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Democracy and human rights in the EU enlargement process:

Focus on corruption from a human rights and democratic perspective,
in relation to the EU adhesion of Western Balkan official candidates.

Author: Elisa Collomp
Supervisor: Mr. Atanas Slavov

ELISA COLLOMP

DEMOCRACY AND HUMAN RIGHTS IN THE EU ENLARGEMENT
PROCESS:

FOCUS ON CORRUPTION FROM A HUMAN RIGHTS AND
DEMOCRATIC PERSPECTIVE, IN RELATION TO THE EU
ADHESION OF WESTERN BALKAN OFFICIAL CANDIDATES.

ABSTRACT

Candidate countries to the EU accession must fulfil various criteria in order to be eligible to the accession. Besides, the EU enlargement process has evolved a lot these past decades, due to important historical changes. Among the new criteria settled by the EU, democracy and human rights hold a significant and prominent importance. Since the perspective of accession of the CEEC, the EU created the Copenhagen criteria, in order to build a new accession process in accordance with the EU viewpoint to enlarge towards Central and Eastern Europe. After the great enlargement of 2004, and the following ones of 2007 and 2013, it is now the turn to Western Balkan countries to run for the accession. However, the EU accession process to the Balkans, in spite of the lessons learned from the past enlargements, stays an uphill struggle, due to major obstacles.

One of the main difficulties to the accession is the phenomenon of corruption. Indeed, it has been one of the main issues during the previous enlargements, and it is still one nowadays for Western Balkan official candidates to the accession. However, these past years, the issue of corruption has been through new and more comprehensive perspectives and studies, such as the human rights and democratic angle. Therefore, the aim of this research is to put into connexion the EU enlargements, human rights, democracy, and the phenomenon of corruption. Bringing a new perspective on corruption in relation to the EU enlargement is necessary considering the difficulties of Western Balkan official candidates to comply with the EU prerequisites, and the struggles of the EU to create and manage effective and fair pre-accession instruments.

LIST OF ABBREVIATIONS BY ALPHABETICAL ORDER

CARDS	Community Assistance for Reconstruction, Development and Stabilisation)
CEEC	Central and Eastern European Countries
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CVM	Cooperation and Verification Mechanism
DPS	Democratic Party of Socialists
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
GRECO	Group of States Against Corruption
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
IPA	Instrument for Pre-Accession Assistance
NGO	Non-Governmental Organisation
OCCRP	Organized Crime and Corruption Reporting Project
OECD	Organisation for Economic Co-Operation and Development
OHCHR	Office of the High Commissioner of Human Rights
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
SIGMA	Support for Improvement in Governance and Management
TEU	Treaty on the European Union
TI	Transparency International
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime

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INTRODUCTION

Democracy and human rights are, to some extent, the pillars of a considerable number of States or international organisations such as the United Nations or the European Union. Though, during the past decades, democratic principles have strongly guided the establishment of the new modern democracies, and therefore the society in general. The construction of these new democracies has been implicitly linked to principles of human rights and the creation of common values. Human rights and democracy are reciprocally constitutive and complementary principles.

“The most effective way to protect human rights is through independent domestic legal institutions – and the best way to uphold those is via democracy.”¹

From a historical point of view, the strong desire of democracy and human rights have drastically swollen during the end of the twentieth century, in response to the end of authoritarian regimes,² and exhorted by the development of international organisations promoting similar values, such as the UN, the EU or the Council of Europe among others.

Without underestimating the tight relationship between human rights and democracy, it is important to remind that their link can also be a source of tension in certain cases – indeed, democracy refers to the majority will while human rights are more affiliated to individualism or individual rights and freedom.³ However, the association of an efficient protection and defence of human rights with the respect of democratic principles remains a fundamental objective targeted by many different countries, and international organisations such as the EU or the Council of Europe. This can be entitled as the principle of “constitutional democracy,” that is to say the association of democracy, human rights and rule of law.

¹ Davis Kiersten E, “*The relationship between Democracy and Human Rights*” (October 2015) Monash University Research Paper
<https://www.academia.edu/17445635/The_Relationship_Between_Democracy_and_Human_Rights> accessed 17 March 2020

² Landman Todd, “*Human Rights and Democracy: The Precarious Triumph of Ideals*” (Bloomsbury Academic, 2013)

³ Davis Kiersten E (n 1)

The Council of Europe has been the first international organisation in the European continent to define these standards as founding principles and values, well before the EU for instance. The role of the Council of Europe remains essentially focused on human rights and democratic standards. The Council has established various special bodies that are specialised in a lot of different related subjects; for example, the GRECO (Group of States Against Corruption) is specialised in anti-corruption matters. From a larger perspective, the Venice Commission has an important consultative role related to the questions to democracy through the law, and support the Council of Europe in the development of the current meaning of its values. Regarding the specific case of the EU, certain values are mentioned in primary law and are considered as core values of the organisation.

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”⁴

However, the interest towards human rights and related values did not trigger as much preoccupation during the beginning of the European construction. Indeed, the establishment of the European Community was mainly focused on economic matters. Yet, at the present time, the European Union is an important driving force regarding the defence and protection of human rights as well as democratic principles inside the EU but also beyond its borders. Thanks to its multidisciplinary competencies, the EU is considered as “guaranteeing entities” and plays an important role in the juridical and political point of view. The Article 7 of the TEU is dedicated to the protection of the previous mentioned values, and settled a mechanism that can be used in case a Member State undermines the fundamental values.

Nevertheless, even if in the collective imaginary the European continent is an example in terms of respect for human rights and democracy, there is a real challenge nowadays. Indeed, the emergence of certain events in recent years has accentuated the endangerment of EU values, with for example the challenge of uncontrolled migration, the non-cooperation from EU Member States, the question of the rule of law, and so on.

As mentioned above, the EU values go beyond the borders of the EU itself. Indeed, they have an important influence on EU external relations, in the neighbouring countries and also at international level. Nowadays, the EU agenda in terms of external relations increasingly

⁴ Consolidated version of the Treaty on European Union (TEU), [2012], OJ C326/1

includes notions related to EU values, that is to say human rights, stable democratic institutions, etc.⁵ These values have a prominent role in the EU enlargement process, as States that wish to enter in the EU must respect specific criteria, known as Copenhagen criteria. EU primary law states that:

*“Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. [...] The conditions of eligibility agreed upon by the European Council shall be taken into account. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.”*⁶

The Article 49 of TEU confirms that the compliance with EU values stated in the Article 2 mentioned before is necessary and mandatory for the candidates. The pre-accession period is though complex and many criteria from different subjects – from economic, juridical, political perspectives - have to be met by the candidates, in order to adopt a form of EU standards.

Therefore, if Copenhagen criteria focus on different intricate areas, I have found interesting to focus on the question of corruption, and on new approaches including human rights and democratic principles. The question of corruption became more widespread with the last waves of enlargements in Central and Eastern Europe. At the end of the 20th century, the EU remained the most prominent actor in this area in terms of the development of democratic principles and human rights protection.⁷ Yet, at the beginning of the pre-adhesion process of the candidates from Central and Eastern Europe, corruption was not the main preoccupation, but became with time an important barrier to the accession.⁸ Yet, it is important to remind that all candidates from the Western Balkans and actual EU members from the Balkans were at that time and nowadays already members of the Council of Europe. In terms of corruption, these countries had to, and still have to comply with CoE obligations, in this case stated by the GRECO and the Conventions such as the Criminal Law Convention on Corruption or the Civil Law Convention on Corruption if ratified. Consequently, it stays essential to highlight the interplay between the EU and the Council of Europe. Indeed, in a certain way, it can be said

⁵ Inglis Kirstyn, “EU values in EU External Relations: an introduction to current legal instruments” 2009 <<https://transatlanticrelations.org/wp-content/uploads/2019/10/ch07.pdf>> accessed 20 March 2020

⁶ Consolidated version of the Treaty on European Union (TEU), [2016], OJ C202/43

⁷ Mihaela Ristei Gugiu, “EU Enlargement and Anticorruption: Lessons Learned from Romania,” (2012) Journal of European Integration, <<http://dx.doi.org/10.1080/07036337.2011.595487>> accessed 20 March 2020

⁸ *ibid.*

that standards developed through the Council of Europe regarding human rights, democracy, rule of law or corruption for instance, may be later endorsed by the EU and taken as a basis. Thus, both institutions have played a major function regarding the issue of corruption in Europe, and it is important to recognize particularly the role, impact and influence of the Council of Europe not only on the European territory but also in the EU matters.

Thus, some developed concepts related to the question of corruption and human rights, democracy and rule of law have started to appear these past years. The concept itself of “right to be free of corruption” was not used at the beginning of the EU enlargement, as corruption was mainly seen as a political and economic obstacle but not as a fundamental right for citizens. To this day, it remains difficult to study this concept as scholars don’t show a clear and concise definition that could be used by law-makers, for example. Nonetheless, recent research proved the negative impact of corruption on the rights of the civil society, and the question of corruption as a violation of human rights has been addressed among scholars and national and international organisations.

Therefore, the aim of this thesis is to make a link between principles of democracy and human rights with the EU enlargement process. The research will focus specifically on questions of corruption and the human rights and democratic approaches, and how it is linked with the EU accession of Western Balkan’s official candidates. A study case will support the research with a comparison of situations between actual EU Balkans States and the official candidates to the accession. The purpose is to compare situations in EU Balkan Member States and their actual situation regarding corruption, human rights and democracy, as well as the current challenges in the official candidates, and anti-corruption initiatives already existing.

With regards to the facts announced, this thesis seeks to answer the following principal question: How fundamental is the fight against corruption regarding the EU accession of Western Balkan official candidates specifically from a human rights and democratic perspective?

Furthermore, a series of sub questions will complement the research, which are: What are the theories related to corruption, human rights and democratic principles? How is the right to be free of corruption related to democracy and human rights’ EU principles? What is the impact of corruption on citizens’ rights and human rights standards? What is the scope of anti-corruption policies in the EU accession negotiations and how these policies are monitored in the Western Balkan’s official candidates to the EU? What is the strategy to fight against corruption in the Western Balkan’s official candidates to the EU accession in order to comply

with Copenhagen criteria, especially regarding the rule of law and stable democratic institutions? How the EU conditionality is having an impact on corruption-related issues in the Western Balkan's official candidates to the EU?

The methodological approach of this thesis is multidisciplinary depending on the chapters and questions addressed. The research applies critical overview of theories related the human rights and democratic based approach on corruption and the question of EU enlargement, assesses existing literature reviews and analyses about questions of corruption in relation to different theories, and finally employs analysis of legal and strategic documents on the issue. Different types of sources will be analysed, from official documents (reports, concepts, strategies), think-tank and NGOs reports, academic literature, and legal documents. The methodological approach of the study case is a bit different and is structured in several parts. The first two subparts are focusing on the EU Western Balkans and the official candidates and are developed through different sections: the road to the adhesion, the EU initiatives in terms of preparation to the enlargement, the impact of the EU accession process on corruption, human rights and democracy, as well as the post-accession situation. Finally, the third part is focusing on the conclusions of this study, and develops on the outcomes of the enlargement process, the lessons learnt from the past and the current challenges. This study case will be strongly supported by newspaper articles, in order to rely on the actuality and give a brief situation of what is happening in the Western Balkan countries recently, as corruption stays a very topical subject.

Thus, this research seeks to answer the different questions presented above by developing on different main subjects. The first chapter looks at the global issue of corruption, and on the emergence of theories related to the human rights and democratic based approaches on corruption. The aim of this chapter is to give a preliminary overview of the issue of corruption, with an emphasis on the human rights and democratic perspectives. The second chapter explores the complex objective of the EU enlargement process and then the effect of corruption in the EU adhesion progression. The last part focuses on the regional and international legislative initiatives, which may have a major impact in the EU enlargement process. Lastly, the third chapter is dedicated to the study case and gives an overview of the EU enlargement situation and corruption in the EU Balkan countries and the official candidates to the adhesion.

1.

CORRUPTION FROM A HUMAN RIGHTS AND DEMOCRATIC PERSPECTIVE: A PRELIMINARY OVERVIEW

1.1 A CONTRAST BETWEEN CONCEPTS OF CORRUPTION AND THEORIES RELATED TO THE RIGHT TO BE FREE OF CORRUPTION

1.1.a Defining corruption

The word corruption itself stays hard to define. The conventional sense of corruption derives from the Latin translation of “spoiling, polluting, abusing or destroying”.⁹ Yet, over the centuries, the current definition of corruption has evolved depending on the contexts, cultures, etc. In addition, there is no clear legal definition of corruption in international treaties, and it is not considered as a criminal infraction in the majority of criminal codes.¹⁰ At international level, the United Nations Convention Against Corruption (UNCAC) doesn’t have in its text a definition of corruption, as no one could agree about this term. Thus, the most common definition of corruption was developed by the NGO Transparency international (TI).¹¹ In general terms, they describe corruption as “the abuse of entrusted power for private gain”. According to the same source, corruption can be categorised as grand, petty or political, varying on the financial consequences of it and the sectors where it occurred. The grand corruption refers to a high level of public offices, and petty corruption to smaller day-to-day administrations.¹² Political corruption refers to the use of power in order to transform public

⁹ Holmes Leslie, “*Corruption: a very short introduction*”, (2015) Oxford University Press, 1 < <https://books.google.bg/books?id=xxfJBgAAQBAJ&printsec=frontcover&dq=corruption+definition&hl=fr&sa=X&ved=0ahUKEwjIpJ3JveroAhUoxqYKHeIABzsQ6AEIRDAD#v=onepage&q=corruption%20definition&f=false>> accessed 22 March 2020

¹⁰ Peters Anne, “*Corruption and Human Rights*” (2015) Basel Institute on Governance Working Paper Series No. 20, 10 < https://www.mpil.de/files/pdf4/Peters_Corruption_and_Human_Rights20152.pdf> accessed 22 March 2020

¹¹ *ibid* 10.

¹² *ibid* 10.

policies for personal gain as power, social status or wealth.¹³ In most of the cases, the different “categories” of corruption are interconnected, as there is often a sort of scheme of corruption that spreads out on the different levels.¹⁴ However, even the definition of the NGO Transparency International is subject to multiple analyses and interpretations, and therefore corruption stays a very complex concept, from legal and definitional perspective.

Defining corruption is also challenging due to the multiple facets of how corruption can occur. Indeed, it can affect different sectors such as the private or public one, and, moreover, under several diverse forms. It would be excessively long to develop in this thesis all forms of corruption, but it remains interesting to focus on the most widespread models; even though recurring forms of corruption may significantly change according to the continent, the country concerned, etc.

A common form of corruption is “bribery”, which refers to the offering, promising, accepting or soliciting an undue advantage in order to encourage an action for personal purposes that could be illegal, even unethical; under different forms such as donations, loans, services, rewards, etc.¹⁵ From a law perspective, bribery is condemned in Articles 15 and 16 of the UNCAC, which refers to the criminalisation and law enforcement of national or public officials, as well as officials of public international organisations.¹⁶ Another widespread form of corruption is “clientelism”, also described as cronyism. It refers to the exchange of favours for a consequent period of time, based on an asymmetric relationship between a “patron” and a “client” where one detains more “power” in comparison with the other.¹⁷ Embezzlement is also a recurrent form of corruption, and describes the appropriation of funds or goods by a person in an institution, organisation (...) for personal purposes.¹⁸ Corruption can also occur in “lobbying activities”, when the influence is not transparent or honest. So far, these are not the only forms of corruption. According to TI, nepotism, money laundering, fraud, extortion, conflicts of interest, patronage, tax evasion, solicitation, etc. are considered as well as forms of corruption.

¹³ Transparency International, “*What is corruption*”, (2018) < <https://www.transparency.org/what-is-corruption#define>> accessed 22 March 2020

¹⁴ Peters Anne, “*Corruption as a Violation of International Human Rights*” (2018) *European Journal of International Law*, Volume 29, Issue 4, Pages 1251–1287 <<https://academic.oup.com/ejil/article/29/4/1251/5320164>> accessed 22 March 2020

¹⁵ Transparency International, “*Anti-corruption glossary: Section Bribery*”, (2018) < <https://www.transparency.org/glossary/term/bribery>> accessed 22 March 2020

¹⁶ United Nations Convention Against Corruption (2004) A/58/422

¹⁷ McLean Iain and McMillan Alistair, “*The Concise Oxford Dictionary of Politics (3 ed.)*” (2009) Oxford University Press

¹⁸ Transparency International, “*Anti-corruption glossary: Section Embezzlement*”, (2018) < <https://www.transparency.org/glossary/term/embezzlement>>

All types of corruption generally have an important cost for the society. This cost can be split into four general classifications: economic, social, political and environmental.¹⁹ Each of these areas are affected in a different way, and are harmed for people's rights, freedom, money, etc. From a political and social point of view, corruption disrupts principles of democracy and rule of law as institutions are not legitimate anymore and give advantages for private gains, and therefore harms the social fabric.²⁰ Likewise, the impact of corruption on the economy is also significant as public resources can be used for non-prioritised project, that don't serve the collective interest. Thus, this situation can be responsible of negative consequences on the environment as corruption is sometimes linked with the management of natural resources or projects that would lead to the destruction of the environment.²¹

Consequently, it can be said that corruption is a very complex phenomenon. It exists multiple forms of corruption, that influence different sectors and that have consequences on different aspects of the society. Even though corruption is more present in some particular countries, it stays a global order issue, recognised by international and national big organisations.

1.1.b The “right to be free of corruption”: the emergence of theories of a “new” right

After defining corruption, this second sub-part of the chapter will be dedicated to the analyse of the emergence of the concept of the right to be free of corruption. The right to be free of corruption is not verbatim the only way to describe this notion. Some scholars may use other expressions that are quite similar and interconnected, such as the right to a corruption-free society, corruption as a violation of human rights, the right to corruption-free service or freedom from corruption as a human right among others. As explained in the introduction of this thesis, there is not a clear definition of this concept. The notion of right to be free of corruption itself is not explicitly cited or referred in international law. However, later in this thesis will be analysed some legislation dedicated to counter corruption and possible legal remedies that are therefore linked with the concept of right to be free of corruption to some extent.

¹⁹ Transparency International, “*What are the costs of corruption*”, (2018) < <https://www.transparency.org/what-is-corruption#costs-of-corruption> > accessed 24 March

²⁰ *ibid.*

²¹ *ibid.*

Yet, the simplistic definition of the concept of right to be free of corruption may be explained by the right of any individual to live in a country where no form of corruption could endanger or damage directly or indirectly his fundamental rights. The notion of “right” is very important as; if the notion recognises that corrupted acts can be considered as violations of human rights, the intention is more to highlight corruption itself as structural obstacles to the full enjoyment of basic fundamental rights.²²

The emergence of the concept of right to be free of corruption is quite recent in comparison with the “initial” human rights promoted in the UN Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural rights (ICESCR). However, the right to be free of corruption is not a “new” human rights that emerged from society’s changes.²³ Indeed, during the mid-40s, the development of the main instruments of international law regarding human rights by international organisations did not consider the topic of corruption as a major subject for their policies.²⁴ It is from the end of the 90s that international organisations started to measure the importance of combatting corruption, and created different instruments at international but also at regional levels.²⁵ To this day, leading international organisations regarding corruption highlight four different objectives concerning anti-corruption policies: to develop the functioning of the global market, to support economic expansion, to participate in the reduction of poverty, and finally to maintain States’ legitimacy.²⁶ However, at first, the awareness of the necessity to combat corruption has not been driven by the idea of corruption as a violation of human rights or a free-corrupted society as a fundamental right. Nonetheless, the concept of right to be free of corruption can be related to principles of good governance. Indeed, this principle includes notions of integrity and accountability, which are an integral part of the establishment of a transparent government, and though linked to rule of law, human rights and democracy.

Considering this perspective, the right to be free of corruption can be considered as a “new human right” because it still has to be recognised in the international community per se. Since the creation of human rights legal instruments, numerous developments led to the recognition

²² OHCHR, “*Corruption and Human Rights*”, (2020) <<https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx>> accessed 28 March 2020

²³ Peters Anne, (n 10) 11.

²⁴ AlleEuropa, “*Corruption as violation of human rights. The Council of Europe anti-corruption instruments and mechanisms*” (2014) <<http://alleuropa.ru/?p=11005>> accessed 26 March 2020

²⁵ *ibid.*

²⁶ Ackerman Susan Rose, “*Anti-Corruption Policy: Can International Actors Play a Constructive Role?*” (2013) Carolina Academic Press, 5 – cited by Peters Anne, (n 10) 11.

of new rights, with for example the third generation of rights including environmental issues.²⁷ Recognising the right to be free of corruption is therefore a topical challenge. The “creation” of this “new” human right would help international organisations and governments to implement adequate laws in order to protect citizens from all negative externalities occurring due to corrupted behaviours, as well as supporting the transparency of governments in order to promote the rule of law and democratic principles.²⁸ If this new right is not legally recognised, international organisations such as the UN or the EU considers more and more in their policies the human right approach on corruption, through the SDGs for example.

1.1.c Corruption and right to be free of corruption: interconnected but different notions

“Official corruption is typically understood as a means by which established human rights are violated, but not as a direct violation. Freedom from official corruption is not enshrined as a universal and inalienable right to which a person is inherently entitled.”²⁹

In the previous parts of this section were developed broadly both concepts of corruption and right to be free of corruption. These two concepts are definitely interconnected but also different as explained in the quotation above. Indeed, if the right to be free of corruption is undoubtedly connected with corruption; the fight against corruption itself doesn’t develop the question of “right”, but focuses on negative general impacts of it on businesses, states or individuals, etc.

In this thesis, it will be complex to only focus from one particular perspective such as the right to be free of corruption as this notion stays a theory that is not recognised in the international community and by all international organisations. From a traditional point of view, corruption was in majority seen as a “victimless crime”.³⁰ Even though the traditional definition of corruption has evolved over the past decades, most of the policies against corruption approach it from a perspective where corruption is an indirect means of human rights violations. Besides, for many, corruption is at first an economic issue, harm for businesses and impedes an efficient economic development.

²⁷ Matthew Murray and Andrew Spalding , “*Freedom from Official Corruption as a Human Right*” (2015) Brookings Governance Studies, Research Paper, 13 <https://www.brookings.edu/wp-content/uploads/2016/06/Murray-and-Spalding_v06.pdf> accessed on 27 March 2020

²⁸ Matthew Murray and Andrew Spalding, (n 27) 15.

²⁹ Matthew Murray and Andrew Spalding, (n 27) 2.

³⁰ Peters Anne, (n 10) 11.

The contrast between corruption and the right to be free of corruption (as well as related notions or different phrasing) constitutes a complex issue, especially from a juridical perspective. Some scholars raised the question of the consistency of the principle of recognition of corruption as a direct violation of human rights. For the moment, international organisations acknowledge the connection between corruption and human rights violations, however, with slightest statements. For example, in documents from the UN - such as reports from the Human Rights Council, or specific monitoring bodies – it is mentioned that corruption has a negative impact on human rights, or that it has “grave and devastating effect”, or finally that corruption undermines fundamental rights.³¹ It is also important to remind that, generally speaking, the issue of corruption has known a late interest in the international community, in international organisations or governments. Consequently, corruption in general remains quite a recent subject that was addressed under international law. Therefore, there is still a long way to go until a full recognition of a right to be free of corruption as the notion of corruption itself was approached recently. Yet, these past years, the subject of corruption has been more likely to be studied and analysed from other perspectives as the traditional ones, and in concordance with principles of human rights.

Thus, the second part of this first chapter is dedicated to corruption from a human right angle. It has the aim to study related deeper questions about the human-right-based approach on corruption, the consequences of corruption on human rights standards, and the recognition of corruption as a violation of fundamental rights.

1.2 EMPHASIS ON CORRUPTION FROM HUMAN RIGHTS PERSPECTIVES

1.2. Human-rights-based approach on corruption: focus on the “Transparency and Human Rights, Making the Connection” report from the ICHPR and TI

Though, the aim of this first part is to focus on corruption with a human rights perspective, and for the moment particularly on the human-rights-based approach on corruption.

The connection between corruption and human rights is most of the time assumed. The establishment of a link between combating corruption and the promotion and defence of human is necessary as corrupted governments often don't respect basics human rights as they reject

³¹Peters Anne, (n 10) 12.

transparency and/or accountability.³² Therefore, making a connection between corruption and human rights is the first step to recognise other theories such as the right to be free of corruption. The emergence of a human-rights-based approach on corruption is quite a new phenomenon. One of the key reports that settled clear human rights perspectives on corruption is “*Transparency and Human Rights, Making the Connection*” from the International Council for Human Rights Policy (ICHRP) and the NGO Transparency International, that was published in 2009.³³ This report is one of the first studies from official organisations that analysed the impact of corruption from a human-right perspective.

The report from the ICHRP and TI launched the debate around this subject in the international scene, and presented necessary information and perspectives to adopt in terms of human rights and corruption. Cobus de Swardt from TI highlighted that: “*For too long the anti-corruption and human rights movements have been working in parallel rather than tackling these problems together.*”³⁴ The report focuses not only on the connexion between both corruption and human rights, but on the reciprocal connexion they have. Then, it states that from the one hand anti-corruption instruments hardly mention the question of human rights, but on the other hand, it can be noted that it remains similar in the reverse situation, where corruption rarely appears in human rights instruments.³⁵ The report also highlights that a human rights-based approach on corruption may help to improve the public awareness and though getting support especially from key actors such as media, politicians or citizens in general, in order to develop campaigns or programmes for combatting corruption.³⁶ Furthermore, according to the report and other different scholars, if corruption is a detriment to everyone, it impacts particularly disadvantaged groups, such as children, migrants, women, minorities, indigenous people, etc.³⁷ Though, the human rights-based approach on corruption is also about to catch attention on this particular point, where corruption affects people that are already vulnerable and suffer from other human rights violations in their everyday lives. Finally, it is important to remind that the aim of defending a human rights-based approach on corruption is not about asking human rights

³² Hemsley Ralph, “*Human Rights & Corruption States’ Human Rights Obligation to fight Corruption*” (2015) Journal of Transnational legal issues Volume 2 issue 1, 12 https://www.unilu.ch/fileadmin/fakultaeten/rf/morawa/dok/JTLI_Vol_2_Issue_1_Hemsley.pdf accessed 2 April 2020

³³ Ramasastry Anita, “*Is There a Right to Be Free from Corruption?*” (2015) University of California Davis Vol.49:703, 721 <https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Ramasastry.pdf> accessed April 2020

³⁴ ICHRP, TI, “*Corruption and Human Rights: making the connection*” (2009), vi <http://www.ichrp.org/files/reports/40/131_web.pdf> accessed 2 April 2020

³⁵ *ibid* 3.

³⁶ *ibid* 5.

³⁷ *ibid* 7.

organisations to transform themselves as anti-corruption organisations or vice versa.³⁸ The necessity of taking this approach is to admit the connexion between these two issues. Thus, thanks to a better understanding of consequences arising from corruption, organisations from both sides could be able to work together and address shared challenges.

Therefore, this report marked the beginning of a human-rights-based approach on corruption. The new approach developed in this report represented a big step for theories related to the right to be free of corruption. Indeed, although this report doesn't recognise clearly a corruption-free society as a right for people, it remained an important improvement in terms of identifying corruption and human rights interconnected. Furthermore, it is indicated in the report that both ICHRP and TI confessed the merit of the concept of right to be free of corruption, but that their goal was to focus on already existing human rights stated in international treaties and ratified by many countries.³⁹ Thus, if this report did not recognise or encouraged explicitly theories related to the right to be free of corruption, it settled for the first time a necessary foundation that proved the relevance of the link between corruption and human rights.

1.2.b The negative impact of corruption on human rights standards

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid.”⁴⁰

After demonstrating the necessary human-rights-based approach on corruption, it is interesting to focus particularly on the impact of corruption on human rights standards. The negative impact of corruption on human rights has no longer to be proved. Indeed, numerous reports or statements from international organisations, NGOs or governments acknowledged the important and urgent issues induced by corrupted actions. The quote above by the former Secretary General of the UN Annan Kofi highlights the different areas affected by corruption,

³⁸ *ibid* 83.

³⁹ ICHRP, TI (n 34) 3.

⁴⁰ Annan Kofi, “*Speech of the Secretary General on the adoption by the General Assembly of the UNCAC*” (2003) <<https://www.unodc.org/unodc/en/treaties/CAC/background/secretary-general-speech.html>> accessed on 2 April 2020

and the more global negative consequences on society and particularly in developing countries. However, if the relation between corruption and human rights has been proved already, it is necessary to remind that the impact of corruption on human rights is not systemic. Indeed, corruption occurs under a wide range of forms that cannot be at all times linked with human rights issues.

Well, in real terms, how corruption acts negatively on human rights? It remains quite hard to find direct links between corrupted behaviours and specific violations of human rights as corruption stays itself hard to define and particularly to measure. Nevertheless, it has been proved that corruption has consequences particularly on social rights, that are already recognised by international human rights organisations in different legislative tools.⁴¹ Anyway, different reports and studies demonstrated connexion between corruption and particular rights. Consequently, corruption can have negative effects on different rights, such as the right to life, the right to health, the right to education, the rights of women, the freedom of expression freedom and information, political and justice rights, as well as the right to development.⁴² Some examples may illustrate this approach on corruption. For instance, a prisoner that must give to a guard something in exchange for having better conditions of living such as getting a blanket or food could be considered as a violation of the right to humane conditions of detention stated in Article 10 of the ICCPR.⁴³ The right to work (Article 6 of the ICESCR) for example can be impacted by corruption when the recruitment of someone will depend on the payment of a bribe, or influenced by nepotism or cronyism. Corruption may also act on the right to health, when medical staff ask for bribes in exchange for services, better care or access to some medications. These are examples of the impact of petty corruption on human rights among others. Moreover, some types of violations are more common in some countries than others. Taking the example of the situation in the Balkans, some data proved that an average of 8 per cent of citizens have been solicited to vote for a particular politician or political party in exchange for money, goods or advantages.⁴⁴ This represents an important harm for the transparency and public accountability of governments, in oppositions with principles of good

⁴¹ Peters Anne (n 14)

⁴² Barkhouse Angela, Hoyland Hugo, Limon Marc, "*Corruption : a human rights impact assessment*" (2018) Universal Rights Group, 1 < https://www.universal-rights.org/wp-content/uploads/2018/04/Policy_report_corruption_LR.pdf> accessed 13 April 2020

⁴³ Peters Anne (n 14)

⁴⁴ UNODC, "*Corruption in the western Balkans : bribery as experienced by the population*" (2011) < https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Western_balkans_corruption_report_2011_web.pdf> accessed 12 May 2020

governance. Therefore, corruption can impact a wide range of basic rights and democratic principles, and be a real source of instability for every country.

1.2.c The recognition of corruption as a human rights violation from a critical perspective

In the previous parts of this subchapter were developed the human-rights-based approach on corruption as well as the impact of corruption on human rights. Thus, it is interesting to focus afterwards on a critical perspective about the recognition of corruption as a human rights violation in the international sphere.

Indeed, these past years, many scholars and international, regional or national institutions have emphasised the necessity to counter corruption and acknowledged the connexion with human rights standards.

“The question now facing the international community is how to create an anti-corruption norm that acts as a “trump.” ... A new human right would help spur governments to enforce applicable anti-corruption laws, protect citizens from officially sanctioned extortion and become a tool for all stakeholders to demand transparency and honesty from government.”⁴⁵

However, if many actors advocate in favour of a human rights-based perspective on corruption, some scholars examined this approach from a critical point of view and expressed criticisms. From of global critical perspective, the human rights-based approach on corruption has been qualified as “*vague and overreaching*”.⁴⁶ Similarly, the approach is generally criticised for the existence of clear limitations in the legal framework.⁴⁷ Even though scholars that are specialised in corruption matters tend more and more to focus on this approach, the body of law doesn't now offer a sufficient basis for it.⁴⁸ Therefore, the main issue is the lack of “*conceptual clarity*” of this approach, as international law treaties would have to precisely identify and recognise with clear evidence how corruption violates or undermines human rights principles.⁴⁹

Up to now, the definition itself of corruption stays complex and there is no concrete definition of it in international law. Furthermore, the human-rights-based approach on corruption implies

⁴⁵ Murray Matthew and Andrew Spalding, (n 27) 15.

⁴⁶ Peters Anne (n 14)

⁴⁷ Rose Cecily, “*The limitations of a human rights approach to corruption*” (March 2016), Cambridge University Press <<https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/limitations-of-a-human-rights-approach-to-corruption/5DAFE247541373DC79D2AFB31B2A2A42>> accessed 12 May 2020

⁴⁸ *ibid.*

⁴⁹ *ibid.*

to a certain extent the recognition of corruption as a violation of human rights. In spite of the positive repercussions that might arise through this recognition, how would it be possible, from a legal perspective, to sanction corruption considering the multiple forms where it can occur? Another issue is the lack of research and concrete studies about this approach from law-making organisations, which could build and strengthen the credibility and consistency of the human rights-based approach.

Therefore, the human rights-based approach on corruption is facing different critics, perhaps because it stays now a recent concept that requires the involvement of many actors (international and regional organisations, national governments, civil society, etc.). If it is pertinent to recognize that the approach may be “vague”, it should not mean that this is an unattainable goal. The recognition of a human rights has to go through a complex process and it takes understandably a considerable time. However, the issue of the lack of concrete definition of corruption could be circumvented. A particular example is the case of national minorities. The Council of Europe signed in 1995 the Framework Convention for the protection of national minorities (FCNM) which is a legally binding instrument in order to protect national minorities’ rights. There is no definition of national minorities in the FCNM as countries from the CoE could not agree on a common definition. Consequently, each country that ratified the FCNM detains a margin of appreciation and can decide, in compliance with the general principles stated in international law, if a group belongs or not to a national minority.⁵⁰ This compromise allowed the CoE to implement a legally binding instrument and address the problem of the disagreements regarding the definition of national minorities between the countries. Then, if it is also relevant to admit that there is an important issue regarding the conceptual clarity of the human rights-based approach, it is necessary to recognise that the link between corruption and poor human rights standards has no longer to be proved, but requires a common effort from a global perspective in order to prove with evidence this connexion.

Finally, in order to close this chapter, the third sub-part of the preliminary overview on corruption from a human rights and democratic perspective has the aim to focus specifically on democracy and corruption. As briefly developed in the introduction of this thesis, human rights and democracy are themselves linked to some extent. Therefore, after having demonstrated beforehand in this chapter theories and links between human rights and corruption, the circularity of corruption and democracy will be at the centre of this last part.

⁵⁰ Council of Europe, « *Factsheet on the Framework Convention for the Protection of National Minorities* » (October 2016), < <https://www.coe.int/en/web/minorities/fcnm-factsheet> > accessed 16 May 2020

1.3 CORRUPTION AND DEMOCRACY: AN INTRICATE CIRCULARITY

1.3.a The impact of corruption on democracy

“Corruption chips away at democracy to produce a vicious cycle, where corruption undermines democratic institutions and, in turn, weak institutions are less able to control corruption”⁵¹

Transparency International considers democracy throughout different principles: *“free and fair elections”*, *“strong and independent institutions”*, *“political rights (e.g., right to protest)”*, and *“civil rights (e.g., access to a fair trial)”*.⁵² Multiple data research and studies proved the interconnection between corruption and democracy. Indeed, highly corrupted countries are more likely to have a low index of democracy (Annex I).⁵³ Concrete examples can demonstrate this tendency. Hungary have seen its CPI (Corruption Perception Index) declined by eight points over the past six years, while in parallel the country recorded its lowest mark regarding political rights since 1989.⁵⁴

In specific terms, how can corruption undermine democratic systems? Different reasons may explain the negative impact of corruption on democracy. One of them is political corruption, perpetrated by government officials. Political corruption, especially at the high level has serious consequences on democratic systems, principally because it affects some of the fundamental principles of democracy.

“The effects of (political) corruption are especially disruptive in democracies: by attacking some of the basic principles on which democracy rests - notably, the equality of citizens before institutions (that is, the idea that individuals should be treated with fairness and respect by government officials) and the openness of decision-making (that is, crucially, accountability) - corruption contributes to the delegitimisation of the political and institutional systems in which it takes root.”⁵⁵

Democratic principles rely on core principles that are endangered by political corruption. Democracy is complex and the trust of citizens is fundamental. Yet, political corruption has

⁵¹ Transparency International, *“How corruption weakens democracy”* (January 2019) <<https://www.transparency.org/en/news/cpi-2018-global-analysis>> accessed 18 May 2020

⁵² *ibid.*

⁵³ Annex I

⁵⁴ Transparency International (n 51)

⁵⁵ Heywood Paul *“Political Corruption; Problems and Perspectives”* (1997) *Political Studies*, 417-435 <http://www.ebour.com.ar/pdfs/Political_corruption.pdf> accessed 18 May 2020

strong consequences on citizens' trust in their governments. Moreover, as developed before in this thesis, corruption and particularly political corruption, misdirects public funds, and therefore resources that could have been used for citizens or specifically disadvantaged people. Though, it impacts adversely rule of law, social justice, economic and social rights, and increase a lack of trust in public institutions.⁵⁶

As stated in the quote above, accountability is also a crucial principle in democracy and therefore jeopardised by political corruption. The transparency of the political system of government, as well as the functioning of its institutions is essential to the good functioning of a democracy. In order to comprehend the high importance of this principle, scholars and researchers made a distinction between horizontal and vertical accountability. Firstly, horizontal accountability refers to a basic principle of democracy which is the balance of power. Indeed, power should not be held by a unique authority, whereas it should be balanced between the executive, legislative and judiciary part in order to avoid an abuse of power.⁵⁷ Horizontal accountability is a system where different institutions can check and balance other institutions' actions and therefore there is reciprocity in the accountability between them. However, when political corruption occurs at a high level, the horizontal accountability is futile as these balances and check mechanisms are themselves funded or ruled by the possible "corrupted" government.⁵⁸ Secondly, vertical accountability appoints the accountability of a government in front of its citizens. As citizens have an important role in the democracy with their participation in political elections, vertical accountability represents a strong pillar of the system. Therefore, corruption represents an important threat for democratic elections, as political parties can manipulate or even deceive political elections.

Finally, political corruption is particularly an issue for emerging democratic systems, as the process of democratisation stays long and complex. When the implementation of a democracy is at its beginning, accountability systems for example are fragile, and therefore corruption is more likely to happen as the process of democratisation is not fully achieved.

⁵⁶ Kubbe Ina, Engelbert Annika "*Corruption and the impact of democracy*" (2018) Crime Law and Social Change 175-178 < <https://link.springer.com/article/10.1007/s10611-017-9732-0#citeas>> accessed 18 May 2020

⁵⁷ Nightingale Elsa "*A critical analysis of the relationship between democracy and corruption*" (December 2015) University of Sussex < <https://www.e-ir.info/2015/12/20/a-critical-analysis-of-the-relationship-between-democracy-and-corruption/>> accessed 18 May 2020

⁵⁸ UNODC "*Corruption and comparative politics*" (December 2019) < <https://www.unodc.org/e4j/en/anti-corruption/module-3/key-issues/corruption-and-democracy.html>> accessed 18 May 2020

1.3.b Democracy: a significant instrument for countering corruption

Democracy represents a unique opportunity for controlling and countering corruption. As developed in the previous subpart, corruption remains a threat to democracy, but a stable democracy with efficient mechanisms can be a drag on corruption. The principles of horizontal and vertical accountability have been developed in the previous part, with the perspective of how can corruption jeopardise these two systems. However, both of the accountability principles can themselves discourage corrupted behaviours. For example, the systems of checks and balance in the principle of horizontal accountability should prevent corruption as the power is divided between different parts. Efficient democratic institutions may play a major role in countering political corruption, even at the highest level. Moreover, the separation of the different powers optimises the transparency of political practices, as each government branch are more likely to provide clear information to citizens.⁵⁹

In the case of vertical accountability, if politicians must be transparent with the electorate, they will tend to change their behaviours and gain the trust of citizens with more transparent actions. The public opinion is what makes politicians elected in a democracy and though plays a major role in the future political government. Moreover, nowadays, with the growing role and importance of media, it becomes perilous for politicians to hide corrupted behaviours especially at a high level.

Speaking about media, they also represent a major tool in a democracy. Indeed, if media, NGOs, or the civil society see their rights and freedoms respected in a democracy, they have the opportunity to act, influence and ask governments account: this is called societal accountability.⁶⁰ Media, NGOs and the civil society play a major role in the political sphere as they have opportunities to investigate, to raise awareness on certain subjects, and to encourage the accountability of political governments. Moreover, if a case of corruption is discovered, governments will be incited to impeach responsible people with the pressure of NGOs or media.

“An independent press is one of the most effective institutions to uncover and publicise wrongdoing by government officials. If they have good investigative abilities, they can even act as a ‘nation-builder’, uniting people in opposition to corrupt and misdeeds.”⁶¹

⁵⁹ Nightingale Elsa (n 57)

⁶⁰ Nightingale Elsa (n 57)

⁶¹ *ibid.*

This quote confirms the high importance and role of the media and particularly independent media where politicians don't have any control upon.

Other political systems such as oligarchy or autocracy are completely different as these freedoms, especially freedom of expression is usually not safeguarded.⁶² Therefore, citizens may not be aware of corrupted behaviours; media or individuals can be punished by governments for investigating. Taking into account these reflexions, democracy seems to be a powerful tool that could strongly support the fight against corruption. However, it is not that elementary, and democracy is not an absolute solution. Moreover, all democracies are different, even though they rely on the same democratic principles. Corruption is also specific to each government, where other variables enter into account, such as the culture, for instance.

1.3.c The role of democracy and countering corruption from a critical perspective

The vicious circle between democracy and corruption is a complex phenomenon. The negative effects of corruption on democracy, as well as the strengths of democracy to counter corruption have been developed previously. However, democracies are not perfect examples and the challenges that are facing some democratic regimes do not facilitate anti-corruption initiatives. *“Corruption in a democracy usually indicates a deficit of democracy.”*⁶³ Indeed, in spite of the potential of democracy to counter corruption, in practice, this advantage is not used at its maximum level. For instance, citizens often don't completely use their rights and opportunities to “punish” corrupt behaviours.⁶⁴ Yet, the electoral participation stays quite low in many democracies. Over these past years, the participation has tended to decrease, especially in European new democracies (Annex II).⁶⁵ The role of citizens is a major in democracies, and the right to vote is a considerable tool that could actively dissuade political corruption. Moreover, it exists a paradox between the will of citizens to refuse political corruption, and the results of political elections.

“On the one hand, citizens mostly express a clear rejection of corruption and negatively evaluate politicians involved in corruption. On the other hand, there is some evidence that citizens tend to prioritise competent

⁶² *ibid.*

⁶³ Warren Mark E. *“What does Corruption mean in a democracy?”* (April 2004) American Journal of Political Sciences 328-343 < <https://www.jstor.org/stable/1519886?seq=1> > accessed 30 May 2020

⁶⁴ UNODC (n 58)

⁶⁵ Annex II

representatives that "get the job done" and "deliver the goods" over honest representatives”⁶⁶

This “inconsistency theory” may be explained by the lack of information from citizens, as well as the unfamiliarity of citizens with the political system, which is very complex.⁶⁷ Also, the development of fake news in media has played an important role in democracies these past years. Likely, the lack of transparency, information, and awareness discourage citizens to go to vote. A sort of “resignation” has been settled in recent years, where citizens may have a feeling of disconnection in regards to the political sphere.

Finally, it is important to remind that if “stable democracies” present a lower level of corruption in comparison with new democracies or other political systems, it doesn’t prevent them of corruption in general. Corrupt behaviours are present in well-established democracies in countries such as France, Italy or Germany among others.⁶⁸ Corruption is a phenomenon that is present in many countries, regardless of political systems. However, levels of corruption may, in certain cases, be related to the political system in question. Current democracies cannot wholly prevent corruption, and corruption harms democratic systems. As stated before in this chapter, it is a vicious and complex circle. However, the strengthening of democratic principles in a State may help to some extent to dissuade corrupt practices. In this instance, democracy stays a tool with a lot of potential but that is not able alone to tackle entirely corruption.

“If democratic institutions can develop, consolidate, increase transparency and enhance systems of accountability, there is little reason to claim that democracy is not a powerful tool to reduce corruption.”

Therefore, this chapter 1. provided a solid foundation for the questions related to corruption in relation to human rights and democratic perspectives. Now that the foundation has been established, the chapter 2. gets to the heart of the main issue of this thesis, by putting into relation corruption and the EU enlargement challenge, with both human rights and democratic perspectives developed in this chapter.

⁶⁶ UNODC (n 58)

⁶⁷ *ibid.*

⁶⁸ Nightingale Elsa (n 57)

2.

CORRUPTION AND THE CHALLENGE OF EU ENLARGEMENT: A COMPLEX OBJECTIVE

2.1 THE EU ENLARGEMENT PROCESS

2.1.a The history of the EU enlargements

The EU (formerly European Economic Community) was initially created with six countries in 1957 through the treaty of Rome.⁶⁹ Nowadays, twenty-seven countries are members of the EU (excluding the UK). In about sixty years, the EU has experienced multiple rounds of enlargements in different geographic areas of the European continent.

According to the initial law (Art.98 of the Coal and Steel Community Treaty), any European State had the right to request membership in the Community. However, the term “European State” was not clearly defined, and the “frontiers” of the European continent are still being debated. Over time, the different waves of enlargement have been through different approaches and legislative regulations that have been developed within new treaties and the creation of enlargement instruments.

The first waves of enlargement were geographically concentrated in Western and Northern Europe, with some exceptions. The first countries to join the Community were the UK, the Republic of Ireland and Denmark in 1973, followed by Greece in 1981 and Portugal and Spain in 1986. Less than ten years after, Austria, Sweden and Finland joined the EU as well. The adhesion process started to really evolve during this period, just before the great enlargement to the Central and Eastern Europe.

With the fall of the Soviet empire, the European territory found itself in an unprecedented configuration, with the need to create new political relations with the old Eastern bloc,

⁶⁹ France, Italy, West Germany and the three Benelux countries

composed of several States formatted by forty years of authority of the communist regime. Therefore, after the end of communism, an important number of States from Central and Eastern Europe became potential candidates for the adhesion. Consequently, the European Union has undertaken an important action of integration of these countries with the aim of ensuring peace and stability within these States and more generally in the European continent. In 2004, ten countries entered in the EU, mainly CEEC countries (Central and Eastern European Countries) except from Malta and Cyprus. Among these, four Central European countries have created a new form of regional alliance with the aim of cooperating for a more effective membership within the European Union. Thus, the Visegrád group was born 1991 between Poland, Hungary, and Czechoslovakia, which would later become the Czech Republic and Slovakia. These four States in particular will be marked by a rapid economic and democratic transition, which will culminate in their accession to the European Union in 2004. The three Baltic countries, Lithuania, Latvia and Estonia also went through a successful adhesion process as well as Slovenia, Cyprus and Malta. This was the biggest enlargement that the EU experienced, and represented a very important challenge. This challenge was mainly due to the differences between the CEEC candidates and the EU Member States at that time. Indeed, the CEEC countries have been through a different history after the end of the World War II in comparison with Western European countries. They were also new democracies with sometimes unstable governments, less familiarity with human rights and rule of law European practices, and finally they had few experiences with their post-communist economy.⁷⁰ The project of the great enlargement has been strongly debated and criticised at many levels. Indeed, such a big enlargement would completely change the institutional structure of the Union. Besides, the new enlargement criteria as well as the incorporation of the *acquis communautaire* represented a considerable challenge for the Union and the candidates.

A few years later, Romania and Bulgaria successfully acceded to the EU, in spite of a long and complex pre-adhesion process due to a lack of progress in judicial reforms and the issue of corruption. After the great enlargement, the adhesion of Bulgaria and Romania has been intensely politicised by actors that were already sceptical about the previous one. Nevertheless, the enlargement dynamic did not stop as Croatia entered the EU in 2013. Nowadays, the question of enlargement is still at the heart of EU debates, as five countries are official candidates for the adhesion (Albania, North Macedonia, Montenegro, Serbia and Turkey) and

⁷⁰ Emmert Frank, Petrovie Sinisa “*The past, present, and future of EU enlargement*” (2014) Fordham International Law Journal (Vol.37:1349), 1374 <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2350&context=ilj> accessed 13 June 2020

Bosnia and Herzegovina and Kosovo are potential candidates. Regarding the Western Balkans specifically, negotiations are ongoing with Serbia and Montenegro. Negotiations opened recently with North Macedonia and Albania, in spite of the refusal of the French President Emmanuel Macron that expressed his disapproval in October 2019, but remove his VETO in March 2020 following up the European Commission report. The accession of the Western Balkan to the EU are closer than ever, and will strongly influence the future of the EU as an organisation and the Balkan countries themselves.

2.1.b The evolution of the EU accession process

The enlargement process has strongly changed since the creation of the European Community. Indeed, the process of EU enlargements has experienced important modifications and has been shaped by numerous historical changes. The fall of communism in Europe has particularly changed the approach and the strategy of enlargements.

The first enlargements followed the same process. In accordance with Article 237 of the Treaty of Rome, any European State could apply to become a member of the Community. The enlargement procedure started as soon as a country submitted its application.⁷¹ Applications had to be addressed to the Council of Ministers, that was responsible for the decision after getting the opinion of the European Commission. The role of the Commission was to give an advisory opinion on the starting of negotiations with the candidate.⁷² Then, the Council had to vote unanimously for the opening of negotiations, and the Commission was responsible for the negotiation process. At this time, the Commission did not have clear instructions regarding the enlargement criteria as the EU law stayed quite broad about this subject. Therefore, the Council could give some instructions to the Commission during the process. The different features of the accession agreement were indicated in what is called a Treaty of Accession, which must be approved by the European Parliament and the Council.⁷³ When the treaty is ratified by all Member States and the candidate country, the Council could decide on the exact date of accession.⁷⁴ Thus, at the beginning of the EU construction, the accession process stayed quite broad and without clear criteria for the accession. The EU institutions had a high degree of freedom regarding the terms of accession and had for main goal to ensure in a global way that the candidate was “willing and able” to respect the obligations proper to the accession.

⁷¹ Emmert Frank, Petrovic Sinisa (n 70) 1356.

⁷² *ibid.*

⁷³ *ibid.* 1357.

⁷⁴ *ibid.*

The major turning point in the EU accession process appeared after a few waves of enlargement. Due to the great expansion of the Community and also the accession perspective of new countries especially from the East, it became necessary to regulate and frame the enlargements and take a new perspective through EU policies. The European agreements of 1991, the Maastricht treaty as well as the 1993-99 financial framework adopted in 1992 in Edinburgh are part of the major decisions that allowed the EU foreign policy to change from the former “special relationship” foreign policy to a new one based on the perspective of enlargements.⁷⁵ The adoption of the Maastricht treaty in particular was at that time a major evolution for the Community in its entirety. The debate around the treaty could be qualified as the answer to a simple question: “*What, in this changing world, was the future role of Europe?*”⁷⁶ In the first instance, the Maastricht Treaty established the new name of European Union and brought many different changes and new perspectives on the political agenda (e.g., the single currency, the European citizenship, etc.).

The fundamental change in the EU enlargement process started with the summit of the European Council in Copenhagen in 1993. The Council proclaimed that “*the associated countries in Central and Eastern Europe that so desire shall become members of the European Union.*”⁷⁷ The decision expressed in Copenhagen to address the matter directly and refer clearly to the enlargement to Central and Eastern European Countries opened a new chapter in the history of the European Union. Due to some economic and political differences between the EU members at that time and the potential candidates, the Copenhagen criteria have been created as a condition for accession. These criteria may be divided into three different sections. Firstly, the EU asks for democratic institutions, the fulfilment of the rule of law principles, human rights and the respect and protection of minorities.⁷⁸ Secondly, the EU requires a functioning market economy and the ability of potential Member States to handle competition and market forces.⁷⁹ Finally, the last criterion concerns the ability to adopt entirely the *acquis communautaire* of the Union.⁸⁰ Therefore, the adoption of Copenhagen criteria has strongly changed the perspective and the process of enlargements in comparison with the initial

⁷⁵ Piedrafita Sonia, Torreblanca José, “*The three logics of EU enlargement: interests identities and arguments*” (2005) *Politique Européenne* (n°15) < <https://www.cairn.info/revue-politique-europeenne-2005-1-page-29.htm> > accessed 13 June 2020

⁷⁶ Council of the European Union “How Maastricht changed Europe” (7 February 2020) <https://www.consilium.europa.eu/en/maastricht-treaty/> accessed 13 June 2020

⁷⁷ Piedrafita Sonia, Torreblanca José (n 76)

⁷⁸ Wammen Nicolai “The Copenhagen Criteria and the Enlargement of the European Union” (May 2013) Conference Report, 5.

⁷⁹ *ibid.*

⁸⁰ *ibid.*

procedure. Through these criteria, the EU managed to give a concrete direction for potential candidates and an important list of challenges for Central and Eastern European Countries.⁸¹ Copenhagen criteria are likewise at the origin of what is called the “accession conditionality” that will be developed in the following part.

2.1.c Focus on the « accession conditionality »

The Copenhagen criteria shaped what is called the “accession conditionality” within the European Union. This conditionality has two important roles: first to inform potential candidates that they must adopt what is announced in the criteria (e.g., rule of law, human rights, competitive economy and the ability to implement the *acquis communautaire*, etc.); but also to reassure the current EU members that the enlargements – especially to Central and Eastern Countries – will not create negative externalities such as instability, economic issues, or authoritarianism.⁸²

The accession conditionality has been the major feature for the adhesion of CEEC and the development of the “carrots and stick” approach that particularly influenced the pre-adhesion process. Besides, this approach remains used by the EU with the Western Balkan official candidates to the adhesion. Indeed, with the perspective and hope of the accession, candidate countries are more encouraged to comply with EU criteria. However, it is important to remind that this approach has not always been successful. Yet, the accession conditionality remains the most powerful tool in the hands of the EU regarding the reforms that have been pursued in the CEEC in view of the enlargements.⁸³

If the economic perspective on the accession conditionality of the CEEC stayed obviously an important matter during negotiations, it is interesting to focus on the role of democracy and human rights in the process. Indeed, the accession conditionality gives strict criteria regarding the respect of human rights, particularly regarding national minorities, and democratic principles: they are the political criteria. For the 20-year anniversary of the Copenhagen criteria, the Commissioner for Enlargement and Neighbourhood Policy declared in 2013: “*The clear objective of our enlargement policy was to support the reforms and ensure the advancement of*

⁸¹ Wammen Nicolai (n 79) 5.

⁸² Grabbe Heather “*EU Conditionality and the Acquis Communautaire*” (2002) *International Political Science Review*, Vol 23, No.3

⁸³ Papakostas Nikolaos “*Deconstructing the notion of EU conditionality as a Panacea in the context of enlargement*” (2012) *L’Europe en Formation* (n°364) < <https://www.cairn.info/revue-l-europe-en-formation-2012-2-page-215.htm>> accessed 17 June 2020

peace, reconciliation, democracy and human rights in Europe.” The political criteria were at that time an important challenge for CEEC that was new and unstable democracies. The EU decided to make them obligations through the Copenhagen criteria for the accession process and that represents a big step as the Union reiterated its commitment, 40 years after its creation, to the founding values of peace, democracy and human rights.

Therefore, the EU conditionality considerably changed the perspective on EU enlargements. Candidates countries and the EU itself had and still have to face many challenges, from an economic and political point of view. The enlargements of 2004 and 2007 had to face these different series of challenges and gave rise to the biggest enlargement that reshaped the Union. However, the phenomenon of corruption had interfered with this new enlargement process. Indeed, corruption is harming under different forms Copenhagen criteria, and therefore the accession conditionality. The issue of corruption goes even further than the Copenhagen criteria as such, as it raises questions and challenges on the global functioning of the country and the European cohesion and transparency. Indeed, even though Copenhagen criteria remain an important basis for the accession, formal and technical criteria can’t entirely frame the complex process of accession.

“Of course any EU enlargement will remain as much a political project, going beyond the formal compliance with technical criteria.”⁸⁴

Though, the next part is dedicated to the question of corruption and how it interferes with the EU accession process. A focus on the human rights and democratic perspective on corruption will be developed in the line of the thesis.

2.2 A MAJOR OBSTACLE TO THE EU ENLARGEMENT: CORRUPTION

2.2.a The issue of corruption in relation to democracy within Copenhagen criteria

The subject of corruption became a major issue in the EU enlargement process during the pre-accession of the CEEC, and remains an important issue until now with the perspective of accession of Western Balkan countries. During the pre-accession of CEEC, the Commission highlighted multiple times that corruption remained to be a systemic issue within the enlargement process. The Commission also added that fighting corruption was necessary and indispensable for the fulfilment of Copenhagen criteria, and particularly regarding democracy

⁸⁴ Füle Stefan *“The Copenhagen criteria and the enlargement of the EU”* (May 2013) Conference Report, 9-10.

and rule of law.⁸⁵ Besides, the link between corruption and democracy was more or less acknowledged during the pre-adhesion time of the CEEC. Different reports and statements from the EU underlined the seriousness of the issue, such as this quote:

“Corruption, fraud and economic crime are widespread in most candidate countries, leading to a lack of confidence by the citizens and discrediting the reforms.”⁸⁶

In the line with Copenhagen criteria, we can notice that corruption affects in particular democracy, or areas in relation with democratic principles. For instance, the Commission of the European Union declared in 1993 during the Copenhagen European Council and the “Copenhagen Criteria” that candidates to the adhesion should not only endorse democratic principles and rule of law, but also to put them into practice in their governments. That means that countries must respect the rule of law, have a stable government and transparent institutions, particularly in the judiciary system, etc. Thus, how corruption concretely harms the EU enlargement regarding democracy? It is interesting to look at the following quote:

“When it is pervasive and uncontrolled, corruption thwarts economic development and undermines political legitimacy. Less pervasive variants result in wasted resources, increased inequity in resource distribution, less political competition, and greater distrust of government. Creating and exploiting opportunities for bribery at high levels of government also increases the cost of government, distorts the allocation of government spending, and may dangerously lower the quality of infrastructure. Even relatively petty or routine corruption can rob government of revenues, distort economic decision-making, and impose negative externalities on society, such as dirtier air and water or unsafe buildings.”⁸⁷

This quote confirms that the issue of corruption stays a major issue for the respect of democratic principles. It is interesting to notice that this quote refers not only to political corruption or grand corruption, but also affirms that petty corruption is an important issue and a threat to democracy. This is an important statement coming from the EU at that time, as even until now, the link between petty corruption and democracy is not always acknowledged (Annex III).⁸⁸ The consequences of petty corruption are often underestimated, but it participates to the weakening of democratic systems at a certain level.

⁸⁵ Open Society Institute “Monitoring the EU accession process: corruption and anti-corruption policy” (2002) 16. < https://www.esiweb.org/pdf/bulgaria_OSI-EUMAP-corruption-CEE-2002.pdf> accessed 17 June 2020

⁸⁶ *ibid.* 19.

⁸⁷ *ibid.* 21.

⁸⁸ Interview with Laure du Castillon, Annex III

The fight against corruption has been therefore linked with the democratic conditionality very quickly during the enlargement process of the CEEC. It had been recognised that corruption, under different forms, attacks democratic principles, such as the rule of law for instance. In the case of the CEEC enlargement, corruption was a strong obstacle to the democratic conditionality, as they were new and unstable democracies, due to the fall of communism and the quick perspective towards EU accession. Corruption also represents an important challenge for Western Balkan official candidates in their process of democratisation after a long period of conflict.

Yet, the consequences of corruption in the EU enlargement process are not only in relation with the democratic conditionality or the economic market. As developed before in this thesis, corruption also has negative effects on human rights, which are part of the fundamental values of the European Union and the Copenhagen criteria. Hence, the following part will develop on the relationship between corruption and human rights in the framework of the EU conditionality.

2.2.b The issue of corruption in relation to human rights within Copenhagen criteria

The link between human rights and corruption in the EU enlargement process is very different than the association between democracy and corruption studied in the previous part. Indeed, if the EU recognised clearly that corruption was harming democracy and rule of law and particularly within the framework of the enlargements, human rights and corruption are not often connected in this particular case.

Nonetheless, we have proved before in this thesis that corruption and human rights are definitely connected, and that corruption acts negatively on multiple human rights areas. The respect of human rights is present in the Copenhagen criteria, as well as in the *acquis communautaire*. Therefore, as part of the enlargement process, corruption is also a threat to the human rights conditionality.

If during the negotiations of the CEEC the EU pointed out several times the more important of the respect of human rights and particularly on the rights of national minorities, the impact of corruption on citizens' rights has not been considered as much as the impact on democracy and rule of law. Thus, the human rights conditionality was treated as a separate subject in comparison with the democratic conditionality that was explicitly connected with the issue of corruption and therefore other subjects such as the market economy, etc. As explained before

in this thesis, the new theories such as the right to be free of corruption or corruption as a violation of human rights are quite recent, and it seems understandable that at the time of the CEEC enlargements these theories were quite inexistent. However, for the case of the Western Balkan countries, it is interesting to highlight that corruption is harming human rights, and therefore an obstacle in view of the fulfilment of Copenhagen criteria.

Nevertheless, the EU highlighted a particular point that could link corruption and human rights within the enlargement process. Indeed, corruption has a tendency to weaken the judiciary system, and therefore to harm the human right to an effective legal protection. This point is also linked to the principle of the rule of law, but as developed before in the first chapter, corruption and democracy are implicitly linked and have a circular connexion. Thus, all negative consequences from corruption on democracy and rule of law can have an impact on human rights and vice versa. More specifically, with the case of the enlargement to Croatia in 2013, the fight against corruption in the judiciary was necessary in order to address the issue of war crimes.⁸⁹ This issue in particular has been acknowledged by the EU as a matter of corruption in relation to human rights and democratic standards in the context of the enlargements.

However, the recognition of corruption a threat for economic inequalities for example is not really taken into account in the framework of the enlargements, while the negative impact of corruption on human rights standards has been proved over the past years. The human rights-based approach on corruption represents an important opportunity for fostering anti-corruption measures and take into account all externalities (not only on democratic principles but also human rights). Yet, this recognition could help to the EU to implement effective anti-corruption policies in accordance with the human rights criteria appointed in the Copenhagen criteria.

2.2.c The issue of corruption beyond Copenhagen criteria

If corruption is considered as a major issue in the EU enlargement process and as an obstacle to the fulfilment of the EU conditionality; it is important to notice that corruption doesn't appear clearly in Copenhagen criteria. This has been strongly criticised, as corruption represented a major issue during the EU accession of the CEEC and remains a major issue for the perspective of adhesion of Western Balkan countries. However, it is necessary to remind that the issue of corruption started to take importance in the international sphere in the second

⁸⁹ Bojinovic Fenko Ana, Urlic Ana “*Political criteria vs. Political conditionality: comparative analysis of Slovenian and Croatian EU accession processes*” (2015) CIRR <<https://content.sciendo.com/downloadpdf/journals/cirr/21/72/article-p107.pdf>> accessed 20 June 2020

half of the 90s'.⁹⁰ Thus, it could be an explanation of why Copenhagen criteria, created in 1993, did not take corruption explicitly into account. However, the Commission never created in details a benchmark or a criterion regarding what they expect in terms of countering corruption within the framework of the enlargements.⁹¹

Thus, there is a clear lack of clarity from the EU regarding corruption in relation the EU enlargements, and also in the EU itself. This situation may be explained by different reasons. Indeed, the anti-corruption instruments within the EU are unclear and too few. Thus, concerning the EU enlargement, the issue of corruption could not be included in the *acquis* conditionality. The small part of the *acquis* focusing on anti-corruption measures was coming from international treaties and not from the EU itself.⁹² Therefore, to some extent, corruption had been integrated to the democratic conditionality. Yet, the issue of corruption during the EU enlargement process of the CEEC went far beyond the initial democratic criteria.

Moreover, it is also necessary to emphasise that the EU lacked necessary benchmarks regarding corruption in its Member States before the great enlargement. At the time of the CEEC enlargement, few researches were available regarding corruption in Western EU Member States, while it was demonstrated that high levels of corruption were present in the largest countries such as France, Italy, Greece or Germany among others.⁹³ Corruption is not specific to the Eastern part, but is present everywhere in Europe, although it may occur under different forms according to the country in question.

Yet, corruption stays a major issue in the EU enlargement process; as an obstacle for Copenhagen criteria and the EU conditionality, but also in the process of European integration at a larger scale. Indeed, especially during the first big enlargement, corruption has been strongly mediatised and stereotyped. It created a sort of gap between the West and the East, while the purpose of the EU enlargement was to unite and connect the European continent. Also, the difficulty from the EU in addressing a clear plan for countering corruption in the candidates' countries participated to the lack of credibility of the admission process. Finally, human rights are part of the values of the EU, and corruption remains a major obstacle opposed to one of the pillars of the European foundation. Therefore, corruption is an issue that takes a great importance on multiple areas of the EU enlargement policy, starting from the Copenhagen criteria to a larger extent (e.g., European values).

⁹⁰ Szarek-Mason Patrycja *"The European Union's fight against corruption: the evolving policy towards Member States and candidate countries"* (2010) Cambridge University Press, 144.

⁹¹ Open Society Institute (n 86) 22.

⁹² *ibid.*

⁹³ *ibid.* 23.

2.3 ANTI-CORRUPTION INITIATIVES: EUROPEAN AND INTERNATIONAL INSTRUMENTS

As discussed before in this chapter, corruption represents an important challenge for the adhesion of Western Balkan official candidates and was an important challenge for CEEC a few years ago. However, different instruments exist to counter corruption and may impact in a positive way countries affected by high corruption standards and the EU enlargements in particular. The EU took part in different international and regional negotiations regarding anti-corruption measures, and their impact could be a real asset for the enlargement perspective of the Western Balkan countries. Therefore, this part focuses on combatting corruption from a legal perspective and through international and European instruments. Thus, this subpart aims to study different instruments and anti-corruption legislation from international and regional initiatives, starting with European initiatives from the EU and the Council of Europe, following by more global measures led by the UN and the OECD.

2.3.a Initiatives from the European Union

The European Union took different initiatives to counter corruption in its continent. From a global perspective – out of the enlargement process – the EU is at the origin of different mechanisms. The EU created different acts of legislation: firstly, the Convention on fighting corruption involving officials of the EU or officials of Member States of 1997, and secondly the Framework Decision on combating corruption in the private sector of 2003. Besides, since the adoption of the Lisbon Treaty, corruption became considered as a “eurocrime”.⁹⁴ Moreover, according to the Article 83(1) of the TFEU, corruption is considered among the severe crimes including a cross-border dimension, and therefore with the possibility to establish some sanctions.⁹⁵ The EU is also at the origin of the Convention on the Protection of the European Communities’ Financial Interests in 1995, with the aim to settle some standards regarding fraud in relation to the allocation of EU funds.⁹⁶ The fight against corruption is also included in the

⁹⁴ Blanche Melissa, Depardon Adeline, Gros Félix “*EU action against corruption: steps forward and setbacks in a strategic policy for Europe*” (2019)11. <<http://www.ejtn.eu/PageFiles/17913/TH-2019-01%20TEAM%20FRANCE.pdf>> accessed 20 June 2020

⁹⁵ European Commission (Home Affairs) “*EU anti-corruption policy*” <https://www.mpravde.gov.rs/files/23_2_antikorruption.pdf> accessed 20 June 2020

⁹⁶ *ibid.*

Stockholm Programme adopted in 2009, where the Council elaborated a collaboration between the EU and the Council of Europe through the GRECO. Finally, a network called the EACN (Anti-Corruption Network) has been created under the Council Decision 2008/852/JHA in 2008, with the aim to settle a network to work closely on corruption and reunites different Member States in order to exchange on their domestic initiatives⁹⁷.

However, these initiatives have been strongly criticised and present important weaknesses. The EU in particular adopted a complex policy in regards to corruption. Indeed, for instance, the Convention of 1997 has the aim to guarantee that active and passive bribery must be considered as a criminal offence.⁹⁸ Yet, elder international Conventions (the UNCAC and the CoE Criminal Law Convention) were already ensuring the criminalisation of bribery in both its practice.⁹⁹ Then, the Council Decision 2003/568/JHA of 2003, with the aim to criminalise corruption in the private sector was already ensured by the OECD Convention of 1997.¹⁰⁰ The issue with this situation is that the EU focuses on the creation of new anti-corruption measures while it could simply encourage, support and ensure that its Member States respect the obligations present in already existing international legislation. However, the EU has also presented ambitious initiatives regarding countering corruption, especially in recent times. In 2019, members of the EU parliament asked for the creation of an EU Magnitsky Act, referring to the US act created in 2012. This act has the purpose to create sanctions (such as visa bans or the freezing of assets) targeting individuals involved in gross human rights violations, including people involved in financial crime and therefore systemic acts of corruption.¹⁰¹ This initiative represents an important step, and encourages the recognition of corruption as a violation of human rights.

Regarding the EU enlargement process, in addition to the support provided by legislative tools, the EU had to create new policies in order to fight against corruption. The EU promoted institutional reforms in candidate countries and financed different projects. During the first great enlargement, the PHARE programme contributed to finance developments and projects in relation to justice and home affairs, thus including the fight against corruption and economic crime. Candidate countries that needed additional help regarding certain areas (e.g., corruption or economic reform) received a financial support through the PHARE programme called the

⁹⁷ Blanche Melissa, Depardon Adeline, Gros Félix (n 95) 8.

⁹⁸ *ibid.*

⁹⁹ *ibid.*

¹⁰⁰ *ibid.* 9.

¹⁰¹ European Parliament “*MEPs call for EU Magnitsky Act to impose sanctions on human rights abusers*” (14 March 2019) <<https://www.europarl.europa.eu/news/en/press-room/20190307IPR30748/meps-call-for-eu-magnitsky-act-to-impose-sanctions-on-human-rights-abusers>> accessed 8 July 2020

Catch-Up facility.¹⁰² Nowadays, the EU participates to the fight against corruption through the financial instrument named IPA (Instrument of Pre-Accession Assistance). The IPA is the main funding source for the current EU enlargements and replaced the former instruments such as PHARE or ISPA, etc. Through this funding, the EU also runs multiple tailor-made projects in different countries, especially in the Balkan official candidates, such as the PACA (Project against Corruption in Albania) among others.

Finally, the work of the EU in countering corruption is also strongly linked to other international or regional organisations, and particularly with the Council of Europe, due to its major importance and influence within the continent regarding human rights and democracy.

2.3.b The Council of Europe and the GRECO

The Council of Europe is a fundamental organisation protecting and defending human rights and democratic principles. The Council established in 1999 the Group of States against Corruption also called GRECO. The group consists of the elaboration of European standards, to monitor the situation about corruption in Member States as well as the creation and support to technical assistance.¹⁰³ The goal of the GRECO is also to help and support Member States to enhance their faculty to respect CoE's obligations in terms of corruption. For this purpose, the GRECO uses different mechanisms such as peer pressure between the States and mutual evaluation.¹⁰⁴ The GRECO monitors the implementation of two main legislative mechanisms: The Criminal Law Convention on Corruption ratified in 2002, and the Civil Law Convention on Corruption ratified in 2003. These two Conventions complete themselves, and are ambitious mechanisms aiming at criminalising multiple sorts of corrupt practices in the public and private sector. They are part of the first international legislative mechanisms aiming to combat corruption by taking a global perspective on it.

Then, the approach of the Council of Europe on corruption has always been quite innovative and comprehensive in comparison with other international organisations. Indeed, since the creation of anti-corruption mechanisms, the Council recognised the negative externalities of corruption on its core principles, that is to say human rights, democracy and rule of law. In the resolution (97) 24, the Council created the Twenty Guiding Principles for the Fight against

¹⁰² European Commission "*The PHARE Programme Annual report 1998*" (2000) 13. < <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0183:FIN:EN:PDF>>

¹⁰³ Council of Europe "*About GRECO*" < <https://www.coe.int/en/web/greco/about-greco/priority-for-the-coe>> accessed 8 July 2020

¹⁰⁴ *ibid.*

Corruption, that is a framework aiming to develop anti-corruption measures with a global perspective.¹⁰⁵ Adopted in 1997, the Committee of the Ministers affirmed that the Council of Europe is:

“aware that corruption represents a serious threat to the basic principles and values of the Council of Europe, undermines the confidence of citizens in democracy, erodes the rule of law, constitutes a denial of human rights and hinders social and economic development”.¹⁰⁶

These statements are definitely in advance regarding the recognition of the impact of corruption on human rights and democracy. Unfortunately, the Twenty Guiding Principles for the Fight against Corruption are not legally binding for any States, yet, they have been strongly used to create and implement anti-corruption strategies.¹⁰⁷

Regarding the links between the EU and the Council of Europe initiatives about corruption, at this date, all EU Member States and candidates to the accession have ratified the Criminal Law Convention on Corruption. However, the Civil Law Convention on Corruption has not been by ratified by all EU Member States; Poland, Denmark, the UK and Ireland have only signed the Convention, while Portugal did not sign it yet. Yet, all candidates to the accession have ratified the Convention.

Then, the cooperation between the GRECO and the EU, in terms of countering corruption and particularly on the question of enlargement has a lot of potential. If the work of the GRECO has operated on a more or less voluntary basis, the larger power and influence of the EU could be a real asset for a better implementation of the GRECO mechanism.¹⁰⁸ A deeper collaboration between the EU and the GRECO could represent an important progress and maybe one of the best ways to promote and implement efficient anti-corruption mechanisms.¹⁰⁹ Besides, in 2019, the Committee of Ministers of the Council accepted the request of the EU to join the GRECO working group. The strengthening of the cooperation between the two parties shows a will to counter corruption from a more efficient way, and confirms the importance of fighting against corruption on the European continent. It is also a good sign for the EU enlargement process and for the Western Balkan official candidates that could maybe have access to a more comprehensive process.

¹⁰⁵ Open Society Institute (n 86) 42.

¹⁰⁶ Council of Europe Committee of Ministers *“Resolution (97) 24 on the twenty guiding principles for the fight against corruption”* (1997)

¹⁰⁷ Open Society Institute (n 86) 42.

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

Out of the European continent and from a more global perspective, the UN also plays an important role in countering corruption. One of the major UN Convention is dedicated to it and will be developed in the following subpart.

2.3.c The UNCAC and legislative remedies

The United Nations Convention against Corruption (UNCAC) is the first global legal instrument that aims to prevent and combat corruption. It was adopted in 2003 and entered in force in 2005, with nowadays 140 signatories and 187 State parties (as of February 2020).¹¹⁰ All EU countries and official candidates to the accession have ratified this Convention. Therefore, the Convention could play an important role regarding the perspective of the EU enlargement, even though the Convention stays criticised from different points of view. It is the first international legally binding instrument that covers a wide range of acts of corruption and not only the most well-known forms such as bribery or embezzlement.¹¹¹ The UNCAC acknowledges the importance of both preventive and punitive measures, and though encourage or oblige State members to take actions on different levels.¹¹²

“The UNCAC requires the countries to establish rules that make corruption illegal and also provides model policies and preventive measures for countries to adopt.”¹¹³

Therefore, the UNCAC covers different areas. The preventive measures are developed in the Chapter II, and oblige State members to adopt policies in order to prevent corruption, in both private and public sectors.¹¹⁴ Then, the Chapter III focuses on the criminalisation of corruption under bribery, embezzlement of public funds or the obstruction of justice for example that are mandatory obligations.¹¹⁵ States are also encouraged to criminalise other acts of corruption such as abuse of function, unlawful enrichment, money laundering among others.¹¹⁶ The Chapter IV is dedicated to international cooperation, that is to say that all Member States must support each other's in international criminal investigations.¹¹⁷

¹¹⁰ UN Office on Drugs and Crime « *United Nations Convention against Corruption*” (2020) <<https://www.unodc.org/unodc/en/corruption/uncac.html>> accessed 10 July 2020

¹¹¹ Matthew Murray and Andrew Spalding, (n 27) 7.

¹¹² Hechler Hannes, “*UNCAC in a nutshell*” (May 2017) U4 Anti-Corruption Resource Centre, 1 <<https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf>> accessed 10 July 2020

¹¹³ Hemsley Ralph (n 32) 4-5.

¹¹⁴ Hechler Hannes (n 53) 1.

¹¹⁵ *ibid.* 2.

¹¹⁶ Hechler Hannes (n 53) 2.

¹¹⁷ *ibid.*

Then, it is interesting to focus on the Article 35 in relation to the human rights-based approach on corruption. The Article 35 states that:

*“Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.”*¹¹⁸

Indeed, if the UNCAC does not link corruption with human rights, the Article 35 provides a compensation for damage for people victims of corruption. Consequently, people that would have been victims of acts of corruption that could have harmed their human rights can ask for a compensation. This Article constitutes a right to a legal remedy, which therefore could be linked to a “right to be free of corruption”. To that extent, some Courts started to recognise civil society as a “victim” in cases of grand corruption, for example.¹¹⁹ The Article 35, if used correctly, can be a powerful tool as it can provide a legal remedy in both petty and grand corruption. Indeed, if originally Article 35 was, strictly speaking, referring to direct victims of corruption (for example paying a bribe to a police officer/doctor/civil servant in order to have access to basic goods or services); recent legal actions proved that it was also possible to act with collective litigation in the name of citizens affected by grand and political corruption.¹²⁰ However, grand corruption stays hard to address as it occurs at the highest levels of national governments. Therefore, if Article 35 represents an important opportunity for the right to a legal remedy, it stays in reality a left behind tool due to different reasons. The main cause is that Member States are not obliged to create a domestic right of action for victims of corruption; thus, a significant number of countries did not implement the requirements stated in Article 35.¹²¹ Even though the Article 35 has an important potential, it stays an emerging tool that must be developed in order to surely defend the right to a legal remedy in terms of corruption-related harms.

Then, the legitimacy as well as the efficacy of the UNCAC remain at the forefront of negative reflections. The Convention has been criticised for its “*non-mandatory, vague and qualified provisions*”.¹²² The fact that some “types of corruption” don’t have to be criminalised

¹¹⁸ United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) A/58/422 art 35

¹¹⁹ Ramasastry Anita (n 33) 707-708.

¹²⁰ Ramasastry Anita (n 33) 708.

¹²¹ Ramasastry Anita (n 33) 727.

¹²² Rose Cecily « *International Anti-Corruption Norms: Their creation and influence on domestic legal systems*” (2015) Oxford University Press, 98. <
<https://books.google.bg/books?id=dwM7CgAAQBAJ&pg=PA103&dq=UNCAC&hl=fr&sa=X&ved=2ahUKEw>

mandatorily constitutes an important gap in countering corruption efficiently. Moreover, the UNCAC has a short capacity to influence domestic legal systems as the Convention doesn't oblige Member States to implement domestic laws to criminalise corruption. As a result, the legitimacy of the Convention is strongly damaged, since many Member States have decided not to follow the recommendations but only the mandatory aspects of the UNCAC that are considered so far too few.¹²³ Therefore, the UNCAC stays a major legally binding instrument about corruption but remains an incomplete mechanism that doesn't take into consideration corruption in its entirety. However, the EU participates actively to the well-functioning of the Convention, but the review mechanism of the UNCAC has to be made at the national level. Therefore, the EU doesn't have such a strong influence in this case and the UNCAC has a few influence in the EU enlargement process.¹²⁴

2.3.d The OECD Convention on combating bribery of foreign public officials in international business transactions

The last major instrument in the fight against corruption developed in this part is the OECD Convention on combating bribery of foreign public officials in international business transactions. This is likewise one of the first international instruments to focus specifically on the question of corruption, and was adopted in 1997. Yet, the difference with the OECD Convention and some other instruments is that this specific Convention is dedicated to a particular "type" of corruption, and doesn't embrace all aspects of corruption. Still, different measures and perspectives are developed in the Convention such as the criminalisation of corruption, the elaboration of international collaboration, the implementation of preventive measures among others.¹²⁵

The OECD Convention stays a major instrument with an important influence in the international sphere. However, the approach of the OECD on corruption through its legal instrument remains quite restricted. Indeed, this approach relies mainly on an "economic perspective" that focuses principally on business transactions and economic matters.¹²⁶ Yet, the

iS1LvzzK7qAhXslsKHQ4dAsMQ6AEwBHoECAQQAg#v=onepage&q=UNCAC&f=false> accessed 11 July 2020

¹²³ Rose Cecily (n 123) 98.

¹²⁴ Interview with Laure du Castillon - Appendice III

¹²⁵ Blanche Melissa, Depardon Adeline, Gros Félix (n 95) 7.

¹²⁶ *ibid.* 8.

OECD also recognises the negative effects of corruption on social rights and not only on economics purposes:

“In all countries and at all levels of society, corruption threatens to distort social and economic interactions, reducing efficiency and increasing inequality by favouring the well-positioned. As a result, the cost of doing business increases, public resources are wasted and the poor are pushed aside.”¹²⁷

The OECD also is at the origin of other initiatives such as the Global Anti-Corruption and Integrity Hub, the monitoring system of the Convention as well as the 2009 Anti-Bribery Recommendation through the OECD Working Group on Bribery in International Business Transactions. Therefore, the OECD stays an organisation that dedicated an important part of its work on fighting corruption.

Regarding the case of the EU enlargements, the OECD and the EU are working closely together on the subject of corruption and especially in the CEEC and Western Balkan countries. Indeed, the two organisations created a joint initiative called SIGMA (Support for Improvement in Governance and Management) in 1992. This initiative strongly supported the fifth and sixth enlargement of the European Union, and is still a fundamental instrument in countering corruption.¹²⁸ The SIGMA works principally on issues related to the public sector and in coordination with the DG Near; thus, including official and potential candidates to the accession and countries members of the European Neighbourhood Policy. This joint initiative is not only focusing on corruption but is linked to accountable and transparent public governance. However, not all EU Member States and official candidates to the accession are members of the OECD and therefore ratified the Convention or may be part of the SIGMA. Nevertheless, the OECD remains an important organisation in countering corruption and in the EU enlargement process as they work closely with Western Balkan countries in particular.

To conclude this part, anti-corruption instruments are therefore quite numerous, and had developed a lot during the past 30 years. However, some scholars still maintain that anti-corruption initiatives present serious limitations and inefficiency, due to their lack of enforcement, their inadequacy and lack of adaptation to local cultures.¹²⁹ Scholars also blame

¹²⁷ Angel Gurría, OECD Secretary General < <http://www.oecd.org/corruption-integrity/about/> > accessed 11 July 2020

¹²⁸ Hadjiisky Magdaléna *“SIGMA : un programme international de renforcement des capacités administratives en terres européennes (1992-2012) »* (2012) *Revue Française d’Administration Publique* < <https://www.cairn.info/revue-francaise-d-administration-publique-2017-1-page-73.htm> > accessed 13 July 2020

¹²⁹ Blanche Melissa, Depardon Adeline, Gros Félix (n 95) 5.

the different instruments for being overlapped and not harmonised between them. In the particular case of the EU enlargement and the perspective of adhesion of Western Balkan official candidates, these instruments have the possibility to play an important role, in spite of their limitations.

Thus, the last chapter of this thesis is dedicated to the study case of the EU enlargement process in relation to corruption from a democratic and human rights perspective. This Chapter will focus on the current EU Member States from the Balkan as well as the Western Balkan official candidates to the adhesion.

3.

STUDY CASE: HUMAN RIGHTS, DEMOCRACY AND CORRUPTION: FROM THE PAST ENLARGEMENTS TO THE ACCESSION OF WESTERN BALKAN OFFICIAL CANDIDATES

The aim of this chapter is to study the impact of corruption in the EU enlargements and link it with the human rights and democratic perspectives. In order to do so, it is interesting to focus first on the past EU enlargements, that is to say in Bulgaria, Romania and Croatia, in order to develop on the EU policies at that time and give an overview on the post-accession situation. Then, the second part is dedicated to the case of the Western Balkan official candidates to the accession and the study of the previous and current situation as well as the issues encountered in these countries in relation to the EU enlargement process. Lastly, the last part focuses on the conclusions of this study case, which include a comparison between actual Balkan EU countries and the candidates, the lessons learnt from the past and the current challenges to the accession.

3.1 EU WESTERN BALKAN COUNTRIES (BULGARIA, ROMANIA AND CROATIA)

3.1.a Study case of Bulgaria

In December 1995, Bulgaria applied for EU membership. Negotiations with the EU officially started a few years later, in March 2000, as Bulgaria was belated other countries on the road to the accession, particularly regarding the political criteria.¹³⁰ Indeed, within the ten post-communist countries that applied for EU membership approximately at during the same period, Bulgaria and its neighbour Romania accessed to the accession a few years later in 2007.

¹³⁰ European Parliament, “*Briefing no 6 Bulgaria and the Enlargement of the EU*” <https://www.europarl.europa.eu/enlargement/briefings/6a3_en.htm> accessed 16 July 2020

“The widespread corruption at all levels of the Bulgarian government, the lack of transparency and professionalism of state institutions and the inefficiency of the judiciary system were the main reasons that made the European Commission extend the conditionality mechanism beyond accession.”¹³¹

Bulgaria before the EU adhesion was going through an important democratic transition, marked by long years of communism. The EU often reproached to Bulgaria its issues regarding human rights, democracy and corruption. The Commission particularly highlighted the conditions of the Roma community in Bulgaria as an important issue as well as the issue of corruption.

During the pre-adhesion time, Bulgaria went through a lot of reforms and changes, supported by EU adhesion mechanisms, and also with the will to make EU integration a success in the country. The programme PHARE - the main funding source of the EU regarding enlargements - had a political conditionality, that means that starting from 1995, Bulgaria concentrated efforts in its democratic transition in order to have access to funding in order to support its economic transition and its ability to fulfil the EU conditionality.¹³² The first report from the European Commission had been released in 1997 and highlighted that the process of democratisation in the country had been strengthened, yet the situation of the judiciary system and corruption were still an important issue.¹³³ The main issues regarding the EU adhesion of Bulgaria remain quite connected. Indeed, the issues are basically the systemic corruption and the lack of implementation of rule of law principles that are interconnected phenomenon. The EU supported Bulgaria in the settlement of anti-corruption national plans, or the Council on Counter Corruption among others. After the official adhesion of Bulgaria in 2007, the EU decided to settle a mechanism called the CVM (Cooperation and Verification Mechanism). Indeed, the European Commission stated that Bulgaria was ready to enter in the Union but still needed to progress regarding the situation about corruption and rule of law among others. This system had the aim to act as a *transitional measure* and assist Bulgaria in its inclusion in the Union.¹³⁴ More specifically, this system settles some benchmarks chosen by the Commission

¹³¹ Dimitrova Anna “*Public Opinion in Bulgaria with Regard to the EU Membership in the Context of the Economic Crisis, Towards a ‘Bulgarian Exception’?*” (2012) L’Europe en Formation < <https://www.cairn.info/revue-l-europe-en-formation-2012-2-page-289.htm#no32>> accessed 16 July 2020

¹³² Dimitar Belchev “*Bulgaria and the EU: the Role of Conditionality before and after accession*” (2019) CIFE International Centre for European Studies, 10-11 < https://www.ie-ei.eu/Ressources/FCK/image/RECHERCHE/Theses_2019/BELCHEV_Dimitar.pdf> accessed 22 July 2020

¹³³ *ibid.*

¹³⁴ European Commission “*Cooperation and Verification Mechanism for Bulgaria and Romania*” < https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en#what-is-cvm> accessed 22 July 2020

that must be reached by the country. Then, the Commission provides a report on the assessments and keep an open dialogue with the authorities.¹³⁵ The benchmarks for Bulgaria are:

“the issues such as the independence, professionalism and efficiency of the judicial system, the fight against corruption and action being taken against organised crime.”¹³⁶

The Commission decided to end the CVM process in 2019, as it stated that Bulgaria met all its commitments regarding the judicial system and countering corruption, in relation to its adhesion to the EU.¹³⁷

Then, it is interesting to focus on the effects of the enlargement conditionality and in particular the political criteria on the human rights and democratic situation of the country. First, it is necessary to confirm that Bulgaria has put a lot of efforts in complying with the EU conditionality, and that showed an important progress to achieve its democratic transition. However, it stays also essential to acknowledge that these efforts led to a mixed result.

“Bulgaria has been developing extensive public accountability mechanisms, and is a global leader of anticorruption legislation, but those had little influence on the real rules of the game. The country underperforms on judicial autonomy from private interest, with an impunity culture for the ruling class still reigning. Connections and bribes continue to be a main alternative to rights and meritocracy for accessing public services or gaining success in the market. Far too few officials are administratively sanctioned on grounds of corruption.”¹³⁸

The effects of the membership have undoubtedly been a positive result for Bulgaria, with considerable encouraging outcomes that led to its adhesion to the EU in 2007. But the reality shows that in spite of the improvements, corruption stays a fundamental issue. As proven in this thesis, corruption is more than an economic issue but acts on human rights and democracy as well. Corruption has a whole and grave consequence on very different aspects in Bulgaria, and remains a major violation of Bulgarian citizens' rights. Very recently, in July 2020, thousands of citizens went across the streets of Bulgaria to manifest against corruption in the government. Indeed, citizens see their rights violated and the democratic values of their country threatened by a government under strong accusations of corruption. The freedom of speech and

¹³⁵ *ibid.*

¹³⁶ *ibid.*

¹³⁷ European Commission “*Commission reports on progress in Bulgaria under the CVM*” (October 2019) <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6136> accessed 22 July 2020

¹³⁸ European Research Centre for anti-corruption and state building “*Bulgaria*” <<https://www.againstcorruption.eu/country/bulgaria-2/>> accessed 22 July 2020

of press as well as basic democratic standards are not guaranteed in the country and this situation triggered an important citizens' movement. Unfortunately, the response from the EU stayed quite inexistent. Yet, this situation proves the link between corruption human rights and democracy. Therefore, the human rights and democratic perspective on corruption make all its sense as the case of Bulgaria proves that the approach of EU conditionality brought progress nevertheless unsatisfactory results as well as urgent concerns for the country and its citizens.

3.1.b Study Case of Romania

The case of Romania has been to some extent similar to the Bulgarian case. Indeed, according to the European Commission Romania could not fulfil all criteria at the same time as other CEEC and therefore accessed to the adhesion in 2007 at the same time as Bulgaria. Romania signed the Europe Agreement in 1995 and the Commission confirmed a few years later that the country guaranteed sufficient level of stability and democracy.¹³⁹ The official pre-accession process started in 1998 but the Commission directly highlighted the systemic issue of corruption in the country and expressed it in its first report "*Regular Report on Romania's progress towards Accession*".¹⁴⁰ Facing similar issues than its neighbouring country, corruption became for Romania the main condition for its adhesion to the Union.

In order to achieve its road to the adhesion, Romania made a lot of efforts in order to comply with the EU conditionality. The EU pressure managed to influence the country to perform quick institutional changes. Regarding corruption specifically, the Romanian parliament adopted in 2000 the Law on Preventing, Detecting, and Punishing Acts of Corruption, which constituted a major step in the fight against corruption at a judicial level.¹⁴¹ Nonetheless, the European Commission continued to stress that corruption represented the major obstacle to the adhesion of Romania. In 2002, the government decided to create the National Anticorruption Prosecutor's office in order to catch up its lack of progress.¹⁴² As Bulgaria, Romania received important funds during its road to the adhesion, through different programmes such as PHARE and received approximately between 1997 and 2006 12 billion euro.¹⁴³ The important sum of

¹³⁹ Mihaiela Ristei Gugiu (n 7) 7.

¹⁴⁰ *ibid.* 8.

¹⁴¹ Mihaiela Ristei Gugiu (n 7) 13.

¹⁴² *ibid.*

¹⁴³ *ibid.*

funds has been completed by other additional funded helps such as the support to implement the FOIA that is to say the Chamber of Deputies.¹⁴⁴

Despite the important progress made by Romania, corruption stayed the major issue in the country. Thus, after the adhesion in 2007, the European Commission decided to apply the CVM to Romania as well. Bulgaria and Romania have been the first countries to test this mechanism. The benchmarks created by the Commission for Romania were:

“the effectiveness and transparency of the judicial system, key institutions in areas like integrity and the fight against corruption at all levels, and corruption prevention.”¹⁴⁵

If the CVM has stopped recently in Bulgaria, it is still present in Romania for an indefinite period of time. The four benchmarks mentioned in the CVM are still not met by Romania, 13 years after the launch of the monitoring system at the time of the adhesion. The European Commission stated in 2019:

“Today's report takes stock of the situation since November 2018. It notes that since the last report the Commission has had to raise a number of times rule of law-related concerns with the Romanian authorities in relation to developments on judicial reforms and the fight against corruption. On each of these occasions, the Commission has confirmed backtracking from the progress made in previous years and this evolution is a source of great concerns,”¹⁴⁶

Another time, corruption and rule of law are the core issues and represent an important challenge for the country. It is interesting to raise the question of why Romania backtracked in terms of fighting corruption and rule of law principles after the adhesion in the EU. Indeed, if the pressure of the adhesion worked in order to convince governments to fit with the EU conditionality, once the goal has been achieved, some countries did not manage to go further in their reforms. The case of Romania proves the limits of the EU conditionality at that time, and an umpteenth time the correlation between corruption and democratic and human rights principles. In 2015, the OHCHR after a visit in Romania confirmed the urgent situation regarding corruption and emphasised that:

¹⁴⁴ *ibid.*

¹⁴⁵ European Commission (n 135)

¹⁴⁶ Romania Insider “EC maintains CVM monitoring on Romania but is ready to lift it for Bulgaria” (October 2019) < <https://www.romania-insider.com/european-commission-cvm-romania-bulgaria-october-2019>> accessed 23 July 2020

“In terms of corruption, major progress has been made in prominent cases, but forms of soft-core corruption persist in relation to access to, or exclusion from, many social services.”¹⁴⁷

Moreover, according to the Special Eurobarometer of 2017, 68% of citizens expressed that they feel individually affected by corruption in their everyday lives.¹⁴⁸ Therefore, the post-adhesion situation in Romania shows controversial opinions. Indeed, as Bulgaria, Romania put a lot of efforts in order to comply with the European conditionality, but the reality indicates numerous and severe shortcomings in terms of corruption, rule of law and human rights.

3.1.c Study case of Croatia

The perspective of adhesion of Croatia had represented a big challenge for the EU. Indeed, Croatia entered the EU in 2013, five years later than Bulgaria and Romania; thus, after a complex enlargement due to the issues developed before in this chapter. Croatia applied for membership in 2003 and negotiations with the Commission started officially in 2005. Croatia is the second country to apply for EU membership among the ones impacted by the Balkan war. Additionally, Croatia entered alone in the EU, which made its adhesion process particular. During the negotiations, Croatia faced different challenges, principally the frontier issue with Slovenia, as well the stabilisation of the government, rule of law, and corruption among others. During the pre-adhesion period, the EU did not take the same perspective as with the former candidates. Indeed, in 2000, the EU and Croatia were already building stronger relations and launched the Stabilisation and Association Process, called SAP.¹⁴⁹ The SAP had the aim to instore a regional rapprochement between the Union and Balkan countries. Therefore, before the start of official negotiations, the SAP allowed both parts to create a link, supported by the goal of stabilisation.¹⁵⁰ The EU funded the pre-adhesion process through new instruments: firstly, the programme CARDS (Community Assistance for Reconstruction, Development and Stabilisation). This programme was specific to the Western Balkan countries and adapted to the

¹⁴⁷ OHCHR “Romania “in denial about extent of poverty, UN human rights expert say”” (November 2015) < <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16739&LangID=E>> accessed 23 July 2020

¹⁴⁸ Petrescu Denisa “Corruption in Romania: a European affair” (September 2019) < <https://www.euractiv.com/section/justice-home-affairs/opinion/corruption-in-romania-a-european-affair/>> accessed 23 July 2020

¹⁴⁹ Bouterin Thibault “Croatia’s accession to the EU: thought for Europe at a crossroads” (2013) < <https://www.robert-schuman.eu/en/european-issues/0283-croatia-s-accession-to-the-european-union-thoughts-for-europe-at-a-crossroads>> accessed 25 July 2020

¹⁵⁰ Vlašić Feketija Mirna, Łazowski* Adam « THE SEVENTH EU ENLARGEMENT AND BEYOND: PRE-ACCESSION POLICY *VIS-À-VIS* THE WESTERN BALKANS REVISITED” (2014) CYELP, 14.

post-war situation. At the end of this programme, the second funding source from the EU was the Pre-Accession Assistance (the IPA I) between 2007 to 2013. Therefore, the negotiations between Croatia and the EU have been through new and more adapted frameworks. The EU conditionality through the Copenhagen criteria has been completed with the SAP, that gave support to Croatia regarding its weak points.¹⁵¹ Additionally, the EU improved its system of benchmarks in relation to the implementation of the *acquis*, that have been created six months after the start of the negotiations, and were completely included in the Negotiating framework.¹⁵² One benchmark in particular took a strong importance: the chapter 23, focusing on the judiciary, the issue of corruption, as well as the defence and protection of fundamental rights.¹⁵³ This benchmark was divided into numerous subparts, relying on international and regional initiatives from the UN and the Council of Europe, with the aim to support Croatia in the adoption of the *acquis*, and particularly on the political conditionality.¹⁵⁴ The Union also implemented a stronger monitoring system during the pre-adhesion process, with the aim to note the progress made and particularly to highlight in which areas improvements should be made.¹⁵⁵ In the monitoring report of 2012, the Commission called Croatia to focus more attention on the Chapter 23 and particularly on corruption, the judicial reform and anti-discrimination measures.¹⁵⁶ In spite of the new mechanisms settled by the EU, the areas related to the political conditionality are still problematic. Yet, it is interesting to notice that the EU decided to emphasise the necessity to put more efforts regarding the political conditionality and to give to Croatia clear indications as well as a more targeted support. This change of perspective proves that the EU took notes from the issues that occurred in the past enlargement with Bulgaria and Romania, and try to renew its enlargement policy. The Commission qualified the contemporary adhesion process as more *comprehensive and rigorous*.¹⁵⁷ However, despite this new approach and more comprehensive pre-adhesion process, the post accession result stays mitigated. Indeed, the new approach on the enlargement with Croatia has been applauded, but the current situation shows that all efforts that have been made in view of the adhesion have slowed down.

“In January (2020), Croatia slumped to its worst level (47 points out of 100) in five years in Transparency International’s annual index of perceived

¹⁵¹ Ibid. 13.

¹⁵² Ibid. 14

¹⁵³ ibid 16.

¹⁵⁴ Ibid.

¹⁵⁵ Vlašić Feketija Mirna, Łazowski* Adam (n 151) 19.

¹⁵⁶ Ibid.

¹⁵⁷ ibid.

corruption. (...) There is no external pressure to encourage change; the European Commission, for example, has abolished the anti-corruption reports it once had.”¹⁵⁸

Indeed, once that politicians don't have to face anymore the pressure of the rigorous political conditionality criteria, the post-adhesion situation has declined, specifically in the sensitive areas that is to say corruption and thus its incidences on democratic principles and human rights. Therefore, the result of the Croatian accession remains quite similar to the enlargement of Romania and Bulgaria. Improvements are more numerous, but corruption stays a systemic issue with multiple consequences that continues to develop even after the adhesion.

3.2 WESTERN BALKAN OFFICIAL CANDIDATES TO THE ADHESION

3.2.a Study case of Serbia

Serbia has been a candidate to the EU adhesion since 2005 and had the status of an official candidate since 2012. Different steps led the country to its road to the adhesion. After the adhesion of Croatia in 2013, the EU launched its third generation of adhesion process,¹⁵⁹ specific to the case of Western Balkan candidates, with the aim to improve the controversy of enlargements.

The EU and Serbia adopted in 2008 the European partnership for Serbia, relying with the UN Security Council Resolution 1244. The goal of this partnership was to create short and mid-term objectives in perspective to a further European integration of Serbia.¹⁶⁰ The objectives are fixed and adapted to the priorities and specific needs of the country. Another step has been taken in 2013 when the Stabilisation and Association Agreement (SAA) entered in force. This step took a long time for Serbia, and made negotiations harder as the EU framework and conditionality reinforced during these years. Negotiations between Serbia and the EU are complex and marked by strong political issues that block the adhesion perspective.

“In addition to Serbia’s insufficient compliance with accession criteria, particularly reforms of the judiciary and public administration, the contested

¹⁵⁸ Vladisavljevic Anja, « *Croatia seen backsliding on corruption since EU accession* » (February 2020) < <https://balkaninsight.com/2020/02/17/croatia-seen-backsliding-on-corruption-since-eu-accession/>> accessed 25 July 2020

¹⁵⁹ Grubiša Damir “*Anti-Corruption Policy in Croatia: a Benchmark for EU Accession*” < https://eu.boell.org/sites/default/files/uploads/2013/12/anti-corruption_croatia.pdf> accessed 27 July 2020

¹⁶⁰ Ministry of European Integration – Government of the Republic of Serbia “*European Partnership*” > <https://www.mei.gov.rs/eng/documents/eu-documents/european-partnership/>> accessed 27 July 2020

issue of Kosovo's independence continues to pose a major threat to Serbia's entry into the EU."¹⁶¹

Therefore, the obstacles to the adhesion between Serbia and the EU are far more complex than the previous enlargements. Serbia fails to improve its compliance with the political conditionality and still doesn't recognise Kosovo's independence. The issue of political conditionality is more similar than the case of Croatia. The EU emphasised the necessity to adopt and implement obligations of the Chapter 23, and also the Chapter 24 about Justice freedom and security. In 2019, the European Commission released a report highlighting the issues and particularly on the rule of law, fundamental rights, the functioning of the judiciary and the fight against corruption. The Commission confirmed that Serbia had *some level of preparation* regarding countering corruption, but the progress stays too limited and must be improved in order to comply with the *acquis* and other regional standards such as the GRECO.¹⁶² Then, very recently, the EU introduced a new enlargement methodology regarding the access to the adhesion of Albania and North Macedonia. Serbia accepted this new approach in July 2020. The aim of this new methodology is once again to improve the efficiency of the EU enlargement approach.

*"With some adjustments, this approach should allow for a stronger focus on key reforms in related areas and improve strategic planning of public policy. This should at the same time influence the interest and responsibility of political leaders to become more strongly involved in strategic planning within the process of accession to the Union."*¹⁶³

The adoption of the new enlargement methodology and the perspective of adhesion of Albania and Macedonia suggest that the enlargement process in the Western Balkan countries is moving on a positive future. Yet, very recently, Serbians were protesting in the streets, denouncing undemocratic latest parliamentary elections, deep and systemic corruption (including state capture) as well as many other violations of democratic and human rights principles.¹⁶⁴ Meantime, most of the media covered these protests affirming that Serbians were protesting

¹⁶¹ Bonomi Matteo, Uvalic Milica "Serbia and the European Union" (July 2019) < <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1052>> accessed 27 July 2020

¹⁶² European Commission "Commission Staff Working Document: Serbia 2019 Report" (2019) < <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>> accessed 27 July 2020

¹⁶³ Burazer Nicola "Will Serbia accept the new methodology and what could be the role of civil society?" (May 2020) < <https://europeanwesternbalkans.com/2020/05/25/will-serbia-accept-the-new-methodology-and-what-could-be-the-role-of-civil-society/>> accessed 27 July 2020

¹⁶⁴ Pantelic Marija "What were the protests in Serbia really about?" (July 2020) < <https://www.aljazeera.com/indepth/opinion/protests-serbia-200718175749533.html>> accessed 28 July 2020

against “new lockdown measures”. The reality shows different claims and highlights yet again that civil society doesn’t remain silent in front of the situation.

3.2.b Study case of Montenegro

The case of Montenegro has been on the same timing line as Serbia. Indeed, Montenegro started the accession process in 2005 at the same time as Serbia and took its official independence one year later. The SAA entered in force in the country in 2010, three years before Serbia. Then, the accession negotiations started officially in 2012. The EU supported Montenegro’s accession through the IPA I and II. It is interesting to focus on the repartition of financial assistance. For the period 2014-2020, the IPA II had a budget of € 279.1m.¹⁶⁵ €107.7m have been dedicated to rule of law and democracy, thus almost 40% of the overall budget. This demonstrates the importance and challenge of the political criteria in the country. Regarding the situation in Montenegro, the 2019 report on Montenegro from the European Commission highlights important progress, yet important shortcomings in regards to the political criteria persist in the country.

*The reporting period continued to be marked by the low level of trust in the electoral framework, which needs to be revised in a comprehensive and inclusive manner. (...) The political scene remains fragmented, polarised and marked by lack of genuine political dialogue. (...) As regards governance, there is a need to strengthen transparency, stakeholders' participation, and the government's capacity to implement reforms. (...) Challenges to the credibility, independence and priority setting of the Anti-Corruption Agency still need to be addressed.*¹⁶⁶

Yet, Montenegro is considered as the closest to the enlargement among the Western Balkan candidates. The last chapter of the negotiations between the EU and Montenegro has been opened in June 2020, which made Montenegro the first country that opened all its Chapters between the Balkan candidates. Furthermore, Montenegro has accepted the new enlargement methodology in order to “*breathe new life*” into the accession process.¹⁶⁷

¹⁶⁵ European Commission “*Montenegro financial assistance under IPA II*” (2020) https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/montenegro_en accessed 28 July 2020

¹⁶⁶ European Commission “*Key findings of the 2019 Report on Montenegro*” (May 2019) https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_19_2779 accessed 28 July 2020

¹⁶⁷ Maksimov Vlagyislav “*Montenegro to open final chapter in talks to join the EU amid domestic tensions*” (June 2020) < <https://www.euractiv.com/section/enlargement/news/montenegro-to-open-final-chapter-in-talks-to-join-the-eu-amid-domestic-tensions/> > accessed 28 July 2020

However, if Montenegro is considered as the top candidate for the adhesion, some important issues, especially in the political sphere are persistent and denounced by civil society and NGOs. Since the fall of communism, the prominent political party in Montenegro is the DPS (Democratic Party of Socialists), and its leader Milo Đukanović are both ruling the country for years. The president Đukanović is very cooperative and supports the EU adhesion of Montenegro. Conversely, Đukanović and the DPS are accused of numerous democratic and human rights violations – corruption, involvement with the mafia, state capture, organized crime, electoral fraud, authoritarian practices, attacks against opponents such as media and individuals, etc.¹⁶⁸ that are clear obstacles to the adhesion. Some media even qualify the Đukanović’s government as an “*authoritarian kleptocracy*”.¹⁶⁹ Furthermore, the president has been qualified as “the person of the year in organized crime” by an anti-corruption organisation (OCCRP). This NGO stated:

*“Nobody outside of (Russian President Vladimir) Putin has run a state that relies so heavily on corruption, organized crime and dirty politics. It is truly and thoroughly rotten to the core.”*¹⁷⁰

In February 2019, anti-government militants and the civil society protested against the DPS in order to denounce the overall critical situation and ask for the government resignation. This situation gives rise to many questions. How Montenegro can be the top candidate to EU adhesion considering the amount and seriousness of charges against the current government? Corruption is clearly more than present in the country, and remains a considerable obstacle for the political conditionality. The consequences of corrupt behaviours in Montenegro on democracy and human rights have no longer to be proved – murders of journalists, barriers to the freedom of expression/media among others – and represent a significant threat for the democratisation and EU adhesion of the country.

¹⁶⁸ Keil Soeren “*The Business of State Capture and the Rise of Authoritarianism in Kosovo, Macedonia, Montenegro and Serbia*” (2018) <https://repository.canterbury.ac.uk/download/9c46c9a774e1645b9e0c00756b674ec61860e015a1b475cdecfef7dc b3145e53/725764/17235_Keil.pdf> accessed 28 July 2020

¹⁶⁹ Bardos Gordon “*Montenegro's Corrupt Party of Socialists Is Killing the Country*” (January 2020) <<https://nationalinterest.org/feature/montenegros-corrupt-party-socialists-killing-country-117821>> accessed 28 July 2020

¹⁷⁰ OCCRP “2015 Man of the year in organized crime and corruption” (2015) <<https://www.occrp.org/en/poy/2015/>> accessed 28 July 2020

3.2.c Study case of Albania

The road towards the adhesion of Albania has been less quick than the one of Montenegro or Serbia. Indeed, Albania applied for EU membership in 2009, and got the official status granted five years later in 2014.¹⁷¹ The Commission issued a recommendation in 2018 stating that the negotiation process should be opened with Albania. The Council considered opening the negotiations in June 2019, but with some conditionality, including improvements in terms of judiciary, organised crime as well as countering corruption.¹⁷² However, a few months later, the French president Emmanuel Macron as well as Denmark and the Netherlands refused the opening of negotiations with the candidate country. The French president, that exercised his VETO stated:

“These countries will be part of the European Union one day... but it is too early to open the legal process towards enlargement,”¹⁷³

A few months late in March 2020, the European Commission released a report that convinced all the EU leaders to open the negotiations. This decision represented a turning point in the EU enlargement process as the former situation left the EU enlargement policy in uncertainty. Indeed, the fact that EU political leaders could not agree on the EU enlargement perspective weakened the EU credibility.

As an answer the situation, the European Commission decided to create a new methodology, with the purpose to strengthen the EU adhesion process. This methodology has different purposes. Firstly, the credibility of both sides regarding the process of enlargement in order to build a relationship based on trust during negotiations.¹⁷⁴ Secondly, the new approach has the aim to build a stronger political control, which means to enhance the connexion between the different parts and organise regular meetings.¹⁷⁵ Thirdly, the focus is on a more dynamic enlargement process, in order to boost the cooperation between both parts.¹⁷⁶ Lastly, the emphasis is on the predictability for the two parts, which means that criteria and objectives will

¹⁷¹ European Commission “Albania” < https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/albania_en> accessed 29 July 2020

¹⁷² European Commission (n 172)

¹⁷³ Matamoros Cristina “France rejects talks with Balkan hopefuls on EU membership” (October 2019) < <https://www.euronews.com/2019/10/16/balkan-membership-talks-rejected-by-france-who-wants-reforms-to-enlargement-policy>> accessed 29 July 2020

¹⁷⁴ European Commission “Revised enlargement methodology; Questions and Answers” (February 2020) https://ec.europa.eu/commission/presscorner/detail/de/qanda_20_182 accessed 29 July 2020

¹⁷⁵ *ibid.*

¹⁷⁶ *ibid.*

have to be clear and that the EU will have to be more decisive (e.g.: if the candidate country backslides in a special area, the EU must take clear decisions and give sanctions).¹⁷⁷

The opening of the negotiations with Albanian stays complicated for now. Indeed, the European Commission asked Albania to fulfil 15 conditions before to really start the process. These conditions are the following:

“the approval of electoral reform, the functioning of the Constitutional Court, the functioning of the High Court, the establishment of structures against organised crime and anti-corruption/functioning of SPAK, the strengthening the fight against corruption and organised crime in cooperation with Member States and through the Action Plan for addressing financial crime, the reduction of the number of Albanians seeking asylum abroad, the review of the Media Law in line with Venice Commission recommendations, the continuation of Justice Reform, the initiation and completion including first instance trials against senior officials and politicians involved in vote-buying, the progress in public administration reform and the implementation of electoral reform, the decision on the legality of 2019 local elections, the approval of bylaws on the Law on National Minorities and the approval of the amendment of the Census Law, Advancement of the property registration process.”¹⁷⁸

All of these conditions are related to the political conditionality of the EU. It proves that the barrier to the adhesion is most of the time linked to the areas of democracy, the fight against corruption, etc. The relationship between the EU and Albania stay complex and the opening of negotiations brings a lot of attention on the evolvement of the situation.

3.2.c Study case of North Macedonia

North Macedonia has been the first country in the Balkans to initiate negotiations with the EU. Indeed, the SAA entered in force in 2004, the same year where North Macedonia applied officially for membership, and was recognized as an official candidate one year later in 2005. However, the beginning of the official start of the negotiations started in 2020 as Albania. The main reason that retarded North Macedonia in the EU enlargement process is the political issues with Greece. Indeed, Greece and North Macedonia have been through a complex disagreement regarding the name of the country of Macedonia. In 2019, the two countries

¹⁷⁷ *ibid.*

¹⁷⁸ Justice Reform “Where Albania Stands on its 15 conditions for opening EU accession talks” (June 2020) <<https://exit.al/en/2020/06/18/where-albania-stands-on-its-15-conditions-for-opening-eu-accession-talks/>> accessed 29 July 2020

finally ratified the Prespa agreement, that changed the appellation of the country as the Republic of North Macedonia.¹⁷⁹ The question of “identity” in this dispute was very complex as both countries had their demands and reasons to claim the name of “Macedonia”. Thus, the end of the dispute was a historic moment for both countries, and for North Macedonia that could henceforth move forward and access to a closer relationship with the EU.

As Albania, North Macedonia endorsed the new enlargement methodology, in order to boost its road to the adhesion. Yet, North Macedonia is facing similar issues than its neighbours in terms of fighting corruption or judicial reforms among others. The political conditionality is again an important obstacle for the adhesion of the country. According to Transparency International, Macedonia is the most corrupted country in the Balkans with a score of 35 in 2019, a score that is not improving among the years (in 2014 the score was at 45).¹⁸⁰ Similarly to Montenegro, the North Macedonian Prime Minister Nikola Gruevski and its government have been accused of many anti-democratic acts, including corruption, electoral fraud, etc.¹⁸¹ This situation led to important protests in 2015 asking for the resignation of the government and particular Gruevski. In May 2015, a joint statement of different countries and the European Union stated:

*“We have specifically reiterated our concerns to the Prime Minister that his government has not made progress towards accounting for the many allegations of government wrongdoing arising from the disclosures. This continued inaction casts serious doubt on the Government of Macedonia’s commitment to the democratic principles and values of the Euro-Atlantic community. Continued failure to demonstrate this commitment with concrete action will undermine Macedonia’s progress towards EU and NATO membership.”*¹⁸²

The prime minister resigned in January 2016, due to the pressure exercised by national and international initiatives.¹⁸³ The democratic governance in North Macedonia is facing many challenges and the EU political conditionality is far to be reached. Yet, the country continues to prove its will to enter in the EU, with the resolution of the conflict with Greece for instance.

¹⁷⁹ Šorović Mira “*The Republic of North Macedonia: a “new” country in the Western Balkans*” (September 2019) RSC Volume 11, Issue 3 < http://www.fuds.si/sites/default/files/priloge-aktualnosti/mira_sorovic_87-107.pdf> accessed 1 August 2020

¹⁸⁰ TI “*Corruption perspectives Index*” 2019 < <https://www.transparency.org/en/cpi/2018/results/mkd>> accessed 1 August 2020

¹⁸¹ Keil Soeren (n 169), 6.

¹⁸² Joint Statement by the Ambassadors of the U.S, France, Italy, the U.K, Germany and the EU (May 2015) < <https://web.archive.org/web/20150529155126/http://macedonia.usembassy.gov/mobile/https/macedonia2/speeches/speeches2015/joint-statement-by-the-ambassadors-of-the-united-states-france-italy-the-united-kingdom-germany-and-the-european-union-may-11-2015.html#>> accessed 1 August 2020

¹⁸³ Keil Soeren (n 169) 6.

As other Balkan official candidates to the adhesion, North Macedonia government has to face the issue of corruption and its consequences on democracy and human rights, in order to move towards a successful adhesion process.

3.3 CONCLUSIONS

3.3.a The EU enlargement process: success or defeat?

As developed in the previous subparts, the EU enlargement process is very controversial. Indeed, on the one hand, each round of enlargement is often considered as a success as it means that the EU and the candidate countries managed to conclude a deal and finalise the adhesion. The great enlargement to the East, in spite of some critics and a rise of Euroscepticism has often been considered as a success. Some scholars even affirm that the EU enlargement policy is the most successful one between the EU's foreign programmes.¹⁸⁴ The adhesion of Croatia in particular has been considered as a successful start towards the Balkan enlargement.

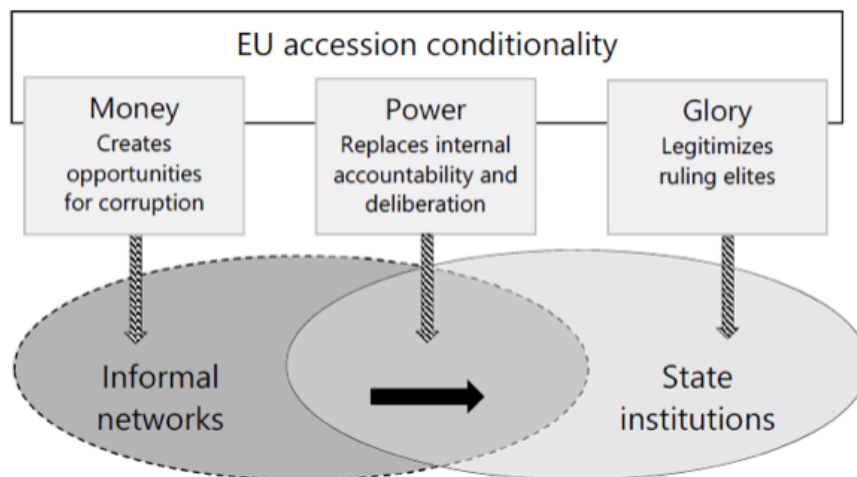
On the other hand, the EU enlargement process faces many criticisms, especially regarding the approach taken with the Western Balkan countries. For instance, some scholars defend a theory that affirms that the EU conditionality participates to the rootedness of state capture in these countries. Different studies and approaches have been taken in order to prove this theory. Firstly, a study of the level of compliance with the Copenhagen criteria in relation to the level of democracy has been made, and the results are surprising. Indeed, this study proves that more countries comply with Copenhagen criteria, more the level of democracy will tend to decrease (see Annex IV).¹⁸⁵ According to this study, the decoupling between the compliance with the enlargement criteria and the level of democracy would be due to the rise of state capture during the period of democratisation of Balkan States.¹⁸⁶ Yet, how the enlargement conditionality would contribute to the rise of state capture in the Balkans? The same scholars developed a “model” that links the EU accession conditionality and the phenomenon of state capture.

¹⁸⁴ Vlašić Feketija Mirna, Łazowski* Adam (n 151) 1.

¹⁸⁵ Richter Solveig, Wunsch Natasha “*How EU conditionality entrenches state capture in the Western Balkans*” (March 2019) *Journal of European Public Policy* < <https://blogs.lse.ac.uk/euoppblog/2019/03/07/how-eu-conditionality-entrenches-state-capture-in-the-western-balkans/>> accessed 2 August 2020

¹⁸⁶ *ibid.*

EU conditionality and the state capture model



Source: https://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_3_antlasmalar/1_3_1_kurucu_antlasmalar/1957_treaty_establishing_eec.pdf

Therefore, according to this model, the EU conditionality gives Money, Power and Glory to governments during the EU enlargement process, which could have negative consequences and participate to state capture, thus high-level corruption.

First, external pressure for the liberalisation of markets in the absence of a comprehensive legal framework allowed a small economic elite to realise private gains and build powerful networks that influence political decision-making (money). Second, strong top-down conditionality stifles domestic deliberation and weakens internal mechanisms of accountability, allowing ruling elites to silence domestic opponents (power). Finally, progress towards EU membership and frequent interactions with high-ranking EU and member state officials serve to legitimise ruling elites (glory). As a result, the countries of the Western Balkans are stuck in a 'state capture trap' that leads to stagnating democratisation and the inability to implement deep reforms.¹⁸⁷

However, this model doesn't charge the EU conditionality to be responsible for state capture, yet it makes a link between both and demonstrate how EU conditionality involuntary participates to the entrenchment of state capture in Balkan countries during their process of democratisation. In the previous subparts of this Chapter, we could notice that the common factor between official candidates to the adhesion is corruption and its impact on democracy particularly. However, the first subpart also demonstrated that the last countries that entered in the EU, despite a successful enlargement process see the issue of corruption resurfaces strongly

¹⁸⁷ Richter Solveig, Wunsch Natasha (n 186)

these past years. For instance, the CVM mechanism in Bulgaria and Romania has been strongly criticised for multiple reasons. Indeed, the CVM doesn't involve any consequences in case of the non-compliance with the European Commission recommendations; furthermore, objectives are overlapped.¹⁸⁸ Yet the European Commission decided to stop the CVM in Bulgaria very recently, stating that the objectives would have been met. Meanwhile in July 2020 thousands of citizens were protesting against corruption in the streets of Bulgaria. Thus, the credibility and efficiency of the CVM definitely stay unsatisfactory, for the citizens and their right to live in a country respecting rule of law and human rights.

Nonetheless, the EU stays the most powerful actor for promoting the rule of law and democracy, and the EU enlargement policy has a lot of potential and proved to be an efficient tool in some cases. Defining the EU enlargement process as a success of defeat is an intricate, even perhaps an impossible choice. The accession process is contrasted with positive and negative consequences, proper to each country and many other factors. However, in order to improve and diminish the negative consequences, it is necessary to identify and identify the issues and establish indispensable developments.

3.3.b The lessons learned from the past: some necessary changes in the EU enlargement policy

“Today, while the conditionality of enlargement remains the same, the way we apply it has evolved based on what we have learnt from past enlargements. We have increased the focus on good governance and the rule of law, including judicial reform, public administration reform and the fight against corruption and organised crime.”

This quote comes from the discourse of Štefan Füle, the Commissioner for Enlargement and Neighbourhood Policy in 2013 for the 20-year anniversary of the Copenhagen criteria. He highlighted that the EU policy on enlargements for the Western Balkan countries had evolved since the previous enlargements. He confirmed that the accession conditionality remains a major point in the policy, but acknowledges that the EU had to use the “lessons from the past enlargements.” These lessons would have pushed the EU to focus more on the key issues of the enlargements: the rule of law, the fight against corruption, and fundamental rights among others. Corruption in particular represents an important challenge as its repercussions are various and remains a clear obstacle to the political conditionality.

¹⁸⁸ Radosveta Vassileva “*The failure of Bulgaria’s Cooperation and Verification Mechanism CVM*” (2019) <<https://radosvetavassileva.blog/2019/10/15/vlog-post-the-failure-of-bulgarias-cvm/>> accessed 1 August 2020

*The EU could be more successful in its approach towards candidate countries if expectations, their importance, and the repercussions for failure to comply with these stated expectations are clearly communicated to candidate countries. This is particularly important given the absence of a comprehensive and coherent European anticorruption policy, which includes clear benchmarks and transparent monitoring systems.*¹⁸⁹

Furthermore, the EU had to admit that the democratic transition through the EU adhesion process is not a “one-way street”.¹⁹⁰ Additionally, a democratic transition can’t guarantee good governance, and EU Members are not “perfect examples” – e.g., Italy or Greece present many issues in relation to democratic principles even though they are EU members for many years – which weakens the EU position as a “promoter of democracy”.¹⁹¹ It is also important to remind that the European *acquis* does not have specific parts dedicated to democracy. Thus, in order to counter this gap, the EU works more closely with the Council of Europe, which developed more instruments in this field.¹⁹² The Commission also tried to work on a project to create a “European Public Prosecutor”, that could monitor and check the compliance of EU Member States with democratic principles including rule of law, and even with other principles in accordance with Copenhagen criteria.¹⁹³ But the creation of such a project requires the will of all Member States, including the those who would be at risk, which makes a project like this technically hopeless.¹⁹⁴ If the EU knows the important shortages in its enlargement process, it remains a hard task to make efficient changes due to the complexity of the decision process that now includes 27 governments.

The new enlargement methodology is an answer to some of the lessons learned from the past enlargements, and the beginning of negotiations with Serbia and Montenegro. With the creation of a new approach on the enlargement, the EU admitted more or less than the previous methodology had short limitations, especially because it was not adapted to the case of Western Balkan candidates. The impact of this new methodology can’t be studied yet as it is too recent. However, it proves a will from the EU to make some changes, especially on the EU

¹⁸⁹ Mihaiela Ristei Gugiu (n 7) 16.

¹⁹⁰ Grabbe Heather « *Six lessons of enlargement ten years on: the EU’s transformative power in retrospect and prospect*” (2014) Open Society Foundation, 5 <
https://www.researchgate.net/publication/263670615_Six_Lessons_of_Enlargement_Ten_Years_On_The_EU%27s_Transformative_Power_in_Retrospect_and_Prospect> accessed 2 August 2020

¹⁹¹ *ibid.* 6.

¹⁹² *ibid.* 7.

¹⁹³ *ibid.*

¹⁹⁴ *ibid.*

“fundamentals” including rule of law, fundamental rights and the fight against corruption.¹⁹⁵ But some specialists don’t see in this new methodology such an important change. They qualified this new initiative as “*just another piece of paper without political will*”.¹⁹⁶

3.3. The upcoming challenges

*More fundamentally, conditionality is now part of the process of pre- and post-enlargement politics.*¹⁹⁷

The EU enlargements are now facing multiple challenges. As stated in the quote above, the enlargement conditionality is not only part of the pre-enlargement process but also the post-enlargement time. In this study case was demonstrated that the situation in the Balkan EU countries is alarming regarding the political criteria and particularly corruption and rule of law. It is also similar in other EU countries, for instance Poland and Hungary have very big issues with the rule of law, and Italy also shows high rates of corruption. Therefore, how the EU can promote its “values” in the Balkan countries through its enlargement process when these values are not respected within the EU already? This is a paradoxical situation that participates to the decredibilisation of the EU enlargement process.

In addition, the EU has to face intern challenges. Indeed, the Union is facing a political crisis, with the Brexit, the crisis of EU values, and now the Covid-19. The internal issues are a real obstacle to a clear and efficient adhesion process as EU countries are already concerned with other internal challenges. For instance, the reaction of France and the Netherlands regarding the opening of negotiations with Albania and North Macedonia confirmed that not all EU Members are committed to move towards the Balkan enlargement. This division proved to be a real political issue inside the European Union. Indeed, the EU enlargement policy requires a strong political will from both EU Member States and candidates to the adhesion. In order to ensure positive and efficient negotiations, EU Member States must be on the same page. Likewise, the lack of effective reforms in the EU enlargement process is another obstacle to a good and efficient enlargement. The EU put its hopes in the new methodology system, that is yet already

¹⁹⁵ Ivkovic Aleksandar “*New enlargement methodology: it will work only if used properly*” (February 2020) <<https://europeanwesternbalkans.com/2020/02/11/new-enlargement-methodology-it-will-work-only-if-used-properly/>> accessed 4 August 2020

¹⁹⁶ *ibid.*

¹⁹⁷ Luxembourg Institute for European and International Studies “*Bulgaria and the EU: Before and After Accession*” (April 2009) <http://www.ieis.lu/online/www/menu_vert/1152/220/221/content/355/436/116/ENG/Bulgaria%20and%20the%20EU.pdf> accessed 4 August 2020

criticised for its lack of political will. Through this new methodology, the EU should affirm its political project, in front of EU citizens and potential ones. Indeed, the EU is often condemned for not having a clear “political project”. The debate around the future of Europe is complex and needs to be clarified. New instruments such as this new methodology can help the EU to define and put more concrete demands on what is expected from candidate countries to the next enlargement. Thus, this new methodology will have to prove its effectiveness the sooner the better in order to reinforce the enlargement policy.

Furthermore, the situation in the Balkan official candidates is very complex and unstable. These past years, citizens have been protesting in the streets of their country multiple times, vindicating their fundamental rights. Corruption, women’s rights, LGBT+ rights, rule of law, authoritarianism, environmental issues, etc. All these subjects have led to different protests among the Balkan countries in 2019; from Croatia to Albania, through Bosnia-Herzegovina, Montenegro, Serbia or North Macedonia. The common point within all these protests is the high rate of corruption, in addition to low human rights and democratic standards. This is where the human rights and democratic perspective on corruption become clear and judicious. Breaking the vicious circle between corruption and its negative consequences remains such a complex task considering the current initiatives and instruments used. One of the topical challenges for the EU and the following enlargements is to take corruption from another perspective. Human rights, democracy and corruption are indivisible and represent a consequent threat for EU values within the Union and for the enlargement perspective.

CONCLUSION

In conclusion to the main question - how fundamental is the fight against corruption regarding the EU adhesion of Western Balkan official candidates specifically from a human rights and democratic perspective – this thesis aimed to research on three main related subjects: the human rights and democratic based approach on corruption, the question of EU enlargement in relation to corruption, and a comparison of situations in the Western Balkan countries. If the question of corruption itself is undoubtedly an important barrier for the EU enlargement process, we know right now that the human rights and democratic based approach on corruption and related notions present multiple outlooks and their recognition at the European level is not fully acknowledged. Nevertheless, both perspectives on corruption remain related specifically to the political criteria and EU values, such as democracy and rule of law, fundamental rights, EU policies in terms of good governance and the Copenhagen criteria themselves as well. Therefore, if from a legal or official perspective corruption from a human rights and democratic perspective is not considered as a decisive criterion as such regarding the EU enlargement process; these approaches on corruption remain in accordance with EU values and criteria in terms of accession policies.

“The European Union is built on compromises, but when it comes to human rights, the rule of law, the fight against corruption, there can be no compromise.”¹⁹⁸

As the former president of the EU Commission stated, the question of human rights, rule of law and the fight against corruption are fundamental in the EU. These principles are interconnected and are part of the EU values. The European Union has been founded on shared values, and the respect of these can guarantee a better internal functioning of the Union, and a better approach towards the enlargements. Indeed, the EU adhesion process has been strongly under pressure and criticism these past years. Yet, it is also considered as one of the most successful EU instruments in terms of foreign policy.

Many claim, quite rightly, that the enlargement policy is the most successful of the EU’s foreign policy tools. Even those who bring this bold argument into doubt have to agree that, when contrasted with other external policies, and the European Neighbourhood Policy in particular, the overall balance

¹⁹⁸ Juncker Jean-Claude, « *Speech for the opening ceremony of the Romanian Presidency of the Council of the EU* » (2019)

*sheet of the enlargement policy is positive. The accession of Croatia is symbolic in a number of ways. (...) it closes one big chapter in the history of EU enlargements but, at the same time, opens another. (...) After a sometimes-painful pre-accession process, it has proved to be a 'success story' of the stabilisation and association process.*¹⁹⁹

Not all experts agree with the statement above. Indeed, it is necessary to recognise that CEEC countries and the Balkans EU Member States have benefited a lot from their EU adhesion, from an economic to a political point of view. Yet, it is also essential to face the reality and admit that despite the EU adhesion, some countries face very important issues regarding their ability to respect the political criteria. Due to the internal issues in the EU and the weaknesses of the EU enlargement process, the process of enlargement in the Balkan countries stays a goal very far to reach.

In order to guarantee and encourage a better EU adhesion approach, it has been demonstrated in this thesis that corruption was one of the key issues that needed to be tackled urgently. The future of the enlargements will rely on the good understanding of the negative consequences of corruption, especially on human rights and democracy. Indeed, the human rights and democratic approaches on corruption have a lot of potential and could be a real asset for the EU enlargement policy. Nowadays, these new approaches on corruption take more and more importance within international and regional organisations, with the support of NGOs that also campaign for the recognition of corruption as a violation of human rights. The challenge of Western Balkan official candidates to the adhesion also encourages the EU to focus more on corruption as it stays a key issue in the process. Therefore, the importance of corruption in the EU enlargement process should not be minimised. It should also be acknowledged by both EU institutions and candidate countries. The emergence of new approaches on corruption, including democracy and human rights represent a unique opportunity to fight corruption in its entirety, and promote EU values - specifically human rights and democracy - as a real way to connect the European countries and build a true European identity on the continent.

¹⁹⁹ Mirna Vlašić Feketija and Adam Łazowski (n 151)

BIBLIOGRAPHY

ARTICLES

- Bardos Gordon “*Montenegro's Corrupt Party of Socialists Is Killing the Country*” (January 2020) <https://nationalinterest.org/feature/montenegros-corrupt-party-socialists-killing-country-117821> accessed 28 July 2020
- Bojinovic Fenko Ana, Urlic Ana “*Political criteria vs. Political conditionality: comparative analysis of Slovenian and Croatian EU accession processes*” (2015) CIRR <<https://content.sciendo.com/downloadpdf/journals/cirr/21/72/article-p107.pdf>> accessed 20 June 2020
- Boutherin Thibault “*Croatia's accession to the EU: thought for Europe at a crossroads*” (2013) <<https://www.robert-schuman.eu/en/european-issues/0283-croatia-s-accession-to-the-european-union-thoughts-for-europe-at-a-crossroads>> accessed 25 July 2020
- Burazer Nicola “*Will Serbia accept the new methodology and what could be the role of civil society?*” (May 2020) <<https://europeanwesternbalkans.com/2020/05/25/will-serbia-accept-the-new-methodology-and-what-could-be-the-role-of-civil-society/>> accessed 27 July 2020
- Ivkovic Aleksandar “*New enlargement methodology: it will work only if used properly*” (February 2020) <<https://europeanwesternbalkans.com/2020/02/11/new-enlargement-methodology-it-will-work-only-if-used-properly/>> accessed 4 August 2020
- Joint Statement by the Ambassadors of the U.S, France, Italy, the U.K, Germany and the EU (May 2015) <<https://web.archive.org/web/20150529155126/http://macedonia.usembassy.gov/mobile/https/macedonia2/speeches/speeches2015/joint-statement-by-the-ambassadors-of-the-united-states-france-italy-the-united-kingdom-germany-and-the-european-union-may-11-2015.html#>> accessed 1 August 2020
- Justice Reform “*Where Albania Stands on its 15 conditions for opening EU accession talks*” (June 2020) <<https://exit.al/en/2020/06/18/where-albania-stands-on-its-15-conditions-for-opening-eu-accession-talks/>> accessed 29 July 2020
- Kubbe Ina, Engelbert Annika “*Corruption and the impact of democracy*” (2018) Crime Law and Social Change 175-178 < <https://link.springer.com/article/10.1007/s10611-017-9732-0#citeas>> accessed 18 May 2020
- Makszimov Vlagyiszlav “*Montenegro to open final chapter in talks to join the EU amid domestic tensions*” (June 2020) < <https://www.euractiv.com/section/enlargement/news/montenegro-to-open-final-chapter-in-talks-to-join-the-eu-amid-domestic-tensions/>> accessed 28 July 2020
- Matamoros Cristina “*France rejects talks with Balkan hopefuls on EU membership*” (October 2019) <<https://www.euronews.com/2019/10/16/balkan-membership-talks-rejected-by-france-who-wants-reforms-to-enlargement-policy>> accessed 29 July 2020
- OCCPR “2015 Man of the year in organized crime and corruption” (2015) < <https://www.occrp.org/en/poy/2015/>> accessed 28 July 2020
- Pantelic Marija “*What were the protests in Serbia really about?*” (July 2020) <<https://www.aljazeera.com/indepth/opinion/protests-serbia-200718175749533.html>> accessed 28 July 2020
- Petrescu Denisa “*Corruption in Romania: a European affair*” (September 2019) <<https://www.euractiv.com/section/justice-home-affairs/opinion/corruption-in-romania-a-european-affair/>> accessed 23 July 2020
- Radosveta Vassileva “*The failure of Bulgaria's Cooperation and Verification Mechanism CVM*” (2019) <<https://radosvetavassileva.blog/2019/10/15/vlog-post-the-failure-of-bulgarias-cvm/>> accessed 1 August 2020

- Richter Solveig, Wunsch Natasha “*How EU conditionality entrenches state capture in the Western Balkans*” (March 2019) *Journal of European Public Policy* < <https://blogs.lse.ac.uk/euoppblog/2019/03/07/how-eu-conditionality-entrenches-state-capture-in-the-western-balkans/>> accessed 2 August 2020
- Romania Insider “*EC maintains CVM monitoring on Romania but is ready to lift it for Bulgaria*” (October 2019) < <https://www.romania-insider.com/european-commission-cvm-romania-bulgaria-october-2019>> accessed 23 July 2020
- Vladisavljevic Anja, « *Croatia seen backsliding on corruption since EU accession* » (February 2020) <<https://balkaninsight.com/2020/02/17/croatia-seen-backsliding-on-corruption-since-eu-accession/>> accessed 25 July 2020

BOOKS

- Heywood Paul “*Political Corruption; Problems and Perspectives*” (1997) *Political Studies*, 417-435 <http://www.ebour.com.ar/pdfs/Political_corruption.pdf> accessed 18 May 2020
- Inglis Kirstyn, “*EU values in EU External Relations: an introduction to current legal instruments*” 2009 <<https://transatlanticrelations.org/wp-content/uploads/2019/10/ch07.pdf>> accessed 20 March 2020
- Landman Todd, “*Human Rights and Democracy: The Precarious Triumph of Ideals*” (Bloomsbury Academic, 2013)
- McLean Iain and McMillan Alistair, “*The Concise Oxford Dictionary of Politics (3 ed.)*” (2009) Oxford University Press
- Mihaiela Ristei Gugiu, “*EU Enlargement and Anticorruption: Lessons Learned from Romania,*” (2012) *Journal of European Integration*, <<http://dx.doi.org/10.1080/07036337.2011.595487>> accessed 20 March 2020
- Šorović Mira “*The Republic of North Macedonia: a “new” country in the Western Balkans*” (September 2019) *RSC Volume 11, Issue 3* < http://www.fuds.si/sites/default/files/priloge-aktualnosti/mira_sorovic_87-107.pdf> accessed 1 August 2020
- Vlašić Feketija Mirna, Łazowski Adam « *The Seventh EU enlargement and beyond: pre-accession policy vis-à-vis the Western Balkans revisited*” (2014) *CYELP*, 14.

INTERVIEW

- Interview with Laure du Castillon, Magistrate of Foreign Affairs of Belgium – expert in large-scale transnational anti-corruption practises (UNDOC, GRECO, OECD, FATF), expert in national and international coordination with related European and international agencies.

LEGISLATIONS

- Council of Europe Committee of Ministers “*Resolution (97) 24 on the twenty guiding principles for the fight against corruption*” (1997)
- Consolidated version of the Treaty on European Union (TEU) [2012], OJ C236/17
- Consolidated version of the Treaty on European Union (TEU), [2016], OJ C202/43
- United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) A/58/422
- United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) A/58/422 art 35

OFFICIAL WEBSITES

- AlleEuropa, “*Corruption as violation of human rights. The Council of Europe anti-corruption instruments and mechanisms*” (2014) < <http://alleuropa.ru/?p=11005>> accessed 26 March 2020
- Angel Gurría, OECD Secretary General < <http://www.oecd.org/corruption-integrity/about/>> accessed 11 July 2020
- Annan Kofi, “*Speech of the Secretary General on the adoption by the General Assembly of the UNCAC*” (2003) <<https://www.unodc.org/unodc/en/treaties/CAC/background/secretary-general-speech.html>> accessed on 2 April 2020
- Bonomi Matteo, Uvalic Milica “*Serbia and the European Union*” (July 2019) <<https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1052>> accessed 27 July 2020
- Council of Europe “*About GRECO*” < <https://www.coe.int/en/web/greco/about-greco/priority-for-the-coe>> accessed 8 July 2020
- Council of Europe, « *Factsheet on the Framework Convention for the Protection of National Minorities*” (October 2016), < <https://www.coe.int/en/web/minorities/fcnm-factsheet>> accessed 16 May 2020
- Council of the European Union “*How Maastricht changed Europe*” (7 February 2020) <<https://www.consilium.europa.eu/en/maastricht-treaty/>> accessed 13 June 2020
- European Commission “*Albania*” < https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/albania_en> accessed 29 July 2020
- European Commission “*Commission reports on progress in Bulgaria under the CVM*” (October 2019) <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6136> accessed 22 July 2020
- European Commission “*Cooperation and Verification Mechanism for Bulgaria and Romania*” <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en#what-is-cvm> accessed 22 July 2020
- European Commission (Home Affairs) “*EU anti-corruption policy*” <https://www.mpravde.gov.rs/files/23_2_antikorruption.pdf> accessed 20 June 2020
- European Commission “*Key findings of the 2019 Report on Montenegro*” (May 2019) https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_19_2779 accessed 28 July 2020
- European Commission “*Montenegro financial assistance under IPA II*” (2020) https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/montenegro_en accessed 28 July 2020
- European Commission “*Revised enlargement methodology; Questions and Answers*” (February 2020) https://ec.europa.eu/commission/presscorner/detail/de/qanda_20_182 accessed 29 July 2020
- European Parliament, “*Briefing no 6 Bulgaria and the Enlargement of the EU*” <https://www.europarl.europa.eu/enlargement/briefings/6a3_en.htm> accessed 16 July 2020
- European Parliament “*MEPs call for EU Magnitsky Act to impose sanctions on human rights abusers*” (14 March 2019) <<https://www.europarl.europa.eu/news/en/press-room/20190307IPR30748/meps-call-for-eu-magnitsky-act-to-impose-sanctions-on-human-rights-abusers>> accessed 8 July 2020
- European Research Centre for anti-corruption and state building “*Bulgaria*” <<https://www.againstcorruption.eu/country/bulgaria-2/>> accessed 22 July 2020
- Ministry of European Integration – Government of the Republic of Serbia “*European Partnership*” <<https://www.mei.gov.rs/eng/documents/eu-documents/european-partnership/>> accessed 27 July 2020
- OHCHR, “*Corruption and Human Rights*”, (2020) <<https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx>> accessed 28 March 2020

- OHCHR “*Romania “in denial about extent of poverty, UN human rights expert say”*” (November 2015) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16739&LangID=E>> accessed 23 July 2020
- Transparency International, “*Anti-corruption glossary: Section Bribery*”, (2018) <<https://www.transparency.org/glossary/term/bribery>> accessed 22 March 2020
- Transparency International, “*Anti-corruption glossary: Section Embezzlement*”, (2018) <<https://www.transparency.org/glossary/term/embezzlement>> accessed 22 March 2020
- Transparency International “*Corruption perspectives Index*” 2019 <<https://www.transparency.org/en/cpi/2018/results/mkd>> accessed 1 August 2020
- Transparency International, “*How corruption weakens democracy*” (January 2019) <<https://www.transparency.org/en/news/cpi-2018-global-analysis>> accessed 18 May 2020
- Transparency International, “*What are the costs of corruption*”, (2018) <<https://www.transparency.org/what-is-corruption#costs-of-corruption>> accessed 24 March 2020
- Transparency International, “*What is corruption*”, (2018) <<https://www.transparency.org/what-is-corruption#define>> accessed 22 March 2020
- UNODC “*Corruption and comparative politics*” (December 2019) <<https://www.unodc.org/e4j/en/anti-corruption/module-3/key-issues/corruption-and-democracy.html>> accessed 18 May 2020
- UN Office on Drugs and Crime « *United Nations Convention against Corruption*” (2020) <<https://www.unodc.org/unodc/en/corruption/uncac.html>> accessed 10 July 2020

REPORTS, JOURNALS AND UNIVERSITY RESEARCHES

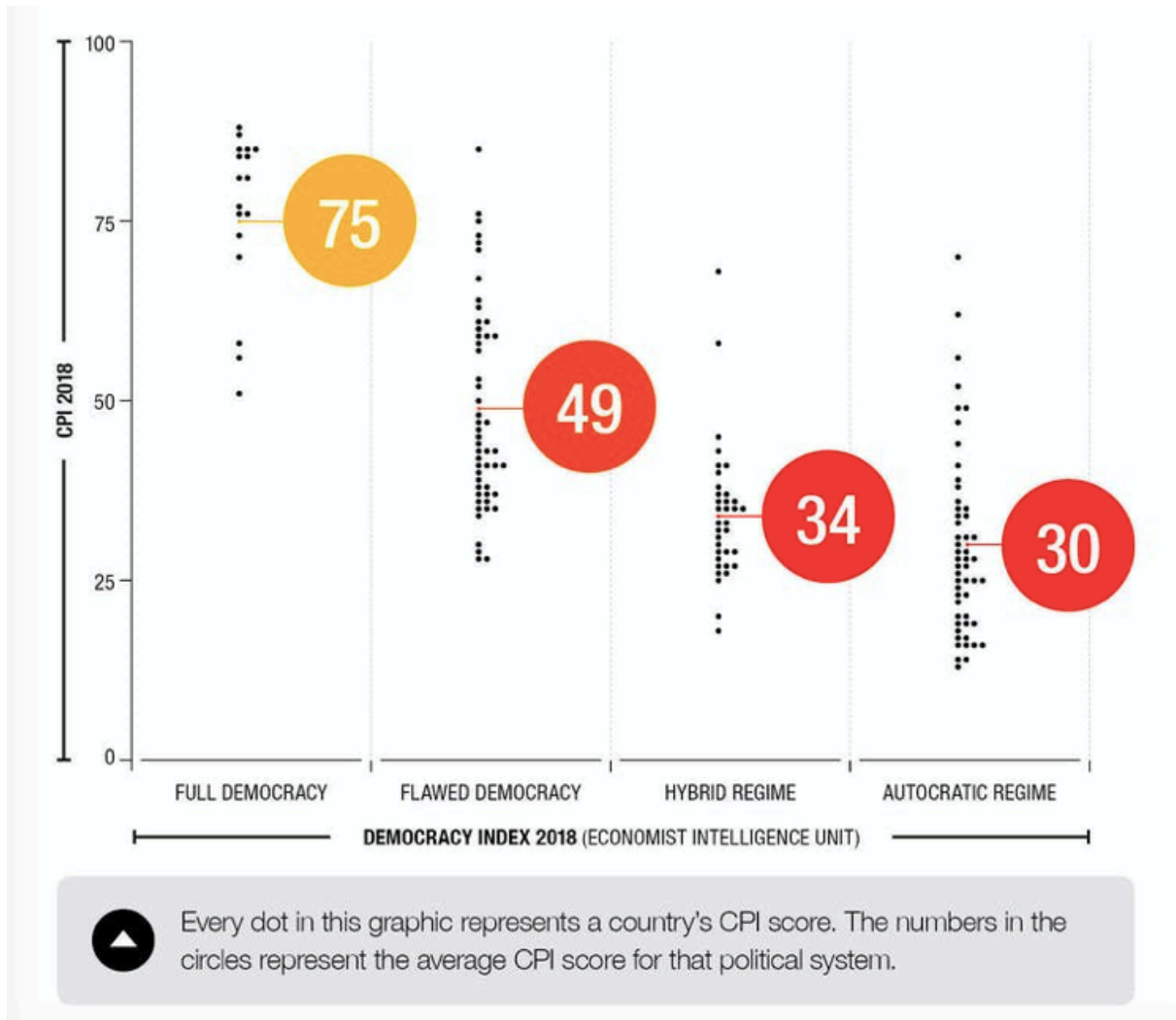
- Ackerman Susan Rose, “*Anti-Corruption Policy: Can International Actors Play a Constructive Role?*” (2013) Carolina Academic Press, 5 – cited by Peters Anne, (n 10) 11.
- Barkhouse Angela, Hoyland Hugo, Limon Marc, “*Corruption : a human rights impact assessment*” (2018) Universal Rights Group, <https://www.universal-rights.org/wp-content/uploads/2018/04/Policy_report_corruption_LR.pdf> accessed 13 April 2020
- Blanche Melissa, Depardon Adeline, Gros Félix “*EU action against corruption: steps forward and setbacks in a strategic policy for Europe*” (2019)11. <<http://www.ejtn.eu/PageFiles/17913/TH-2019-01%20TEAM%20FRANCE.pdf>> accessed 20 June 2020
- Davis Kiersten E, “*The relationship between Democracy and Human Rights*” (October 2015) Monash University Research Paper <https://www.academia.edu/17445635/The_Relationship_Between_Democracy_and_Human_Rights> accessed 17 March 2020
- Dimitar Belchev “*Bulgaria and the EU: the Role of Conditionality before and after accession*” (2019) CIFE International Centre for European Studies, 10-11 <https://www.ie-ei.eu/Ressources/FCK/image/RECHERCHE/Theses_2019/BELCHEV_Dimitar.pdf> accessed 22 July 2020
- Dimitrova Anna “*Public Opinion in Bulgaria with Regard to the EU Membership in the Context of the Economic Crisis, Towards a ‘Bulgarian Exception?’*” (2012) L’Europe en Formation <<https://www.cairn.info/revue-l-europe-en-formation-2012-2-page-289.htm#no32>> accessed 16 July 2020
- Emmert Frank, Petrovie Sinisa “*The past, present, and future of EU enlargement*” (2014) Fordham International Law Journal (Vol.37:1349), 1374 <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2350&context=ilj>> accessed 13 June 2020
- European Commission “*The PHARE Programme Annual report 1998*” (2000) 13. <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0183:FIN:EN:PDF>> accessed 8 July 2020

- European Commission “*Commission Staff Working Document: Serbia 2019 Report*” (2019) <<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>> accessed 27 July 2020
- Füle Stefan “The Copenhagen criteria and the enlargement of the EU” (May 2013) Conference Report, 9-10.
- Open Society Institute “*Monitoring the EU accession process: corruption and anti-corruption policy*” (2002) 16. <https://www.esiweb.org/pdf/bulgaria_OSI-EUMAP-corruption-CEE-2002.pdf> accessed 17 June 2020
- Grabbe Heather “*EU Conditionality and the Acquis Communautaire*” (2002) International Political Science Review, Vol 23, No.3
- Grabbe Heather « *Six lessons of enlargement ten years on: the EU’s transformative power in retrospect and prospect*” (2014) Open Society Foundation, 5 <https://www.researchgate.net/publication/263670615_Six_Lessons_of_Enlargement_Ten_Years_On_The_EU%27s_Transformative_Power_in_Retrospect_and_Prospect> accessed 2 August 2020
- Grubiša Damir “*Anti-Corruption Policy in Croatia: a Benchmark for EU Accession*” <https://eu.boell.org/sites/default/files/uploads/2013/12/anti-corruption_croatia.pdf> accessed 27 July 2020
- Hadjiisky Magdaléna “*SIGMA : un programme international de renforcement des capacités administratives en terres européennes (1992-2012)* » (2012) Revue Francaise d’Administration Publique <<https://www.cairn.info/revue-francaise-d-administration-publique-2017-1-page-73.htm>> accessed 13 July 2020
- Hechler Hannes, “*UNCAC in a nutshell*” (May 2017) U4 Anti-Corruption Resource Centre, 1 <<https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf>> accessed 10 July 2020
- Hemsley Ralph, “*Human Rights & Corruption States’ Human Rights Obligation to fight Corruption*” (2015) Journal of Transnational legal issues Volume 2 issue 1, 12 <https://www.unilu.ch/fileadmin/fakultaeten/rf/morawa/dok/JTLI_Vol_2_Issue_1_Hemsley.pdf> accessed 2 April 2020
- Holmes Leslie, “*Corruption: a very short introduction*”, (2015) Oxford University Press <<https://books.google.bg/books?id=xxfJBgAAQBAJ&printsec=frontcover&dq=corruption+definition&hl=fr&sa=X&ved=0ahUKEwjIpJ3JveroAhUoxqYKHeIABzsQ6AEIRDAD#v=onepage&q=corruption%20definition&f=false>> accessed 22 March 2020
- ICHRP, TI, “*Corruption and Human Rights: making the connection*” (2009), vi <http://www.ichrp.org/files/reports/40/131_web.pdf> accessed 2 April 2020
- Keil Soeren “*The Business of State Capture and the Rise of Authoritarianism in Kosovo, Macedonia, Montenegro and Serbia*” (2018) <https://repository.canterbury.ac.uk/download/9c46c9a774e1645b9e0c00756b674ec61860e015a1b475cdecfef7dcb3145e53/725764/17235_Keil.pdf> accessed 28 July 2020
- Luxembourg Institute for European and International Studies “*Bulgaria and the EU: Before and After Accession*” (April 2009) <http://www.ieis.lu/online/www/menu_vert/1152/220/221/content/355/436/116/ENG/Bulgaria%20and%20the%20EU.pdf> accessed 4 August 2020
- Matthew Murray and Andrew Spalding , “*Freedom from Official Corruption as a Human Right*” (2015) Brookings Governance Studies, Research Paper, 13 <https://www.brookings.edu/wp-content/uploads/2016/06/Murray-and-Spalding_v06.pdf> accessed on 27 March 2020
- Nightingale Elsa “*A critical analysis of the relationship between democracy and corruption*” (December 2015) University of Sussex <<https://www.e-ir.info/2015/12/20/a-critical-analysis-of-the-relationship-between-democracy-and-corruption/>> accessed 18 May 2020
- UNODC, “*Corruption in the western Balkans : bribery as experienced by the population*” (2011) <<https://www.unodc.org/documents/data-and>

- analysis/statistics/corruption/Western_balkans_corruption_report_2011_web.pdf> accessed 12 May 2020
- Papakostas Nikolaos “*Deconstructing the notion of EU conditionality as a Panacea in the context of enlargement*” (2012) *L’Europe en Formation* (n°364) < <https://www.cairn.info/revue-l-europe-en-formation-2012-2-page-215.htm>> accessed 17 June 2020
- Piedrafita Sonia, Torreblanca José, “*The three logics of EU enlargement: interests identities and arguments*” (2005) *Politique Européenne* (n°15) < <https://www.cairn.info/revue-politique-europeenne-2005-1-page-29.htm>> accessed 13 June 2020
- Peters Anne, “*Corruption and Human Rights*” (2015) Basel Institute on Governance Working Paper Series No. 20, 10 < https://www.mpil.de/files/pdf4/Peters_Corruption_and_Human_Rights20152.pdf> accessed 22 March 2020
- Peters Anne, “*Corruption as a Violation of International Human Rights*” (2018) *European Journal of International Law*, Volume 29, Issue 4, Pages 1251–1287 <<https://academic.oup.com/ejil/article/29/4/1251/5320164>> accessed 22 March 2020
- Ramasastri Anita, “*Is There a Right to Be Free from Corruption?*” (2015) *University of California Davis Vol.49:703*, 721 <https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Ramasastri.pdf> accessed 2 April 2020
- Rose Cecily, “*The limitations of a human rights approach to corruption*” (March 2016), Cambridge University Press <<https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/limitations-of-a-human-rights-approach-to-corruption/5DAFE247541373DC79D2AFB31B2A2A42>> accessed 12 May 2020
- Rose Cecily « *International Anti-Corruption Norms: Their creation and influence on domestic legal systems*” (2015) Oxford University Press, 98. <<https://books.google.bg/books?id=dwM7CgAAQBAJ&pg=PA103&dq=UNCAC&hl=fr&sa=X&ved=2ahUKEwiS1LvzzK7qAhXsllsKHQ4dAsMQ6AEwBHoECAQQAg#v=onepage&q=UNCAC&f=false>> accessed 11 July 2020
- Szarek-Mason Patrycja “*The European Union’s fight against corruption: the evolving policy towards Member States and candidate countries*” (2010) Cambridge University Press, 144.
- Wammen Nicolai “The Copenhagen Criteria and the Enlargement of the European Union” (May 2013) Conference Report, 5.
- Warren Mark.E “*What does Corruption mean in a democracy?*” (April 2004) *American Journal of Political Sciences* 328-343 < <https://www.jstor.org/stable/1519886?seq=1>> accessed 30 May 2020

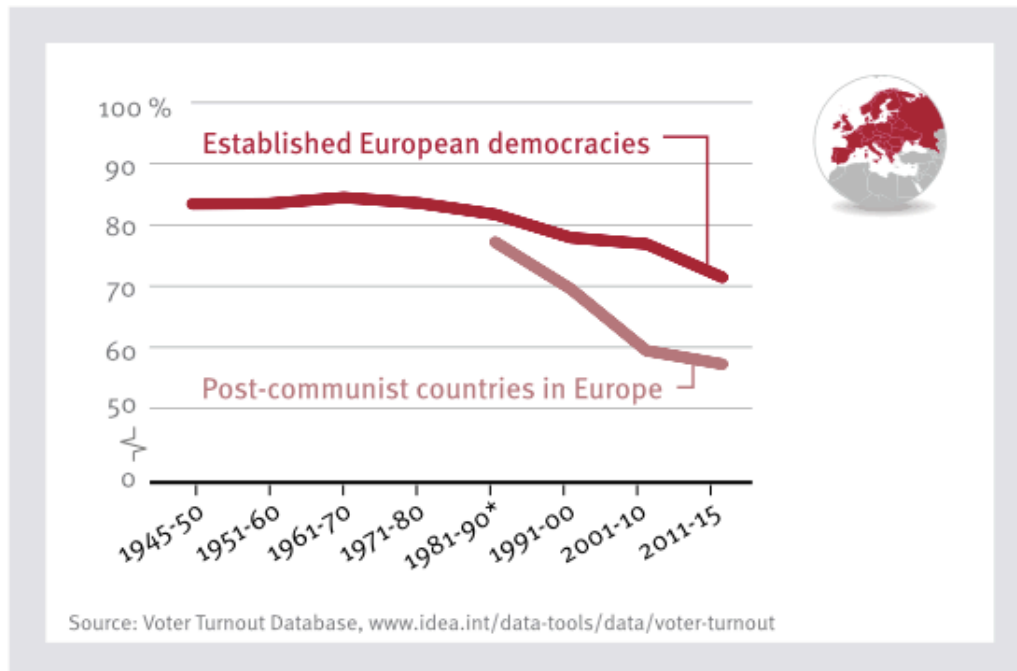
ANNEXES

Annex I



Source: Transparency International, “How corruption weakens democracy” (January 2019) <<https://www.transparency.org/en/news/cpi-2018-global-analysis>>

Figure 5. Voter turnout in Europe, 1945–2015



Established European democracies (countries and territories): Andorra, Austria, Belgium, Cyprus, Denmark, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, United Kingdom.

Post-communist countries in Europe: Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czechia, Estonia, Hungary, Kosovo, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Ukraine, Yugoslavia (the Union of Serbia and Montenegro).

* The first post-Cold War elections in post-communist countries were held during 1989–1990. Poland held its first post-Cold War election in 1989, and 10 other countries followed in 1990. Data for the elections held in Poland and Yugoslavia before the end of Cold War are included in the VTD. There are no data in the VTD for elections held in the countries of the former Eastern bloc, the former Soviet Union or the former Yugoslavia before 1990.

Source: Solijonov Abdurashid, “*Voter Turnout Trends around the World*” (2016) International Institute for Democracy and Electoral Assistance, 26 < https://www.agora-parl.org/sites/default/files/voter-turnout-trends-around-the-world_0.pdf>

Annex III

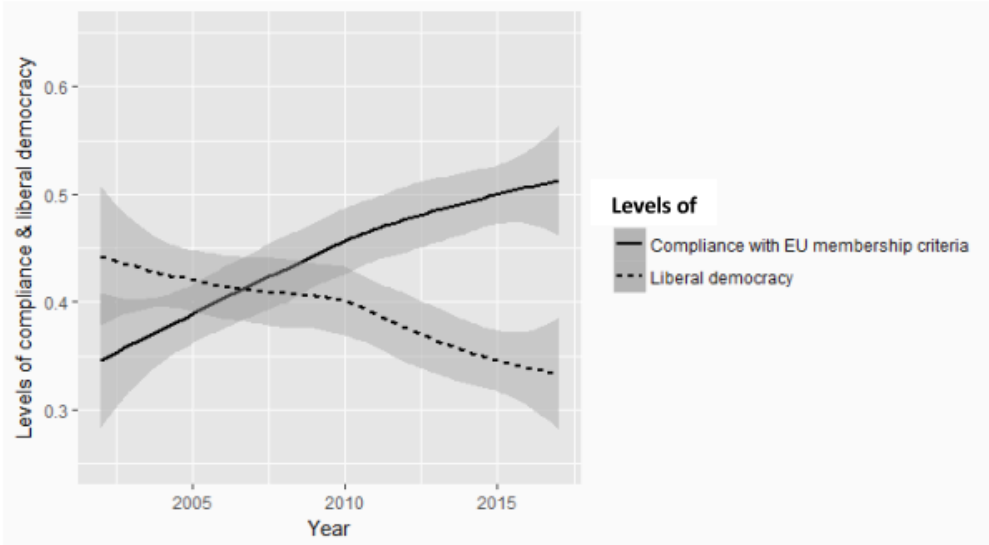
Interview with **Laure du Castillon**, Magistrate of Foreign Affairs of Belgium – expert in large-scale transnational anti-corruption practises (UNDOC, GRECO, OECD, FATF), expert in national and international coordination with related European and international agencies.

Questions asked during the interview:

- Could you describe yourself briefly? (your job position, in which areas are you specialised?)
- According to your experience, do you think there is an emergence of a human right and democratic perspective on corruption in international organisations?
- Would you think we could speak about the creation of a “new right”?
- Could you give concrete examples on how corruption affects citizens’ life?
- Would you say that petty or grand corruption is more likely to happen in the EU? (or both)
- Could you develop on the cooperation between international organisations and governments in term of corruption?
- Could you speak about the strengths and weaknesses of the UNCAC?
- Do you think that the EU played an efficient role in countering corruption in Europe? Or do you have other organisations in mind? (CoE, international or local NGOs etc.)
- Do you feel optimistic, neutral or pessimistic regarding countering corruption in the future?

Annex IV

Figure 1: Decoupling of compliance and democracy levels in the Western Balkans



Source: Richter Solveig, Wunsch Natasha “*How EU conditionality entrenches state capture in the Western Balkans*” (March 2019) Journal of European Public Policy < <https://blogs.lse.ac.uk/euoppblog/2019/03/07/how-eu-conditionality-entrenches-state-capture-in-the-western-balkans/>>