

EU Conditionality and Anti-Corruption

The case of Bulgaria and its incentive game

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Master's thesis in Political Science

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*To my dear grandmother,
Else Haldis Lie
05.11.30 – 22.04.09*

Abstract

This master's thesis analyzes the role of EU conditionality and the fight against corruption in Bulgaria. The thesis aims at explaining why anti-corruption measures in Bulgaria have failed. By looking at external factors and the role of EU conditionality, as well as domestic factors in Bulgaria, the thesis provides conditionality-studies with an original in-depth investigation of the topic.

The EU has for the last two decades acted as a democratic and judicial advisor for its candidate- and member states. Conditionality is the EU's instrument to direct policies in these states, mainly prior to a state's accession. Bulgaria is a special case due to the fact that EU decided to extend its conditionality to the country once it became an EU member in 2007. High levels of corruption and organized crime were one of the main reasons for this act. Curbing corruption in the country therefore became a priority for the EU *and* Bulgaria, yet corruption is still a widespread issue here.

The thesis applies elements from conditionality theory and legal transfer theory. This allows for a thorough investigation of potential factors that may prevent anti-corruption measures from taking hold in Bulgarian society. Invaluable empirical data are collected through in-depth interviews in order to shed light on the research questions. The main findings of the thesis suggest that EU conditionality has not been strong enough as to influence Bulgaria in its fight against corruption. The findings more importantly indicate that domestic factors play a crucial part for the lack of implementation of and commitment to establish anti-corruption measures in the Bulgarian society.

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The responsibility of any idea or argument developed in the following lies with the author herself.

Johanne Lie Tærum
Oslo, May 19th 2014

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Abbreviations

ARO	Asset Recovery Office
BORKOR	Center for Prevention and Countering Corruption and Organized Crime
CEECs	Central Eastern European Countries
CEPACA	Commission for Establishing of Property Acquired from Criminal Activity
CIAF	Commission for Asset Forfeiture
CJEU	Court of Justice of the European Union
CPACI	Commission for Prevention and Ascertainment of Conflict of Interest
CPI	Corruption Perception Index (Transparency International)
CSD	Center for the Study of Democracy
CVM	Cooperation- and Verification Mechanism
EC	European Commission
EU	European Union
GRECO	Group of States against Corruption
MEP	Member of European Parliament
NGO	Non-governmental organization
NRIF	National Road Infrastructure Fund
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
OSI	Open Society Institute
PHARE	Financial pre-accession instrumented of the EU
SANS	State Agency for National Security
TI	Transparency International
UNCAC	United Nations Convention Against Corruption

1 Introduction

“We all ask ourselves this question, why [anti-corruption measures] do not seem to work. In many places there are rules and laws, but corruption does not seem to be diminished”.

Cecilia Malmström¹ (European Commission, 2014e)

Fighting corruption has been on the agenda of the European Union (EU) for more than a decade. As one of the most serious social evils that Europe is currently facing, corruption prevents economic competition, stimulates economic crime and threatens a functioning democratic society (Rose-Ackerman, 1999, p. 3; Ulvik, 2013, p. 1).

A growing focus on fighting this malady has led to the evolution of a worldwide anti-corruption ‘industry’² (Michael, 2004), to which the EU has also been a contributor. Despite substantial global investments there are few results of anti-corruption initiatives. In post-communist Bulgaria, which will serve as the geographical focus of this thesis, anti-corruption measures appear to be inefficient. Since Bulgaria acceded to the EU in 2007, corruption has emerged as one of its gravest problems (table 1.1).

Table 1.1 Corruption Perceptions Index (Transparency International, 2013)³

Before EU membership		After EU membership	
Year	CPI-score	Year	CPI-score
1999	33	2007	41
2000	35	2008	36
2001	36	2009	38
2002	40	2010	36
2003	39	2011	33
2004	41	2012	41
2005	40	2013	41
2006	40		

Transparency International (TI) ranks Bulgaria as one of the worst countries in the EU in terms of negative perceptions of corruption. Bulgaria’s scores on the Corruption Perceptions Index (CPI), shown in table 1.1 above, indicate that the perceived level of corruption in the country has only seen minor improvements since Bulgaria’s negotiations for EU membership

¹ Cecilia Malmström is the European Commissioner for DG Home Affairs as of April 2014.
² For a thorough assessment of the emergence of anti-corruption politics and anti-corruption discourse, see notably Ivan Krastev (2004), “Shifting Obsessions: Three Essays on the Politics of Anticorruption”.
³ From 2012 onwards, Transparency International uses the indicators 1-100 instead of 1-10 (1 being highly corrupt and 100 very transparent). Table 1.1 is adjusted to correspond to the current indices (e.g. 3,3 is adjusted to 33 etc.).

started in 1999. What can be perceived as a stagnated development and thus lack of political will to fight corruption, resulted in nationwide daily protests in Bulgaria during a nine-month period in 2013 (Slavov, 2013). The Center for the Study of Democracy (CSD)⁴ (2013, p. 1) has estimated the scale of corruption in Bulgaria to be so immense that “without a radical administrative reform, even a substantial increase in the capacity and efficiency of law enforcement would not provide sustained decrease of corruption [...] in the society at large”.

The EU’s key instrument to stimulate administrative, legislative and institutional changes in its (candidate- and) member states is conditionality. Conditionality is widely used by international institutions (here the EU) to “direct policy in target states” (Epstein & Sedelmeier, 2008, p. 795). EU’s exercise of conditionality has become a significant instrument not only for reforming states more generally, but also to encourage anti-corruption reform. Most EU-specialists agree that the role of EU conditionality has had a great impact on democratic and regulatory changes in the new EU member states. However, in order to have full impact, many components, both externally (EU) and domestically, have to be in place (Barnes & Randerson, 2006; Schimmelfennig & Sedelmeier, 2005; Steunenberg & Dimitrova, 2007; Vachudova, 2001). Sandholz and Gray (2003) suggest that international integration causes corruption to decline. Szarek-Mason (2010), on the other hand, gives a rather critical account of an EU that has failed to properly address the problem of corruption in its member states and that lacks the necessary competence to fight it. This discrepancy in research indicates that a clear emphasis on anti-corruption in EU conditionality is required.

1.1 Purpose of the thesis

The aim of this thesis is to provide new insights into a highly important and challenging theme, namely the role of anti-corruption measures and the nature of the impediments that may prevent these measures from taking proper hold in society. Put simply, the thesis seeks to explain the reasons as to why anti-corruption measures in Bulgaria are inefficient. The indices and reports referred to above show a negative trend. As will be the basis of the thesis, corruption is devastating for both democratic and sociological development. Adding this perspective to the theoretical debate on EU conditionality is important for the simple reason that corruption threatens the foundations of society. Research can thus help improve anti-corruption efforts in an effective manner. Bulgaria is still in the process of completing its

⁴ CSD is an interdisciplinary Sofia-based research institute.

integration with the rest of Europe. Shedding light on the factors that may prevent a reduction of corruption ('elimination' is not realistic) is therefore valuable.

The academic literature shows a lagging development in Bulgaria to fight corruption. Based on conditionality literature and how the EU has applied conditionality in Bulgaria both before and after accession, this thesis investigates factors that may obstruct an efficient fight against corruption and the manner in which they do so. Even though the study of conditionality is broad, surprisingly few studies aim to provide an in-depth investigation to explain this trend. More rarely do studies make use of empirical evidence to understand the role of conditionality in anti-corruption work in the Central Eastern European countries (CEECs)⁵. Schmidt (2007, p. 203) stresses that anti-corruption in these countries is an "under-represented field". Her opinion is supported by Karklins (2005, p. 126) who contends that "good data are often unavailable and much more in-depth research is needed".

1.2 Research question

Batory (2012, p. 78) sums up one of her studies by concluding that "[...] it is a miracle if anti-corruption interventions have any effect in Central Eastern Europe". Other scholars see the problem in the misconception of corruption among different actors, i.e. corruption is understood differently by different actors and consequently anti-corruption initiatives fail to take hold (Mungiu-Pippidi, 2006, pp. 86–87). Yet, other scholars focus on the failure of the transfer of anti-corruption legislation by investigating how the EU's anti-corruption requirements have been introduced in its candidate- and member states. Despite the potential of EU conditionality, the outcomes of anti-corruption measures in the CEECs are often ineffective and imperceptible.

The main purpose of this thesis is to gain a better understanding of the impact of EU-initiated anti-corruption efforts in Bulgaria. The research question to be investigated is:

Why have anti-corruption measures failed in Bulgaria after EU-accession?

In order to systematically study conditionality and corruption together, I will apply two different theoretical approaches. I will analyze (i) how conditionality has been applied in Bulgaria by the European Union to reduce corruption and (ii) whether domestic and/or

⁵ In this thesis, the term 'CEECs' indicates the EU member states that joined in 2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia; and in 2007: Romania and Bulgaria.

external factors prevent anti-corruption measures from taking hold in Bulgarian society. Based on the research question, the thesis sets forth two hypotheses:

H1: *The lack of credible conditionality results in inadequate implementation of anti-corruption measures in Bulgaria;*

H2: *EU-driven anti-corruption measures are not sufficiently adjusted to the Bulgarian local context and therefore fail.*

The first hypothesis concerns conditionality and accounts for aspects of how conditionality preferably is effective. The other hypothesis relates to legal transfer theories and provides this thesis with a bottom-up approach in which potential interfering factors are discussed (see chapter 2). The application of two distinct theoretical models allows me to look at external and internal explanatory factors for why EU conditionality has not succeeded in reducing the scope of corruption in Bulgaria.

1.3 Methodology

Due to time and space limitations, the focus of the thesis covers a fixed period of time, i.e. 2007-2013. The time limit is applied for practical as well as rational reasons. After achieving membership, the importance of efficient rule implementation and compliance with conditions set by the EU has become more of a responsibility of national governments. Still, as is the case with Bulgaria, complications with anti-corruption measures have called for an extension of pressure by the EU. As will be seen below, EU conditionality was extended beyond Bulgaria's accession to the EU in 2007. The period chosen for analysis is therefore of particular interest.

Most studies in the field focus almost exclusively on conditionality *before* Bulgaria joined the EU. Research on the post-accession period alone has been limited. While scholars are concerned that post-accession pressure exerted by the EU on the CEECs may be insufficient, there is little empirical research on the post-accession period and the relation between the EU and Bulgaria in order to reinforce anti-corruption reform.

By applying aspects from conditionality theory and legal transfer theory, the thesis looks into the relationship between the EU and Bulgaria. As underlined by Ivanov (2010), the conditionality applied by the EU together with local 'politics of anti-corruption' may explain Bulgaria's response to EU demands. Both relate to the "history, culture and the peculiarities

of transition” (Ivanov, 2010, p. 210), i.e. some of the factors to be analyzed in this thesis. In the theoretical framework a distinction is made between external and domestic factors, as both are crucial for a positive development of anti-corruption measures. Two cases from Bulgarian legislation are applied to the thesis. Both laws work to prevent corruption, yet neither have been studied in relation to conditionality. Hence the cases provide originality to the thesis.

This thesis has made use of in-depth interviews in order for empirical evidence to provide new insights to the theme. 26 semi-structured interviews have been conducted at EU-level (Belgium) and national level (Bulgaria) and allow for an original discussion of EU conditionality and Bulgarian anti-corruption reform. I have met people working directly on this issue who have first-hand knowledge and experience. Interview data is combined with secondary literature when useful for the analysis. Literature about the relevant legislation is also referred to.

1.4 Defining key concepts

Corruption

The most common definition of corruption is that of the World Bank: “Corruption is the abuse of power for private benefit” (Kaufmann, 1997, p. 124). As noted above, corruption is a growing problem in modern societies, as it threatens their basic values and foundations. When studying corruption, there are methodological limitations that have to be considered.

Corruption varies between countries and across social divisions and is therefore a complex phenomenon to define and to measure. Szarek-Mason (2010, p. 12) writes that corruption is undercounted because the parties to a corrupt transaction are mutually interested in concealing the activity. She is supported by Wolf (2010, p. 101) who asserts that corruption is a “victimless crime” and thus difficult to measure. Despite being one of the most-cited and acknowledged indices in academic research, the CPI referred to above has been criticized for its perception-based measures and overall assessment of corruption (Hawthorne, 2013, p. 1; Ko & Samajdar, 2010, p. 513; Vachudova, 2009, p. 47). Difficulties arise when perceptions of corruption depend on circumstances and when one’s perception may vary significantly from reality (Thompson & Shah, 2005). Despite the possibilities of being misleading in a year-to-year comparison⁶, the CPI is widely used by scholars, NGOs and politicians alike. I therefore

⁶ TI informs that “a country’s scores in one year cannot be compared to its score in a previous year” (Transparency International, 2011).

choose to use the CPI as the point of departure for this thesis. The scores listed in table 1.1 only provide an indication of the extent of corruption in Bulgaria.

EU conditionality

Conditionality is generally referred to as “the use of the conditions an actor attaches to awarding benefits to – or to not imposing cost on – another actor in order to influence his behavior” (Börzel & Heidbreder, 2011). With regards to EU conditionality, and in simpler terms, the actor to be influenced is the candidate- or member state to which the EU provides benefits when certain conditions are fulfilled (Smith, 1997, p. 4).

The role played by the EU in guiding post-communist countries on their path towards consolidated democracy has been fundamental for enhancing both political and economic stabilization in the CEECs (Open Society Institute, 2002b, p. 16). Sedelmeier (2010, p. 421) underlines how the EU strategically has used the membership incentive as a condition “to induce or preserve specific policy changes in non-member countries”. The expansion of the EU to the east (2004 and 2007) has affected the manner in which the EU effectively can transfer a complex EU legislation to (post-communist) candidate states. What were previously short periods of accession negotiations have been extended to a longer-term process that more clearly specifies how to proceed towards accession, strengthened by demanding and more extensive conditionality (Sedelmeier, 2010, p. 427).

Scholars commonly talk about the period before and after accession as the periods with and without EU conditionality. The post-accession period is often looked at in terms of compliance instead of conditionality, since membership is already achieved and the incentive structure is altered. However, as will be argued at greater length below, the need for a renewed and intensified approach towards Bulgaria made the EU extend its conditionality once the country became a member state (Lyle, 2010, p. 10). Bulgaria’s difficulties in finishing key reforms in areas such as the fight against corruption showed that systematic shortcomings concerning enforcement and implementation of laws were in need of being handled (Trauner, 2009b). With particular focus on anti-corruption, the unique ‘Cooperation- and Verification Mechanism’ (CVM) was designed in order to “smooth the entry of [Bulgaria

and Romania]⁷ and safeguard the working of [the EU's] policies and institutions” (Spendsharova & Vachudova, 2012, p. 47).

1.5 Structure of the thesis

The structure of the thesis is as follows: *Chapter 2* presents the theoretical framework. This framework serves as the starting point for the analysis of EU conditionality and anti-corruption measures. EU conditionality is viewed in relation to Bulgarian anti-corruption measures. Models of conditionality and of legal transfer provide the theoretical foundation of this thesis, from which two hypotheses have been derived. Additional literature is included when appropriate for the discussion.

Chapter 3 provides an overview of the development of anti-corruption measures in Bulgaria that have come about as a result of external pressure from the EU. In order to optimally utilize the theoretical framework presented in chapter 2, two cases of Bulgarian legislation, aimed at preventing corrupt activity as well as to recover goods and funds obtained by means of corruption, are presented in the last part of the chapter. The two cases are further included in the discussions of EU conditionality and corruption in chapter 5.

Chapter 4 presents the research design and methodology. I have made use of qualitative in-depth interviews and the benefits of this method for data collection are emphasized. Sampling-procedures are discussed and some attention is given to the interview guide and the manner in which interviews were conducted and data were analyzed. The last part of the chapter discusses the challenges concerning validity and reliability. Possible delimitations are emphasized throughout the chapter.

Chapter 5 reviews and discusses the empirical findings in relation to the theoretical aspects and hypotheses presented in chapter 2 and the cases presented in chapter 3. The findings lend support to both hypotheses, though stronger support to one more than the other.

Finally, *chapter 6* provides concluding remarks and presents possibilities for future research.

⁷ Romania received EU membership, and became subject to EU's extended conditionality, on same conditions as Bulgaria in 2007. Given the focus of the thesis, Romania will not be considered in the following discussions. Yet, one should bear in mind that the country faces more or less the same challenges, and thus the same EU requirements, as Bulgaria.

2 Theoretical framework

A comprehensive theoretical framework is an important foundation for a study of EU conditionality and corruption. To gain an understanding of the nature of anti-corruption measures in Bulgaria and to be able to discuss conditionality properly, this chapter explains the main features of EU conditionality applied to Bulgaria. Conditionality is discussed in relation to anti-corruption, which further serves as the body of the analysis. In order to analyze the effects of EU's conditionality on Bulgaria after its accession, a coherent discussion on how the concept of conditionality is applied in this thesis is needed. First, an account of the scholarly debate concerning EU conditionality provides the reader with a solid foundation of the matter. Secondly, the theoretical approaches chosen for this thesis are discussed. These include theories on conditionality and theories on legal transfer from which the two hypotheses derive. Aspects from relevant literature are presented throughout the discussion.

2.1 EU conditionality

“At no time in history have sovereign states voluntarily agreed to meet such vast domestic requirements and then subjected themselves to such intrusive verification procedures to enter an international institution”.

(Vachudova, 2001, p. 7)

Vachudova describes a relation between the European Union and European countries that is unique. Conditionality has been a tool of the EU aimed to integrate candidate states and promote required reforms. While EU conditionality is often successful, the Bulgarian case shows that it is not always an effective means by which to facilitate effective anti-corruption reform. Even though the new member states have been dependent on the EU to stabilize and enhance progress of political and socio-economic development, great responsibilities have also been lying on EU's shoulders (Anastasakis & Bechev, 2003, p. 4). The problem of corruption in the CEECs, and in Bulgaria in particular, has challenged the efficiency of EU conditionality – its most important source of leverage. As a result, the conditions set for Bulgaria to achieve EU membership were “the most detailed and comprehensive [conditions] ever formulated” (Grabbe, 2002, p. 251).

In historical terms, the EU has exerted different kinds of influence on candidate states. Vachudova (2005) distinguishes between *passive* and *active* leverage. While the former is based on the membership incentive as an attraction in itself and so-called “reforms on paper”, the latter includes a more active and deliberate conditionality where the intention was to reinforce political changes in the candidate states (Vachudova, 2005, p. 63). The active leverage was initiated by the EU as a result of discontent with the poor adoption of new laws. It allowed for monitoring mechanisms to assess shortcomings in policy areas. As noted below, specific criteria and requirements were prepared in order to assess issues such as quality of governance, rule of law and efforts to reduce high-level corruption.

In relation to the EU’s expansion to the east, the issue of corruption, which was almost unheard of in the EU in the past, forced the EU to deal with delicate matters that further brought the membership of some of the candidate states into question. Conditions for joining the EU had previously been recognized as “self-evident and general”. With the expansion, new and unprecedented measures for stimulating reform had to be developed, among others in the challenging area of anti-corruption (Grabbe, 2002, p. 249; Ivanov, 2010, p. 210). The EU later acknowledged that the situation in Bulgaria, and the problem of high-level corruption in particular, had made a “considerable impact on the actual weight of anti-corruption policies within the EU” (European Commission, 2011b, p. 15). Thus, the scale of corruption in the CEECs – many of which had applied for EU membership in the early 1990s – forced the EU to tackle corruption in a new and comprehensive manner.

2.1.1 EU anti-corruption conditionality before Bulgarian EU membership

The EU’s most powerful leverage was the long-term membership perspective, an incentive that candidate states were motivated to achieve, along with the fear of being excluded. Despite grave economic and political instability and lack of reform in post-communist Bulgaria, the EU invited it to accession talks at the 1999 Helsinki summit (Anastasakis & Bechev, 2003, p. 6). Effective anti-corruption measures were mentioned most frequently by the EU as one of the preconditions for Bulgarian EU membership (European Commission, 1999). Not only did EU membership act as a reward at this stage. Accession to financial funds⁸ also served as a powerful incentive. World Bank findings confirm that the accession process as a whole (with the above motivations) served as an efficient incentive for the CEECs to intensify their measures to fight corruption (Anderson & Gray, 2006, p. 81). By

⁸ Financial funds under the SAPARD, ISPA and PHARE programs.

proposing incentives related to certain policy areas, the EU effectively managed to give more substance to its conditionality than with the membership incentive alone (Trauner, 2009a, p. 776).

One of the first official sets of conditionality requirements was laid down in the 1993 ‘Copenhagen Criteria’ (Vachudova, 2005, p. 95). These criteria have served as the point of reference for the EU’s assessments of the CEEC’s progress towards EU membership (Anastasakis & Bechev, 2003, p. 6). Though criticized for being too general, the following political, economic and institutional criteria were to be achieved before negotiations for accession could be completed:

- ◆ Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for protection of minorities;
- ◆ Existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
- ◆ Ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

(European Commission, 2011g; Sandholtz & Gray, 2003, p. 793)

The last condition concerned the total body of “EU rules, political principles, and judicial decisions”, generally referred to as the *acquis communautaire*⁹ (Grabbe, 2002, p. 251).

The *acquis* served as the main basis for negotiation, as all 31 chapters¹⁰ must be satisfactorily accomplished, and 80 000 pages translated into the national language before a candidate state can become an EU member. Even though there is a chapter on justice and home affairs that focuses on the criminalization of bribery, limited pressure was exerted to facilitate anti-corruption reform. Szarek-Mason (2010, p. 216) criticizes the EU for not having used its full potential to influence CEECs in terms of introducing effective strategies for anti-corruption reform. She further emphasizes the importance of addressing the problem of corruption, as it is crucial for other reforms required by the EU.

An additional category of anti-corruption standards were the ones set out in various enlargement policy documents, such as the Accession Partnership and Regular Reports (Szarek-Mason, 2010, p. 186). Membership conditions, as set out in the Copenhagen criteria

⁹ Hereinafter the ‘*acquis*’.

¹⁰ The *acquis* is divided into chapters concerning separate policy fields, e.g. justice and home affairs, external relations, environment, etc., all of which are not negotiable. During the process of enlargement in 2004 and 2007, the CEECs’ *acquis* consisted of 31 chapters (as of today there are 35 chapters).

and the *acquis*, were systematically articulated through assessment of progress in the Regular Reports of the European Commission¹¹. These further determined the pace of a country's accession process (Lyle, 2010, p. 7). Accession Partnership was introduced as a tool to “make conditionality stricter on both financial assistance through PHARE and ultimately on accession itself” (Grabbe, 1999, p. 13), and particularly to assist Bulgaria in implementing the *acquis* (European Commission, 2007c). The reports served as important guidelines for necessary improvements throughout the accession process. Since 1999, the reports written on Bulgaria have been characterized by continuing unease about the level of corruption and a call for intensified efforts to fight it.

The conditionality of EU accession was crucial for Bulgarian anti-corruption efforts. The European Commission argued that the areas evaluated as EU conditionality-criteria included corruption control even though this was not explicitly mentioned in the Copenhagen criteria (Batory, 2010, p. 168; Steunenberg & Dimitrova, 2007, p. 4). What further intensified conditionality was that the financial assistance¹² given to Bulgaria functioned as a strong incentive for conforming to EU requirements. As the conditions in the Copenhagen criteria and the priorities outlined in the accession process were met, financial assistance was given with a warning that “failure to respect these general conditions could lead to a decision by the Council on the suspension of financial assistance [...]” (DG Enlargement, 1999, p. 14). Bulgaria particularly benefited from EU's financial assistance as it was one of the EU's poorest member states (Pridham, 2007, p. 186).

Some scholars note that the adoption of the EU *acquis* (Bulgaria had completed all 31 chapters by June 2004) was most of all a technical exercise (Noutcheva & Bechev, 2008, p. 124). The political and economic reforms were more dependent on external and internal factors and thus more time-consuming. Bulgaria stumbled towards EU membership. Valid reforms did not commence before the country was “sanctioned either by the market or by the exclusion effects of the EU's conditionality machine” (Noutcheva & Bechev, 2008, p. 120). Spendzharova (2003, p. 144) evokes Bulgaria's unfavorable initial conditions as the reason for ineffective conditionality. With initial conditions, Spendzharova refers to weak democratic traditions and an insecure environment, such as during the transition from communism when societies lacked both legal capabilities and a strong economy. For the frontrunners of the 2004

¹¹ In this thesis, ‘European Commission’ and ‘Commission’ are used interchangeably, if not otherwise stated.

¹² EU funds were provided to the candidate states through three specific pre-accession instruments: PHARE (Strengthening preparations for enlargement); ISPA (Instrument for Structural Policies for Pre-Accession); and SAPARD (Special Accession Programme for Agriculture and Rural Development) (DG Enlargement, 2002).

enlargement, conditions for qualifying for EU membership were better, compared to the countries with less favorable domestic conditions.

Efforts to reduce corruption were acknowledged by the Commission as key requirements for accession. Though mentioned in reports and assessments prepared by the EU throughout the 2000s, opinions are divided on whether the requirements appeared only as “continuous elaboration” in EU documents, rather than specific conditions compiled in one separate document (Lyle, 2010, p. 5; Szarek-Mason, 2010, p. 195). Some scholars view anti-corruption efforts in EU member states as “non-acquis” (A. L. Dimitrova, 2010; Vachudova, 2009). Lyle (2010, p. 5) claims that anti-corruption conditions only constituted an “evolving body of principles” adjusted to each state, which lacked the focus of the practical implementation of reforms. Only in 2003 did the European Commission establish ten specific principles for improving the fight against corruption. The wording “it is reasonable to expect that each candidate country [...] should ideally subscribe to these principles” (Mac Mahon, 2005, p. 4), makes the compliance threshold somewhat low. The EU further communicated that effective implementation and training with a view to strengthening national institutions should be one of the top priorities (European Commission, 2003). Szarek-Mason (2010, p. 197) criticizes these principles, as there was no follow-up mechanism of actual implementation at the national level.

By contrast, the non-governmental organization Open Society Institute (OSI) (2002b) argues that an anti-corruption acquis does exist and that it takes the form of both a *direct* and a *soft* acquis. The former covers the ‘Justice and Home Affairs’-chapter of the acquis and common legislation mainly in the area of bribery. The soft acquis, on the other hand, includes international anti-corruption conventions¹³ that are included in the European Commission’s evaluation of the candidate states (Open Society Institute, 2002b, p. 37). Szarek-Mason (2010, p. 142) supports the position of the OSI by pointing out that the acquis covers international anti-corruption conventions. She also criticizes the acquis’ limited functionality and further reveals EU’s lack of comprehensive anti-corruption strategies.

Hardy (2010), for her part, distinguishes between *hard* and *soft* acquis. The hard acquis refers to “the rules that member states shall comply with at the risk of being prosecuted [...] as

¹³ Such as The OECD Convention on Combating Bribery of Foreign Public Officials; The European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; The Council of Europe Civil Law Convention on Corruption (Open Society Institute, 2002b, p. 37), all in which Bulgaria has signed and ratified (European Commission, 1999).

offender to the laws”, meaning EU’s legally binding acts. The soft *acquis*, on the other hand, involves specific EC recommendations and communications that the member state should, but is not required to, follow (Hardy, 2010, p. 11).

Barnes and Randerson (2006, p. 355) suggest that *thin*, or soft, *acquis*, is more susceptible to “informal conditionality and ambiguity in policy recommendations”. Consequently, the impact of conditionality may vary from one policy area to another. Anti-corruption requirements are allegedly more subject to a “softer” kind of conditionality.

Veebel (2009), for his part, distinguishes between *positive* and *negative* conditionality, respectively as ‘the carrot and the stick’, which the World Bank considers as highly stimulating in accordance to anti-corruption efforts (Anderson & Gray, 2006, p. 81). In short, the carrot motivates an actor (here Bulgaria) to change a situation that is unsatisfactory to the EU. This happens based on the EU’s promise of providing positive incentives, such as membership and subsequently financial aid or a visa-free regime (Veebel, 2009, p. 210). Negative conditionality, on the other hand, implies sanctions to be imposed if Bulgaria does not meet the requirements set by the EU. Possible sanctions include reducing, suspending or terminating benefits, such as financial aid (ibid, p. 210). Smith (1997, p. 14) argues that rewards are preferable to sanctions, as states are more prone to conform to positive measures.

In the case of Bulgaria, there are clear examples on how both carrots and sticks have been utilized. When Bulgaria was kept out of the 2004 EU-enlargement, one of the main reasons was the problem of widespread corruption (Vachudova, 2009, p. 52). The European Commission called it “a stronger use of conditionality” aimed to promote the work against corruption (European Commission, 2011a). Noutcheva and Bechev (2008, p. 123) describe it as an act to “embarrass [Bulgaria] in public and to motivate them for serious reform efforts”. The Commission’s annual report in 2005 on the other hand showed that the exclusion was reasonable, noting that:

[...] Widespread corruption remains a cause for concern and affects many aspects of society. There is a positive downward trend as far as administrative corruption is concerned, but the overall enforcement record in the field of corruption remains very weak.

(European Commission, 2005a, p. 11)

Szarek-Mason (2010, p. 220), for her part, argues that after the first wave of enlargement in 2004, a new epoch of EU’s leverage over national anti-corruption measures commenced. The

EU had lost its influence of the eight new member states on the day of accession in 2004. The continuing accession process of Bulgaria and Romania gave the EU an opportunity to develop more coherent anti-corruption requirements as both states suffered from more extensive corruption. The EU's change of strategy was already visible when Bulgaria signed its Treaty of Accession in 2005.

An enhanced reporting system was introduced in response to the problem of corruption, a system that was continued after Bulgaria's accession, as seen below. As with the 2004-enlargement, a set of safeguard clauses was put into practice in order to speed up reform in the areas of the economy, internal market and justice and home affairs¹⁴ (Noutcheva, 2006). The clauses allowed, if needed, the suspension of certain membership rights for up to three years after accession. The justice and home affairs-clause entailed non-recognition of arrest warrants and court rulings and was of particular relevance for the issue of corruption (European Commission, 2005b). Van Elsuwege (2005, p. 118) emphasizes how "these safeguard clauses [were] instruments of post-accession conditionality; they [were] kind of stick behind the door for the Commission [...]".

The EU further called attention to Bulgaria's unpreparedness by adding a new clause – a "precautionary measure" – to the country's Accession Treaty. The fourth and exclusive safeguard clause would allow the European Commission to postpone accession by one year (to January 2008) should Bulgaria be "manifestly unprepared to meet requirements of membership [...] in a number of important areas" (European Commission, 2004, p. 4). Anti-corruption reform was one of the areas placed under scrutiny, thus corruption was put forward as a potential obstacle to the country's accession (Lyle, 2010, p. 9; Szarek-Mason, 2010, p. 223).

Some scholars point to the fourth safeguard clause as an "emergency window" (Szarek-Mason, 2010, p. 223). The then Bulgarian Prime Minister rightly signaled the possibilities of national humiliation and/or reduced public confidence towards the EU was accession to be postponed. Still, the potential threat of postponing EU membership was very much present.

¹⁴ Article 36, 37 and 38 of Bulgaria's Accession Treaty, 25th of April 2005.

2.1.2 EU anti-corruption conditionality after Bulgarian EU membership

Bulgaria did join the EU on 1st of January 2007 – though, as indicated above, on much more stringent conditions than those imposed upon the CEECs that joined the EU in 2004. Scholars agree that widespread corruption was one of the main reasons as to why the EU intensified its conditionality requirements (A. Dimitrova, 2012, p. 55; Lyle, 2010, p. 10). The establishment of the CVM proved that the requirements for EU enlargement had become tougher with Bulgaria's accession to the EU (Barnes & Randerson, 2006). For the first time the conditionality requirements were linked to the introduction of specific conditions as well as sanctions within the monitoring mechanism (Gateva, 2010, p. 7). Such extension of the EU's conditionality was an “unusual procedure”, albeit required in order to monitor the laggards¹⁵ and stimulate further reform (Trauner, 2009b, p. 4).

An immediate reaction to Bulgaria's accession was how devastating corruption could be to the country, the EU and the EU's principles and values. In response to this concern, among others, the CVM defined six benchmarks for progress in the problematic areas of judicial reform, corruption and organized crime. These areas were subject to monitoring (Lyle, 2010, p. 10). Of the six benchmarks, the fourth and fifth directly relate to corruption and proves that the EU took action by setting more stringent standards for monitoring along with forcing the Bulgarian government to commit to anti-corruption reforms. More specifically, Bulgaria is required to:¹⁶

4. Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high-level officials.
5. Take further measures to prevent and fight corruption, in particular at the borders and within local government.

(European Commission, 2006c, p. 10)

In order to maintain a certain level of pressure on Bulgaria, reports with detailed evaluation of the progress on the benchmarks were to be issued every six months (Vachudova &

¹⁵ Bulgaria (and Romania) has been labeled as “the laggard” of the Eastern Enlargement (Noutcheva & Bechev, 2008; Trauner, 2009b).

¹⁶ The other four benchmarks are 1) Adopt Constitutional amendments removing any ambiguity regarding the independence and accountability of the judicial system; 2) Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on the impact of these new laws and of the penal and administrative procedure codes, notably on the pre-trial phase; 3) Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually; and 6) Implement a strategy to fight organized crime, focusing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas.

Spendzharova, 2012, p. 2). As with the ten states that joined the EU in 2004, the above-mentioned safeguard agreement was a tool that allowed the European Commission to sanction Bulgaria until the situation was remedied. It was clearly communicated that a failure to address one or more of the benchmarks would result in the safeguard clauses being applied according to the same conditions as before membership (Rehn, 2006). A Commission Decision of December 2006 clearly stated that:

[If] Bulgaria should fail to address the benchmarks adequately, the Commission may apply safeguard measures [...], including the suspension of Member States' obligation to recognize and execute, under the conditions laid down in the Community law, Bulgarian judgments and judicial decisions, such as European arrest warrants.

(European Commission, 2006b, p. 3)

In addition, the most serious mechanism that allows the EU to punish its member states is the notorious Article 7 of the Treaty of the EU. This allows the EU – if there is a risk of a serious breach of the European values by any member state – to “suspend the voting rights of a Member State in the Council” (Sadurski, 2010, p. 4). Infringement is another important procedure that allows the European Commission to tackle breaches of European legislation by member states. Infringements may also be used when EU member states fail to comply with laws transposed through the *acquis*. Article 226 and 228 of the European Community Treaty gives the European Commission the right to initiate a so-called infringement procedure, which may eventually end up in the Court of Justice of the European Union (CJEU):

If the Commission considers that a Member State has failed to fulfill an obligation under the Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations [...] If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.¹⁷

Despite the EU's pressure for results, few breakthroughs have been made in the fight against corruption in Bulgaria. In 2008, due to “excessive misuse of resources by government officials” and suspected fraud of EU pre-accession funds (European Commission, 2008c; Gawthorpe, 2010, p. 2), the EU responded strongly and decided to freeze €520 million earmarked for Bulgaria (Sedelmeier, 2010, p. 425). After several months of investigation, the

¹⁷ Consolidated Version of the Treaty Establishing the European Community [2002] OJ C 325/125.

Commission confirmed that Bulgaria's misuse of EU funds had resulted in an irreversible loss of €220 million (Ivanov, 2010, p. 216; Vachudova, 2009, p. 54).

Hardy (2010, p. 22) argues that the scandal was a result of EU anti-corruption conditionality that had lost its momentum as soon as the membership incentive was gone. Even so, Bulgaria had a painful experience when EU funds were blocked, both due to the economic loss and the national embarrassment it caused. The legitimacy of Bulgarian politicians was further weakened due to the fact the normal citizens were the ones affected by the suspension. By publishing two reports simultaneously, the European Commission linked the absorption of funds and the monitoring through the CVM together. Markov (2010, p. 4) argues that the slow progress in countering corruption could "easily be interpreted by the [European] Commission as creating [an] environment favorable for corruption [...]". The CVM's ability to provide expected results – of which has been questioned – may therefore have been strengthened by the EU's determination to take further actions to sanction misbehavior.

The loss of EU funds indicated how sanctions could be effective. Bulgaria stepped up anti-corruption efforts as a result of the suspension and the country was awarded positive appraisal in the Commission's interim report¹⁸ in February 2009. It stated that Bulgaria had made "significant development" towards benchmarks 4 and 5 concerning corruption and organized crime (European Commission, 2009b, p. 2). A total of €115 million under the ISPA program was unfrozen due to the Bulgarian authorities' efforts to implement new measures to curb corruption (see section 3.2.2) (Kostadinov, 2009). A possible misfortune, however, was, and still is, that when the EU sanctioned Bulgaria and it felt the "stick" of EU's conditionality, "[the Bulgarian] government would rapidly respond by presenting revised reform strategies and making pledges for additional measures" (Noutcheva and Bechev 2008: 124).

Another important instrument that has strengthened the leverage of the CVM was, and still is, the issue of accepting Bulgaria into Schengen. Lack of progress under the CVM has made "old" member states¹⁹ question, and dramatically delay, Bulgaria's accession to the passport-free area (A. Dimitrova, 2012, p. 58; Reuters, 2013).²⁰ One of the main reasons for suspension has been the persistent problem of corruption.

¹⁸ The interim reports serve as an update and shorter version of the progress report of the CVM, published regularly and without specific recommendations.

¹⁹ France and the Netherlands in particular.

²⁰ As of 1st of January 2014, there are no longer restrictions on free movement of workers from Bulgaria and Romania to all the other member states (European Commission, 2014c). However, they are still not admitted to the Schengen area.

2.1.3 The current state of EU conditionality in Bulgaria

Even though the safeguard agreement expired in January 2010, the continuation of the CVM extended the EU's post-accession conditionality beyond the duration of the safeguards. The CVM is certainly still a burden on the country (Gateva, 2010; Szarek-Mason, 2010). Neither Bulgaria nor the EU expected the CVM to last for as long as seven years after Bulgaria's accession to the EU. Nevertheless, recent history has shown that the mechanism is needed and "will continue until the objectives of the CVM are met and all six benchmarks are satisfactorily fulfilled" (European Commission, 2012d, p. 2). The last progress report (January 2014) further states that the CVM will not be lifted anytime soon, due to Bulgaria's limited and fragile progress in the areas of judicial reform and the fight against corruption and organized crime (European Commission, 2014f).

As regards these areas, there has been disagreement among scholars regarding the efficiency of the CVM and the strength of EU conditionality through it. Some criticize the CVM for being created solely in recognition of EU's inefficient pre-accession framework (Szarek-Mason, 2010, p. 237). Others claim that the extended leverage was the EU's last attempt to trigger reform (Vachudova & Spendzharova, 2012, p. 1). Prominent conditionality scholars suggest that lack of credible incentives halt the process of implementing EU requirements (Barnes & Randerson, 2006; Schimmelfennig & Sedelmeier, 2005), still the Bulgarian case shows that conditionality is present also after accession. Gateva (2010, p. 7) notes an important aspect of the interchangeability between the effectiveness of the CVM and the effectiveness of post-accession conditionality, allowing for the CVM to function as a strong instrument for compliance. It exists an incentive structure in the EU that focuses on how to best induce compliance with its conditions. As shown above, during the pre-accession phase, the use of carrots was favored, while after accession, as an effect of stricter conditionality and with the CVM, punishing non-compliance became more likely for the two latecomers. This thesis argues that the leverage of EU conditionality (CVM, safeguard clauses etc.) after Bulgaria's accession has continued. It seeks to investigate how it has affected anti-corruption measures in the country.

When making use of conditionality theories, some scholars might wish to draw a clear distinction between conditionality and compliance as theoretical terms, and thus focus on the compliance aspect after a country's accession. After the 2004-enlargement the focus has shifted more towards a member state's compliance of EU rules. Nevertheless, I argue that it is

important to understand the interdependence between conditionality and compliance. In this sense, I argue in favor of the continued use of conditionality theory. Compliance, as the word implies, counts for abiding by and meeting specified demands and conditions. This confirms the coherence between the two: Conditionality is successful if the states comply with the conditions that are set. If conditionality fails, on the other hand, it is more likely that compliance is absent.

Vachudova (2005, p. 185) argues that conditionality, together with credible commitment and domestic groups, encourages compliance. In a social learning-context, compliance refers to showing good and appropriate behavior (here towards other EU-member states) as a response to conditionality. The threat of sanctions can further explain a member state's compliance. From the realist's point of view, however, compliance with EU conditions often leads to a positive outcome on a cost-benefit-calculation, notwithstanding that the costs of adjusting to EU legislation, accompanied by limited domestic capacities, have proved to be salient factors for non-compliance (Sedelmeier, 2008). Epstein and Sedelmeier (2008, p. 795) support this estimation by saying that conditionality is used as “[a] conferral of rewards in exchange for compliance”. Conditionality and compliance therefore have to be understood as a dynamic process.

One can differentiate the pre- and post-accession conditionality by the moment when the EU replaced the use of both explicit and implicit threats²¹ with only explicit threats of specific penalizing measures (Gateva, 2010, pp. 11, 16). Penalizing measures among other cover financial sanctions, as the ones Bulgaria experienced in 2008 when EU suspended a great part of its funds to the country. Another type refers to precautionary measures that Gateva (2010) names “preventive or remedial sanctions”, such as the safeguard clauses described above. Even though Gateva (2010, p. 20) looks to the development from a “strong positive incentive structure” to a “weak negative incentive structure”, one can argue that the negative incentives are efficient if other preconditions are in place.

The monitoring applied to Bulgaria complementary to the safeguard clauses made the country subject to extended scrutiny with respect to specific problematic areas such as the fight against corruption. As noted above, the conditions put forward were area-specific benchmarks and individual country specific conditions, both differentiated from the invariable conditions

²¹ Implicit threats particularly accounted for the delay of accession due to non-compliance. This was applied to Bulgaria when it initially failed to meet the Copenhagen criteria and thus was excluded from the first group that started accession negotiations in 1998 (Gateva, 2010, p. 11).

for achieving membership. Gateva (2010) emphasizes the extended monitoring as an instrument used by the EU to advance new conditions and/or threats. As a means of monitoring, more advanced reports were put forward with the aim of enhancing recommendations and conditions set out for the young members. With both an increased scope and frequency of reports, the CVM has therefore significantly intensified a process of monitoring of which has provided the EU with yet another instrument for “continuous political pressure” (Gateva, 2010, p. 15).

2.2 Theoretical Approach and Hypotheses

This thesis seeks to investigate the *role* of EU conditionality and to what extent it has been applied to Bulgaria in order to fight corruption. Anti-corruption measures in Bulgaria have seemed to fail and the scholarly disagreements on the issue show that there is a knowledge gap in need of being filled. Mungiu-Pippidi (2006) claims that “nonpolitically” motivated initiatives, as well as misinterpretation of what corruption is, can explain the negative trend. Steuenberg and Dimitrova (2007, p. 4) single out the credibility and size of EU rewards and the domestic adoption as key determinants for conditionality to be successful.

Two distinct theoretical models are applied to the thesis – the external incentives model and the legal transfer model. The former seeks to explain under what conditions EU member states adopt EU rules. It addresses the different factors that may explain why compliance comes about. The latter model explains whether laws and regulations adjust to a society when transferred from an external actor. It draws on legal sociology and thus provides the thesis with originality and variation as it complements political science theory. The two models are presented below.

2.2.1 The external incentives model

As discussed earlier in this chapter, theoretical approaches for studying conditionality and its efficiency are applicable to Bulgaria as an EU member state. Recent history shows that EU conditionality has caused important progress but also imperfect implementation (Pridham, 2007). In spite, it is still the EU’s most important reform-instrument. Although the strong leverage of EU membership has ceased, the EU has managed to apply extended conditionality to its new(er)²² member states. When applying conditionality to the post-accession period,

²² EU’s 2007 enlargement is now considered to be in the past, particularly since Croatia became the newest member state when acceding on 1st of January 2013. Yet Bulgaria (and Romania) will still be referred to in this thesis as new member states simply for convenience.

addressing if and how it is effective is crucial. One of the most comprehensive theoretical frameworks for studying Europeanization²³ has been developed by Schimmelfennig and Sedelmeier (2005). Their model is referred to as the ‘external incentives model’. The model was originally created for studies of pre-accession conditionality. In spite, and with particular reference to the discussion above, the model is applicable for studying Bulgaria’s post-accession period due to the fact that the EU extended its conditionality to the country. Elements of this model are useful for assessing the impact of EU conditionality on anti-corruption in Bulgaria, as it allows for investigation of the effectiveness of conditionality.

The external dimension that this model aims to cover focuses on the transfer of given EU rules and their adoption by states. For the sake of simplicity, “external” refers to an outside actor, often an international organization, other than the target state itself. The “incentive” refers to the benefits of some kind of interaction with the outside actor, for instance obtaining EU membership.

The model is based on “logic of consequences”, meaning that the success of EU conditionality is driven by incentives, rewards and/or sanctions, imposed on the rule-adopting state by the EU (Schimmelfennig & Sedelmeier, 2005, p. 9). It is reasonable to look at a dimension where Europeanization is driven by the EU’s demands and the conditions for member states to comply. Schimmelfennig and Sedelmeier apply a rule adoption-variable to measure domestic change in EU member states in accordance with the EU rules. Rule adoption can occur as a *formal conception*, meaning that EU rules are transposed into, and defined by, national law, or an informal or *behavioral conception*, where the society itself complies with the rules (Schimmelfennig & Sedelmeier, 2005, p. 8). Dimitrova and Steunenberg (2011, p. 7) describe it as the implementation of formal and informal policy – the latter being “rules that are used in practice and the way actors actually apply them”.

It is assumed that EU’s strategy of reinforcing rewards influences the member states’ adoption of rules in order to receive rewards (or avoid sanctions). “The EU pays the reward if the target government complies with the conditions and withholds the reward if it fails to comply” (Schimmelfennig & Sedelmeier, 2005, p. 11). This corresponds to the *positive* and *negative* conditionality discussed above. In addition, the negative kind of reward – sanctions – also plays a crucial role in this cost-benefit balance. The external incentives model assumes that a member state complies with EU rules if the benefits of the reward exceed the domestic

²³ Europeanization is in simple terms defined as “a process in which states adopt EU rules” (Schimmelfennig & Sedelmeier, 2005, p. 7).

costs of adopting them. The costs of noncompliance can also count for e.g. losing EU funding or minimizing institutional ties. This calculation can either work directly on the target government itself, or on domestic actors with independent incentives for adopting the rules (ibid, p. 11). Anastasakis and Bechev (2003) argue that the difficulties of conditionality can result from lack of commitment by the member state, of which again can be related to low costs of noncompliance. As noted above, the EU aims to put forward conditions so appealing to a member state that those will seek to be fulfilled, despite the extensiveness of domestic political changes (Sedelmeier, 2010, p. 421; Vachudova, 2005, p. 99).

Credibility of conditionality

One of the factors eligible for explaining variation in our case has to do with *credibility* of conditionality.²⁴ In simple terms it counts for the credibility – the quality of something to be convincing or believable – of EU’s threats and promises, whether it is related to positive or negative conditionality (Schimmelfennig & Sedelmeier, 2005, p. 13). Schimmelfennig (2008, p. 918) points to an important aspect where “EU conditionality has to be put on fertile domestic ground” in order to be effective. If the conditions set out by the EU are not credible to the target state – if it is not convinced that rewards will be paid or sanctions will be imposed – compliance is likely to be absent. In other words, the credibility of the EU’s threat of withholding carrots or imposing sticks affects the likelihood of rule adoption. Noutcheva and Bechev (2008, p. 132) confirm this by claiming that “commitment to reform [in Bulgaria] was only partial and seems to depend on the intensity of EU pressure”.

Even though there might be unfavorable conditions for compliance when the membership incentive is gone, conditionality is reinforced by the EU’s new mechanisms of sanctions and safeguards (Pridham, 2007, p. 369). Despite the fact that positive conditionality through rewards might be preferable, the case of Bulgaria indicates how EU conditionality is not just a soft framework, but rather “a strict system of structural support and control where not all participants qualify for the prize” (Veebel, 2009, p. 224).

Although lessened after Bulgaria’s accession in 2007, the interdependence between Bulgaria and the EU is still asymmetrical, an issue notable for the credibility-aspect. Due to Bulgaria’s distinctive extended monitoring mechanism, the interdependence is still in favor of the EU.

²⁴ Other sets of factors presented in the external incentives model are determinacy of conditions; size and speed of rewards; and veto players and adoption costs (Schimmelfennig & Sedelmeier, 2005, pp. 12–17). By extension from the section above on EU conditionality towards Bulgaria, I considered the ‘credibility of conditionality’-factor appropriate for this thesis. The choice of applying the legal transfer model also required an assessment of time and space limitations.

By extension, it should be evident that Bulgaria is dependent on a good relation to other member states as well. As mentioned above, Bulgaria's struggle for joining Schengen is an important aspect of such relations.

Dimitrova (2005) suggests that credibility be evaluated in the light of past relations between the member state and the EU. For Bulgaria, as a latecomer and "burden" due to its post-accession slowdown in reform, the credibility of threats or sanctions is higher than for more successful states. Such signals have for the last seven years been communicated through the CVM and further proves the mechanism's importance. Noutcheva (2006) more importantly emphasizes *reputational costs*, of which political leaders should try to avoid, as having an impact on how member state's governments respond to EU conditionality. The fear of being left out from the "EU club" would naturally be an effect of responding to EU's conditions. An anti-corruption framework can thus rely on a form of naming and shaming, since no EU-member state would prefer to be denounced as the worst in this policy area (Szarek-Mason, 2010, p. 264).

Schimmelfennig and Sedelmeier (2005) make use of sub-factors to explain the credibility of conditionality. One of these concerns the *asymmetry in information* (ibid, p. 15). An asymmetry in information refers to when the outside actor, here the EU, is unable to monitor the target state in a consistent manner. This gives the target state a chance to conceal its noncompliance, which in turn reduces the effectiveness of conditionality (ibid, p. 15). Noutcheva (2006, p. 1) stresses that "Bulgaria [...] may have become EU-compliant on paper only and that the image projected to Brussels by their political leaders differs from the situation on the ground".

A disturbing aspect stemming from this sub-factor is that of a member state's 'symbolic compliance'. When EU conditionality appears to be too focused on legislative adoption, the target governments can easily "tick off" requirements and conditions without giving too much focus to implementation and actual change on the ground (Karklins, 2005, p. 168). Scholars criticize how conditionality solely focuses on adoption of laws and regulations, while little attention is given to the actual implementation of the legislation (ibid, p. 168). Vachudova (2009, p. 43) notes that "strict enforcement [is] limited to the adoption – and not the implementation – of the *acquis*". Todorov (2008, p. 3) claims that the anti-corruption measures previously introduced in Bulgaria are "now largely forgotten, the few investigations

into high-level corruption that were initiated have stalled, and public cynicism has increased”. This can serve as a point of departure for a discussion on the credibility of EU conditions.

Iacob (2012), in his study, argues that “the lower the pressure posed by the European Union the higher the levels of corruption will be”. If EU conditionality depends on its credibility, as the theory suggests, it is crucial to investigate whether conditions applied by the EU have been considered credible enough for Bulgaria to improve its fight against corruption. A member state can be expected to comply with EU’s conditions when threats of sanctions and/or promises of rewards are credible.

In order to evaluate whether EU conditionality towards Bulgaria has been efficient, it is useful to investigate the credibility of the conditionality. Schimmelfennig and Sedelmeier’s theory assumes that lack of proper external incentives results in no further action in the member state. Thus, the credibility of the EU conditions appears as an important component for successful implementation of anti-corruption measures in Bulgaria. Conditions should be followed up with credible and comprehensive monitoring for conditionality to be effective, and thus maintain a certain degree of pressure for the target state to comply. If the factors listed in this section are absent or unsatisfactory, one could assume that EU conditions lack credibility. In Bulgaria, insufficient implementation of anti-corruption measures is therefore to be expected, resulting in a limited fight against corruption in the country and thus difficulties in tackling the core of the problem. In order to explain the variation of the aspects proposed by the external incentives model, the first hypothesis is:

H1: *The lack of credible EU conditionality results in inadequate implementation of anti-corruption measures in Bulgaria.*

2.2.2 The legal transfers model

The traditional Europeanization literature generally applies a top-down approach. In order to incorporate an invaluable and unique bottom-up approach, another direction is added to cover a broader scope of the matter. Theoretical components from legal sociology supplement the discussion on EU conditionality and allow for an original in-depth investigation to explain the reasons for success or failure of anti-corruption measures in Bulgaria.

Credible conditionality, as discussed above, should preferably be accompanied by supportive domestic conditions. Respected scholars point to possible explanations as to why anti-corruption measures fail to take root in CEECs in particular. Mungiu-Pippidi (2006, p. 91), among others, states that “the problem is that both the assessment instruments (which result in a descriptive “anatomy of corruption”) and the resulting anticorruption strategies seem to be simply replicated from one country to another”. Looking to Bulgaria, Gawthorne (2010, p. 3) argues that “the overarching rules and regulations of the EU heavily restrict the ability of Bulgaria to address problems in its own way given that they are not always sympathetic to national particularities”. The question is raised whether EU leverage can overcome the difficult domestic conditions perceivable in the CEECs.

Though a global phenomenon, corruption varies a lot between countries, both in terms of perceptions and scope. It is important to have in mind that root causes may affect the level of corruption, but also prevent the efficiency of anti-corruption reform. The World Bank emphasizes this as an important approach both when studying corruption and when striving to fight it:

An effective strategy for anticorruption must be based on an understanding of the root causes of different forms of corruption and their variation. Without it, policymakers run the risk of treating the symptoms without remedying the underlying conditions.

(The World Bank, 2000, p. xix)

In order to shed light on a plausible explanatory factor for why anti-corruption measures fail to take root in Bulgarian society, elements from theories on legal transfers are added to the theoretical framework. As seen above, scholars tend to question the transferability of EU laws and regulations to EU member states. There is an explicit difference between what one considers “exported” laws (tending to be initiated by an external party through some kind of pressure) and “imported” laws (the “receiver” legitimize the rules on his/her own initiative and the legislation is initiated locally). Many critics of these kinds of legal transfers are to be found in the academic sphere (Kingsley, 2004; Monateri, 2008; Teubner, 1998).

A legal transfer – or transplant²⁵ – may be defined as a “transfer of laws and institutional structures across geographical and cultural borders” (Gillespie, 2006, p. 3). As will be seen, the outcome of a legal transfer and its success depends on several factors. The primary focus

²⁵ Alternative terms that are used for legal transfers include legal transplants, legal translation, legal irritants, etc. (Grødeland, 2012; Langer, 2004; Teubner, 1998). In this thesis, ‘legal transplants’ will be used if not directly quoting an author who uses another term.

is how laws and regulations are initiated. Research often shows that legal transfers are more likely to be successful if “initiated or actively encouraged by the society into which they are being introduced (i.e. ‘imported’), rather than forced upon them from the outside (i.e. ‘exported’)” (Grødeland, 2012, p. 239). This also applies to anti-corruption measures and may explain their success or failure when introduced through external pressure. Dimitrova (2010) and Batory (2012, p. 68) note that rule transfer in the CEECs is rather unsuccessful, as “laws in books often fail to be transplanted into laws in action”.

Being a prominent scholar of legal transfer theories, Kingsley (2004, p. 511) argues that “legal transplants are often unsuccessful if external forces, such as international institutions, assume certain institutional, cultural, or political realities that in fact are not present or properly developed; therefore, these laws are often simply ignored or rejected”. By using examples from Indonesia as the point of departure, Kingsley’s work shows that the success or failure of law reforms is dependent on the society in which the laws are meant to operate. Economic incentives and/or cultural imperatives are factors that often need to be taken into account.

Kahn-Freund (1974, p. 7) alludes to indicators that Montesquieu believed was of importance when incorporating legal transfers into a foreign society. These include socio-economic factors and cultural factors, such as a state’s history and national political factors, of which all can serve as guidelines when studying this trend. Despite strong legal frameworks for fighting corruption, the implementation of laws and their efficiency “on the ground” challenge their ability to change social behavior. Anti-corruption measures might suffer from “cultural bias” (Grødeland, 2012, p. 240), which, in the case of Bulgaria, may prevent them from being compatible with Bulgarian society.

Teubner (1998) uncompromisingly criticizes legal transfers, renaming them as “legal irritants”, when claiming that legal institutions cannot be transferred from one context to another. Foreign law “irritates” and therefore has to be reconstructed into another context where the fundamental external meaning of the law might disappear (Teubner, 1998, p. 12).

It should be noted that international institutions generally have political intentions when transferring laws and regulations. Hence, legal transfers are often perceived as impositions in the EU candidate- or member states (Kingsley, 2004, p. 511). When a society is to implement new laws introduced by external forces, it will automatically apply internal factors that work

to counteract the efficiency of these laws. Whether the factors are culturally constructed or stem from other elements of the society is a matter for this thesis to examine.

Domestic factors affecting compliance

It has been common to consider lack of political will as an overarching factor as to why anti-corruption measures in young member states are inefficient (Anderson & Gray, 2006; Open Society Institute, 2002b). Political will *is* crucial, yet several other domestic factors also emerge when the theoretical scope is extended. Vachudova (2009, p. 60) argues that “EU leverage has always worked much better in concert with domestic pressure towards the same goal”. The reduced pressure from the EU after accession should beneficially have been compensated by domestic mobilization in order to improve the efficiency of anti-corruption measures (Ivanov, 2010, p. 210).

Gadowska (2012, p. 207) argues that “externally imposed initiatives meant to help combat corruption cannot be effective if they are not accompanied by domestic anti-corruption efforts, resulting in, on the one hand, top-down political and administrative projects, and on the other, bottom-up pressure”. Kotchegura (2004), on her part, points to the difficulties of reducing corruption in countries transitioned from communism, which are also the countries that have been subject to more pressure from the international community. For international organizations it has proved quite easy to classify the societies where high levels of corruption is present. Prescribing effective remedies and applying new approaches in a sustained fashion to fight this malady has been more challenging (Kotchegura, 2004, p. 138). In continuation of Montesquieu’s guidelines, Kotchegura claims that the intricate problem of corruption should be seen in relation to the ‘legacy of the past’.

The communist era, and even Bulgaria’s Ottoman past, explain how “ethical standards of good governance, accountability and transparency” acted as the exception from the normality of society (Kotchegura, 2004, p. 140). Infected by private rent seeking in the bureaucracy and a dominating state apparatus, communism left its mark on the Bulgarian society. For anti-corruption measures to be efficient in the country, especially if the measures are initiated from outside, historical factors need to be considered. The legitimacy that anti-corruption measures seem to lack can be traced some decades back in time. Bulgaria was also then governed from the “outside” and there was little room for influencing the political leaders

who were based abroad. The legal culture²⁶ of the society was characterized by indifference for laws that lacked legitimacy and could easily be circumvented.

Grødeland and Aasland (2007) suggest that informality, as an inherent part of national culture, has facilitated corruption especially in the second wave post-communist EU member states. In historical terms, informality is often connected to how people behave according to unwritten rules, as a way to undermine the written rules of a foreign authority. One can assume that unwritten rules have become social norms that are deeply embedded in society. Dimitrova (2010) associates this trend with weak state institutions in the CEEC's that are undermined by informal actions. Furthermore, with the international community's effort to transform post-communist states into consolidated democracies, the problem seems to be that "the adjustments [that the international community] have required from people in terms of behavior, may not necessarily have affected the values and norms underpinning people's behavior as such" (Grødeland & Aasland, 2007, p. 3). While such behavior may be more resistant to change, it proves that the social norms and practices of post-communist societies are still, to some extent, rooted in the culture of communism (Grødeland, 2012, p. 240; Sandholtz & Taagepera, 2005, p. 109).

By moving the discussion to today's situation, where academic work and international indices suggest that the corruption in Bulgaria is widespread despite a fairly established legal framework, many factors prove to be significant when looking at it from the bottom-up perspective. Based on aspects of legal transfer theories and the factors listed above, this thesis assumes that the anti-corruption measures exported by the EU struggle to take root in the geographically and culturally different context that Bulgarian society represents. It is assumed that behavior embedded in the Bulgarian culture is likely to negatively affect measures aimed at fighting corruption in Bulgaria. Central to this reasoning is that the anti-corruption measures implemented through, or driven by, the EU lack elite and/or popular legitimacy in the societies in which they are being introduced. Based on the bottom-up perspective of legal transfer theories, the second hypothesis is:

H2: *EU-driven anti-corruption measures are not sufficiently adjusted to the Bulgarian local context and therefore fail.*

²⁶ Legal culture may be defined as "a way of describing relatively stable patterns of legally oriented social behavior and attitudes" (Nelken, 2004, p. 1).

Conclusion

The two hypotheses to be tested in this thesis cover important aspects of the functionality of EU conditionality, the manner in which Bulgarian authorities assess the existing conditions set by the EU and how this in turn influences the implementation of anti-corruption measures in the country. By considering two distinct theoretical models, the aim of the thesis is to cover several key factors of importance to the implementation of anti-corruption measures in Bulgaria. In order to achieve this, two specific anti-corruption measures from Bulgaria are applied and presented in the next chapter. These are further investigated and related to the theoretical framework and the two hypotheses in chapter 5.

3 Fighting corruption in Bulgaria

Notwithstanding that corruption is still a widespread problem in Bulgaria, there has been a positive development from some decades ago, when the Bulgarian government denied that corruption even existed in the country, to when it cited the EU accession as to be “one of the most important reasons for the adoption of its national anti-corruption policy” (Open Society Institute, 2002a, p. 95). From once accepting corruption, now also the public shows less tolerance for the intricate problem, a reaction that caused the nationwide demonstrations the last year. The concern of this thesis is whether the national anti-corruption measures are efficient in the country and if the pressure from the EU has been sufficiently strong for Bulgaria to make improvements in combating corruption.

As previously discussed, measuring corruption is nearly impossible. Estimating the impact of anti-corruption measures on the actual level of corruption is even more complex. Noutcheva and Bechev (2008, p. 139) claim that anti-corruption measures and their rhetoric “cannot attest to anything more than a declaration of intentions meant to reassure Brussels and the public at home”. In other words, common will and engagement are required for anti-corruption measures to take root and to overcome the problem. Despite such a complication, this chapter provides an overview of the nature of anti-corruption measures that have emerged and developed in Bulgaria as a result of EU external pressure during the last two decades.

3.1 Anti-corruption in Bulgaria

As in Western democracies, the problem of corruption was put on the agenda by non-governmental organizations also in Bulgaria. In the context of negotiating EU membership, the Center for the Study of Democracy (CSD) was in the front seat together with other NGOs and the media, taking measures to raise public awareness of corruption. Together they initiated Coalition 2000, an initiative to persuade governments and politicians with principles of combating corruption (SELDI, 2002, p. 27). CSD actively contributed to the first governmental anti-corruption document ever elaborated in Bulgaria in 2001, the National Anti-Corruption Strategy (CSD, 2006b). They also contributed to a new and re-formulated version of this strategy in 2006, the ‘National Strategy for Good Governance, Prevention and Counteraction of Corruption 2006-2008’, in which political corruption; income and assets of

governmental officials; and corruption in health care and education were among the key areas of concern (ibid, p. 2).

The refined strategy was applauded by the European Commission but also criticized for not having concrete targets for measuring performance, which in the end would impair the situation due to low administrative capacity (European Commission, 2006a, p. 36). Scholars are critical to the role of the anti-corruption coalitions. Even though such coalitions have succeeded in conceptualizing corruption, their influence on national governments has not been great enough: “There was a discrepancy [in Bulgaria] between the types of reforms the coalitions built up a demand for [...] and the types of long-term, institutional solutions that the governments were prepared to offer [...]” (Tisné & Smilov, 2004, p. 35).

At national level, especially in the period 2000-2005, Bulgaria gave more priority to improvement of its legislation – as this was a requirement through the *acquis* – rather than to establish efficient preventive institutions for corruption control (Noutcheva & Bechev, 2008, p. 137). The few state commissions that were set up proved to be inefficient and dysfunctional (CSD, 2006c, p. 51). The small numbers of national anti-corruption bodies that have been established more recently have lacked transparency in their work. As for the investigative institutions both autonomy and resources have been scarce (European Commission, 2014a, p. 6). Joint efforts between institutions are therefore needed (Smilov & Smilova, 2010, p. 58).

Despite the lack of a common European standard for anti-corruption, Bulgaria was under particular pressure from the EU in the months prior to its accession. It had to demonstrate effective measures and clear results, especially for combating corruption and organized crime. As noted in chapter 2, conditionality is employed by the EU to encourage candidate- and member states to accept its rules. In general terms, member states are responsible to incorporate and implement all aspects of EU law into national law. EU law, whether as regulations, directives or decisions, “take precedence over national law and [is] binding on national authorities” (European Commission, 2012e).

In response to conditions set by the EU ahead of Bulgaria’s accession, the CSD (2006a) describes a move from soft to harder awareness-raising measures oriented towards prevention and sanctions. Among the successful initiatives that commenced prior to Bulgaria’s EU accession were the adoption of a new law on political party funding and asset disclosure for high-ranking officials. What remained to be addressed were areas such as public procurement

and VAT fraud (ibid, p. 4). CSD looked optimistically towards EU accession, as this would bring about tougher pressure on the Bulgarian government. Internal factors causing the problem in the first place were regarded as impediments that would be difficult to overcome. Smilov and Dorosiev (2008a, p. 6), for their part, argue that the development of anti-corruption institutions served as instruments of leverage over the government's anti-corruption discourse. Such a discourse had become important for the governments and their political mobilization (ibid, p. 6) and thus operated as an incentive for political actors to gain public support.

With EU-membership in 2007, Bulgaria was expected to be on "the right track" towards administrative and institutional reform. Still, there was room for improvements in many areas, particularly of anti-corruption. Even though the European Commission in 2008 reported that Bulgaria had introduced "new administrative procedures [to] reduce the possibilities of corruption", such as closing down duty-free shops²⁷ that were focal points for corrupt activity, a strategic approach to fight corruption was missing (European Commission, 2008b, p. 3).

There have been some, yet few, achievements initiated by the Bulgarian government in the area of anti-corruption. Two steps were taken in response to the EU's call for efficient strategies. The State Agency for National Security (SANS) was established in 2008. Its initial purpose was to investigate and fight high-level corruption and organized crime among senior officials (European Commission, 2008b, p. 3). Even though the EU required a clear separation of the agency's investigative and intelligence role, the profile of SANS was short after revised by the new government to only concern counterintelligence issues (European Commission, 2014a, p. 7; Transparency International Bulgaria, 2011, p. 4). The EU and TI criticized the shift, on the grounds that the agency's focus on investigating corruption was drastically limited (ibid, p. 4).

Secondly, a strategy for 'Preventing and Countering Corruption and Organized Crime' was adopted in 2009 together with an action plan on how to combat corruption in the coming years (European Commission, 2014a, p. 2). A model for preventing and countering corruption and organized crime, named BORKOR, was established under the Council of Ministers as part of the action plan. As a large-scale anti-corruption project, the model was aiming at "increasing transparency and addressing corruption within the public administration at all levels" (European Commission, 2011c, p. 6). Despite an allocation of €4 million from the

²⁷ After requirements from the EU in 2006 (Vatahov, 2006).

Bulgarian government in 2011, there are still no “tangible advances [that] have resulted from [BORKOR’s] work” (European Commission, 2011c, p. 6, 2014b, p. 23).

The EU therefore continued to push for legislative improvements in Bulgaria. The 2011 technical CVM-report affirmed the adoption of several legal amendments and new laws. Despite having a strengthening effect on the legal and institutional framework, the need for concrete and convincing results was a consistent deficiency referred to in the monitoring reports on Bulgaria (European Commission, 2011f, p. 13). Particularly the first years following Bulgaria’s accession showed a negative trend of increased corruption:

Political corruption and organized crime still remain largely crimes without punishment even after Bulgaria’s accession to the EU. Notwithstanding economic growth and past progress in its anti-corruption reforms, Bulgaria still displays two major deficits for countering corruption and organized crime: namely, of political will and administrative capacity.

(CSD, 2009, p. 2)

Other challenges that the European Commission often pointed to were deficiencies in judicial practice. There have been several acquittals in high-level corruption cases that have not been followed up and analyzed properly by government institutions. A recurrent issue in Bulgaria’s anti-corruption legal framework is therefore that there is a “systemic discrepancy between [...] legal framework and actual practice and performance” (Transparency International Bulgaria, 2011, p. 6). Ivanova (2013, p. 104) notes that there was an increase in the number of indictments for high-level corruption in 2010, when top politicians for the first time in history were brought to court on corruption charges. However, she views this development as only a temporary success, due to a serious reduction in indictments in 2011 and 2012 when “most high-profile cases ended up in acquittals” (ibid, p. 104). This development reflects what some scholars point to as Bulgarian ‘showcase’ activities, where the government tries to convince the EU about their seriousness in fighting corruption (Smilov & Dorosiev, 2008b, p. 20). In the end it seems like this was more “PR rather than deep system changes” (ibid, p. 20), which is proven by the lack of convictions emphasized by Ivanova.

A similar trend could be observed in several different areas as well. These have been highlighted in the EU’s monitoring reports: “Bulgaria has stepped up its efforts to fight high-level corruption”²⁸, *but* “few [corruption] situations [...] are being pursued and sanctioned”; “the lack of effective control at the administrative level to prevent and detect fraud continues

²⁸ Italics removed from original quote.

to pose problems”; and “the laws [lack an] efficient implementation structure” (European Commission, 2010b, pp. 10–14). The same deficiencies follow in the recent reports.

Another serious shortcoming is that of the protection of whistleblowers, i.e. people who report corruption activity. The international community regularly calls for enhancing the rights of, and to protect, those who are willing to report crimes, unethical behavior and/or malevolent activities. The EU (2014a, p. 5) calls for more effective administrative arrangements in order to protect whistleblowers and preferably bring light to corruption acts in every level of the society. There is no legal definition of a ‘whistleblower’ in Bulgaria, and although the right to report any kind of dishonest behavior is granted to every citizen, TI (2009, p. 24) states that a huge majority is reluctant to report cases related to corruption.

Legislation for whistleblower-protection was introduced in the period 2006-2007 in response to GRECO²⁹ and OECD’s recommendations, and later recommendations in the CVM (European Commission, 2008b). The Bulgarian government later claimed that a separate whistleblower-law was not needed. Kierans (2013, p. 10) asserts that the negative attitude towards whistleblowers, among politicians and citizens alike, stems from the communist era of the country. “The corruption of public officials, the strong influence of criminal organizations and the fear of physical repercussions” are all aspects of a communist society. Whistleblowers can only trust “the goodwill of civil servants not to reveal their identity” (Transparency International, 2009, p. 24). This risk outweighs the reporting of corruption.

In June 2012, the European Commission reported that despite Bulgaria having developed a “comprehensive administrative framework and prevention measures” in the fight against corruption, implementation is still lacking in order to make significant improvements (European Commission, 2012d, p. 15). The report further referred to substantial public concern about corruption in Bulgaria (according to 68% of the population the situation is worse now than it was in 2007) and underlined that “public perceptions will only change when determined action [is] taken in the fight against corruption” (ibid, p. 15). The European Commission followed up with a revised long-term assessment 18 months later³⁰ in order to “see how the reforms [...] were taking root”, only to conclude that progress has been fragile and insufficient (European Commission, 2014f, p. 9). The general image of corruption, and the lack of results in the fight against it, is described by the European Commission as that of

²⁹ GRECO is the abbreviation of the Council of Europe’s ‘Group of States against Corruption’.

³⁰ The European Commission approved the thirteenth Cooperation and Verification Mechanism-report on the 22nd of January 2014.

“[...] a weak and uncoordinated response to what is a systemic problem throughout the public administration” (European Commission, 2014f, p. 7).

The British ambassador to Bulgaria recently communicated his concern about the lack of nationalized reform in the country by saying “there is a tendency for politicians and civil society alike to point to the demands of outsiders for reform as the key reason for doing it” (The Sofia Globe, 2013). Such a tendency can risk the disempowerment of Bulgarians, which further weakens the legitimacy of national policies. The reason to adopt laws and improve the situation should rather lay in the will of politicians and citizens alike, in order to be successful.

3.2 Choice of cases

Notwithstanding the fact that laws and formal procedures alone are not sufficient to combat corruption – moral education and informal institutions are *as* important – legislation is a crucial instrument capable of limiting the possibilities of corruption. In post-communist countries in particular, where corrupt behavior evolved as a part of social norms and practices (Sandholtz & Taagepera, 2005, p. 109), education intended to strengthen people’s morals may serve as an important anti-corruption tool as well (Fan, 2008, p. 103). Legislation, however, serves as the foundation for a society to act according to what is determined to be right.

Corrupt activity is an intricate matter and although it may seem futile to extract aspects from a picture that should be seen as a whole, it is needed due to the limitations of this thesis. Two cases are applied to the thesis, seeking to properly analyze empirical data in accordance with the chosen theoretical framework. One concerns the law on confiscation of illegal assets obtained from illegal activity (including corruption), whereas the other case addresses the law on prevention of conflict of interest. The two cases allow for an investigation, in the light of EU-conditionality, into how anti-corruption measures have functioned in Bulgaria. Despite the fact that the laws might be regarded as untraditional anti-corruption measures, both – if implemented in a proper manner – serve as a tool to hinder corrupt activities. Neither of the laws has been studied in-depth and in relation to this thesis’ theoretical framework. Hence, the choice of cases provides the thesis with a broad, in-depth focus.

3.2.1 The law on illegal asset forfeiture

In its comprehensive report of 2003 on ‘Fighting corruption in the EU’, the Commission clearly commends that strengthened repressive measures would work as a means of fighting corruption and that “corrupt acts have to be detected and prosecuted and offenders have to be punished and deprived of their illicit proceeds” (European Commission, 2003, p. 5). It is further emphasized in the aforementioned ten principles for fighting corruption that both EU and international anti-corruption instruments have to be put into effect by enacting legislation. One of these instruments is the Council of Europe’s ‘Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime’, which was ratified by Bulgaria and entered into force in 1993. OSI and Szarek-Mason note that international conventions serve as part of the EU *acquis* (see chapter 2.1.1). Consequently Bulgaria was obliged to meet the requirements set out in the convention.

Confiscation of proceeds of corruption is by international society regarded as an effective means for curbing corrupt activities. GRECO (2005, p. 7) affirms that “an important way to combat [...] corruption, is to eliminate the proceeds generated and thereby the motivation for the crime itself”. Freezing assets is intended to retain property whereas the confiscation is an extended manner that permanently prevents access to the illegal assets. Depending on a functioning judicial framework, a prison sentence might be less effective if the assets from corruption is hidden and secured. A law on illegal assets forfeiture will thus reduce people’s incentives to conduct corrupt activities. It will enable a national authority to trace illegally earned proceeds and to punish the criminals by depriving them of their profit.

The existing EU legal framework on confiscation of assets, of which was initially built on the Joint Action 98/699/JHA of 1998, emphasizes the importance of such a system as a means to fight corruption and organized crime, which are both profit-driven. As a result of scarce implementation among the European countries subsequent to the abovementioned Convention, Framework Decision³¹ 2001/500/JHA was introduced in order to further strengthen the countries’ legislation (European Commission, 2007a, p. 2, 2009a, p. 24). The legal basis for a framework decision is communicated in the Treaty on the European Union’s (2002) article 34, paragraph 2b:

³¹ A *decision* refers to an EU law relating to certain cases, where the EU can require authorities in member states to either do or stop doing something (European Commission, 2012f).

(b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect [...].

The above-mentioned Framework Decision of 2001, with an extended version in Framework Decision 2005/212/JHA, concerned the execution of freezing proceeds and required each EU state “to take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences”. Since Bulgaria was preparing to join the EU, approximation of national legislation with EU standards was already underway, thus the decisions applied as part of the *acquis*.³² States were requested to comply with the decisions usually within a year or two. Bulgaria showed early attempts of trying to put together a functioning law on asset forfeiture. In 2005³³, a legal innovation became available when the Law on Forfeiture and Proceeds of Crime entered into force (GRECO, 2007, p. 2). However, as noted in the following, several impediments accompanied the law’s evolution.

A report assessing the Council Framework Decision 2003/577/JHA of 2003 outlined that Bulgaria had transmitted the laws and implemented the decision upon its accession in 2007 (European Commission, 2008a, p. 2). Following a fourth Framework Decision, 2007/845/JHA, the European Commission reported that Bulgaria had met the requirements of designating an Asset Recovery Office (ARO), entitled ‘the Commission for Establishing Property from Criminal Activity’ (CEPACA)³⁴ (European Commission, 2011e). The commission³⁵ was to bring proceedings of confiscation acts in court, however, its function proved to be rather limited, especially regarding its lack of investigatory power (European Commission, 2009a, p. 127). It was to be expected that the first CVM-reports on Bulgaria would report little progress in freezing and confiscating illegal assets, due to its weak judicial system. The European Commission (2007b, p. 20, 2009c) pointed to substantial shortcomings particularly relating the legislation on the forfeiture of criminal assets, as well as the dysfunction of the CEPACA to “effectively [impose] measures to restrain and confiscate criminal assets”. During a period of three years (2005-2008), the CEPACA only analyzed ten proceedings of forfeiture, claiming this was a result of their restrictions under the law (Venice Commission, 2010, p. 4).

³² All Framework Decisions are referred to and published on CIAF’s homepage, under “Legislation”

³³ This case exclusively extends the time limits of the thesis, for the simple reason that the law was adopted prior to Bulgaria’s accession as a result of EU’s conditionality. In the thesis’ analysis the law will for most parts be referred to within the initially set time limit (2007-2013).

³⁴ Synonymous with today’s ‘Commission for Asset Forfeiture’ (CIAF).

³⁵ In this chapter ‘commission’ solely refers to the specific bodies in focus.

The inefficiency of the CEPACA and the law itself called for amendments amid GRECO's (2005) proposal for a clarification of relevant legislation that suffered from vague terminology. In order to improve its own efficiency, CEPACA started formulating proposals for amendments to the law. "The conditions of asset freezing fixed in the law are too restrictive and do not match the reality of crime in Bulgaria" was the evaluation of the European Commission (2009c, p. 4). In response, Bulgarian authorities decided to draft a new law, which, according to the Venice Commission (2010), included essential changes. Among the changes was the possibility to investigate any illegal activity, not just the ones connected to disclosed crimes. Non-conviction based forfeiture was also added to the draft, meaning that a conviction is not needed in order to recover illegal assets (ibid, p. 5). The bill, which had been rejected by the Parliament several times, was urged by the EU to be adopted and in a specific recommendation the EU encouraged that "efficient cooperation must be established between the asset forfeiture commission, financial institutions, administrative authorities and the prosecution [...]" (European Commission, 2011d, p. 5).

Further encouragements became necessary the year after, as the European Commission (2012c, p. 3, 2012d, p. 22) explicitly recommended that for Bulgaria to maintain its momentum of reform, it had to "revise the asset declaration and verification system [by] turning it into an effective instrument to detect illicit enrichment". After several readings in the Bulgarian Parliament, the law was passed in 2012 (Bivol, 2012), this time with amendments that seemed to have serious impact for the outcome of the law.

The initial law from 2005 had proposed an investigation that could trace assets acquired from crimes up to 25 years back (The Sofia Echo, 2005), which is quite a long period. In 2012 the Constitutional Court reduced this period to ten years (Novinite, 2012b). Another serious amendment was the minimum discrepancy between net income and assets to be raised from BGN 60,000 (approximately €30,000) to BGN 250,000 (approximately €125,000) (European Commission, 2008d, p. 20; Novinite, 2012b). These limitations in particular created an asset forfeiture-system with a completely different outcome. If the law had allowed for an independent investigative commission without such limitations, the lawbreaker would have had difficulties to for instance hide his/her illegally obtained asset by claiming it was earned more than ten years ago. With a greater leeway for investigation, the law would have been a stronger and more efficient means for fighting corruption and organized crime. Pechilkova

(2012) argues that although EU-pressure was a main factor, “there [was] also a strong political will [at the] national level to “mitigate” the situation”.

The inefficiency of either the law, CIAF (previously CEPACA), or both, is reflected in the statistics collected from CIAF’s 2013 annual report. Out of 3,348 notices submitted by the Bulgarian Prosecution under the new law, CIAF initiated 2,951 investigations, which in turn led to only *one* request for imposing freezing measures in the court (CIAF, 2014, pp. 25–26). A procedure for forfeiture has yet to be initiated.

3.2.2 The law on prevention and findings of conflict of interests

Conflict of interest arises when “[a] public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties” (Council of Europe, 2000, p. 5). Reed (2010, p. 5) further elaborates that a conflict of interest does not occur unless an official “deliberately [...] resolves the conflict of interest to the detriment of the public interest”. Conflict of interest is also referred to in the United Nations Convention Against Corruption (UNCAC) and considered to be “an indicator, a precursor and a result of corruption” (Zibold, 2013, p. 1).

As noted in section 2.1.2, the freezing of Bulgaria’s EU funds at the beginning of 2008 caused a scandal both domestically and in the EU. The suspensions were initially caused by the disclosure of a major corruption scandal directly involving the pre-accession funds provided to Bulgaria by the EU. The executive director of the National Road Infrastructure Fund (NRIF), Veselin Georgiev, was accused of being involved in serious conflict of interest (Kostadinov, 2008). Mr. Georgiev had awarded contracts of road constructions worth tens of millions of Bulgarian levs to companies run by his brothers (European Commission, 2008c, p. 5; Novinite, 2012a). Moreover, two NRIF officials who were responsible for implementing the EU funds were accused of taking bribes (European Commission, 2008c, p. 5). The officials involved were immediately set aside and investigations commenced.³⁶

The European Commission directly followed up the intricate situation: “It is important that a more effective law on conflict of interest and asset control be established [and once] a revised law is adopted it needs to be implemented as soon as possible” (European Commission, 2008b, p. 4). Due to the serious abuse of its funds, the EU obliged Bulgaria to take further

³⁶ Veselin Georgiev is still standing trial for the offense. He received yet another grave allegation at the beginning of 2013, when a Bulgarian court froze more than BGN 4 million in illegal assets (Novinite, 2013).

actions. The European Commissioner for Administrative Affairs, Audit and Anti-Fraud at that time, Siim Kallas, announced that “lack of legislation that regulates conflict of interest [was] one of Bulgaria’s major weaknesses” (Novinite, 2009b).

Legal provisions in Bulgaria’s Civil Service Act had in fact provided the country with procedures to avoid conflict of interest in state administration since 1999 (Ivanova, 2009, p. 27). However, it became apparent after the scandals in 2008 that the act did not preempt corruption as such, because officials holding top positions in e.g. ministries or public agencies or bodies, who on the other side are particularly prone to corrupt activities, were not regarded as ‘state servants’ (ibid, p. 27). “Adequate administrative capacity and effective control of conflict of interest, fraud and financial irregularities” therefore became a necessary condition for Bulgaria “[in order] to fully benefit from EU pre-accession and structural funds” (European Commission, 2008b, p. 5).

In response to the suspension of the EU funds, Bulgarian authorities submitted a draft law on conflict of interest as early as in July 2008 (European Commission, 2008d, p. 17). The EU indicated some serious drawbacks as the scope of the law was regarded “unclear and incomplete [and] would create serious problems for enforcement” (ibid, p. 17). Nonetheless, the Conflict of Interest Prevention and Disclosure Act was adopted in October the same year. The application of the law was planned in January 2009, but due to amendments that had to be debated this was postponed until March 2009 (European Commission, 2009b, p. 5).

The EU showed its apprehensiveness accordingly, as it became apparent that withholding the law would threaten to exclude Bulgaria from future EU structural and cohesion funds³⁷ (The Sofia Echo, 2009). Danuta Hübner, Commissioner for European Regional Policy at that time, announced that effective legislation on conflict of interest had to be put in place in order to obtain conformity assessments for future operational programs (ibid.).

What makes this case especially interesting in regards to the theoretical framework applied for the thesis, is the degree of conditionality in which the law was established. Scholars argue that EU conditionality is severely reduced once the incentive of membership has ceased (Epstein & Sedelmeier, 2008; Falkner & Treib, 2008). This case proves the opposite, as the

³⁷ It is valuable to mention the Structural- and Cohesions Funds – post-accession financial instruments of the EU – “intended to narrow the development disparities among regions and Member States” (Europa.eu, n.d.). For the period 2007-2013, the EU allocated €6.9 billion to Bulgaria, in order to reach a goal of economic, social and territorial cohesion (European Union, 2008, p. 4). Due to the limitations that come with writing this thesis, I will not elaborate more upon this topic.

legal framework on conflict of interest that was established in Bulgaria – *after* its accession to the EU – was solely a result of EU conditionality.

Due to its rapid improvements of national legal framework, Bulgaria was anticipating an alleviation of the suspensions. As noted above, the EU, by implication, forced Bulgarian authorities to adopt a conflict of interest law in correspondence to the EU’s requirements, also in order to release parts of the funds (Kostadinov, 2009) (see section 2.1.2). The then Deputy Prime Minister Meglena Plugchieva announced that:

The EC expects from us to revise the Conflict of Interest Act and to implement it as soon as possible as a guarantee that Bulgaria is serious about fighting corruption. The Act has a key importance at the moment and has become another requirement in order for the EC to unblock the funds.

(Novinite, 2009a)

Even if the law was successfully adopted, its comprehensive and efficient implementation was still missing. The European Commission (2010b, p. 13) reported that “the law on prevention and detection of conflict of interest [lacked] efficient implementation structure and therefore [did] not offer adequate protection against conflict of interest”. Despite the EU’s recommendations, “no steps [had] been taken to develop guidelines for the implementation of the conflict of interest law [...]” (European Commission, 2010b, p. 10).

Bulgaria needed to intensify its efforts towards a functioning legal framework. A strengthened law was adopted in November 2010, in which necessary amendments were made to allow for the establishment of an agency to detect and prevent conflict of interest (European Commission, 2011d, p. 6). In spite of a sudden delay, the Commission for Prevention and Ascertainment of Conflict of Interest (CPACI) became operational in 2011. Bulgaria was explicitly recommended by the EU to “demonstrate a convincing track record of sanctions under the revised law on conflict of interest” (European Commission, 2011d, p. 9). By the beginning of 2012 it had taken its first decisions, however, only 12 cases had been established of a number of 146 received signals of conflict of interest (European Commission, 2012c, p. 6). Five months later, CPACI had received a total of 300 signals of conflict of interest, of which 30 cases had been established and only one finalized in court (European Commission, 2012a, p. 27).

In its recently published Anti-Corruption Report, the EU condemns CPACI for not yet having “succeeded in acting systematically and independently to prevent or uncover risks of political corruption” (European Commission, 2014a, p. 8). The EU shows special discontent with what seems like “indications of an arbitrary and formalistic approach” in the commission (ibid, p. 8). The problem of inefficient commissions, as noted above, has prevailed. The European Commission further notes in its most recent CVM report that CPACI, “[of] which could have played a crucial role in targeting irregular practices at all levels in the public sector, has instead been caught up in a serious scandal involving suspicions of strong political influence” (European Commission, 2014f, p. 7).

Conclusion

In short, and as scholars rightly argue, countries with anti-corruption legislation and measures in place “do not necessarily perform better” (Mungiu-Pippidi, 2013). As for Bulgaria there seems to be a recurrent trend of lack of implementation and a deficiency in actual “effect on the ground”. Rose-Ackerman (2002, p. 3) notes that a criminal law alone is not a good enough tool for fighting corruption and that it can only “play a role as a backstop lying behind the needed structural changes”. There is a clear lack of information and especially a “lack of a culture of identification of corruption in Bulgaria”, of which likely have an effect on the function of anti-corruption measures (Smilov & Smilova, 2010, p. 57).

The abovementioned cases therefore serve as a point of departure for investigating how EU’s conditionality has had an impact on anti-corruption measures in Bulgaria. By including primary data to the cases, it is possible to detect factors that have impacted the laws’ efficiency or inefficiency, in the light of conditionality. Even though neither of the cases account for what one may regard as “traditional” anti-corruption measures, both work to curb corruption if implemented properly. The investigation of these cases in relation to EU conditionality and legal transfer theory provides the thesis with originality. Furthermore, it contributes to an unexplored part of the field of study.

The two cases can have interest of being seen together in a bigger picture for two reasons. First, both laws were implemented as a result of EU conditionality: The first case came to be in the period before Bulgaria’s membership and was therefore subject to conditionality through the *acquis* (see section 2.1.1). Whereas the second case was susceptible to a different

kind of conditionality since it was (i) triggered after Bulgaria's accession, thus *post*-accession conditionality, and (ii) it was subject to an actual threat involving economic sanctions.

Another interesting component concerns the purpose of the laws. Both are applied for corruption to be revealed, however the first penalizes by confiscating the proceeds after being involved in corrupt activities, whereas the other penalizes the person(s) being involved in a corrupt act. On the other hand, both cases have showed a trend where multiple amendments have been applied due to external (EU) reporting of insignificant results. Hence, the cases shed light on interesting aspects with regards to the hypotheses put forward in chapter 2.

4 Methodology and research design

Gerring (2007, p. 216) defines a research design as “the way in which empirical evidence is brought to bear on a hypothesis”. In other words, a research design serves as a strategy of how the research is to be conducted. The purpose of the research design is to provide the reader with a transparent outline of how one has reached to conclusions. This chapter explains what a case study is and why it is the most appropriate choice for this thesis. It discusses the usefulness of the qualitative research design and the choice of in-depth qualitative interviews as the method to collect data. Subsequently the reader is provided with a comprehensive description of how interviewees³⁸ were sampled, how data were collected and analyzed, and other practical aspects particular for an interview environment.

4.1 The case study

By applying George and Bennett’s (2005, p. 17) definition, a case is “an instance of a class of events”, which further refers to a phenomenon of special scientific interest. In this thesis, the phenomenon of interest is the EU conditionality applied upon Bulgaria. In contrast to cross-case and quantitative studies, a case study can be regarded as a “small-n” study or as an “intensive study of a single unit or a small number of single units, for the purpose of understanding a larger class of similar units (a population of cases)” (Gerring, 2007, p. 37). Hence the introduction of specific laws or regulations in Bulgaria, or in any other country as a result of EU conditionality, can be seen as a single unit to be studied in order to place conditionality in a wider context. When conducting research with a narrow focus, the case study is more suitable than for instance statistical methods. In order to achieve the necessary richness and degree of variance in an outcome, what Gerring (2007, p. 49) refers to as depth of the analysis, a qualitative study provides in-depth understanding of a few numbers of cases.

George and Bennett (2005) identify several advantages of using a case study. First, it gives an opportunity to achieve a high level of conceptual validity, which in turn allows for “conceptual refinements with a higher level of validity over a smaller number of cases” (George & Bennett, 2005, p. 19). As this thesis involves concepts such as corruption, conditionality and legal transfers, these can more easily be identified and measured to represent the chosen theoretical framework.

³⁸ ‘Interviewee’ and ‘respondent’ will be used interchangeably in this thesis.

Another advantage of the case study is that it enables the researcher to examine causal mechanisms and to look at many possible intervening variables in order to “identify what conditions present in a case activate the causal mechanism” (George & Bennett, 2005, p. 21). As to the cases of this thesis, both historical and cultural variables, and possibly other intervening variables, may be applied to the causal mechanism. This would have been more complicated if a statistical study was employed, where all contextual factors but a few are left out. With a case study one can observe unpredicted factors of the causal mechanism, which in turn results in a more contingent generalization than with other methods (George & Bennett, 2005, p. 22).

4.1.1 Choice of cases

As noted in chapter 1, the geographical focus of the thesis is Bulgaria. In order to present the choice of cases as transparent as possible and to show what and why I did as I did (Bryman, 2004, p. 285), the reasons for focusing on Bulgaria need to be explained in more detail. A common critique of case studies is that they are prone to “selection bias” as the researcher is likely to select cases that suggest a particular outcome (George & Bennett, 2005, p. 23). Even though this weakens the representativeness of a study and the possibility to generalize, the researcher gives prominence to explanatory richness and sacrifices parsimony (ibid, p. 31).

There are a number of reasons for this narrow focus and why Bulgaria as the geographical focus of the thesis will offer interesting and illustrative cases. Referring to previous chapters, Bulgaria proves to be one of the EU member states with the worst scores on the CPI. Scholars emphasize an increase in corruption after Bulgaria’s accession³⁹. It is also one of the countries in the EU with the highest corruption risk (CSD, 2013, p. 1). These factors make Bulgaria particularly suitable for an examination of EU conditionality and corruption.

In chapter 3, two cases were chosen in order to investigate aspects of the theoretical framework. For the cases to be applicable to this thesis, they both had to be a result of EU conditionality, as defined in chapter 2. If the two laws were initiated solely on Bulgaria’s own initiative, they would not have come about as a result of EU conditionality. It was therefore important to do preliminary research both at EU level and Bulgarian national level to be sure that the laws had been adopted and/or amended due to external pressure from the EU. The cases were chosen due to their thematic relevance for the theories. The qualitative research

³⁹ See, for instance, Daniel Smilov and Rashko Dorosiev (2008a, p. 4); Florian Trauner (2009b).

interview, on the other hand, was applied as the methodological tool to collect data for the thesis. The method is discussed at greater length below.

To strengthen the thesis' transparency, it is crucial to provide insights of my stance, as the researcher, on the theme. As noted in the introductory chapters, the understanding of what corruption is and what causes corruption varies greatly around the world. Even though it is prevalent in any country, corruption is more widespread and has better conditions in some countries than in others. Even though economists in the 1970s argued that corruption enhanced economic growth⁴⁰, most scholars today find corruption harmful to society. Based on this, and on the information provided in the first part of the thesis, I have composed this thesis assuming that corruption in all its forms is negative for society, yet recognizing that some societies may be of a different opinion.

4.2 Data collection

As the overview of existing literature has shown, there is already a fair amount of studies concerning the level of corruption in post-communist countries and in relation to the EU. Some studies address Bulgaria's progress in the field of corruption in relation to its EU membership (Noutcheva & Bechev, 2008; Trauner, 2009b). Others focus on how anti-corruption reform has come about due to EU leverage (Iacob, 2012; Spendzharova & Vachudova, 2012).

Much of the scholarly work on the topic has an argumentative and descriptive approach. This thesis has gathered and analyzed new empirical data in order to contribute to the field in a new, original manner. A qualitative research structure enabled me to investigate my sources more closely. Thus, I may draw inferences from discussions with people who hold in-depth knowledge, rather than interpreting theory by means of secondary literature alone. As will be discussed by the end of this chapter, the criteria of reliability and validity of a qualitative study is often difficult to meet. I have therefore done my best to approximate these standards by presenting the data collection and the analysis as transparently as possible. One should have in mind that "the most important rule for all data collection is to report how the data were created and how [one] came to possess them"⁴¹ (King, Keohane, & Verba, 1994, p. 51).

⁴⁰ See, for instance, Samuel Huntington (1968).

⁴¹ Italics removed from the original quote.

4.2.1 Qualitative interviews

A qualitative interview focuses on the interviewee's point of view and his or her reflections. It also holds a somewhat clear direction of intention in order to respond to the interviewer's hypotheses. By contrast to more structured interview designs, I wish to obtain rich and detailed answers and therefore allow for flexibility during the actual interview, encouraging a free conversation (Bryman, 2004, p. 320). Scholars normally differentiate between semi-structured and unstructured qualitative interviews (Arksey & Knight, 1999; Bryman, 2004). I chose a combination of the two for this thesis. Both flexibility and a degree of structure were applied during the interviews.

Scholars and professionals often argue against the use of qualitative research methods. By extension, it is important to look to the purpose of the thesis. Some say that qualitative research interviews do not provide scientific results. Others state that the results only reflect the personality of the interviewers (Ryen, 2002, p. 131). Since this thesis aims to shed light on specific cases that have not been studied in-depth before – not to generalize over a bigger population – a flexible interview environment is more appropriate for this thesis.

Semi-structured interviews are usually reserved for researchers with a “fairly clear focus” of the investigation (Bryman, 2004, p. 323), as they seek to address specific issues already elaborated upon. The interviewer structures an interview guide with questions concerning specific topics that must be covered. What makes it semi-structured is that the questions do not necessarily have to be presented in the order outlined in the interview guide. I am free to ask additional follow-up questions and thus point to important underlying factors. Even so, more or less the same questions may be asked to all interviewees in a semi-structured interview, which enables me to control the structure of the interview to a certain degree and to draw comparisons from the answers. In unstructured interviews the interviewer is restricted to a limited number of topics and/or questions, as the purpose is to allow the interviewee a free conversation (Arksey & Knight, 1999, p. 8).

The focus of my interviews was that they had to assure that all issues were to be covered, thus a degree of structure was needed. Another concern was to let the interviewee speak undisturbed in order to avoid him/her being influenced by my questions. For the interview setting to be as flexible as possible, one part was conducted according to a semi-structured model, while a smaller part of the interview incorporated an unstructured approach for a freer

conversation. Barry (2002, p. 679) argues that “excellent interviewers are excellent conversationalists”, of which I aimed to master during the fieldwork.

4.2.2 Interviewees

When planning how to investigate the research questions of a thesis it is necessary to have in mind *what* the researcher is trying to investigate. Consequently, when arranging the interviews for this thesis, I had to seek information concerning (i) EU conditionality, and (ii) anti-corruption legislation in Bulgaria, particularly focusing on the two laws. I had to look to people with a comprehensive understanding of how anti-corruption measures behave in the Bulgarian society, as well as people holding information and knowledge about how the EU has applied conditionality and how Bulgaria has received it. I was aware that the well-informed respondents relevant for the thesis might be few in number and that they might also be difficult to access. To find and access potential respondents are common problems when making use of qualitative interviewing, since sensitive topics are often up for discussion. A qualitative interview setting also exposes the respondent more than e.g. a questionnaire sent by email. The availability of certain respondents places restrictions on the researcher and his/her sampling methods and forces the researcher to look to alternative ways of sampling.

Restrictions due to availability of respondents also applied to this thesis. An ideal method for choosing respondents would have been a purposive sampling method. This allows the researcher to select respondents in a strategic manner by seeking people of direct relevance for the study. The purpose of the study, along with the knowledge of the researcher, serves as a guide when choosing appropriate respondents (Tansey, 2007, p. 770). Due to restrictions of availability, as described above, the sampling method based on convenience and opportunities proved more beneficial for this thesis. This means that sampling was conducted on the premise of what and whom I was able to access, in other words what was more convenient (Ritchie, Lewis, & Elam, 2003, p. 81). Even though the respondents were selected due to their relevance to the thesis, the convenience method allowed me to sample by virtue of accessibility. The sampling was further extended by the ‘snowballing’ method, which is described in detail below.

During the process I was fortunate to benefit from a network of contacts both in Brussels and in Sofia, within which sampling was conducted. Due to geographical limitations, most of the respondents were contacted by email. This was not a problem other than being time-

consuming compared to contact by phone or to meet in person. Many of the interviewees were reached through a referral approach, meaning that I contacted experts who were familiar with the topic or knew others who might hold useful information and/or experiences. This provided the sampling with some kind of quality assurance, as I gained assistance and advice from professionals who were familiar with the topic. By extension, the ‘snowball’-method was applied. A ‘snowball sample’ enabled me to get in contact with other potential respondents after recommendations from initial interviewees who had already been interviewed (Bryman, 2004, p. 334). This sampling method allows for access to useful respondents that otherwise would have been unattainable, possibly due to unknown identity.

Interviewees were eventually chosen with scrutiny. Among them were EU policy officers, state officials, civil servants, independent and professional experts, think-tank representatives, NGO representatives, university professors, and diplomats. The selection of the interviewees focused on the EU-level (Brussels) and national level (Sofia).⁴² It was invaluable to meet with so many competent people. I interviewed EU-representatives and Bulgarian officials and experts *both* in Brussels and in Sofia. The role of EU conditionality towards anti-corruption measures in Bulgaria, as well as the laws included in the cases, was thus addressed from an EU-point of view *and* a Bulgarian-point of view. It would undoubtedly have been interesting to meet with high-profile politicians from the Bulgarian government as well. Yet, these kinds of elite-respondents proved difficult to access, possibly due to both time-constraints and professional restraints. The lists of interviewees are to be found in Appendix 1.⁴³

It is important to mention that the non-probability sampling applied for this thesis also has some drawbacks. The lack of standard procedures in choosing interviewees makes the thesis difficult to replicate. My subjective decisions on the basis of theory may allow for possible selection bias. Since respondents were sampled by virtue of the theoretical framework, the sample may not be representative for a bigger population. Yet, the selection of interviewees covered a broad range of people relevant for this thesis as snowballing was carried out among different groups of professionals. The cross-section of respondents at EU level and Bulgarian national level therefore strengthens the representativeness of the thesis. I also assessed the respondents’ background knowledge and experiences – including their previous occupation – as important prerequisites for generating a fruitful analysis.

⁴² The inclusion of the regional level in Bulgaria would have provided the study with more depth and an interesting angle. Yet, this proved to be too broad and extensive due to both time limitations and high costs of travelling, and furthermore beyond the scope of this thesis.

⁴³ One list consists of people who agreed to publish their names and occupation, while the other gives an overview of the respondents who wished to stay anonymous.

Most respondents were cooperative and open. However, it should be noted that their opinions should be treated as personal (expert) opinions based on personal knowledge and experience, not as official statements. Several respondents feared that they could not be entirely outspoken, particularly concerning their own institutions. In response to many of the respondents' requests, limited and sparse answers were therefore traded for long and comprehensive answers – and full or partial anonymity.

4.2.3 Consent of anonymity and voice recording

Corruption and anti-corruption measures as such might be a particularly sensitive topic to elaborate upon to a stranger. Interviewees might be hesitant to open up about the faults of the state of corruption in Bulgaria and, as argued by Arksey and Knight (1999, p. 106), a voice-recorder can be disturbing in this matter. It was therefore necessary to equally give all interviewees the opportunity not to be recorded, as well as an opportunity of anonymity.

A consent form was presented to the interviewee to be signed by both the interviewee and myself, conforming to the conditions on which the interview would be conducted and how the information would be used (Webster, Lewis, & Brown, 2014, p. 87). Only a few of the interviewees found it necessary to sign the agreement, yet consent of participation and wishes concerning anonymity and the use of a recorder were discussed orally at the beginning of all interviews. It was somewhat unexpected that many respondents disapproved the use of a voice-recorder. This also made the interview-environment slightly different, as I had to focus more on taking well-written notes and consequently less on the person in front of me. Those who did give consent for the interview to be recorded probably experienced a freer conversation with the interviewer.

The benefits from capturing all details of an interview with a voice recorder also opened up for another serious concern related to the interviewee's privacy protection and thus their willingness to express personal opinions. As noted above, the interviewees therefore had the option to be referred to anonymously, either fully or partially. Anonymity concerns "the researcher's responsibility to keep the identity of the participants private, if they so wish, so that they will not be personally identifiable in any outputs" (Scheyvens, Nowak, & Scheyvens, 2003, p. 146). The majority of the respondents wished for full anonymity. Partial anonymity counted for the possibility of being anonymous only regarding specific issues agreed upon during the interview. Some interviewees gave permission to list their name and

profession while at the same time they wished to be quoted anonymously on all matters. Either in written (by signing the consent form) or orally, I agreed to verify the intended use of direct quotes and interpretations with the interviewees.

For rational reasons I chose to publish one list in Appendix 1 with the identified respondents, in order to give the reader a better impression of from where the empirical data has been collected. As a researcher, I am aware that to conceal the identity of some of my respondents affects the inter-subjectivity of my work. The lack of inter-subjectivity is in fact one of Kvale's (1994) ten objections for using qualitative research interviews. Regardless, it is my responsibility and in my own interest to give priority to my respondents' preferences, even though it might affect the reliability and validity of the thesis (see section 4.3). In order to counterbalance this shortcoming, the interview process is described in detail below.

In accordance with Norwegian ethics and rules for conducting research, a project notification requirement was submitted to and approved by the Data Protection Official for Research, Norwegian Social Science Data Services (NSD). This was necessary due to the fact that the thesis had accumulated both names and contact details of the respondents.

4.2.4 The interview guide

Semi-structured interviews are usually conducted by means of an interview guide. An interview guide is useful for directing the interview towards the topics that one wishes to cover. By comparison, an interview schedule used in quantitative structural interviewing has a strict formulation of questions, of which an interview survey/questionnaire is applied by rule and all questions are asked in the same order to all respondents (Arksey & Knight, 1999, p. 8). What distinguishes an interview guide from a schedule is that the former is normally less specific and gives more room for flexibility (Bryman, 2004, p. 324). An interview guide is often less rigorous and scripted than an interview schedule and allows for the interviewer to depart from the guide and ask follow-up questions. The design of this thesis's interview guide was threefold.⁴⁴

1. In the first part of the interview I explained the intention and purpose of the thesis. The interviewee was informed on his/her rights in terms of using a recorder and the option of being anonymous (as mentioned above). Such formalities also consisted of signing the consent form, if wished for by the interviewee. For the interview to be as

⁴⁴ The interview guide is to be found in Appendix 2.

constructive and impartial as possible, it was important not to disclose the hypotheses and my personal reflection on the topic. A few introductory and general questions were asked in order to ease the interview setting (Leech, 2002, p. 665).

2. In the second part, questions directly related to the theory and hypotheses were asked. Due to the fact that it was difficult to foresee the time frame of the interview it was important to cover these topics in an early stage of the interview. Being open-ended, the questions intended to encourage a full answer from the respondent and to allow him/her to elaborate on and discuss the topic. This often required follow-up questions in order to make sure that the relevant topics were covered.
3. The third and last part of the interview allowed for a more relaxed communication, where some concluding questions were asked. The interviewee was allowed to elaborate upon other topics he/she regarded as useful for the thesis. The interviewee was free to share opinions about the interview itself, or advice concerning literature or contact details of other potential respondents.

4.2.5 Conducting the interviews and managing the data collection

I conducted a total number of 26 interviews in Brussels (11th of March to 14th of March) and in Sofia (16th of March to 1st of April).⁴⁵ To achieve an orderly progress of the data collection, I chose to focus on the interviewees in Brussels first. In this way the respondents in Sofia could comment on the views expressed during these interviews, and I would also have the time and possibility to address the respondents in Brussels (by email or phone) with new information if needed. The length of each interview varied between 40 and 110 minutes.⁴⁶ Due to limitations of time and availability, one interview was finalized by email. Despite a different interview environment compared to meeting in person, I evaluated the situation and decided to apply the data since it was useful to the analysis.

Referring to the interview guide in Appendix 2, most of the interviews consisted of a balanced amount of general and specific questions. It was my intention to ask quite general questions, allowing the respondent to freely elaborate on the different topics. Even so, and particularly with regards to the chosen cases, specific questions were presented in order to cover a broad aspect of the thesis. All in all, it appeared that respondents more easily answered questions

⁴⁵ A total of 9 interviews were carried out on 'EU-level' (Brussels) and the remaining 15 interviews were conducted on national level (Sofia), cf. appendix 1.

⁴⁶ The average length was approximately 80 minutes.

regarding internal circumstances, of which I think was due to the fact that the core of the problem was perceived by all respondents to be found *in* Bulgaria.

The recorded interviews added up to a total of eight hours. Bryman (2004, p. 331) suggests allowing no less than five to six hours of transcription for every hour of recorded speech. However, one should have in mind that the researcher's abilities of transcribing, as well as his/her way of doing it, may result in a more efficient and less time-consuming assignment. In order to ease the workload and make the process of analyzing more efficient, I chose to only transcribe the answers I regarded as relevant for the analysis. The answers were arranged into categories of the main themes of the thesis, as well as more specific information about the cases. I started transcribing already during the fieldwork, as this gave an opportunity for ongoing analysis if interesting themes emerged (Bryman, 2004, p. 332). It also lessened the amount of work when all the interviews were completed.

The notes from the unrecorded interviews were transcribed in the same manner. It is important to note, however, that the transcribed data from the unrecorded interviews were less detailed than the recorded ones. I was unable to make a complete verbatim note of all that was said during the unrecorded interviews. However, parts of the interviews were given specific focus when relevant to the thesis. The transcriptions were therefore as detailed as possible. Quotations from the unrecorded interviews are mainly presented in the form of summaries, if no direct quote was written down.

After processing and analyzing the data, it became apparent that many respondents had similar opinions on the themes. Even though this will contribute to a strengthened evaluation of the hypotheses, it also appears as a methodological issue. A danger of the snowball method, in particular, is that the chosen respondents often belong to the same network as the initial respondent, and thus hold the same characteristics, attitudes and information (Tansey, 2007, p. 770). As justified above, this was avoided as best as possible by selecting respondents within a broad range of professions.

Even though it was my responsibility to guide the interviews in a wanted direction, the interviewees were urged to give detailed answers to all the questions. This is normal procedure for qualitative research interviews, but might generate amounts of less fruitful information for the thesis. The findings were therefore categorized when relevant to the theme and the working hypotheses, carefully discussed and, when needed, analyzed in relation to

relevant secondary literature. For example, an interviewee's answer about the influence of the EU in Bulgaria after its accession would, when appropriate, be abridged to encapsulate the substance of the statement. The data was analyzed as to address the different aspects predicted by the hypotheses. All this was done manually and without any software, both due to time limitations and my own wish to process the material without technical devices. The findings are systematically addressed in chapter 5.

For the purpose of a thorough and differentiated analysis, I regarded it feasible to distinguish between external (Brussels/EU) and local (Bulgaria) viewpoints to the degree it was possible. As noted above, the majority of the respondents wished to be cited anonymously, hence to conceal their identity was crucial. Quotes from interviews with respondents working for or directly related to the EU will be marked 'EU', while interviews with respondents conducted in Bulgaria will be marked 'B'. Respondents will be referred to with a random number that cannot be traced back to the order in the lists of respondents. Thus, e.g. 'Interviewee B-5' or 'Interviewee EU-2' operates as the point of reference.⁴⁷

4.3 Validity and reliability

The criterion of *reliability* refers to "the degree to which a study can be replicated", something that is often difficult for qualitative researchers to meet (Bryman, 2004, p. 273). One of the main arguments of critics is that it is difficult to "freeze" a social setting, meaning that the circumstances in which the research is performed are unique and cannot be copied in the future. Replication is also difficult due to the protection of the interviewees that contributed in the thesis, which in turn affect the way empirical data is stored and used.

By making use of semi-structured interviews, the loose structures both in sampling, conducting the interviews and analyzing the data, weakens a study's replicability. The limited reliability of the thesis comes from the flexible interview environment of the semi-structured interviews. Despite having an interview guide, it will be difficult to account for all aspects of such an environment. The follow-up questions that are asked and how the findings are interpreted will more be difficult for another researcher to copy. To ensure the reliability of this thesis as best as possible, both recording and transcription of the interviews were

⁴⁷ I chose to refer to the respondents as neutral as possible, thus referring to 'interviewee' instead of e.g. 'anonymous informant', which might be perceived inappropriate.

conducted by myself and thus ensured the consistency of the measurements made. A list of interviewees was also publicized (Appendix 1).

The matter of *validity* is normally evaluated in terms of *external* and *internal* validity. The latter is defined in simple terms as a “good match between researcher’s observations and the theoretical ideas they develop” (Bryman, 2004, p. 273). By offering insight to causal mechanisms, internal validity is one of the strengths of a case study (Gerring, 2007, p. 43), by which it allows for “conceptual refinements with a higher level of validity over a smaller number of cases” (George & Bennett, 2005, p. 19). One can strengthen the internal validity of a study by employing a method of triangulation, of which was also done for this thesis. Triangulation here entails using more than one source of data and has been achieved by using alternative sources, such as official EU documents, reports from the media, as well as other secondary literature relevant for the analysis. As regards the conducted interviews, for quotes not to be distorted during transcription, citations were presented to the informants before being used. This refers to ‘respondent validation’ and ensures “a confirmation that the researcher’s findings and impressions are congruent with the views of those on whom the research was conducted” (Bryman, 2004, p. 274). It was an advantage that the interviews were conducted and the thesis was written in English, as it reduces the possibilities of misinterpretation of quotes and wordings while transcribing. Triangulation of data and respondent validation allow for inferences of a higher quality and strengthens the credibility of the findings (ibid, p. 275).

A challenging aspect of the case study is, however, to achieve external validity as it implies the generalization of a broader population and across social settings (Bryman, 2004, p. 273; Gerring, 2007, p. 43). In a qualitative study and when conducting interviews with a small number of respondents, it is nearly impossible for a single case or small-n study to be representative for all other cases. The OSI (2002b, p. 45) also emphasizes that generalization is particularly challenging when studying corruption in post-communist countries. Due to intricate cross-border variations of the concept of corruption, along with cultural and historical differences in particular among CEECs, the chance of generalization is limited and there is a need for “solutions specific to individual countries” (ibid, p. 45). As a consequence, this thesis trades generalization in return for an in-depth focus and explanatory richness. The findings and conclusions of this thesis are therefore not necessarily applicable to other CEECs, but may serve as inspiring grounds for future studies and hypotheses.

5 Findings and Analysis

This chapter reviews and discusses the collected empirical data. The data, together with relevant secondary literature, is seen in the light of the theoretical framework and hypotheses as presented in chapter 2. It has already been emphasized in chapter 3 that most of Bulgaria's anti-corruption measures can be seen in conjunction with the country's EU membership, both before and after accession. The recurring tendency, however, and what has been highlighted throughout the thesis, is that anti-corruption measures have failed to work their actual cause.

In order to pinpoint reasons for why anti-corruption measures seems to fail in Bulgaria, this chapter seeks to investigate to what extent EU conditionality has been credible as to influence Bulgaria in its fight against corruption. This accounts for the first hypothesis, which assumes that *“the lack of credible conditionality results in inadequate implementation of anti-corruption measures in Bulgaria”* (see section 2.1). As further argued in section 2.2, the impact of domestic factors is presumably another important aspect to take into account, thus the second hypothesis assumes that *“EU-driven anti-corruption measures are not sufficiently adjusted to the Bulgarian local context and therefore fail”*. Throughout the chapter, the parallel between the two theoretical approaches is discussed and underlined, as it appeared throughout the fieldwork that they are somewhat interlinked.

5.1 Credibility of conditionality

As will be seen in the following, Bulgaria's commitment to meet EU requirements has been dependent on to what degree it has been beneficial for the country to do so. The core of the hypothesis on credibility is the assumption that if rewards and/or sanctions are sufficiently credible to Bulgaria, it will comply.

As seen throughout the first part of the thesis, Bulgaria has been inconsistent in its compliance of anti-corruption measures and few improvements have occurred. The problem one is facing is that laws are in fact in place, while there are few concrete results that can prove for a change in the status quo supported by a true commitment by Bulgaria to fight corruption. One can thus argue that to actually fight corruption, legal frameworks need sincere commitment on the part of all actors of the society.

Bulgaria has, since the negotiation period for joining the EU, given priority to improve and amend its legislation. It did so with good reason, since compliance with the EU *acquis* was a prerequisite for joining the Union. EU officials, politicians and scholars alike have been questioning a degree of focus that is still only on legislative amendments, rather than on implementation through for instance efficient institutions. EU officials that I met in Brussels and Sofia, whom all wished to be quoted anonymously, highlighted the disparity between formal compliance and actual compliance, in which the latter is nearly absent in Bulgaria. One of them uttered: “I think Bulgaria has been, let’s say, more successful in *not* complying with our recommendations and requirements, so you could argue that in the case of Bulgaria, our impact has been far less [than elsewhere]” (Interviewee EU-6).

It is important to single out to what degree it has been beneficial for Bulgaria to comply with EU’s requirements for an intensified fight against corruption. Hence it is logical to first assess the incentives in place, what should have attracted Bulgarian commitment. The biggest and most important carrot – EU membership – was achieved in 2007. However, and as argued in chapter 2, the EU extended its conditionality to Bulgaria for a number of reasons, the problem of corruption being one of them.

Several respondents in Brussels emphasized how Bulgaria, on the eve of its accession, marked a new period with regards to its commitment to the EU: “They (Bulgaria) were finally in and could relax, and so they did” was the reasoning of an EU official in Brussels (Interviewee EU-2). The satisfaction of finally joining the EU clearly had an impact on the level of the country’s willingness to meet with extended EU requirements. The CVM appeared as not being a good enough incentive for the government to comply. Another EU official emphasized how the country’s membership clearly marked a crossroad of what had previously been eagerness from the Bulgarian government to comply with EU requirements: “We (the European Commission) approached a government that saw us as interfering with national affairs” (Informant EU-5). The first period of Bulgaria’s membership saw little signs of commitment.

Being part of EU’s incentive-toolbox, the Cooperation- and Verification Mechanism (CVM) that was launched on the eve of Bulgaria’s accession in 2007 was designed as “an element of the EU’s evolving conditionality strategy” (Primatarova, 2011, p. 26). In other words, the CVM served as a basis of EU’s incentive structure and thus as a point of reference for the member states it applied to (Bulgaria and Romania).

Once admitted into the EU, Bulgaria faced area-specific safeguard clauses (see section 2.1.2) that allowed the EU to “remedy difficulties encountered as a result of accession” (European Commission, 2005b). Despite a clear linkage to the CVM, the clauses remained unused until their expiry in January 2010. In other words, it appeared to be a strong incentive that could encourage commitment for reform. Yet, and despite irregularities both in the area of corruption and organized crime, none of the respondents could give a rational explanation as to why the clauses were not invoked. An EU official admitted that “it was not really foreseen that the clauses would be utilized [...] it appeared as a serious threat on paper, though” (Interviewee EU-9). In other words, the safeguard clauses as a potential sanctioning method by the EU were rightly regarded as “empty threats”.

Having in mind the above-mentioned first period of Bulgaria’s membership, it is reasonable to argue that EU post-accession conditionality had some “starting difficulties”. This tendency, however, changed in 2008. As noted in chapter 2, and further argued by Levitz and Pop-Eleches (2010, p. 470), there was a turning point in 2008 when the EU decided to freeze a huge amount of its financial assistance to Bulgaria. By applying “negative incentives in order to induce change” (Vachudova & Spendzharova, 2012, p. 7), the EU responded to the uncertainty that had arisen about the credibility of its conditionality. The EU’s threat of punishing irregularities in the new member states (Bulgaria in this case) was again strengthened with credibility. It further showed that the EU was capable of introducing sanctioning measures, and thus the possibility to withhold or withdraw financial support became a strong incentive for Bulgaria to comply.

Even though not officially, the suspension in 2008 was linked to the CVM when two reports were published simultaneously (see p. 17). By doing this, the CVM as an instrument also regained its credibility. A new government⁴⁸ came to power following the early-2009 elections and this resulted in an intensification of Bulgarian commitment towards the EU. An EU official described the reappearance of the intensive political will where “the new prime minister did everything in his power to show us (Brussels) their commitment” (Interviewee EU-2). This was further emphasized by an EU diplomat in Sofia who stated: “I think Bulgaria had a strong feeling about its reputation, it wanted to live up to the standards of an EU member state” (Interviewee B-2). As discussed at greater length below, reputation at home also appeared to be another important factor for this calculation.

⁴⁸ Boyko Borisov won the election (with stark anti-corruption campaigning) with his pro-European party GERB (Citizens for European Development).

Equally important as its reputation as a young member state was Bulgaria's accession to the passport-free zone of Schengen. It had long been a yearning for Bulgarian politicians and citizens alike, and was thus one of the strongest incentives for complying with EU requirements. EU officials I met in Brussels confirmed that the period from 2008 until 2010/2011 showed a very positive development in Bulgaria's commitment towards the EU. However, there was an imbalance between the number of anti-corruption measures being adopted and those that actually brought about change.

To briefly summarize the pages above, it would have been beneficial for Bulgaria to comply with EU requirements and enhance its anti-corruption measures for three reasons: (i) positive appraisal in the CVM reports and thus improved reputation both in Brussels, among other member states and at the national level, (ii) access Schengen so that Bulgarians could live and travel in a border-less Europe, and (iii) maintain financial support from the EU.

5.1.1 The incentive game

A reasonable explanation to why anti-corruption measures in Bulgaria are still ineffective would be that the incentives mentioned above have been somewhat unattractive for Bulgaria. Chapter 2.2.1 provides a theoretical foundation for why Bulgaria should meet EU requirements, due to different aspects that make the above-mentioned conditions more credible. The situation in Bulgaria seems to be dependent on what one may call an *incentive game* and, as discussed in the following, it accumulates contradictions to the theoretical reasoning.

Recent history shows that other than the suspension of the funds in 2008 (disregarding numerous negative CVM-reports), there has not been any action with a serious sanctioning effect carried out by the EU. Accordingly, all respondents in Brussels confirmed that Article 7 of the Treaty of European Union (see p. 16) has remained a nuclear option. The President of the European Commission, José Barroso, has described Article 7 as “the last resort to resolve a crisis and ensure compliance with European Union value” (European Commission, 2014d). Hence, as an incentive, this has not in any way been credible with regards to Bulgaria's compliance of anti-corruption measures.

The intensity of EU pressure, direct or indirect, has varied throughout the years. Szarek-Mason (2010, p. 233) critically questions why threats of sanctions, such as freezing funds like

in 2008, are not used more often as it is apparently an effective tool for securing continuity of anti-corruption measures. A former EU official clearly stated that tougher and more frequent sanctioning, by “using a hard hand on Bulgaria’s misbehavior”, would have been the only way to force them to comply (Interviewee EU-2). By extension, another EU official confirmed: “We (European Commission) have not had enough political courage to pinpoint the seriousness of the situation” (Interviewee EU-5).⁴⁹ By extension, the EU official underlined the inevitable issue of lack of clear *acquis* for fighting corruption: “It is true that in the broader area of rule of law, fight against corruption, justice reform, and to a certain extent fight against organized crime, we lack tools” (Interviewee EU-6).

One can argue that the Schengen-accession has been a positive incentive provided by the EU. Bulgaria has strived for this since it joined the EU in 2007 and the Borisov-government (2009-2013) worked particularly hard to have Bulgaria become a part of the Schengen-zone. In fact, Bulgaria has met all official criteria (safeguarding the EU’s external borders among others), yet the country is still left out of the passport-free zone. Accordingly, it can be argued that the EU has played its “Schengen-card” erroneously and thus misconceived its potential lever. Even though the European Commission has never officially linked Schengen-accession to the CVM, it has been quite obvious that other member states, “especially the bigger ones in the north-west” (Interviewee EU-5), has demanded consistent compliance with CVM-requirements as a prerequisite to join Schengen (see section 2.1.2). An EU official elaborated upon the reasons as to why Bulgaria has not been allowed to join Schengen: “We (the Commission) understand that the [other] member states are worried. The Schengen instrument is a matter of trust, and if there is a lack of trust – which is something *very* serious – it can be politically damaging” (Interviewee EU-9).

The college of the European Commission⁵⁰ has discussed whether or not accession to Schengen should have a direct link to the CVM, in order to strengthen the leverage of both incentives. Despite the fact that the idea has been abandoned (EurActiv, 2009), the conduct of the other EU member states has created a “hidden” link between performance under the CVM and the decision to accept Bulgaria into Schengen. This linkage has had two possible outcomes: (i) the prospect of joining the Schengen-area would remain a strong and credible positive incentive for Bulgaria to improve its anti-corruption efforts as put forward in the

⁴⁹ An exhaustive discussion on EU’s *own* incentives to put pressure on a member state is beyond the scope of this thesis, yet it accounts for an interesting part of the incentive structure.

⁵⁰ The college of the European Commissions refers to the Commissioners from all the 28 member states.

CVM-reports, or (ii) Schengen-membership would lose its credibility and thus the EU would have lost one of its strongest post-accession incentives for Bulgaria.

Both outcomes mentioned above would indirectly have affected the strength of the CVM, as it is both an incentive and an instrument to influence change. As will be discussed at greater length below, Bulgaria's reputation within the EU has been dependent on the monitoring through the CVM. However, for the last few years, scholars have questioned the credibility of the CVM:⁵¹

Bulgaria has been under the supervision of the European Commission for more than a decade now. The first regular report of the EU from 1998 is an interesting read, with a message on an optimistic note. [...] Today, the message of the reports under the [CVM] is the same, but without the optimistic tone. The latter has been replaced by an undisguised disappointment and boredom, which are diplomatically shown in expressions such as "loss of direction".

(Smilov, 2012)⁵²

A Bulgarian expert supported this rationale and described the CVM as follows: "[It] has long been regarded as a panacea for all that is wrong in Bulgaria. While in fact it is only monitoring everything that is not working" (Kolarov, 2014). Despite these statements, Bulgaria's post-accession development shows another situation. The monitoring through the CVM has in fact been a crucial part of the EU's incentive structure. As noted in section 2.2.1, scholars have emphasized the potential costs of negative reputation due to non-compliance with EU requirements. This should be viewed as an indirect sanction. It is reasonable *not* to believe that a country's reputation in the "EU club" is inferior for any member state, in particular Bulgaria. Low costs of non-compliance, which in turn can be a result of lack of credibility, can explain why conditionality as such produces fewer results than aspired for (Anastasakis & Bechev, 2003). Due to the fact that any action taken by Bulgaria is evaluated and reported through the CVM, there have been costs of not complying with EU requirements. It has brought about results both with the suspension of the EU-funds in 2008 and the delay of Schengen-accession.

⁵¹ For a thorough assessment of the CVM, its limitation and its potential, see notably Georgi Dimitrov et al. (forthcoming), "The Cooperation and Verification Mechanism: Shared Political Irresponsibility between the European Commission and the Bulgarian Government".

⁵² The document has no page numbers.

5.1.2 Laws on paper but not in practice

Despite the incentive structure described above, and as highlighted throughout the first part of the thesis, Bulgaria has met many of EU's requirements. The tendency has been that legislation, anti-corruption measures included, is harmonized with European standards and "look perfect on paper" (Interviewee EU-5). To some degree this proves that EU conditions, as those listed above, have in fact been credible, although with one serious complication that an EU official noted: "On paper everything is right, and it is very difficult to say that here and here you are doing something wrong [...] the problem is that the implementation of all these measures is very difficult" (Interviewee EU-5). Another EU official emphasized that the option of starting an infringement procedure (see p. 16) is irrational: "The problem is that we cannot even initiate an infringement procedure, because all the written laws are in place and they seem perfect. [...] There is no way for us to "catch" them" (Interviewee EU-6).

As noted above, rule adoption is an important aspect of the discussion, and several respondents both in Brussels and Sofia emphasized that informal compliance is more or less absent in Bulgaria. Dimitrova and Steunenberg (2011) describe informal compliance as when a society complies with written rules and use them in practice. In other words, informal compliance – and thus behavioral change – in the area of anti-corruption, often appears as the root problem in Bulgaria. The logic behind this can be seen in the reasoning of an EU diplomat in Sofia who said that "the government has become like a legislative factory". A Bulgarian state official confirmed this claim: "We got into that habit when we were preparing for the EU, because the EU required us to get in line with all those (acquis) chapters" (Interviewee EU-1).

The statements above suggest that the incentive structure of the EU might not have been at its strongest, yet Bulgaria has, to a greater extent than any EU member state, adopted and amended legislation to fit EU standards. Bulgaria was the first member state with a transposition deficit of 0% in 2008 (Trauner, 2009b, p. 9). Even though this accounted for laws and regulations under the acquis, the same tendency is seen with regard to measures aimed at fighting corruption, where most of the specific requirements communicated in the CVM have been met in a formal manner. A journalist in Sofia explained the same rationale: "It is clear that [the Bulgarian authorities] adopt the necessary laws and regulations just to get Brussels off its back" (Bossev, 2014). Legislation being 'perfect on paper' corresponds to

Dimitrova's (2010) assumption that actors tend to ignore new rules while established unwritten rules remain valid, and thus EU rules in a member state become "empty shells".

'Symbolic compliance', as noted in section 2.2.1, also emerged as an issue. It suggests that the EU's over-emphasis on Bulgaria's adoption of laws and regulations shifts the focus away from the factors that actually facilitate change – proper implementation and enforcement. Accordingly it allows Bulgaria to comply with EU requirements only symbolically. This over-emphasis on legislative amendments corresponds to criticism of the CVM that several respondents uttered: "We see no consistency in the CVM reports. Once a requirement is met, although implementation is lacking, the next reports will shift focus to another area that the EU *think* is important for fighting corruption here. Whether the previous requirement was successful is not their concern anymore" (Interviewee B-5). A Bulgarian state official in Brussels denounced the vague benchmarks in the CVM, pointing to a vicious circle of non-compliance: "While in one report the EU requires us to amend a law, the next report refers to missing results and eventually follows up with new requirements to amend the same law" (Interviewee EU-3).

Several of the respondents recalled what Mark Gray, spokesperson of the European Commission, once said about the frequency of the CVM reports: "Short-term reports facilitate short-term efforts" (Primatarova, 2014; Bossev, 2014). Transparency International's EU policy officer in Brussels followed up on this: "The CVM in particular has caused rushed procedures that allowed Bulgaria to fake reforms, and where capacity building came in the second line" (Palstra, 2014).

Despite the sanctions of EU funds in 2008, the EU has, according to an EU official, lacked both the political courage and legal basis to threaten Bulgaria with further sanctions (Interview EU-6). This may explain Bulgaria's halfhearted compliance with EU requirements – as may the apparently low costs of non-compliance. On the other hand, there must also be a reason as to why compliance occurs in the first place. When asked what kind of effect the CVM has today, the same EU official said that "for the time being the only thing we can do is kind of expose [Bulgaria's non-compliance], so that there is some political *blamage*⁵³ for the country, which certainly also affect the economic interest" (Interviewee EU-6). Hence, the CVM has evolved into a tool of 'naming and shaming', which – as will be seen below – lends

⁵³ French word for 'disgrace' or 'loss of reputation or respect'.

it credibility in that it “exposes” non-compliance in Bulgaria and thus affects the country’s reputation both domestically and within the EU.

5.1.3 The effect of naming and shaming

Having in mind the discussion above, one can argue that the speed of reform in Bulgaria is reflected by potential reputational costs offered by the CVM. EU officials that I met with emphasized the Bulgarian authorities’ eagerness – *after* mid-2008, to rapidly meet EU requirements. This, in turn, explains two motives: (i) obtaining positive CVM-reporting important for Bulgaria’s reputation in the EU, and (ii) the intention to demonstrate ambition and commitment at the national level, and thus maintain – or acquire – domestic support. Again, the credibility of the CVM is apparent, since it could be argued that positive monitoring reports are prerequisites for gaining good reputation.⁵⁴ In other words, complying with EU requirements accounts for a credible incentive.

Bulgaria’s reputation appeared as a credible condition for compliance with EU conditionality, as was confirmed by an EU official: “It is politically damaging when Brussels talk about ‘you two’ (Bulgaria and Romania) as sort of the poor students who are not doing their job, it is not pleasant and I think that politically there is still a linkage and still an influence” (Interviewee EU-3). This rationale also results in some serious issues due to formal compliance by Bulgaria. As one of the respondents emphasized, “[the Bulgarian government] have the attitude that ‘Brussels wants this, so we do as they say’” (Kolarov, 2014).

As noted in chapter 3, several anti-corruption bodies that have been established during the past few years, show an interesting tendency in terms of Bulgaria’s commitment to do away with corruption. In the aftermath of the European Commission’s first Anti-Corruption Report of January 2014, Bulgaria’s current Prime Minister, Plamen Oresharski, responded to the critical chapter on Bulgaria by establishing a special unit tasked with coordinating anti-corruption activities (Novinite, 2014b).⁵⁵ Among the different factors that the European Commission highlighted in the report was the lack of concrete results by the ‘Center for Prevention and Countering Corruption and Organized Crime’ (BORKOR) under the Council of Ministers (European Commission, 2014a, p. 8). This unit was established by former Prime

⁵⁴ I have familiarized with theories on reputation, as this appeared as an important aspect of the analysis. Yet, due to the initial theoretical focus, I have chosen not to apply theories on reputation in this thesis. For relevant theories on reputation, see notably J. Mercer (1996) “Reputation and International Politics”; P. van Ham (2001) “The Rise of the Brand State”; and G. Downs & M. Jones (2002) “Reputation, Compliance and International Law”.

⁵⁵ The unit is not yet operative.

Minister Boyko Borisov in 2011, in response to EU-monitoring, which at that time was critical of the country's lack of improvements in fighting high-level corruption (Novinite, 2011).

In simple terms, the cases above show how political 'damage' of poor compliance accounts for a somewhat disturbing approach on the part of the Bulgarian governments. In response to negative monitoring, new bodies are established and laws are amended or adopted, all of which eventually prove dysfunctional, failing to bring about results. An academic in Sofia explained this matter as follows:

The recommendations and requirements (in the CVM) are based on a classical understanding that targets tiny little measures – the Bulgarian government can perfectly fulfill these measures because it does not touch the crucial core of the problem. They (in the Bulgarian government) are very happy, they fulfill a bad recommendation and they are happy.

(Dimitrov, 2014)

By extension, and with regard to a positive appraisal in the CVM-reports, an EU official pointed to an interesting case: "They (the Bulgarian government) often ask 'How many ministers do we have to put in jail' in order to get positive reports" (Interviewee EU-5). This view confirms Smilov and Dorosiev's (2008b, p. 20) argument, referred to in chapter 3, concerning the so-called "showcase sentences". Governments try to convince the EU about their seriousness against corruption. However, their efforts are only half-hearted. Another respondent in Sofia followed up on this allegation, assuming that laws and regulations look good on paper, while other interests, hidden from the public and external actors, are prioritized: "The Bulgarian bureaucracy is good in imitating law reforms" (Bossev, 2014).

One may assume that the above-mentioned endeavors are motivated by credible incentives from the EU, such as reputation from positive CVM-reports. It is thus reasonable to address Bulgaria's Schengen-accession, as this has been one of the strongest positive incentives for Bulgaria to comply with EU requirements. By extension, and due to the fact the other member states have demanded positive reporting through the CVM, Bulgaria's good reputation through the monitoring mechanism, as a result of compliance towards the EU, has made it credible for Bulgaria to meet EU requirements. As implied above, Schengen as an incentive has now become a moving target and its strength and credibility are dramatically weakened. Furthermore, positive appraisal and good reputation through the CVM reports have fallen through, resulting in less credible conditions for complying with the EU requirements.

While external reputation has been an important condition and credible incentive for Bulgaria to meet EU requirements, many respondents emphasized that the political *domestic* incentive has also been crucial. As noted in chapter 3, Smilov and Dorosiev (2008b) criticize the emergence of an anti-corruption discourse in Bulgarian politics, which calls for increased conformity of corruption preventive means in order to gain domestic political leverage. The reporting through the CVM has thus provided an incentive that accounts for domestic support, primarily with regards to political parties' elections and popularity (Vachudova & Spendzharova, 2012, p. 1). A respondent emphasized that "to a certain degree it has been more important to gain votes at home, rather than to strive for the actual implementation of the anti-corruption measures" (Interviewee B-5). By extension, one can argue that the incentive itself, and what the governments stand to gain from it, has created an imbalance of focus between the incentive and the actual implementation:

Constant adjustment and re-adjustment of national legal frameworks mean that Europeanization happens in syncope and does not consolidate preventing long-lasting effects of socialization. [...] Bulgarian politicians are motivated more by domestic politics, losing track of EU commitments unless relevant for scoring points at home.

(Dimitrov, Haralampiev, Stoychev, & Toneva-Metodieva, forthcoming, p. 87).

This shows a grave trend of political populism as an incentive for Bulgaria's commitment to EU requirements. An EU diplomat uttered concern about governments that use its position not only to gain votes, but also to discredit previous governments or oppositions, thus increasing its popularity among the population (Interviewee B-2). Referring to Dimitrov's statement above on 'bad EU recommendations' that the Bulgarian government easily fulfills, the commitment reflected in the CVM-reports accounts for internal incentives being more credible than external incentives.

An EU-official highlighted the problem of "window dressing" in Bulgaria, in which deceptions of the status quo are presented not only to the EU but also to the Bulgarian citizens (Interviewee EU-9). The above rationale confirms the reasoning of TI Bulgaria, which emphasizes how the importance of reputation at home creates potential coordinating problems that further result in dysfunctional anti-corruption measures:

Corruption is a favorite topic for the political opposition: in order to counter opposition criticism governments too often make institutional anticorruption reforms, which may account

for a certain proliferation of institutions with overlapping jurisdiction, the coordination among which can become a problem.

(Transparency International Bulgaria, 2011, p. 5)

By extension to the discussion above, the incentive of joining Schengen appear to have vanished at the domestic level as well. Several respondents emphasized that one of the main goals of the Bulgarian government (especially the Borisov-government) has been to achieve voters' support. However, the benefits of joining Schengen have slowly been outweighed by the costs of fighting to join it. An EU diplomat in Sofia noted:

The Schengen criteria were met, but [Bulgarian politicians] didn't have the political trust. And after a while the incentive fell away... It was for political reasons; that the political class could not keep saying that they wanted to join Schengen, and then fail. So they stopped saying they wanted to join Schengen, and automatically this incentive was gone.

(Interviewee B-2)

Kartal (forthcoming, p. 13) notes that "due to high public support for the EU, [...] opposition parties, *regardless of their true intentions*, likely seize the opportunity to maximize their vote share by following EU-induced policy preferences". Kartal describes a pre-accession situation, but circumstances in Bulgaria support this trend also after accession. There has been continuous high support for the EU among Bulgarians, in fact the highest of all member states. Figures from the latest Eurobarometer (2013a, p. 97) show that in Bulgaria, 54% of the citizens trust the European Union (compared to the EU member state average at 31%). Compared to trust in national institutions, such as the Parliament and the government, the ratios are much lower, at 14% and 20% respectively (Eurobarometer, 2013b, p. 50).⁵⁶

An example may be drawn from what was highlighted in chapter 3, that most of the anti-corruption bodies that are established are dysfunctional. An expert in Sofia followed up this claim by saying: "All these new institutions (commissions and bodies) that are invented every year, hide the real problem" (Interviewee B-3). The real problem appeared to be underlying factors that prevent anti-corruption measures to be successful, as will be discussed in the section below. The logic of this statement is accounted for in Heilbrunn's (2004, p. 1) reasoning with regards to the establishment of anti-corruption commissions, of which is

⁵⁶ It is worth noting that specialized literature on public opinion argues that in countries with poor government, citizens tend to look to the EU as a "lifebuoy" (Harteveld, van der Meer, & De Vries, 2013). In correspondence with low trust in national governments (see Eurobarometer, 2013a; 2013b), one can assume that Bulgarians faithfully trust EU institution simply due to the fact that there is no trust whatsoever in the Bulgarian government.

especially problematic when only representing “an effort to satisfy international donors and placate domestic calls for reform, if only for a short while [...]”.

As regards the actual results of the anti-corruption measures by Bulgaria, it appears like reputational costs are not severe enough for Bulgaria to wholeheartedly comply with EU requirements, implement new measures and strive for concrete results. Even though its reputation in the EU and on national level matters for Bulgaria, the next sections will argue that other factors diminish the effect of the credible conditions, and thus anti-corruption measures in particular are not implemented as to have an effect on the ground.

5.2 Legal transfers

“Outsiders can never fundamentally root out corruption for others. Rather, people and societies must create their own integrity and incentive system for [...] reducing corruption”.

(Rekhviashvili in Kotchegura, 2004, p. 148).

Rekhviashvili’s statement underlines the nature of legal transfer theories and gives importance to internal factors, be it socio-cultural or historical, which in Bulgaria appeared to be the stumbling blocks for external actors such as the EU to encourage anti-corruption reform. The hypothesis allows for an analysis of multiple factors. During fieldwork in Brussels and Sofia it became apparent that some factors stood out as particularly interesting. Socio-economic and cultural factors appeared as strong impediments to anti-corruption measures in Bulgaria.

Throughout the process of interviewing and analyzing the collected data, it also became clear that both of the theoretical approaches chosen for this thesis had to be considered together. The degree of support for the first hypothesis was linked to the outcome of the second hypothesis. If conditions set by the EU were credible enough to facilitate change, one could argue that domestic conditions were, to a certain extent, receptive to the change. On the other hand, if conditions were *perceived* less credible and thus failed their cause, domestic conditions should be investigated as being too strong for anti-corruption measures to take root. Domestic factors may also undermine conditionality when it is strong.

The scholar Kjell Engelbrekt (2014) argues that EU-processes of modeling post-communist countries like Bulgaria correspond to the uploading of software to a computer.⁵⁷ A program is uploaded with all its functions only by “double-clicking”. The pitfall is that the software will only function with a proper hardware. Engelbrekt criticizes the EU for not regarding the fact that not all member states have the proper hardware and thus the software (anti-corruption measure) is uploaded to a flawed hardware (a geographically and culturally different context).

As Engelbrekt’s metaphor assumes, and as underlined in section 2.2.2, credible conditionality should preferably be accompanied by supportive domestic conditions. This particularly accounts for the laws and regulations regarding anti-corruption that have been encouraged and transmitted from an external actor, in this case the European Union. As theory shows, it is presumed that legal frameworks transferred from the “outside” might be perceived as impositions in both a legal and social context. Andreev (2009, p. 389) has explained the tendency as such: “The uniqueness of the actual situation of Bulgaria [...] principally consists in the failure of their rulers to deal with a large number of ‘unresolved issues’ from the accession period”. By extension, it will not make much difference if laws and regulations for combating corruption are in place on paper, due to the simple reason that the *uniqueness of the situation* has hindered efficient implementation of anti-corruption measures. The situation in question will be discussed below.

5.2.1 Bulgaria’s legacy of the past

It is reasonable to approach the chosen thematic sphere with an attempt to explain potential factors that may facilitate the problem of corruption. The issues Bulgaria has been, and is, facing with regards to corruption cannot be analyzed without addressing the country’s turbulent transition towards consolidated democracy, first and foremost the transition from communism.⁵⁸ As mentioned in section 2.2.2, Kotchegura (2004) argues that the problem of corruption in Bulgaria, and consequently likely reasons for why EU’s influence on fighting corruption seems to lack substance, has to be seen in relation to the country’s “legacy of the past”. It is crucial to analyze any root causes of the problem of corruption. Not only do they create and affect corrupt activity in itself, root causes and internal conditions also affect anti-

⁵⁷ Details on Engelbrekt’s reasoning have been communicated with the scholar himself by e-mail on April 7th, 2014. The “software”-metaphor was part of an unpublished conference paper.

⁵⁸ For a thorough examination on the topic, see notably Venelin Ganev (2007), “Preying on the state: the transformation of Bulgaria after 1989”.

corruption measures and prevent them from a firm establishment in a society. An academic in Sofia underlined the importance of this approach:

To understand the problem of corruption in Bulgaria, one should know a lot about the Bulgarian transitional period, from communism towards democracy. This transition is the base of the real corruption... That is why it is very difficult to overcome now.

(Shikova, 2014)

An EU official examined the situation as such: “There must be some kind of link [with Bulgaria’s past]. They have been under foreign rule for so long, and now they appear less responsible and with a ‘let somebody else fix it’-attitude” (Interviewee EU-9). The reason for this attitude can relate to another rationale, with clear argumentation of links to Bulgaria’s communist past: “It has to do with the inherited models of functioning of the communist system, which are being transferred to the new “democratic” system” (Toneva-Metodieva, 2014), was the explanation of a local expert. The majority of the respondents acknowledged this reasoning, claiming that in Bulgaria people still act according to unwritten rules rooted in social norms of communism.

The history of external dominance is something that indeed proved to be a factor and the Bulgarian context was seen together with some kind of societal psychology, referring to cultural attitudes and norms, and it was emphasized how any misbehavior in the culture (legal, political and societal alike) is “deeply rooted in the history” (Interviewee B-5). It had created a perception of foreign rule as something that “comes from outside”: “They [Bulgarians] used to be puppets, but when being a puppet nothing is up to you. The irresponsibility on all levels of decision-making is coming from the experience of being just puppets” (Dimitrov, 2014). Mr. Dimitrov, a European politics-academic and expert, further claimed that there is no strong component of political responsibility in Bulgaria, whatsoever. This, in conjunction with disregard of legal frameworks, was the core of the problem according to him: “When you live in a country where nobody is ashamed of using corrupt means – because this is the survival moral – nobody cares about morality and law” (Dimitrov, 2014).

The logic behind the above-mentioned claims can be found in the work of Mancur Olson (1995). He explains how the decades of economic exploitation of the individual by the communist regime has eroded the economic morality and logic of the individuals, who have been forced to live within a condition of the impossibility *not* to be corrupt. Other scholars

support this claim: “When citizens are convinced that they live in an environment, in which corruption not only goes unpunished but is also perceived as an effective means of solving private problems, their predisposition to the use of corrupt practices grows greatly” (CSD, 2005, p. 24). One may argue that Bulgaria’s historical pattern of corrupt practices has lowered the threshold for corrupt practices today. Many respondents supported this rationale. A local expert claimed that “corruption is in fact the *norm* here, not the deviation from the norm” (Interviewee B-3). Another expert in Brussels described corruption as the “cancer of Bulgaria” (Interviewee EU-4). It appeared difficult to treat such a “cancer” and thus hinder further corrupt activity:

[...] when the problem is culture and civilization you cannot just shift that with monitoring mechanisms or through *acquis communautaire*. Corruption is a systemic problem and to fight it you need to adjust the social system and that includes living people. So how do you adjust living people?

(Interviewee B-3)

The above-mentioned statements exemplify a reiteration of Kingsley (2004, p. 511) from chapter 2: “[...] legal transplants are often unsuccessful if external forces, such as international institutions, *assume* certain institutional, cultural, or political realities that in fact are not present or properly developed; therefore these laws are often simply *ignored* or *rejected*”.⁵⁹ An expert in Sofia described the applicability of European legal frameworks to laws that apply to Bulgarians: “This country is not ruled by law. If we do not care about Bulgarian law, why should we care about European law? We agreed about the provisions on the *acquis*, who cares about the rest?” (Dimitrov, 2014). This sums up the overall opinion of most respondents, where in fact indifference of what is “right” according to the law appeared to be the at the core of the problem.

5.2.2 Living in different realities

Former US Ambassador to Bulgaria, James Warlick, has suggested that in Bulgaria there is ‘one law for the rich, and one law for the poor’ (Iliev, 2011). Foreign diplomats in particular have stated that this is a truth with modifications, yet some of the respondents did support this impression:

⁵⁹ Italics added.

In Bulgaria we have parallel realities, one is the legal framework and the other is the real social environment [...] I am sure that they (the EU) had good intentions in the beginning, but you approach different social realities and you cannot meet them with the instruments you are used to apply.

(Interviewee B-5)

The respondent, a local expert, further explained how “one’s connections with the powerful decides if the legal framework applies to you” (Interviewee B-5). Whether or not there is one law that applies for rich people and one law that applies for the poor is difficult to establish. What the respondent stated above, on the other hand, explains a reality different than the one the EU might have expected. An EU official explained this rationale: “Reality is very subjective to different people and if you say ‘law’ in Germany (or elsewhere) it will not mean the same thing in Bulgaria. That is the heart of the problem, of which we (the EU) have failed” (Interviewee EU-9).

Another EU official highlighted what seems to be an issue based on a misconception: “I think we underestimated the impact of countries that have lived under communism” (Interviewee EU-6). The respondent further described conceptual misunderstandings, exemplifying how the concept of democracy – as understood by people coming from “true” democracies – was seen differently in post-communist countries and Bulgaria in particular: “Democracy for [Bulgarians] is simply the majority deciding over the minority. 50 + 1 for them is democracy. [...] So we talked about the same issues, but with completely different concepts behind” (Interviewee EU-6).

The empirical data aligns with Papakostas’ (2013) assumption that when corruption has originated in “historical foundations” and is deep-seated in a country’s culture, European policies and efforts to actively encourage compliance in the area of anti-corruption becomes irrelevant. When analyzing obstacles for legal transfers, and the credibility of EU’s conditions for that matter, it is reasonable to assume that internal factors are great contributors to the problem.

Recent studies on the topic also confirm what was pinpointed by quite a few of the respondents: “The fundamental mistake lies in the assumption that the EC and the local governments share common social and mental space and see the situation through a mutually-shared perspective” (Dimitrov et al., forthcoming, p. 106). A former Commission official supported this claim: “It is another rule mentality in Bulgaria, which is very particular, and it

seems as they are not interested in any change” (Interviewee EU-2). By extension, any legal frameworks initiated by the EU (see section 5.3 below for a discussion on the chosen cases) might lack common grounds with what is perceived normal and accepted in Bulgaria. In addition, a strong political influence in Bulgaria appeared to be a crucial factor for whether or not such legal frameworks were to be implemented, a claim found in the recollection of *all* respondents. Such a matter, as it appears crucial for this analysis, is further emphasized in the section below.

5.2.3 The Bulgarian ‘sistema’

Throughout the interviews it became apparent that internal circumstances were crucial components of an already complex picture illustrating the situation in Bulgaria. Even more, it explains a possible reason for why supposedly credible EU conditions have not resulted in any remarkable change with regards to the fight against corruption. It seemed inevitable to disregard an explicit underlying factor in the analysis. Thus, I have chosen to devote this section to explore what might appear to be some kind of structure or system in Bulgaria.

The Russian scholar Alena Ledeneva⁶⁰ pinpoints the phenomenon, and the issue of, ‘sistema’ – *system* in Russian⁶¹, what it is and how it works. Although I may avoid drawing any comparisons between the two countries in this thesis, the term “system” recurred so frequently in the interviews that it became a crucial theme to emphasize. Ledeneva elaborates her perception of ‘sistema’ as follows:

I call it [...] ‘methods of informal governance’. It is a situation when institutions do not work and the leadership has to do something. And what they do then, they use [...] networks, relationships, informal power, informal negotiations, and bargaining. That's what works. And that is exactly what's been used as these forms of informal governance to achieve targets that otherwise could have been achieved through formal channels, but those do not work.

(Coalson, 2013)

By extension, and with regards to the role of the EU, an EU official explained the problematic aspects of EU’s influence in Bulgaria. The respondent modestly stated that a possible reason for why the EU has failed to sufficiently encourage reform and improvements in the country is due to a phenomenon similar to Ledeneva’s ‘sistema’: “That (to break the system) has been a failure in Bulgaria, we have not been able so far to break that system. It is simply too

⁶⁰ See notably Alena Ledeneva (2006), “How Russia Really Works”.

⁶¹ The Russian and Bulgarian word is identical (= система).

strong” (Interviewee EU-2). How institutions and actors work together in a potential Bulgarian system, what the system actually *is* – *if* there is a system at all – is an issue beyond the scope of this thesis. However, the existence of such a ‘system’ seems likely to be the reason for why EU conditionality is perceived less credible than it actually is, and thus fails to influence anti-corruption efforts in the country.

A rather untraditional, although apt metaphor made by an EU official gives an idea of what the ‘Bulgarian system’ is like:

Compare it to an octopus: there is an octopus with all its arms, behind the scenes, and it is pulling the strings of the justice system, the financial system, the economic system, the civil society, and it is there... We *know* it is there, but we cannot see it. Who is part of this octopus we can just assume, but you never know.

(Interviewee EU-6)

How this is linked with the overarching theoretical focus of this thesis was further described by the same respondent: “The system in place in Bulgaria, I would dare to argue, is so strong that it is robust enough to basically get away with doing some, let’s say, taking some measures at the surface, without going into depth” (Interviewee EU-6). As an explanation of the discussions above, it can be assumed that the commitments Bulgaria has made to attain good reputation in the EU have been half-hearted due to concealed power distributions and interests at domestic levels. The logic behind this rationale corresponds to factors that are more deeply rooted in Bulgarian culture and further back in time. One respondent described the following:

Transition lead to an institutional vacuum – the lack of law, security – we had 15 years of non-existing institutions. That was when the organized crime groups managed to become strong, to monopolize major sectors of the economy and of the political sphere, and now you cannot do anything... They have influence and *a lot* of power.

(Interviewee B-3)

Scholars support this statement by arguing how historical contexts in Bulgaria, with an emphasis on the transformation from communism, are crucial parts of the bigger picture:

The deep connections between state power and private interest have developed historically as a result of [...] the dismantling of the one party system, and the de-politicization of the

security apparatus [...]. These processes [...] continue to influence modern-day politics [and] members of the former establishment continue to influence power distribution.

(Stoyanov, Stefanov, & Velcheva, 2014, p. 24)

By extension, one of the EU officials argued that such kind of influence is very difficult to trace: “This system that we are exposed to here...it is difficult to know who is pulling the strings” (Interviewee EU-5). Moreover, in response to the question on to what degree the EU is enabled to take into account possible internal factors when applying its conditionality, a Commission official listed a particular difficulty rooted in the country’s transformation:

[...] all these (post-communist) countries had a very vast security service system [...] you look at this very chaotic transformation period in the 1990s, where these people entered the economic sphere, became businessmen of the shady sort, or entered politics. Unfortunately this is something that is not followed within the remit of the EU acquis [...] but I fear that this is exactly the motor of the Bulgarian system that is still in place.

(Interviewee EU-9)

Who the actors in this latent Bulgarian system might be, was more difficult to grasp and even to speculate upon. Even so, some respondents alleged that there is a structure beyond the core of decision-makers in the country, and that the reason why high-level corruption cannot be fought is because “it is protected by the government” (Bossev, 2014). A recent poll by the Eurobarometer (2014, p. 40) suggests that Bulgarian citizens support the views above. Only 12% think that “measures against corruption are applied impartially and without ulterior motives”. Furthermore, 82% of Bulgarian citizens are of the opinion that “too close links between business and politics” facilitate high-level corruption (ibid, p. 55).

The reasoning of respondents persisted with the claim that “the politicians are just tools in the hands of other people” (Shikova, 2014). Another respondent further argued that what paves the ground for corruption, and consequently what makes it less appealing to properly implement measures to fight it, is the ‘vertical interaction or power distribution’ between politicians and businessmen (Dimitrov, 2014). In a recent documentary produced by Aljazeera, the prominent Bulgarian expert Philip Gounev, from CSD, summarizes the situation:

What we face is a situation where whatever government comes to power, [it] is being kept as a hostage to some private interests [...] it is very difficult to see how we can get out of this circle where private interest comes before public interest.

(Ellis, 2014).

If one is to interpret the findings above, there is no correlation whatsoever with what the European Commission emphasized when formulating its “Comprehensive EU Policy Against Corruption” in 2003:

Combating and preventing corruption can only be successful when all parts of society agree that this is indispensable. However, the most important signal has to come from leaders and decision-makers themselves. 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 to be established.

(European Commission, 2003, p. 6)

In the end, it boils down to what has been assumed and pinpointed by a majority of the respondents. It does not matter whether the EU provides credible incentives or not, because “in Bulgaria the people in power are not interested in fighting the problem of corruption, it is simply not beneficial for them” (Interviewee B-5).

5.3 The cases

The tendencies discussed above can be exemplified by the two chosen cases that were presented in chapter 3.

Asset forfeiture

As argued in section 3.2.1, the law allowing for the freezing or confiscation of illegal assets was adopted in Bulgaria as early as in 2005 “in order to approximate national laws to EU legislation as part of the accession of Bulgaria to the EU” (Nikolov, 2011, p. 22). At that time there was no EU directive on the matter, but several Framework Decisions (see p. 36) paved the ground for what later became Bulgaria’s legal framework on asset forfeiture. Applying the same line of argument as in chapter 3, several respondents confirmed that the adoption of this law was a part of Bulgaria’s road towards EU-membership: “We adopted the first law in the period of EU accession. It was considered important for EU accession and its adoption was assessed positively since we eventually acceded” (Ivanova, 2014).

In other words, the decision to adopt a law that allowed for the confiscation of proceedings from criminal activity was a positive means for closing all chapters of the acquis. Although I cannot claim that Bulgaria's membership depended on this specific legal framework, most of the respondents regarded it as an incentive for compliance. In fact, the law itself was quite sensitive in Bulgaria due to the introduction of privatization after the fall of communism: “[The law was rather] socially controversial, [it] can be seen together with the past, [when] assets were confiscated under communism for different reasons and people had strong feelings about the right to private property without the state interfering” (Interviewee B-5). In other words, the respondent in Sofia rightly claimed that “the law would never have been adopted on [Bulgarian] initiative” (Interviewee B-5).

According to several respondents in Sofia, the initial law from 2005 was a clear copy-paste of EU's Framework Decisions. This shows how legal frameworks copied from an external context fail to provide proper results in the destination country. The 2005 law was particularly difficult, due to the fact that the EU later affirmed that the legal framework was “inadequate, unevenly implemented and under-used” (European Commission, 2012b), and thus advocated strengthened legislation in its member states. A Bulgarian government official, who wished to remain anonymous, ironically pointed to the deficiencies of the 2005 law: “We did not even have a paragraph in the law saying what to do with the assets that were frozen or confiscated. Maybe they (i.e. those who adopted the law in 2005) expected us to not achieve any results?” (Interviewee B-4). This further accounts for the need of amendments to the law, which was directly articulated through the CVM reports. With the close follow-up reporting one may argue that stronger conditions were in place for Bulgaria than for other member states to improve this legal framework. On the other hand, and with comparison to the law on conflict of interest (discussed below), the conditions that were put forward to upgrade the asset forfeiture-legislation had no explicit negative conditionality in them, except for negative appraisal in CVM-reports.

While undergoing the process of amending the law, it appeared to be crucial for Bulgaria to show its commitment towards the EU with regards to improving the law, and particularly for the ruling government. Several of the respondents described interesting situations when the law was to be amended in 2011, which further emphasized possible factors that are essential for the credibility of conditionality rationale. A legal expert from Bulgaria now working in the

EU, who at that time was part of the committee that was initially assigned to amend the law, described a situation in Parliament:

The chair of the legal affairs committee was not a big fan of the Minister of Justice⁶² and vice versa. The latter (the Minister) asked the speaker of the Parliament specifically to refer the law to another committee: Not to the legal affairs committee, which *had* to have the responsibility, but to the internal affairs committee. This was strange, because they were not really competent. The reason behind was that they really wanted to adopt this law fast enough, to show Europe that they were really doing something.

(Interviewee EU-10)

The respondent further emphasized that in the course of action, all procedures were rushed in order to “show the EU” Bulgaria’s willingness for compliance (Interviewee EU-10). By extension, an expert from CSD emphasized that the pressure from the EU was considerable regarding the scope of the law and that “the EU specifically pushed for an introduction of administrative penalties as a predicate for triggering the investigation by CIAF, as they believed that this could be an effective anti-corruption measure” (Rusev, 2014). The text in the 2012 interim-report, which was published before the second draft of the law was presented in Parliament, reads: “[...] the draft law also excludes the possibility for CEPACA⁶³ to launch ex-officio checks on the grounds of administrative infringements” (European Commission, 2012c, p. 5). The CSD-expert explained that this particular text of the amendments was disputed due to the fact that such penalties were directly linked to corruption and public officials:

Bulgaria is ranking high in terms of grey economy, so there are many people with undeclared incomes or income, for which they cannot prove the origin. [...] Therefore many high-profile people are vulnerable under this law, if at some point they are faced with investigations of their incomes and properties.

(Rusev, 2014).

The draft law that in 2012 was up for approval in Parliament for the second time initiated a situation that may be described as even more unethical⁶⁴ than the above-mentioned one. It became clear that the political will to get approval for the amendments and to adopt a new law, thus complying with EU requirements, was the biggest priority for the Bulgarian government at that time:

⁶² Neither of the persons described are holding the positions today.

⁶³ At present, ‘CIAF’ is the correct abbreviation for the commission.

⁶⁴ A respondent wittily underlined that “‘unusual’ is not the right word to use for such events in Bulgaria” (Interviewee B-4).

Actually, GERB⁶⁵ introduced the amendments about the administrative penalties *after* the bill was submitted to the Parliament, so there was not any time for discussions around them. [...] All of the opposition parties were totally against these new amendments. Even many of the GERB MPs were not very happy with the law and particularly these amendments, but their parliamentary group has always been known for their high discipline in regards to voting...

(Rusev, 2014).

The above-mentioned rationale accounts for strong political will from the then ruling government to meet EU requirements that were communicated in the CVM-reports. It thus paints a picture of the importance of positive reputation in Brussels. The rushed endeavors for adopting a revised asset forfeiture-law correspond to previous reasoning that indicates credible conditions of reputation. Potential internal factors likely had an impact on the process of amendment, especially due to the fact that the law consisted of serious limitations (see p. 38). It is clear that the hasty adoption of a new law was aimed at earning positive appraisal in the CVM-report. In other words, showing lack of commitment to amend the law would cause reputational costs that could have been unhealthy for the country's relation with other member states.

In its 2010 report, the European Commission set out specific recommendations for a strengthened legal framework on confiscation of assets, which particularly emphasized “the principle of non-conviction based civil confiscation” (European Commission, 2010a, p. 9). As noted in section 3.2.1, this provision is the basis of today's law, while other serious limitations seem to prevent proper functioning of the legal framework. A logic behind this reality is that of ‘symbolic compliance’. Clear-cut recommendations, such as the provision of non-conviction based confiscation, was “ticked off” with the adoption of the new law. The provision on administrative penalties, as emphasized above, can also be said to have been “ticked off”, in order to “satisfy the European Commission” (Interviewee B-5). Furthermore, other shortcomings in the legal text, that in fact might interfere with correct enforcement of the law, is expected not to cause about major changes due to the fact that other interests are prioritized.

Bulgaria did receive commendation from the European Commission when the new law was adopted in 2012, but it was also emphasized that the law consisted of several shortcomings. A respondent elaborated the following: “As long as the law was in place, even if it was

⁶⁵ GERB was the ruling party at the time the law was amended.

completely inefficient – which it is, the government assumed that a few negative (CVM) reports would quickly be forgotten, and no further actions would be taken even though no clear results were put forward” (Interviewee EU-10). An expert in Sofia supported this claim, describing a lack of will for the enforcement of the law: “If they had the will they could have done a great job within this legal framework, but it is not happening” (Slavev, 2014).

It is interesting to look at the statements above in a bigger picture, particularly with regards to the theoretical focus of the thesis. All in all, it can be argued that the costs of not satisfactorily complying with EU recommendations on this matter, be it the wording of the law or the lack of concrete results by CIAF, were so low that not much effort was been put into it. Despite the fact that Bulgaria has received criticism and indirect pressure to show clear and concrete results, some negative CVM-reports have throughout the years proved to not result in any threatening action by the European Commission. In other words, conditions put forward by the European Commission have lacked credibility for Bulgarian authorities to strive for *real* improvements.

In fact, there appeared to be higher costs of complying with EU recommendations and in turn provide the public with concrete and valid results. Many respondents indicated that it is simply not in the interest of decision-makers to “provide such a legal framework with efficiency” (Interviewee B-5), a statement that is reflected through the dismissal of the former chairman of CIAF (at that time CEPACA) at the beginning of 2012. Despite “significant increase in the amounts of forfeited assets in Bulgaria and a more proactive and rigorous approach by the asset forfeiture commission under a new director” (European Commission, 2012d, p. 13), he was now longer wanted as chairman of the asset forfeiture commission. As presented in chapter 3, 2013 statistics from CIAF show its low efficiency; out of 3 348 notifications to CIAF only *one* request has been passed on to court for imposing freezing measures (CIAF, 2014, pp. 25–26). Furthermore it accounts for a reasoning that other kinds of incentives are more credible in Bulgaria, rather than incentives posed by the EU. Positive monitoring and incentives for increased reputation in the Union were thus outweighed by other interests, of which the former chairman himself, Mr. Kolarov, indicated to be a *system* where one is restricted from being independent in one’s position:

Political influence is found in all positions here. [...] The solution should have been to choose people who prove themselves *not* to be susceptible to influence. Of course, here nobody likes

people who are not susceptible to influence [...] People here just learn to adjust, to become flexible.

(Kolarov, 2014)

By extension of the European Commission's report, it is interesting to look at the reasoning of an EU official familiar with the case. The respondent simply claimed that the "significant increase" and "proactive and rigorous approach" appeared to be threatening for some actors in Bulgaria, implying that these actors might wish the law to be less effective. The respondent further claimed that the former CIAF-chairman's "track record became too ambitious, the results were too good and he clearly started to affect some interest, which was supposed to remain untouched" (Interviewee EU-6). A Bulgarian legal professional supported this claim and regarded the situation as such: "It is quite obvious that there were political intentions behind [the amendment of the law]. People in power are aware that their own wealth might cause interest" (Interviewee B-1).

Conflict of interest

As described in detail in section 3.2.2, the law on conflict of interest came into being as a result of another kind of conditionality. Bulgaria faced a serious situation when the EU decided to freeze funds to the country in 2008. Corruption linked to abuse of EU funds was one of the main motivations for the suspension. It became clear that EU financial assistance to Bulgaria was dependent on an immediate improvement of both administrative and legal measures.

Due to the fact that conflict of interest appeared to be at the core of the problem when the funds were suspended, the EU demanded the adoption of a legal framework on conflict of interest. This was stated both in individual reports from the European Commission and in the CVM report, which were published simultaneously. As described in section 3.2.2, the threat of persistent suspension of the already frozen EU-funds, as well as the possibility of the EU withholding future financial assistance, gave Bulgaria no other choice but comply. Given the way in which the situation had evolved and as the EU had already frozen a huge amount of its funds, the EU had proven itself capable of repeating its action. The conditions presented to Bulgaria by the EU – i.e. an indirect threat of further serious sanctioning – became credible and resulted in a rapid procedure for adopting a new legal framework.

Many of the respondents made remarks about the rushed adoption of the law, underlining that the ‘legislative factory’ was certainly in function. It took no more than 5-6 months for the legislators and the Parliament to draft, vote on and adopt a law on conflict of interest, despite shortcomings being highlighted by both national and local experts. A legal expert familiar with the case confirmed that the 2008-suspension had triggered Bulgaria’s commitment when the amendments were required: “This legal framework has in particular been sensitive due to the context of its foundation” (Interviewee EU-7). Another legal expert stated that “the law was rushed simply to meet EU requirements and to prevent an extended situation of freezing the funds. Whether the law was good or not was not so important. Let’s say that the law could have been better...” (Interviewee EU-10).

Several of my respondents regarded the law on conflict of interest as completely inefficient. Experts in Sofia were in particular frustrated about the aims of the law, as the legal text refers to enforcement punishing conflict of interest rather than preventing it: “The current law is treating conflict of interest as a crime, by saying that whenever you learn about it, after it has occurred, you have an obligation to report. But nobody is idiot enough to report, not in Bulgaria” (Ivanova, 2014). Due to the lack of results under the current law, this statement implies that it is not working its actual cause. A Brussels-based legal expert claimed that the draft amendments made no legal sense and that it was “clear that the government had no strong commitment to solve the problem” (Interviewee EU-10).

By extension, it is interesting to evaluate both the law on asset forfeiture and the law on conflict of interest with regards to theoretical assumptions on legal transfers. Although neither of the laws, as they are written today, are direct copy-pastes from EU legislation, one respondent indicated some kind of laziness concerning how laws are actually adopted in Bulgaria: “For the Bulgarian government it is just easier to copy something (a legal framework), and that’s it. It is not a mystery that these laws are not working (Ivanova, 2014).

The track record of CPACI⁶⁶ and thus the law itself prove that the amendments did not bring about any positive development regarding the enforcement of the law. Few cases have been investigated and “it has proved difficult for CPACI to identify conflict of interest” (European Commission, 2014b, p. 23). The EU had several times criticized CPACI for not showing greater results in an area that is also of concern to the EU. An EU official confirmed the EU’s

⁶⁶ CPACI is the abbreviation for the ‘Commission for Prevention and Ascertainment of Conflict of Interest’, which is responsible for identifying and sanctioning conflict of interest.

concern that “only a few cases of conflict of interest have been identified and only at a certain (low) level” (Interviewee EU-5).

During my meeting with the current chairman of CPACI, Nikolay Nikolov, I was told that 50% of the cases they covered were cases regarding municipal officials, and in the course of three years they had dealt with a total of 15 cases concerning ministers and members of Parliament. I obviously wondered if conflicts of interest normally did not occur at higher levels of government in Bulgaria or if there were other explanations as to why so few high-profile politicians and professionals had been investigated for conflict of interest. Mr. Nikolov could not answer this question. An EU official, on the other hand, had a clear opinion of the situation: “It is clear that there is some kind of filter. ‘This case we can let through, this case not’... And that is how it works” (Interviewee EU-6). Thus it became reasonable to consider other factors as important incentives for amending the law. The EU official further stressed that it was the intention of Bulgarian decision-makers to make the law inefficient:

The more complicated you make laws, the more difficult it is to implement them [and] to bring a trial to a successful end. So there is certainly a strategy behind, in terms of, through the Parliament mostly, in terms of making the quality of the laws either poorer or more complicated in order to make the implementation very difficult.

(Interviewee EU-6)

This statement in fact exemplifies a tendency in many of the interviews, both in general and with regards to the two laws in focus. No matter how strong EU conditionality might seem, and whether conditions are credible or not, other factors (internal for the most) are superior to any reputational cost or threat of sanctions from the EU. Taking into account the emergence of both laws, this also corresponds to the reasoning in the sections above. The laws were adopted as a result of different motivations, but due to the fact that the EU has not imposed any new conditions with regards to actual implementation of the frameworks (other than continuous requirements and critique in the CVM reports), both of them appear to be “legislative failures”.

This reasoning is also valid for a sensitive case referred to in section 3.2.2. The EU had articulated specific discontent with what was described as a “serious scandal involving strong political influence” (European Commission, 2014f, p. 7). The scandal concerned the former chairman of CPACI, Filip Zlatanov, who earlier this year was facing trial due to findings of a

notorious notebook in his office.⁶⁷ The notebook indicated that he had received “[political] instructions about the progress of certain cases” and consisted specific directions regarding high-level politicians such as the former prime minister and current President (Novinite, 2014a).⁶⁸ The case indicated an issue of conflict of interest *within* the conflict of interest commission, as one expert in Sofia emphasized: “It is in fact not conflict of interest but joining of interest” (Slavev, 2014).

The scandal contradicts EU’s demand to “strengthen the law [...] notably through an authority with a pro-active mandate in charge of identifying and sanctioning conflict of interest” (European Commission, 2010a, p. 9). No explicit tools are in place for the EU to penalize such incidents, other than clearly emphasizing its discontent in the CVM-reports. However, and as discussed in the sections above, this does not necessarily cause enough harm if other incentives are stronger. As seen with the case on asset forfeiture, influential disturbance was emphasized with regards to the law on conflict of interest as well, and particularly the structure of the bodies executing them. CPACI also suffered from some kind of relations with an overarching system, referring to the controversy around its former chairman. An EU official emphasized the core of the problem:

There is *one* overarching interest (in the system). That is to stick together, not to break the system, to make sure that in key positions there are people they can trust, and that *their* interests are in any circumstances safeguarded.

(Interviewee EU-6)

An expert in Sofia supported this statement: “[One has to] understand why and how people were elected in this commission. They (in the system) appoint someone who is easily manipulated, who will be their contact there. So we (civil society) keep striving for integrity, which is up until now non-existent” (Slavev, 2014). Furthermore, both of the laws exemplify an intricate matter that the EU has not managed to thwart. A Commission official uttered deep frustration with a problem that eventually overthrows any probabilities for mechanisms such as the law on asset forfeiture and the law on conflict of interest to actually work their cause, notably the problem of a ‘system’:

These are all kinds of circumstantial evidence, that the system in place – and it is not necessarily linked to one political party, it is the whole system in place, and the moment it

⁶⁷ As of 3rd of April 2014, the former chairman has been sentenced to 3,5 years effective imprisonment in first instance (Novinite, 2014c).

⁶⁸ The persons in the notebook were identified only by initials, yet there were obvious indications of whom the former CIAF-chairman was addressing (Novinite, 2014c).

fears its core interest being affected, be it by the EU or be it by the people, occasionally good people within the system are simply evacuated (here referring to the former chairman of CEPACA).

(Interviewee B-6)

Karklins (2002) has previously discussed the core of such a matter, emphasizing that undisclosed interests in an overarching system can work against the interest of the population, the country as a whole and certainly the interest of the EU: “[...] many political decisions are motivated by a desire to protect implicated officials either in one’s own network or as a collusive *quid pro quo*⁶⁹” (Karklins, 2002, p. 28). The statements referring to both laws also correspond to that of an EU diplomat. I asked if laws initially encouraged by an external actor, such as the EU, would have an impact on people’s sense of “ownership” to it: “I would say it in a rather different way. Not that they don’t apply to them because [the laws] are from the outside, but that the Bulgarian state does not apply them to the powerful groups” (Interviewee B-2). Other respondents in Sofia further supported this claim by indicating that the implementation of these laws depends on whom it reaches out to: “[The laws on asset forfeiture and conflict of interest] do not apply to the really high-level people at all, that is the big problem here” (Ivanova, 2014).

Conclusion

The logic behind the discussions in this chapter can be summed up as follows: The EU has clearly lacked incentives towards Bulgaria, yet the CVM reports have been credible particularly when it comes to the country’s reputation. It has provided decision-makers in Bulgaria, to a certain degree, with an incentive to meet any recommendation presented in the reports, be it adopting new laws or amending old. As stated by several respondents, a few more legal frameworks for the sake of positive appraisal in the reports are costs worth paying. This is also where the expression “to a certain degree” becomes valid: EU incentives have been credible for Bulgaria only to a certain degree. In fact, the costs of complying *entirely* with the EU’s demands (first and foremost communicated in the CVM reports) – to show concrete results and improvements that the level of corruption is being fought – are so high at the national level that the credibility of, for instance, good or bad reputation in Brussels becomes insignificant. By extension, both historical and cultural factors also contribute to the unevenness of Bulgaria’s incentive game.

⁶⁹ The term *quid pro quo* here means “a favor or advantage granted in return for something”.

6 Conclusion

After a thorough review and analysis of the empirical findings in the previous chapter, this final chapter will answer the research question and draw some concluding remarks.

The overall research question of this thesis is: “Why have anti-corruption measures in Bulgaria failed after EU accession?” It is valid to emphasize once again that corruption is difficult both to measure and target, and thus to fight. To facilitate a real decrease in a country’s level of corruption not only takes efforts but also time. However, Bulgaria, as one of the youngest EU member states, came across as an interesting country to study since it has been subject to an exclusive EU post-accession conditionality, simply due to its high levels of corruption.

As with most qualitative research, a theory has several dimensions. This is confirmed by the analysis provided in this thesis. It has emphasized the importance of studying different aspects of what might have had an effect on the development of Bulgarian anti-corruption measures. Secondary literature on conditionality suggests that credible incentives produce commitment for compliance. However, the empirical data presented in this thesis show a more nuanced and complex picture. Even though the data indicate that there is still an asymmetry between the EU and Bulgaria, there are impediments that prevent this asymmetry from actually bringing about real change and subsequently a real commitment to reducing corruption.

The thesis has provided a comprehensive overview of anti-corruption efforts in Bulgaria and to what extent the EU and its conditionality has been influential. It has focused on anti-corruption in Bulgaria after EU-accession and can thus address a more or less unexplored part of conditionality studies. With specific focus on the chosen cases, the empirical findings have established inferences that may explain why anti-corruption measures have been inefficient in Bulgaria. The strength of the thesis lies in the empirical data that have been collected from a broad range of respondents who hold viewpoints as external and national experts.

The findings presented in this thesis confirm that fighting corruption is about much more than transposing law and conforming to EU anti-corruption requirements. They demonstrate that despite external incentives set forth by the EU, the efficiency of anti-corruption measures in Bulgaria is hindered due to a number of factors. These include both historical and cultural

circumstances, which in turn sustain the foundation of a hidden structure in the Bulgarian society. The division between formal and informal compliance seems to be less dependent on credible incentives provided by the EU and more dependent on Bulgarian domestic factors. Most respondents emphasized that domestic factors have been the strongest impediments to the success of anti-corruption measures in Bulgaria. The general finding of the thesis is that a robust internal dominance, a 'system', prevents credible incentives from having an impact, hinders legal transfers to take root in the Bulgarian society and thus undermine a dedicated fight against corruption in the country. Furthermore, the concealed dominance of a Bulgarian 'sistema' has outweighed the potential of credible EU conditionality.

By encapsulating the themes presented in the previous chapter, the external incentives model does not find substantial support in the empirical evidence. It can be argued that the credibility of conditionality-approach alone is too one-dimensional to satisfactorily get to the core of the problem – i.e. why anti-corruption measures in Bulgaria have failed. The findings indicate that the top-down approach of EU conditionality and of external factors affecting the fight against corruption in Bulgaria cannot account for all explanatory components of this intricate theme. The empirical evidence cannot confirm that lack of credibility of EU conditionality is the sole reason for the dysfunction of such measures. Even so, the findings do not completely invalidate the hypothesis of external incentives. Seen in relation to both hypotheses, the findings suggest that EU conditionality may have been credible had domestic factors been more compatible with external incentives. The findings presented in the previous chapter thus lend some support to the first hypothesis.

Several respondents have carefully discussed and emphasized that external incentives from the EU have been credible to a certain degree, although dependent on other circumstantial factors. Recent history and the findings presented in this thesis show that the EU has not been able to present long-lasting credible incentives towards Bulgaria. Even though some aspects of conditionality have been particularly attractive, the country's continuous non-compliance of anti-corruption measures has made the EU incapable of taking strong actions. The lack of credibility of EU conditionality has given dominance to other, internal factors that have been of greater importance in Bulgaria. The findings show that factors such as cultural and historical ones have influenced Bulgaria's incentive game and negatively affected the incentives offered by the EU. In sum, the credibility of EU's conditionality has played a lesser role in Bulgaria than what conditionality-theory assumes.

The hypothesis of legal transfers allowed for a thorough examination of what appeared to be valid explanations as to why credible EU incentives have less influence in Bulgaria. Findings lend strong support to this hypothesis and show that historical and cultural factors in Bulgaria have hindered legal transfers to take root in society. Values and undue behavior from the communist period are still shaping parts of Bulgarian society. The issue of corruption is a clear example of this, in which one respondent emphasized that corruption is “the norm, not the deviation from the norm” (Interviewee B-3). With stronger support to the first hypothesis, one would expect that a strong external actor, as the EU, would have been capable of positively influencing anti-corruption measures in Bulgaria. Instead, findings show that anti-corruption measures transferred and imposed from the outside rarely succeed. Many factors can cause such a trend, though the most significant finding of this thesis, and which was shared by most of the respondents, was that of ‘sistema’. There appears to be a system – hidden, yet integrated – in the Bulgarian society, which has outweighed any potential credible incentive, as the costs of complying with EU requirements have been too high. Powerful actors in this ‘system’ have benefited from dysfunctional anti-corruption measures, such as the law on asset forfeiture and the law on conflict of interest. In other words, findings presented in this thesis suggest that domestic conditions in Bulgaria prevent anti-corruption measures from taking root. The socio-cultural approach of this thesis is therefore of utmost importance.

The findings of this thesis have implications for the theoretical debate on conditionality and also for the future of Bulgaria’s anti-corruption measures as such. They suggest that the cause and effect of EU conditionality have been obstructed by domestic factors in Bulgaria. They also confirm that external incentives from the EU have not been sufficiently beneficial for Bulgaria, albeit not due to the incentive itself. Deep, underlying domestic factors in Bulgaria have prevented the EU from bringing about change and an improved fight against corruption. The internal factors in question – be it historical, cultural, or a disguised ‘system’ – indicate a complex situation in need for further research. This thesis provides a useful starting point for investigating a potential ‘system’ in Bulgaria (inspired by Ledeneva’s work), in order to further trace explanations as to why corruption seems so difficult to fight in this post-communist country.

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Appendix 1 – List of respondents

List of respondents, by name

Name	Current occupation	Relevance to the thesis	Time and place of the interview
Mr. Norbert Sagstetter	Deputy Head of the 'Evaluation, Regulatory Fitness and Performance' unit at European Commission Secretariat-General	Former CVM-team leader in the Secretariat-General (2007-2012)	12.03.2014 at the European Commission Berlaymont, Brussels, Belgium
Dr. Corina Stratulat	Policy Analyst (EU Politics and Institutions Programme) at the European Policy Center (EPC)	Holds expertise in the area of EU integration and enlargement; CEE politics	13.03.2014 at EPC's office, Brussels, Belgium
Ms. Nienke Palstra	EU Policy Officer, Transparency International Liaison office to the EU	EU Policy Officer, TI	13.03.2014 at the TI office, Brussels, Belgium
Mrs. Sabine Zwaenepoel	Senior Rule of Law Co-ordinator Chapter 23 and 24, DG Enlargement	Has worked closely with and towards Bulgaria from 1997-2012 in different units of the EU Commission (CVM; external relations unit; unit for the fight against corruption)	14.03.2014 at DG Enlargement, Brussels, Belgium
Mr. Joeri Buhner Tavanier	Resident Advisor at the Permanent Representation of the European Commission to Bulgaria	Reports to the Commission's Secretariat General, accompanies the CVM monitoring team on their fact-finding mission	17.03.2014 at the Representation of the European Commission, Sofia, Bulgaria
Mr. Todor Kolarov	Associate professor at Varna Free University, teaching European Judicial Cooperation	Former chairman of the Commission for the Identification and Forfeiture of Criminal Assets (CEPACA)(2011-2012)	21.03.2014 at Maraia Café, Sofia, Bulgaria
Mrs. Gergana Passy	President of PanEuropa Bulgaria	Former Minister of EU Affairs of the Republic of Bulgaria (2007-2009); former Member of the Bulgarian Parliament	25.03.2014 at Moskovska 15 restaurant, Sofia, Bulgaria
Mr. Teodor Slavev	Researcher, Bulgarian Institute for Legal Initiatives (BILI)	Former junior expert of the CVM Directorate at the Ministry of Justice of the Republic of Bulgaria	24.03.2014 at BILI offices, Sofia, Bulgaria
Prof. Georgi Dimitrov	Professor at the European Sciences Department of Sofia University "St. Kliment Ohridski"	Researcher engaged in questions concerning the CVM and anti-corruption	26.03.2014 at Fancy restaurant, Sofia, Bulgaria
Mr. Nikolay Nikolov	Head of Commission for Prevention and Ascertainment of Conflict of Interest (CPACI)	Former chairman of the Commission for the Identification and Forfeiture of Criminal Assets (CEPACA)(2005-2011)	26.03.2014 at CPACI offices, Sofia, Bulgaria
Ms. Ivanka Ivanova	Law Program Director, Open Society Institute Sofia (OSI)	Expert on Bulgarian legislation	26.03.2014 at OSI offices, Sofia, Bulgaria
Ms. Antoinette Primatarova	EU Program Director, Centre for Liberal Strategies (CLS)	Former ambassador to the European Communities	27.03.2014 at CLS offices, Sofia, Bulgaria
Mr. Atanas Rusev	Research fellow, Center for the Study of Democracy (CSD)	Scholarly expert on the law on asset forfeiture	27.03.2014 at CSD offices, Sofia, Bulgaria
Ms. Maria Yordanova	Director, Law Program, Centre for the Study of Democracy (CSD)	Scholarly expert on the law on conflict of interest	27.03.2014 at CSD offices, Sofia, Bulgaria
Mr. Rossen Bossev	Journalist, Capital Weekly	Has as a journalist covered the work of the judiciary and law enforcement in Bulgaria since 2006	28.03.2014 at Wien Café, Sofia, Bulgaria
Prof. Ingrid Shikova	Professor; Head of the European Sciences Department at Sofia University "St. Kliment Ohridski"	Former expert at the Bulgarian Permanent Representation to the EU	31.03.2014 at Sofia University, Sofia, Bulgaria
Ms. Linka Toneva-Metodieva	PhD-student	Program Coordinator, TI Bulgaria	02.04.2014. <i>Email-communication</i>

*List of respondents, anonymous*⁷⁰

Status	Occupation and/or relevance to the thesis	Time and place of the interview
<i>Anonymous</i>	Policy officer, European Commission	12.03.2014 in Brussels, Belgium
<i>Anonymous</i>	Bulgarian state representative	13.03.2014 in Brussels, Belgium
<i>Anonymous</i>	Bulgarian state representative	13.03.2014 in Brussels, Belgium
<i>Anonymous</i>	Assistant, European Parliament	14.03.2014 in Brussels, Belgium
<i>Anonymous</i>	Legal expert, European Commission	14.03.2014 in Brussels, Belgium
<i>Anonymous</i>	Legal professional	20.03.2014 in Sofia, Bulgaria
<i>Anonymous</i>	Independent expert	24.03.2014 in Sofia, Bulgaria
<i>Anonymous</i>	EU Diplomat	28.03.2014 in Sofia, Bulgaria
<i>Anonymous</i>	Government official	01.04.2014 in Sofia, Bulgaria

⁷⁰ Due to the relevance for the thesis, without revealing any confidential information, the occupation/position of the respondent is listed only on basic terms, as well as the time and place for the interview.

Appendix 2 – Interview guide

Introduce the purpose of the thesis and its overarching theme. Agree on consent.

EU conditionality is an efficient policy tool of the EU. How do you consider its influence on Bulgaria before and after its accession?

Has Bulgaria's commitment changed after accession, compared to before?

How is it beneficial for Bulgaria to comply with EU requirements?

Which incentives are the most attractive/beneficial?

Has the CVM been a credible incentive for Bulgaria to comply with EU conditions?

Do you regard positive or negative conditionality – rewards or sanctions – as the most efficient tool for compliance?

Can you think of any factors (external and/or internal) that have had an impact on Bulgaria's compliance with EU requirements, either positively or negatively?

Why do you think corruption is still such a widespread problem in Bulgaria?

Would more efficient use of sanctions and/or rewards change the government's approach to anti-corruption measures in Bulgaria?

Do you consider EU conditionality as an efficient tool in the fight against corruption in Bulgaria?

Can you point to external and/or internal factors that might affect compliance of anti-corruption measures in Bulgaria?

Do you have any thoughts about why anti-corruption measures seem to be inefficient in Bulgaria?

Do you have any thoughts about how Bulgarians relate to EU-initiated laws and anti-corruption measures?

The cases:

Are you familiar with the function of this law?

What has EU done in order to affect Bulgaria to improve this law in the years after?

To what degree does the EU consider internal factors that might prevent such a measure to take hold in Bulgarian society?

Can you think of any external and/or internal factors that affect Bulgaria's compliance with EU requirements?

Has the EU implemented conditions/measures as a result of the shortcomings in the law (e.g. the delay by the parliament, inefficient implementation of the law)?

Is there anything else you might want to add that you regard as interesting for the theme?

What do you think about the questions?

Can I get back to you with follow-up questions if new issues occur?

Is there anyone else that you recommend me to contact?