



Anti-corruption measures as political criteria for EU accession: Lessons from the Bulgarian experience

The issue of corruption featured high on the agenda of the two latest enlargements of the European Union, in particular with respect to the accession of Bulgaria and Romania, in 2007. There were few assistance programmes in these countries that did not include a good governance/anti-corruption component. However, differences of approach between the EU and bilateral aid agencies were significant enough to allow some generalisations that could be of use to future efforts in this area. This brief seeks to summarize the lessons learned from the terms of engagement employed by the EU

and aid agencies of individual governments in respect of Bulgaria. It highlights some of the inefficiencies, assuming worst practice can be as valuable a learning tool as best practice.



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Corruption: criminal justice or development issue?

One of the biggest challenges to donor programmes has always been the complexity of corruption and its particularities in different countries. Whether corruption is the cause or the symptom of 'underdevelopment', whether it is a deliberate crime or a rational behaviour are all issues for debates. While the EU in the context of the enlargement process has tended to view corruption as a matter for criminal justice and harmonised legislation, bilateral donors have traditionally seen it as a developmental challenge. The difference is more than academic: how corruption is viewed has shaped both the type of assistance provided and the collateral political pressure accompanying it.

Since the Union is a mechanism of harmonisation and not transformation, in the initial stages of the Bulgarian accession the European Commission focused on ensuring nominal compliance with what constituted the EU *acquis*. Prolonging this approach, however, risked turning the accession preparations into a drawn out statutory audit rather than a period of transformation of society and economy (which was what the Bulgarian public hoped to see). Subsequently, once Bulgaria had signed and ratified the international legal instruments part of the *acquis* (ironically, becoming a signatory before certain founding member states), the Commission prioritised the need for effective investigation and prosecution of corruption. This emphasis stemmed partly from the fact that most of the legal documents in the *acquis* criminalise various forms of corruption.¹

Focusing the attention of the Bulgarian government on the criminal law aspects of anti-corruption (AC) was indispensable for ensuring recognition of the newly adopted legal standards. However, viewing corruption through the prism of criminality also proved to be problematic:

- criminal justice is the least harmonised area in the EU, so the Commission could offer Bulgaria little in the way of guidance;
- the criminal justice approach was all the more ineffective given existing levels of corruption within the Bulgarian judiciary, an acknowledged phenomenon including by the Commission itself;
- the criminal law approach was particularly highlighted by the Commission in respect of political corruption but the complexity of political corruption makes effective prosecutions exceptionally difficult. Widespread graft among elected officials is more indicative of a poorly developed democratic process than of ineffective law enforcement.

Most bilateral agencies, on the other hand, have considered corruption a typical developmental problem: a matter of deficiencies in certain social and economic institutions rather than deviant behaviour that can be tackled through criminal prosecution by the state. Every bilateral aid agency that has funded AC programmes in Bulgaria over the past seven or eight years has in varying degrees subscribed to this approach. Yet, the law enforcement angle came to dominate the corruption debate in Bulgaria to such an extent that the biggest donors – the US, the UK, and the Netherlands – all made it one of their priorities.

One way in which the governments of EU member states sought linkages with the generic EU approach was through the so called twinning projects, financed by the national Phare² programme. In cases where a given member state was implementing EU-funded twinning projects with government or judicial authorities in Bulgaria while also financing projects through its bilateral aid agency, the twinning projects were seen as a kind of law enforcement complement to the aid agency's focus on development. The UK, for example, simultaneously funded NGOs to carry out research

on the linkages between organised crime and corruption through the Global Opportunities Fund while its Home Office was twinned with the Bulgarian Ministry of Interior in a project to install a system of AC procedures within the Ministry.

Regrettably, the congruity of approaching corruption from both the criminal and developmental points of view was never a matter of debate in Bulgaria. Enforcing criminal laws against bribery and introducing incentives to attract individuals and companies into the legal economy are not necessarily incompatible. However, in the case of Bulgaria complementarity between these two policies was never sought. Ideally, all stakeholders would undertake a joint initial assessment to identify those areas/sectors where economic and social policies are likely to be most effective in reducing corruption and those where criminal law enforcement can be expected to have a greater impact. Such an exercise should be led by the government of the would-be accession country in partnership with the private sector while donors could assist the subsequent delivery of policies.

EU membership as leverage

The EU and some individual aid agencies/governments adopted a similar approach – namely, maximizing the incentive of EU membership to induce the Bulgarian government to act against corruption. This was achieved primarily by including corruption among the *political criteria* for accession. Although corruption pertains to the functioning of a market economy as much as it does to the stability of democratic institutions and the rule of law, it was included among the political criteria to indicate the significance attributed to it by the Commission and member states. Since, however, the EU had no common AC standards, the Commission was obliged to formulate targets for deliverables as it went along. This turned the accession process into a learning exercise for the Commission itself.

Given the considerable value attributed to EU membership by both the Bulgarian government and the public, the decision to make EU membership conditional on the implementation of certain reforms was expected to bring tan-

1 A non-comprehensive list of the EU *acquis* that have a bearing on corruption issues is available at <http://europa.eu/scadplus/leg/en/s30004.htm>.

2 The Phare programme is one of the three pre-accession instruments financed by the European Union to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union.

gible positive results. In reality it achieved considerably less: the AC strategies and institutions that were introduced through pre-accession pressure are now largely forgotten, the few investigations into high level corruption that were initiated have since stalled, and public cynicism has increased.

The experience in Bulgaria shows that the key results of making EU membership conditional on developing AC strategies were to encourage bipartisan consensus on the need for reforms, to pressure the Bulgarian government into anti-corruption commitments which it would otherwise not have undertaken, and to bring corruption issues into the mainstream debate. However, conditionality of this kind has been ineffective in reducing corruption for a number of reasons:

- Making anti-corruption progress a “deliverable” by the government presupposes that any breakthrough will hinge entirely on the exercise of political will, an assumption which oversimplifies the complex and often deeply rooted issues around corruption.
- This kind of conditionality was also not very effective because of the lack of any mechanism for the verifiable monitoring of progress. Initially, the Commission was sceptical that levels of corruption (or the successful delivery of anti-corruption policies) could be effectively monitored. In one of its early reports on Bulgaria published in 2000, it wrote: “Whilst it is hard to know its extent, the persistent *rumours* (emphasis added) about corrupt practices at various levels of the administration and the public sector in themselves contribute to tainting the political, economic and social environment.”³ By 2007, the Commission was setting “benchmarks” for the Bulgarian government to attain. Although these were items on a to-do list rather than measurable indicators of change, they were indicative that the need for some kind of hard data on progress was being acknowledged. It was a bilateral donor

– USAID – that had started funding regular monitoring of corruption in the late 1990s. This kind of monitoring was an indispensable tool of AC policy as it showed the effect of its delivery. For example, the USAID-funded monitoring showed that better management procedures had had a significant AC effect in certain public sectors (e.g. revenue collection) while corruption levels remained high in other public sectors where there had been no credible AC action (e.g. healthcare). Overall USAID-funded monitoring registered a two-fold drop in administrative corruption over a period of 7-8 years. This monitoring was discontinued in 2007, with Bulgaria’s EU membership.

- Neither the Commission nor the bilaterals put in place a *plausible* mechanism to link assistance during pre-accession to political conditions. Admittedly, such a mechanism would have been difficult to achieve because of an inherent contradiction in any AC conditionality – namely, it risks confusing the objective of assistance (an accountable government looking after the public good) with the precondition for that assistance (an accountable government looking after the public good).

Bilateral aid agencies with their close links to local embassies were in a more awkward position as regards conditionality than was the EU. Although the fact that corruption within Bulgaria was widely acknowledged, foreign governments were understandably reluctant to comment on this politically sensitive matter. The Commission as the representative of a 20-odd member international institution was able to raise governance issues more easily. On the other hand, the bilateral agencies benefited greatly from their integration in the respective embassies. Given their diplomatic mandate, the latter were much more engaged with the Bulgarian social and political environment and therefore could provide their aid agencies with valuable insights into the capacity of local actors and the underlying social and economic processes. The Commission’s representatives in the country had a

narrower mandate, kept a lower profile, and generally had less influence on the funding priorities.

One unique feature of the Bulgarian experience with AC conditionality was that – resented as it may have been by politicians – it went down very well with the Bulgarian public. “Thank goodness for the EU” was an attitude widely shared among citizens who saw the Union as an ally against corrupt politicians. Although few other nations are likely to take foreign criticism so lightly, it is possible that exter-

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nal pressure of this sort, coupled with assistance from the EU and individual governments/agencies, would be welcomed by citizens in other countries who are disgruntled by successive corrupt governments at home.

More generally, however, if the Bulgarian experience is anything to go by, AC conditionality has limited applicability – it is only effective when aimed at the highest political level, for a very specific, defined and *feasible* target.

The local stakeholders: beneficiaries or allies

Anti-corruption is an area in which the institutions receiving foreign assistance need to be more than mere financial or technical beneficiaries of aid. They are and must be seen as indispensable allies in advancing an AC agenda. From this point of view the European Commission, as the institution administering EU assistance, and the bilateral donors adopted very different policies in Bulgaria.

In a carryover from its other realms of competence, the European Commission engaged almost exclusively with the executive branch of government regarding AC. Initially, this was mainly because meeting EU standards was considered a matter of transposing the provisions of international legal documents into national law. During the latter stages of accession, the Commission shifted its attention

³ 2000 Regular Report from the Commission on Bulgaria’s Progress Towards Accession, 8 November 2000, p. 17

to the effective enforcement of these rules but even then the Bulgarian government remained its exclusive interlocutor and no attempt was made to ensure that Bulgarian society “owned” the process. Most other Bulgarian institutions with a stake in advancing good governance – the judiciary, the private sector, civil society, the media, and municipal councils – remained fairly marginalized. As regards assistance, by far the better part of EU funds were – and will continue to be for a while – administered by a public administration whose practices by the Commission’s own assessment fall short of EU standards of transparency and accountability.

Bilateral agencies, on the other hand, were far more flexible in their choice of partners. With much smaller funds to administer, they had to exercise better judgement and to rely on closer knowledge of the local institutional environment in deciding who and what to finance. The main contrast with the Commission approach was in the *capacity to engage* local stakeholders. While the bilateral agencies relied on a mix of expatriates and local programme people and cooperated very closely with their respective embassies, the targets of EU assistance were decided in discussions between the Commission and representatives of the executive with only token input from non-state actors. Many of the bilateral agencies developed their AC programmes in dialogue with Bulgarian counterparts which ensured, at the very least, considerable “ownership” by the local partner. Some of the bigger bilaterals combined capacity to influence government with the will and the knowledge to engage “micro stakeholders” (NGOs, local government, etc). In contrast to the *by default* approach of the Commission, the bilateral agencies worked with the government through a set of (more or less) clearly specified priorities and target areas/institutions. Public-private partnerships – arguably the best anti-corruption instrument – were confined to the bilaterals and not favoured by the Commission. As regards the selected areas of assistance, the bilaterals, owing to their fairly good understanding of the local environment, made a greater effort in opting to tackle areas of AC where it was feasible to make a difference.

A key consequence of the choice of partners in anti-corruption assistance is the culture of *accountability* that is promoted as a result. Political pressure and financial assistance from the EU, in so far as they were directed at the Bulgarian government, required reporting almost exclusively to Brussels. The result was that EU sponsored AC started to be seen by the public as a government-to-Brussels business with little relevance to citizens.

By contrast, local accountability was built into most bilateral aid programmes. The recipient/partners of these programmes – NGOs, local authorities, business associations – were required to incorporate a public

outreach component in their work, an aspect largely missing in the EU-funded AC projects.

The exit strategy

In a final twist to the interplay between the AC roles of the EU and the bilateral aid agencies, the latter are now discontinuing their programmes because EU membership makes Bulgaria ineligible for this assistance.

Bilateral assistance was discontinued almost overnight not because Bulgaria had either met or failed to meet its anti-corruption targets but on the grounds of one formal criterion alone – membership in an international institution. In taking this decision, neither the European Union nor the bilaterals have applied other, arguably more relevant criteria (levels of corruption, strength of local institutions, etc). Yet, the risks of a country with a corrupt public administration joining the EU are by far bigger for the country than for the EU. The quadrupling of the monies available to the civil service to administer (the structural funds compared to the pre-accession instruments), coupled with the relaxation of monitoring procedures without any additional transparency guarantees to compensate and the withdrawal of bilateral donor agencies⁴ funding anti-corruption work, are bound to have an adverse short term effect on corruption levels.

In the long term, however, gearing the Bulgarian public administration up to the Commission services is likely to do more for anti-corruption than was achieved by all the political manoeuvring by Brussels and member states during the pre-accession period. This is all the more reason for the bilateral agencies to remain active in the country to ensure linkages between the actions of the public administration and private sector and civil society AC efforts.

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Since the future EU hopefuls (such as Croatia and Macedonia) are not expected to join within the immediate future, the multilateral and bilateral agencies are likely to be working on anti-corruption programmes in these countries for some time yet. This gives all donors a window of opportunity to complement assistance conditional on political reforms with support for social and economic transformation. This would aim at reducing the scope for corruption. Thus, the EU would be well advised to learn from the bilaterals’ view of corruption as a matter of development and to seek to use the pre-accession period to induce actual social and economic transformation. Conversely, the bilateral donors could enhance the conditionality of their funding linking it to identifiable commitments by the would-be accession government.

⁴ With the exception of Norway which is launching a bilateral assistance fund *because* Bulgaria has joined the EU.