Fighting Corruption in Croatia with the Prospect of European Union Membership: Conditionality and Soft Aquis Communautaire - Lessons Learned from the Previous Enlargements to Slovenia, Bulgaria and Romania

Angélique Hardy
Hertie School of Governance
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When compared to the rest of the world, transitions with a European Union accession perspective have proved the best so far: they seem to lead to democracy and prosperity faster and with reduced uncertainties and risks. The evidence is not so linear, however, if we compare across Eastern Europe itself. The Western Balkans has experienced difficult transitions, and their European perspective seemed still more of a promise than a reality by 2010. The new EU member countries, particularly Romania and Bulgaria, but not only these two, have meanwhile experienced some sliding back on various governance indicators after their EU accession, generating talk on a ‘day after EU syndrome’. By focusing on Croatia, Angelique’s Hardy paper uses the lessons learned from the last accession wave in the most sensitive field – corruption and rule of law – to generate a forecast and provide some warnings. The fight against corruption has experienced some backsliding in Slovenia, Romania and Bulgaria soon after their integration within the EU. Drawing on these examples, Hardy argues for a distinction between the post-accession compliance from the Member States in areas of hard acquis and soft acquis. She forecasts that a ‘Croatian problem’ similar to the ‘eastern problem’ is likely to occur if EU does not learn the lessons from previous accessions, which uses theoretical tools (such as stakeholder analysis) with skill and imagination. The author makes a tour de force in this paper, drawing on several countries, integrating official assessments, governance data and interview material to provide a vivid picture of an ongoing process and the lessons learned which emerge.

Alina Mungiu-Pippidi
Professor of Democracy Studies
Thesis supervisor
FIGHTING CORRUPTION IN CROATIA
WITH THE PROSPECT OF EUROPEAN UNION MEMBERSHIP

CONDITIONALITY AND SOFT ACQUIS COMMUNAUTAIRE:
LESSONS LEARNED FROM THE PREVIOUS ENLARGEMENTS TO
SLOVENIA, BULGARIA AND ROMANIA

Student:  
Angélique Hardy  
082434  
Master of Public Policy  
Class of 2010

Master Thesis Advisor:  
Alina Mungiu-Pippidi

Partner Institution:  
European Commission  
DG Enlargement  
Unit Croatia  
Dirk Lange
The sole responsibility for the ideas and arguments developed in the following paper lies with the author. It does not necessarily reflect the opinion of the European Union. The European Commission is not responsible for any use that may be made of the information contained therein.
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\(^1\) Due to confidentiality the experts remain anonymous. However, the author can provide the list of the experts’ organisations on demand.
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<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CEECs</td>
<td>Central and Eastern European Countries</td>
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<tr>
<td>CoE</td>
<td>Council of Europe</td>
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<td>CoC</td>
<td>Control of Corruption</td>
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<td>CPI</td>
<td>Corruption Perceptions Index</td>
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<td>CSD</td>
<td>Center for the Study of Democracy</td>
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<td>CVM</td>
<td>Cooperation and Verification Mechanism</td>
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<td>DNA</td>
<td>National Anti-Corruption Directorate</td>
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<td>EC</td>
<td>European Commission</td>
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<td>EU</td>
<td>European Union</td>
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<td>GRECO</td>
<td>Group of States against Corruption</td>
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<td>NAPO</td>
<td>Office of the National Anticorruption Prosecutor</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>NIT</td>
<td>Nations in Transit</td>
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<td>OMC</td>
<td>Open Method of Coordination</td>
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<td>OSI</td>
<td>Open Society Institute</td>
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<tr>
<td>PNUSKOK</td>
<td>National Police Office for the Suppression of Corruption and Organised Crime</td>
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<tr>
<td>SAA</td>
<td>Stabilisation and Association Agreement</td>
</tr>
<tr>
<td>TI</td>
<td>Transparency International</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>USKOK</td>
<td>Office for the Suppression of Corruption and Organised Crime</td>
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<tr>
<td>WB</td>
<td>World Bank</td>
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Executive Summary

Lately Croatian officials have received positive signs with regard to the progress of their country towards accession. However, in order to gain membership, Croatia still needs to fulfil a number of conditions. As with the Candidate countries of the two previous enlargements, Croatia is subject to the EU pre-accession conditionality method. This method is considered to be among the most successful foreign policy instruments the EU has implemented so far. During the last two enlargement processes, it proved itself to be able to align the post-communist candidate countries with the EU *acquis communautaire*. However EU conditionality has not been exempt from criticisms, many of them being related to its post-accession sustainability. The strength of the instrument lies primarily in the conditional membership incentive. Hence doubts arose with regard to the compliance of the new Member States with the EU *acquis* once the enlargement would be effective and the membership lever would disappear. Studies on post-accession compliance suggest that the dreaded ‘eastern problem’ remains rather theoretical and has not been observed in practice. Nevertheless in specific areas resting on the EU *soft acquis*, such as the fight against corruption, the ‘eastern problem’ actually occurred. However, empirical evidence backed up by international organisations’ reports demonstrated that the fight against corruption has experienced some backsliding in Slovenia, Romania and Bulgaria soon after their integration within the EU. The results of a comparison of the Slovene, Romanian and Bulgarian experiences advocate for a distinction between *hard acquis* and *soft acquis* since they do not produce the same degree of post-accession compliance from the Member States. Having confronted the state of corruption in Croatia and the overall environment that underlies domestic corruption in the Slovenian, Bulgarian and Romanian experiences, this thesis establishes that a ‘Croatian problem’ similar to the ‘eastern problem’ is likely to occur as things stand at the present. Even if fighting corruption remains mostly under the scope of the Member States competences, the EU can have a substantial impact on the persistence of anti-corruption measures in Croatia and elsewhere if the organisation adjusts its current approach.
“Greek tragedy is based on myth, and Croatian on corruption.”

(Ivica Djikic)²

Introduction

Croatia could conclude accession talks in 2010. Such was the message that awaited Ivo Josipovic upon his arrival in Brussels for his first visit to the European Union (EU) headquarters as newly elected Croatian President.³ However this positive statement was counterbalanced by the reminder from Brussels’ officials underlining that Croatia still needs to fulfil a number of conditions prior receiving the membership sesame. The President of the European Council, Herman Van Rompuy, namely declared that “negotiations for accession could be concluded [in 2010], provided that all conditions are met” and specified that “Croatia has to make some improvements in certain areas” (Balkan Insight 2010).

Conditioning EU membership on the fulfilment of specific criteria is characteristic of the method used by the EU to prepare its enlargements. The pre-accession conditionality method was inaugurated in 1993 with the adoption of the so-called Copenhagen Criteria as a response to the application for membership by the Central and Eastern European Countries (CEECs) which were facing great challenges to conform their societies to European standards. Part of the Copenhagen criteria is the political criteria.⁴ These require the Candidate country to have stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Though not explicitly mentioned, the fight against corruption comes under the scope of the political criteria since the level of corruption is a crucial determinant of the quality of governance (Vehovar and Jager 2003) which in turn influences the quality of institutions. EU conditionality is believed to be among the most successful European foreign policy instruments implemented so far since it fostered the alignment of the post-communist candidate countries with the EU acquis

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³ Ivo Josipovic, Social Democrat, won the presidential elections on the 10th of January 2010 with 60.3% of the votes (BBC News 2010)
⁴ The political criteria is completed on the one hand by the economic criteria which require the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union and on the other hand by the legislative criteria which presuppose the acceptance of the Community acquis, the ability to take on the obligations of membership, including the adherence to the aims of the political, economic and monetary union.
According to the conditionality principles, a Candidate country shall be ‘ready’ to be invited to join the EU, in other words all criteria must be fulfilled including that the issues related to corruption should have been tackled by the time of accession. However, empirical evidences backed up by international organisations’ reports demonstrated that the fight against corruption has experienced some backsliding in some countries and notably in Slovenia, Romania and Bulgaria soon after their integration within the EU. In the particular case of Romania and Bulgaria, the situation is even more striking since the EU imposed on both countries a post-accession monitoring mechanism _ the Cooperation and Verification Mechanism (CVM) _ to control the appropriate implementation of measures intended to curb corruption. Obviously the similar backsliding pattern and the apparent lack of willingness from the politician elites to fight corruption seriously and especially high-level corruption cast some doubt on EU conditionality and its post-accession sustainability once the membership lever is gone (Epstein and Sedelmeier 2008; Sedelmeier 2008).

The concerns with the actual long-term sustainability of EU conditionality are of the greatest importance since the instrument is currently used in countries presenting serious corruption levels. As of today, Croatia remains plagued by high-level corruption. Since the launch of the accession negotiations in 2005, the European Commission (EC) continuously denounced corruption as a serious area of concern in its annual reports assessing the Croatian progress towards accession. Hence, relying on the previous Slovene, Romanian and Bulgarian post-accession experiences, a backsliding scenario shall be considered when discussing the conclusion of the accession negotiations and assessing the Croatian full readiness to join the EU.

All in all, EU conditionality shortcomings raise a number of questions. Taking a more general perspective, one can wonder whether these shortcomings are strictly

5 The EU glossary defines the *acquis communautaire* as the body of common rights and obligations which bind all the Member States together within the EU. The *acquis* is in constant evolution, currently comprises around 30 000 legal acts. For further details: [http://europa.eu/scadplus/glossary/community_acquis_en.htm](http://europa.eu/scadplus/glossary/community_acquis_en.htm)

confined to corruption or on the contrary if the lack of post-accession sustainability is a general trend. Taking a more particular perspective, it is legitimate to question the soundness of the comparison drawn between Croatia, Slovenia, Romania and Bulgaria. Is there any evidence that Croatia is actually following a similar path to that of its neighbours in the past? If so, what lessons can be learned from the previous enlargements? What kind of action could be undertaken by the EU to help Croatia to get back on the right track and when should they be implemented? Prior to or after accession? If no evidence exists, what particular elements could explain the different Croatian destiny?

This thesis will demonstrate that the lack of post-accession sustainability, though not widespread, is not strictly limited to corruption. Actually, a distinction should be established between hard acquis and soft acquis, the combination of the two constituting the acquis communautaire. The hard acquis refers to the rules that Member States shall comply with at the risk of being prosecuted by the EC as offender to the EU law. Hence the hard acquis encompasses all kinds of legally binding acts, from the Treaties and the currently enacted legislation to the verdicts ruled by the European Court of Justice and the measures agreed under both Foreign and Security Policy and Justice and Home Affairs. Unlike the hard acquis, the soft acquis refers to the rules that are not legally binding but that provide the Member States with certain guidance and recommendations that they should _ but not shall _ follow. It includes among others the communications and recommendations issued by the EC, the resolutions and recommendations of the Council and the conclusions delivered by the EU Presidency (Petrov 2008). While post-accession compliance towards hard acquis proved to be guaranteed, post-accession compliance towards soft acquis is much less evident. The thesis will also argue that a ‘Croatian problem’ similar to the ‘eastern problem’ remains a possibility that shall not be set aside.

The thesis is divided into three parts. The first part will be devoted to the theoretical framework that will structure the following policy analysis. After establishing a literature review on the two core notions of the thesis, namely ‘corruption’ and ‘EU conditionality’, I will introduce my working hypotheses as well as the variables I will be referring to and present the data and the method of analysis. In the second part, I will analyse the relationship existing between corruption control and EU
conditionality through a comparative study involving Croatia, Slovenia, Romania and Bulgaria. Building on the findings from the second part, the third part will present a number of policy options. A cost-effectiveness analysis will be run for each of these options in order to assess their viability and provide sounded policy alternatives to improve the current EU approach towards corruption.
1. Theoretical Framework

1.1. Literature Review

Corruption and EU conditionality are the two core concepts that will serve as the basis of the policy analysis on the EU approach to endemic corruption in the Candidate countries. Having a closer look at the essence and the corollary of corruption will emphasize why it is in the interest of the EU to intervene on this particular and rather domestic issue. As already mentioned, the EU’s main instrument of action in Candidate countries is pre-accession conditionality, which has been the subject of ample debates.

1.1.1. Corruption

Being a multi-facetted concept, corruption is difficult to grasp and there is no single uniform definition of all the constituent elements of corruption. For the purposes of the present thesis, I will refer to the EU’s own definition of corruption, i.e. “abuse of power for private gain” (EC 2003d: 6). This definition, borrowed from the Global Programme against Corruption run by the United Nations (UN), is broad enough to include both the entire public and private sector.

1.1.1.1. Corruption, Economy and Governance

Corruption became a ‘hot’ topic with the third wave of democratisation and the transition of the CEECs towards democracy and the market economy. The transition process in those countries has been characterised by flagrant corruption and which brought the issue to the forefront of the public debate. Hence, international organisations including among others the EU and the World Bank (WB) as well as non-governmental organisations (NGOs) such as Transparency International (TI) and the scholar community (Klitgaard 1991; Rose-Ackerman 1999; Treisman 2000) have focused their efforts on understanding corruption, its causes and impacts in order to develop and promote strategies to contain and reduce it.

Corruption has severe effects on the economy and the governance of the affected society. First, corruption harms the economy and hangs over the wealth of average citizens. Scholars have notably established that corruption has proved to reduce economic growth and lower the level of foreign direct investment, to undermine the
effectiveness of industrial policies and encourage businesses into unlawful behaviours (Rose-Ackerman 1999), to distort public expenditures by encouraging unproductive public investments, and to facilitate state capture (Mauro 1995; Hellman, Jones and Kaufmann 2000). These dominant views have been challenged by revisionist scholars who argue that far from being entirely harmful, corruption might actually have a positive impact on economic growth (Huntington and Leff cited in Mauro 1995: 681; Lui cited in Rose-Ackerman 1999: 16). They believe that using bribes as incentive bonuses may actually lighten individuals and business from bureaucratic delays and heaviness. They claim that corruption may actually introduce competition in a monopolistic environment (Leff cited in Kaufmann 1997: 114) or that corruption may foster innovation in a sclerosed society or even act as a hedge against bad policy by enhancing the participation of business groups in the policy-making (Leff 2002). Yet some scholars have counterbalanced the short-term gains of the aforementioned positive effects of corruption with their long-term negative effects, including spillover effects, the perpetuation of an insecure business climate, the additional burden on people unable or unwilling to bribe and the delay of actual state reform (Rose-Ackerman 1999: 16-17).

Second, corruption undermines the overall governance of a country. Citizens are marginalised from the political process since information is fairly scarce due to the lack of transparency and the policy-making processes rather opaque because of the lack of clear check and balance mechanisms. Additionally, widespread corruption fosters disdain for and saps trust in public institutions, democratic politics, and the rule of law which in turn delegitimizes democratic governance (Klitgaard 1991, Kainberger 2003). In 2003, Verheugen summarised the general feeling towards corruption as the following: Corruption is the cancer of modern societies and economies - a disease eating further and further into the organism and infecting what was still healthy. Hence, international organisations and scholars have also focused their attention on finding a cure to contain and reduce corruption.

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7 The expression refers to the four categories developed by Rose-Ackerman in order to determine what the intent behind the payment of a bribe was. Bribes can be used to clear the market, create incentives, lower costs and permit criminal activity (Rose-Ackerman 1999: 9-10)

8 Günter Verheugen, Commissioner responsible for Enlargement, Strasbourg, European Parliament, 3 October 2000 (Kainberger 2003: 1)
1.1.1.2. Corruption and Anti-Corruption

The literature on corruption suggests that strategies to tackle corruption should include a combination of general and tailored measures. Overall, strategies designed to fight corruption usually include a number of general features such as the demonopolisation of decision-making, the limitation of discretionary power, the strengthening of accountability and transparency, and the protection of ‘whistleblowers’ (Ristei and Senic 2007). Such strategies also take into account particular national features and design tailored anticorruption strategies _complementary to the general features_ that target specific problems in the field.

International donors have a crucial role to play in combating corruption insofar as they can pressure _more or less directly_ political officials into taking actions aimed at curbing corruption in their country. Taking into account the multiple adverse effects of corruption, the EU commitment to help Candidate countries to face corruption is not surprising. Indeed it is not in the EU interest to admit into the Union a highly corrupt state that might not be able to cope with its new responsibilities, to manage the European funds appropriately or that could have a negative spillover effect on the Single market and contaminate it. The overall structure of the EU is based on the mutual trust of the Member States. Hence a highly corrupt Member State could jam the entire mechanism (Alegre, Ivanova and Denis-Smith 2009). Therefore with its conditionality method, the EU became the epitome of the crucial international donor since it has the means to be a significant actor in fighting corruption in the Candidate countries.

1.1.2. European Union Conditionality

EU conditionality is considered to be among the most successful European foreign policy instruments. The mechanism was actually the basis of the relations between the EU and the CEECs while the latter were undergoing the integration process. _A posteriori_ EU conditionality has been qualified as “_the main motor for political and economic change_” in the region (Knezović S. 2009: 100). Nevertheless EU conditionality has not been exempt from criticisms especially concerning its own sustainability.
1.1.2.1. Pre-Accession Conditionality

EU conditionality can be traced back as far as to the early 1960s. It represented the position of the European institutions with regard to the will expressed by certain Southern European countries to establish closer links with the regional organisation. However it really became the cornerstone of EU strategy towards the CEECs in the late 1980s with the establishment of bilateral relations between the then European Communities and the post-communist countries (Papadimitriou and Phinnemore 2004, Pridham 2007). Back then, EU conditionality was characteristic of a democratic conditionality\(^9\) under which compliance to the EU rules depended essentially on the adoption costs and the credibility of the conditionality itself (Schimmelfennig and Sedelmeier 2005). Over time, EU conditionality’s timing, scope and focus, and priority and procedures have been reinforced _especially with the design and implementation of the Copenhagen criteria (Council of the European Union 1993)_ leading to the emergence of a second kind of conditionality, i.e. the acquis conditionality.\(^10\) Unlike democratic conditionality, acquis conditionality will be effective under the combination of credible membership perspective and clear setting of criteria as requirements for membership (Schimmelfennig and Sedelmeier 2005).

Generally speaking, political conditionality provides an instrument binding the state and the international organisation _or the benefits desired by another state_ to the fulfilment of certain conditions (Smith cited in Veebel 2009). Though the method presented non-significant results in the 1970s and 1980s, its popularity is increasingly growing. Indeed using conditionality enables to exert social, economic or political influence without having to resort to more dangerous, costlier methods with no guarantee of results. Conditionality is expected to create a ‘virtuous circle’: the initial pressure to engage reforms is believed to create political support which will in turn support modernisation and the continuation of the reforms (Veebel 2009).

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\(^9\) Democratic conditionality refers to the EU strategy to link its external incentives to the fundamental principles of the EU, including among others the respect for human dignity, freedom, democracy, equality, the rule of law, the adherence for the norms of human rights and minority protection, the development of a liberal democracy and the promotion of a market economy (Schimmelfennig and Sedelmeier 2005: 211).

\(^10\) Acquis conditionality emerges once the Candidate countries start the accession process towards full membership. This pre-accession conditionality is rather strict (Schimmelfennig and Sedelmeier 2005:212).
In practice, two different kinds of conditionality models are being applied. While the first model has been specifically designed for development cooperation in the least developed countries, the second has been developed by institutions like the EU or even NATO in order to impose a structural pre-accession conditionality on eligible countries willing to join the organisation (Schimmelfennig and Sedelmeier 2005; Veebel 2009). According to Veebel’s typology of conditionality, EU conditionality is multilateral, *ex ante* since the conditions required must be fulfilled before the integration occurs, and positive (Veebel 2009: 209-210). Indeed EU conditionality is said to be based on the *strategy of reinforcement by reward* (Schimmelfennig and Sedelmeier 2004, 2005). This strategy is based on the following rule: the EU pays the reward (ultimately membership) if the target government complies with the conditions and but will withhold it in the case of non-compliance.

The causal relationship between the presence of EU conditionality and successful rule transfer in particular issue-areas has been tested by several scholars on the basis of the *external incentives model* designed by Schimmelfennig and Sedelmeier (andonova, Dimitrova, Engert, Epstein, Grabbe, Héritier, Jacoby, Knobel Schimmelfennig, Schwellnus, Sedelmeier and Sissenich 2005). The external incentives model embraces the dynamics hindered by the EU conditionality strategy. It “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-adopting state” (Schimmelfennig and Sedelmeier 2005: 9). The external incentives model presupposes that the government of the Candidate countries will comply with EU conditions if the benefits of the EU rewards surpass the domestic adoption costs. Hence, compliance will be determined by a certain number of factors, i.e. the determinacy of conditions, the size and speed of rewards, the credibility of conditionality, the number of veto players and the level of adoption costs (Schimmelfennig and Sedelmeier 2005: 10-17).

11 Schimmelfennig and Sedelmeier also designed two alternative models to the external incentives model. The *social learning model* establishes that a state adopts EU rules if it is persuaded of the appropriateness of EU rules and the *lesson-drawing model* argues that a state will adopt EU rule, if it expects these rules to solve domestic policy problems effectively (Schimmelfennig and Sedelmeier 2005: 18-25).

12 These scholars have contributed to the *Europeanization of Central and Eastern Europe*, which has been edited under the direction of Schimmelfennig and Sedelmeier.
1.1.2.2. Beyond Conditionality

EU conditionality showed significant results in light of the astonishing achievement by the CEECs with regard to the legislative adoption of the *acquis communautaire* (Carothers cited in Mungiu-Pippidi 2009). Nevertheless it has not been exempt from criticisms notably with regard to its own sustainability. First of all, the very nature of the Copenhagen criteria leaves little room for negotiations and functions instead on the basis of ‘take it or leave it’, a principle confirmed by the declaration made in 2003 by Javier Solana, the then-EU High Representative: “*We just ask the countries which are interested in participating in our structures to comply with our rules and to share our values*” (Veebel 2009: 208). Second, the success of pre-accession conditionality is merely imputable to the conditional incentive of membership, rather than to processes of persuasion and social learning (Schimmelfennig and Sedelmeier 2005). Finally, the strength of EU conditionality lies first and foremost on the conditional membership incentive, with the Candidate countries complying with any of the EU requests in order to enter the Union (Mungiu-Pippidi 2009).

Hence, with the disappearance of the membership lever, experts dread the emergence of an *eastern problem* (Sedelmeier 2008: 806) and questioned whether long-term efficiency has been sacrificed on the altar of short-term effectiveness (Schimmelfennig and Sedelmeier 2004; Pridham 2007; Sedelmeier 2008; Epstein and Sedelmeier 2008; Trautner 2009). As things stand at the present, studies assessing CEECs’ post-accession compliance with the EU *acquis* conclude that the *eastern problem* was rather unfounded (Schimmelfennig and Sedelmeier 2005; Sedelmeier 2008; Trauner 2009). On the contrary, compliance records suggest that the CEECs perform generally much better than the old member states (Sedelmeier 2008; Trauner 2009). If the *acquis conditionality* outcomes passed the test of post-accession, the *democratic conditionality* results are still more nuanced (Schimmelfennig and Sedelmeier 2005). Thus the preliminary results on post-accession compliance remain to be further analysed in order to provide an overall assessment of the CEECs’ actual performance.
1.2. Framework of Analysis

1.2.1. Hypothesis and Variables

In light of the literature on corruption and EU conditionality, this thesis focuses on the specific relationship between EU conditionality and the fight against corruption in the Candidate countries. I seek to assess whether the post-accession positive results of the *acquis conditionality* are equally observable in the framework of the fight against corruption and if there are grounds for concern with regard to Croatia’s upcoming accession. I will concentrate on a certain set of variables that might influence the persistence of the anti-corruption measures in the Candidate countries after their accession within the EU and test the five following hypotheses:

- The lower the level of corruption in the country, the higher the probability that anti-corruption measures will continue to be implemented after accession within the EU.

- The higher the EU pressure to fight corruption in the pre-accession phase, the lower the probability that anti-corruption measures will continue to be implemented after accession within the EU.

- The higher the domestic public pressure to fight corruption in pre- and post-accession phases, the higher the probability that anti-corruption measures will continue to be implemented after accession within the EU.

- The stronger the personal commitment of political leaders to fight corruption, the higher the probability that anti-corruption measures will continue to be implemented after accession within the EU.

- The longer the anti-corruption measures have been implemented prior to the EU membership, the higher the probability that anti-corruption measures will continue to be implemented after accession within the EU.

The overall dynamic underlying the persistence of anti-corruption measures after EU accession _on the basis of the aforementioned hypotheses_ can be summarized by
the following model:\(^{13}\):

**Chart 1: Hypothetical Model on the Persistence of Anti-Corruption Measures**

1.2.2. Data and Methodology

To complete the analysis successfully, I used a broad range of data on Croatia, Slovenia, Romania and Bulgaria which constitute my case studies. The data include surveys carried out by international organisations, official reports, scholar studies, media publications on corruption and interviews of experts. The use of discourse analysis will help identifying the rationale behind the adoption of anti-corruption measures. Depending on the nature of the rationale, the persistence of the anti-corruption measures after the accession will be more or less probable. The discourse analysis will also emphasize the interactions existing among the different actors.

To investigate the soundness of the first hypothesis, I will use data including the World Bank indicators as well as the international organisations’ scores, ranking and reports. In order to evaluate the EU pre-accession pressure, I will analyse the content of the Regular Reports issued by the EC to assess the progress made by the candidate countries. I will particularly focus on the statements made with regard to corruption,

\(^{13}\) The design of the model has been influenced by the model developed by M. Ristei and N. Senic in their comparative study on Romania and Slovenia (Ristei and Senic 2007: 7)
on the attention devoted to the issue and on the type of language used by the Commission when addressing comments on the state of corruption to the Candidates. In order to evaluate the added-value of the EU pre-accession pressure, I will examine the Reports on the CVM as well as the Nations in Transit (NIT) reports issued by Freedom House. To measure domestic pressure, I will use public opinion polls compiled by the Gallup Balkan Monitor (for Croatia) and the Eurobarometer surveys (for Bulgaria, Slovenia and Romania). From the study of NIT reports, I will evaluate the actual weight of domestic pressure on the persistence of anti-corruption measures. To assess the personal commitment of political leaders to fighting corruption, I will mainly rely on the statements made by interviewed experts, press articles and on scholarly studies mentioning the level of commitment of the Candidate countries leaders. Finally, to test the last hypothesis, I will measure the time that passed between the implementation of serious anti-corruption measures and integration within the EU.

The overall purpose of this policy analysis is to understand the complex mechanism underlying the persistence of anti-corruption measures in the Candidate countries once they are invited to join the EU. A clear understanding of the mechanism will enable to assess the strengths and weaknesses of the current acquis conditionality, to establish some projections for Croatia and finally to provide alternatives and recommendations in order to improve the whole mechanism.
2. Testing the Relationship between the Fight against Corruption and the EU Conditionality in Candidate countries: Comparative study on Slovenia, Romania and Bulgaria

2.1. On the acquis conditionality theory: introducing the distinction between hard acquis and soft acquis

Around 30,000 legal acts. This is the staggering amount of EU legislation _acquis communautaire_ or _acquis conditionality_ according to Schimmelfennig and Sedelmeier _that a Candidate country shall transpose in its own national legislation prior to obtain the EU membership and to implement it once the membership enters into force. The _acquis_ encompasses a broad range of policy areas from the regulations on competition within the Internal Market to the acts related to the fight against corruption or even to the organisation of appropriate judiciary and administrative systems. The main goal of the thesis is to determine whether the integration of the EU legislation into the national legislation will be sustainable over time. As mentioned previously, the preliminary results on the _acquis conditionality_ sustainability are rather positive.

And yet, some empirical evidences challenge the hypothesis arguing for the _acquis conditionality_ sustainability. 2004, Slovenia joins the EU; 2005, the Slovene Parliament decides to shut the Commission for the Prevention of Corruption (NIT Slovenia 2006). 2007, Bulgaria enters the EU; 2008, two major scandals involving the Minister of the Interior and the Deputy Director of the National Service for Combating Organised Crime break out (Ivanova 2009), a confidential OLAF report reveals severe misuse of EU funds and stresses the links between some Bulgarian political leaders and organised crime circles (OLAF 2007) and the EC decides for the first time to deprive Bulgaria from EU funds. January 2007, Romania becomes an EU Member State; March 2007, Monica Macovei, Minister of Justice and emblem of the fight against high-level corruption in Romania, is dismissed (NIT Romania 2008). Three countries, two enlargements but one common denominator:

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14 The Minister of the Interior was caught meeting with acknowledged organised crime people. The Deputy Director of the National Service for Combating Organised Crime was believed to provide criminals with crucial information. While the former resigned, the latter has been trialled.
15 The confidential OLAF report has been leaked to the media, hence its ‘public’ characteristic.
16 The report notably establish a connection between the Nikolov-Stoykov Group and the Bulgarian President and a former Deputy Minister of Foreign Affairs.
the lack of sustainability of the anti-corruption related *acquis conditionality* once the membership leverage is gone.

What are the implications of this recurring pattern on the *acquis conditionality* theory? Are the Slovene, Bulgarian and Romanian experiences a prediction of what the EU should expect from the Croatian post-accession path? Far from denying the soundness and the interest of the *acquis conditionality* theory developed by Schimmelfennig and Sedelmeier, I would argue that the overall theory should be nuanced by introducing a distinction between *hard acquis* and *soft acquis*. The *hard acquis* refers to the rules that Member States shall comply with at the risk of being prosecuted by the EC as offender to the EU law. Hence the *hard acquis* encompasses all kinds of legally binding acts, from the Treaties and the currently enacted legislation to the verdicts ruled by the European Court of Justice and the measures agreed under both Foreign and Security Policy and Justice and Home Affairs. Unlike the *hard acquis*, the *soft acquis* refers to the rules that are not legally binding but that provide the Member States with certain guidance and recommendations that they should _but not shall_ follow. It includes among others the communications and recommendations issued by the EC, the resolutions and recommendations of the Council and the conclusions delivered by the EU Presidency (Petrov 2008).

A distinction between *hard acquis* and *soft acquis* should be established to assess correctly the level of post-accession compliance demonstrated by the new Member States towards the EU law. So far, studies on *acquis conditionality* and post-accession compliance focused on the areas related to the *hard acquis*, hence the positive results observed. On the contrary, post-accession compliance towards *soft acquis* seems to be much less systematic, as suggested by the Bulgarian, Romanian and Slovene experiences. Anti-corruption policy as well as policies related to the judiciary and administrative systems _are all areas covered by the *soft acquis*. In those policy fields, the EU can only provide recommendations to the Candidate

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17 Anti-corruption policies are intertwined with judicial and administrative reforms since for instance dependent, non meritocratic-based judiciary and administration are more vulnerable and tend to attract and foster (high-level) corrupt behaviours over time.

18 The EU strategy towards corruption is notably based on two different communications issued by the EC (EC 1997a and 2003d), the Stockholm Programme and different legislations (the latter are part of the *hard acquis*). For further details: [http://ec.europa.eu/justice_home/doc_centre/crime/corruption/doc_crime_corruption_en.htm](http://ec.europa.eu/justice_home/doc_centre/crime/corruption/doc_crime_corruption_en.htm)
countries: no legally-binding act exists on what levels of corruption should be allowed in Member State, no common definition on what constitutes an ‘independent’ judiciary/administrative system is mentioned in the EU legislation, etc. The apparent soft acquis incapacity to prevent Candidate countries from backsliding with regard to their efforts to fight corruption after their accession raises the issue whether Croatia is following the same path than Slovenia, Bulgaria and Romania did in the past. Despite the lessons learned by the EC and the Croatian own particularities, the post-accession persistence of anti-corruption measures remains quite uncertain. Though anti-corruption measures might be more anchored in the Croatian society than they used to be in the three other countries before their accession within the EU, the hypothesis of a Croatian backsliding cannot be swept away.

2.2. Comparing Croatia with Bulgaria, Romania and Slovenia

The comparison between the four countries lies on the fact that they share four different factors, i.e. the geographical proximity, the communist rule, the transition period and the relations with the EU.

Croatia, Bulgaria, Romania and Slovenia are located in South-Eastern Europe. They also share the common experience of living under the communist rule for nearly half a century. Yet their experiences have been quite different. While Romania and Bulgaria were placed under the strict aegis of the Soviet Union, Slovenia and Croatia, as members of the Yugoslav Federation, enjoyed greater though relative economic and personal freedom. Moreover, all of them but Slovenia have encountered a difficult transition. There, the collapse of the Communist bloc opened an era of authoritarian regimes instead of liberal democracies. Tudman in Croatia, Iliescu in Romania and Zhelev in Bulgaria actually initiated in those countries a process of “democratization without decommunization” (Mungiu-Pippidi 2010). Unlike Romania and Bulgaria, the Croatian transition was further worsened by the War of Independence that followed the breakdown of the Yugoslav Federation. Progressively ‘watershed elections’ (Vachudova 2010) put the three countries back

19 The greater freedom enjoyed by the Yugoslav Federation consequence of the Tito/Stalin dispute is reflected in the relations uniting the EU and the Balkans. Since the 60s, Slovenia and Croatia expressed the will to establish closer links with the then European Communities (Pridham 2007; Mungiu-Pippidi 2010).
on the liberal democracy tracks\textsuperscript{20} but nevertheless this illiberal detour carried much weight on their path towards EU membership. Though sharing a European fate, the Bulgarian, Romanian and Slovene way towards the EU has been somewhat different. While Slovenia enjoyed a rather smooth accession process and benefited from the first enlargement wave in 2004, Bulgaria and Romania faced stronger difficulties. For long regarded as ‘laggards’ in the accession process, both countries have seen their membership being postponed and conditioned to the acceptance of the CVM, a newly created instrument enabling the EC to keep them under close scrutiny for certain benchmarks after their accession within the EU. Hence Bulgaria and Romania are believed to be “either the last to benefit from the old enlargement policies, or the first to experience the novel, and expectedly more restrictive, stance of the EU to the admission of new member states” (Smilov cited in Trauner 2009: 2).

The similarities/disparities combination existing between Bulgaria, Romania and Slovenia makes them highly valuable reference points to test the soundness of the analytical model, assess the sustainability of the \textit{soft acquis} and determine the Croatian potential post-accession trajectory.

2.3. Testing the Fight against Corruption/EU Conditionality relationship in Slovenia, Bulgaria and Romania

In order to test the relationship between the fight against corruption and the EU conditionality, five factors have been hypothesised as having a significant influence on the persistence of anti-corruption measures in post-accession, i.e. the pre-accession domestic level of corruption, the EU pressure, the personal commitment of national political leaders, the domestic pressure and time. Anti-corruption measures refer not only to the legislation but also to less ‘legal’ instruments such as the persons/institutions promoting the fight against corruption.

\textsuperscript{20} The ‘watershed elections’ occurred in Romania in 1996, in Bulgaria in 1997 and in Croatia in 2000 (Vachudova 2010).
2.3.1. On the persistence of anti-corruption measures: Pre-Accession factors influencing Post-Accession sustainability

2.3.1.1. The influence of the pre-accession domestic level of corruption

The medical lexical field is often used by expert to describe corruption and its corollary effects. Hence corruption is usually regarded as a disease infecting the vital organs of the society such as the executive, the legislative and the judiciary. In medicine, when an organ is too damaged, a transplant is required; in corruption, the cure is the implementation of anti-corruption measures. This medical analogy allows me to introduce the first hypothesis:

*The lower the level of corruption in the country, the higher the probability that anti-corruption measures will continue to be implemented after accession within the EU.*

The reasoning behind this hypothesis rests on a similar reasoning that will assure a successful transplant. In the same way as a transplant needs a body as healthy as possible to be assimilated, anti-corruption measures need a breeding ground to take root. If such is not the case, then a rejection is most likely to occur in both cases. Hence countries with a high rate of corruption will be more inclined to get rid of the anti-corruption measures which were required under the EU conditionality after the accession.

The soundness of the hypothesis will be tested on the basis of the data provided by the WB and three non-governmental organisations (NGO), namely TI, Freedom House and the Open Society Institute (OSI). The Control of Corruption (CoC) indicator will be the first source of information used to evaluate the corruption in Bulgaria, Romania and Slovenia before their integration within the EU. TI and Freedom House provide two additional corruption perceptions indicators,

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21 CoC is one of the six aggregate indicators developed by D. Kaufmann, A. Kraay and M. Mastruzzi and published by the WB to evaluate good governance. The CoC measures the extent to which public power is exercised in order to satisfy private interests and state capture. CoC scores are expressed in percentage, 100 being the best score. For further details: [http://info.worldbank.org/governance/wgi/index.asp](http://info.worldbank.org/governance/wgi/index.asp)
respectively the Corruption Perceptions Index (CPI)\textsuperscript{22} and the NIT Corruption score\textsuperscript{23}, the latter being completed by a qualitative evaluation. A fourth source for the evaluation is the OSI reports issued in the framework of the EU Accession Monitoring Program (EUMAP).\textsuperscript{24} National reports have also been issued by the WB (on Romania) and by the Center for the Study of Democracy (CSD)\textsuperscript{25} (on Bulgaria). These reports provide a complex and extensive evaluation of the state of corruption and anti-corruption in each of the 2002 CEECs. Though crucial, these data face shortcomings. CoC, CPI and to a lesser extent NIT measure the perceived level of corruption. Yet, corruption being by definition secretive, there might be a great difference between the perceived and the actual levels of corruption. Besides, an additional weakness of the CPI is the one-dimensional interpretation of the ‘corruption’ concept while corruption is intrinsically a multi-faceted concept and reality (Kainberger 2003). However I estimate for the conduct of the analysis that those particular shortcomings are counter-balanced by the complementary inputs of the qualitative evaluations.

The evaluation of the first hypothesis will take place in three steps. After having analysed the pre-accession level of corruption for each country, I will crosscut the quantitative results with the qualitative assessments included in the NIT and OSI reports and finish by an observation of the post-accession level of corruption. Since the CoC indicator provides some results as early as 1996, it will be the starting point to evaluate Bulgaria, Romania and Slovenia’s pre-accession level of corruption. From the analysis of the CoC, the three countries can be clustered in two different groups. On the hand, Slovenia is granted with overall good results.\textsuperscript{26} From 1996 to 2004, its CoC score remains between 79.6 and 84.5. Though the score is gradually decreasing since 2000, a recovery is noticeable in 2003 and in 2004 Slovenia joined

\textsuperscript{22} The Corruption Perceptions Index (CPI) is an aggregate indicator measuring the perceived level of public-sector corruption for a large number of countries and territories around the world. The CPI scores are established on a scale from 10 to 0, 10 being the best score. For further details: http://www.transparency.org/policy_research/surveys_indices/cpi/2009

\textsuperscript{23} Corruption is one of the seven dimensions _six until 2004_ evaluated in the NIT reports. NIT rates corruption in 29 countries on a scale of 1 to 7, with 1 representing the highest and 7 the lowest level of corruption. For further details: http://www.freedomhouse.org/template.cfm?page=485

\textsuperscript{24} EUMAP is an initiative launched in 2000 aimed at supporting independent monitoring of the EU accession process by civil society representatives. For further details: www.eumap.org and http://www.soros.org/resources/articles_publications/publications/euaccesscorruption_20020601/1euaccesscorruptionfullreport_20020601.pdf

\textsuperscript{25} The CSD is a Bulgarian think tank that notably launched Coalition 2000, an anti-corruption initiative and publishes annual Corruption Assessment Reports for Bulgaria.

\textsuperscript{26} The overall results for Slovenia are detailed in Annex 1
the EU with a score of 83.5. On the other hand, Bulgaria\textsuperscript{27} and Romania\textsuperscript{28} bring up the rear. Though its first score was pretty low (24.3), Bulgaria received over time better scores, up to 59.7 in 2004 and 2005. Since then its scores slightly decreased and Bulgaria entered the EU with a score of 54.6. As for Romania, during a first period, its score wavered between 42.2 and 49 but is above 50\textsuperscript{29} since 2005. In 2007, Romanian score is 56. The evaluations from TI and Freedom House offer similar conclusions with Slovenia achieving much better than its two counterparts. To establish whether or not Slovenia, Bulgaria and Romania are actual corrupt countries, it is necessary to put their results in perspective. Since the three countries are candidates to join the EU, their results should be compared with those obtained by the already EU Member States. I will resort to the CoC and CPI indicators to run the comparison since they provided scores for all EU Member States unlike the NIT scores which focus only on transitional countries. 2004 and 2007 will serve as years of reference. Table 1 shows that Slovenia performs better than Greece and Italy and is very close to the Portuguese. Though, Slovenia does not rank very high in the table, CoC figures reveal that actually the country is only 6.5 points away from the EU Member States that performs well.\textsuperscript{30} A constat confirmed by the CPI scores. The second table confirms the preliminary results with regard to Bulgaria and Romania.

Table 1: Level of Corruption in the EU15 and in Slovenia in 2004

<table>
<thead>
<tr>
<th></th>
<th>CoC 2004</th>
<th>CPI 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovenia</td>
<td>83.5</td>
<td>6.0</td>
</tr>
<tr>
<td>Greece</td>
<td>71.4</td>
<td>4.8</td>
</tr>
<tr>
<td>Italy</td>
<td>70.9</td>
<td>4.3</td>
</tr>
<tr>
<td>Finland</td>
<td>100.0</td>
<td>9.7</td>
</tr>
<tr>
<td>Sweden</td>
<td>97.6</td>
<td>9.2</td>
</tr>
<tr>
<td>Austria</td>
<td>96.6</td>
<td>8.7</td>
</tr>
<tr>
<td>Netherlands</td>
<td>95.6</td>
<td>8.6</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>95.1</td>
<td>8.4</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>94.2</td>
<td>8.4</td>
</tr>
<tr>
<td>Germany</td>
<td>93.7</td>
<td>8.2</td>
</tr>
<tr>
<td>Belgium</td>
<td>91.7</td>
<td>7.5</td>
</tr>
<tr>
<td>France</td>
<td>90.8</td>
<td>7.5</td>
</tr>
<tr>
<td>Ireland</td>
<td>90.3</td>
<td>7.1</td>
</tr>
<tr>
<td>Spain</td>
<td>89.8</td>
<td>7.1</td>
</tr>
<tr>
<td>Portugal</td>
<td>86.9</td>
<td>6.3</td>
</tr>
<tr>
<td>Finland</td>
<td>98.5</td>
<td>9.5</td>
</tr>
<tr>
<td>Denmark</td>
<td>97.6</td>
<td>9.2</td>
</tr>
<tr>
<td>Sweden</td>
<td>96.6</td>
<td>8.7</td>
</tr>
<tr>
<td>Netherlands</td>
<td>95.6</td>
<td>8.6</td>
</tr>
<tr>
<td>Austria</td>
<td>95.1</td>
<td>8.4</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>94.2</td>
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</tr>
<tr>
<td>Germany</td>
<td>93.7</td>
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<tr>
<td>Belgium</td>
<td>91.7</td>
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<tr>
<td>France</td>
<td>90.8</td>
<td>7.5</td>
</tr>
<tr>
<td>Ireland</td>
<td>90.3</td>
<td>7.1</td>
</tr>
<tr>
<td>Spain</td>
<td>89.8</td>
<td>7.1</td>
</tr>
<tr>
<td>Portugal</td>
<td>86.9</td>
<td>6.3</td>
</tr>
</tbody>
</table>

Sources: World Bank and Transparency International

\textsuperscript{27} The overall results for Bulgaria are detailed in Annex 2
\textsuperscript{28} The overall results for Romania are detailed in Annex 3
\textsuperscript{29} ‘50’ represents a threshold in Kaufmann, Kraay and Mastruzzi’s evaluation.
\textsuperscript{30} Countries performing well are countries that obtained a CoC score between 90 and 95.
Table 2: Level of Corruption in the EU25 and in Bulgaria and Romania in 2007

<table>
<thead>
<tr>
<th>Country</th>
<th>CoC 2007</th>
<th>CPI 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>99.5</td>
<td>9.4</td>
</tr>
<tr>
<td>Denmark</td>
<td>99.0</td>
<td>9.4</td>
</tr>
<tr>
<td>Sweden</td>
<td>98.1</td>
<td>9.3</td>
</tr>
<tr>
<td>Netherlands</td>
<td>97.1</td>
<td>9.0</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>96.6</td>
<td>8.4</td>
</tr>
<tr>
<td>Austria</td>
<td>94.2</td>
<td>8.1</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>93.7</td>
<td>8.4</td>
</tr>
<tr>
<td>Germany</td>
<td>93.2</td>
<td>7.8</td>
</tr>
<tr>
<td>Ireland</td>
<td>92.8</td>
<td>7.5</td>
</tr>
<tr>
<td>Belgium</td>
<td>91.3</td>
<td>7.1</td>
</tr>
<tr>
<td>France</td>
<td>89.4</td>
<td>7.3</td>
</tr>
<tr>
<td>Malta</td>
<td>85.5</td>
<td>5.8</td>
</tr>
<tr>
<td>Spain</td>
<td>84.1</td>
<td>6.7</td>
</tr>
<tr>
<td>Portugal</td>
<td>83.1</td>
<td>6.5</td>
</tr>
<tr>
<td>Estonia</td>
<td>81.2</td>
<td>6.5</td>
</tr>
<tr>
<td>Slovenia</td>
<td>80.7</td>
<td>6.6</td>
</tr>
<tr>
<td>Cyprus</td>
<td>77.8</td>
<td>5.3</td>
</tr>
<tr>
<td>Hungary</td>
<td>72.5</td>
<td>5.3</td>
</tr>
<tr>
<td>Latvia</td>
<td>68.1</td>
<td>4.8</td>
</tr>
<tr>
<td>Italy</td>
<td>66.2</td>
<td>5.2</td>
</tr>
<tr>
<td>Slovakia</td>
<td>65.7</td>
<td>4.9</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>65.2</td>
<td>5.2</td>
</tr>
<tr>
<td>Greece</td>
<td>62.8</td>
<td>4.6</td>
</tr>
<tr>
<td>Poland</td>
<td>61.8</td>
<td>4.2</td>
</tr>
<tr>
<td>Lithuania</td>
<td>61.4</td>
<td>4.8</td>
</tr>
<tr>
<td>Romania</td>
<td>56.0</td>
<td>3.7</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>54.6</td>
<td>4.1</td>
</tr>
</tbody>
</table>

Sources: World Bank and Transparency International

The analysis of the OSI and NIT reports sharpens the preliminary results. Overall experts as well as international organisations _the EU included_ agree that corruption is not a major issue in Slovenia. Yet, the OSI also noted that the Slovene score was slightly decreasing and that the citizens believe corruption to be both widespread and increasing (OSI 2002c: 572). However, some studies indicated that the perceived level of corruption did not tally with the actual experience of corruption: in 2002, a study from the Ljubljana University demonstrated that whereas more than 60 % of the respondents considered corruption as a major issue, 95% admitted that they never personally suffered from corruption (NIT Slovenia 2004). As for Romania and Bulgaria, corruption is believed to be a highly significant problem in both countries. In Romania, “corruption has achieved a state of normalcy” (World Bank 2001: vi) and is particularly widespread in several areas such as the customs, the judiciary, public procurement, the Parliament, the health sector, the police and the Government.
Petty and grand corruption, state capture is of common occurrence. Steady progress have been observed, especially since 2005, with the adoption of anti-corruption strategies and legislation, however “each concrete step was fought over fiercely between reformers and conservatives, and little progress was achieved in practice” (NIT Romania 2005\textsuperscript{31}). In Bulgaria, “corruption, particularly in the high echelons of power, [was] one of the most critical problems faced [...] on the eve of its accession to the European Union.” (CSD 2006: 5). The phenomenon has particularly affected the customs, the health sector, the police, public procurement, the political party financing, the local administration and the judiciary (OSI 2002a: 88; CSD 2006: 12). Corruption is also worsened by the existence of an active organised criminality.

Two conclusions stand out: during the pre-accession period, while Romania and Bulgaria experienced widespread corruption in several _and crucial_ areas, Slovenia seemed to enjoy much lower levels of actual corruption. According to the hypothesis, the lower the level of corruption in the country, the higher the probability anti-corruption measures will continue to be implemented after the accession within the EU. Romania and Bulgaria present a high level of corruption, hence according to the hypothesis it is very likely that anti-corruption measures will experience serious post-accession difficulties. As already mentioned, few months after their integration within the EU, both countries have put a hold on the enforcement of anti-corruption measures. Denounced in the NIT and CSD reports, these stagnations/backslidings are also visible in the indicators. According to the theory, Slovenia with its rather low level of corruption should present some continuity between the pre- and post-accession period with regard to corruption. And yet, here as well, serious attempts to dismantle the anti-corruption measures occurred, especially with regard to the Commission for the Prevention of Corruption, which is still fighting for its survival in 2009 (NIT Slovenia 2009). CoC and NIT scores mirror Slovenia’s backsliding. Hence, in the light of the findings, the hypothesis shall be rejected: the pre-accession level of corruption of a country does not influence significantly the persistence of anti-corruption measures in the post-accession period.

\textsuperscript{31} The file retrieved was not paginated.
2.3.1.2. The influence of EU pressure

The second hypothesis developed in the analysis framework deals with EU pressure on Candidate countries for them to tackle corruption before joining the Union.

*The higher the EU pressure to fight corruption in the pre-accession phase, the lower the probability that anti-corruption measures will continue to be implemented after accession within the EU.*

The theory behind the hypothesis rests on the essence of ‘pressure’ and the distinction between ‘constraint’ and ‘obligation’ made by the political and moral philosophy. While constraint implies the intervention of a repressive/compelling external force, the obligation is based on the subject’s own free-will. Intrinsically pressure pertains to constraint. Pressure being similar to a corset, the expected reaction for the subject once the repressive/compelling external force is gone is to get back to its initial position, i.e. the position occupied before the pressure occurred. EU official documents will enable measuring EU pressure. Each year, the EC publishes a report assessing the progress towards accession for each of the Candidate countries. The content of the 6 reports issued on Slovenia and of the 18 reports released for both Bulgaria and Romania will serve as the main basis for testing the hypothesis.

In the pre-accession period, the EC addressed corruption issues in a different manner depending on the country concerned. The chart below, compiling the occurrence of the word ‘corruption’ in the reports\(^\text{32}\), gives a general idea of the level of EU pressure upon Slovenia, Romania and Bulgaria.

\(^{32}\) Were excluded from the statement the words ‘corruption’ that were included in the title of legislations, conventions or institutions.
As suggest in the graph, EU pressure on Slovenia was pretty weak or even nonexistent. The comments on corruption were always quite succinct. From 1998 to 2003, the EC constantly stated that “corruption problems are relatively limited” in Slovenia (EC 1998c: 9). Starting 2002, the statement was however directly followed by some concerns with regard to the increasing perceived level of corruption (EC 2002c: 23, 2003c: 13). Despite the absence of significant EU pressure, the accession process did influence the Slovene corruption-related environment. The reforms introduced by the government, including the harmonisation of the criminal law to the *acquis communautaire*, the creation of anti-corruption bodies and the development of a coherent anti-corruption policy, were engaged as a result of the comments made by both the EU and the Council of Europe (CoE) and the recommendations provided by the Group of State against Corruption (GRECO)³³ (EC 2001c, 2002c, 2003c; OSI 2002c). Likewise, the EU membership is the main driving force for the Slovene participation to anti-corruption initiatives³⁴ and the ratification of the international

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³³ GRECO was created in 1999 by the CoE in order to monitor the compliance of its Member States with the organisation’s anti-corruption standards. As of today, GRECO comprises 47 member States and has performed three evaluation rounds. For further details: [http://www.coe.int/t/dghl/monitoring/greco/default_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp)

³⁴ Slovenia notably joined OCTOPUS I and II, which are programmes on the fight against corruption and organised crime in states in transition jointly developed by the EU and the CoE.
anti-corruption Conventions\textsuperscript{35}: “current and future EU Members shall fully align with the EU acquis and ratify and implement all main international anti-corruption instruments they are party to (UN, Council of Europe and OECD Conventions)” \textsuperscript{36} (EC 2003d: Annex).

Unlike Slovenia, Romania and Bulgaria experienced much greater pressure from the EU: the poor performance showed by both countries to fight corruption efficiently is one of the main reasons explaining their postponed accession. In 1998, the reports evaluated corruption in Romania and Bulgaria rather briefly; respectively 12 and 15 lines were devoted to the issue. However, corruption was given very quickly much more space and attention. While at the beginning the evaluations remained general, over time the reports became more and more precise with regard to the effects of corruption on society, the sectors infected, the anti-corruption measures implemented and their effectiveness, and delivered recommendations for further actions.

Though EU pressure remained very strong on Bulgaria during the pre-accession period, it evolved slightly over time as suggested by the graph results. Indeed, the EC stated in 1998 “corruption remains a serious problem in Bulgaria”. From 1999 to 2001, it becomes a ‘very serious problem’, becomes again a ‘serious problem’ until 2004 and is finally judged as ‘a cause for concern’ in 2005. The EC put a greater emphasis on the necessity for Bulgaria to focus on fighting high-level corruption starting from 2004. With regard to Romania, corruption is characterised as ‘a widespread and systemic problem’ and from 2001 to 2004\textsuperscript{37}, this characteristic is mentioned not fewer than four times during the evaluation, a way for the EU to anchor the importance of the issue. The EC noted the efforts made by the Romanian government and declared in 2004 that the Romanian anti-corruption was in line with the EU acquis. Yet, the Commission maintained that no significant result has been achieved and urge Romania to actually enforce the existing legislation and to focus

\textsuperscript{35} International anti-corruption Conventions notably include: the UN Convention against Corruption the OECD Convention on combating bribery of foreign public officials in international business transactions, the CoE Criminal Law Convention on Corruption, the CoE Civil Law Convention on Corruption and the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

\textsuperscript{36} This is the second of the ten principles for improving the fight against corruption in acceding, candidate and other countries designed by the EC in the framework of its 2003 comprehensive strategy against corruption (EC 2003d)

\textsuperscript{37} Only twice in 2002.
on high-level corruption. Moreover, it is worth noticing that when the frequency of ‘corruption’ was the highest in 2004 and 2005, the tone of the reports was also much sharper than in the previous reports. Finally, the EU maintained its pressure on both Bulgaria and Romania until the very end of the negotiation process. It notably conditioned their membership\textsuperscript{38} to the acceptance of a post-accession monitoring mechanism, i.e. the CVM, a European \emph{première}.

Here again Slovenia differs widely from its two counterparts during the pre-accession period. However, after their accession within the EU the three of them showed similar reactions with regard to anti-corruption measures and attempted to undermine or even withdraw them. Hence, in the light of the findings, the hypothesis shall be rejected: EU pressure in the pre-accession phase does not significantly influence the persistence of anti-corruption measures in the post-accession period.

\textbf{2.3.1.3. The influence of domestic public pressure}

The third hypothesis also deals with pressure but concentrates specifically on endogenous sources of pressure, and especially the pressure exerted by citizens and advocacy NGOs.

\emph{The higher the domestic public pressure to fight corruption in pre- and post-accession phases, the higher the probability that anti-corruption measures will continue to be implemented after accession within the EU.}

The constraint/obligation philosophical theory also applies to the hypothesis in question. However this time a change of perspective is required. As demonstrated previously, EU pressure is exogenous. On the contrary, domestic public pressure is by nature endogenous and pertains to the concept of ‘obligation’. On the scale of a country, the population acts as collective consciousness and represents the free will of the aforementioned country. Building on the corset analogy, I believe that the subject \emph{here a country} will not get back to its initial position once the repressive/compelling external force is gone, if sufficient internal pressure exists to

\textsuperscript{38} The conditions and arrangements for the admission of Bulgaria and Romania to the EU included in the Accession Treaty stated that the Candidate countries are to become Member States on the 1\textsuperscript{st} January 2007. However a safeguard measure postponing the accession by one year to 1\textsuperscript{st} January 2008 could be implemented if there is clear evidence of serious shortcomings as regard to the implementation of the \textit{acquis} (EU 2005).
maintain the subject in its new position. The evaluation of the hypothesis will be realised on the basis of several kind of sources including NIT and CSD reports, scholar researches and the testimony of national experts.\(^\text{39}\) I will proceed in two times by focusing first on the public pressure as a whole and then tightening the scope to advocacy NGOs.

Overall Slovene, Bulgarian and Romania citizens are well aware of the existence and the extent of corruption in their respective countries, as mirrored by the different indicators measuring the perceived level of corruption. However one can wonder if the widespread public awareness actually results in public pressure. Analysing elections, and especially election campaigns, will provide valuable information to assess whether public pressure towards corruption-related issues exists, and if so to evaluate its strength. Indeed, elections represent the main citizens’ leverage to pressure their political leaders into addressing their main sources of concern. The rationale behind any sensible politician actions is to win votes; hence he/she will be more likely to address issues that will capture the voters’ attention. Over time, and especially from the 2000s, political parties in CEECs have started politicising corruption with some success (Bågenholm A. 2009). In 2004, corruption was a cornerstone of the Slovene parliamentary election campaign (NIT Slovenia 2005) and a similar trend was observable in the 2005 Bulgarian and the 2004 Romanian elections.

Advocacy NGOs represent another vector of expression of the public pressure but unlike the periodic elections, their actions and pressure are continuous. In Slovenia, anti-corruption NGOs are relatively weak, an observation relayed by national experts. The languor of the Slovene anti-corruption NGOs is noticeable due to the absence of initiative to develop anti-corruption projects and the failure to create a TI national chapter (OSI 2002c). On the contrary, Romania and Bulgaria enjoyed very active advocacy NGOs during the pre-accession period. In Bulgaria, \textit{Coalition 2000}\(^\text{40}\) played a key role in shaping the anti-corruption debate. It focused its efforts on facilitating the dialogue between the Government, NGOs and other institutions with regard to the fight against corruption and on monitoring the path of Bulgarian

\(^{39}\) In the framework of the thesis, experts from the European Commission, from diverse NGOs and from the four countries under scrutiny have been interviewed.

\(^{40}\) \textit{Coalition 2000} is an initiative launched in 1998 by a group of civil society organisations.
anti-corruption policies. Moreover it drafted an anti-corruption action plan for Bulgaria that heavily influenced the content of the 2001 National Anti-corruption Strategy (CSD 2004, OSI 2002a). Advocacy NGOs were also particularly vibrant in Romania, notably due to the weakness of opposition political parties and played a key role in the democratisation of the society (NIT Romania 2004). In Romania as well, NGOs regrouped themselves under coalitions: Coalition for Transparency and Coalition for a Clean Parliament. While the former closely monitored the enforcement of the Freedom of Information Act, the latter scrutinised all candidate running for the parliamentary elections and developed ‘blacklists’ to pressure the political parties to withdraw the pariahs from their electoral lists (NIT Romania 2005). Following its success, the initiative has been renewed in the framework of the European elections (NIT Romania 2007). Another sign of the Romanian civil society strength was the appointment of Mrs. Macovei as Minister of Justice in 2004. Media also played a major role in the formation and the maintenance of domestic public pressure insofar as they represent the main source of information for the citizens. Corruption affairs receive extensive coverage in the three countries and in Romania the media regularly relayed the initiatives undertaken by the anti-corruption NGOs.

Domestic public pressure obviously played a crucial role in the adoption and implementation of anti-corruption policies. Nevertheless, does it also play a similar crucial role in their persistence? With regard to the election campaigns, corruption remained a core issue in the 2008 Slovene and the 2009 Bulgarian elections. Experts agree that the corruption theme mainly determined the outcome of these elections. In Slovenia, the attempts to shut down the Commission for the Prevention of Corruption provoked an outcry among the population and an initiative headed by the non-parliamentarian Youth Party of Slovenia has been launched very quickly to put the closing of the Commission under a referendum (NIT Slovenia 2006). Although the Commission has been ‘saved’ by the Constitutional Court, a Slovene expert emphasised that domestic public pressure is the unique force holding anti-corruption

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41 Coalition 2000 still monitors Bulgaria annually.
42 Coalition for Transparency has been set up in 2001
43 Coalition for a Clean Parliament has been created in 2004
measures. In 2004, a “Romanian Watergate”\textsuperscript{44} revealed that the then Government saw advocacy NGOs as a menace that should be taken care of (NIT Romania 2005). Though reprehensible, this incident also underlined the strength of NGOs. However post-accession Romania shows quite a more nuanced picture and the same conclusion can be made for Bulgaria. Civil society continues to be active and to initiate anti-corruption projects but since 2007, NGOs are facing huge financial difficulties, which involve independence issues. During the pre-accession period, Romanian and Bulgarian NGOs were heavily dependent on the international donors’ aid. Hence with the Romania and Bulgaria becoming EU Member States, the NGOs lost a substantial part of their financial resources (NIT Romania 2009, CSD 2008).

The analysis demonstrated that a strong public mobilisation can lead to the adoption and protection of anti-corruption measures. Although strong public pressure may not prevent the political leaders from dismantling anti-corruption measures, testimonies argue that domestic public pressure actually contains and limits the process and that without this pressure anti-corruption measures would not last long. Hence, the hypothesis can be accepted: the higher the domestic public pressure to fight corruption in pre- and post-accession phases, the higher the probability anti-corruption measures will continue to be implemented after the accession within the EU.

2.3.1.4. The influence of the political leaders’ personal commitment

As highlighted in the previous conclusion, political leaders are the ultimate actors deciding on the anti-corruption measures fate. Hence, the fourth hypothesis will concern this category of actors.

\textit{The stronger the personal commitment of political leaders to fight corruption, the higher the probability that anti-corruption measures will continue to be implemented after accession within the EU.}

\textsuperscript{44} In 2004, confidential transcripts of the then SDP-dominated government meetings leaked to the press. They revealed the project from the SDP to undermine the civil society by creating a counter civil society. Parallel NGOs would be created and put under the control of party activist and aimed at replicating and combating the current disturbing NGOs (Nations in Transit Romania 2005).
Adopting and enforcing anti-corruption measures is a difficult and long-lasting process that usually involves deep institutional reforms. Embedding changes in public institutions such as the judiciary and the administration, changes that might put high-level public officials under pressure, requires among other things strong and competent leaders who do believe in the changes soundness (Fernandez and Rainey 2006; Yukl 2008). With regard to the CEECs and especially concerning Bulgaria, Romania and Slovenia, the presence of uncontested leaders is all the more crucial since corruption reached the highest levels of the society. Political corruption is indeed of common occurrence. It is not in the interest of rent-seeking elites to implement strong and long-lasting anti-corruption measures undermining their sources of ‘income’. Therefore, if anti-corruption champions are absent or too scarce then a sword of Damocles stands over the anti-corruption measures and is very likely to swoop down as soon as a shift in the balance of power occurs, i.e. once the EU leverage is gone. To evaluate the likelihood of the persistence of anti-corruption measures in the post-accession period, I will assess whether the measures adopted and implemented in Bulgaria, Romania and Slovenia were the fruits from the solely EU pressure or if the political leaders’ personal commitment to fight corruption actually played a significant role. The evaluation of the hypothesis will be realised on the basis of several kind of sources including NIT reports, scholar researches and the national experts’ assessments.

Although Slovenia has never been put under particular pressure by the EU to adopt anti-corruption measures, the accession process did actually influence the Slovene leaders to engage into the fight against corruption (OSI 2002c). In 2000 and 2003, major corruption affairs involving high-level officials broke out and lead to the first conviction of a civil servant for corruption-related crime in the country. However the three defendants claimed that the accusations of corruption were politically motivated (NIT Slovenia 2004). Besides all along the accession process, participation of high-level official within the Slovene economic life remained widespread involving conflicts of interest (NIT Slovenia 2003).

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46 Boris Sustar has been convicted in 2001.
During the pre-accession period, Bulgaria and Romania were rarely pro-active and it is actually the ‘stick of EU conditionality’ that gave the beat to their progresses: “Every time the EU penalised the two laggards, their governments would rapidly respond by presenting revised reform strategies and making pledges for additional measures” (Noutcheva and Bechev 2008: 124). Hence, the personal commitment in both countries political leaders is highly questionable. Adoption and implementation of anti-corruption measures seemed to depend more on the strength of the EU pressure than on the political leaders’ belief that changes were necessary independently of the EU membership. This perception is reinforced by the fact that the ‘big fish’ remained mostly out of the prosecution scope in both countries: most convictions concerned cases of petty corruption and when grand corruption were at stake only medium-level officials were troubled. However the EC repeatedly urged both countries to tackle the issue of high-level corruption in a serious manner and denounced the lack of political will to do so (EC Bulgaria and Romania 2003-2006). With the election of a new Government and the appointment of Monica Macovei as Minister of Justice, 2004 represented a milestone for the fight against high-level corruption in Romania. While the Office of the National Anticorruption Prosecutor (NAPO) only prosecuted two officials in two years, the newly created DNA presented in 2006 the following record: over 1 000 defendants have been charged with corruption, including among others seven Members of Parliament, two ministers and a deputy minister and several magistrates, out of which over 400 convictions have been pronounced. Nevertheless the political will to fight corruption within the Government and the Parliament remained uneven and anti-corruption measures were often fought fiercely (NIT Romania 2006 and 2007). Few efforts to curb high-level corruption have actually taken place in Bulgaria, a statement annually emphasised by the EC since 2004. Among the few positive examples, Boris Velchev _elected in 2006 as Prosecutor-General_ notably initiated prosecution against former colleagues and top managers of public utility companies and managed to the lift the immunity of several parliamentarians (Noutcheva and Bechev D 2008).

Nevertheless, the positive results observed in the three countries with regard to high-level corruption seem to simply be brief bursts rather than long-lasting trends. In

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47 The NAPO was a special agency created in 2002 on order to fight grand corruption; it has been replaced in 2005 by the DNA.
Slovenia, anti-corruption efforts were essentially made to please EU officials in Brussels, an observation somehow relayed by Helsinki Monitor (NIT Slovenia 2004). No real personal commitment from the political leaders to fight corruption was and is actually observable.\textsuperscript{48} With regard to Romania, experts remained quite sceptical on the ‘conversion’ of political leaders to EU values and believed it to be rather rhetoric (Mungiu-Pippidi cited in Trauner 2009). They also stressed that within the top-levels circles, pro-anti-corruption leaders were heavily outnumbered.\textsuperscript{49} Finally, the EC continued to criticise the Bulgarian lack of political will to fight actively high-level corruption and particularly expressed it with a rather non-diplomatic tone in the 2008 CVM interim report (EC 2008c). Hence, in the light of the findings, the hypothesis can be accepted: the personal commitment of political leaders to fight corruption has a significant impact on the persistence of anti-corruption measures after the accession within the EU.

2.3.1.5. The influence of time

Embedding structural changes in public institutions require many factors including among other things leadership and internal/external support. Yet a key parameter shall not be forgotten: time. The influence of time is the fifth and final hypothesis of the model on the persistence of anti-corruption measures.

\textit{The longer the anti-corruption measures have been implemented prior to the EU membership, the higher the probability that anti-corruption measures will continue to be implemented after accession within the EU.}

Implementing anti-corruption measures, especially in countries plagued by both petty and grand corruption, will require the reform of several core public institutions, notably the judiciary and the administration. However “\textit{institutional arrangements are incredibly resilient and resistant even in the face of huge historic breaks}” such as revolutions or defeat in war (Thelen 2003: 209). This resilience to change can be linked with path dependency and the fact that legacies have a great influence on the functioning of institutions (Thelen 2003). Hence, according to the theory, time would be a crucial factor to break down the institutional resilience, enable costly measures

\textsuperscript{48} Interview with an expert from Slovenia.

\textsuperscript{49} Interview with experts from Romania.
to take root and become the norm within the society and to make their removal more costly than their permanence. To analyse the relationship time/persistence of anti-corruption measure, the time between the adoption of the measures, their actual enforcement and the integration within the EU as well as the consequences of the lift of EU conditionality will be evaluated on the basis of NIT and EC reports and experts’ assessments.

Though not under firm EU pressure, Slovenia adopted certain anti-corruption measures. In 2001, with the creation of the Office for the Prevention of Corruption as and the first conviction of a civil servant for corruption-related crime, Slovene pace to curb corruption seemed to accelerate. The EC noticed that the recommendations made by the GRECO surely had a lot to do with it (EC 2002c). In its last report prior to the 2004 enlargement, the EC highlighted some shortcomings but did not ask for particular requirement.

Alike Slovenia, since they officially became Candidate countries, Bulgaria and Romania adopted a great array of anti-corruption measures. However, their enforcement failed to come up to expectations, especially EU expectations. On several occasions, the EC notified to both countries that the measures adopted were weakly implemented and that priority should be given to their enforcement. In its 2003 report, the EC stated that “[a]lthough not yet complete, the legal framework for fighting corruption is relatively well developed. The Romanian government should therefore focus attention on enforcing existing legislation” (EC 2003b: 27), a recommendation renewed in 2004 and 2005. Similar comments have been made to Bulgaria in 2002 and 2003. Romanian efforts to curb corruption have not been linear but since late 2004 and the arrival to power of a new governmental team, the pace of the reforms enforcement has been increasing. In 2006, the EC noted that “the reforms led by the Ministry of Justice and the [DNA] need to be followed by sustained efforts of all other state institutions so that the progress made becomes irreversible” (EC 2006e: 14). Bulgaria’s turning point came earlier, in 2001-2002 and coincided with the rapprochement between the Government and civil society, and the adoption of a national Strategy for Combating Corruption (EC 2001a and 2002a). However, high-level has never really been addressed in the pre-accession period. Hence, while at the threshold of the EU, Bulgaria was reminded by the EC
that it shall “present clear evidence of results in its fight against corruption, in particular high-level corruption” (EC 2006b: 9).

To summarise, Slovenia and Romania started to devote significant efforts to curb corruption, and especially high-level corruption, around two years before its accession. Bulgaria is quite a special case since great efforts were made starting in 2001-2002 but never fully addressed the issue of high-level corruption. Is a couple of year sufficient for costly and troubling anti-corruption measures to anchor deep enough in the structures of the society and resist to post-accession pressures for removal? Apparently not. Since 2005, the Slovene Commission for the Prevention of Corruption works under the constant threat of being dismissed (NIT Slovenia 2006). Besides, already in 2003, some doubts have been raised concerning the neutrality of corruption allegations made against political officials (NIT Slovenia 2004). Despite the CVM, Romania and Bulgaria have also experienced backslidings. The Romanian Government quickly dismissed Minister of Justice Monica Macovei. Her successor, Tudor Chiuariu, get involved soon enough in the DNA affairs in order to put a hold on investigations involving top officials and tried to fire an anticorruption prosecutor, Doru Tulus, while he was inspecting Chiuariu’s political sponsors (NIT Romania 2008). These interference practices have continued under Chiuariu’s successor, Minister of Justice Cătălin Predoiu (NIT Romania 2009). In Bulgaria, the networks involving organised crime and politicians proved to be tough to get rid of (OLAF 2007) and the country already experienced negative opinions as well as substantial financial sanctions from the EC. A posteriori, some officials from the EC recognised that the reforms have been implemented simply too late and were not given sufficient time to embed in the system.

The importance of time for the persistence of anti-corruption measures after the EU accession has been proved in the negative: anti-corruption measures only recently enforced are not rooted deep enough in the institutional structures to cope with the end of the EU conditionality. Nevertheless some positive signs also tend to confirm the importance of time. Though reprehensible, Chiuariu’s attempts to fire Doru Tulus had a positive effect since “for the first time in Romania, magistrates mobilized to defend the independence of the judiciary” (NIT Romania 200850), a sign of the

50 The document is not paginated.
normalisation of the principle of judiciary independence. Besides, Slovenia and Bulgaria are experiencing respectively since 2008 and 2009 Governments that are more oriented towards the fight against corruption. Yet, it is still too early to assess the longevity of their actions. All in all, in the light of the findings, the hypothesis can be accepted: time is a crucial factor for the persistence of anti-corruption measures after the accession within the EU.

2.3.2. Conclusions

The evaluation of the hypothetical model on the persistence of anti-corruption measures revealed that three of the five proposed hypotheses have a significant influence on the post-accession persistence of anti-corruption measures, i.e. ‘public domestic pressure’, ‘personal commitment from the political leaders’ and ‘time’. Though excluded, the variables ‘level of corruption’ and ‘EU pressure’ have actually helped fostering the adoption of anti-corruption measures in the pre-accession period. However, their impact proved to be insufficient to ensure the sustainability of the reforms over time. Sustainability of anti-corruption measures cannot be achieved without internal demand.

In the light of the findings, a change of model is necessary. The persistence of anti-corruption measures shall be understood as the result of a synergy created by the interweaving of two ‘outer’ variables enhancing the apparition of anti-corruption measures, i.e. level of corruption and EU pressure, and three ‘inner’ variables supporting the persistence of these measures, i.e. domestic public pressure, time and political leaders’ personal commitment.

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51 Interviews with experts from Slovenia and Bulgaria.
Overall, the results from the evaluation demonstrated that the sustainability of the *soft acquis* is not assured and depends more on endogenous factors than on the EU conditionality. Hence, to ensure the persistence of anti-corruption measures in Croatia, appraising its potential post-accession trajectory is necessary.
3. Croatia beyond Accession: Securing and strengthening the progress achieved under the EU conditionality

3.1. Applying the Synergy Model to Croatia

3.1.1. Croatia and the ‘Outer’ variables

3.1.1.1. Level of Corruption

Croatia’s performance is quite similar to Romania and Bulgaria. Even if international indicators grade the country with better scores than its two counterparts, Croatian results\(^{52}\) are way behind those achieved by Slovenia. From 1996 to 2002, its CoC score has greatly improved but since then it has started to waver between 62.6 and 58.3. With similar scores from NIT and CPI, Croatia ranks worldwide among the countries with a medium level of corruption. From a solely European perspective, Croatian results are very close to the EU’s less performing countries.

Table 3: Level of Corruption in the EU27 and in Croatia in 2008/2009

<table>
<thead>
<tr>
<th>Country</th>
<th>CoC 2008</th>
<th>CPI 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>100.0</td>
<td>Denmark</td>
</tr>
<tr>
<td>Denmark</td>
<td>99.0</td>
<td>Sweden</td>
</tr>
<tr>
<td>Sweden</td>
<td>97.6</td>
<td>Netherlands</td>
</tr>
<tr>
<td>Netherlands</td>
<td>97.1</td>
<td>Finland</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>95.2</td>
<td>Luxembourg</td>
</tr>
<tr>
<td>Austria</td>
<td>93.7</td>
<td>Germany</td>
</tr>
<tr>
<td>Germany</td>
<td>93.2</td>
<td>Ireland</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>92.8</td>
<td>Austria</td>
</tr>
<tr>
<td>Ireland</td>
<td>92.3</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>France</td>
<td>91.3</td>
<td>Belgium</td>
</tr>
<tr>
<td>Belgium</td>
<td>90.3</td>
<td>France</td>
</tr>
<tr>
<td>Spain</td>
<td>84.5</td>
<td>Estonia</td>
</tr>
<tr>
<td>Portugal</td>
<td>83.1</td>
<td>Slovenia</td>
</tr>
<tr>
<td>Cyprus</td>
<td>82.6</td>
<td>Cyprus</td>
</tr>
<tr>
<td>Malta</td>
<td>81.6</td>
<td>Spain</td>
</tr>
<tr>
<td>Slovenia</td>
<td>79.7</td>
<td>Portugal</td>
</tr>
<tr>
<td>Estonia</td>
<td>79.2</td>
<td>Malta</td>
</tr>
<tr>
<td>Hungary</td>
<td>72.5</td>
<td>Hungary</td>
</tr>
<tr>
<td>Slovakia</td>
<td>68.6</td>
<td>Poland</td>
</tr>
<tr>
<td>Poland</td>
<td>67.6</td>
<td>Czech Republic</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>66.7</td>
<td>Lithuania</td>
</tr>
<tr>
<td>Latvia</td>
<td>64.7</td>
<td>Slovakia</td>
</tr>
<tr>
<td>Lithuania</td>
<td>63.3</td>
<td>Latvia</td>
</tr>
<tr>
<td>Italy</td>
<td>62.3</td>
<td>Italy</td>
</tr>
<tr>
<td><strong>Croatia</strong></td>
<td><strong>61.8</strong></td>
<td><strong>Croatia</strong></td>
</tr>
</tbody>
</table>

Sources: World Bank and Transparency International

\(^{52}\) The overall results for Croatia are detailed in Annex 4
Overall, corruption in Croatia severely affects the judiciary, the health sector and education institutions as well as general administrative services and public procurement are usually perceived as the most corrupt sectors. Recent surveys confirm these findings. In 2008, 51.6% of the respondents declared they have been asked to pay a bribe by a government official or a civil servant for his/her service, while 21.8% of them have been subjected to bribery by a doctor/nurse (Gallup Balkan Monitor). Moreover, the Global Competitiveness Index 2009-2010\textsuperscript{53} emphasises the unfairness and unpredictability of public procurement in Croatia. The country performs poorly with regard to the diversion of public funds to companies, individuals, or groups due to corruption and the favouritism of government officials towards well-connected companies and individuals when deciding upon policies and contracts, with a score respectively of 3.2 and 2.7 (Business Anti-Corruption Portal 2009). Despite the burden of the Communist era legacy, the War of Independence and the privatisation process\textsuperscript{54} are actually the two ‘original sins’\textsuperscript{55} explaining the persistent high level of corruption in Croatia. The combination of these factors in particular enhanced the long-lasting establishment of underground governance structures competing with the legal structures and as things stand at the present those parallel institutions have not yet been dismantled.\textsuperscript{56}

If public corruption deeply infiltrates Croatian’s daily life, private interests also interfere with the State business. TI's Global Corruption Barometer 2009 establishes that “state capture” is quite widespread: 85%\textsuperscript{57} of the respondents believe that the private sector uses bribery to influence government policies, laws or regulations while 68% of them declare that it is a very serious problem. Croatia also suffers from organised crime activities. Although less ‘organised’ than in Bulgaria\textsuperscript{58}, the Croatian organised crime groups proved through the assassination of high-profile

\begin{footnotesize}
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\textsuperscript{53} The Global Competitiveness Index (GCI) is an aggregate indicator assessing the competitiveness of nations. Countries are rated from 1 to 7, 1 representing the worst possible situation. For further details: \url{http://www.weforum.org/en/initiatives/gep/Global%20Competitiveness%20Report/index.htm}

\textsuperscript{54} President Tuđman wanted to develop a “capitalism with a Croatian face” by allowing 200 Croatian families to take over the economy and lead the country’s transformation (Grubiša 2005: 66)

\textsuperscript{55} In his study, Grubiša actually considers the privatisation process as the ‘original sin’ (Grubiša 2005: 66)

\textsuperscript{56} Interview with an expert from Croatia

\textsuperscript{57} To the question “How often do you think the private sector/business use bribery to influence government policies, laws or regulations?”, the respondents replied sometimes (26%), often (43%), almost always (16%).

\textsuperscript{58} Interviews with officials from the EC.
\end{footnotesize}
personalities, including several investigative journalists, that they can be serious veto players and can challenge the state authority (NIT Croatia 2009).

3.1.1.2. **EU pressure**

Croatia experiences strong pressure from the EU to significantly curb corruption before joining the Union. EU pressure was applied as early as in 2001 with the signature of the Stabilisation and Association Agreement (SAA). Under the SAA, Croatia committed to participate in anti-corruption projects and to comply with the EU *acquis* which required the adoption of an anti-corruption strategy and the establishment of a legal framework as well as institutions to fight corruption (Budak 2006).

When Slovenia, Bulgaria and Romania applied for the EU membership, the EC evaluated corruption-related issues under the part on the political criteria and in chapter 24 ‘Cooperation in the field of Justice and Home Affairs’. With Croatia, the EC adapted its method to the shortcomings experienced during the previous negotiations by translating much of the political criteria _including the aspects related to corruption_ into the new negotiating chapter 23 ‘Judiciary and Fundamental Rights’. The opening and closing of chapter 23 depends on the ability of Croatia to meet certain benchmarks and as of today, it has not yet been open to negotiations.59

Apart from this change of method, EU pressure is also visible through the weight given by the EC to corruption issues in its regular reports.60 The chart below shows that the occurrence of ‘corruption’ in the reports on Croatia reached levels similar or even superior to Bulgaria and Romania, though Croatia experiences lower level of corruption. What’s more, the EC began stressing the importance played by corruption in the negotiating process much earlier in the case of Croatia. From as early as 2005, the EC used the word ‘corruption’ on 46 occasions, while such levels are observable for Bulgaria and Romania only three years after the publication of their respective first regular report.

59 Ibid.
60 The results for 2004 are based on the Opinion on Croatia issued by the EC.
The greater scrutiny demonstrated by the EC in 2009 can be related to the violent murders of two journalists and of the daughter of a prominent lawyer in October 2008 and the difficulties encountered by the Government to investigate and prosecute these cases (NIT Croatia 2009). The EC usually characterised corruption in Croatia as a “serious and widespread problem [affecting] many aspects of society” (EC 2005c: 13), except in 2006 when it became only a ‘serious’ problem and in 2009 when it was said to “still [be] prevalent in many areas” (EC 2009d: 10, 11).

Under the EU conditionality and following GRECO recommendations, Croatia progressively built up an entire legal framework to fight corruption. In February 2009, the Government renewed its Anti-Corruption Strategy and Action Plan, providing Croatia with a complete anti-corruption package. Since 2001, Croatia has centralised the fight against corruption within the Office for the Suppression of Corruption and Organised Crime (USKOK), which has a political mandate is based on two main pillars: investigation and prosecution of corruption cases. After difficult beginnings, USKOK has become increasingly active, investigating high-level corruption cases. Meanwhile the anti-corruption framework has been reinforced by the establishment of four special chambers for dealing with organised crime and corruption cases and a National Police Office for the Suppression of Corruption and

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61 Its third function _prevention_ is somewhat losing its relevance.
Organised Crime (PNUSKOK) (EC 2009d). Additionally, in line with the EU requirements\(^\text{62}\), Croatia signed and ratified several international anti-corruption Conventions.

Despite welcoming the positive progress, the EC underlines that Croatia is still facing serious shortcomings, most notably with regard to the conflict of interest, the political accountability and the full enforcement of already adopted anti-corruption measures (EC 2009d).

3.1.2. Croatia and the ‘Inner’ variables

3.1.2.1. Internal Domestic Pressure

Croatian people are well aware of corruption. In 2009, 52.3% estimated that the current level of corruption was worse than five years ago and 86.8% believed that the government was not doing enough to fight corruption. 73.7% of the Croatian people also considered corruption as more harmful than helpful. Although they reject the use of money to get some privileges, a majority still consider the use of small gifts or the resort to relations as acceptable to get better services, especially when it concerns healthcare, education, public procurements and fines (Gallup Balkan Monitor). Corruption was at the heart of the debates during the last Croatian presidential election campaign. On the 10\textsuperscript{th} of January 2010, Ivo Josipovic, with a programme calling for a strong fight against corruption, was elected with a strong majority, i.e. 60.3% of the votes, over Milan Bandic, the charismatic but not above suspicion Mayor of Zagreb (AFP 2010, BBC News 2010). However, despite their desire for less corruption, Croatian citizens are rather fatalist and scarcely rise up against the political leaders to demand greater transparency and more results in the fight against corruption.\(^\text{63}\)

With regard to the civil society, Croatia paints a rather mild picture. Even if Croatian advocacy NGOs play a crucial role in the continuing democratisation of the society, their influence on the policy-making process remains weak, due to the lack of trust from the Government (EC 2009d). Despite positive signs suggesting some positive evolutions in relations between the Government and civil society relations (NIT

\(^\text{62}\) For further details, please refer to page 32

\(^\text{63}\) Interview with an expert from Croatia.
Croatia 2009; Hina 2009), a majority of official authorities still consider advocacy NGOs as “enemies of the State”.64 TI Croatia, the Adriatic Institute for Public Policy65 and GONG66 are amid the most active organisations on the advocacy scene. However the Croatian advocacy NGOs environment is undermined by two elements: on the one hand, the increasing influence of state-supported NGOs promoting nationalist and non-democratic values and on the other hand, the lack of financial long-term sustainability (NIT Croatia 2008). Similarly to their Slovene, Bulgarian and Romanian fellows, Croatian advocacy NGOs depend almost exclusively on international donors, especially since the Croatian society _and especially the middle class_ has not yet reach a sufficient level of wealth to encourage the emergence of a philanthropic culture.

Whereas the media played an important role in Slovenia, Bulgaria and especially in Romania, the Croatian media landscape does not really encourage people to question corruption since it focuses on sensational matters rather than on investigative reports. Besides, the violent murders and attacks towards journalists reporting on corruption/organised-crime stories and the lack of progress in solving these cases do not foster investigative journalism (NIT Croatia 2009).

3.1.2.2. Political Leaders’ Personal Commitment

Corruption started to become a hot topic in the political circles at the end of the Tuđman era and the 2000 elections. In 2006, the EC notes that “the importance of tackling corruption is being increasingly highlighted by senior politicians” (EC 2006c). Since 2007, the government is on the offensive and have so far organised four high-profile anti-corruption operations: ‘Dijagnoza 1 and 2’, ‘Maestro’, ‘Grunтовčan’ and ‘Indeks’ (Bertelsmann Stiftung 2009; NIT Croatia 2009). These operations have been respectively directed towards the health care, the Croatian Privatization Fund, the Zagreb Land Registry and the Zagreb University and have led to the arrest of high ranking officials. For instance, the ‘Maestro’ operation resulted

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64 Ibid.
65 The Adriatic Institute for Public Policy is an independent Croatian think tank founded in 2004. Its main missions are to strengthen the rule of law and advance economic freedom in Croatia and southeast Europe. For further details: http://www.adriaticinstitute.org/
66 GONG is a NGO founded in 1997 in order to encourage citizens to take active participation in political processes. For further details: http://www.gong.hr/cpage.aspx?Page=default.aspx&PageID=2
in the prosecution of three vice presidents of the Croatian Privatization Fund. Two of them have actually been sentenced (Prenc 2009).

The evolution in the fight against corruption undertaken by the Croatian authorities is mainly attributable to both EU and public pressure (Bertelsmann Stiftung 2009). Yet, if investigations on corruption-related cases are more frequent, prosecutions come about solely as a result of external pressures. Nevertheless, observers have noticed interesting changes. Acting as Minister of Education (2003-2009), Dragan Primorac managed to curb corruption significantly in the Croatian education system, a commitment that was not directly related to the EU conditionality. Likewise, Minister of Justice Ivan Simonovic declared during a round-table conference that “[Croatia] need[s] to carry out (the anti-corruption programme) with very clear principles – nobody should be above the law”. He also underlined that even if there is less corruption in Croatia than in other EU Member States, the fight against corruption should not be hindered (Prenc 2009). Equally, since her appointment as Prime Minister in July 2009, Jadranka Kosor has demonstrated strong commitment to the fight against corruption. Finally, the election of Ivo Josipovic was another positive sign, even if the presidential powers are limited to a primarily ceremonial role. However, even if it is still too early to assess the sustainability of these changes but the fact that most of the Government officials are involved in conflicts of interest or suspected to maintain privileged ties with the underground structures already cast some serious doubts on the declared good-will to fight corruption.

With regard to the high-profile sting operations, they have rarely resulted in clear statements and convictions. Besides, the persons convicted for corruption crime are mainly low- or mid-level actors; top-level actors are usually spared. The investigations and prosecution of ‘big fish’ are often disturbed by political interference and USKOK investigations on high-corruption cases suffer from a lack of support from a majority of political leaders (EC 2009d). Besides, political leaders are not above suspicion, which is quite problematic since they are in charge of the

67 Interview with a expert from Croatia
68 Interview with a representative from Gallup Europe
69 Interviews with officials from the EC and representatives from Gallup Europe and the Regional Cooperation Council
70 Ibid
71 Interview with a expert from Croatia
correct implementation of anti-corruption measures, and might still be after Croatia becomes an EU Member State. The reasons underlying former Prime Minister Ivo Sanader’s sudden resignation in July 2009 remain quite unclear. In March 2010, Former Croatian deputy Prime Minister Damir Polanec was arrested on suspicion of illegal mediation (Grđić 2010). As of today, Polanec is the highest ranking official that has ever been investigated on under corruption allegations. Anti-corruption bodies are also affected by corruption: in 2008, the chairperson of the Committee for the Prevention of Conflict of Interest had to resign due to corruption allegations (EC 2008e). NIT notably underlined the persistence of a “double loyalty” system of values in Croatia, “where hidden political agendas are more important than cash payments as basic sources of corruption” (NIT Croatia 200872). In the end, despite the efforts of the Croatian Government, the EC deplores the absence of a culture of political accountability (EC 2009d).

3.1.2.3. Time

Looking how the EU conditionality was applied with regard to Croatia, it is evident that the EC learned from the strengths and weaknesses of the previous enlargements. It showed clear concerns to start tackling the corruption issue at the earlier stages of the accession process.

In 2006, the EC arrived at the same conclusions that it did few years ago for Romania and Bulgaria: Croatia has most of the required instruments to fight corruption properly in its hands but their enforcement remains partial (EC 2006c). However it continued to deplore the absence of any conviction in high-level corruption cases until 2007. Its judgement is more nuanced since 2008: though it welcomes the increasing activity demonstrated by the USKOK in investigating alleged cases of high-level corruption, the EC regrets that too few of these investigations are followed by actual prosecutions and convictions. Croatia’s turning point occurred in 2006-2007, date in which the EC and NIT started mentioning the country’s progress in the fight against corruption in their reports. It also coincided with the operations ‘Diagnosis’, ‘Maestro’, ‘Grunтовчан’ and ‘Index’ that led to the arrest of several high ranking officials.

72 The document is not paginated
As of today, the EC continues to underline the need for the Croatian Government to correctly enforce the anti-corruption measures adopted, especially in a non-partisan manner. It still emphasises important shortcomings in tackling conflicts of interest and high-level corruption and holds the political interference and a lack of accountability for responsible (EC 2009d). Besides this, the recent big entrance of the organised crime presents another challenge for the Croatian authorities in their fight against high-level corruption.

3.2. **Croatia beyond Accession: between ‘Backslide’ and ‘Status Quo’**

The evaluation of Croatia with regard to the synergy model demonstrates that the country in its pre-accession state is actually showing great similarities with Bulgaria and Romania. However it is still too early to assess whether or not the EC will recommend implementing the CVM in Croatia after the accession.\(^\text{73}\) Hence, starting from the assumption that the monitoring mechanism won’t be applied in the Croatian case, anti-corruption measures may encounter three different fates once the EU conditionality will be removed; these are ‘Backslide’, ‘Status Quo’ and ‘Consolidation’.\(^\text{74}\)

The ‘Backslide’ path suggests that once the EU membership is secured, the Candidate country will stop its efforts and undermine the troubling anti-corruption measures. A backslide combines three elements: a weak domestic public pressure, political leaders without any particular personal commitment to fight against corruption on their own and a superficial implementation, since anti-corruption measures have barely yet had time to go deeper than the ‘crust’ of the governance structure.

The ‘Status Quo’ path would be pursued on the grounds that anti-corruption measures were integrated in the governance structure of the country during the pre-accession period and that the costs of keeping them would equal the cost of removing them. The continuity of anti-corruption measures will results from the association of three factors. First, domestic public pressure will be able to have an impact on the political leaders’ decision-making. Second the political leaders believing in the

\(^{73}\) Interviews with European Commission officials

\(^{74}\) The typology is inspired from the four post-accession dynamics developed by G. Pridham to evaluate Romania’s post-accession compliance (Pridham 2007: 6)
soundness of the fight against corruption, especially political corruption, will represent a strong and visible minority that will be difficult to remove or ignore. Third, anti-corruption measures have been given enough time to reach the ‘mantel’ of the governance structure.

The ‘Consolidation’ path implies that instead of stagnating, anti-corruption measures will actually be reinforced after the EU accession. While the previous paths were solely based on the EU conditionality, the ‘consolidation’ path entails the strengthening and deepening of anti-corruption measures after the enlargement. The interaction of three features will produce this ‘social learning’ (Pridham 2007). While domestic public pressure will proved to be strong and sustainable over time, the political leaders’ personal commitment will turn to the fight against corruption which will have become the norm since anti-corruption measures will have been in place long enough to reach the ‘core’ of the governance structure.

Table 4: A Typology on the Persistence of Anti-Corruption Measures

<table>
<thead>
<tr>
<th>Persistence of Anti-Corruption Measures</th>
<th>Domestic Public Pressure</th>
<th>Political Leaders’ Commitment</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Backslide</td>
<td>Weak</td>
<td>Merely EU conditionality-related</td>
<td>Superficial</td>
</tr>
<tr>
<td>Status Quo</td>
<td>Medium</td>
<td>Strong Minority</td>
<td>In-Between</td>
</tr>
<tr>
<td>Consolidation</td>
<td>Strong</td>
<td>Majority</td>
<td>Meaningful</td>
</tr>
</tbody>
</table>

Taking Croatia’s background into account and assuming that the country will keep going, a backslide is most likely to occur. Political leaders seem to only present the façade of personal commitment and are rather prompt to interfere in a judicial system.
that still seriously lack independence. Hence while USKOK is multiplying investigations, actual prosecutions are actually scarce. As a matter of fact, prosecutions are usually launched because of strong external pressure. What makes matters worse, domestic public pressure is unlikely to enhance any positive spillover. On the one hand, Croatian citizens are very much aware of corruption and its adverse effects on the overall society but remain quite fatalist. On the other hand, the achievements completed by the advocacy NGOs are threatened by the upcoming shortage of funds from the international donors and the unwillingness of the Government to finance ‘watchdog’ NGOs. However, on the bright side, domestic public has pressure proved to be strong enough to drive allegedly corrupt ministers to resign and to urge the Government to address ‘corruption’ as a top priority in the political agenda. The time frame also shows some encouraging trends. While the Romanian and Slovene anti-corruption measures have really been enforced less than two years before their integration within the EU, Croatia’s competent authorities have been implementing them for a longer time. Thus upon its integration within the EU, Croatia’s anti-corruption measures should be more deeply rooted than they used to be for Slovenia, Romania and Bulgaria. However since the enlargement is said to be imminent, it is unlikely that the anti-corruption measures will have enough time to reach the ‘core’ of the governance structure by then. Unfortunately, as things stand at present, judging by the apparent strengths of both domestic public pressure and anti-corruption roots, it is unlikely that they could resist to the negative spillover coming from the political leaders. Hence, Croatia seems to head for a ‘Backsliding’ path with little chances to reach the ‘Status Quo’.

3.3. Avoiding the ‘Backslide’ and enhancing a ‘Status Quo’

3.3.1. Basic Principles and Stakeholders

Three basic and constraining principles shall be taken into account when attempting to reform the EU approach towards the fight against corruption: the extent of the EU competences in corruption-related issues, the EU will to avoid any duplication of efforts and the EU primary focus on high-level corruption. Fighting corruption falls first and foremost within the competences of the State. Hence, the EU cannot act as it wishes and must be particularly aware of the Member States sensitivities. Besides,

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75 Interview with an expert from Croatia
76 Bulgaria has not been included since it never seriously fought high-level corruption.
the EU anti-corruption initiatives in Croatia have evolved alongside programmes launched by different international organisations such as the CoE or the UN. Insofar as multiple actors are involved, the EU insists on the fact that efforts should not be unnecessarily duplicated, especially with regard to monitoring and evaluation mechanisms. Hence, “the European Commission is of the opinion that at this stage a separate EU anti-corruption evaluation and monitoring mechanism is inappropriate” since such a mechanism is already provided by GRECO (EC 2003c: 9). Finally, despite its global approach to curb corruption, the EU underlines that political leaders should set an example and fully embrace the fight against corruption otherwise “public agents would find it difficult to act impartially, objectively and solely in the public interest if the country’s highest representatives did not promote and live up to the anti-corruption standards” (EC 2003c: 7). Thus, the EU put a strong emphasis on fighting high-level corruption.

Alongside these three basic principles, changes should also take into account the dynamic existing between the different stakeholders. In the case of Croatia, there are four different kinds of stakeholders. The table below presents the post-accession ‘weight’ of each stakeholder, i.e. its importance and influence on the persistence of anti-corruption measures.

Table 5: Current and desired balance of powers among stakeholders in the persistence of anti-corruption measures in Croatia
Leaving aside potential future actions undertaken by Croatia, the left-hand side table shows the post-accession balance of power among the stakeholders if no particular modification is made to the EU approach. Croatian political leaders and the business sector are the most important and influential actors. Equally important but less influential are the Croatian citizens, advocacy NGOs and EU institutions. Finally, neighbouring countries and individual Member States play a minor role. Though negligible, organised crime groups appear in the current balance of powers.

The right-hand side table presents the desired outcomes that should result from securing ‘status quo’ and enhancing ‘consolidation’ in Croatia. The aim of the changes in the EU approach is indeed to counterbalance the Croatian political leaders’ supremacy by empowering both citizens and advocacy NGOs and reinforcing the influence of the EU. With regard to the business sector, its influence on the decision-making process should be lowered. However, its overall interests should be still taken into account in order to develop a sound and sustainable business environment, which would be conformed to the EU requirements. Finally, weak as they are, organised crime groups should no longer constitute a stakeholder.

3.3.2. Four + one areas of intervention

Building on the Croatian background, and taking into account both the three basic principles supported by the EU and the desired balance of power amongst the stakeholders, four important areas shall be addressed in order to assess how best to avoid a ‘backslide’ and enhance ‘status quo’ path in Croatia, i.e. post-accession monitoring, empowerment of advocacy NGOs, ‘social learning’ and time. Though not involving Croatia directly, pre-accession negotiations constitute the fifth issue that should receive some attention from the EU. For each of these issues, a certain number of policy options have been developed (Table 6) and will be evaluated on the basis of their feasibility, the support they would benefit from and their costs.
<table>
<thead>
<tr>
<th>Issues</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Post-Accession Monitoring</td>
<td>No Monitoring</td>
<td>Temporary individual ‘soft’ monitoring: CVM</td>
<td>Temporary individual ‘stronger’ monitoring: reinforced CVM</td>
<td>EU-wide monitoring mechanism based on the OMC</td>
<td>EU-wide strong monitoring</td>
</tr>
<tr>
<td>Empowerment Advocacy NGOs</td>
<td>No particular help</td>
<td>Help as currently organised</td>
<td>Renewed Strategy for advocacy NGOs in the EU, Candidate and Potential Candidate Countries</td>
<td>Provide financial funding directly to the NGOs and eliminate the mediation of the Government</td>
<td></td>
</tr>
<tr>
<td>Time</td>
<td>No pre-defined entry date</td>
<td>Provide the Candidate country with an entry date with safeguards</td>
<td>No pre-defined entry date but positive beacons</td>
<td>Condition the entry date to the results of an external audit on the level of corruption in the Candidate country</td>
<td>Condition the entry date to the level of corruption: wait until the Candidate country performs above the average</td>
</tr>
<tr>
<td>‘Social Learning’</td>
<td>Wait and see for the elite turnover</td>
<td>Learning programmes organised as of today</td>
<td>Learning programmes with stronger expectations and appointed ‘guardians’</td>
<td>Provision with general guidelines</td>
<td></td>
</tr>
<tr>
<td>Pre-Accession Negotiations</td>
<td>Same method</td>
<td>Introduction of a negotiation chapter on administration</td>
<td>Introduction of a negotiation chapter on political corruption</td>
<td>Transform the soft acquis into hard acquis</td>
<td></td>
</tr>
</tbody>
</table>
3.3.2.1. Post-Accession Monitoring

With regard to post-accession monitoring, the EU has the choice between three main options, i.e. no monitoring mechanism, an individual mechanism tailored to Croatia or an EU-wide monitoring mechanism.

Not implementing any post-accession monitoring mechanism entails some advantages such as the non-duplication of efforts, the support of the Croatian authorities and a saving of a substantial amount of money. Indeed since Croatia complies with the GRECO’s own monitoring mechanism and its recommendations, some doubts could arise concerning whether or not the EU mechanism has any actual added value. Besides the Croatian authorities would support this option that would make Croatia a fully-fledged EU Member State. Finally the option would enable the EU to save time and money. However, would these savings be worth paying the ‘price’ of a ‘backslide’?

With the extreme likelihood of a Croatian ‘backslide’, the implementation of a temporary individual monitoring mechanism is appealing, especially since the EU would not have to start from scratch insofar as individual monitoring mechanisms have already been set up in Bulgaria and Romania upon their accession. While the option might be challenged by the Croatian authorities since the country actually performs better than some Member States, introducing a monitoring mechanism could reassure the EU27, especially at a time when the trust among Member States has been damaged, and could facilitate the enlargement to Croatia. Indeed, without the CVM and the continuing EU supervision, anti-corruption measures in both Bulgaria and Romania would have probably been entirely removed. 77 However, the mechanism does not really create incentives to perform better (Ivanova 2009) and the threat of the implementation of safeguards is not credible enough. 78 Hence, a stronger CVM with less extreme safeguards would be much more easily implemented and would allow the EU to remain an important and influential stakeholder. However the additional safeguards would create additional costs to design and implement. Besides, apart from Croatia, some Member States might be reluctant to their adoption if they can set a precedent and be implemented towards older Member States in the future.

77 Interview with a Member of the European Parliament
78 Interviews with EU officials
Implementing an EU-wide monitoring mechanism would have the advantage of putting all Member States on an equal footing and reinforcing the weight of the EU institutions in the Member States with regard to anti-corruption measures. Insofar as no current monitoring mechanism is able to provide a comparison between all EU27, the implementation of such a mechanism would not contradict the non-duplication-of-efforts principle. This option would involve greater costs than the two previous since the design and scale of the mechanism would be greater than the current CVM. The recent adoption by the Council of the Stockholm Programme inviting the EC to “develop indicators” (Council of the European Union 2009: 49) could represent a window of opportunity to launch an EU-wide monitoring mechanism. Agreement from the Member States will be extremely difficult to achieve and if the mechanism involves sanctions, then an agreement will not be found, at least in the short-term. Therefore, the EU-wide monitoring mechanism should be developed in the framework of the Open Method of Cooperation (OMC). Despite its shortcomings, the OMC through ‘naming and shaming’ should have a positive impact on the Member States commitment towards the fight against corruption. To develop the mechanism, the EC should try to find some support in the European Parliament, where powers in justice and home affairs have been extended with the Lisbon Treaty. Overall the mechanism would meet the European citizens’ expectations since particularly as currently they “do not consider national and EU actions to combat corruption effective” (EC 2009h: 45).

3.3.2.2. Empowerment of Advocacy NGOs

Insofar as the EU supports the emergence of a strong civil society and endeavours to foster dialogue between the Croatian official authorities and NGOs, the option of not providing any particular help would be counterproductive. It would not only represent a step backward in comparison to the policy adopted towards NGOs by the EU adopted after the previous enlargements but it would also mean compromising its principles of democracy and rule of law promotion.

The EU could hold on its current strategy. However, the increasing difficulties encountered by the ‘watchdog’ NGOs in Romania and Bulgaria as well as the poor advocacy NGO environment in Slovenia reveal its limits. The strategy is inadequate
to support advocacy NGOs during the transition period following the enlargement which in turn leads to financial uncertainties. Moreover, even if the Government provides some funding to the civil society, it is not offered without certain conditions. To benefit from the Government funding, advocacy NGOs would have to stop voicing against officials. Since the EU funds to the NGOs are currently managed by the Government, there is obviously a conflict of interest. Besides, the EU strategy seems to focus too much attention on awareness-raising campaigns at the expense of more complex anti-corruption projects. For instance, the Coalition for a Clean Parliament functioned only on small funding as a consequence of its quick development which was incompatible with the procedures to apply for EU funds. Hence it is questionable whether the current EU strategy has the capacity to enable the empowerment of advocacy NGOs in Croatia and reinforce their influence among the different stakeholders.

A renewed strategy focusing exclusively on advocacy NGOs within the Member States, Candidate and Potential Candidate countries would enable the EU to fully address the shortcomings of the current strategy. Distinguishing the NGO type and location would enable the EU to devote greater attention on the specific difficulties they encounter. To be sustainable, the strategy should be designed on the basis of the outcomes resulting from a broad public consultation. On the one hand, this method would enable the people working in the sector to share their expectations. On the other hand it would allow the EU to provide a better tailored response. All in all, the process would be time-consuming and involve substantial costs, notably if greater funds are to be devoted to advocacy NGOs. Hence it is essential that the EC launches the process as early as possible in order to include the changes related to the new strategy in the next budgetary period negotiations. Though costly, the renewed strategy would be able to increase the influence of advocacy NGOs and of the citizens in Croatia as elsewhere and consequently prevent the costs related to the remaining corruption incurred by backsliding/stagnation.

Insofar as the elaboration of a new strategy is a long-term project, the EU still has to address advocacy NGOs’ short-term difficulties. The remaining policy option concerns the management of EU funds. So far, the EU has entrusted individual

79 Interviews with national experts
national Governments with the supervision of its funds and expects the national authorities to share them out without prejudices among the civil society. However, advocacy NGOs are most likely to be discriminated against their ‘watchdog’ activities. Suppressing the mediation of the Government over the European funding devoted to the civil society assistance would require setting up new application and distribution mechanisms as well as safeguards to avoid fraudulent behaviour.

3.3.2.3. Time

During the accession negotiations with Bulgaria and Romania, the EU predetermined an entry date with the possibility to postpone it by one year. The method can foster a renewal of motivation from the Candidate to tackle the remaining problematic issues. Nevertheless, the sustainability of this renewal of motivation is questionable. Besides, establishing a provisional entry date can produce the opposite effect to motivation as it happened in Bulgaria. Since the country is going to join anyway, then it would be irrational for the political leaders to adopt or even enforce legislation that can harm them.

If the EU remains silent concerning the accession date then the Candidate country might be discouraged by the idea that the membership is not credible. However the anti-corruption measures adopted will be given more time to take root in society and will be able to produce more sustainable outcomes. The lassitude of Candidate countries can be easily overcome by sending positive beacons, if there are grounds for doing so.

At the end of the accession process, granting the EU membership is usually more a matter of political interests than of an objective evaluation of the actual readiness of the Candidate country.80 To diminish the role of political interests, the membership could be conditioned to the actual performance of the Candidate country with regard to corruption. On the one hand, performance can be evaluated on the basis of the country’s results in the different indicators. However, these indicators measuring the perceived level of corruption are far from been undisputed and usually provide only a snapshot of a country state of corruption. Moreover, it would be difficult to establish a clear threshold above which membership would be granted. On the other hand,

80 Interviews with EU officials and national experts
performance can be assessed from a detailed report on the country state of corruption. To avoid any bias, the realisation of the report should be entrusted to a mutually agreeable neutral third party designated by the EU and the Candidate country. This option would generate some costs but the latter would be covered by the fact that an individual monitoring mechanism would no longer be necessary. For the same reason, the Candidate country might be more inclined to accept this ‘screening’ report while the Member States would be reassured on the readiness of the new member.

3.3.2.4. ‘Social Learning’

Fostering ‘social learning’ is probably among the most tedious and complex tasks, especially since the results will be observable only in the long-run: changing deeply rooted behaviours takes time. Hence one option is based on the fact that the potential and thus uncertain outcomes do not worth the investments put in those ‘social learning’ programmes. However opting for a ‘wait and see’ approach might bring undesired effects. Indeed it is unlikely that the new generations of decision-makers will take the initiative to act more conscientiously, especially if they are trained by the current elite.

Implementing programmes to help set the ‘social learning’ process in motion is a second option. The EU is already investing substantial amounts of efforts in ‘social learning’ programmes during the pre-accession period through Twinning, Twinning Light, TAIEX and SIGMA, the latter being a joint initiative of the EC and the OECD. The programmes are usually appealing but the sustainability of the reforms introduced is not guaranteed. Overall the achievements have been rather low and have led to some frustration among Member States (EC 2008b; Papadimitriou and Phinnemore 2004). Moreover, with regard to the Twinning programme, the EC encourages the Candidate countries to adopt a ‘varied approach’ to the selection of their twinning partners in order to them from solely duplicating a Member State’s system into their own system (Papadimitriou and Phinnemore 2004). However since there are as many way of organising public institutions as there are Member States, the multiplicity of twinning partners can lead to some confusion and discontinuity within the Candidate country’s own internal organisation. Despite their great
potential and the amount of efforts invested in them, these programmes are hindered by serious shortcomings.

The current framework of the learning programmes could be strengthened through the introduction of a phasing out period, a limitation of the number of ‘twinning partners’, a reinforcement of the coordination between the programmes on the field and the appointment of ‘guardians’ from the Member States, especially in areas dealing with high-level corruption cases. Nevertheless, extending the scope of the programmes to the post-accession period and sending ‘guardians’ into sensitive areas have two major downsides. On the one hand, it would somehow prove that the EU accepts the integration of Member States unable to fully handle their new responsibilities. On the other hand, current Candidate countries might not be willing to be taught by other Member States how to manage their own public institutions once they will become themselves Member State. On the contrary, Croatian citizens might favourably welcome the ‘guardians’ if the latter manage to make the institutions’ decisions fairer and more predictable. The ‘guardians’ could not only foster the citizens’ trust in the institutions but also participate in diminishing of both parallel structures and organised crime by acting as a barrier between the political leaders and these illegal groups.

As part of the acquis conditionality, the EU requires the Candidate country to adopt anti-corruption measures. However if these conditions lacks determinacy, then the progress of the Candidate country might be hampered by the absence of clarity (Schimmelfennig and Sedelmeier 2005). For instance, whether it is for Slovenia, Bulgaria, Romania or Croatia, the EC noticed in its reports that the notion ‘conflict of interest’ was usually little understood and that loopholes in the anti-conflict-of-interest legislation were common (EC 2002c; 2003b; 2008b and 2009d). To avoid having Candidate countries grope around and waste time before adopting the adequate legislation, the EU has the option to gather its best practices in a single reference document. The latter would provide clear, general guidelines that could then be used by the Candidate countries as a ‘pattern’ for the design of their own anti-corruption legislation framework. Hence the country would immediately be on the right track and since alterations to the legislation would be scarcer, this legislation could start to take root in the society’s structure without delay. Gathering
the *soft acquis* related to the fight against corruption will be a complex and time-consuming task. Yet, it could also become a reference for the ‘older’ Member States, especially if an EU-wide monitoring mechanism based on the OMC is established.

3.3.2.5. **Pre-Accession Negotiations**

The last area of intervention is related to the method used by the EC to deal with the pre-accession negotiations. Since the EU and Croatia already agreed on an accession negotiation framework, the policy options presented in this section do not directly target Croatia but are designed for the prospect of the upcoming negotiations.

The approach of the EC has been constantly evolving in tandem with successive enlargements. In the framework of the accession negotiations with Croatia, opening/closing benchmarks as well as a chapter ‘judiciary and fundamental rights’ have been introduced. The EC has the option to use the same framework to handle the future enlargement negotiations. This would imply that the framework designed for Croatia can be regarded as a reference framework. Nevertheless, it has been acknowledged that there is still room for improvement.\(^\text{81}\) Though now fully addressing the judiciary, the EC still does not devote enough attention to the administration, while the latter is a crucial institution with regard to the fight against corruption. Introducing an additional negotiating chapter on the administration would be a logical step and should not create much resistance from the Candidate country, especially since the EU is already intervening in this field through its ‘learning’ programmes. A further option is to establish an additional chapter specifically devoted to political/high-level corruption. Far from abandoning petty corruption and other related crimes, this chapter would make it clear to the Candidate country that EU membership will be conditioned to an efficient and successful fight against high-level corruption and would also prevent national authorities masking high levels of political corruption behind good achievement rates resulting from greater investigation and conviction of petty/private corruption crimes. However, even if this chapter has the advantage of increasing the pressure to curb high-level corruption, the Candidate country officials might be more reluctant to let the EC scrutinise such a sensitive area. Besides if the EC is only perceived as a ‘gendarme’ then it might be difficult to establish relations based on trust.

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\(^{81}\) Interview with officials from the EC
Finally, the EU has the choice to transform the soft acquis on corruption into hard acquis. On the bright side, the option would have the potential to avoid any backsliding with regard to the fight against corruption. Indeed, it has been proven that the Member States from the previous eastern enlargements, Bulgaria and Romania included, are showing greater compliance with regard to the EU laws. Besides, the EU institutions would remain both important and influential after the integration of the Candidate country. Finally by implementing this strategy, money and time that would have been invested in more ‘gentle’ policies could be saved and used for other purposes. However this option is obviously a long-term solution that would require time, intense lobbying and fierce negotiations. It is very likely that a majority of Member States will attempt to check or even block the initiative since corruption-related acquis falls first and foremost under the national competences. Transforming the soft acquis into hard acquis would require a certain degree of harmonisation among the EU27 institutions like the judiciary and the administration, which are considered to be at the core of the state sovereignty. Hence Member States are expected to fight for conservation of their own sovereignty. If the EC wants to initiate the reform, the impetus should be found within the European Parliament. However, even though the European Parliament now enjoys extended powers under Lisbon, the consent of the Council is still required to pass any legislation. Even if transforming soft acquis into hard acquis is the best option to avoid backslidings, the option hardly seems to be feasible. However the EC could use it as a trade-off to encourage the Member States to agree on an EU-wide monitoring mechanism.

So far, the EU has adopted a sound but too soft approach towards Croatia to enable the persistence of anti-corruption measures once the country will become a Member State. Hence, reinforcement and further improvement should constitute the key elements of a renewed EU strategy.
Conclusions and Recommendations

EU conditionality is undoubtedly a strong instrument to foster radical changes in Candidate countries. However the Bulgarian, Romanian and Slovene post-accession experiences with regard to the fight against corruption have highlighted the fact that sustainability of the reforms introduced is questionable. Despite its overall satisfactory outcomes, the EU conditionality fails to make changes irreversible when the latter have been implemented in the framework of the soft acquis. The comparative study on the persistence of anti-corruption measures in the post-accession period has demonstrated that the compliance from the newly EU Member States towards soft acquis is less systematic than towards the hard acquis.

Even though the EU conditionality is a powerful lever, its pressure alone cannot make a corrupt system deeply rooted in the structures of governance structures collapse, especially if this system is founded on decades of legacies encouraging rent-seeking behaviour. At most it can make it wobble. For the system to crumble, the pressure must also emanate from the inside. Hence the persistence of anti-corruption measures depends on the synergy created by the interweaving of two ‘outer’ variables enhancing the adoption of anti-corruption measures, i.e. the level of corruption and the EU pressure, and three ‘inner’ variables fostering their persistence, i.e. domestic public pressure, political leaders’ personal commitment and time. The dynamic within the synergy will provide a key explanation to understand and if necessary to determine, the trajectory of Candidate countries once they integrate into the EU.

Croatia will probably become the 28th EU Member State but the state of corruption in the country shows a worrisome picture similar to the Bulgarian and Romanian’s at the time of their accession. The incapacity of the soft acquis conditionality to urge Member States to hold firm on the anti-corruption measures they adopted when they were Candidate countries casts some doubts on the future of Croatia’s own anti-corruption measures: is the country going to backslide as Slovenia, Bulgaria and Romania did in the past? The analysis of the Croatian synergy shows that the country is heading for a ‘Backslide’ path: the supremacy of political leaders in the balance of power, combined with their lack of commitment, does not bode well.
It is the duty of the EU to make sure that before granting membership, Candidate countries will be able to handle their new responsibilities and will not endanger the European construction and its founding principles. Hence the EU shall endeavour to keep Croatia away from the ‘Backslide’ and to enhance instead its ‘Status Quo’. Overall, the EU has adopted a judicious but too soft approach. Taking into account the boundaries of the EU competencies, two types of recommendations can be provided.

Specific recommendations on Croatia:

- Believing that a Candidate country aware of its accession date of will lead at most to unsustainable anti-corruption measures and that Croatia is not yet ready to fully handle the EU responsibilities, the EU shall not inform Croatia of its integration date as long as possible but continue to give the country precise and regular updates on its progress/regression.

- Considering that political interests are too influential at the end of the negotiation process, the EU should condition the membership to the outcomes of an external audit _carried out by an impartial third party under the mandate of both the EU and Croatia_ on the level of corruption in the country.

- Judging that Croatia is still facing serious shortcomings in its fight against corruption and since the GRECO monitoring does not offer as much follow-up as the CVM, the EU shall establish _in the absence of an EU-wide monitoring mechanism_ a temporary post-accession monitoring mechanism in Croatia. This monitoring mechanism should be based on precise benchmarks and complemented by a wider range of safeguards in order to make the sanctions credible and reinforce the position of the European institutions in the balance of powers.

- Assuming the crucial role of advocacy NGOs in the mobilisation of domestic public pressure to defend anti-corruption measures, the EU shall develop mid- and long-term solutions, including direct financing, in order to ensure that the Croatian civil society environment will remain favourable to the development and strengthening of advocacy NGOs after the accession of the country into the EU.
Being convinced that waiting for changes at elite-level is a misguided strategy, the EU shall continue to implement learning programmes and reinforce their potential by extending their scope to the post-accession period while limiting the number of partners. The EU should also carefully consider the possibility to appointing ‘guardians’ from other Member States in Croatia and especially in the judiciary.

General recommendations:

- Considering that a mechanism enabling the comparison of the EU27 anti-corruption policies is still lacking and that the Stockholm Programme calls for the development of indicators measuring corruption, the EU shall take advantage of the positive timing and introduce an EU-wide monitoring mechanism that could be based on the OMC.

- Noticing the changes made to the negotiating framework since the 2004 and 2007 enlargements but considering that it could be further improved, the EU shall introduce two additional negotiating chapters with opening and closing benchmarks on the administration and on the high-level corruption.

- Believing that Candidate countries lose a substantial amount of time in designing adequate anti-corruption legislations partly due to the lack of determinacy of the EU conditions, the EU shall gather the whole range of soft acquis related to corruption into a single reference document and design general guidelines that could be used by the Candidate country as a ‘pattern’ for the design of its own anti-corruption legislation framework.

- Building on the fact that advocacy NGOs from the CEECs and the Balkans are facing particular constraints, especially because of their ‘watchdog’ activities, and that the current response from the EU is not fully satisfactory, the EU shall launch a public consultation as soon as possible in order to develop a renewed strategy for advocacy NGOs in the EU, Candidate and Potential Candidate Countries.
Annexes
Annex 1: Slovenia and Corruption, some figures

- World Bank, Control of Corruption

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- Evolution of the Perceived Level of Corruption in Slovenia, 1996-2009

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Annex 2: Bulgaria and Corruption, some figures

- World Bank, Control of Corruption

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- Evolution of the Perceived Level of Corruption in Bulgaria, 1996-2009
Annex 3: Romania and Corruption, some figures

- World Bank, Control of Corruption

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- Evolution of the Perceived Level of Corruption in Romania, 1996-2009

![Graph showing the evolution of perceived level of corruption in Romania from 1996 to 2009.](image)
Annex 4: Croatia and Corruption, some figures

- World Bank, Control of Corruption

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