

# **Post-accession conditionality – monitoring without punishment?**

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# Cooperation and Verification Mechanism (CVM)

- Set up to monitor progress after accession in the areas of judicial reform, fight against corruption and organised crime\*
- Applicable only to Bulgaria and Romania
- For areas with very thin acquis
- Open-ended
- Controversial and divisive
- Important implications for EU internal and external policies

# Cooperation and Verification Mechanism (CVM)

- Legal basis: Accession Treaty
  - Super safeguard clause
  - Additional conditionalities in the case of Romania
- CVM – ad hoc solution
- Sets of country-specific benchmarks
- Linked to the activation of JHA safeguard clause

| Stages                 | Conditions  | Incentives Structure  |  | Monitoring                        |
|------------------------|---|---|--|-----------------------------------|
|                        |   | Rewards   | Threats  |                                   |
| <b>Pre-negotiation</b> | <ul style="list-style-type: none"> <li>- Conditions for applying for membership;</li> <li>- Conditions for opening Accession Negotiations;</li> <li>- Additional (country specific) conditions</li> </ul>   | <p><b>Accession advancement:</b></p> <ul style="list-style-type: none"> <li>- Providing membership perspective;</li> <li>- Signing Association Agreement;</li> <li>- Implementing Association Agreement;</li> <li>- Granting Candidate country status;</li> <li>- Opening Accession Negotiations.</li> </ul> <p><b>Financial assistance</b></p> | <p><b>Explicit threats:</b><br/>Suspending funding</p> <p><b>Implicit threats</b><br/>(refer to each of the accession advancement rewards)</p>   | Regular Progress Reports (annual) |
| <b>Negotiations</b>    | <ul style="list-style-type: none"> <li>- Copenhagen criteria;</li> <li>- Opening benchmarks;</li> <li>- Interim benchmarks</li> <li>- Closing benchmarks;</li> <li>- 31/35 chapters;</li> <li>- Areas of serious concern – highlighted in monitoring reports</li> </ul> | <p><b>Accession advancement:</b></p> <ul style="list-style-type: none"> <li>- Opening chapters;</li> <li>- Closing chapters;</li> <li>- Credible membership perspective;</li> <li>- Completion of Accession Negotiations;</li> <li>- Signing Accession Treaty</li> </ul> <p><b>Financial assistance:</b></p>                                    | <p><b>Explicit threats:</b><br/>Suspending funding</p> <p><b>Implicit threats</b><br/>(refer to each of the accession advancement rewards)</p>   | Regular Progress Reports (annual) |
| <b>Accession</b>       | <ul style="list-style-type: none"> <li>- Copenhagen criteria;</li> <li>- Areas of serious concern – highlighted in the monitoring reports)</li> </ul>   | <p><b>Accession advancement:</b></p> <ul style="list-style-type: none"> <li>- Accession</li> </ul> <p><b>Financial assistance</b></p>   | <p><b>Explicit threats: (Preventive and Remedial Sanctions)</b></p> <ul style="list-style-type: none"> <li>- Internal Market Safeguard;</li> <li>- JHA Safeguard ;</li> <li>- Super Safeguard;</li> <li>- Additional clauses)</li> </ul> | Comprehensive Monitoring Reports  |
| <b>Post-accession</b>  | <ul style="list-style-type: none"> <li>- individual country specific conditions (benchmarks)</li> </ul>   | <p><b>Financial assistance</b></p>  | <p><b>Explicit threats: (Preventive and Remedial Sanctions)</b></p> <ul style="list-style-type: none"> <li>- Economic Safeguard;</li> <li>- Internal Market Safeguard;</li> <li>- JHA Safeguard Clause</li> </ul>                        | Monitoring Reports (biannual)     |

# Conditions (Bulgaria)

- (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.
- (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.
- (6) Implement a strategy to fight organised crime, focussing 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.

# Conditions (Romania)

- (1) Ensure a more transparent and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.
- (2) Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.
- (3) Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.
- (4) Take further measures to prevent and fight against corruption, in particular within the local government

# Sanctioning lack of progress

- Commission concluded that it ‘considers support to be a more effective than sanctions and will not invoke the safeguard provisions set out in the Accession Treaty’
- ‘The discontinuation of cooperation in the judicial field would have contributed nothing to achieve the ultimate aim’ (Interview 1, 2009);
- ‘Compared to the political exposure, this [JHA safeguard] is a Mickey Mouse clause’ (Interview 3);
- ‘The mechanism is a huge credibility issue for the Union’ and pointed out that ‘the disadvantages of activating outweigh the advantages’ (Interview 2, 2009)

# Sanctioning lack of progress

- Some member states pushed for the activation of JHA clause;
- Introducing new sanctions? Discussions in the Commission for linking the removal of the CVM with Bulgaria's and Romania's accession to the Schengen Area;
- Application of financial sanctions against Bulgaria and Romania



# Monitoring

- Monitoring: Reports ‘at least every six months’
  - 2012 Reports – overall assessment
- Monitoring reports and technical updates
- Evaluation – ‘all benchmarks are closely interlinked’ (2009)
- ‘This is a process which needs deep societal change – it is not realistic to expect quick results’ (2013)

# Bulgaria (2015)

- The European Court of Human Rights: ‘over 45 judgments against Bulgaria, found that the authorities had failed to comply with their obligation to carry out an effective investigation and considered that these recurrent shortcomings disclosed the **existence of a systemic problem**’;
- The need for deeper reform of the prosecution is borne out by the **continued lack of a solid track record** in high-level cases on corruption and organised crime;
- Bulgaria consistently ranks among the EU Member States with the **highest perceived level of corruption**;
- The institutions which have been set up to fight corruption have been characterised as fragmented, uncoordinated.

# Romania (2015)

- The track record of the key judicial and integrity institutions to address high-level corruption has **remained impressive**;
- The judicial system as a whole has continued to show its professionalism, including a capacity to adapt to significant changes in the civil and criminal codes, efforts to unify jurisprudence and a **willingness to defend the independence of the judiciary**;
- DNA indicted over 1250 defendants including the Prime Minister, former Ministers, Members of Parliament, mayors, presidents of county councils, judges, prosecutors and a wide variety of senior officials.
- Since 2013, the total numbers of local officials sent to trial for corruption amount to almost 100 mayors, over 20 county council presidents and dozens of other local officials.

# How effective?

- Laura Codruta Koevesi (Chief Prosecutor of National Anti-Corruption Directorate): ‘Without this mechanism the reform of the judiciary would have never had such a scale’
- Monica Macovei (Romania, EPP): ‘This mechanism is highly efficient. If it didn't exist the national directorate for the fight against corruption would not have existed in Romania. An institution with huge success which works very well’
- The CVM continues to play an important role in Romania as driver for reform and an incentive to maintain consistency in track record (European Commission, 2016)

# 15 Reports later...

- EU has revised and expanded on the scope of the benchmarks
- Growing gap between BG and RO
- Contested impact
- First substantial debate in EP
- Responsibility of the First Vice President of the European Commission
- Commitment to end the CVM by 2019

# **New Instruments**

- EU Justice Scoreboard ( 2013, 2014, 2015)
- EU Anti-Corruption Report – CVM for all?
- EU rule of law Mechanism
- New Approach to the Accession Negotiations

# Conclusions

- Post-accession conditionality illustrates the limitations of the EU's approach to sanctioning lack of sufficient progress
- The emergence of new EU instruments illustrates the wide gap between the Union's approach towards enlargement countries and MS
- Need for a more comprehensive framework of EU democratic governance