrong to block Macedonia's bid to join NATO in 2008 because of the row over its name (BBC 2011). Nevertheless, the ruling had neither an effect on improving bilateral relations between Macedonia and Greece nor helping Macedonia get an EU negotiation date.

To somehow prevent the accession process moving towards total collapse, the so-called High-Level Accession Dialogue was introduced in 2012. This dialogue was led by the Prime Minister of Macedonia and the European Commissioner for enlargement with the aim of bringing dynamism to the reform process for accession to the EU by strengthening confidence and increasing the European perspective of the country. It focused on key challenges in five areas: freedom of expression in the media, the rule of law, the reform of public administration, electoral reform and strengthening of the trade economy (Markovski 2014). However, the Dialogue did not yield the desired results, and since 2012 only five meetings have been held.⁵¹ This situation makes Macedonia a particularly interesting case for analysing the effectiveness of EU conditionality in general and, for the purposes of this thesis, corruption control in particular. Namely, the main argument of this chapter is that the EU could not force through significant changes in corruption control in Macedonia because it was unable to offer rewards based on progress made. The EU did not have any bargaining power in the case of Macedonia, but this chapter argues that even if the EU had the ability to reward Macedonia for potential progress, such rewards would not have been stimulating enough for the political elites. This makes Macedonia a very peculiar case as, unlike other candidates, there were incentives for both parties to complete the accession process.

The aim of this chapter is, therefore: (i) to analyse the impact of the EU's enlargement conditionality on the control of corruption in Macedonia, (ii) to examine how relevant and appropriate were the EU's anti-corruption requirements, and whether success in controlling corruption was a prevailing issue during accession, (iii) to assess how the EU used rewards, threats and punishments in the case of Macedonia and (iv) to examine the role of domestic adoption costs. This chapter uses the external incentives model to look at the role of the EU in

⁵¹ The last press release about a HLAD meeting on the EC's webpage is dated 18 September 2015 (see EC 2015a). The first four meetings took place between 12 March 2012 and 9 April 2013 (European Commission 2012b; European Commission 2013b, European Commission 2013c).

controlling corruption in Macedonia. It starts by analysing the EU-related factors that shaped EU conditionality on the control of corruption in Macedonia: the determinacy of the anti-corruption criteria is covered in section 3; the size and speed of the awards based on the progress made, and the credibility of threats and promises for furthering the accession process is analysed in section 4, whereas section 5 highlights the domestic factors that shaped the control of corruption in Macedonia before offering concluding remarks in section 6.

2. General remarks

The Republic of Macedonia⁵² was formed on 8 September 1991, when a referendum supported its independence from Yugoslavia. On 17 November 1991 the country adopted its Constitution⁵³ which was based on democratic principles, including a division of powers, a multiparty system, and parliamentary and presidential elections. Before the end of 1991, Macedonia applied for recognition by the European Community. However, even though Macedonia fulfilled the European Community's criteria by the end of 1991, it remained unrecognised due to a dispute over its name with Greece (Turk 1993: 69). Greece objected to Macedonia's name and state symbols and made a claim that the Republic of Macedonia may harbour intentions to reclaim part or all of Aegean Macedonia (Ramet, Listhaug and Simkus 2013: 3). As a result the country changed its constitution to emphasise that it does not have any territorial pretensions towards its neighbours. Yet, even in 2015 the dispute had not been resolved and it still affected Macedonia's integration in the EU, as Greece continued to block the opening of negotiations.

⁵² Since the independence of Macedonia in 1991, the country had a dispute with Greece over the use of its name. Greece opposed the constitutional name Republic of Macedonia and uses the provisional reference Former Yugoslav Republic of Macedonia (FYROM) instead. The name "North Macedonia" has been agreed as the country's official name and it is in use since 2019.

⁵³ Published in "The Official Gazette of the Republic of Macedonia" No. 52/91

Macedonia, a country with no previous experience of democracy, going through a regime change, had the task of introducing and implement democratic principles, while at the same time dealing with the very challenging process of privatisation. With regard to corruption control, there was no anti-corruption legal framework and practices suitable to tackle the new forms of corruption emerging from the privatisation process. According to Denko Maleski, a former Foreign Minister of Macedonia and former UN Ambassador: *“during the process of privatisation a group of businessmen accumulated wealth very rapidly through informal practices and without actually developing and growing businesses”* (Maleski to Cvetanoska, 5.9.2014). These new practices differed from corruption issues that were common for the previous regime, and as a result: *“corruption became evident during the privatisation process, but new forms of corruption were also invented after the privatisation process was finalised”* (Maleski to Cvetanoska, 5.9.2014).

This was not only an issue for Macedonia but also a problem for all post-communist CEE countries in the early 1990s, as CEE countries were struggling with both new forms of corruption and forms of corruption that became more salient after regime change (Holmes 2003: 194–195). According to Jiri Pehe, a Czech political analyst:

The way in which businessmen acquired their businesses [through informal connections during the privatisation process and without actually forming and developing their own businesses] pushed them towards corrupt practices as a means of maintaining and expanding their [newly acquired] wealth. (Pehe to Cvetanoska, 5.10.2014)

Therefore, in the mid-1990s, it came as no surprise that the control of corruption in Macedonia was at a very low point. Yet, out of all the CEECs, Macedonia had achieved the greatest progress in corruption control over time— from 17% in 1996 to 59.3% in 2012. The most

significant increase in the score was in 1998 (30.7%), followed by steady increases after 2003. It is worth noting that the country gained candidate status in 2005, but this did not result in any significant change in the control of corruption score before 2008, when the score reached 54.6% (an approximately 10% increase over 2007).

2.1. Political parties, the Albanian minority and the Ohrid Agreement

In 2001 an uprising by ethnic Albanians in Macedonia emerged demanding equal rights for ethnic Albanians. After numerous violent conflicts that lead the country to the edge of civil war, in August, 2001 the government and the rebels signed the western-backed Ohrid peace agreement involving greater recognition of ethnic Albanian rights. The government announced (and later on in 2002 accepted) amnesty for the former rebels, many of which later one became prominent political figures and leaders of the two major Albanian parties in Macedonia.

The Internal Macedonian Revolutionary Organization - Democratic Party for Macedonian National Unity was the largest right-oriented party and was the ruling party in Macedonia by 2015. The leader of the party and the prime minister was Nikola Gruevski. He was in office since 2006. The party became the largest party in Parliament in the 2006 parliamentary elections when it formed a government in a coalition with the Democratic Party of Albanians. The Internal Macedonian Revolutionary Organisation was criticised for trying to relate the Macedonian national identity with Alexander the Great, which worsened the negotiations over the country's name dispute with Greece, and further obstructed Macedonia's NATO and EU integrations (Hristova 2011: 90).

The Social Democratic Union of Macedonia was the leading opposition party in the country. It was left oriented, and a successor of the League of Communists in Macedonia, which was the ruling party at the time of the communist regime. The party was in power from 1992 to 1998, and from 2002 to 2006. The Social Democratic Union was in power during the privatisation process of Macedonia, which arguably created many oligarchs, and was constantly shadowed

by political scandals. However, during the 2002-2006 mandate, the Social Democratic Union expressed strong commitment towards EU integration, and Macedonia was granted candidate status while the Social Democrats were in power. After the parliamentary election of April 2014, the Social Democratic Union, even though the largest opposition party in the country, and the second largest party in the Parliament, decided to boycott Parliament, and refused to attend parliament sessions over claims of election fraud (EurActiv 2014).

The two leading parties that represented the Albanian minority in Macedonia were the Democratic Party of Albanians, led by Menduh Thaci; and the Democratic Union for Integration, whose leader is Ali Ahmeti. Both parties were focused almost exclusively on the national cause of the Albanians, which after 2001 was rationalised in the realisation of the Ohrid Framework Agreement. Both parties expressed very little interest in all other political aspects. Even though the Democratic Union for Integration was self-proclaimed as left, whereas the Democratic Party of the Albanians was self-proclaimed as right, it had been difficult to find actions and arguments that would have supported such claims (Hristova 2011: 88). Both parties had not restrained from physical animosity in pre-election periods in the past (Hristova 2011: 88). Finally, both parties lacked consistent policies, and were characterised by ad hoc decision making, which resulted in fluctuation of the Albanian electorate from one to the other (Hristova 2011: 88). However, both parties had on numerous occasions proclaimed their support and strategic interest in Macedonia joining the EU. The Democratic Party of Albanians was in coalition with the Internal Macedonian Revolutionary Organisation from 2006 to 2008. Since 2008 the party is the main opposition Albanian party in Macedonia. Since the early election in 2008, The Democratic Union for Integration had been in coalition and part of the Government with the Internal Macedonian Revolutionary Organisation.

2.2. Macedonia- EU relations

Even though Macedonia was the first country to sign a Stabilisation and Association Agreement with the EU in 2001, and, was, together with Croatia, considered the most promising Western Balkan candidate (with status of candidate since 2005), the country is still far away from joining the EU. After the European Commission recommended the opening of negotiations, the EU accession process with Macedonia was not advanced due to the name dispute with Greece. The recommendation to open negotiations with Macedonia was reiterated by the EC for the next five years since 2009, but with no success as Greece is persisted on resolving the dispute before EU opens negotiations with the country.

Before the blockade in the EU, Greece, in 2008, also blocked a NATO invitation for Macedonia over objections to the country's name. Following the obstacle for joining NATO and the EU, in 2009 Macedonia applied to the International Court of Justice in the Hague for a ruling on its dispute with Greece over the country's name. In December 2011, the International Court of Justice in The Hague ruled that Greece was wrong to block Macedonia's bid to join NATO in 2008 because of the row over its name (BBC 2015). Nevertheless, the ruling had no effect on improving the bilateral relations between Macedonia and Greece, not on Macedonia's EU negotiation date.

To somehow maintain the accession process from total collapse, the High Level Accession Dialogue was created. The dialogue was led by the Prime Minister of the Government of the Macedonia and the Commissioner for enlargement. The dialogue aimed to bring dynamic in the reform process for accession to the EU by strengthening confidence and increasing the European perspective of the country, and it focused on the key challenges on these 5 areas: freedom of expression in media; rule of law, reform in public administration, electoral reform

and strengthening of the trade economy. However, the Dialogue had not yielded the desired results, and until 2015, only four meetings of the accession dialogue were held.

2.3.The VMRO-DPMNE period

Since VMRO-DPMNE took power in 2006 there has been a significant decline in the country's relation with the EU. The Progress Reports from 2006 onwards started to have a more and more of a critical tone regarding Macedonia's progress in rule of law, democracy and fight against corruption, culminating with the EC referring to the country as a captured state in its 2016 Report (EC 2016: 4).

Based on the domestic issues with controlling corruption, during the VMRO-DPMNE rule Macedonia could be conceived as a pure particularistic regime as per the criteria of Mungiu-Pippidi (2007). These characteristics are very important for the ability of the EU to have an impact on the control of corruption in the country.

Pure particularistic regimes are characterised by monopoly in power distribution, state capture (the state is "owned" by one or few), the distribution of public goods is unfair and predictable, there is moderate social acceptability of corruption, and there is no distinction between the public and private (2006: 94), which were the problems in the Macedonian case. As Macedonia was a pure particularistic regime the costs of joining the EU (or of even furthering the accession process) were too high. Pure particularistic regimes have more to gain by maintaining the status quo than by furthering the EU accession process, because this may reveal and restrict their corrupt activities. Finally, due to these unfavourable domestic factors in Macedonia, the EU was unable to influence effective control of corruption through its conditionality mechanism.

Mungiu-Pippidi suggests that the distribution of power can be deduced from electoral history and from events such as sanctioning of powerful and influential individuals by courts (2006:

94). In a pure particularistic society, power is highly centralised, accompanied by electoral irregularities, and characterised by lack of sanctioning of powerful individuals (Mungiu-Pippidi 2006). This section will briefly look at the electoral history of Macedonia from 2006 until 2015. The year 2006 was chosen as at the end of 2005 Macedonia became an EU candidate, and the European Commission started issuing the Progress Reports from 2006 to monitor Macedonia's advancement. It will also look at whether Macedonia had a track record in convicting and sanctioning powerful individuals for corrupt acts, as this is another indicator for whether a country is a pure particularistic regime or not.

In Macedonia the Internal Macedonian Revolutionary Organisation held power since 2006, when it won the parliamentary election. It also won the early parliamentary election in 2008, 2011, and 2014, as well as the presidential elections in 2009, and 2014. The European Commission continuously noted shortcomings before and during elections, and raised concerns for the lack of separation between state and party activities and biased media reporting (European Commission Progress Report 2014: 2). Similarly, OSCE had been noting for few years that the link between the state and the party structures throughout elections had been dangerously blurred: "During the campaign, there were instances of an insufficient separation between state and party structures, contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document. This included misuse of state resources for campaign purposes and partisan rhetoric when candidates acted in an official capacity. This detracted from the overall quality of the election process. (OSCE 2011: 2)". According to Dimitrioski from the Citizens Association Most, which regularly monitored elections in Macedonia the goal is to affect the outcome of the election before the election day: *"We have had reports about pressures through making voting lists in public administration (for the 2011 election), which is a form of pressure over the electorate"* (Dimitrioski, citizen association Most, which regularly monitored all elections in Macedonia, 10.09.2014). During the last elections in 2014, OSCE reported about pressures

exerted over public sector employees (European Commission 2014: 2). Undue influences over the electorate, regardless of whether during or before election day, according to Mungiu-Pippidi are a trait of particularistic regimes. Again, in such regimes ruling elites are more interested in maintaining political power, which would be significantly weakened by implementing relevant EU anti-corruption requirements, thus resulting in higher domestic costs for the ruling parties.

Another characteristic of pure particularistic regimes according to Mungiu-Pippidi is the prosecution and the sanctioning (or the lack of sanctioning) of powerful individuals that have been accused for or convicted for corruption related offences. According to, James Stein, the director of USAID in Macedonia “there haven’t been as many cases identified for prosecution, and really no cases prosecuted for corruption, which is unusual in comparison to some of the cases in the region” (Stein 2015 online interview for Radio Free Europe). Furthermore, anticorruption policies particularly in such an arguably semi-democratic context as in Macedonia opened the opportunity for selective prosecution of political opponents on corruption charges. Specifically, the SCPC which should have been the frontrunner in the control of corruption in the country was strongly influenced by the government, lacked capacity, integrity, independence, and many experts were on the opinion that its main purpose was to serve the needs of the ruling party, as opposed to leading the fight against corruption (Dimova, a Member of Parliament, Social Democratic Union of Macedonia, 06.09.2014; Kuzmanovska, platform manager in the Government of the Republic of Macedonia, Secretariat for European Affairs, 12.09.2014; Mangova to Cvetanoska, 2014; Mihajlova, Former Member of the State Commission for Preventing Corruption of the Republic of Macedonia, 15.09.2014; Ordanoski, Political Analyst, President of Transparency Macedonia, 16.09.2014). *“The SCPC has neither assets, nor power, and is a tool in the hands of the political elites to give an excuse that such an independent body exists in Macedonia; however, having regulatory independence*

on paper is completely different from independence in practice, and the selection of president and members of the SCPC is completely politicised“(Kuzmanovska, platform manager in the Government of the Republic of Macedonia, Secretariat for European Affairs, 12.09.2014).

A former member of the SCPC agreed that this institution lacked the necessary capacity and expertise to perform its basic functions. The SCPC was heavily criticised in the European Commission Progress Reports; “this was especially the case [in 2010] when members of the SCSPC did not fulfil the basic criteria to be elected as per the law, and the Progress Reports noted this” (Mihajlovska, Former Member of the State Commission for Preventing Corruption of the Republic of Macedonia, 15.09.2014). According to Stein, the SCPC “*wants to [fulfil its function but] it doesn’t have perhaps the level of resources, the budgetary resources and the level of staffing that it really needs to, to really fulfil its function* (Stein 2015)”. The European Commission confirmed these claims and raised concerns that “*[o]nly around 40 per cent of the 45 posts foreseen within the State Commission for the Prevention of Corruption have been filled and it remains hampered by its limited powers (EC Progress Report 2014: 43)*”. Finally, “*the main focus of the SCPC is on the declaration of assets and not in identifying key problems with corruption*” (Kuzmanovska, platform manager in the Government of the Republic of Macedonia, Secretariat for European Affairs, 12.09.2014). As an example, the SCPC brought forward public allegations for irregularities in the asset disclosure form of the main opposition candidate during the local election in 2013 (Press 24, 2013). What is more, this suggests that the SCPC had been used to shed suspicion on the integrity of a political opponent, just before election, which contradicts to electoral rules. This suggests selectivity of the justice system, and its abuse to prosecute political opponents by ruling elites, which in turn is another characteristic of pure particularism.

Dimova, a Member of Parliament, from the Social Democratic Union of Macedonia pointed out that shortly after a change of government there is a tendency to act against political

opponents from the previous government on corruption charges, but this does not solve systemic corruption, as the main goal of such prosecutions is to selectively punish political elites from the opposition (Dimova, a Member of Parliament, from the Social Democratic Union of Macedonia 06.09.2014). Kalajdziev, a criminal law professor at the Ss. Cyril and Methodius University and President of the Helsinki Committee for Human Rights of the Republic of Macedonia had similar observations: *“Political elites are not held accountable except in the first years after shift in powers. With the change of the ruling party numerous investigations on corruption were initiated, but now corruption cases are only a few cases against ‘players’ that are either not very significant, or due to some reasons are chosen to be sanctioned- yet there is no systemic fight against high-level corruption”* (Kalajdziev, 19.09.2014). Imposing sanctions towards those that have committed corruption related offences was yet another problem of institutions. *“Relevant institutions very often do not act upon corruption complains”* (Kalajdziev, a criminal law professor at the Ss. Cyril and Methodius University and President of the Helsinki Committee for Human Rights of the Republic of Macedonia, 16.09.2014). Even though some relevant institutions somewhat fulfilled their obligation to report irregularities as instructed by law, they were not prepared to assume a more interactive role in the sanctioning of wrongdoers (Dimitrioski, citizen association Most, which regularly monitored all elections in Macedonia, 10.09.2014). In such cases, the power is distributed among few political elites who determine who is to be held accountable, and who not, which further suggests that Macedonia is an example for pure particularism, which in turn supports the argument that furthering the accession process vis-a-vi relinquishing power was too costly.

In summary, opening negotiations with the EU, especially with the new approach towards chapter 23 and 24, which brought the issues of corruption and the rule of law at the forefront of the accession process, would have reduced the power control, as ruling elites would have

been held openly accountable for not opening investigations or imposing sanctions not only in front of the EU, but also in front of its electorate. Consequently, stalling the opening of negotiations would be a strong incentive for ruling parties. The European Commission was also aware of this, thus continuously reiterated the opening of negotiations, but with no real success as of 2015.

To determine ‘ownership’ of the state’ i.e. whether a state is captured one needs to trace the networks of power and privilege, to establish the extent to which public goods are distributed through them, and to determine how thick, closed and influential these networks of power are (Mungiu- Pippidi 2006: 94-95). If the state ‘owns’ the main branches of power, if the legislature and the judiciary are predominantly used to serve the interests of the executive, if it lacks independence and cannot hold the executive accountable for its actions, there is a problem of state capture. State capture is present when incumbent elites capture private benefits from the public offices they hold (Grzymala-Busse 2008: 638).

In Macedonia, interviewees generally agreed that the division between the party and the state was seriously weakened with party interests being put ahead of state interests. According to Dimova, a Member of Parliament, Social Democratic Union of Macedonia, the diminished separation of the state from the ruling party in Macedonia contributed to the lack of effective control of corruption: *“at present in Macedonia governing powers are divided between the two coalition partners (the Macedonian Internal Macedonian Revolutionary Organisation and the Albanian Democratic Union for Integration), characterised by positioning of all institutions in the service of the ruling party”* (Dimova, a Member of Parliament, Social Democratic Union of Macedonia 06.09.2014). Similar concerns have been raised by Commissioner Fule. When addressing the European Parliament to present the latest progress reports for candidate countries, Commissioner Fule expressed concerns about party interests put ahead of national interests in Macedonia, and requested the government and the opposition to take steps to restore

political dialogues in the Parliament (Fule, 2014 in Republika, 2014), which supports the conclusion that there was a fusion between party and state interests in Macedonia.

Furthermore, the system was characterised by no real division of powers between the legislature, executive and the judiciary, and strong governmental control and interference in the work and decision- making in all spheres of public life. Such problems lead to the concentration of political power in a relatively small group of people, who regardless of the formal processes of decision- making, were the actual decision- makers for all important political and economic issues (Kalajdziev, a criminal law professor at the Ss. Cyril and Methodius University and President of the Helsinki Committee for Human Rights of the Republic of Macedonia, 19.09.2014). Generally, the legal mechanisms and the system of sanctions in the country were inoperative against ruling elites, which undermined the legitimacy of the electoral processes, diminished the trust in public institutions and provided fertile ground for corruption.

Serious concerns have been raised by both the EU and by national experts and practitioners about the independence of relevant institutions, among which concerns about bias of the judiciary, undue political influences in politically sensitive court cases, appointment of judges and members of the SCPC that did not fulfil the criteria prescribed by laws were the most serious ones. The independence and the functioning of the judiciary received particular attention. According to the European Commission, the independence of the judiciary not only that it did not improve, but even deteriorated when compared to previous years, and growing concerns were raised about the selectivity of, and influence over, law enforcement and the judiciary, especially about political influence over certain court proceedings (Progress Report 2014: 11). The Judicial Council, which was the main body responsible for the appointment and dismissal of judges, was not independent from undue influences in the appointments and dismissal of judges. The European Commission also raised concerns about the credibility of

the Judicial Council's commitment to merit-based system for appointing judges, because when appointing first instance judges, the Judicial Council continued to give preference to applicants who had not graduated from the Academy for Judges and Prosecutors, despite the legislative requirement that 50 per cent of such appointments should be Academy graduates (European Commission Progress Report 2012: 10; European Commission Progress Report 2014: 40). As of 2015 the formulation of the legal provisions on the role of the Judicial Council allowed for bias and undue influences over the process for selection and dismissal of judges, which presented a threat for the independence of the judiciary altogether. As a result *"it is very unlikely for relevant institutions to initiate proceedings against the prime-minister, or against high-level officials, which signals that the system is lacking checks and balances"* (Kalajdziev, a criminal law professor at the Ss. Cyril and Methodius University and President of the Helsinki Committee for Human Rights of the Republic of Macedonia, 16.09.2014). Having in mind the emphasis that the EU places on the independence of the judiciary as part of its accession requirements, such serious shortcomings and lack of positive track record in this sphere indicated that domestic ruling elites were not seriously interested in enforcing the necessary changes in regards to controlling corruption. This further suggests that the benefits of opening negotiations were not as appealing for domestic elites, as it was to maintain political influence over the judiciary.

The state of the civil society and the media is another indicator for the existence of particularism in Macedonia where oligarchs 'own' the state powers. According to Johnston (2005) where 'oligarchs and clan' corruption is present, the majority of the news media is dominated by the oligarchs, and those media that are not controlled by ruling elites are likely to be lacking the resources to be effective watchdogs (Johnston 2005: 46). In other words, absence of political and economic independence of media actors supports the claim that the state was captured by oligarchs who used state institutions and media to fulfil their own political and economic gains.

According to the Progress Reports of the European Commission “*there is indirect state control of media output through government advertising and government-favoured (and favourable) media outlets. The public broadcaster does not fully play its role as the provider of balanced and informative media content, and its political bias was noted by OSCE/ODIHR during both this year’s and last year’s elections. This results in a scarcity of truly independent reporting and a lack of accurate and objective information being made available to the public by the mainstream media*” (2014: 12). Such statements support the argument that there was strong control over the media in Macedonia by ruling political elites.

Freedom House ranked Macedonia as partially free because in its Freedom of the Press ranking, most private media outlets were tied to political or business interest that influenced their content, while state-owned media tend to support government positions (Freedom House, 2014). If there is no free media that would highlight abuse of power, if reporters are sanctioned, if the media is in the service of the government, it is very difficult to control the actions of political elites. In addition, “*the parties that come to power tend to understand that they need to have absolute freedom to rule, and do not understand that control of their powers is crucial for a democratic system*” (Maleski, Former Minister for the Exterior of Macedonia, and a former UN Ambassador, 05.09.2014). A good example of this is that a corruption scandal which involved the prime-minister Gruevski has not been even reported by the main media houses (Dimova, a Member of Parliament, Social Democratic Union of Macedonia, 06.09.2014).

The danger that comes along with a dependent media is that it allows political elites to control the public opinion, and to influence the citizens’ perceptions on the levels of corruption in the country and on the efforts that are undertaken to tackle the issue. In Macedonia “[t]he media currently plays a negligible role in investigating and exposing corruption and organised crime (European Commission Progress Report 2014: 50).” This in turn could have an effect on the

country's success in controlling corruption in various indexes, such as the Transparency International and World Bank indicators, which would explain the improvements in scores, despite the problems with corruption in practice. *"Corruption data is generally data on the perception of corruption and this data is influenced by propaganda, in particular by paid propaganda through the media, which explains why the perception of corruption is changing: the government's PR in Macedonia changes the perception of corruption, which makes corruption even more difficult to measure"* (Ristevska, Director of the European Policy Institute in Macedonia, a former state counsellor for legal issues of European integration at the Government of Macedonia and a chairperson of the Stabilization and Association Committee with the EU, 16.09.2014).

Another problem with the media was that it was largely financed by the state due to close ties with members of the ruling parties. *"Formal criteria requiring resignation of Members of Parliaments owners of media houses from their MP positions, have been respected, but the media is still largely biased towards the ruling party"* (Dimitrioski, citizen association Most, which regularly monitored all elections in Macedonia, 10.09.2014). This was also highlighted by OSCE's report: *"OSCE/ODIHR EOM media monitoring showed that the majority of monitored media was largely biased in favour of one ruling party and its presidential candidate and mainly negative against the main opposition party and its candidate. The public broadcaster did not provide balanced and equal coverage to all candidates and parties, thus challenging paragraph 7.8 of the 1990 OSCE Copenhagen Document. The failure of the media to distinguish between the coverage of state officials in their capacity as ministers and as candidates contributed to the blurring of the line between state and party"* (OSCE 2014: 3).

The above discussion demonstrates the challenges that Macedonia has faced regarding corruption control during the VMRO-DPMNE rule and these will be kept in mind when analysing the size of the domestic costs for introducing EU anti-corruption requirements.

3. Determinacy of the conditions

As with previous enlargements, the EU continued to use the European Commission's Annual Progress Reports as the main instrument for assessing progress. The main aim of these reports was to examine the performance of candidate countries vis-à-vis the Copenhagen Criteria. The progress reports also contained requirements for improvements. For corruption control there were many inconsistencies in spotting relevant problem areas as demonstrated in the chapters on the Czech Republic and Romania. For example, according to several interviewees who were directly involved in the accession negotiations of the Czech Republic, during the 2004 enlargement, candidates' ability to control corruption was not the focus of the EU's attention (Telicka, Chief Negotiator for the Czech Republic to Cvetanoska, 9.2.2015; Interviewee 4, Former Prime-minister of the Czech Republic to Cvetanoska, 22.2.2015; Kavan, Former Minister for Foreign Affairs to Cvetanoska, 5.2. 2015). However, after the 2007 joining of Romania and Bulgaria, the EU shifted its focus, and the ability of candidates to control corruption received much more attention. According to Stefan Fule, Former European Commissioner for Enlargement, the EU accession requirements on anti-corruption significantly improved from the first enlargement wave of 2004 (Fule to Cvetanoska, 12.5.2015). Whether this was the case is examined in this chapter.

When asked about the specificity of corruption control measures interviewees were of the view that there still room for improvement, especially regarding their generic nature. According to a senior official of the Delegation of the EU in Macedonia, there was still a lot of room for improvement in the area of EU anti-corruption conditionality, as *"the progress reports are not adequate policy documents because they are too short, too simple, and too superficial"* (Interviewee 17 to Cvetanoska, 18.9.2014). Moreover, according to Mr Misev, President of the Institute for Democracy, Macedonia:

The criteria according to which success is measured in the progress reports are too generic and formalistic, emphasise the additional harmonisation of the laws, require [the] formation of institutions, or additional equipment and capacity, which could derail the focus from implementation issues. (Misev to Cvetanoska, 11.9.2014)

As an interviewee from the Delegation of the EU in Macedonia, the EU's own lack of anti-corruption regulations, mechanisms and standards was among the issues that affected the quality of the EU's anti-corruption conditionality as regards candidates:

Our conditionality policy can be better articulated, some documents need to be broader, but we are facing the problem of [an] absence of international anti-corruption standards, and no hard core anti-corruption acquis, as well as different systems, legal and institutional frameworks, which do not allow us to be too prescriptive as to what constitutes a good anti-corruption policy. (Interviewee 17 to Cvetanoska, 18.9.2014)

Nevertheless, through its conditionality mechanism, the EU created templates and imposed norms and requirements that indicated the type of legal framework that the Union expected candidates to adopt. From a normative point of view, candidates were expected to adopt anti-corruption and conflict of interest legislation, as well as to align their criminal codes with international conventions. In other words, even though there was no specific anti-corruption acquis, the Union had formulated a sort of 'soft' acquis based on international norms and standards, which was used by the EU to create and impose more specific anti-corruption requirements for the adoption of legislation by candidates (Fule to Cvetanoska, 12.5.2015). This was illustrated in the chapter on Romania, where it was argued that prior to 2008 the EU did not have a clear framework for operation (Senior officer, DG-Near to Cvetanoska, 18.1.2016).

In addition, concerns were raised about the appropriateness of anti-corruption requirements. A number of interviewees⁵⁴ mentioned that the EU had very weak criteria on corruption to begin with, such as to form an institution, or technically equip a building. In other words, the EU had a ‘check-box’ system for success: a candidate should have an independent anti-corruption institution and there should be cooperation between institutions for combatting corruption. The State Commission for the Prevention of Corruption in Macedonia manage to fulfil these requirements. This institution was formed in 2002, and for the first few years it was considered to be a success story and a positive example to other EU candidates by the European Commission. That same institution a few years later fell completely under the control of political elites. In the view of Malinka Ristevska Jordanova:

Even though it is formally independent, de facto it [the State Commission for the Prevention of corruption] is completely under the influence and the domination of the ruling party, especially since the key people in the State Commission for the Prevention of Corruption do not have the relevant experience and expertise in anti-corruption.”
(Ristevska, to Cvetanoska, 16.9.2014)

However, according to Malinka Ristevska Jordanova :

The State Commission for the Prevention of Corruption in Macedonia is an excellent example of how an independent anti-corruption institution can be conquered by ruling parties, especially in a setting where grand corruption, including nepotism, cronyism, dysfunctional balance of powers and [a] fragmented integrity system, are in place. In line with this, regardless of Macedonia’s normative success in the introduction of

⁵⁴ Cekov, Corruption analyst at the Centre for Research and Policy Making, 20.08. 2014; Dimova, a Member of Parliament, Social Democratic Union of Macedonia, 06.09 2014; Senior official, Delegation of the EU in, Macedonia 18.09.2014; Marichikj, Executive Director of the Macedonian Centre for European Training, 19.08.2014; Mihajlovska, Former Member of the State Commission for Preventing Corruption of the Republic of Macedonia, 15.09.2014, 2014; Ristevska, Director of the European Policy Institute in Macedonia, a former state counsellor for legal issues of European integration at the Government of Macedonia and a chairperson of the Stabilization and Association Committee with the EU, 16.09.2014.

institutional mechanisms, these remain dead words on paper in practice. (Ristevska to Cvetanoska, 16.9.2014)

The Progress Reports were setting the anti-corruption agenda for candidates with their findings and recommendations for improvements and it is expected the findings to correspond to the suggestions for improvements for the EU anti-corruption conditionality to be deemed appropriate. In the 2014 Progress Report, the Commission was of the opinion that corruption remained prevalent in many areas and continued to be a serious problem and expressed its concerns about claims of selective enforcement and political influence, and low public trust in institutions (European Commission 2014: 11). In particular, the EC pointed out that enforcement bodies and supervisory agencies remained weak and had frail powers, status and lack of independence, which needed to be strengthened (European Commission 2014: 11). To address these concerns, the Commission's recommendations for Macedonia were to introduce awareness-raising measures, increase political commitment and be more proactive in order to eliminate these serious concerns. For instance:

Inter-agency cooperation and communication still needs to improve further and data exchange and sharing is limited. Problems include the lack of IT interconnectivity between the courts and the prosecution service and the absence of a central register of public officials, which hampers the supervisory work of the State Commission for the Prevention of Corruption. The lessons learned from past anti-corruption policies and measures need to be put to use much more effectively. There is currently little strategic planning in this area, and future policies should be better targeted towards the real problem areas, including public procurement, political corruption and high-level corruption. (European Commission 2014: 11)

The SCPC was understaffed and had capacity problems, and it mainly concentrated its activities on asset declarations, which resulted in a backlog in its other activities and further hampered its work. The EU's response to this was to introduce a new Instrument for Pre-Accession Assistance twinning project of the SCPC in Macedonia, implemented in partnership with the Federal Office of Administration of the Republic of Germany, but mainly with the aim of strengthening the capacity and technical abilities of this institution. Nevertheless, this was not the only problem with the SCPC: *"The limited powers of the SCPC are hampering its development into an effective anti-corruption body ... [t]he dismissal of the former President of the SCPC without a clear legal basis raised concern[s]"* (European Commission 2013: 41). The impartiality of the SCPC was further questioned due to a public announcement about the irregularity of assets declaration by an opposition mayoral candidate a few days before election day (European Commission 2013: 42).

The language that the EC uses to communicate the needs for improvements are another aspect of the clarity of the conditions criteria. Language is also crucial for communicating whether measures are deemed appropriate and is linked to the EU's decision-making process on whether rewards should follow, thus this is also considered in the next section. The question to be answered is whether the EU's language was commensurate vis-a-vis the current issues with controlling corruption in Macedonia. When looking at some of the statements by EU representatives involved in Macedonia's domestic processes, one can get an idea of the language used:

There is a serious problem with a non-functioning Parliament in Macedonia. There are shortcomings noted in the last progress report, namely the problems with corruption, media legislation, and the media freedom, open questions concerning the Ohrid Agreement, but Macedonia has made great progress in the economic situation, so the

overall situation is not that bad. (Ivo Vajgl, Slovenian MEP and European Parliament rapporteur on Macedonia, 2014)

What remains questionable is why, despite the many problems with corruption and the rule of law, it was still appropriate to conclude that the country was not performing as badly as it seemed. According to Member of the European Parliament Eduard Kukan, a Slovakian MEP involved in brokering the political agreement in Macedonia:

[T]his situation creates difficulties for the Government to keep up the flames of integration of Macedonia to the EU. Under this situation, it is really difficult. On the other hand, there are many issues that the Government of Macedonia can do in delivering the reports, in addressing the issues of freedom of media, and these other things. Political boycott of the Parliament is a very damaging thing and it is occurring in Macedonia and also damages the general image, but I would tend to agree with my colleague [Vajgl] that generally Macedonia is not as bad as it is usually portrayed.”
(Kukan, 2014)

3.1. Impact limited to the adoption of anti-corruption legislation

According to the World Bank good governance indicators, in the mid-1990s, Macedonia, together with Serbia and Albania, had the lowest capability to control corruption in CEE. However, the scores in these indices then dramatically improved for Macedonia. Out of all the CEECs, according to World Bank data, Macedonia achieved the greatest progress in corruption control over time, from 17% in 1996 to 59.3% in 2012 (see Introduction, Table 1.). The most significant increase in the score was in 1998 (30.7%), followed by a steadier pace of constant

increase after 2003 and reaching a peak in 2012. Yet, the Progress Reports on Macedonia continuously reiterated the seriousness of the problems with corruption. The country was continuously praised for adopting additional corruption-related legislation, while at the same time being heavily criticised for not implementing it in practice. Macedonia's struggle with the implementation of anti-corruption reforms supports the argument that the significant progress of 42.3% as noted in the WGI scores was mainly as a result of the introduction of a comprehensive anti-corruption legal framework. Interviewees agreed that the anti-corruption progress of the country since the mid-1990s largely contributed to the introduction of anti-corruption legislation that did not exist at the time (Dimitrioski to Cvetanoska, 10.9.2014; Maleski to Cvetanoska, 5.9.2014).

Macedonia was the first country in the Western Balkans region to sign a Stabilisation and Association Agreement in 2001. Requirements for the introduction of legislation on issues such as anti-corruption, reform of the judiciary and public administration, and free elections were part of that agreement⁵⁵ (Council of the European Union 2001). Also, implementation of the newly adopted laws, in particular regarding the fight against corruption (The Law for Preventing Corruption was enacted in 2002) and the long-term reform of the judiciary and the public administration (Law on the Judicial Budget 2003, Law on Civil Servants 2000), both of which were highly politicised, were among the main challenges for the country at the time (Fouere 2011: Balkan Insight). However, despite the introduction of new anti-corruption laws, further strengthening of the legal framework was required together with progress in implementation of the rules in practice, as corruption persisted in the country. The European Commission, in its opinion on Macedonia's application for EU membership (European

⁵⁵ The aim of the SAAs, not only for Macedonia, but for the Western Balkans overall, was to provide an alternative to the Europe Agreements that were previously signed with the post-communist countries aspiring to join the EU (see Phinnemore 2003: 78). They were a crucial tool for the Stabilisation and Association Process for the Western Balkans and had the goal of maintaining a progressive partnership between the EU and the Western Balkan countries, with the aim of eventual EU membership (see European Commission 2012).

Commission 2005b: 562), in particular pointed out that the country needed to make additional efforts in the field of judicial reform and in the fight against corruption. This opinion was based on the Analytical Report of the Commission (European Commission 2005) in which the Commission analysed the application from Macedonia for membership vis-à-vis the Copenhagen Criteria and the Stabilisation and Association Process.

The analytical report identified many causes of corruption in public bodies, including:

[T]he often arcane administrative procedures for various dealings of citizens and enterprises with the State administration, the lack of transparency and compliance with these procedures, the extensive and non-transparent system of issuing licences and permits for various activities, the discretionary rights of certain government officials, the lack of well-defined rules on conflicts of interest and the still opaque management of State assets. (European Commission 2005)

Nevertheless, the country was granted candidature status in 2005, with the aim of resolving these issues as part of the Copenhagen criteria.

As a response to the EU requirements for furthering the accession process, Macedonia changed relevant anti-corruption laws. The primary anti-corruption framework consisted of the Law for the Prevention of Corruption (2002) and the Law for the Prevention of Conflicts of Interest (2007), reinforced by incrimination rules and sanctions in the Penal Code. The Law for the Prevention of Corruption, in Article 2, defined corruption as “*the use of public authorization for personal gain*”. The Law for the Prevention of Corruption also established measures for preventing corruption and conflict of interests in the exercising of power and the carrying out of entrusted public mandates (Article 1). The Law banned the disclosure of confidential state information for private gain (Article 32), prohibited elected or appointed functionaries from exerting influence for the employment or promotion of members of their family over the body

in which they were elected or appointed (Article 30), and prohibited functionaries from receiving gifts (Article 31). It also founded the State Commission for the Prevention of Corruption as the main public institution responsible for the implementation of anti-corruption measures and activities. The Commission also oversaw the implementation of the Law for the Prevention of Conflicts of Interest.

The Penal Code criminalised corrupt acts and prescribed penalties for corruption-related offences. The law incriminated both offering a bribe, i.e. ‘active’ corruption (Article 357), and receiving a bribe, i.e. ‘passive’ corruption (Article 358). The legislative measures in the penal code were sufficient to ensure that the offences of active and passive bribery in the public sector could cover all acts and omissions in the exercising of the function of a public official, whether within the scope of the official’s duties or not (GRECO 2012: 2–3). Also, both ‘active’⁵⁶ and ‘passive’⁵⁷ trading in influences were passed into law with amendments to the Penal Code in 2011, and these incriminations were in line with the GRECO recommendations (GRECO 2012: 5–7). These amendments were made because, previously, only ‘passive’ trading in influences was a criminal offence, and there were no sanctions against persons seeking to influence public officials. However, after the European Commission raised concerns about this in its Progress Report of 2009, amendments to the Law were introduced.

Therefore, the legislative framework in the area of anti-corruption policy was generally in place. This was reflected in the Progress Reports of the European Commission:

There were certain areas where further harmonisation of the laws is required, including regulations to increase the independence and the accountability of the Judicial Council, comprehensive rules on whistle-blower protection,⁵⁸ public

⁵⁶ "Active" trading in influence presupposes that a person promises, gives or offers an undue advantage to someone who asserts or confirms that he is able to exert improper influence over third persons (Council of Europe 1999: 14).

⁵⁷ "Passive" trading in influence presupposes that a person, taking advantage of real or pretended influence with third persons, requests, receives or accepts undue advantage, with a view to assisting the person who supplied that undue advantage by exerting improper influence (Council of Europe 1999: 14).

⁵⁸ Whistle-blowers protection is an area where effective legal mechanisms had yet to be established (European Commission 2012c: 12) and legal protection was weak (Global Integrity Report 2011: 76b). There was still no separate and comprehensive

procurement and funding of political parties. Nonetheless, the general consensus is that, overall, Macedonia had a comprehensive anti-corruption legal framework in place. (European Commission 2014)

Yet, it would be premature to conclude that substantive progress in controlling corruption can be achieved based solely on a legal framework. This was evident from the Progress Reports in which the European Commission continued to emphasise the need for further improvement in controlling corruption, with concerns revolving around the implementation of anti-corruption laws and policies. The EC in its 2012 Progress Report (p.13) agreed that: “*overall, the legislative framework is in place and capacity has been strengthened slightly, but greater efforts are needed as regards the implementation of existing laws*”. Although anti-corruption laws and policies provided a framework and a basis for operating, it was their proper implementation that was crucial for the successful control of corruption. As Lidija Dimova pointed out, this was exactly where Macedonia was failing to deliver:

If progress is understood as [the] formation of institutions and [the] harmonisation of legislation, [then] Macedonia has progressed a lot, as ‘window dressing’ practices have always been common in Macedonia, regardless of the party in power; whereas if progress is understood as success in the fight against corruption in practice, no progress has been achieved whatsoever. (Lidija Dimova to Cvetanoska, 6.9.2014)

The EU continued to conclude in its Progress Reports that Macedonia had a solid anti-corruption framework. In its progress reports, the EC agreed that, overall, the legislative framework was in place and capacity had been strengthened slightly, but it pointed out that

law for the protection of whistle-blowers in Macedonia, and the protection of public servants who reported suspicions of corruption or misconduct to senior management or to law enforcement bodies was partial (Transparency International 2011: 30).

greater efforts were needed as regards the implementation of existing laws (European Commission 2013d; European Commission 2014).

Criticisms about the lack of clarity of the criteria, and the lessons learned from previous enlargements (especially Bulgaria and Romania), prompted the need to introduce more specific requirements on controlling corruption in candidates (Fule to Cvetanoska, 12.5.2015). In the case of the Western Balkan countries, therefore, early on in the accession process, before opening negotiations, the EU started introducing short- and medium-term priorities, which among other things contained benchmarks for controlling corruption (Fule, to Cvetanoska, 12.05.2015).

For Macedonia, these short and medium-term priorities on anti-corruption were introduced through the Council Decision 2008/212/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the former Yugoslav Republic of Macedonia, repealing Decision 2006/57/EC. The requirement to establish a sustained track record on the implementation of anti-corruption legislation was among the short-term priorities of the Decision (Council of the European Union 2008). In addition, other short-term requirements, which did not mention corruption per se but were related to controlling corruption, were also introduced. These were: to establish a sustained track record on the implementation of judicial reforms, to strengthen the independence and overall capacity of the judicial system and to ensure that recruitment and career advancement of civil servants were not subject to political influence. The following were the medium-term priorities on anti-corruption: to complete the implementation of the strategy to fight corruption and to enforce regulations relating to the prevention of conflicts of interest, in line with international standards.

In addition to the key priorities, the Council Decision also contained more specific short-term requirements as part of the Copenhagen political criteria for accession. On anti-corruption, the

key priorities were: to ensure an adequate follow-up to the recommendations made by the State Commission for Preventing Corruption and the State Audit Office; to implement fully the recommendations made by the Group of States against Corruption; to strengthen the administrative capacity needed to implement rules adopted on the financing of political parties and electoral campaigns, as well as to impose effective sanctions in cases of infringements; to follow up the reviews carried out on the discretionary rights of certain public officials; to ensure full implementation of the law on public access to information; and to further strengthen cooperation among the institutions involved in combatting corruption (Council of the European Union 2008).

According to Malinka Ristevska Jordanova: *“the problem with the EU’s policy is that it insists too much on [a] formal, normative framework, which leads to too many rules that are not implemented in practice”* (Ristevska to Cvetanoska, 16.9.2014). The protection of whistleblowers ⁵⁹in Macedonia is a good example. The country did not have sufficient regulation in this area, and the European Commission kept insisting on introducing such legislation in its Progress Reports. Yet, the probability of such law being implemented in practice was low. In the view of Ristevska:

In the current situation of a totally politicised public administration in Macedonia, it is almost impossible for such a law to be implemented, which alludes to the problems that certain norms are ‘exported’ from the EU, and their implementation is followed up on a very formal level, without digging deeper [in]to the core of the problems. (Ristevska to Cvetanoska, 16.9.2014)

⁵⁹ The country has since introduced relevant whistleblowing legislation, however this will not be examined in more detail in the present thesis as it has been introduced after this analysis was finalised.

4. Size and speed of rewards and credibility of threats and promises

The second issue related to the determinacy of the conditions was the ability of the EU to reward candidates upon successful completion of anti-corruption requirements. This section analyses whether candidates were rewarded following fulfilment of anti-corruption requirements and, vice versa, how credible exclusion from the accession process was if candidates were lagging behind. It also investigates whether candidates were rewarded/threatened/ punished correspondingly and in a timely matter.

One matter that was crucial to the EU's conditionality's success in the bargaining process was the country's (at the time unresolved) name dispute with Greece. In the view of Malinka Ristevska Jordanova: *"Because of the name dispute, because of the EU's patience and its unwillingness to take a step backwards and to remove the recommendation for opening negotiations there is a softer tone in the evaluation of the country's success."* (Ristevska to Cvetanoska, 16.9.2014)

This was not only relevant for corruption per se, but for EU conditionality policy overall. The dispute was preventing Macedonia from opening negotiations since 2009. According to Erwan Fouere, former Head of the Delegation of the European Union in Macedonia, negotiations would lock the country into a dynamic and a mechanism that would be much more intrusive, and this would allow the EU to suspend negotiations if progress was not achieved (Fule to Cvetanoska, 26.1.2016). In other words, the EU would have, at least in theory, regained the power to impose influence. This was because of the so-called 'new approach' that was introduced for the accession process of the Western Balkans, which focused on the rule of law and anti-corruption reforms and gave the EU additional control of the negotiations process: *"if targets are not achieved, the Union has the option to close the door until necessary progress is made"* (Fule to Cvetanoska, 12.5.2015). Yet, this was very relative from case to case, as it depended on other domestic and EU-related conditions which existed for a specific candidate.

As Mr Fouere put it: *“In theory it would be a way of controlling more but in practice I think it would probably not do much”* (Fouere to Cvetanoska, 26.1.2016).

4.1. Secondary importance of anti-corruption success in Macedonia for the EU

This section examines whether control of corruption was a main priority for the accession process of Macedonia. Within the political criteria, there were three levels of priorities: stability, inter-ethnic relations and good neighbourhood policy, rather than corruption, were on the first and most important level, with security being at the top of the list (Ristevska to Cvetanoska, 16.9.2014). NATO⁶⁰ membership played a crucial, but not exhaustive, role to the region's stability. Equally important for Macedonia were the inter-ethnic relations between its Macedonian majority and its Albanian minority (Craig 2020) . Even democracy, which was among the main priorities for the EU, was still secondary to stability (Marichikj, Executive Director of the Macedonian Centre for European Training to Cvetanoska, 19.8.2014). It is worth noting that interviewees did not perceive corruption as an issue of security. When discussing security, interviewees (Dimova 2014; Marichikj 2014) were making a distinction between the two arguing that security trumped anti-corruption efforts. No attempts were made by interviews to connect the two and there were no discussions on how corruption may be a threat to security – security was linked to avoiding new conflicts in the Balkan region.

The stability of the Western Balkans was the highest priority for the EU, whereas everything else was secondary, and as long as the criteria for stability were fulfilled other problems were set aside, at least in this stage of the accession process (Ordanoski, Political Analyst, President of Transparency Macedonia to Cvetanoska, 16.9.2014). According to Ristevska, as these issues were a priority for the EU, the Union was likely to sacrifice success in the fight against

⁶⁰ Macedonia gained NATO membership on 20 March 2020.

corruption in order to maintain political stability, and this is why the conditionality policy in this area was undermined (Ristevska to Cvetanoska, 16.9.2014).

Finally, interviewees also linked the issue of enlargement fatigue with the credibility of the threats and promises for rewards. The EU's interest in advancing the accession process for Macedonia had seriously decreased post-2010 compared to earlier years of the accession process. According to Erwan Fouere: "*Candidate status was granted in December 2005, and there was really a general feeling from Brussels and everything [sic] that if things go so well, and since negotiations have been opened with Croatia and Turkey in 2005, that by 2006 [Macedonia] would be able to open negotiations*" (Fouere to Cvetanoska, 26.1.2016).

The weakening of EU leverage was linked with the diminishing popularity of EU enlargement within Member States (Fouere to Cvetanoska, 26.01.2016). This resulted in decreased visibility of EU representatives in Macedonian media and public events and less emphasis on the importance of the enlargement process. According to Mr Fouere, such lack of interest and capabilities of EU representatives to deal with the political crisis in Macedonia contributed to the EU no longer being the powerful actor that it used to be in the early stages of the accession process (Fouere to Cvetanoska, 26.1.2016).

The majority of interviewees agreed that it made no sense to prevent Macedonia starting negotiations and that this was demotivating for domestic political elites and undermined the EU's conditionality mechanism.. It was very problematic that Macedonia was unable to start negotiations with the EU, as the negotiations process would have placed the country in a mechanism, in a process, that would have required further and stronger reforms (Maleski to Cvetanoska, 5.9.2014). For Macedonia, it was not an option to stand still, because if other candidates were moving forward, standing still was effectively taking a step back (ibid.). According to Ivo Vajgl, an MEP and European Parliament Reporter for Macedonia in the European Parliament:

The European solution for this stalemate is [to introduce] dynamics, and dynamics means the start of negotiations. Once Macedonia would start negotiations the mood in the country would change, and it would be more oriented to the future than to the past, so this would be the right move and the cause of the general frustration shown by the opinion polls last time, where the people care less and less for the EU and [the] European future, shows that some new dynamics need to be introduced. (Vajgl, 2014)

Yet, opening negotiations does not necessarily guarantee progress and reforms and some interviewees were not convinced that opening negotiations would have had a significant positive effect. According to Erwan Fouere:

In theory it [opening negotiations] would be a way of controlling more, but in practice I think it would probably not do much. [...] The longer they [the EU] wait for negotiations the worse it will get but I cannot conceive of the negotiations opening with a government and a ruling party which is under such serious suspicions of malfeasance or corruption. (Fouere to Cvetanoska, 26.1.2016)

Yet, according to Florian Bieber, enlargement fatigue may be even more dangerous for the democratisation process of the Western Balkans :

In the Western Balkans, overall, we can see the rise of authoritarianism that reduces the freedom of the media, and this is related to the EU's decreased interest in enlargement and in it distancing from the Western Balkans, which in turn makes elites less and less interested in enlargement. (Bieber 2014).

According to Dimova if negotiations were to open, there was at least a possibility for progress to occur, as the EU would have the option to halt the negotiations in case of any serious problems:

If negotiations start the situation will change, as the closer a candidate is to the EU the more the EU is interfering in [the] candidate's internal affairs. [If negotiations were on the table] the EU could state that if the opposition is not back in the Parliament by December, we will stop negotiations in Chapter 23 [...] This will make the citizens aware that the Government is not doing something right, because at present [the citizens] are under the impression that Macedonia's only problem is the name dispute.
(Dimova to Cvetanoska, 6.9.2014)

It is worth noting that media problems were also noted in the various freedom of media indices. In the Freedom House reports, Macedonia's rankings had decreased⁶¹ from 51st place in 2003 (World Press Freedom Index 2003) to 123rd place in 2014 (World Press Freedom Index 2014). As opening negotiations with Macedonia proved difficult, the EC decided to try and substitute accession negotiations with the so-called High Level Accession Dialogue. In the view of a platform manager working on *acquis communautaire* issues in the Government of the Republic of Macedonia, Secretariat for European Affairs:

[The High Level Accession Dialogue] is not an exclusive dialogue, as the EC has a very similar approach in the accession process with Turkey, but under a different name, which suggests that the EC introduces such instruments when in their opinion there are serious issues with the democratisation process of a candidate. (Interviewee 9 to Cvetanoska, 12.9.2014).

⁶¹ First place corresponds to the highest degree of media freedom.

The High Level Accession Dialogue was born out of the efforts to find a solution to keep the accession process going, and ‘to fill the gap’ caused by the negotiations deadlock. According to an interviewee: *“It is clear for the EC that the long wait to open negotiations is counter-productive for Macedonia and that it has serious political consequences; thus, the Commission introduced the High Level Accession Dialogue to remedy the situation”* (Interviewee 9 to Cvetanoska, 12.9.2014). Before the introduction of the High Level Accession Dialogue, the main documents for assessing success were the Accession Partnership, the Key Priorities, and the Short- and Mid-Term Priorities. Nevertheless, in the view of the platform manager from the Secretariat for European Affairs: *“The last Accession Partnership was prepared in 2008 with key priority benchmarks for Macedonia, but since then Member States have not instructed the Commission to prepare new partnerships, which is a signal that Member States’ interest is decreasing, at least for Macedonia”* (Interviewee 9 to Cvetanoska, 12.9.2014).

However, as pointed out by a number of other interviewees (Ristevska to Cvetanoska, 16.9.2014; Interviewee 17 to Cvetanoska, 18.9.2014; Dimova to Cvetanoska, 6.9.2014; Interviewee 9 to Cvetanoska, 12.09.2014), this dialogue was introduced only because the EC found itself at a dead end and had no other alternative to offer in light of the negative response to its recommendation for negotiations by the Council of Ministers. In the words of Dimova: *“The High Level Accession Dialogue was an alternative solution, and this is an unsuitable document, a substitute for the present situation in which Member States are not interested in furthering the accession process”* (Dimova to Cvetanoska, 6.9.2014).

In the view of Dimova the stalemate affected the EU’s conditionality in a negative manner: *“The conditionality mechanism has not been used in Macedonia for a long time now, and it should be clear that the High Level Accession Dialogue is not a type of conditionality”* (Dimova to Cvetanoska, 6.9.2014). It was possible for the EU to impose more pressure on Macedonia, which could be achieved through the introduction of a more intense dialogue: *“But*

there was a lack interest within the EU to impose the European agenda in Macedonia” (Ristevska to Cvetanoska, 16.9.2014). Even the European Commission pointed out that no meeting to pursue the High Level Accession Dialogue was held in 2014 (European Commission 2014: 1).

Another question is whether the Dialogue was an adequate instrument for improving corruption control prior to negotiations. For example, in the area of media freedom, an objective within the High Level Accession Dialogue was to decriminalise slander and insults, and to strengthen professional standards in journalism; concerning anti-corruption, it was emphasised that legislation against conflict of interests was to be strengthened, that the track-record in the fight against corruption would be monitored more closely, and that a new Law on Administration would consolidate the professionalization of public administration (European Commission 2012b).

Another EU-related factor was the merging of the enlargement policy with the Neighbourhood policy, and the weakened role of the European Commission. According to Dimova: *“The fact that the EC for five years has been recommending for negotiations to be open, but without success, signals that the EC influence as to enlargement is weakening, and that the main decision-making power is still in the hands of the Member States”* (Dimova to Cvetanoska, 6.9.2014).

Commissioner Stefan Fule (2014) said that the accession process of Macedonia towards the EU had reached an impasse, and he expressed concern over the country’s stagnation. Negotiations, as the next step in the accession process for Macedonia, would require a stronger commitment to eradicating corruption; hence, the opening of negotiations was a prerequisite for re-introducing the EU’s enlargement conditionality in Macedonia. The European

Parliament (in its Resolution on Macedonia's Progress Report (2013)) also reiterated its call to the Council to set a date for the start of accession negotiations and stressed that *"bilateral issues should not be resorted [to] in order to hinder the EU accession process"*. The Commission reiterated its recommendations for opening negotiations in 2014 confirmed that the limited progress being made was sufficient for the country to start the next step in EU integration.

As of 2015, there was no EU consensus on Macedonia opening negotiations⁶². In the view of an interviewee from the Delegation of the European Union in Macedonia: *"It is uncertain whether the EU will be capable of targeting the real problems, whether the EU will be bold and smart to solve the problems, or whether at the end everything will come to a political decision"* (Interviewee 17 to Cvetanoska, 18.9.2014).

5. Domestic adoption costs

The following section concentrates on the specific domestic costs in Macedonia. Domestic adoption costs have a distinct characteristic when compared to the size and speed of rewards, the credibility of threats and promises, and the determinacy of conditions. The later three were set out by the EU, and were dependent on and controlled by the EU. That is, the EU sets the conditions, the EU decides on whether or not (and how much) to reward a candidate, and the EU decides whether and to what extent to execute a threat for non-compliance. In contrast, the size of the domestic costs was out of the EU's direct range of control. Moreover, it was the aim of the EU to decrease the size of such domestic costs, as lower domestic costs suggested that domestic political elites would be more inclined to fulfil the accession criteria and join the EU. Therefore, the main argument of this section is that in cases where the domestic costs are too

⁶² The country did get a negotiations date in 2020 but this occurred after the cut off date for this thesis, so it is beyond the scope of this research.

high, EU enlargement conditionality has limited powers. This is because domestic political elites will benefit more from maintaining the status quo than from progressing with the accession process.

It was expected that the impact of EU conditionality on the control of corruption in post-communist states would be dependent upon domestic factors within a particular state. In other words, there is no causal relationship between the EU and control of corruption scores in CEE and specific domestic conditions in different countries are decisive for the success (or lack of it) as regards the control of corruption. The main focus was on the specific domestic circumstances in Macedonia that affected the domestic control of corruption, and on how costly was it for domestic political actors to adopt and implement EU anti-corruption requirements.

The legitimacy of EU leverage was challenged by issues that impacted on national sovereignty and the identity of candidates, and rent-seeking political elites took advantage of such issues (Vachudova 2014: 124). The main assumption of conditionality is that governments behave rationally, and this is also assumed for the control of corruption: if the benefits of corruption exceed the benefits of not being corrupt then rent-seeking elites will have no incentive to control corruption. This is where the prospect of EU membership could have a potentially significant impact. Namely, if the importance of successfully controlling corruption in Macedonia is secondary for the EU, that is, if political elites understand that they can further progress the accession process by introducing piecemeal efforts, then the control of corruption is likely to be limited. Moreover, even if the control of corruption is a priority for EU accession, and the EU expects implementation of its requirements before a country accedes, in a candidate country with serious corruption problems, where it is to be expected that the benefits of joining the EU are not an incentive to effectively control corruption, then there will be no point in political elites striving for membership. Finally, if anti-corruption requirements are not appropriate to effectively tackle corruption, there are a number of dangers that will hinder anti-

corruption efforts. Consequently, the interest of political elites to pursue serious and sustained attempts to effectively control corruption, as well as their interest in Macedonia joining the EU, was very important for the country's success in controlling corruption.

It has been established that, generally, Macedonia had a good normative and institutional framework for controlling corruption. Yet, according to Ristevska, the institutional framework in Macedonia did not function in practice as intended:

In Macedonia, the focus is on petty corruption, whereas the bigger picture is overlooked; there is maybe less petty corruption, or there is less coverage of corrupt acts in the media, but there are problems with high-level, political corruption and corruption in the electoral process. (Ristevska to Cvetanoska, 16.9.2014)

The question to be answered is whether EU conditionality impacted the country's ability to control corruption. Moreover, whether the name dispute reduced the impact of the EU's carrot and stick system to influence domestic elites is examined here. When asked whether the name dispute was used to maintain the status quo in Macedonia, Erwan Fouere answered:

[H]e [Gruevski] is using it [the name dispute], there is no doubt about it. I mean the name issue for him [Gruevski] is a very convenient scapegoat, a smokescreen in carrying out whatever he [Gruevski] wants, and whenever people blame or complain about the problems of delaying the accession process, [the answer is] no, no it is not me, it is the name issue. (Fouere to Cvetanoska, 26.1. 2016)

As several other interviewees pointed out:

It is clear that there is no political will, and it is possible that [Macedonia] is caught up in a vicious circle where there is stronger will to be corrupt, than to join the EU,

and politicians seek to abuse the present situation as much as possible.” (Maleski to Cvetanoska, 5.9.2014)

The open question with the name is suitable for the government, as the ruling party wishes to maintain its power for as long as it is possible.” (Ristevska to Cvetanoska, 16.9.2014)

The excuse is that Macedonia cannot open negotiations due to the Greek veto, but this has been used to completely colonise the state and institutions, and transform them into a clientelistic mechanism for winning elections and maintaining power.” (Ordanoski to Cvetanoska, 16.9.2014)

Despite the name dispute, many benchmarks and criteria needed to be fulfilled for the country to improve its democracy and democratic values (Interviewee 9 to Cvetanoska, 12.9.2014). The only mechanism in the hands of the EU was to impose penalties, and it was clear that the EU was avoiding this at all costs (Ristevska to Cvetanoska, 16.9.2014). At that point in the accession process of Macedonia, the EU was unable to do much more unless negotiations were open, which would have introduced additional requirements with clearer goals (Fule to Cvetanoska, 12.5.2015; Dimitrioski to Cvetanoska, 10.9.2014). Finally, “*standing still while other Western Balkan countries were going forwards was equivalent to moving backwards*” (Ristevska to Cvetanoska, 16.9.2014), because “[t]he practice of blocking the opening of the negotiation process, could potentially stalemate the reforms that Macedonia is expected to carry out under the National Programme for Adoption of the Acquis” (Markovski 2014).

6. Analysis

6.1. Determinacy of the conditions

Problems with the determinacy and appropriateness of the anti-corruption criteria, although slightly different from previous enlargements, remained during Macedonia's accession. For corruption control, in particular, the data presented in the previous sections suggests that the criteria were generic and formalistic, without requirements for specific measures to improve implementation. This was because the EU kept focusing on the adoption of legislation and a requirement for the introduction of measures that lacked depth and substance. Yet, the adoption of laws does not necessarily guarantee success in corruption control, and this is where the main problem with the EU anti-corruption requirements lay. What is more, when problems were identified requirements for additional legislation and technical improvements followed as a way of addressing the problems.

This had a negative impact on the domestic control of corruption as it focused on structural and technical issues. Forming an institution or equipping a building is, in itself, not sufficient for corruption control and may have given the impression of false success. The adoption of laws and the introduction of new institutions, in other words, may have been considered a 'success' even if their implementation was lacking. As interviewees suggested, the fact that a relevant anti-corruption institution, such as the SCPC, was established could hardly be considered a success, as the institution did not de facto contribute to improving corruption control in Macedonia.

Moreover, the inappropriateness of the anti-corruption measures suggested by the EU is illustrated in the findings and recommendations for improvements in the Progress Reports. The Progress Report were criticising the SCPC for being under political influence but were suggesting for awareness measures, improved IT connectivity and a central register of public officials to be introduced as a response. Needless to say, that these measures are unlikely to

resolve the severe interference by the government in the SCPC and the focus of the EU on improving the capacity and technical abilities of the SCPC did not address the core problematic issue of the institution: its independence and impartiality.

Clarity in the criteria existed with regard to which laws needed transposing and/or improvements, and as shown in this chapter, Macedonia managed to build an impressive anti-corruption legal framework. Implementation, however, was little affected by these legal changes. The EU did not shift its focus from harmonisation to implementation in practice and continued to emphasise the need for legal amendments, the formation of institutions and technical support. One of the reasons for this was the difficulty in measuring success in corruption control whether a law is adopted or an institution formed is not difficult to assess, but how effectively that law is being implemented in practice is very difficult indeed.

Furthermore, the data examined suggests that EU used very soft language when it spoke about serious forms of corruption in Macedonia, such as electoral corruption, and corruption and conflicts of interest within the political elite. This further limited its possible influence. The ‘mild’ language of the EU undermined its credibility in its progress reports and conclusions about Macedonia’s improvement. Also, the soft language of EU representatives (see below) about progress in Macedonia potentially risked undermining the progress achieved with regard to corruption control and the overall democratisation of the country. Such soft language in light of the problems that Macedonia faced in controlling corruption sent a message to political elites that progress was achievable by partial efforts. This further affected the control of corruption and hindered the country’s accession process.

The overall limited progress in the WGI further suggests that any effect that the EU could have had on the country’s control of corruption was mainly limited to the introduction of anti-corruption legislation, with little impact on its enforcement in practice. Nevertheless, the country was granted candidature status in 2005, which indicated that limited control of

corruption was not the primary concern of the EU at the time. However, after the European Commission raised concerns about this in its Progress Report of 2009, amendments to the Law were introduced., which illustrates the success of the EU's enlargement conditionality when it comes to the adoption of anti-corruption legislation.

Although anti-corruption laws and policies provided a framework and a basis for operating, it was their proper implementation that was crucial for the successful control of corruption. In practice, the situation had not changed much since the Progress Report of 2008.⁶³

Macedonia's struggle with the implementation of anti-corruption reforms further suggests that the EU's impact on the country's control of corruption was limited to the introduction of anti-corruption legislation, with little impact on enforcement in practice.

Vachudova (2014: 124) suggests that problems with the rule of law and the control of corruption have been predominantly addressed indirectly through the existing *acquis communautaire*, and the EU had little experience and expertise in using its leverage in these areas. As a result, the EU's impact was limited to the adoption of laws.

The criteria imposed by the EU to improve corruption control allowed for discretionary actions by candidates and did not include specific criteria for measuring implementation of the rules to be adopted by candidates. As a consequence, the EU had some influence on anti-corruption policy in Macedonia, but the influence was exhausted at the formal level, whereas actual implementation remained a problem.

⁶³ The year 2008 was a turbulent one for Macedonian politics. Greece vetoed Macedonia's entry to NATO and early parliamentary elections were held after the assembly voted to dissolve itself. The Internal Macedonian Revolutionary Organisation won the elections against the Social Democratic Union. Additionally, in 2008, the Council of the European Union set key priorities for Macedonia in the EU accession process, including the implementation of anti-corruption legislation and reform of the judiciary (Council of the European Union 2008). The newly elected government announced its commitment to effectively tackle corruption. Nonetheless, the limited progress in the implementation of these laws in practice remained a serious reason for concern.

6.2. Size and speed of rewards and credibility of threats and promises

This section explains whether the EU enlargement conditionality had a limited effect on the control of corruption in Macedonia. Based on the data presented in the previous section the conclusion that the main focus of the EU in the Macedonian case was on stability and that all other goals were secondary to the above. Interviewees suggested that ensuring political stability was more important than the fight against corruption with the most important condition that contributed to the candidacy status of Macedonia being the implementation of the Ohrid Framework Agreement (Misev 2014: 143). In other words, stability had supremacy over issues such as the rule of law and the fight against corruption.

As long as the control of corruption was a secondary priority for the EU, conditionality in this area was limited. Thus, the danger of adopting temporary solutions without long-term impact, with the possibility of backsliding after accession, was a real threat for new candidates.

Finally, the inconsistency of the credibility of threats and promises weakened the EU's conditionality in the pre-accession process (Vachudova 2014: 214). This raised the question about the consensus between Member States to further the accession process for a specific candidate. When considering how the EU applied its "carrot and stick" tool in the Macedonian case, the data suggests that the EU lost its leverage for influence and its credibility due to the name issue in Macedonia, and it was arguably softer in its evaluation of the country's success in the fulfilment of the political criteria.

The name dispute resulted in diverting the focus away from the main problems with corruption, which in this case was political corruption, by focusing on technicalities and law adoption without appropriate implementation in practice. Therefore, on account of the shortcomings of the instruments for measuring progress, it was crucial to open negotiations, as opening negotiations would in all likelihood have increased the bargaining power of the EU. Opening accession negotiations may have allowed the EU to increase its credibility, because the practice

of being tolerant towards Macedonia in order to maintain the recommendation for negotiations would have diminished once negotiations were about to start.

Nevertheless, as the political situation started to deteriorate in Macedonia, coupled with the Greek veto, so did the EU'S efforts to move the accession process to the next level, that is, negotiations. Amongst the reasons for this was the whole issue of the credibility of the EU enlargement process. This brings the discussion to the effects of the political squabbles and the EU' reluctance to open accession negotiations with Macedonia. Negotiations could have potentially strengthened the EU leverage compared to the status quo, which resulted in a deadlock and a stalemate that hindered the reforms achieved so far. Weak corruption control, coupled with the argument that the EU did not have an interest in moving ahead in the accession process with a country that failed to implement the Copenhagen criteria, answers this question. This may have strengthened the impact of EU conditionality which is according to Borsel and Risse (2007) is the strongest at the start of negotiations and the EU may be able to positively influence of domestic circumstances. Yet, the name dispute prevented this.

Nevertheless, the European Commission's efforts to introduce the High Level Accession Dialogue were a way of prioritising problems and initiating a dialogue for improvement, however, the data suggests that the possibility of the effectiveness of such an instrument was very limited. The Dialogue was an ineffective tool as it could not substitute the power that the conditionality tool was able to offer. A 'carrot and stick' logic is not functional if the 'carrot' does not actually exist. If the EU is not able to offer a reward or the possibility of a reward then it throttles its own potential to influence a candidate country. Even the High Level Accession Dialogue, which was the only tool at the EU's disposal for influence, regardless of how limited its powers might be, was not maintained and used as a potential tool for applying pressure: no meeting 2014. This further supports the argument that Macedonian accession was not high on the EU agenda.

A second issue with the High Level Accession Dialogue (as it was with a number of the anti-corruption requirements of the EU) was that it was not ambitious enough. These reforms were, overall and predominantly, focused on additional legislation and on the introduction of a monitoring system, without highlighting the need for progress in practice. It is worth noting that this argument further supports the claim that the EU's influence was mainly focused on improving the legislative framework as argued earlier in this chapter.

Furthermore, the accession of Bulgaria and Romania seriously undermined the credibility of the EU's conditionality in the fight against corruption. Granting politically motivated membership to countries with serious corruption problems sent a message that an effective fight against corruption was not the main 'ticket' for entry to the EU. If other political criteria were fulfilled, there was a possibility for the EU to grant membership, regardless of anti-corruption progress. This undermined the legitimacy of enlargement conditionality and directly affected the control of corruption. Lacking effective anti-corruption progress may not have been perceived as a principal threat of denying accession by candidates and could therefore have had a demotivating effect on political elites to address this problem. Moreover, the Enlargement Policy was merged with the Neighbouring Policy which according to interviewees sent signals that enlargement was not a priority for Member States.

The fact that the Commission reiterated its recommendations for opening negotiations in 2014 confirmed that the limited progress being made was sufficient for the country to start the next step in EU integration. However, the reason for postponement of the negotiations' start date was not only and primarily a consequence of the existing problems with corruption, but also of the inability to resolve the name dispute. This sent a message that enough was already being done in the fight against corruption to achieve the next stage of accession, which had a negative effect on additional progress. In other words, the adoption costs for further anti-corruption measures were higher than the actual benefits of introducing reforms. This made it very

unlikely that ruling elites would introduce further substantial efforts to fight corruption before opening accession negotiations.

The Commission and Parliament recommending the opening of negotiations reaffirmed the message that the stagnation of Macedonia was not a result of its lack of anti-corruption progress. Still, having in mind the aforementioned issues regarding controlling corruption in Macedonia, one might ask why the EU recommended negotiations in the first instance. In fact, even though the Progress Report for 2014 recapped the importance of opening negotiations, it emphasised that the name dispute was not the only problem that the country faced and pointed to numerous problem areas.

Based on the above discussion a number of points need to be raised. First, the fact that the EU would regain its leverage once negotiations started did not by default guarantee that this leverage would be successful in improving the control of corruption in practice. In other cases, the EU's conditionality had not been questioned and undermined by bilateral issues, yet success in controlling corruption varied greatly among CEECs. Therefore, it should not be assumed that opening negotiations would guarantee improvement. The danger that the EU would continue to focus on anti-corruption legislation as opposed to implementation still persisted.

Second, previous enlargements had proven that a direct focus on anti-corruption measures resulted in limited success, as many CEECs relapsed to old 'corrupt' practices in the aftermath of EU accession. Therefore, the EU should arguably have concentrated on improving the domestic factors that were important for the control of corruption, instead of focusing on anti-corruption requirements that, more often than not, lacked appropriateness, clarity and tools for measuring progress and success.

Third, if the EU wanted to be effective then it should have made the effective control of corruption a top priority, equal to security and stability. Regardless of the EU's rhetoric on the importance of the effective control of corruption in candidates, if granting the start of

negotiations or actual accession is based on political decisions, without taking into serious consideration candidates' ability to control corruption, then governments' efforts are likely to remain superficial and further backsliding is expected to occur.

6.3.Domestic adoption costs

Macedonia had serious problems with corruption that were not adequately addressed during the accession process. The data suggested that in the Macedonian case, initiatives for controlling corruption predominantly targeted lower governmental levels. This allowed for the source of corruption at the top levels of government to remain unaffected. In such an environment of state capture, political elites have little interest in controlling corruption or joining the EU. The costs of joining the EU and decreasing corruption were too high for domestic rent-seeking elites. In such an environment maintaining the status quo is beneficial for a government that is more interested in sustaining its power and control over state institutions, as opposed to opening negotiations and being exposed to further scrutiny and screening, by both the EU and its electorate.

The loss of credibility was additionally abused by the government whose domestic political costs were too high to introduce measures to effectively control corruption. The name dispute was misused by the Government as an excuse, but, in fact, there was a lack of domestic political will to join the EU. Yet, as the data suggests, the name dispute was not the only problem for Macedonia. In Macedonia the real problems were neglected and the name dispute was used as an excuse. The country demonstrated that it lacked the capacity and interest to further the accession process. As to the control of corruption, the lack of progress was evident in the shortcomings in the election of the members of the State Commission for the Prevention of

Corruption and in the interference in their work; in the significant decrease in the freedom of media; and in the politicisation of the public administration.

As a consequence, the domestic costs for Macedonia were very high for the government. The general consensus was that the EU had the ability to impose benchmarks and requirements to encourage progress by candidates. Yet, within the peculiarity of the Macedonian case, this could not work because, even if all the required benchmarks were fulfilled, the EU could not guarantee progress in the accession process. The high domestic costs were additionally complicated by the EU's inability to have any influence over the control of corruption.

Overall, in the case of Macedonia, the core principle of bargaining was disturbed and distorted and the EU could not exercise its enlargement conditionality, at least not in the sphere of anti-corruption. In other words, the EU had nothing to offer Macedonia so it could not really bargain. In this case, the 'illiberal pattern' as defined by Vachudova (2007) was present and, as a result, EU conditionality could not be successfully applied, even if the bilateral issue with Greece was not an obstacle to the integration process of Macedonia. Furthermore, the adoption costs for Macedonia were too high since the country followed this illiberal pattern and domestic political elites found the costs of effective control of corruption to be too great to pay. If the EU can offer the 'carrot' but domestic elites are not interested in what the EU has to offer, then there are no grounds for bargaining at all, so the core assumption of the external incentives model falls apart.

7. Conclusion

The main argument of this chapter is that EU conditionality had a limited role in the control of corruption in Macedonia. It has been established that, generally, Macedonia had a normative and institutional framework for controlling corruption. Yet, the institutional framework in

Macedonia did not function as intended. The reasons for the limited impact have been explained in this chapter by using the determinacy of the conditions, the size and speed of rewards, the credibility of threats and promises and the size of the adoption costs, that is, the four factors of the external incentives model. The general argument is that: (a) EU anti-corruption conditionality was limited to the adoption of legislation (b) EU anti-corruption conditionality was distorted in the case of Macedonia due to the EU's inability to use the 'carrot and stick' approach which is essential for conditionality; and (c) for domestic political elites the benefits of furthering the accession process did not surpass the size of the adoption costs. Macedonia had the necessary institutional and legal framework to control corruption, yet its implementation was limited and uneven. The EU had a determining role in the adoption of laws and in the creation of institutions, and it was here where the impact of the EU was identified. The EU's main emphasis was on the formal – on creating institutions and adopting laws – and limitations in implementation did not invoke threats or punishments by the EU. This chapter has argued that this limited influence was related to the lack of determinacy of the anti-corruption criteria of the EU. The EU anti-corruption criteria lacked clarity and appropriateness and were not tailored specifically to Macedonian circumstances. The anti-corruption criteria were determined very generally, and limited progress was often met with very mild criticism. The limited impact also related to the secondary importance of success in controlling corruption over other issues, such as stability, security and multi-ethnic relations. The secondary importance of success in the control of corruption, combined with the lack of interest by EU member states to further the accession process, further limited the scope of enlargement conditionality.

Furthermore, the credibility of enlargement conditionality was another issue in the case of Macedonia. The name dispute with Greece stalled the accession process of Macedonia and limited the EU's credibility regarding threats and promises and the ability of the EU to promise

rewards upon successful completion of anti-corruption reforms. The European Commission's recommendations to open negotiations were not taken into consideration for five consecutive years, which signalled that the EU was unable to deliver on its promises, and this completely distorted the credibility of the conditionality mechanism. In such a situation, the size of the domestic costs for political elites combined with the lack of rewards for fulfilling the accession criteria contributed to their loss of interest in furthering the process.

Finally, the size of the adoption costs was crucial. Macedonia followed an illiberal pattern and was owned by a few political elites who exercised control over institutions such as the judiciary and the media, thus the domestic costs for joining the EU were likely to be very high for those elites who would prefer to maintain a state captured for their own interests. As a result, domestic political elites found the costs of effective control of corruption to be too high. If the benefits of corruption exceed the benefits of not being corrupt, rent-seeking elites will have no incentives to control corruption, hence, it is simply not in their interest to engage in substantive anti-corruption reforms. When a country faces serious problems with political corruption, political elites have little interest in controlling corruption or joining the EU. The costs for joining the EU and decreasing corruption were too high for domestic rent-seeking elites. In such an environment maintaining the status quo was beneficial for the government, which was more interested in sustaining its power and control over state institutions, as opposed to opening negotiations and being exposed to further scrutiny and screening by both the EU and its electorate.

In summary, opening negotiations with the EU, especially with the new approach towards chapters 23 and 24, which brought the issues of corruption and the rule of law to the forefront of the accession process, would have given the government an opportunity to improve corruption control. Ruling elites would have been scrutinised for their actions both by the EU and the electorate. Consequently, the EU might contribute to improving corruption control in

Macedonia by aiming to improve the factors that contribute to the particularistic environment and by rewarding the country only after specific requirements are met.

Chapter Six: The EU's anti-corruption enlargement conditionality in a comparative context: have the criteria evolved over time?

1. Introduction

The previous three chapters examined the role of the EU in corruption control during the accession processes of the Czech Republic, Romania and Macedonia. The purpose of this chapter is to compare the different trajectories of the three cases. It will examine whether the EU's anti-corruption conditionality evolved over time and, if so, in what ways. It will also assess how important anti-corruption requirements were in the accession process, i.e. whether accession depended on the fulfilment of anti-corruption requirements, or on some other criteria. Finally, this chapter will examine whether domestic circumstances differed from case to case and, if so, whether these differences had an impact on the EU's anti-corruption conditionality. This chapter initially analyses how clear the criteria on anti-corruption were, whether they differed from case to case and if they were suitable for effectively controlling corruption. By comparing Macedonia to the Czech Republic and Romania, I reiterate the argument that corruption was not a core determining factor during the accession process of the Czech Republic. It was to an extent for Romania, but things changed for Macedonia's accession. Furthermore, this chapter looks at the size and speed of rewards and the credibility of threats and promises. It examines if candidates were rewarded after anti-corruption conditions were fulfilled and, if so, whether were they rewarded correspondingly and in a timely manner. How credible was exclusion from the accession process if candidates were lagging behind in anti-corruption progress? As before, I use the empirical chapters to summarise the main developments in the three cases and to compare the similarities and differences between them. The main argument in this section is that the EU misused its conditionality mechanism and that this could have affected the control of corruption more substantially in all three cases.

Finally, before summarising the main findings, the chapter compares the domestic costs in the three cases. It analyses how important EU accession was in each case, and whether it was more important for domestic political elites to join the EU, or to maintain the status quo. It illustrates the importance of domestic costs and argues that the EU could have done much more in cases where the domestic costs of joining EU were a priority for domestic political elites. Also, it shows that when the domestic costs were too high for political elites, corruption control was impossible for the EU.

2. Determinacy of conditions

The findings suggest that the anti-corruption criteria were not sufficiently clear and were not suitable to effectively control corruption in the cases examined. In the Czech case, the EU did not have a specific anti-corruption strategy. This was because the control of corruption was not at the core of the Czech negotiations, and the EU's accession requirements were characterised by inconsistency, a lack of expertise and a lack of focus on effective corruption control (see Chapter 2). Corruption was not an issue during the enlargement process, and it never threatened the accession process: *"It [control of corruption] was not at all part of the requirements"* (Telicka, Chief negotiator of the accession process for the Czech Republic and Member of the European Parliament, 13.2.2015).

In the view of Jiri Pehe, political analyst and director of the Political Cabinet in the office of the Czech President, Vaclav Havel:

Definitely, there were, on the one hand, mechanical efforts to harmonize laws without really paying much attention to what it meant content wise, and there were some specific issues related to corruption, which of course had some influence [...] [U]nfortunately, the Czech political elites have done their best to avoid the impact of some of those efforts, the most prominent of course is the Civil Service Law, which was adopted by the Czech Parliament in 2002 under pressure from the EU because it was one of the conditions for membership, but then immediately after gaining membership, Czech politicians managed to postpone the [implementation of the Law]. (Pehe to Cvetanoska, 27.10.2014)

For the first enlargement wave, the main emphasis was, overall, on consolidation and democratisation processes. That is not to say that the EU did not make any efforts to improve corruption control in the Czech Republic, but these efforts were limited both by the EU's lack of regulations and experience in anti-corruption, as well as by the time constraints from the joint accession process of ten countries, and the lack of synchronised tools for measuring success in the sphere of anti-corruption. Interviewees raised similar concerns:

[T]heoretically it was accessed, and obviously if things were really bad that would slow down the negotiations, but as an issue, as corruption as such, it was not part of the negotiations, because what you negotiate was, not only was but is, that you try to prove progress in transposing the legislation and you need to be convincing in the implementation record, and here there is no legislation on corruption in the EU, so you are not transposing that legislation [...] [There is] an obligation that you need to transpose a part of legislation but you might prove based on concrete evidence that you can't make it by the time of accession, so you negotiate a transition period, during which, for a certain period of time after becoming a member, you can still apply your national legal norms in that area, which are not compatible with the acquis, but as I say there was no legislation on corruption, so the issue as such was not part of the negotiations. (Telicka to Cvetanoska, 13.2.2015)

I don't think that the EU put too much pressure on the Czech Republic in areas where it should have in my opinion and this could have made some difference, such as insisting on more transparency in the Czech Republic in administering public tenders, and spending public money. (Pehe to Cvetanoska, 27.10.2014)

In comparison, Romania's accession process, at least in regard to anti-corruption requirements, was somewhat different. After the 2004 enlargement, EU conditionality in the sphere of anti-corruption evolved. In the Czech case, corruption was never a serious issue that might have threatened the accession process and it was not at the core of the negotiations, but the same could not be said for the Romanian accession. According to Leonard Orban, Chief Negotiator for Romania:

There were several conditions and I remember that for the first ten countries there were no conditions, no additional conditions between the moment of closing the accession negotiation process and the moment of joining the EU. There were no conditions, while for Bulgaria there were conditions, but to be defined based on unanimity of the Member States, there was the possibility of postponing the accession of Bulgaria for one year, but only based on a decision, a unanimous decision of all Member States. For Romania, there were 11 conditions. (Orban to Cvetanoska, 21.10.2015)

By 2002, Romania's accession had been postponed for three years, with the option for a further delay of one additional year if anti-corruption requirements were not satisfactory. Nevertheless, the control of corruption remained a serious problem during Romania's accession process and criticisms were very often raised, specifically about the lack of implementation of newly introduced reforms, and on reversing newly enacted laws (Gugiu, 2012).

As in the Czech case, in Romania, problems with corruption were mainly addressed through the political criteria for accession, as a chapter on judiciary and fundamental rights, where the issues of corruption and judicial reform were tackled, was only introduced for later enlargements. As part of the *acquis*, corruption was mainly addressed in the chapter on cooperation in the field of justice and home affairs, but this chapter did not provide complete coverage of all corruption-related problems. What is more, as previously explained in the introduction, the Copenhagen political criteria for accession, including those on tackling corruption, were to be fulfilled before opening negotiations. However, it is evident from the cases of the Czech Republic and Romania that this did not happen in practice. In the case of the Czech Republic, negotiations were opened shortly after the country was granted candidate status, and both fulfilment of political criteria and negotiating chapters occurred during the negotiation phase. Romania waited a bit longer to open negotiations, but negotiations were also opened before significant progress in fulfilling the political criteria was made, at least in the sphere of anti-corruption. Again, this suggests that the EU did not use its conditionality to the fullest potential and furthering the accession process in both cases depended on other, political, reasons, rather than on success in controlling corruption.

The anti-corruption criteria for Macedonia also lacked clarity and consistency and were often inappropriate to deal with the problems in controlling corruption effectively. In other words, the EU had a 'checkbox' for success, which often failed to bring to the surface the real problems with corruption, and appropriate mechanisms for tackling them. As pointed out before (see

Chapter 4), the EU had very vague criteria on corruption to begin with and the main emphasis was on the adoption of laws, rather than on their implementation (see Chapter 4). It failed to address problems such as institutions being captured by the state, and it kept emphasising the importance of measures for raising awareness, or strategic planning (see Chapter 4).

As explained in the introduction to this thesis, there are two types of criteria related to the control of corruption during the accession process: democratic criteria related to anti-corruption and the rule of law, and *acquis* criteria. To progress to the negotiations stage, a candidate was expected to sufficiently fulfil the democratic criteria. The European Commission, through the Regular/Progress reports, assesses whether these criteria have been fulfilled or not, and based on that assessment it may recommend the opening of negotiations. However, as is evident from both the Czech Republic and Romania cases, the democratic criteria, especially in the sphere of anti-corruption, were only partially fulfilled. The EU did not use the crucial moment of opening negotiations to ensure fulfilment of the Copenhagen criteria, particularly those referring to the stability of institutions guaranteeing democracy, the rule of law and human rights. When negotiations were opened, the country did not even have a law for preventing and punishing corruption. Moreover, the Regular Report preceding the opening of negotiations noted corruption was a widespread problem in Romania and contained very serious negative criticisms by the European Commission (see Chapter 3). In this case, both for opening and closing negotiations, success in controlling corruption was not a priority, as the country was in both instances rewarded with progress despite rampant corruption being present, both grand and petty.

However, a distinction in the approach for tackling corruption can be distinguished between the Czech and Romanian cases. In the view of the senior official, from DG Near-Neighbourhood and Enlargement Negotiations, European Commission:

First of all, the importance of corruption grew over the years. And, second, the situation in Romania and Bulgaria was worse than in any of the ten others [referring to the

countries in the 2004 enlargement wave, including the Czech Republic]. However, I would not say that it justifies that we have been so lenient on corruption with the others or on other rule of law things. Honestly, I think that by being quite lenient, and also not having the tools, I mean we did not have Chapter 23 with Hungary or with Poland, and I am convinced that if we had had that at the time we would not have had the problems that we have now with these countries on the rule of law. (Interviewee 1 to Cvetanoska, 18.1.2016)

This suggests that the anti-corruption requirements for the 2004 enlargement wave were less strict compared to the later enlargement rounds, which supports both the statement that EU anti-corruption conditionality has evolved over time, as well as the statement that the EU did not use its conditionality tool to its fullest potential during the Czech accession.

After the accession of Romania and Bulgaria, the situation changed further. In the view of Mr Leonard Orban:

During the negotiations on Chapter 24 Justice and Home Affairs, the subject was raised very often but there were no clear, at that time, benchmarks concerning what does it mean to fulfil to accede to [the] EU. The subject was discussed in detail, there were many debates, but there were no, like this [sic], like today, clear benchmarks concerning the fight against corruption, and concerning other aspects. Now, there are benchmarks for opening the chapters, there are benchmarks for closing the chapters, but at that time there were no such things; however, the negotiation was extremely difficult. (Orban to Cvetanoska, 21.10.2015)

What is more, this thesis illustrates that even though the EU tried to impose stricter criteria during the accession of Romania, this was still not sufficient to tackle corruption during the country's accession, and Romania joined the EU despite corruption being a serious problem. After the Czech accession, several laws were revoked, or not implemented, as per pre-accession agreements. This suggests that the EU had not learnt from its previous mistakes, and the most comprehensive criteria for controlling corruption in the case of Romania were only introduced after negotiations closed. Even though there was an option to postpone the Romanian accession for one year, from 2007 to 2008, there was no further threat to completing the accession process, regardless of fulfilment of the additional criteria. In other words, regardless of what happened, Romania was going to become an EU member by 2008 at the latest. This is an excellent example of how the EU undermined the power of its own conditionality and limited

its ability to influence further change, where needed. Even though the EU imposed a Cooperation and Verification Mechanism on both Romania and Bulgaria in an attempt to improve the state of issues that were not sufficiently resolved during the accession period, which among others, in both cases, included the issue of corruption, these mechanisms had limited effect, due to the limited threats and punishments at the EU's disposal after accession (see section 2).

Compared to the Czech Republic and Romania, the accession of Macedonia is a different story. After the 2007 enlargement, the EU accession criteria, especially with regard to the control of corruption and the rule of law, evolved further. This was reflected in both the expectations of the EU on the level of the preparedness of candidates before negotiations were opened, as well as on the further emphasis on rule of law and anti-corruption reforms after opening negotiations. Compared to Romania and the Czech Republic, Macedonia was much better prepared to tackle corruption, especially with regard to the existence of relevant legislation and the formation of anti-corruption institutions. The country adopted a Law for the Prevention of Corruption in 2002, formed the State Commission for the Prevention of Corruption and started working on police and judicial reforms around the time it was granted candidate status. Therefore, when the European Commission suggested that Macedonia open negotiations in 2009, the country did at least have a solid legal anti-corruption framework and basic institutions in place. This was not the case with Romania and the Czech Republic, neither of which had even a basic legal anti-corruption framework at the time of opening negotiations. This supports the previous argument about the evolving character of the EU's anti-corruption conditionality. This suggests that after the second CEE enlargement in 2007, lessons were learnt and a lot more pressure was applied, and expectations made of candidates. As former European Commissioner for Enlargement Stefan Füle said:

Very often in the past [...] we have not been able to fully accommodate the accession process to the requirements of the transportation countries. [...] For Member States

never before faced a situation like the one in Bulgaria and Romania where, at the end of the road, there were still some commitments and tasks not met and done. The Croatian case has clearly shown that this new approach to enlargement is working because Croatia is without a CVM mechanism, and Montenegro is the first one, together with Serbia, the first country going through the full cycle of the new, so-called soft acquis approach, for core transformation of CEE, which includes the extremely important part of the fight against corruption. (Fule to Cvetanoska, 14.5.2015)

The additional pressure on candidates to deliver on reforms prior to accession is also evident from the so-called 'new approach'. The new approach on EU enlargement was introduced in December 2011 for the accession of the Western Balkans. The aim of this approach is to put the issues of corruption and the rule of law, judiciary and fight against organised crime specifically, at the forefront of the negotiations process (EC 2013). Namely, the chapters on judiciary and fundamental rights and on justice, freedom and security will be opened early in the negotiations and will be the last ones to close. By extending the timeframe of the negotiations and introducing a range of benchmarks for Chapters 23 and 24, the aim of the new approach was to set up specific requirements for candidates and speed up reforms related to justice, freedom and security, including fight against corruption. The Commission also introduced interim benchmarks for Chapters 23 and 24 and conditioned the progress of the negotiations overall to the progress of these two chapters (Gateva 2015: 18). Also, with the new approach, the European Commission has demonstrated greater awareness towards the different domestic circumstances in candidates. Moreover, chapters were to be only provisionally closed pending a final decision at the end of the negotiations process, which was again inked to progress achieved in Chapters 23 and 24 (Gateva 2015: 18).

The new approach involves an explanatory screening meeting, that is, screening of key rule of law chapters (EC 2012d). The aim is to present the EU legal framework in the given chapter to the candidate country and flag up crucial aspect of EU law (Bozovic 2015). The candidate country prepares a so-called bilateral screening and at a meeting representative of the candidate country present the national legal framework relevant for the specific chapter, including

information of the level of harmonisation with EU law and the areas that need further acquis alignment (Bozovic 2015: 20-21). This is followed by an assessment of the candidates legal framework and recommendations for further improvements – screening report, which is used by the Council of the EU when determining whether a candidate is ready to start negotiating a specific chapter, and in the case of a positive decision, opening benchmarks are produced by the EC which are to be met for a chapter to be opened (Bozovic 2015: 21-22).

The new approach has already been introduced for the accession of Montenegro and Serbia however the negotiations process has been further amended in 2020 for the accession of Macedonia and Albania, following a French veto on opening negotiations with these two candidates in 2019 despite positive recommendations from the EC (Cvetanoska 2019). The further amendments to the approach are aimed at further strengthening the negotiations process so as to make sure that candidates deliver on the reforms promised, and allow for backtracking, that is – chapters being reopened if valid concerns are raised (European Parliament Think Tank 2020). These ongoing improvements of the negotiations process suggest that enlargement criteria are fluid and keep evolving with the accession of new candidates.

Also, the EU initially did not have a framework for measuring success. However, over time, and especially after the European Commission became part of the UNCAC, the gap closed somewhat. In the view of the senior officer from DG-Near, there are two main differences, one methodological and one substantive, in the way the EU has approached the control of corruption since the 2007 enlargement:

...the UNCAC Convention, which is currently the main framework that we operate in and how we set our standards and the basis on which we define our recommendations towards countries, came to life, it was ten years last year, and the EU became party, the Commission on behalf of the EU became party to the Convention in 2008. So, since then, we have had a clear framework in which we operate. Of course, we still refer to the Criminal and Civil Conventions of the Council of Europe, and we have our little framework inventions ourselves, but we did not have a lot of substance. So now, when we ask countries, look, we now focus on the one hand on prevention, on the other hand [sic] repression, we can each time refer to an article in UNCAC when we ask them to establish an independent body, on the prevention side, to strengthen their repressive

authority to work on asset recovery, as at least we can each time easily refer to something, and in the meantime we have from 2014 a Directive on Assets Confiscation which is reinforcing all these issues, so the whole framework for anti-corruption became more robust, clearer for everyone to work in, so that was easier. (Interviewee 1 to Cvetanoska, 18.1.2016⁶⁴)

Whether this produced results on the ground is a different question. Both the Council of Europe Conventions and UNCAC have their shortcomings. The Conventions offer a number of anti-corruption standards in a generic manner and offer ‘one-size-fits-all’ solutions to corruption problems. Moreover, the CoE and the UN have limited options for sanctioning non-compliance. Both the CoE Conventions and UNCAC are similar in their content to a large extent, so it is not clear why the EU’s anti-corruption conditionality became more robust by referring to UNCAC. Even after the switch, the anti-corruption conditions in the Macedonian case, for example, remained generic. Furthermore, as illustrated before, the measures for tackling corruption suggested by the EU were often inappropriate and did not yield results; for example, providing a building or technical equipment was seen as an anti-corruption success (see Chapter 4). This meant that the emphasis was, to a large extent, on ticking boxes, ensuring the adoption of laws and the establishment of certain institutions. Whether laws were implemented and institutions were functional was another matter.

Irrespective of the fact that Macedonia had an anti-corruption legal framework, the country faced very serious problems with corruption in practice. The question remains as to why the European Commission suggested opening negotiations with a country that did not sufficiently fulfil the democratic criteria, one that even took steps backwards during the subsequent five years after the first recommendation was made. This will be further elaborated in section 3 of this Chapter looking at the size and speed of rewards and the credibility of threats and promises. The lack of tools for measuring success was another factor that affected the determinacy of conditions. This was for the accession processes of all three cases. The main instruments for

⁶⁴ This was the main rationale provided for switching from Council of Europe Conventions to UNCAC.

accession were the Regular Reports (for the Czech Republic and Romania), which were renamed Annual Progress Reports for the accession of the Western Balkan countries. However, throughout this thesis, concerns are raised regarding the clarity of the conditions in these Reports, and the lack of recommendations for concrete actions for improvement in areas of concern. This was particularly true for the 2004 accession, as ten different countries were joining the EU at the same time. As argued by Grabbe (2001), inconsistencies existed when spotting problem areas in the sphere of anti-corruption, and actions and requirements were selectively emphasised for some, but not all, candidates. Even though the EU's anti-corruption conditionality evolved over time, this thesis illustrates that problems with the clarity of criteria and the adequacy of actions for improvements were present during subsequent enlargement cycles.

In conclusion, during the accession process, all three cases would have benefited from clearer and better-defined criteria on how to control corruption. Yet, some progress in acknowledging the seriousness of the corruption issue was made over time, and efforts were undertaken to improve in this area. Nevertheless, as is evident from these cases, further clarity and stricter assessments were required, and emphasis on a new trend that demanded a track record in controlling corruption was necessary.

3. Size and speed of rewards and credibility of threats and promises

Remaining questions include whether candidates were rewarded after anti-corruption conditions were fulfilled, what these rewards were, if they were appropriate and if they were given in a timely manner. Also, how credible was exclusion from the accession process if candidates were lagging behind in the anti-corruption progress? As illustrated in section 5.1, as well as in the three empirical chapters, the EU faced difficulties in defining and clarifying its anti-corruption criteria. This, in turn, weakened the EU's ability to effectively influence

corruption control during the accession process because not having clearly defined criteria and expectations led to only partial (mainly legislative) reforms being achieved. Furthermore, even though anti-corruption criteria have progressed and became more substantive over time, the rewards and threats tool was still not used to its full capacity and candidates were rewarded with progress without significant anti-corruption efforts, or they were denied progress even though the European Commission was of the opinion that sufficient progress had been made. For example, during the Czech accession, the issue of corruption was not at the forefront of the enlargement process. Consequently, a lack of fulfilment of the already limited anti-corruption criteria did not affect the accession process significantly, and rewards and threats were not used as part of the anti-corruption conditionality. In the view of Mr Stefan Fule (Fule to Cvetanoska 14.5.2015), the communication between the parties, the expectations and the goals of the accession process were very different at the time and the 2004 accession was more of a business project than a political one. Such attitudes had a negative effect on candidates' anti-corruption efforts and the power of accession conditionality was not used to improve corruption control. As mentioned before (see Chapter 2), laws that were crucial for the control of corruption were left to be implemented after accession. Understandably, without the threat of punishment after accession, the Czech Republic postponed implementation for over a decade, and only after a threat by the EU to cut funds was made did the Czech government agree on a Civil Service Code. This example suggests that EU conditionality works best when there is a viable threat of punishment or a credible reward for compliance. As no threats were made by the EU to the Czech Republic, no efforts were made to implement legislation. Once a viable threat to cut funds was made, Czech politicians made efforts to introduce the Law. Yet, threatening to cut EU funds as a type of post-accession conditionality has very rarely been used, and it was, therefore, crucial to ensure compliance before accession, rather than after.

It is also important to note that the Regular Reports constantly included serious concerns about corruption control, yet the EU allowed the accession of the Czech Republic and Romania before such problems were resolved. In Romania, the CVM was introduced as an alternative option that had the goal of ensuring that the EU would still have a say in areas that lacked progress. However, the CVM as a post-accession conditionality tool did not have the impact that accession conditionality did. It was during accession that the EU was able to threaten candidates with exclusion or to reward them with further progress, depending on a country's performance. As illustrated in the case of Romania, progress in controlling corruption was lacking, but the EU still opened negotiations, and even closed the negotiations process without ensuring that sufficient progress was made in the sphere of anti-corruption.

Such practices undermined the credibility of the enlargement process and sent a message to future candidates that control of corruption had not been a priority for the EU. Even though, with later accessions, especially with the accession process of the Western Balkans, the EU tried to reiterate the importance of controlling corruption, issues such as security and stability took priority over the rule of law and corruption control. Therefore, the transformation process of Central and Eastern European candidates largely depended on which issues the EU saw as priorities. For the Czech accession, overall democratisation and promises of change were sufficient to grant membership, as there was a general political consensus that the ten countries were to jointly accede to the EU in 2004, and the repetitive concerns about the problems with corruption in the Regular Reports did not have a delaying effect on their accession date.

In other words, threats and promises, as well as exclusion and rewards, were not used properly in the cases of the Czech Republic and Romania, and the EU could have done a better job of using these tools when aiming to control corruption during accession. This reiterates the argument that the EU did not use the full capacity of its conditionality tool to promote the control of corruption. However, Romania (and Bulgaria) did not enjoy exactly the same

approach as the Czech Republic. Considered high-risk corruption countries, their entry was denied and delayed until 2007. The EU acknowledged that Romania and Bulgaria had to improve corruption control before accession and impose stricter measures and expectations. The EU demanded that certain conditions be fulfilled after negotiations were closed (see Chapter 3), and failure to do so would have resulted in a one-year accession delay for Romania. Nevertheless, despite the EU's concerns about corruption in Romania, the country was rewarded with both opening and closing negotiations without substantive anti-corruption progress being made. This supports the claim that, in this case, the 'size and speed of rewards' factor was distorted. Even though corruption was considered to be a widespread problem in Romania, and the functionality of the newly formed anti-corruption body was questioned, the European Commission proceeded and suggested negotiations be opened (European Commission 1999a: 13–14). Furthermore, the country began accession negotiations despite the various shortcomings in fulfilling the political criteria related to controlling corruption (see Chapter 3).

This poses the question of the effect that such attitudes had on the conditionality mechanism of the EU. Opening negotiations after such negative criticisms by the European Commission, and at a point when Romania did not even have the most basic anti-corruption laws in place, illustrates the secondary nature of the fight against corruption for the EU. The EU decision for Romania to open negotiations was influenced by four short-term factors (Phinnemore 2010: 300–301) that were unrelated to Romania's progress in establishing the rule of law, a market economy or combating corruption (Papadimitriou and Phinnemore, 2008 in Gugiu, 2012: 434). It also demonstrated that the EU did not use the conditionality mechanism to achieve anything with regard to controlling corruption prior to opening negotiations. Moreover, in the case of Romania, the EU did not use the crucial moment of opening negotiations as leverage to at least impose the adoption of legislation and ratification of relevant international instruments for the

fight against corruption. It was clear that Romania did not fulfil the Copenhagen Criteria, or at least those points referring to the political conditions on corruption and the rule of law. As noted above, the Regular Report for 1999 seriously questioned the functioning of such institutions, yet Romania was allowed to open negotiations. The reward of opening negotiations did not improve the situation in Romania, and after one year of negotiations, the only positive thing in the Regular Report in 2000 was the adoption of a new law on the prevention and punishment of corruption (see Chapter 3). Yet, this did not significantly affect the state of corruption in the country, and many serious remarks were made in the Regular Reports on this matter.

By way of illustration, Macedonia received a recommendation to open negotiations in 2009, having been a candidate since 2005, but only after a comprehensive anti-corruption legal framework was in place. This was not the case for the Czech Republic and Romania, as these countries did not even have a basic legal anti-corruption framework when they opened accession negotiations with the EU. This speaks to both the evolving character of the EU's anti-corruption policy, as well as to the so-called 'enlargement fatigue' of the EU, which was, among other things, a reason for deepening and slowing down the accession process for the Western Balkans.

Moreover, even though Macedonia did not comply with the political criteria and the main progress was importing EU laws, it was still much more than what previous candidates such as Romania or the Czech Republic had done by the time they opened negotiations. This speaks to both the subjective assessments of different candidates and to the limited way that anti-corruption criteria have evolved over time. By the time Macedonia was recommended for negotiations, Romania and the Czech Republic were already members, and their domestic problems with controlling corruption were resurfacing. By that point, the EU had signed the UNCAC and was introducing more detailed measures for candidates controlling corruption.

However, as the Macedonian case has proven, these were mainly legislative and foundational measures, which did very little to control corruption in practice. This is evident from the subsequent Progress Reports on Macedonia, in which regress in the control of corruption was constantly noted, yet the recommendation to start negotiations remained for five years.

How did this affect the principle of conditionality? The main point of having a ‘carrot and stick’ approach is to be able to offer rewards but threaten with punishments when criteria are not fulfilled. Once again, in the Macedonian case, the EU decided to reward the country’s progress, regardless of how limited it was, with opening negotiations. This can be partially attributed to the claim that the EU’s influence may be strongest when negotiations are just being opened. According to Mr Stefan Fule:

With the opening of accession negotiations you are going to treat this issue much more systemically, much more deeply, and while in the pre-accession process there is a lot of space and ambiguity here and there, the conditionality which I described at the beginning works best during the accession process, where you have clearly established goals, clearly established timings, a clearly established track record, which you expect a candidate country to follow and move towards to accede to the EU. (Fule to Cvetanoska, 15.5.2015)

However, it is worth noting that countries in the Western Balkans, unlike previous candidates, were expected to comply with the Copenhagen criteria before being welcomed to open negotiations. As Borzel and Risse (2007) argue, the EU’s ability to influence is strongest around the opening of negotiations. Therefore, after opening negotiations, the EU’s ability to inflict change decreases, and Fule’s position here remains less than convincing. Nevertheless, Macedonia is a specific case where the accession process was negatively affected by political issues, thus, opening negotiations may have had a different impact.

For Macedonia, the promise of opening negotiations was not delivered due to the Greek veto. Even though the European Commission recommended opening negotiations, a Greek veto was imposed on an annual basis, which distorted the conditionality principle, as the EU was unable to offer the promised rewards to Macedonia. At the same time, the country was performing worse and worse in controlling corruption every year, but the EU was reluctant to impose

threats and revoke its recommendation, due to not being able to previously deliver the promised rewards. An alternative solution to this was the so-called High Level Accession Dialogue.

The High Level Accession Dialogue was part of a structured dialogue of the European Commission that was introduced in order to show that the EU was still interested in maintaining a strong relationship with Macedonia and that the accession process was not at a halt. The EU recognised that the long wait to open negotiations was counterproductive and had serious consequences for the country, and so the High Level Accession Dialogue was introduced to rectify the situation. Nevertheless, this dialogue was in no way able to replace the negotiation process. On top of this, this situation directly affected the size of the domestic costs for Macedonia, and political elites that were already unwilling to improve controls on corruption were further demotivated to do so by not being offered the reward of furthering the accession process. Arguably, the same dispute was even used as an excuse by political elites to maintain the status quo and not do much with regard to controlling corruption due to the high domestic costs (see also section 4).

Finally, a lack of proven progress in controlling corruption in the Czech Republic and Romania did not stop the EU from concluding negotiations, and it did not trigger an additional slowdown (or possibility of a slowdown) of the process, at least not until 2005 in the Romanian case. Even though there were special conditions in the Accession Treaty for Romania, seven of which were related to the Justice and Home Affairs Chapter in which issues on corruption were tackled, the only power that the EU had to push for additional changes in Romania was the threat that accession would be postponed for an additional year (see Chapter 3). Other than this, there was not much more the EU could do to initiate substantive changes in Romania's control of corruption. Arguably, some of the more substantial reforms were introduced in Romania around and after negotiations were closed. This suggests that the threat of postponing

Romania's accession for one year had an impact and it is a shame that the EU did not make this threat sooner.

As explained before, the influence of the EU is strongest before opening negotiations, and it gradually decreases depending on how certain accession is. Consequently, after negotiations are concluded and an accession treaty is signed, the EU's ability to impose threats or to offer rewards is decreased to a minimum level. The EU concluded negotiations with Romania in 2004, when the country had not fulfilled the political criteria on controlling corruption and lost its leverage when there was much more to be done.

Vachudova (2014: 214) has argued that the inconsistency in the credibility of threats and promises has weakened the EU's conditionality in the pre-accession process. The postponed date for accession in the case of Bulgaria and Romania could have been seen as a potential threat by the EU if additional delays in progress occurred later on. When looking at the credibility of threats and promises in the Romanian case, two things matter. First, as Romania did not join along with the ten new EU members in 2004, this was in a way a threat that a lack of progress might stall accession. However, there was a clear promise from the EU that Romania and Bulgaria would join by 2007. Second, there was an additional threat to postpone the accession date for one more year if progress was lacking, but this threat was undermined by the promise that by 2008 Romania would definitely accede to the EU. Therefore, it is safe to conclude that these threats were more symbolic in nature, rather than substantive. This was because there was no threat of further exclusion if sufficient progress was not achieved after the one-year postponement. Even in the view of Leonard Orban, the Chief Negotiator with the EU for Romania, there was no threat of Romania's accession being postponed had the EU deemed that progress was inadequate (Orban to Cvetanoska, 21.10.2015).

Both the Czech and Romanian cases support the argument that the EU did not try to use the 'threats and promises' tool to its full potential so as to ensure that these countries would not

join without significant progress. The main reason lies in member states' interests, and corruption was a secondary one at the time. Romania was promised accession, and after the first delay in 2004, the EU did not want to further slow down the pace of accession, and so granted membership to Romania (and Bulgaria) based on political decisions rather than on their success in fulfilling criteria. This resulted in two new EU member states that were not ready to assume the obligations of membership, especially with regard to controlling corruption. This is supported by the introduction of the Cooperation and Verification Mechanism that allowed for further monitoring of weak areas. Arguably, Romania did improve its control of corruption after accession, but the reasons behind this progress have nothing to do with the EU (see Chapter 3).

Overall, the EU's anti-corruption conditionality was contradictory and unreliable. Candidates were rewarded with progress without achieving anti-corruption requirements and the EU was not always able to deliver on its promises, which weakened its conditionality tool.

4. Size of domestic costs

The 'size of the domestic costs' factor depends on the domestic context of each individual candidate, and it is therefore different to the size and speed of awards, the credibility of threats and promises, and the determinacy of conditions. The latter three were set up by the EU and were dependent on and controlled by the EU (i.e. the EU sets the conditions, the EU decides on whether or not and by how much to award a candidate, and the EU decides whether and to what extent to execute a threat of non-compliance). In contrast, the size of the domestic costs was out of the EU's direct control. Moreover, it should have been the aim of the EU to somehow minimise the size of such domestic costs, as lower domestic costs suggest that domestic political elites would be more inclined towards fulfilling the accession criteria and joining the EU. Therefore, the main argument in this section is that in cases where the domestic costs are

too high, EU enlargement conditionality had limited impact potential. This was because, as per the rational choice theorists (Rose-Ackerman and Palifka 2016), domestic political elites benefit more from maintaining the status quo than from progressing with the accession process. In fact, the argument that stretches throughout this thesis is one related to the domestic costs of conditionality in recipient countries: if the costs of EU accession surpass the costs of corruption control, then domestic political elites are likely to introduce trivial anti-corruption measures that will not affect their status. On the other hand, if the benefits of EU accession for political elites exceed the benefits of maintaining the status quo in terms of controlling corruption, then ruling elites will do whatever is within their power to accede to the EU. This argument is also directly related to the size and speed of rewards and the credibility of threats and promises. Namely, if domestic political elites are seriously determined to join the EU they are very likely to introduce the requested requirements in order to further the accession process, i.e. to receive the promised rewards from the EU. As a result, if the EU does not demand fulfilment of anti-corruption criteria, or if it does not use credible threats when criteria are not fulfilled, it jeopardises the credibility of its accession conditionality. This is exactly what happened during the accession of the Czech Republic, and to a certain extent during the accession of Romania. Yet, in the Macedonian case, it was the exact opposite: the EU could not deliver on its promise to open negotiations.

In the Czech case, as shown earlier in this thesis (see section 2.), EU membership was more important for domestic political elites than the costs of complying with anti-corruption conditionality. As a result, the EU had very strong leverage to act and request anti-corruption reforms from the Czech political elites. As the Czech political elites were determined to join the EU, using stricter conditionality to impose the adoption and implementation of anti-corruption measures would likely have proven successful. This was because political elites had more to lose by not joining the EU, than by introducing anti-corruption measures. As argued

in the chapter on the Czech Republic (see Chapter 2), public opinion in the country was pro-EU and EU integration was the only way forward for the country. As a result, even a generally Eurosceptic ruling party pushed for EU integration. Nevertheless, the EU did not use the full potential of its enlargement conditionality in this case and, as argued in section 2, the Czech Republic joined the EU without sufficient progress in controlling corruption having been made. If the EU did not use the conditionality mechanism to its full potential during the Czech accession, this was even more the case in Romania. Even though the EU helped Romania to lay the legal and institutional basis for controlling corruption, these were only developed and implemented by domestic politicians determined to bring in changes that limited corruption. The EU laid the same basis in Bulgaria but the results were even more limited compared to those in Romania. The domestic circumstances in Romania were different from those in Bulgaria, or in Macedonia, and some Romanian political elites demonstrated a strong commitment to the fight against corruption. However, the positive developments in anti-corruption mainly occurred after Romania was already an EU member, and the EU could not have foreseen these positive developments when deciding if the country should be granted accession in 2004.

As shown previously (see Chapter 3), in Romania the benefits for political elites of joining the EU were higher than the domestic costs of not becoming an EU member. Therefore, similar to the Czech Republic, the EU could have used stricter conditionality and could have tried to impose the implementation of additional measures for improving corruption control. Yet, the EU allowed Romania to join at a time when the country did not have strong control of corruption. Having in mind the importance that the accession process had for Romanian politicians, further efforts would have been made to improve corruption control, but the EU kept sending signals that accession was possible with only limited results, and so Romania only

fulfilled the minimum requirements, which, as argued in section 2., lacked clear definition and focus.

The domestic costs related to controlling corruption in the Macedonian case were higher for domestic political elites compared to the benefits of continuing the EU accession process. For Macedonia, the fact that the Commission reiterated its recommendations for opening negotiations for five years in a row confirmed that the limited progress being made was sufficient for the country to start the next step of EU integration. However, the reason for postponement of the negotiations starting date was not only and primarily a consequence of the existing problems with corruption, but also of the inability to resolve the name dispute. This sent a message that enough was already being done in the fight against corruption to achieve the next stage of accession, which had a negative effect on additional progress. In other words, the adoption costs for further anti-corruption measures were higher than the actual benefits of introducing reforms, and it was very unlikely that the Government would introduce further substantial efforts to fight corruption before the opening of accession negotiations.

Macedonia followed an illiberal pattern (as per Vachudova's classification) and was ruled by a few political elites who exercised control over institutions such as the judiciary and the media, thus the domestic costs for joining the EU were likely to be very high for elites who would prefer to maintain control over the state they had captured for their own interests. As a result, domestic political elites found the costs of effective control of corruption to be too high and it was simply not in their interest to engage in processes of reform. In such an environment, political elites had little interest in controlling corruption or indeed joining the EU. Therefore, maintaining the status quo was beneficial for a government that was more interested in sustaining its power and control over state institutions, as opposed to opening negotiations and being exposed to further scrutiny and screening, by both the EU and the Macedonian electorate.

As the importance of controlling corruption was secondary for the EU, and signals were sent to political elites that accession progress was achievable by introducing superficial results, it is understandable that success in controlling corruption was limited. In addition, even if corruption was a priority for the EU accession process, if there was no clear promise for joining, as in the Macedonian case, and if the benefits of corruption exceeded the benefits of joining the EU, it would be expected that rent-seeking elites would not be interested in joining the EU. Consequently, the incentive for political elites to make serious and sustained efforts to effectively control corruption, as well as the benefits for their country of joining the EU, were very important for anti-corruption success.

The introduction of the CVM is additional proof that corruption control was secondary during the accession of Romania and that the EU did not use the cost-benefit principle to address the issue. The EU accepted a new member that was falling behind, and it granted membership based on a political decision, and not on fulfilment of the accession criteria. It is acknowledged in the corruption literature (and in the conclusion of this thesis) that the EU was not well equipped to tackle corruption in candidates and that it was not quite sure what to do to improve the situation. However, the problem that remains is that the EU did not even attempt to push for enforcement of the anti-corruption criteria that it demanded from candidates. The domestic cost factor was not fully used in this case, which sent signals to future candidates that accession does not solely depend on fulfilling the very important criteria on the rule of law and corruption, but on other, often political, decisions. As is evident from the Macedonian accession, the control of corruption yet again remained secondary, and political disputes, as well as issues such as stability and security, were primary for the accession process.

When asked whether stability and security were priorities in the case of Macedonia over the control of corruption, the former EU representative for Macedonia, Erwan Fouere answered:

Of course, and it's the wrong approach by the European Commission, an approach that will fail in the long run, because you cannot have stability which is based on a

fiction where the rule of law is not being respected for state institutions have been captured by one ruling party and therefore do not function in accordance with the basic standards and conditionality which is set up by the EU and its criteria for accession for any country. (Fouere to Cvetanoska, 26.1.2016).

The secondary importance of corruption combined with the inability of the EU to further the accession process undermined the conditionality in the case. It also gave ruling elites a perfect excuse for maintaining the status quo and not doing much with regard to corruption control.

Opening negotiations with the EU, especially with the new approach towards chapters 23 and 24, which brought the issues of corruption and the rule of law to the forefront of the accession process, would have reduced elite power, as ruling elites would have been scrutinised for their actions by both the EU and the electorate. Consequently, to improve the control of corruption in Macedonia, the EU should focus on improving the factors that contribute to a corrupt environment, which increases domestic costs, and on using the full potential of its enlargement conditionality by offering rewards once progress is achieved.

In summary, the EU did not manage to take advantage of the lower domestic costs in the Czech Republic and Romania, which would have introduced additional anti-corruption reforms in order to join the club. Finally, in the Macedonian case, the EU's power was limited as the domestic costs for furthering the accession process were simply too high for domestic political elites.

5. Conclusion

The main aim of this chapter was to compare the accession processes of all three cases by using Schimmelfennig and Sedelmeier's (2005) external incentives model. The purpose was to comment on both the determinacy of the conditions, the size and speed of rewards, the credibility of threats and promises, and the size of adoption costs. Finally, this chapter has

looked at the evolving character of EU enlargement conditionality and assessed how the EU's anti-corruption criteria have evolved over time.

The main conclusion with regard to the determinacy of the conditions was that even though the EU's anti-corruption criteria have evolved over time, the conditions remained vague, unclear and focused predominantly on the adoption of laws and the formation of institutions, without specific measures on how to tackle corruption in practice. When looking specifically at the evolving character of anti-corruption conditionality it was evident that corruption was not at the centre of discussions during the Czech accession and that problems with corruption were not a threat for Czech membership. This resulted in not even adopting the relevant anti-corruption legislation prior to accession, and influencing anti-corruption legislation after accession has proven very difficult for the EU. Only when EU funds were affected by corrupt practices did the EU decide to impose strict post-accession conditionality to remedy the situation. In the case of Romania, corruption control was taken much more seriously than during the accession of the Czech Republic, but the criteria were still not very clear and strictly imposed. Romania opened and even closed negotiations without addressing serious problems with corruption, and the EU undermined its own conditionality mechanism when it allowed Romania to join in 2007. For the accession of Macedonia, the conditions evolved further, yet they lacked clarity and mainly focused on the adoption of laws. In addition, measures suggested for improving corruption control in the Progress Reports continued to focus on trivial measures, which did little to advance the situation in practice.

The size and speed of rewards and the credibility of threats and promises, similar to the domestic costs factor, also had limited use. There was no doubt at any point during the Czech accession that the country would become an EU member. The threat of exclusion was non-existent in the Czech case, and corruption was never an issue that could have threatened the accession process. Even though the EU tried to look tougher on Romania, and it even postponed

the accession date from 2004 to 2007, it did little to improve the situation in practice. It was clear that sooner or later Romania would join the EU, and the country was rewarded with negotiations even before adopting an anti-corruption law. It was also rewarded with concluding negotiations despite the very limited progress in corruption control. The threat of postponing the accession for one year did not have a strong impact, as it was evident that the country would join by 2008, regardless of whether it fulfilled the additional benchmarks as set out in the Accession Treaty. Macedonia was both similar and different from Romania and the Czech Republic. Similarity can be seen in the fact that, like the previous two, Macedonia also did not effectively control corruption when a recommendation to open negotiations was made. Therefore, the country was rewarded with progress without actually achieving much in an area crucial for the EU. The reason for this was the secondary importance of the control of corruption, compared to security and stability. Also, when compared to Romania and the Czech Republic, Macedonia at least had a solid anti-corruption legal framework and had already set up institutions relevant to controlling corruption. This was not the case for the previous two countries. Still, the EU could not deliver on its promise to open negotiations, which further undermined the credibility of the promises and rewards in the Macedonian case.

The question of how important EU accession was for domestic politicians vis-à-vis the control of corruption was at the core of domestic cost conditions. As is evident from the domestic conditions in the Czech case, political elites were prepared to relinquish corrupt practices in order to join the EU, as accession was seen as the highest priority for the country. This was similar for Romania, too. Yet the EU did not use this leverage to demand more effective corruption control, and granted membership to both countries before using the full potential of its conditionality. However, in the case of Macedonia, the situation was different. For Macedonian political elites, maintaining the status quo was more important than furthering the accession process, and only trivial efforts were introduced in the fight against corruption. These

negative domestic circumstances, combined with the inability of the EU to threaten or offer rewards, were key issues for Macedonia's accession. Therefore, it is expected that if negotiations were opened with Macedonia, the EU would have regained control and be able to impose stricter conditionality on the country.

My research suggests that increasing corruption control in candidate countries during the enlargement process is more likely to be successful when the enlargement conditionality tool is used to its fullest potential, without allowing political decisions to undermine its effectiveness. This chapter illustrates that this has not been the case so far and a shift in the EU's approach, i.e. stricter application of the 'carrot and stick' approach, may increase corruption control during the accession process.

Chapter 7: Conclusions

1. Main assumptions and case selection

The main aim of this thesis was to analyse the impact that the European Union had on corruption control through its enlargement conditionality during the accession process of candidate countries. Specifically, this thesis has analysed and answered the following questions:

- (a) How far, and in what circumstances, did the EU influence corruption control during the accession process?
- (b) Why did the EU have a limited impact on the control of corruption in candidate countries?
- (c) What factors, both external (EU-related) and internal (domestic), were relevant for controlling corruption in CEECs during the EU accession process?

The thesis has looked specifically at three country cases. All three at some point were (and, at the time of writing, one still remains) candidates for EU membership. They were part of three different enlargement ‘waves’. In order to select the cases, World Bank data on corruption control for seventeen CEECs between 1996 and 2012 have been used. The thesis has looked at the control of corruption scores in these seventeen countries for the selected period and concluded that there was no obvious correlation between improved ability to control corruption and EU enlargement. In fact, some cases – such as Macedonia, Latvia and Croatia – improved their ability to control corruption over time. Other cases, such as the Czech Republic and Slovenia, deteriorated in their ability to control corruption, whereas Romania’s ability to control corruption did not change much according to the World Bank data (see Table 1. in the introduction for more details).

The Czech Republic was selected as a case because it had the most obvious slippage in scores over time. At the same time, it was also part of the 2004 enlargement wave. Romania was selected as it was a case where the overall control of corruption score did not change during

the period in question. In addition, Romania entered the EU in 2007, during the so-called second enlargement wave, which allowed analysis of whether the EU's anti-corruption conditionality had evolved since the enlargement wave of 2004. Macedonia, on the other hand, had one of the lowest starting control of corruption scores out of all the CEECs in 1996 but, according to World Bank data, the country's control of corruption increased significantly over this period. As it happens, the country had the biggest improvement in scores out of all CEECs for the 1996–2012 period. Macedonia is also one of the Western Balkans enlargement applicants, which allowed us to examine whether EU anti-corruption conditionality had evolved further for the accession process of countries.

This thesis has sought to make the following contributions to our knowledge on these topics: (i) it contributes to the academic literature on corruption; (ii) it contributes to studies that examine EU conditionality during accession; (iii) it makes a specific contribution to the growing literature on the role of the impact that the EU has on the rule of law and corruption in CEE and (iv) it makes specific contributions to the scholarship on the role of international actors in controlling corruption and draws attention to the EU as an actor. I will expand on each of these areas in greater detail in Section 5.

In the next sections, the three research questions are answered. The main contributions that this thesis makes to the corruption literature are then explained. This is followed by the contributions that this thesis makes to the literature on EU conditionality. The main repercussions of the thesis' findings are then outlined. Finally, I present some thoughts and suggestions as to how scholars might build on my findings in future research.

2. Key findings for research question 1: How far and in what circumstances can the EU influence corruption control during the accession process?

The first research question related to the conditions under which the EU could influence corruption control during the accession process. The main conclusion in all three cases is that the influence of the EU anti-corruption enlargement conditionality was mainly restricted to the adoption of anti-corruption legislation. Furthermore, in some cases, the EU did not even attempt to use its conditionality tool to put pressure on candidates to enact basic anti-corruption laws. As illustrated in Chapter 2, where the Czech case was examined, the EU opened and closed negotiations without relevant legislation, such as the Civil Service Code, being adopted. In its 2002 Regular Report on the Czech Republic, the European Commission reiterated its concerns that corruption and economic crimes were a serious problem in the country, but it also praised the country for taking a number of steps to improve corruption control. These steps included: introducing new anti-corruption bodies, signing international conventions and becoming a member of GRECO (see Chapter 2), which were predominantly measures related to the formation of institutions or the introduction of legislation. This further strengthens the argument that the main focus was on formal rule adoption, as opposed to implementation.

The same argument is supported by the case of Romania. When criteria existed, they mainly focused on law adoption and often lacked depth and substance. As argued in Chapter 3, the Romanian Accession Partnership of 1999 focused completely on the adoption of laws and the creation of institutions in the sphere of anti-corruption. Ironically, in this case, the EU opened negotiations prior to Romania even adopting a basic anti-corruption law. During the negotiations, Romania adopted the necessary legislation, but its accession was postponed from 2004 to 2007 due to serious concerns over corruption control. Such evidence reaffirms the argument that the EU's influence on corruption control was mainly limited to formal rule

adoption, as the country joined the EU even though serious issues with corruption control remained.

The Macedonian case added validity to the argument that the EU's influence on corruption control during accession was confined to the formal level. As illustrated in Chapter 4, Macedonia was the case with the strongest anti-corruption legal framework out of all three cases. The country adopted legislation in line with the EU's recommendations and was praised in Progress Reports for having a robust legal framework. However, the same Progress Reports kept reiterating that implementation of the anti-corruption legislation was a very serious area of concern. Nevertheless, in 2009, the EC recommended the opening of negotiations with Macedonia.

The issue with formal rule adoption, without real efforts to implement such rules in practice, opens up the possibility of reversing newly adopted laws after a candidate joins the EU. The attempts by Members of Parliament in Romania to lift their immunity (Nielsen 2016) is just one example. This is because of the EU's lack of competencies regarding corruption control within Member States. Such competencies, with a few exceptions, remained almost exclusively in the hands of Member States. For these reasons, formal adoption of rules was not sufficient to tackle corruption effectively during accession.

That is not to say that the EU never attempted to influence corruption control beyond the adoption of legislation, but that for several reasons such attempts often failed. Therefore, the next question that needs consideration is why the EU was unable to force implementation of anti-corruption legislation. Based on the findings of this thesis, the EU's influence was predominantly restricted to formal rule adoption for several reasons. These are outlined below.

3. Key findings for research question 2: Why did the EU have a limited impact on the control of corruption in candidate countries?

The second question that this thesis answers is very closely related to the first. As concluded in Section 2., corruption control during accession was predominantly limited to the adoption of legislation in all three candidate countries. The second research question considers why this was the case. Based on my empirical findings, I have identified three factors that have had an impact on the EU's anti-corruption conditionality. The first is the lack of clarity and suitability of anti-corruption criteria introduced by the EU, namely: generic requests for the adoption of anti-corruption rules which did not correspond with actual problems with controlling corruption in each specific candidate for EU accession. The second factor is the difficulty in adequately measuring success. The third is the secondary importance of corruption control for the EU.

3.1. The lack of clarity and suitability of anti-corruption criteria

Lack of clarity and suitability of the anti-corruption requirements imposed by the EU was an issue in all three cases examined here. It is worth mentioning that the EU did not have its own comprehensive anti-corruption legal framework that could have been used as a guide when preparing criteria for candidate countries. This was especially true for the accession of the Czech Republic and Romania. However, the EU signed the United Nations Convention Against Corruption in 2008 and used it to prepare assessment criteria for corruption control. My research shows that before signing UNCAC, it was difficult for DG NEAR to prepare anti-corruption criteria and evaluate their success. DG NEAR used the framework of the Council of Europe, with certain modifications, but after signing UNCAC the focus shifted to articles from this Convention. However, UNCAC was generally viewed as a weak institution (Soreide 2013: 132), with many caveats, soft language and universal rules that were not necessarily

suitable for specific contexts, which resulted in very few changes, and the instrument being considered a weak tool by many scholars (Hechler, Zinkerhagel, Koechlin and Morris 2012, Hough 2017, Soreide 2012). Thus, using UNCAC as a basis for imposing anti-corruption criteria had its own limitations and could not have been considered an appropriate tool for imposing anti-corruption requirements on candidate countries. The aim here is not to criticize UNCAC, but to emphasise that using UNCAC as a basis for anti-corruption criteria was a contributing factor to the lack of success in controlling corruption beyond the legal adoption of rules.

It is important to emphasise that the EU's anti-corruption conditionality evolved over time and that the criteria became more complex with every accession wave. For the first enlargement wave, as illustrated in Chapter 2, the focus was not on corruption control but on overall progress. The Czech Republic started negotiations without even having a comprehensive legal framework for tackling corruption, and the issue of corruption was at no point a threat to accession negotiations. According to the interviewees (see Chapter 2), the main aim of the 2004 enlargement wave was the consolidation of post-communist transformation and overall democratization. The EU focused on general progress at the expense of progress in corruption control. There were anti-corruption criteria and expectations, but they lacked clarity and were overshadowed by the country's overall progress. The result, therefore, was limited EU influence on corruption control during the accession process in the Czech case.

When looking at the evolution of anti-corruption criteria and their clarity and appropriateness, it is important to reiterate that things changed for the 2007 accession wave. This was because of the lessons learned from the 2004 enlargement, where some new member states did not uphold their promises to introduce and implement legislation to improve corruption control. The example of the Czech Civil Service Code, that took over a decade after the country joined the EU to be adopted and implemented, supports this claim (see Chapter 2). The reason for

changes to the anti-corruption criteria can also be seen in the particular severity of the problems with corruption among the 2007 candidates. However, as argued above (see Chapter 2), the evolution of the anti-corruption criteria did little to improve the influence that the EU had on corruption control beyond the adoption of legislation, and the issues with lack of clarity remained. The Romanian and European officials whom I interviewed suggested that it was unclear what the EU expected from them (see Chapter 4). They used the example of having a track record in combatting corruption. Namely, the EU kept asking for a track record in the identification, prosecution and conviction of corruption cases, but it remained very unclear to Romanian officials what ‘track record’ meant. This argument is also important for measuring success and will be further unpacked in Section 3.2.

Even though the anti-corruption criteria had evolved further for the accession of the Western Balkan countries, the lack of clarity and appropriateness remained. First, with regard to the lack of clarity, the number of chapters in the Progress Reports increased and a Chapter on the judiciary and fundamental rights was introduced for the accession of the Western Balkans. As such a Chapter did not exist at the time, problems with corruption vis-à-vis the enlargement to include the Czech Republic and Romania were mainly addressed through the Copenhagen criteria, even during the negotiations. A lack of benchmarks and clarity for successful corruption control created additional confusion during the negotiations. Countries were not sure what it meant to successfully control corruption and how success was measured by the EU. That is not to say that benchmarks did not exist at all, but that they contained expectations that were to be achieved, without containing the ‘know-how’ for corruption control.

Also, the process of negotiation changed with the EU’s 2011–2012 ‘Enlargement Strategy’. Top priority was given to the chapters on judicial reform and fundamental rights, and on justice, freedom and security, which were to open at an early stage of future negotiations. This directly affected the fight against corruption. Nevertheless, it is important to refer to the point at which

a country was expected to sufficiently satisfy the Copenhagen criteria before opening negotiations. Macedonia – at least in practice, and as illustrated in Chapter 4 – nonetheless did not do so. When analysing the Macedonian case, it was clearly illustrated how superficial and inappropriate were the suggested EU anti-corruption measures. For problems such as cronyism and state capture, the EU suggested measures such as the formation of new institutions and improvements to technical equipment and institutions' infrastructure. These suggestions lacked real depth and consequently substance. Such evidence further suggests that the evolution of the criteria did not necessarily mean that they were transformed into appropriate and suitable conditions to influence corruption control in candidates during accession. Having criteria that were not well suited and adjusted to tackle corruption in candidate cases contributed to the limited EU influence in this area.

Second, as illustrated in all of the cases examined, the EU's anti-corruption requirements were often not appropriately designed to address corruption. For problems such as fusion of party and state, the Commission in its progress reports recommended the adoption of additional legislation or the formation of new institutions and related technical equipment, which was not adequate to tackle the scale of the problem. As argued in the introduction, many candidate countries adopted corruption-related laws and introduced new anti-corruption bodies that had little capacity to prompt change in practice. Keeping in mind the limited influence on anti-corruption that the EU had on its member states after they joined the Union, ensuring that appropriate measures were in place before accession was an aspect of the enlargement process (this is also elaborated in the next section).

3.2. The difficulties with adequately measuring success

When it comes to the EU's ability to measure success in controlling corruption among candidate countries, two issues are important. First, the corruption literature agrees that it is very difficult to measure success in corruption control. In most studies, measuring success is based on perceptions. It comes as no surprise, therefore, to see that the EU had difficulties with measuring progress in candidates.

Second, as illustrated in the introduction to this thesis the most well-known indices typically rank countries and mark (lack of) progress over time. This is problematic. In these indices, countries are usually ranked somewhere between 0 and 100: in the CPI 100 represents 'corruption free' and 0 represents 'totally corrupt', whereas in the WGI, countries are ranked in percentile rank terms, from 0 to 100, and higher values correspond to better outcomes. Nevertheless, it is very difficult to perceive what it means to be 'corruption free' or indeed to be completely corrupt (Hough, 2017: 53). The European Commission, among other sources, used the results from indices such as Transparency International's Corruption Perceptions Index and the World Bank Governance Indicators in order to produce its annual progress reports and, in doing so, faced the same methodological issues. It is worth noting that the progress reports were not based solely on aggregate corruption indices, but also on reports from the not-for-profit sector, government reports, observation and other similar tools. However, similar methodological problems remained, especially when attempting to measure the implementation of anti-corruption legislation because of the large dependence on perceptions. It is also worth noting that there is a clear cause-and-effect challenge here. It is difficult to tell whether a change in corruption control was as a result of EU pressure, or other causal mechanisms. Moreover, it is difficult to pinpoint why changes in corruption control occurred in the first place. The aim of this thesis is not to identify why changes in corruption control happened (or did not happen), but to illustrate that the EU had limited influence on corruption

control during accession. However, this illustrates the need for future research on why anti-corruption reforms occur.

As illustrated in all four empirical chapters, my interviewees agreed that the progress reports were not adequate policy instruments for either setting EU anti-corruption requirements or measuring the success of candidates in fulfilling those requirements. Criticisms included the fact that progress reports were too short, too simple, too superficial and did not cover all necessary areas. Particularly during the 2004 enlargement, similar problems in different countries were mentioned in some, but not all, progress reports.

Another deficiency of the progress reports was the lack of clarity and suitability of anti-corruption criteria, which supports the previous argument in Section 2.1. Namely, it was argued that the EU kept asking for a ‘track record’ in corruption investigations, prosecutions and convictions, but did not give any clear indication as to what it meant by ‘track record’. This further complicated the problem with assessing the progress made. What is more, as illustrated in Chapter 3, in the 2002 Roadmap for Romania the EU called for the implementation of laws and strengthening the autonomy of institutions, but what this meant, and how it was to be implemented and measured, was not stated clearly. As a result, Romania did join the EU, but it did so with very serious corruption problems and had to accept the introduction of the CVM. This is in line with the claim that a suitable ‘track record’ had not been demonstrated and that one of the reasons for the lack of success was the absence of clear benchmarks and instructions about what was to be considered progress. This problem is also related to the size and speed of rewards and the credibility of threats and promises, and this is examined further in Section 3.3.

3.3. The secondary importance of corruption control for the EU

Findings from all three cases suggest that control of corruption was not a priority for the EU. Even though the issue was discussed, and the EU was aware of the limited influence that it

would have once candidates became member states, it did not give it priority. Instead, precedence was given to issues such as security, political interests and multi-ethnic relations. Such actions significantly weakened the EU's conditionality mechanism, as candidates were given signals that accession was possible without adequately fulfilling anti-corruption criteria. In other words, the 'carrot and stick' system, at least in the anti-corruption sphere, could not work. Interestingly, as argued in Chapter 5, the EU had the leverage to use the 'carrot and stick' system for both the Czech Republic and Romania, as in both countries the costs of not joining the EU were higher than the costs of improving corruption control, but it chose not to.

It was argued in Chapter 5 that, for the 2004 enlargement wave, the main emphasis was on the overall democratization and transformation process of the candidates. There was a political consensus and the ten countries were seen as a package deal, i.e. it was clear that they were going to join the EU together.⁶⁵ Also, as argued in Chapter 2, the Czech Republic joined the EU without a comprehensive anti-corruption framework. The regular reports kept referring to serious problems with corruption control during the negotiations, yet the Czech Republic joined in 2004. What is worse, in the Czech Republic, this was not even the case with the most serious corruption issues at the time (Vachudova 2005). It is therefore logical to conclude that successful corruption control was a secondary issue for the EU and the Union did not use its leverage to its full potential to push for improvements.

The Romanian accession process was no exception, and so that country also joined the EU, even though it continued to have serious problems with controlling corruption. Before joining the EU, Romania had to introduce the CVM, which largely focused on corruption control due to the seriousness of the problem. Furthermore, throughout the entire Romanian accession, the EU was sending signals about the secondary importance of corruption control. Indeed, Romania started negotiations without even having an anti-corruption law on the statute book.

⁶⁵ There were various problems with Slovakia, and at one point there was a threat that the country might not join together with the others if the situation did not improve, but that threat did not materialise.

It concluded negotiations while, at the same time, regular reports kept reiterating the fact that corruption was rampant in the country. This further strengthens the argument that corruption control was not essential for EU membership, despite the EU's rhetoric. It also reaffirms Sandholtz and Gray's (2003) argument that corruption-related issues were not as significant for the accession process as one might expect. They argued that corruption was an important issue for the Copenhagen criteria, which were to be fulfilled before opening negotiations, yet, candidates were allowed to open negotiations without demonstrating significant capability to control corruption (see Chapter 1).

The only evidence that supports the opposing argument that the EU perceived corruption control to be an important issue – was the so-called 'break clause'. This clause allowed the EU to postpone Romanian accession for one year should the country not achieve the EU's requirements. These requirements were very much focused on corruption control, but the 'break clause' was not activated. Romania joined the EU on schedule and, as argued in Chapter 3, accession was allowed for political reasons rather than success in controlling corruption. This highlights two points. First, corruption control was a secondary issue for the EU. Second, the EU once again did not use the full impact of its conditionality mechanism to enforce the implementation of anti-corruption measures.

Not using the 'carrot and stick' system is related to the size and speed of rewards and the credibility of threats and punishments contained in EU conditionality. Namely, the EU had the opportunity to at least try and enforce a stricter application of its anti-corruption requirements, but it chose not to do so. Instead, it allowed Romania to join the EU despite its serious corruption problems. As argued in Chapter 3, the domestic costs in Romania of joining the EU were lower than for the country to be excluded from the accession process. Yet, the EU did not use the power that it had during the accession process to force changes. The EU therefore

undermined its own conditionality mechanism and once again allowed the accession of a candidate that was not ready to assume the obligations of EU membership.

Macedonia was a different case compared to the Czech Republic and Romania in several respects. First, Macedonia had a comprehensive anti-corruption legal framework before it was even recommended by the Commission that it start negotiations. However, implementing the complex legal framework that the country had was a very difficult task. As illustrated in Chapter 4, both the progress reports and my interviewees agreed that the country had severe problems with corruption control, and it is not clear why the EC suggested opening negotiations in the first place. The assumption is that the EC suggested opening negotiations due to the country's overall commitment to ensuring stability and security with regard to the Albanian minority.

The answer once again lies in the secondary importance of corruption control for the EU. In the Macedonian case, it was illustrated that security, stability and good multi-ethnic relations were the main areas of EU concern. Namely, the EU's attitude was that opening negotiations would send a positive signal and stabilise the country's democracy and fragile multi-ethnic relations. However, as argued in the introduction to this thesis, the EU's ability to influence corruption control is strongest around the opening of negotiations, and by proposing the opening of negotiations the EU lost some of its conditionality power. It also sent a signal to Macedonian elites that enough had been done to control corruption and that the remaining issues could be resolved during negotiations. Even if this was true to a certain extent, it should be emphasised that the EU still expected candidates to fulfil the Copenhagen criteria. However, when looking at the comments in the Progress Reports and my interview data, it is clear that, despite the comprehensive legal framework, Macedonia did little to enforce this in practice. In its progress reports, the EU consistently reported that there were severe problems with corruption control – that is, state capture and fusion between the ruling parties and the state –

while, at the same time, recommending the opening of negotiations. This reaffirms the argument of the secondary importance of corruption control for the EU and the Union's lack of ability to effectively use its conditionality mechanism to enhance corruption control in candidates.

Another important issue that reiterates the argument that successful corruption control was secondary to political issues was Macedonia's name dispute with Greece. Putting aside the fact that Macedonia was not ready to open negotiations due to corruption problems (as illustrated in Chapter 4), the fact that the EC recommended opening negotiations remained. However, Greece kept imposing a veto when voting took place in the EU Council on whether Macedonia should be allowed to open negotiations. The veto was the result of a bilateral issue between the two countries and supports the argument that political disputes were able to overpower the EC's assessment of corruption control. That is not to say that Macedonia was well equipped to open negotiations, but only to argue that, regardless of Macedonia's efforts in the anti-corruption sphere, due to political reasons the issue was secondary. The dispute was about Macedonia's name, not about the country's ability to control corruption. Based on the data collected, the same outcome, i.e. not reaching a unanimous decision to open negotiations in the EU Council, would have been expected even if Macedonia was in the vanguard of corruption control. This evidence further affirms the argument that there was a mismatch between the size and speed of rewards and the credibility of the EU's 'threats and promises' system. In other words, the EU could not offer progression in the accession process if political disputes were present. At the same time, as argued in Chapter 4, Macedonian elites were also not interested in furthering the accession process with the EU due to the high domestic costs of introducing effective anti-corruption measures by them. This is argued in greater detail in Section 4., below.

4. Key findings for research question 3: What factors, both external and internal (domestic), are relevant for controlling corruption in CEECs?

The third research question seeks to identify the factors, both external and internal, that are relevant for corruption control during the accession process. External factors are those that are controlled by the EU, whereas internal, or domestic, factors are those that are determined by specific candidates. This thesis has revealed that the effectiveness of EU influence on corruption control was related to both factors on the EU side, and specific domestic conditions and factors in the target countries, such as the interests of political elites to join the EU and their capacity to address the corruption control issue as illustrated in the empirical chapters. When tracing the accession processes, using the external incentives model, similar factors were identified in all three cases.

In this thesis I have identified the following EU-related factors: (i) the secondary importance of corruption control for the EU, (ii) the lack of clarity in the anti-corruption criteria, (iii) the lack of appropriate measurement tools for assessing success in the control of corruption and (iv) the inappropriateness of control of corruption measures suggested by the EU. I will not go into more details about each factor as they were fully analysed when answering research questions one and two. Instead, I will focus on the domestic factors for controlling corruption in candidate countries and conclude that the external, EU-related factors are context-specific and dependent on the specific domestic circumstances in each particular case.

To reach this conclusion I have looked at the size of the domestic costs in each case. The domestic costs, as outlined in the introduction, are one of the four factors from the external incentives model. The expectation is that actors will behave rationally and act in a way that maximises their gains. Translated to corruption control, the argument is that if the gains from improving corruption control are higher than the benefits of maintaining the status quo, then

actors will make efforts to improve corruption control. It is important to keep in mind that corruption was a serious problem in all three cases that were examined. This suggests that actors would have continued to derive certain benefits by maintaining the status quo, i.e. by not improving corruption control. On the other hand, if the costs of improving corruption control are higher than the benefits of joining the EU, domestic actors will not have an incentive to improve corruption control. Rather, they will have an incentive to stall the accession process. Two possibilities are available to the EU if a candidate is not making efforts to improve corruption control. First, the EU can decide to continue with the accession process and allow a candidate to join regardless of the progress made (or lack of it). Second, the EU can decide to delay or stop the accession process until the anti-corruption requirements are met. This is directly related to the size and speed of rewards and the credibility of the threats and promises of the external incentives model. In all three cases the EU opted for the first option and continued the enlargement process regardless of the efforts (or rather lack of them) made to improve corruption control. Nevertheless, there were several differences when it comes to the domestic circumstances in each case.

In the Czech case, the EU had the upper hand. As argued in Chapter 2, the benefits of EU membership were higher than the costs of staying out; thus, domestic elites would have been prepared to improve corruption control in order to get access to the club. However, the EU did not use its dominant position to demand improvement. As a result, the Czech Republic joined the EU without implementing the necessary reforms. Nevertheless, even if the EU had used its dominant position, not much could have been done due to problems with its own external factors, namely, the lack of clarity, the appropriateness of conditions, the inability to measure success and the secondary importance of corruption control to the EU.

Similar conclusions can be drawn for the Romanian case. The benefits of membership, as argued in Chapter 3, were stronger for Romania, which was already lagging behind the ten

countries that joined in 2004. Interviewees agreed that elites were determined to bring the country into the EU, but the Union kept rewarding the country with progress even when anti-corruption criteria were not fulfilled. Once again, the EU did not fully use its conditionality power. As in the Czech case, because of the problems with external factors, it was unlikely to achieve the desired progress.

Things were different for the accession of Macedonia. Chapter 4 illustrates that in that case, the benefits from the status quo – i.e. not furthering the accession process – were higher than the benefits of EU enlargement, as the country faced very serious problems with political corruption. This argument is further strengthened by the advantage domestic elites had because of the EU's inability to offer rewards to Macedonia because of the name dispute. Interviewees that were involved in the enlargement of Macedonia commented that the name dispute was used as an excuse to maintain the status quo and that there was a lack of domestic political will to resolve the issue. Three things are worth mentioning here. First, the Greek veto affected the EU's conditionality mechanism and the Union was not able to offer a 'carrot', i.e. opening negotiations. Second, even if the bilateral issue was not a problem for opening negotiations, it would have been very difficult for the EU to improve corruption control when the costs of doing so surpassed the benefits. Finally, as in the previous two cases, the EU's influence would have been limited because of its own problems with applying anti-corruption conditionality.

5. Revisiting the literature

Three expectations were set up in Chapter 1 after reviewing the literature on corruption and EU conditionality: (i) the impact of the EU conditionality on the control of corruption in post-communist states was limited and differed across time and space; (ii) the impact of EU conditionality on post-communist states was primarily limited to the adoption of anti-corruption legislation; (iii) the impact of EU conditionality on the control of corruption in post-

communist states was dependent upon domestic factors within a particular state. All three expectations proved to be correct for the cases examined. The validation of these expectations in this thesis thus contributes to the literature on both corruption and EU conditionality, as illustrated in the sections below.

5.1. The literature on EU conditionality

When looking at the literature relevant to the present research in Chapter 1, several shortcomings were identified. The number of studies that analysed the influence of EU conditionality on corruption in candidate countries was limited. Many studies, especially those focusing on the 2004 enlargement wave, looked at the overall EU influence on CEECs, with little consideration of anti-corruption as a specific policy. This had changed somewhat for the 2007 enlargement wave, as Romania and Bulgaria continued to face problems with corruption after accession. A number of scholars (Grabbe 2006; Gugiu, 2012; Epstein 2012; Schimmelfennig and Sedelmeier 2005; Schimmelfennig and Sedelmeier 2005a; Sedelmeier 2010; Vachudova 2005; Vachudova 2009) identified problems with the EU conditionality tool, but overall they were of the opinion that the Union was able to influence changes during the accession process. However, the problems with corruption in Bulgaria and Romania, and the introduction of CVM as a post-accession measure, signalled that something was not carried through as expected during the accession process of these two countries, i.e. membership was granted even though problems with corruption control remained. On the other hand, the number of studies (Mendleski, 2015; Muingiu-Pippidi, 2015; Vachudova, 2014) questioning the influence of the EU on corruption control was greater, but literature specific to the EU's impact on corruption control is still scarce. This research, therefore, contributes to such studies. It refutes the idea that EU accession, at least when it came to corruption control, was a success

story. It argues that the EU had a limited role and gives reasons for the EU's limitations in this policy area.

Another shortcoming of the literature is that it has not sought to answer why EU candidates had different outcomes in their control of corruption over the years.⁶⁶ This thesis contributes to the literature by arguing that corruption control was dependent on context-specific factors. Namely, all CEECs were exposed to EU influence, but only some of them improved their ability to control corruption over the period examined. This leads to the conclusion that there was no causal relationship between corruption control in CEECs and the EU, i.e. it was not the EU itself that imposed influence, it was the willingness of candidates to comply with EU requirements and the benefits of joining the EU that mattered. As the EU was not well equipped to tackle corruption in candidate countries during accession, it was unlikely that EU conditionality would have made a difference.

This argument is also strengthened by illustrating that corruption control was secondary for the EU. This thesis therefore also refutes arguments made in the literature regarding EU conditionality in candidate countries which simply assume the existence of a causal relationship between EU conditionality and policy changes in candidates. The EU's attempts to influence certain policy areas during accession did not necessarily correlate to changes that may have occurred. As illustrated in the sphere of anti-corruption, especially in the case of Romania (see Chapter 4), such changes may have occurred due to a shift in domestic conditions. In the Romanian case, the change of political power in the 2004 election, which resulted in the appointment of a new cohort of officials to lead the fight against corruption, was crucial for the improved functioning of anti-corruption institutions after accession.

Likewise, in the introduction of this thesis, I also argued that scholars have not paid enough attention to factors at the domestic level to explain the implementation of the EU anti-

⁶⁶ Even though, as argued in Section 3.2., measuring corruption has its challenges, conclusions about general trends can be drawn from such tools.

corruption accession requirements. Pridham's (2005) book on democratization is one of the few exceptions, as it offers an innovative approach to the study of EU conditionality. It emphasises the importance of both domestic and international factors. This thesis builds on Pridham's ideas about the role of different factors to argue that, in addition to the importance of EU-related factors, domestic factors have a strong impact and the EU may only be able to exert influence beyond the adoption of legislation if the domestic costs are low. As Pridham's work was on democratization in the round, this thesis makes additional contributions by specifically focusing on anti-corruption policies, to strengthen his argument that both domestic and international factors matter, but also to argue that international – that is, EU – factors are dependent upon domestic factors.

Vachudova (2005) identified different responses from CEECs when the EU attempted to influence anti-corruption policies and argued that candidates with 'illiberal' patterns reintroduced superficial reforms, whereas candidates with 'liberal' patterns introduced more substantial efforts. She concluded that it was EU influence that mattered over domestic factors due to the fact that countries with both 'liberal' and 'illiberal' patterns joined the EU. However, according to Vachudova, the Czech Republic was considered to be a country with 'liberal' patterns, but, as illustrated in this thesis, the Czech Republic made very few efforts when it came to corruption control during its accession. This supports the notion that what is true for the accession process overall may not be true for anti-corruption policy. Therefore, further research looking into specific policy areas during the accession process of CEECs is needed. This thesis concludes that the role of domestic costs was crucial for the EU conditionality system, i.e. what mattered was whether it was costlier for a candidate to join the EU and follow EU instructions or remain outside the EU and maintain stronger control over corruption reforms. It is worth noting that even though it was costly for the Czech Republic and Romania to stay outside the EU, the minimal conditions that were imposed by the EU allowed the best

of both worlds. The Czech Republic did not even introduce all that was asked of it and yet still joined the EU. Romania did more, but it continued to face serious problems with corruption control, and yet it too still joined the EU. This suggests that the EU did not use the full power of its enlargement conditionality. In these two cases, remaining outside the EU was costlier than improving corruption control. Thus, the EU could have been much stricter in its anti-corruption demands. Nevertheless, this was not the case. This argument brings the focus back to the importance of specific contexts and opens up space for future research on the specific domestic costs of corruption control in future cases.

Bohmelt and Freyburg (2012) argue that the success of EU influence is related to the probability of membership and that the probability of membership is at its peak at the beginning of accession negotiations (see introduction). The fight against corruption is a critical issue as it is part of the Copenhagen criteria. A candidate country is expected to sufficiently fulfil the Copenhagen criteria before it opens negotiations. Therefore, if we follow Bohmelt and Freyburg's argument (see Introduction) that the EU's influence is at its strongest around the opening of negotiations, the EU's lack of success in corruption control, among other things, is a result of the low probability of membership when the most politically challenging measures (the Copenhagen criteria) for anti-corruption reform are required.

The evolution of the accession process in the area of anti-corruption was traced and compared in all three cases in Chapter 5. The conclusions suggest that EU anti-corruption conditionality evolved into a lengthier process over time. For the accession of the Czech Republic, the timeframe between submitting an application for membership and opening negotiations was shorter than for Romania. The timeframe between submitting an application for membership and receiving a green light to open negotiations for Macedonia was even longer. This reiterates the argument that, in the first two cases, the EU did not use the momentum of opening negotiations to increase its influence. That is not to say that there were no differences between

the examined cases, but to acknowledge that the accession process evolved over time. As is evident from the corruption control scores, the Czech Republic was doing much better at the time of accession, compared to Romania and Macedonia, which were more complex and problematic cases, so it was necessary for the EU to impose stricter criteria in these cases. Nevertheless, the argument that the EU did not use the momentum of opening negotiations remains.

In the Macedonian case, the EU had much more time to examine problems and to ask for improvements than in the previous two cases. The reasons behind the longer wait before recommending the opening of negotiations were a mixture of Macedonia's serious problems with corruption and 'enlargement fatigue'. If one applies Bohmelt and Freyburg's (2012) argument that the EU's influence is strongest around the opening of negotiations, due to the probability of membership, then it is understandable why the EU had a limited effect on improving corruption control in Macedonia. The probability of membership for this country, even after a recommendation for opening negotiations was made, was very low due to the Greek veto. This argument explains why Macedonia's ability to control corruption fell further during the five unsuccessful recommendations to open negotiations made by the European Commission starting in 2009. The Macedonian case reaffirms Bohmelt and Freyburg's argument, as it illustrates that the EU's impact is limited if the probability of accession is low. Moreover, the factors that I have identified in the theoretical framework in Section 6 support this argument and give additional information about the success and failures of the EU's anti-corruption policy.

This thesis, to a significant extent, confirms Szarek-Mason's (2010) argument that the main achievement of the EU was formal compliance with regard to anti-corruption. It adds value to her argument by clarifying that not even formal compliance was achieved among all candidates. Szarek-Mason does not answer why the EU's influence was limited to the adoption

of laws. This thesis answers this exact question and identifies the factors that have caused the EU's influence to stagnate on the formal level. As a result, this thesis makes a contribution to understanding the EU limits on corruption control, as opposed to only confirming that the EU has such limits. It does so by identifying specific factors that affect the EU's anti-corruption conditionality (see Section 6).

It was argued in the introduction that the corruption literature which examines the impact of international actors on domestic anti-corruption programmes rarely considers the role of the EU as a factor. This thesis brings the focus back to the EU as an international actor that may affect corruption control. The EU did not only attempt to influence corruption in member states and candidates, but it also made efforts to influence third countries. This made the EU an important international actor attempting to influence corruption control. This deserves more attention in future research. At the same time, the findings from this thesis suggest caution when analysing the extent to which the EU can actually influence corruption control. As a result, this thesis contributes to the literature on international actors and their role in corruption control by acknowledging the EU as an international actor that attempts to influence domestic corruption control and by analysing whether the EU has had success in doing so. It also sheds light on the issues that international actors may face when aiming to tackle corruption.

5.2. Revisiting the corruption literature

As illustrated in the introduction, corruption has been a focus of interest for many rational choice theorists. The core assumption of this theory is that humans are rational beings and they try to maximise their benefits and minimise their costs when engaging in corrupt behaviour. The conventional rational choice model starts from the assumption that the agents' main aim is to maximise their benefits from corruption, whereas the principals' main goal is to minimise the costs of corruption. The neo-institutionalist approach, on the other hand, criticises the

principal-agent approach mainly for lack of context. This approach suggests that when identifying corruption problems, as well as solutions for controlling corruption, one needs to have in mind the specificities of different settings. Such institutional economics approaches to corruption are important as this thesis the external incentives model, which is a rational choice model. This thesis has contributed to the rational choice understanding of corruption by validating and further clarifying some of the arguments made by rational choice scholars.

In line with institutional economics theories, one of the main conclusions of this thesis is that domestic elites consider the costs and benefits of joining the EU, i.e. if the benefits outweigh the costs then domestic elites will make efforts to satisfy the EU's anti-corruption requirements if that will bring a candidate country closer to membership. This conclusion is very close to the principal-agent model, i.e. the rational, institutional economics approach. However, this thesis also concludes that corruption control during accession was dependent on specific, domestic factors that differed from one candidate to the next. This supports the neo-institutionalists' arguments that the context, as well as interactions between agents and institutions, matters for corruption control.

Lambsdorff, Taube and Schramm (2005) develop this concept and argue that one should consider the institutional and social settings when analysing corruption because these impact on corruption control (see introduction). By illustrating that under certain domestic conditions it was very difficult for the EU to control corruption, as in the Macedonian case, this thesis further supports the neo-institutional claim that efforts to control corruption, by both domestic and EU reformers, depend on domestic settings. Corruption control was weak in Macedonia, which resulted in the inability of the principals (the electorate) to monitor the actions of the agents (the ruling elites), which in turn decreased the costs of corrupt behaviour for the agents (see introduction). In such circumstances, joining the EU was not a priority for ruling elites, which added to the complexity of the specific setting of the Macedonian case.

Rose-Ackerman and Palifka (2016: 428–429) identified factors relevant for anti-corruption reforms and analysed the conditions under which such reforms are sustainable and will not be reversed. It is worth noting that, when doing so, they shift towards a more neo-institutionalist approach to analysing corruption as they identify specific factors that may affect corruption control in different settings, i.e. democracies versus authoritarian regimes. This thesis sheds further light on this question by identifying a set of factors that are important for corruption control. In addition to how costly it was for ruling elites to implement EU conditions, factors specific to EU conditionality were identified. In other words, how the EU conducted its own anti-corruption conditionality also mattered. The EU acted differently based on how important it considered corruption control to be during enlargement. As illustrated in the empirical chapters, the EU was not clear what it expected from candidate countries with regard to corruption control. It did not have tailor-made anti-corruption requirements that accounted for the different contexts in CEECs. And, finally, it did not have appropriate tools for measuring success in corruption control. These problems resulted in weak anti-conditionality and superficial reforms during accession.

Moreover, the possibility of punishment, exhibited through putting the brakes on a candidate's accession process if they did not perform as required, was a significant condition. This is evident from the Romanian case. The country's accession was postponed for three years due to a lack of progress in controlling corruption, which put additional pressure on improving performance. Romania made more significant efforts to improve corruption control only after its accession was postponed from 2004 to 2007. However, in the Macedonian case, the risk of stalling accession yielded negative results on corruption control. Ruling elites (agents) used the Greek veto as an excuse for not opening negotiations and used the bilateral dispute with Greece as a scapegoat for lack of progress with the country's EU accession. The EU was also to blame. The EC continuously recommended opening negotiations with Macedonia for five years and

Greece kept imposing its veto in the EU Council. By doing so, the EU gave signals that the country was ready to embark on the next step in the accession process. By identifying these additional factors, this thesis contributes to the rational choice debates on what conditions affect anti-corruption reforms.

Even though Rose-Ackerman and Palifka's (2016) book makes a significant contribution to the rational choice literature on corruption, it does not focus extensively on the role of international actors in controlling corruption, and so by analysing the role of the EU as a factor, this thesis offers additional factors that may contribute towards anticorruption reforms. This thesis does not examine the role of other international actors in controlling domestic corruption, but it points to the need for a future comprehensive study of this problem (see also the next section of this conclusion).

The Romanian case further supports the neo-institutionalist approach. Unlike in Macedonia, Romanian ruling elites were determined to join the EU and were prepared to undertake the necessary reforms, even if only temporarily. Geddes (1994) argues that the ultimate goal of ruling elites is to remain in office. This has been one of the main assumptions of this thesis. In line with the rational choice argument, if not joining the EU would have threatened the office of ruling elites, it was expected that they would act in a way to maintain power. If the principals' (the electorate) aim was to join the EU and the agents (the ruling elites) did not make efforts to fulfil that goal, then they would risk their office. Therefore, it was expected that the agents would make efforts in their ultimate interest: to remain in office. However, two issues are relevant here.

According to neo-institutionalists (see introduction), in a highly corrupt setting the principal has less power over the agent. This weakened the EU's anti-corruption conditionality. In the Macedonian case, the benefit of maintaining the status quo was higher than the cost of furthering the accession process. This, together with the EU's inability to offer negotiations

due to the Greek veto, resulted in weakening the EU's bargaining power. Also, as argued in this thesis, corruption control was secondary for the EU, due to political interests, security and stability, which resulted in CEECs advancing in the accession process without fulfilling the necessary requirements, as illustrated in all three cases. This, in turn, allowed the agents to maximise their benefits without incurring excessive costs. This thesis, therefore, reaches the conclusion that the EU's anti-corruption conditionality was not used to its fullest potential, because if EU accession was important for the principals, the agents could have been conditioned to implement substantive anti-corruption reforms. This thesis illustrates that this was not the case and that much more could have been done to control corruption during the accession process in the countries examined.

This also contributes to the literature on rational choice theories more generally by adding an additional element – the EU. Conventional rational choice focuses on principal-agent analysis and does not acknowledge the role of additional factors, such as the EU. Neo-institutionalists, by acknowledging the role of institutions and contexts, support this thesis' conclusion that, in the case of CEE, agents could not act individually as they were restrained by the EU factor.

6. Key findings and further research

This thesis has focused on the role that EU enlargement conditionality had on corruption control during the accession of CEECs. The focus is not on the EU conditionality of CEE overall, but on conditionality in corruption control in particular. It has examined how far the EU's influence stretched, what were the limitations of this influence, and whether different contexts had an impact on the ability of the EU to increase corruption control in candidates during the accession period. The thesis does not delve further the causes and consequences of corruption in CEE. It does not consider why some cases faced more severe challenges in tackling corruption than others. However, it suggests a framework that can be used for future

research to better understand the impact that EU conditionality has on corruption control in CEECs.

Based on the cases examined, the main conclusion of this thesis is that the EU's influence on corruption control was dependent on a number of factors. Some of these factors were related to the EU, especially to the limitations of the decision-making processes in the Union itself, the priorities that the Union has with regard to enlargement and the expertise of the EU with regard to corruption control. The main finding from my empirical research is that the influence of the EU's anti-corruption conditionality is dependent on both external, EU-related factors, and internal, domestic circumstances. The EU-related factors that have emerged as significant are:

- (i) The secondary importance of corruption control for the EU (see Section 3.3);
- (ii) The insufficient clarity of anti-corruption criteria and expectations for candidates (see section 3.1.);
- (iii) The lack of appropriate, tailor-made control of corruption measures that were able to tackle corruption problems within specific contexts (see section 3.2.);
- (iv) The lack of appropriate tools for measuring success in the control of corruption (see section 3.1.).

The domestic factors identified are:

- (i) The domestic costs of improving corruption control in candidates (see Section 4);
- (ii) the capacity of candidates to implement EU requirements (See sections 3.1. And 4.).

These key findings provide an excellent basis for further research, which can be based on this thesis. Three particular areas for future research have been identified: (i) testing the key findings on additional CEE members and candidates; (ii) testing the key findings on other post-

communist countries, namely the Eastern Neighbourhood of the EU; (iii) comparative analysis on the influence of the EU vis-à-vis other international actors on corruption control.

It is expected that these findings could be applied to analyse the impact that EU enlargement conditionality has had on corruption control in other countries during their accession processes. Using these findings to analyse additional cases will test their validity and robustness. Future research on the role of EU enlargement conditionality will also provide additional validity to the answers to the three research questions. First, it will shed light on whether the EU's anti-corruption conditionality has been mainly limited to the adoption of legislation in other CEECs. Second, it will determine whether there were additional factors that affected the ability of the EU to control corruption in CEE. It may also reveal additional factors that may have been present in other CEECs, but not in the three cases examined. Third, it will shed light on how high the domestic costs were in other CEECs and it will test how important domestic circumstances were in other cases.

Moreover, there remain unanswered questions as to the different influence of the EU on corruption control between candidates for accession and other post-communist states, especially neighbouring countries that did not have immediate prospects for membership. The EU's main incentive is the prospect of membership, but this incentive is not present for the Eastern Neighbourhood countries. As these countries are not being considered for EU membership, it is expected that the EU's ability to influence corruption control will be even weaker. Whether this is the case is unknown, as studies that compare the EU's anti-corruption conditionality on candidates vis-à-vis 'third' countries are lacking. Therefore, comparative analysis of the two different conditionalities is needed.

Also, this thesis has not engaged in detailed analysis of the capacity of each candidate to control corruption. This should be done for both EU candidates and third country neighbours. This capacity to control corruption is an issue for corruption studies generally, it is not an issue

exclusively related to EU conditionality. As this thesis has illustrated, the EU made efforts to increase its capacity to control corruption in all CEECs. These would have been more effective in cases where the domestic costs were low and if the EU anti-corruption criteria were appropriate for improving corruption control. However, as the issue of capacity has not been examined thoroughly in this thesis, future research on capacity will shed light on the importance of this factor to control corruption. Such research may suggest that lack of institutional capacity (both human resource and finances) has been an important factor in successful corruption control.

The third avenue for future research is linked to the EU's role as an international actor in corruption control. Such research will not only contribute to the literature on EU enlargement conditionality but also to the literature on corruption overall, especially to studies that look at the role of international actors in corruption control. Other international organizations – such as the Council of Europe, the World Bank, the United Nations and the Organization for Economic Cooperation and Development – have made serious attempts to influence corruption control. These organizations have introduced a number of conventions and monitoring mechanisms for their members. However, the tools that such organizations use to enforce compliance are different from that of the EU, due to its membership incentive. Comparing the EU's ability to influence corruption control to that of other international and/or regional organizations is necessary, as it illustrates the differences in methods and tools that international actors use for influencing corruption control. It will also determine whether the EU is more effective in controlling corruption compared to other international organizations. Furthermore, as this thesis focused on the accession process only, further research on how the EU applies post-accession conditionality in the examined cases is needed. The literature review points out to relevant studies on these issues, but questions such as why the EU is so slow to

use conditionality relating to provision of aid/structural adjustment funds, especially from a comparative perspective are welcomed.

Finally, when it comes to the literature on EU conditionality, it would be beneficial to compare the EU's anti-corruption enlargement conditionality to conditionality in other policy areas in order to note cross-policy similarities and differences. Such comparisons will be very beneficial, as different policy areas have different levels of importance for the EU. For instance, research has been done on environmental policies during accession (see Borzel and Fagan 2015; Fagan and Sircar 2015a) and it will be interesting to examine the importance of such policies compared to anti-corruption, in order to understand if some policies have priority over others.

In conclusion, the main findings of this thesis are that EU anti-corruption conditionality during accession has evolved over time and success varies from case to case. This is because of EU-related factors as well as the size of the domestic costs for meeting EU requirements by different candidates. The main contribution of this thesis is the key findings that illustrate the common constraints that the EU faces when attempting to influence corruption control during accession. This thesis also contributes to the corruption literature by further supporting the neo-institutionalist argument about the importance of context for corruption control. It contributes to the literature on EU conditionality by illustrating that the EU's influence on corruption control during accession is limited by a number of factors.

The main empirical contribution of this thesis lies in the richness of data collected for the research. Namely, over 80 elite interviews were conducted for the thesis. These data reveal additional information that was not always evident when analysing various documents, such as the EC's Progress Reports. This thesis thus opens up a number of new trajectories for future research. It is important to test the key findings to understand whether such issues were present for the accession of other CEECs. In addition, it is important to understand whether there are

differences in applying EU anti-corruption conditionality between candidates and third countries. Finally, this thesis raises awareness of the role of the EU in corruption control as an international actor, which is largely missing from the literature. Research in the aforementioned areas will broaden our understanding of what the EU and other international actors can do to assist corruption control and will inform such organizations when they devise their anti-corruption policies and strategies.

Appendixes

Appendix 1: List of interviewees

Aida Popa, J. Judge at the Criminal Section of the High Court of Cassation and Justice, Interviewed by Cvetanoska, L. (20.10.2015).

Atanasov, Z. Head of the Parliamentary Institute at the Macedonian Parliament. Interviewed by Cvetanoska, L. (12.09.2014).

Barlici, M. Head of Anti-corruption studies and prognosis unit, Ministry of Interior, Interviewed by Cvetanoska, L. (14.10.2015).

Basch, R. Executive Director of the Open society Foundation in the Czech Republic. Interviewed by: Cvetanoska, L. (27.10.2014).

Caca-Nikolovska, M. President of the Institute for Human Rights, Former judge of the European Court of Human Rights, Former Supreme Court judge in Macedonia. Interviewed by Cvetanoska, L. (8 .09. 2014).

Calunescu, C. Director of the Head Unit for Corruption, Ministry of Justice, Romania, Interviewed by Cvetanoska, L. (23.10.2015).

Cekov, A. Centre for Research and Policy-Making. Interviewed by: Cvetanoska, L. (01.09. 2014).

Chichevaliev, F. Former employee at the State Commission for Preventing Corruption in the Republic of Macedonia, Partner at Chichevaliev & Ilijovski Law Firm. Interviewed by Cvetanoska, L. (19 .09. 2014).

Cospanaru, I. President of Transparency International Romania, Interviewed by: Cvetanoska, L. (13.10.2015).

Danilet, C. Judge and Member of the Judicial Council, and former personal counsellor of the Minister for Justice during accession. Interviewed by Cvetanoska, L. (13.10.2015).

Dimitrioski, V. Elections analyst at Most Elections monitoring NGO, Macedonia. Interviewed by Cvetanoska, L. (10 .09. 2014).

Dimova, L. Member of Parliament, Social Democratic Union of Macedonia. Interviewed by Cvetanoska, L. (06.09. 2014).

Dvorakova, V. University of Economics, Prague. Interviewed by: Cvetanoska, L. (11.11.2014).

Fadrny, M. Head of the Responsible State Divion at Frank Bold, Prague. Interviewed by: Cvetanoska, L. (31.10.2014).

Fric, P. Research director, Centre for Social and Economic Strategies, Charles University, Prague. Interviewed by: Cvetanoska, L. (11.11.2014).

Fule, S. Former European Commission for Enlargement. Interviewed by: Cvetanoska, L. (14.05.2015).

Gawthorpe, E. Doctoral Researcher Charles University, Czech Republic. Interviewed by Cvetanoska, L. (24 .10. 2014).

Gjorcev, V. Member of Parliament the Internal Macedonian Revolutionary Organisation. Interviewed by Cvetanoska, L. (16 .09. 2014).

Gjorcevski, D. Partner at Gjorcevski and Doneska Law Firm. Interviewed by Cvetanoska, L. (11 .09. 2014).

Hafner Ademi, T. Executive Director of the Balkan Civil Society Development Network. Interviewed by Cvetanoska, L. (10 .09. 2014).

Interviewee 1, Senior EU official, DG Near-Neighbourhood and Enlargement Negotiations, European Commission, Interviewed by Cvetanoska, L. (18.01.2016).

Interviewee 2, Senior Researcher in the Institute of Sociology at the Czech Academy of Science, Interviewed by: Cvetanoska, L. (20.02.2015).

Interviewee 3, Former Minister of Justice for Romania, MEP, Interviewed by Cvetanoska, L. (26.01.2016).

Interviewee 4, Former Prime Minister of the Czech Republic. Interviewed by: Cvetanoska, L. (23.02.2015).

Interviewee 5, Chief Prosecutor at the National Anti-corruption Directorate, Romania. Interviewed by Cvetanoska, L. (16.10.2015).

Interviewee 7, Director of the Head Unit for European Cooperation, Ministry of Justice, Romania, Interviewed by Cvetanoska, L. (23.10.2015).

Interviewee 8, Director of the State Commission for the Prevention of Corruption, Republic of Macedonia, Interviewed by Cvetanoska, L. (18 .09. 2014).

Interviewee 9, Platform Administrator, EUC European Competence and Secretariat for European Affairs of the Government of the Republic of Macedonia. Interviewed by Cvetanoska, L. (12 .09. 2014).

Interviewee 10. Employee in the Secretariat for European Affairs, Government of the Republic of Macedonia. Interviewed by Cvetanoska, L. (05 .09. 2014).

Interviewee 11. Employee in the Secretariat for European Affairs, Government of the Republic of Macedonia. Interviewed by Cvetanoska, L. (05 .09. 2014).

Interviewee 12. Employee in the Secretariat for European Affairs, Government of the Republic of Macedonia. Interviewed by Cvetanoska, L. (005 .09. 2014).

Interviewee 13. Member of the State Commission for the Prevention of Corruption of the Republic of Macedonia, Interviewed by Cvetanoska, L. (18 .09. 2014).

Interviewee 14. Employee of the State Commission for the Prevention of Corruption of the Republic of Macedonia. Interviewed by Cvetanoska, L. (18 .09. 2014).

Interviewee 15. Employee of the State Commission for the Prevention of Corruption of the Republic of Macedonia. Interviewed by Cvetanoska, L. (18 .09. 2014).

Interviewee 16. President of the Institute for Parliamentary Democracy, Macedonia. Interviewed by Cvetanoska, L. (12 .09. 2014).

Interviewee 17. Senior official. Delegation of the EU to the Republic of Macedonia. Interviewed by Cvetanoska, L. (18 .09. 2014).

Interviewee 18. Employee of the Institute for Democracy Societas Civilis Skopje. Interviewed by Cvetanoska, L. (11.09.2014).

Interviewee 19. Employee of the State Commission for the Prevention of Corruption of the Republic of Macedonia. Interviewed by Cvetanoska, L. (18 .09. 2014).

Interviewee 20. Employee in the Head Unit for Corruption, Ministry of Justice, Romania, Interviewed by Cvetanoska, L. (23.10.2015).

Interviewee 21. Member of Parliament, president of the Democratic Party of Turks in Macedonia and Member of the National European Integration council within the parliament of the Republic of Macedonia. Interviewed by Cvetanoska, L. (16 .09. 2014).

Interviewee 22. Counsellor at Municipality Centar, Skopje, Partner at Chichevaliev & Ilijovski Law Firm. Interviewed by Cvetanoska, L. (19 .09. 2014).

Interviewee 23. Journalist, Programme Director of the Center for Civil Communications. Interviewed by Cvetanoska, L. (19 .09. 2014).

Interviewee 24. Corruption expert, Romanian Academy, Bucharest Interviewed by Cvetanoska, L. (15 .10. 2015).

Interviewee 25. Good governance and electoral processes expert. Expert Forum, Romania. Interviewed by Cvetanoska, L. (14 .10. 2015).

Janda, J. Deputy Director of European Values Think Tank, Prague. Interviewed by: Cvetanoska, L. (26 .02. 2015).

Kalajdziev, G. Criminal law professor at the Ss. Cyril and Methodius University and President of the Helsinki Committee for Human Rights of the Republic of Macedonia, , Professor at Ss. Cyril and Methodius University, President of the Helsinki Committee for Human Rights of the Republic of Macedonia. Interviewed by Cvetanoska, L. (19 .09. 2014).

Kavan, J. Former Minister for Foreign Affairs. Interviewed by: Cvetanoska, L. (05.02.2015).

Kolar, P. Former Deputy Foreign Minister of the Czech Republic, and former Czech ambassador. Interviewed by: Cvetanoska, L. (18 .02.2015).

Konieczny, J. Project Manager at the Anticorruption Endowment NGO. Interviewed by: Cvetanoska, L. (16 .02.2015).

Kucera, F. Corruption researcher at the University of Economics, Prague. Interviewed by: Cvetanoska, L. (30.10. 2014).

Koukan, E. Member of the European Parliament, Interviewed by Cvetanoska, L. (26 January 2016).

Leigh, M. Chief Negotiator for the Czech Republic, Director of Directorate General for Enlargement, Interviewed by Cvetanoska, L. (01 .02. 2016).

Maleski, D. Foreign Minister of Macedonia from 1991 to 1993, UN Ambassador from 1993 to 1997, Professor at Ss. Cyril and Methodius University- retired. Interviewed by Cvetanoska, L. (05 .09. 2014).

Marichikj, B. Executive Director of the Macedonian Centre for European Training. Interviewed by: Cvetanoska, L. (19 August 2014).

Mihajlovska, V. Former Member of the State Commission for Preventing Corruption of the Republic of Macedonia. Interviewed by Cvetanoska, L. (15 .09. 2014).

Misev, V. President of the Institute for Democracy Societas Civilis Skopje, Lecturer at the School of Journalism and Public Relations. Interviewed by Cvetanoska, L (11.09.2014).

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Appendix 2: Guiding interview questions

What are the main corruption related problems in the country?

Are the majority of relevant laws in place?

Are the laws and policies in place adequate to tackle the corruption problems that the country is facing?

Is the lack of implementation of laws and policies the main concern as regards the control of corruption?

Has the country achieved significant progress in the implementation of anti-corruption laws and policies since the mid-1990s?

What factors have caused and are influencing these problems in the specific country?

How has the EU enlargement process influenced the domestic control of corruption?

Was the influence positive/ negative, and why?

Was the influence substantive and did it also affect changes in practice, or did it mainly affect the adoption of anti-corruption laws and policies?

How clear were the EU anti-corruption criteria during the enlargement process?

Was anti-corruption progress in the country rewarded by forwarding the accession progress, and vice versa, was there real threat of exclusion when progress was pending?

How costly was it for domestic political actors to adopt and implement anti-corruption EU requirements?

Appendix 3: Anti-corruption frameworks and EU relations on the cases of interest

3.1. Anti-corruption framework and EU relations: Czech Republic

1961- Criminal Procedure Code, Law 141/1961 (amended several times, latest amendment in 2012)

1991- Constitutional Act, 1/1993

1991- Law 424/1991 on association in political parties and political movements (last amended in 2016)

1991- Accounting Act, Law 563/1991

1993- Supreme Audit Office Act, Law 166/1993 (last amended in 2016)

1995- Act on Elections to the Parliament of the Czech Republic, Law 247/1995

1995- The Europe Agreement establishing an association between the Czech Republic and EC and their Member States on the other part (the so-called Association Agreement) entered into force

1996- The Czech's Republic official application for EU membership on 23rd January

1998- Clean Hands Campaign

1998- Negotiations between the Czech Republic and the EU opened in March

1998- The European Commission presents the first Report on the Czech Republic's progress towards the fulfilment of accession criteria

1998- Governmental Strategy on fight against corruption for period 1999 - 2004

1999- Law on Free Access to Information, Law 106/1999

1999- The Council of Europe Criminal Law Convention was signed

2000- The Council of Europe Criminal Law Convention was ratified

2000- The Council of Europe Civil Law Convention was signed

2002- Accession to the Council of Europe

2002- The European Council confirms the conclusion of accession negotiations with the Czech Republic

2002- The Council of Europe Criminal Law Convention entered into force

2003- The Accession Treaty to the European Union of the Czech Republic is signed on 16th April

2003- Unit for Combating Corruption and Financial Crime (ÚOKFK) established

2003- The Council of Europe Civil Law Convention was ratified

2004- The Czech Republic joins the European Union on 1st May

2004- The Council of Europe Civil Law Convention entered into force

2005- Act on the Protection of Classified Information and on Security Competence, 412/2005

2005- Governmental Strategy on fight against corruption for period 2006 – 2011

2005- The Czech Republic signed the United Nations Convention against Corruption

2006- Conflict of Interest Act, Law 159/2006

2008- Act on selected measures against legitimisation of proceeds of crime and financing of terrorism, Law 253/2008

2008- Act on the Police of the Czech Republic, Law 273/2008

2009- Czech Criminal Code, Law 40/2009

2009- Act on Auditors, 93/2009

2010- Governmental Strategy on fight against corruption for period 2011 – 2012

2011- The Act on the Liability of Legal Persons and Proceedings against Them, Law 418/2011

2012- Czech Civil Code, Law 89/2012

2013- Government Strategy on the fight against corruption 2013-2014

2013- Act on International Judicial Cooperation in Criminal Matters, Law 104/2013

2013- The Czech Republic ratified the United Nation's Convention against Corruption

2014- Civil Service Act, Law. 234/2014

2014- Government Strategy on the fight against corruption 2015-2016

2015- Government Regulation 145/2015 on measures related to whistleblowing at a service authority

2016- Elections Law, Law 322/2016

2016- Public Procurement Act, 134/2016

2016- Government Strategy on the fight against corruption 2017-2018

2017- Government Strategy on the fight against corruption 2018-2022

3.2. Anti-corruption framework and EU relations: Romania

1991 -Constitution of Romania, republished in Official Gazette of Romania, Part I, no. 767 of 31 October 2003

1991 - Law on the Repression of Unfair Competition, Law 11/1991

1992 - Law on the Organization and Operation of the Romanian Court of Accounts, Law 94/1992, republished as Law 282/2009

1993 - The Agreement for Romania's Association to the European Union (European Agreement) was signed in February

1993 - Romania's official application for EU membership

1995 - The Agreement for Romania's Association to the European Union (European Agreement) came into force in February

1995 - Romania presents the official application for EU membership in June

1996 - Law for the Declaration and Control of Assets of the Officials, Magistrates, of Persons Holding Management and Control Positions and of Public Officials, Law 115/1996

1997 - Law on the Organization and Functioning of the Institution of the People's Advocate, Law 35/1997

1998 - The European Commission presents the first Report on Romania's progress towards the fulfilment of accession criteria

1999 - Law on the Statute of Civil Servants, Law 233/1999

1999 - The European Council in Helsinki decides to open accession negotiations with Romania in December

2000 – Formal launch of the negotiation process of Romania's accession to the European Union in February

2000 - Law on Preventing, Discovering and Sanctioning of Corruption Acts

2001 - Law Regarding the Free Access to Information of Public Interest, Law 554/2001

2002 - Law on the Prevention and Sanctioning of Money Laundering and on Setting up of Certain Measures for the Prevention and Combating Terrorism Financing, Law 656/2002

2002 - Law on Witness Protection, Law 682/2002

2002 - Law Regarding the Status of the Police Servants, Law 360/2002

2002 - Government Emergency Ordinance no 43 from April 4th 2002 Regarding the National Anticorruption Directorate

2002 - The European Council in Copenhagen expresses support for the objective of Romania's accession to the EU in 2007

2003 - Law on Preventing and Combating Organized Crime, Law 39/2003

2003 - Law on Decisional Transparency in Public Administration, Law 52/2003

2003 - The European Council in Thessaloniki expresses support for the close of Romania's accession negotiations in 2004

2004 - Law on the Code of Conduct for the Civil Servants, Law 157/2004

2004 - Law on the Statute of Judges and Prosecutors, Law 303/2004

2004 - Law Regarding the Protection of Personnel within Public Authorities, Public Institutions and other Establishments, who Report Infringements, Law 571/2004

2004 - The European Council in December 2004 confirms the conclusion of accession negotiations with Romania

2005 - Law on Establishing Certain Measures to Prevent and Fight Corruption within MoAI, Law 161/2005

2005 - Law on the Superior Council of Magistracy, Law 653/2005

2005 - Law on Judicial Organization, Law 827/2005

2005 –The Accession Treaty to the European Union of Romania is signed on 25th April

2006 - Law on the Financing of the Activity of Political Parties and Election Campaigns, Law 334/2006

2006 - Commission Decision of 13 December 2006 Establishing a Mechanism for Cooperation and Verification of Progress in Romania to Address Specific Benchmarks in the Areas of Judicial Reform and the Fight against Corruption (2006/928/EC)

2007 - Romania joins the European Union on January 1st.

2007 - Law on the Establishment, Organization and Functioning of National Integrity Agency, Law 144/2007, republished as Law 176/2010

2008- National Anticorruption Strategy for the vulnerable sectors and local public administration for 2008-2010

2009 - Criminal Code, Law 286/2009

2010 - Criminal Procedure Code, Law 135/2010

2011 – Decision no. 32 from January 12th, 2011 on the Establishment of the National Office for Crime Prevention and Cooperation with EU Asset Recovery Offices

2011 - National Anticorruption Strategy for the Period 2012-2015

2011 - The National Action Plan for the Implementation of the National Anticorruption Strategy for the period 2012-2015

2015 - Law on Amending and Supplementing the Law on the Financing of Political Parties and Election Campaigns, Law 113/2015

2015 – Memorandum for the prolongation of the period of implementation of the National Anti-corruption Strategy 2012-2015 by two years, until 31 December 2017

2016 - - National Anticorruption Strategy for the Period 2016-2020

2016 – Law on Public Procurement, Law 98/2016

3.3. Anti-corruption framework and EU relations: Macedonia

1991 - Constitution

1995 – Law on Courts (abolished with the Law on courts Official Gazette 58/2006)

1998 – Law on Public Procurement (abolished with the Law on Public Procurement official Gazette 19/2004)

1999 – Law for the Ratification of the Criminal Law Convention on Corruption of the Council of Europe

2000 – Law on State Officials (abolished by the Law on Administrative Officials Official Gazette 27/2014)

2001 – Signing of a Stabilisation and Association Agreement with the EU

2002 – Law on the Prevention of Corruption

2002 – Law for the Ratification of the Civil Law Convention on Corruption of the council of Europe

2002 – Establishment of the Commission for the Prevention of Corruption

2003 – Identified as a potential EU candidate during the Thessaloniki European Council summit

2003 – Law on Courts (abolished with the Law on courts Official Gazette 58/2006)

2003 - Law on Judicial Budget

2003 – State Program for the Prevention and Repression of Corruption with an Action Plan

2004 – Stabilisation and Association Agreement with the EU enters into force

2004 – Application for EU membership submitted

2004 – Law on Public Procurement (abolished with the new Law on Public Procurement Official Gazette 136/2007)

2004 – Law on Funding Political Parties

2005 – Granted candidate status

2005 – Law for the Ratification of Additional Protocol of the Criminal Law Convention on Corruption of the council of Europe

2005 – Annex to the 2003 State Program for the Prevention and Repression of Corruption

2006 - Law on the Academy for the Training of Judges and Public Prosecutors (abolished with the Law on the Academy for the Training of Judges and Public Prosecutors Official Gazette 88/2010)

2006 – Law on Courts

2006 – State Program for the Prevention and Repression of Corruption 2007

2007 – Law on Public Procurement

2007 – Law on the Remuneration of Judges

2007 – Law on Conflict of Interests

2007 – Law for the Ratification of the United Nations Convention against Corruption

2007 – State Program for the Prevention and Reduction of Conflict of Interests 2008

2008 - Law on Lobbying

2009 - The European Commission recommended the opening of accession negotiations with Macedonia

2009 – Amendments of the Law on the Remuneration of Judges

2009 – Law on the Remuneration of Members of the Judicial Council

2010 – The European Commission issues the second recommendation for opening accession negotiations with the country

2010 – Law on the Academy for the Training of Judges and Public Prosecutors (abolished by the new Law on the Academy for the Training of Judges and Public Prosecutors Official Gazette 20/ 2015)

2010 – Code of Ethics for the Employees in the Judicial Services

2010 – Law on Public Officials (abolished by the Law on Administrative Officials Official Gazette 27/2014)

2010 – Code of Ethics for the Members of the Government and Public Functionaries Appointed by the Government of the Republic of Macedonia

2010 – State Program for the Prevention and Repression of Corruption and State Program for the Prevention and Reduction of conflicts of Interests 2011

2011 – The European Commission issues the third recommendation for opening accession negotiations with the country

2012 – The European Commission launches a High Level Accession Dialogue with the country

2011 – State Program for the Prevention and Repression of Corruption and State Program for the Prevention and Reduction of Conflicts of Interests with an Action Plan

2012 – The European Commission issues the fourth recommendation for opening accession negotiations with the country

2013 – The European Commission issues the fifth recommendation for opening accession negotiations with the country

2013 – Law on Media

2014 – The European Commission issues the sixth recommendation for opening accession negotiations with the country

2014 – Law on Administrative Officials

2015 – The recommendation to open accession negotiations was made conditional on the continued implementation of the Przino agreement and the “Urgent reform Priorities”

2015 – Law on the Academy for the Training of Judges and Public Prosecutors

2015 – Law on Whistleblower Protection

2015 – State Program for the Prevention and Repression of Corruption and Prevention and Repression of Conflict of Interests 2016-2019

2016 – The recommendation to open accession negotiations was made conditional on the continued implementation of the Przino agreement and the “Urgent reform Priorities”

2018 – Unconditional recommendation by the European Commission to open accession negotiations with the country

2018 – the Council proclaimed its aim to open accession negotiations with the country in June 2019 if progress is made in fight against corruption, organised crime, judiciary, public administration and intelligence services

2019 – The Prespa agreement on the name change enters into force.

2019 – National Strategy 2020-2024 of the Commission for the Prevention of Corruption

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